"To enrich lives through effective and caring service"

Los Angeles County
Caring for Your Coast
Beaches & Harbors

Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

SMALL CRAFT HARBOR COMMISSION

AGENDA
MARCH 14, 2007
9:30 a.m.

BURTON W. CHACE PARK COMMUNITY ROOM
13650 MINDANAO WAY
MARINA DEL REY, CA. 90292

1. Call to Order and Pledge of Allegiance

2. Approval of Minutes: Meeting of February 14, 2007

3. **REGULAR REPORTS**

   a. Marina Sheriff — (DISCUSS REPORTS)
      - Crime Statistics
      - Enforcement of Seaworthy & Liveaboard Sections of the Harbor Ordinance with Liveaboard Permit Percentages

   b. Marina del Rey and Beach Special Events — (DISCUSS REPORT)

   c. Marina del Rey Convention and Visitors Bureau — (PRESENTATION BY BEVERLY MOORE, EXECUTIVE DIRECTOR OF MdR CVB)

4. **OLD BUSINESS**

   a. Panay Way Marina Boat Slip Eviction of Ruben Cardona — (DISCUSSION WITH PANAY WAY LESSEE)

   b. Liveaboard Bill of Rights Review By County Counsel — (DISCUSS REPORT)

5. **NEW BUSINESS**

   a. Appointment of a Member and Alternate to the Marina del Rey Convention and Visitors Bureau Board of Directors for 2007 — (ACTION REQUIRED)

13837 Fiji Way • Marina del Rey • CA 90292 • 310.305.9503 • fax 310.821.6345 • internet: http://beaches.co.la.ca.us

b. Traffic Mitigation Measures Within Marina del Rey --Quarterly Report (PRESENTATION BY BARRY KURTZ, TRANSPORTATION ENGINEER CONSULTANT, DEPARTMENT OF BEACHES AND HARBORS)

c. Approval of Option for Lease to Facilitate Redevelopment – Parcels 52R & GG (Boat Central) – Marina del Rey (RECOMMEND TO BOARD OF SUPERVISORS)

6. **STAFF REPORTS** (DISCUSS REPORTS)

a. Ongoing Activities
- Board Actions on Items Relating to Marina del Rey
- Local Coastal Program Periodic Review – Update
- Status of Dredging Project
- Design Control Board Minutes

b. Public Request for Information
- Small Craft Harbor Commission Mission Statement (DISCUSS REPORT)
- Parcel 20 (Capri Apartments) Covenant for Affordable Housing (DISCUSS REPORT)

7. **COMMUNICATION FROM THE PUBLIC**

8. **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

Si necesita asistencia para interpretar esta informacion llame al (310) 305-9547.

ADA ACCOMMODATIONS: 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 (310) 305-9590 (Voice) or (310) 821-1737 (TDD).

SMALL CRAFT HARBOR COMMISSION
MINUTES
FEBRUARY 14, 2007

Commissioners

Searcy Harley, Chairman
Russ Lesser, Vice-Chairman
Albert Landini, Ed.D. (Absent)
Christopher Chuang-I Lin, Ph.D.
Vanessa Delgado, MPA

Department of Beaches and Harbors

Stan Wisniewski, Director

Also Present

Thomas Faughnan, Principal Deputy County Counsel; Beverly Moore, MdR Convention and Visitors Bureau; Lt. Greg Nelson, Sheriff's Department; Deputy John Rochford, Sheriff's Department

1. CALL TO ORDER, ACTION ON ABSENCES AND PLEDGE OF ALLEGIANCE

Chairman Searcy called the meeting to order at 9:50 a.m. The Commissioners, staff and members of the public stood and recited the Pledge of Allegiance.

Vice-Chairman Lesser moved and Commissioner Delgado seconded a motion to excuse Commissioner Landini from the meeting. The motion passed unanimously.

Mr. Wisniewski introduced and welcomed new Commissioner Vanessa Delgado who is an appointee of Supervisor Gloria Molina and representing the First District.

2. APPROVAL OF MINUTES

Chairman Searcy moved and Vice-Chairman Lesser second a motion to approve the November 8, 2006 minutes. The motion passed unanimously.

3. REGULAR REPORTS

a. Marina Sheriff – Crime Statistics

Lt. Nelson reported that boat burglaries have decreased, but residential burglaries have increased. He expressed that deputies captured burglars who have been burglarizing hotel parking structures, and an individual who has admitted to committing 150 bicycle thefts in the last two years in Marina del Rey. A dozen of the crimes admitted have been confirmed and the arrest of this individual should reduce crime rate this month.

--- Enforcement of Seaworthy & Liveaboard Sections of the Harbor Ordinance

Dep. Rochford reported that since the November 8, 2006 meeting liveaboard permits have increased and there has been good compliance by boaters in the marina. He stated percentages have increased for the total of liveaboard permits issued and that this would continue to increase with the patrolling of the docks by the deputies and the notices to comply being issued.

b. Marina del Rey and Beach Special Events

Mr. Wisniewski announced that Fisherman's Village Weekend Concerts are free on Saturdays and Sundays and that the Department of Public Works and the Sanitation District are sponsoring the annual Household Hazardous Waste and E-Waste Roundup on Saturday, March 3, 2007, from 9:00 a.m. – 3:00 p.m. at 13483 Fiji Way, Marina del Rey (Dock 52). He encouraged the Argonaut to publish this event.

The Marina del Rey and Beach Special Events Report was submitted and discussed at the meeting.

CHAIRMAN SEARCY OPENED THE FLOOR TO PUBLIC COMMENT

Ms. Carla Andrus stated she does not see the numbers for liveaboards, vessels and slips being presented in percentage terms on the compliance report. She stated the liveaboards was about 10% in the past but now shows a decrease. She stated Doug Ring has the entire marina out of commission, which is causing a shortage of slips available and stated once they are available liveaboards from Bar Harbor should be allowed to relocate there.

Mr. Wisniewski replied that Doug Ring's Project would have slips at his new anchorage (Esprit I) and should be available in mid-to-late summer. He stated any liveaboard tenant of his could apply for a slip, but there is guarantee. If a tenant is in good standing he is sure that Mr. Ring will take that into consideration. Lastly, he stated that the count for past liveaboard slips issued by the Sheriff's might have been double counted, which caused the stats to be inaccurate. The actual number of liveaboards has not reduced.

Chairman Searcy requested that Dep. Rochford show liveaboard permit percentages on next month's Seaworthy & Liveaboard Compliance Report.

c. Marina del Rey Convention and Visitors Bureau

Ms. Beverly Moore commented that the MdR Convention and Visitors Bureau has collaborated with other Westside Convention and Visitor Bureaus to develop joint promotional efforts. She explained this would promote the Marina as a popular visiting destination and help reduce the Visitors Bureau's cost of outreach. She stated the Visitors Bureau has completed an advertising project with the State of California Tourism Office. She explained that Beverly Hills, MdR, Santa Monica and West Hollywood have collaborated together and are in the process of forming a website called WestLA.com. Meanwhile, the latest information about the Marina is updated weekly and available for viewing at the website: www.visitmarina.com. She commented that the Marina's visitors count has increased by 32% and a wedding section will be added to the website. Lastly, she complimented the newly installed gateway and directional signage for having greatly improved traffic circulations and give a welcoming look to the Marina.

CHAIRMAN SEARCY OPENED THE FLOOR TO PUBLIC COMMENT

Ms. Nancy Marino complimented the MdR Convention and Visitors Bureau. She commented that alternate forms of transportation such as the waterbus and shuttle only exist on Memorial or Labor Day and should be established for year round operations. She stated the LCP requires a marina shuttle system and wants improvements done. Also, if an urban redevelopment is being imposed on a suburban infrastructure of roads it will not work. She asked the commission to support and consider this alternate mode of transportation a priority.

4. OLD BUSINESS

a. None

5. NEW BUSINESS

a. Election of Commission Officers

Mr. Faughnan explained the Rules of the SCHC, Section 8: Election of Chairman and Vice-Chairman. He stated the commission has the power to waive the rules and have frequently done so in the past. This is up to the commission to decide. Vice-Chairman Lesser moved to waive the rules to re-elect Mr. Harley Searcy as Chairman, Commissioner Lin seconded the motion. The motion passed unanimously.

Vice-Chairman Lesser motioned for Mr. Searcy to be re-elected as Chairman, Commissioner Lin seconded the motion. The motion passed unanimously.

Chairman Searcy moved to waive the rules to re-elect Russ Lesser as Vice-Chairman, Commissioner Lin seconded the motion. The motion passed unanimously.

CHAIRMAN SEARCY OPENED THE FLOOR TO PUBLIC COMMENT

Ms. Nancy Marino supported the re-election of Chairman Searcy and Vice-Chairman Lesser and welcomed Commissioner Delgado. She commented that in 1954, House Document 389 was established and the marina has a mandate to be a Small Craft Harbor for recreational boating on the water and public recreation and parks on the landside. She stated massive redevelopment has caused concerns with recreation facilities and opportunity for the public. She suggested that Commissioner Delgado should become familiar with House Document 389 and let it guide her decision on matters that come before the board for consideration.

Ms. Carla Andrus stated she would like to hear and review the Oath, Purpose and Mission that Commissioners made before taking the office.

Mr. Faughnan will submit this information at the next SCHC meeting.

6. STAFF REPORTS

a. Ongoing Activities

The Ongoing Activities Report was submitted and discussed at the meeting.

CHAIRMAN SEARCY OPENED THE FLOOR TO PUBLIC COMMENT

Mr. William Vsrezk commented on the issue of eviction and stated nothing has been done to alleviate the situation. He stated there is no relocation assistance for legal liveaboards and creates a homeless situation. He said he would be homeless if his liveaboard status is taken away due to redevelopment. Lastly, Mr. Vsrezk stated if Doug Ring wanted to make an honest effort it would be good business sense to attempt to accommodate tenants for relocation.

Ms. Nancy Marino agreed with Mr. Vsrezk's testimony regarding homelessness. She commented that there are no attended parking lots in MdR and the vets are offered absolutely nothing. She stated the LCP Review will be on the May agenda and doesn't know why the County is not aware of this and cast doubt on this aspect of the project and finds it difficult to believe this report. She commented that 200 people were at the prior DCB meeting but were

given adequate time for discussion. She also commented that Mr. Cardona has submitted a letter stating he was never advised he had violated any dock policies when he was being evicted. She challenged the County's report on the subject matter.

Ms. Carla Andrus asked if public comments could be reconsidered in a different way because there is too much on the staff report to discuss in three minutes and stated there is old business that is not being addressed. She stated that the Commission requested an update on the LCP Program Review and is aware of complaints of it not being clear. She stated that the Board of Supervisors has approved leases, and five on the Project Status Report are without the LCP amendments, which needed to become legitimate leases and asked if this bothers the Commission. She would like this discussed at the next meeting. She also stated that at the last DCB meeting the agenda was not completed, the Staff Reports were not discussed because Susan Cloak ended the meeting at 9:30 p.m. and the public was not able to make any comments. She exhausted her time by reading a letter submitted by Rueben Cardona on the latter's opinion why he was evicted and submitted the letter for record.

Vice-Chairman Lesser requested specific violations be submitted pertaining to Mr. Reuben Cardona.

Chairman Searcy stated to the Commission and the public that Commissioners are not arbitrators for landlord tenant matters but try to do what they can to urge people to do what's right. He stated these are contract matters and the Commission's power is limited in this respect. The Commission cannot control how other Commission and boards conduct their meetings. He commented that the Commission understands the public's frustrations and explained that the Design Control Board is not under the SCHC's purview.

Mr. Faughnan replied that Chairman Searcy was correct on both points.

Vice-Chairman Lesser commented that landlords could evict a tenant at any time if given notice. He stated he has heard many cases of tenants being evicted for no reason and would like to review the rules and violations. He also stated he does not see tenants being evicted for no reason as it does not make good business sense.

Chairman Searcy wanted Mr. Wisniewski to contact the lessee to find out if they have anything in writing regarding Mr. Cardona's violation that cause him to be evicted.

Mr. Wisniewski stated he would invite the lessee to attend the next meeting and to also provide a written statement of the rules and violations for evictions.

7. COMMUNICATION FROM THE PUBLIC

Ms. Dorothy Franklin stated that Liveaboard and Boaters Bill of Rights have not been on the agenda since their initial presentation to the Commission last fall.

Mr. Faughnan replied that the Commission has not received the proposal from POWER and the liveaboard advocates.

Ms. Franklin submitted the Boaters Bill of Rights to the Commission and stated POWER would like it included it on the agenda for liveaboards and boat owners. POWER would like it stated in each marina lease agreement with boat owners who chose to be in the various marinas in MdR. POWER wants a consistency in MdR for liveaboards, which has been 10% in the past. POWER would like the commission to recommend the Boaters Bill of Rights to the Board of Supervisors on their behalf. She stated she recalled there were reservations about some of these points on the part of the Commission and wanted to know their concerns. She stated

POWER would discuss this with their attorney and return with a response. POWER is willing to compromise and work out a Boaters/Liveaboards Bill of Rights that can be implemented throughout California.

Mr. Faughnan stated this was exactly what POWER submitted and discussed previously and did not reflect any changes.

Chairman Searcy asked Mr. Faughnan to review the document and submit in writing any problems, issues or conflicts with any existing state laws at the next meeting. He stated the commission would review the document and return with feedback.

Vice-Chairman Lesser asked if this document could be compared to existing policies in other marinas.

Mr. John Rizzo stated he has attended these meetings for 32 years and has heard several issues and problems that never go away. He stated they just get worse. He commented that the turnover with tenants and boaters in the marina has occurred approximately three times and when economic changes occur boaters are evicted due to higher slip fees, as well as apartment tenants. He stated if proper procedures were put into the lease to protect the public this would not happen. Lastly, he stated he would present a list of serious problems to Commissioner Delgado and anyone else who wants it.

Ms. Nancy Marino stated she understood that the Commission does not have authority to deal with many of these issues and acts only in an advisory capacity. She stated the commission is to discuss and explain issues of importance to the community. Also, the public speaks through the commission to Beaches and Harbors and the Board of Supervisors. She asked the commission to speak out in support of issues made to them and to make recommendations to the Board of Supervisors on behalf of the constituents in this area (residents, boat owners, business tenants, liveaboards and surrounding neighbors). She stated the lessees want and believe what will streamline the approvals process and will lead to a balanced and acceptable redevelopment of the marina is a public review of the MdR's Master Plan. The lessees feel there is no master plan and it is the County's obligation to bring this to the public to allow public participation and review. Ms. Marino stated if the County did a public review and developed a master plan to incorporate everyone's concern it would eliminate work for the boards, commissions, department as well as the public. She, asked the commission to support MdR and to be their mouthpiece with the Board of Supervisors.

Ms. Carla Andrus suggested the commission ask the ten most frequently asked questions. She stated an overall master review of all planning in Marina del Rey is needed. Would like to see when these leases become legitimized and certainly not now without the LCP amendment in place. This concerns her and should concern the commission. She stated in the November 8, 2006 minutes she did not say on Page 4 that the Capri no longer had affordable housing that is not the case. She stated she said that, "they do not have their covenant in place" and they still don't. She stated she heard from the CDC and POWER that the County is considering suing Goldrich & Kest to get this covenant signed and would like to know what is the delay. She stated it was to open Aug 2006 and still has not done so. She asked why doesn't Goldrich & Kest want to sign this covenant and asked if he has an increase on his ground lease rents. She wanted them to attend the SCHC meeting to give an explanation. She submitted the August 27, 2003 minutes, which pertains to the Doug Ring Project. She stated the County was suppose to recognize this huge revenue and wanted to know where it is. Lastly, she stated Doug Ring should come in and discuss the audit that has been done on his property and asked if he has to pay more on that ground lease.

Chairman Searcy requested Mr. Wisniewski to review this information and any problems with the Goldrich & Kest covenant.

Mr. Faughnan stated that Goldrich & Kest have not signed and the Board is looking into ways to get them to sign it.

ADJOURNMENT

Chairman Searcy adjourned the meeting at 10:50 a.m.

Respectfully submitted by:
Donna Samuels, Commission Secretary

Taped meetings can be purchased directly after all meetings.

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT
MARINA DEL REY STATION
PART I CRIMES-FEBRUARY 2007

	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	TOTALS
Homicide										
Rape							1			1
Robbery: Weapon										0
Robbery: Strong-Arm										0
Aggravated Assault	1			1			1	1	2	6
Burglary: Residence	3				3	1	6		5	18
Burglary: Other Structure	5	3				1	4	1	2	16
Grand Theft	2	1				1	3		2	9
Grand Theft Auto	5	1					2	1	1	10
Arson										0
Boat Theft										0
Vehicle Burglary	2						4	1		7
Boat Burglary										0
Petty Theft	2	2						1		5
REPORTING DISTRICTS TOTALS	**20**	**7**	**0**	**1**	**3**	**3**	**21**	**5**	**12**	**72**

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

Source- LARCIS, **Date Prepared** – March 5, 2007
CRIME INFORMATION REPORT - OPTION B

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

MARINA DEL REY STATION

PART I CRIMES- FEBRUARY 2007

Part I Crimes	MARINA AREA (RD'S 2760-2763)	EAST END (RD'S 2764-2768)
Homicide	0	0
Rape	0	1
Robbery: Weapon	0	0
Robbery: Strong-Arm	0	0
Aggravated Assault	2	4
Burglary: Residence	3	15
Burglary: Other Structure	8	8
Grand Theft	3	6
Grand Theft Auto	6	4
Arson	0	0
Boat Theft	0	0
Vehicle Burglary	2	5
Boat Burglary	0	0
Petty Theft	4	1
Total	**28**	**44**

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

Source- LARCIS, **Date Prepared –MARCH** 5, 2007
CRIME INFORMATION REPORT - OPTION B

MARINA DEL REY HARBOR ORDINANCE
SEAWORTHY & LIVEABOARD COMPLIANCE REPORT

	January	February
Liveaboard Permits Issued (NEW)	11	4
(RENEW)	2	11
Total	13	15
Notices to Comply Issued	36	0

	Last Meeting	Present
Total Reported Liveaboards:	336	341
Total Current Liveaboard Permits Issued:	176	178
Total Expired Permits:	26	31
Total Reported Liveaboards Without Permits:	134	132

Total reported vessels docked in Marina del Rey Harbor: **4,416**

Percentage of vessels that are registered liveaboards: **7.7%**

No new citations were issued for violations of 19.12.1110 L.A.C.C. (Liveaboard Permit) or 19.12.1060 L.A.C.C. (Un-Seaworthy Vessel) in the month of October.

Number Of Impounded Vessels Demolished

To date, two hundred and eleven (214) vessels have been removed from the marina for disposal, nine (9) of those in 2007. Currently, two (2) vessels are ready for disposal and twenty-four (24) are awaiting lien sale procedures.

To enrich lives through effective and caring service

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

Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

March 8, 2007

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director Stan

SUBJECT: **AGENDA ITEM 3b - MARINA DEL REY AND BEACH SPECIAL EVENTS**

MARINA DEL REY EVENTS

OPENING DAY CEREMONIES 2007

Marina del Rey Yacht Clubs
Saturday, March 17 – Sunday, March 18

The yacht clubs of Marina del Rey will be celebrating the opening of the yachting season on March 17 and 18. Contact the clubs for their schedule of events during this weekend.

California Yacht Club:
www.calyachtclub.com
(310) 823-4567

Del Rey Yacht Club:
www.dryc.org
(310) 823-4664

Marina Venice Yacht Club:
www.mvyc.org
(310) 822-9082

Pacific Mariners Yacht Club:
www.pmyc.org
(310) 823-9717

Santa Monica Windjammers Yacht Club:
www.smwyc.org
(310) 827-7692

South Coast Corinthian Yacht Club:
www.sccyc.org
(310) 306-2787

MARINA DEL REY OUTDOOR ADVENTURES 2007

Sponsored by the Los Angeles County Department of Beaches and Harbors
Burton Chace Park ♦ 13650 Mindanao Way ♦ Marina del Rey ♦ Ca ♦ 90292

Bird Watching Experience Program

Thursdays, March 22 and May 24 at 4:00 pm
&
Thursdays, April 26 and June 28 at 9:00 am

County-sponsored bird watching walk for adults is a free two-hour walk, which will take place at various sites in the Ballona Wetlands. Meet at the Burton Chace Park, Community Room. Participation, parking and transportation to the tour site is free. Pre-registration is a must!

Harbor Kayaking Program
Saturdays
March 24, April 21, May 26, June 16, July 28, August 25, September*, October 27 and November 10
11:30 am – 1:45 pm
* September date yet to be determined

Come and take a kayaking lesson in the Marina del Rey harbor. This two-hour session begins with Los Angeles County Lifeguard instruction and water safety. The group will get the opportunity to enjoy Marina del Rey's basins. This is a great opportunity for families to have a fun and educational day in the Marina del Rey.

Program requires pre-registration. Fees are $25 (youths 10 – 18) and $30 (19 or older). Fees must be paid upon registering.

Surf Kayaking Program (New)
Saturdays
March 24, April 28, May 26, June 16, July 28, August 25, September*, October 27 and November 10
8:00 – 11:00 am
*September date yet to be determined

Los Angeles County Department of Beaches and Harbors is offering a Surf Kayaking program. Participants will get the opportunity to kayak through the Marina del Rey Harbor and head out to the North Jetty, where they will surf the waves aboard sit-on-top kayaks. Los Angeles County Ocean Lifeguards will instruct the outing.

Program requires pre-registration. Fees are $25 (youths 10 – 18) and $30 (19 or older). Fees must be paid upon registering.

For all Outdoor Adventure Programs call: Burton Chace Park at (310) 822-8530.

FISHERMAN'S VILLAGE WEEKEND CONCERTS
Sponsored by Pacific Ocean Management, LLC
All concerts are from 1:00 – 4:00 pm

Saturday, March 10
2 AZZ 1, playing Smooth Jazz

Sunday, March 11
Susie Hansen Latin Band, playing Hot Latin Jazz

Saturday, March 17
Chris "Hammer" Smith Band, playing Harmonica Jazz & Blues

Sunday, March 18
Nick Henry, playing Jazz

Saturday, March 24
Chris Mulkey, playing Blues

Sunday, March 25
Upstream, playing Reggae & Caribbean Roots

Saturday, March 31
Son Candela, playing Latin Jazz

Sunday, April 1
2:00 – 5:00 pm
Uncle Monkey, playing Tropical Rock

For more information call: Pacific Ocean Management at (310) 822-6866.

BEACH EVENTS

There are no beach events this month.

SW:DC:mc

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

Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

March 8, 2007

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director Stan

SUBJECT: **Item 4a – PANAY WAY MARINA BOAT SLIP EVICTION OF RUBEN CARDONA**

During the February 14, 2007 Small Craft Harbor Commission meeting, your Commission asked that we request the lessee to provide a written explanation or come to your next Commission meeting to share the reasons why Mr. Ruben Cardona was evicted from the Panay Way Marina.

Mr. Sherman Gardner, as the lessee's representative, and the leasehold's dockmaster will both be present at your meeting to share the circumstances regarding Mr. Cardona's previous tenancy and why he was not invited back to the marina upon construction completion.

SW:PW:ks

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Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

March 8, 2007

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director Stan

SUBJECT: **Item 4b – LIVE-ABOARD BILL OF RIGHTS REVIEW BY COUNTY COUNSEL**

Attached please find a memo received from Thomas J. Faughnan, Principal Deputy County Counsel, with respect to his review of the document entitled "Live-Aboard Bill of Rights" presented to your Commission by a representative of People Organized for Westside Renewal ("POWER") at your February 14, 2007 meeting.

Mr. Faughnan will be present at your Commission meeting to answer any questions you might have.

SW:ks

13837 Fiji Way • Marina del Rey • CA 90292 • 310.305.9503 • fax 310.821.6345 • internet: http://beaches.co.la.ca.us

COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL

648 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-2713

TELEPHONE
(213) 974-1853
FACSIMILE
(213) 687-7337
TDD
(213) 633-0901

RAYMOND G. FORTNER, JR.
County Counsel

March 8, 2007

TO: SMALL CRAFT HARBOR COMMISSION

FROM: THOMAS J. FAUGHNAN
Principal Deputy County Counsel
Property Division

RE: **Review of "Live-Aboard Bill of Rights"**

At your February 14, 2007, meeting a representative of People Organized for Westside Renewal ("POWER") presented your Commission with a document entitled "Live-Aboard Bill of Rights," which is attached hereto. You have asked our office to review this document. This memorandum will discuss the points raised by POWER in the context of the existing laws and contractual provisions relevant to those points.

1. Background.

The document presented at the February 14, 2007, meeting is essentially the same document previously circulated by POWER at prior Commission meetings. The only changes to the document are:(1) insertion of the title "Live-Aboard Bill of Rights"; and (2) insertion of "and small boaters" after "live-aboard residents" in the first sentence of the second paragraph. POWER has not made any substantive changes to their request despite the numerous public discussions at the Commission regarding these matters and my own discussions with their counsel on the development of a concrete proposal for the County's consideration.

The document addresses three areas of concern: (1) Leases; (2) Evictions; and (3) Fees. The document does not address how the County is expected to implement the proposals set forth or the legal basis for the County proceeding in a particular manner.

2. The "Live-Aboard Bill of Rights".

A. Leases.

POWER first demands that the County ensure "that all live-aboard residents in Marina del Rey have the option to sign 'Live-Aboard Leases' with a term of one year." The County's ground leases in Marina del Rey do not permit the lessees to enter into subleases for boat slips or apartments for more than one year without the approval of the County. The lessees may enter into boat slip or apartment subleases of one year or less without approval by the County. The newer amended and restated leases require County approval of the form of sublease used by the lessee.

Under State law, there is no requirement that a lease of real property or residential real property be for one year. Pursuant to Civil Code section 1943, the leasing of real property is presumed to be a month-to-month tenancy unless otherwise designated in writing. Pursuant to Civil Code section 1944, the hiring of lodgings or a dwelling-house for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent, and in the absence of any agreement respecting the length of time or the rent, the hiring is presumed to be monthly.[1]

Civil Code section 800, *et seq.*, the Floating Home Residency Law, provides certain protections for owners of floating homes, including a requirement that floating home owners be offered the option of a rental agreement for a term of twelve months, a longer or lesser period as mutually agreed upon by the homeowner and management, or a longer period necessary to secure financing. See, Cal. Civ. Code § 800.23. As we previously advised in our memorandum of July 5, 2006, the Floating Home Residency Law has no application at this time in Marina del Rey because of how the statutes define a "floating home" and "floating home marina".

---

[1]As we advised in our memorandum of July 5, 2006, it is unlikely that liveaboard subleases would be treated as residential subleases under State law. In this memorandum we will include statutes applicable to the leasing of residential and non-residential real property, as well as other related statutes, such as the Floating Home Residency Law, solely for purposes of comparison of the rights and obligations governing various types of leases. By doing so, however, we are not opining on the applicability of these statutes to liveaboards or boat slips in Marina del Rey unless expressly stated otherwise.

Based on the above, the County's ground lease provisions regarding residential apartment and boat slip subleases are consistent with State law on the subject of the allowable term of the subleases.

B. Evictions.

(1) Unlawful Detainer.

POWER demands that the County limit "the grounds for Live-Aboard evictions to those grounds consistent with landside rental agreements and leases" and references Code of Civil Procedure section 1161(2) - (4), presumably as constituting those grounds. Code of Civil Procedure section 1161 is the unlawful detainer statute.

Code of Civil Procedure section 1161 affords landlords an expeditious and summary procedure for regaining possession of real property wrongfully withheld by a tenant under certain circumstances. It is not intended as a limitation of the grounds for which a landlord may evict a tenant. POWER suggests that three of the five bases for unlawful detainer (subsections 2 through 4 of section 1161, set forth below) be the only grounds under which a lessee in Marina del Rey can evict a liveaboard. The grounds cited are some, but not all, of the grounds for eviction set forth in the County's 1978 liveaboard eviction ordinance, which was repealed after a successful legal challenge. The liveaboard eviction ordinance was discussed in our memorandums to your Commission dated June 5, 2006 and July 5, 2006.

Code of Civil Procedure section 1161 provides that a tenant of real property is guilty of unlawful detainer: (1) when the tenant continues in possession of the property after the expiration of the term, provided the expiration is of a non-default nature, without the permission of the landlord; (2) when the tenant continues in possession without the permission of the landlord after default in payment of rent pursuant to the lease agreement and three day's written notice to pay or quit; (3) when the tenant continues in possession after a neglect or failure to perform other conditions or covenants of the lease and three day's written notice to perform or quit; (4) when the tenant terminates the lease after assigning or subletting or committing waste upon the premises or permitting the maintenance or commission of a nuisance or using the premises for an unlawful purpose; or (5) when the tenant terminates the lease but fails to deliver possession at the time specified, without the permission of the landlord.

POWER's demand would not make the grounds for liveaboard evictions "consistent" with landside rental agreements and leases, as the unlawful

detainer statute provides a remedy for landlords, not a limitation on the grounds for eviction. Landside evictions are not limited to the grounds in the unlawful detainer statute, only the use of the summary procedure of unlawful detainer is limited to the grounds stated in the statute. As we previously advised in our memorandum of July 5, 2006, the courts have upheld the use of the unlawful detainer statute for evictions of boaters from boat slips. See, *Smith v. Municipal Court,* 202 Cal.App.3d 685, 245 Cal.Rptr. 300 (1988); see also, *Derfus v. Far West Villa Del Mar, LTD, et al.,* 471 F. Supp. 1082 (C.D.C.A. 1979). Thus, the remedy is available to landlords of both landside and waterside leases.

(2) Eviction Based on Vessel Condition.

POWER demands that the County eliminate "discriminatory eviction practices based on boat age, length, or material of construction." Any discussion regarding evictions of vessels based on their condition needs to take into consideration the County's legitimate concerns regarding pollution control and facilities damage caused by unseaworthy vessels.

As we previously advised in our memorandum of July 5, 2006, liveaboards must comply with County Code §19.12.1110, which prohibits a person from using a vessel as an abode in excess of three days within any one-week period, unless authorized by the lessee and issued a liveaboard permit by the Harbor Master. A permit will only be issued upon compliance with the following: (1) compliance with the requirements of seaworthiness as described in County Code § 19.12.1060; and (2) installation of a federally approved marine sanitation device or self-contained portable toilet approved by the Harbor Master. Liveaboard permits are valid for a period of one year.

County Code § 19.12.1060 provides that "no person shall secure or permit to be anchored or moored in a county harbor, waterway or maritime facility a vessel of any kind whatsoever which is unseaworthy or in a badly deteriorated condition, or which is likely to sink or to damage docks, wharves, floats and/or other vessels, or which may become a hazard to navigation."

The County's newer amended and restated leases now also require that the lessee ensure that vessels meet the seaworthiness requirements of the County Code as a condition of the initial renting and continued tenancy of boat slips.

(3) Substitute Slips and Rights of First Refusal.

POWER demands that the County ensure "that leaseholders provide substitute slips to those displaced for the purpose of rebuilding docks or any other maintenance" and that "Live-Aboards are offered 'First Right of Refusal' upon completion of the rebuilding process or other maintenance."

The provision of substitute slips may be difficult to impose if the lessee does not have sufficient vacant slips available under the lessee's own control. Rights of first refusal may be difficult to impose given the fact that typically there is no one-for-one and like-for-like replacement of slips. Many of the dock replacement/refurbishment projects result in fewer slips due to the need for compliance with more stringent building codes, including Americans with Disabilities Act requirements, and reconfiguration of the mix of slip sizes to accommodate boater trends.

(4) Mediation Committee.

POWER demands that the County ensure that "the Marina del Rey Mediation Committee has adequate Live-Aboard representation" and that the Mediation Committee will be responsible for hearing all eviction appeals. As has been previously discussed at the Commission, the mediation services of the County's Department of Consumer Affairs are now available to apartment and boat slip tenants with landlord-tenant disputes.

C. Fees.

POWER demands that the County ensure that: (1) liveaboard fees are equal to or less than 55% of boat slip fees; (2) electricity and water fees are not added to liveaboard fees, unless used in lieu of liveaboard fees and consistent with landside fees; and (3) that liveaboards receive documentation of amenities that justify liveaboard fees.

The County retains ultimate control of prices charged in Marina del Rey through the "Controlled Prices" provision of the ground leases. The "Controlled Prices" provision provides that:

> 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 hereby demised, whether the same are supplied by Lessee or by its

sublessees, assignees, concessionaires, permittees or licensees.

Said prices shall be fair and reasonable, based upon the following two (2) considerations:

First, that the property herein demised is intended to serve a public use and to provide needed facilities to the public at fair and reasonable cost; second, that Lessee is entitled to a fair and reasonable return upon his investment pursuant to this lease.

In the event that Director notifies Lessee that any of said prices are not fair and reasonable, lessee shall have the right to confer with Director and to justify said prices. If, after reasonable conference and consultation, Director shall determine that any of said prices are not fair and reasonable, the same shall be modified by Lessee or its sublessees, assignees, concessionaires, permittees or licensees, as directed.

In addition, Policy Statement No. 27, regarding the enforcement of the Controlled Prices provision, sets forth review procedures for boat slip, apartment and liveaboard rate increases. The County will consider the following elements when reviewing liveaboard rates: (1) the guideline for liveaboard surcharges is 50 to 55 percent of base slip rent rate; and (2) liveaboard rates in comparable areas.

As the Department has previously advised, tenants who believe they have been subject to unreasonable rent increases should bring the matter to the attention of the Department for investigation.

TJF:ss
Attachment

c: Stan Wisniewski,
Director of Beaches and Harbors

POWER

PEOPLE ORGANIZED FOR WESTSIDE RENEWAL
235 Hill Street, Santa Monica, CA 90405
(310) 392-9700 (310) 392-9765 FAX
www.power-la.org

Live-Aboard Bill of Rights

People Organized for Westside Renewal (POWER) and its community leaders seek to work with Los Angeles County Department of Beaches & Harbors, Small Craft Harbor Commission, Board of Supervisors and the California Coastal Commission to address the growing problems facing live-aboard residents in Marina del Rey. Live-aboard slips serve as one of the few remaining affordable places for people to live in the Marina. Furthermore, live-aboards have been an essential part of the Marina community since its inception and have provided a sense of security on their docks.

Over the past several years, live-aboard residents and small boaters have come under fire from dock masters who employ intimidation tactics to force live-aboards out of the Marina. Dock masters have raised rents, issued evictions, and limited live-aboards to monthly leases. The result has been a sense of anxiety among Marina del Rey live-aboards. Live-aboards are outraged that their boat slip could be seized at any time, leaving them with no place to live.

To address these problems, live-aboards, boaters, and other concerned community members have proposed the following actions be taken by Los Angeles County.

1. **Leases**
   a. The County ensures that all live-aboard residents in Marina del Rey have the option to sign "Live-Aboard Leases" with a term of one year.

2. **Evictions**
   a. The County limits the grounds for Live-Aboard evictions to those grounds consistent with landside rental agreements and leases (see California Code of Civil Procedure Sections 1161(2)-(4)). Also:
      i. The County eliminates discriminatory eviction practices based on boat age, length, or material of construction.
      ii. The County ensures that leaseholders provide substitute slips to those displaced for the purpose of rebuilding docks or any other maintenance. The County ensures that Live-Aboards are offered "First Right of Refusal" upon completion of the rebuilding process or other maintenance.
   b. The County ensures that the Marina del Rey Mediation Committee has adequate Live-Aboard representation. The Mediation Committee will be responsible for the initial hearing of all eviction appeals from Live-Aboards in Marina del Rey.

3. **Fees**
   a. The County ensures that Live-Aboard fees are equal to or less than 55% of normal boat slip fees.
   b. The County ensures that electricity and water meter fees are not added to Live-Aboard fees. However, electricity and water meter fees, if consistent with landside electricity and water meter fees, can be used in-lieu of Live-Aboard fees.
   c. The County ensures that Live-Aboards receive documentation of the amenities (such as toilets, showers, parking, and laundries) they receive that justify Live-Aboard fees.

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Los Angeles County Beaches & Harbors — Caring for Your Coast

Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

March 8, 2007

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director Stan

SUBJECT: **ITEM 5a - APPOINTMENT OF A MEMBER AND ALTERNATE TO THE MARINA DEL REY CONVENTION AND VISITORS BUREAU BOARD OF DIRECTORS FOR 2007**

Item 5a on your agenda addresses your Commission's appointment of a member and alternate to the Marina del Rey Convention and Visitors Bureau (MdR CVB) Board of Directors.

By virtue of the MdR CVB by-laws, your Commission has the authority to appoint a member and an alternate to the MdR CVB Board of Directors for a one-year term. For the past five years, your Commission has appointed both a member and an alternate to the MdR CVB Board of Directors. During 2006, Commissioner Carole Stevens served as the member and Commissioner Russ Lesser as the alternate. Commissioner Stevens' term terminated with her departure from the Commission and Commissioner Lesser's term terminated at the end of last year. A Commission appointee can continue to serve for an unlimited number of consecutive terms.

We typically have your Board make its appointments at the end of the prior year. However, this did not occur at the end of 2006. Thus, your Commission should take this up as an order of business at your March meeting and appoint both a member and an alternate to sit on the MdR CVB Board of Directors during the calendar year 2007.

SW:ks

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

Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

March 8, 2007

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director Stan

SUBJECT: **AGENDA ITEM 5b - TRAFFIC MITIGATION MEASURES WITHIN THE MARINA DEL REY AREA – QUARTERLY REPORT**

Item 5b on your agenda is a quarterly report on traffic mitigation measures within the Marina del Rey area, which Barry Kurtz, our Transportation Engineer Consultant, will be present to provide at your meeting. In connection with his presentation, the attachments to this memo provide lists and color coded maps of transportation improvements that are completed, proposed and under construction.

SW:ds
Attachments

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COMPLETED TRANSPORTATION IMPROVEMENTS IN THE MARINA DEL REY AREA March 2007

1. Automated Traffic Surveillance And Control System (ATSAC), has been installed at all of the signalized intersections along Admiralty Way and along Via Marina to improve traffic signal synchronization.

2. Admiralty Way at the SBBT Crossing: Public Works installed a marked pedestrian crosswalk with pedestrian signals to the SBBT crossing of Admiralty Way. This measure improved pedestrian access between Admiralty Park and the Library. (Completed 9/05).

3. Admiralty Way/Mindanao Way: Public Works installed a marked crosswalk with pedestrian signals to the south leg of Admiralty Way to allow pedestrians to cross all four legs of the intersection. Public Works added a left-turn arrow for northbound traffic turning westbound into Mindanao Way. (Completed 8/05)

4. Admiralty Way sidewalk improvements and increased left-turn storage on Admiralty Way for the Waterside Shopping Center on Parcel 50. (Completed 9/05)

5. Via Marina: Public Works installed new speed/curve warning signs on Via Marina. Public Works extended the existing raised center median from 216' to 325' south of Old Harbor Lane. These measures have enhanced speed control and safety. (Completed 10/05).

6. Fiji Way: An Engineering and Traffic (E&T) survey has been conducted on Fiji Way as requested by the West LA CHP. The current 35 MPH posted speed limit will remain the same. A radar enforcement sign has been installed on Fiji Way.

7. Water Shuttle and demonstration Beach Shuttle service: Operates during the Summers.

8. Lincoln Blvd/Culver Blvd interchange improvement: Southeast ramp was modified to allow northbound traffic from Lincoln Boulevard to access Culver Blvd.. (Completed summer of 2005).

9. Bluff Creek Road (Teal St) from Lincoln Blvd to Centinela Av was constructed by Playa Vista. The connection at Lincoln Blvd is expected to be completed in 2006.

10. Lincoln Blvd transit system: Playa Vista funded 5 buses for Santa Monica Big Blue Bus; Installed Bus Priority System for Lincoln Blvd; and installed Internal Shuttle System. (Completed 2005).

11. Centinela Av widening: Two lanes in each direction and left-turn lanes.

12. Vista del Mar widening at Culver Blvd to facilitate left turns Culver Blvd to Vista del Mar.

13. **SR 90/Culver Blvd Interchange: Grade separation over SR 90 and interchange construction. (Caltrans Winter/Spring 2007). Plant establishment will take another year.**

14. **SR 90/Centinela Av Interchange: Widen Centinela ramps, modify signals at the interchange, and construction of soundwalls along the north side of the Marina Freeway between Centinela Av and Ballona Creek.**

15. **San Diego Freeway HOV Lanes from SR 90 to SR 105: Construction of HOV lanes northbound and southbound on I-104. Soundwalls will be constructed for noise mitigation. (Caltrans Winter 2006).**

TRANSPORTATION IMPROVEMENTS UNDER CONSTRUCTION
IN THE MARINA DEL REY AREA
March 2007

1. Lincoln Blvd/Mindanao Way Intersection Improvement: Add a separate northbound right-turn lane on Lincoln Blvd at Mindanao Way. **(PV April 2007).**

2. Lincoln Blvd from Bali Way to 83rd St: Add 3rd through lane in each direction. **(Caltrans mid 2008).**

3. Lincoln Blvd from La Tijera to LMU Drive: Add a 4th northbound lane. **(Caltrans Mid 2008)**

4. San Diego Freeway high occupancy vehicle (HOV) Lanes from I-10 to SR 90: Construction of 3.6 miles of HOV lanes northbound and southbound on I-405. The construction will also include soundwalls for noise mitigation. (Caltrans Fall 2007).

5. Lincoln Blvd/Bluff Creek intersection: Construct the intersection with signal concurrent with Caltrans work on Lincoln Blvd. **(LA City Mid 2008).**

PROPOSED TRANSPORTATION IMPROVEMENTS IN THE MARINA DEL REY AREA March 2007

1. Marina Expressway (SR-90) Connector Road to Admiralty Way Project: EIR/EIS to consider the SR 90 Connector Road to Admiralty Way at grade. (County EIR/EIS 2007).

2. Admiralty Way Improvement Project: EIR/EIS to consider either 5-lane alternative within existing right of way or 5/6-lane alternative. (County EIR/EIS 2007).

3. Admiralty Way/Via Marina Intersection Realignment Project: As part of the Admiralty Way Improvement Project, consider the realignment of Admiralty Way to form a continuous loop road with Via Marina. (County EIR/EIS 2007).

4. Admiralty Way/Palawan Way Intersection Improvements: Restripe northbound Palawan Way to provide a separate right turn lane to Admiralty Way and restripe southbound on Palawan Way to provide into a second left-turn lane. (County 2008).

5. Palawan Way/Washington St Intersection Improvement: Reconstruct Palawan Way at Washington St to allow full access. Install a traffic signal at the intersection providing dual left-turn lanes instead of the existing right-turn only lane. (County 2008).

6. Admiralty Way/Mindanao Way Intersection Improvement: Add an exclusive northbound right-turn lane from northbound Admiralty Way to eastbound Mindanao Way. (Future).

7. Lincoln Blvd/Fiji Way Intersection Improvement: Add second left-turn lane on westbound Fiji Way at Lincoln Blvd. (County 2011).

8. **Fiji Way Fiji Way Bike Lane Project: Widen the south side of Fiji Way by two feet to allow the installation of bike lanes along both sides of Fiji Way. This project was submitted to MTA's 2007 Call for Projects for funding. This project would not preclude a future off-road path through Area A.** (County 2011).

9. Centinela Av Widening from Ballona Creek to Culver Blvd: Add third northbound lane. (PV II 2010).

10. Jefferson Blvd Widening from Beethoven St/Centinela Av: Add fourth eastbound travel lane. (PV II 2007).

11. Sepulveda Blvd Widening from Playa/Jefferson to Green Valley Circle: Add a third southbound lane. (PV 2007).

12. SR 90/Slauson Av Intersection Improvement: Add a third left-turn lane from westbound Slauson Av to SR 90. (PV 2007). Pending City of Culver City approval.

16. Expand Playa Vista's Internal Shuttle System on a Demand /Responsive basis to Marina del Rey, The Bridge, Fox Hills LMU, and Playa del Rey. (PV II 2010). **The Marina Del Rey Summer Shuttle Pilot Program in partnership with Playa Vista was approved for expansion in 2007.**

17. Lincoln Corridor Task Force recommended in March 2004 an exclusive bus lane along Lincoln Boulevard. The bus lane was approved by the City of Santa Monica and is under study by the City of Los Angeles.

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

DONALD L. WOLFE, Director

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
http://dpw.lacounty.gov

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

February 28, 2007

IN REPLY PLEASE
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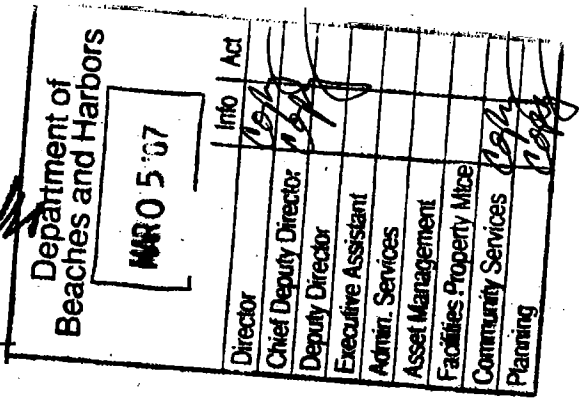

TO: Supervisor Don Knabe

Attention Curt Pedersen

FROM: Donald L. Wolfe
Director of Public Works

MARINA DEL REY SUMMER SHUTTLE PILOT PROJECT
2006 SEASON SUMMARY REPORT
RECOMMENDATIONS FOR THE 2007 SEASON

During the summer of 2006, the County partnered with Playa Capital Company, LLC, to expand their existing summer beach shuttle providing hourly service from the communities of Playa Vista and Marina del Rey to the Venice Beach Pier. This free weekend community shuttle service enhanced the mobility and transit options for visitors and residents of Marina del Rey.

This new service was operated on weekends during the ten-week period from July 1, 2006, through Labor Day, September 4, 2006. Thursday and Saturday evening shuttle service was also provided to the Marina del Rey Summer Concert Series held at Burton Chace Park. Our Agreement with Playa Capital Company, LLC, provided for the County to pay half the cost of the base level service and two-thirds of the operating costs resulting from the extended hours for the Summer Concert Series, up to a maximum annual cost of $15,000. The shuttle transported 1,291 passengers at a contract cost of $10,271. This is an average of about 4 passengers per service hour at a cost of $7.96 per passenger.

Recommendations to improve the service for the 2007 summer season are:

- Expand the shuttle's operating period to extend from Memorial Day to Labor Day (15-weeks). These are the same dates that Playa Vista operated its summer service last season.

- Add a shuttle bus stop at Fisherman's Village.

- Continue to operate the Thursday evening service to support the Marina del Rey Summer Concert Series at Burton Chace Park.

- Add service on Fridays from 10 a.m. to midnight.

- Modify the hours of operation on Saturdays to 10 a.m. to midnight rather than from 8 a.m. to 8 p.m. and modify the hours of operation on Sundays to 10 a.m. to 8 p.m. rather than from 8 a.m. to 8 p.m.

To evaluate the proposed changes for next year, we recommend adding a second option year to our Agreement with Playa Capital Company, LLC, thereby extending the service through the 2008 summer season. County Counsel has indicated that an additional demonstration year would be acceptable.

We estimate the annual contract costs to operate this service for the 2007 summer season, including these proposed changes, to be approximately $50,000. We will continue to jointly share the cost of the service as outlined above. Based on this cost sharing method, the County's estimated share of the cost of the service will be $20,000.

With your concurrence, we will move forward to implement these changes for the 2007 summer season of the Marina del Rey Summer Shuttle Pilot Project. Your District has sufficient funds available in the Transit Enterprise Fund to cover the County's share of the cost.

If you have any questions regarding this matter, please contact me or your staff may contact Shari Afshari at (626) 458-3900.

JZ:dv
C070682
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cc: Steve Napolitano
Beaches and Harbors (Stan Wisniewski, Charlotte Miyamoto, Barry Kurtz)
County Counsel (Robert Cartwright)

COMPLETED TRAFFIC IMROVEMENTS IN THE MARINA DEL REY AREA

--- NEW ROADS

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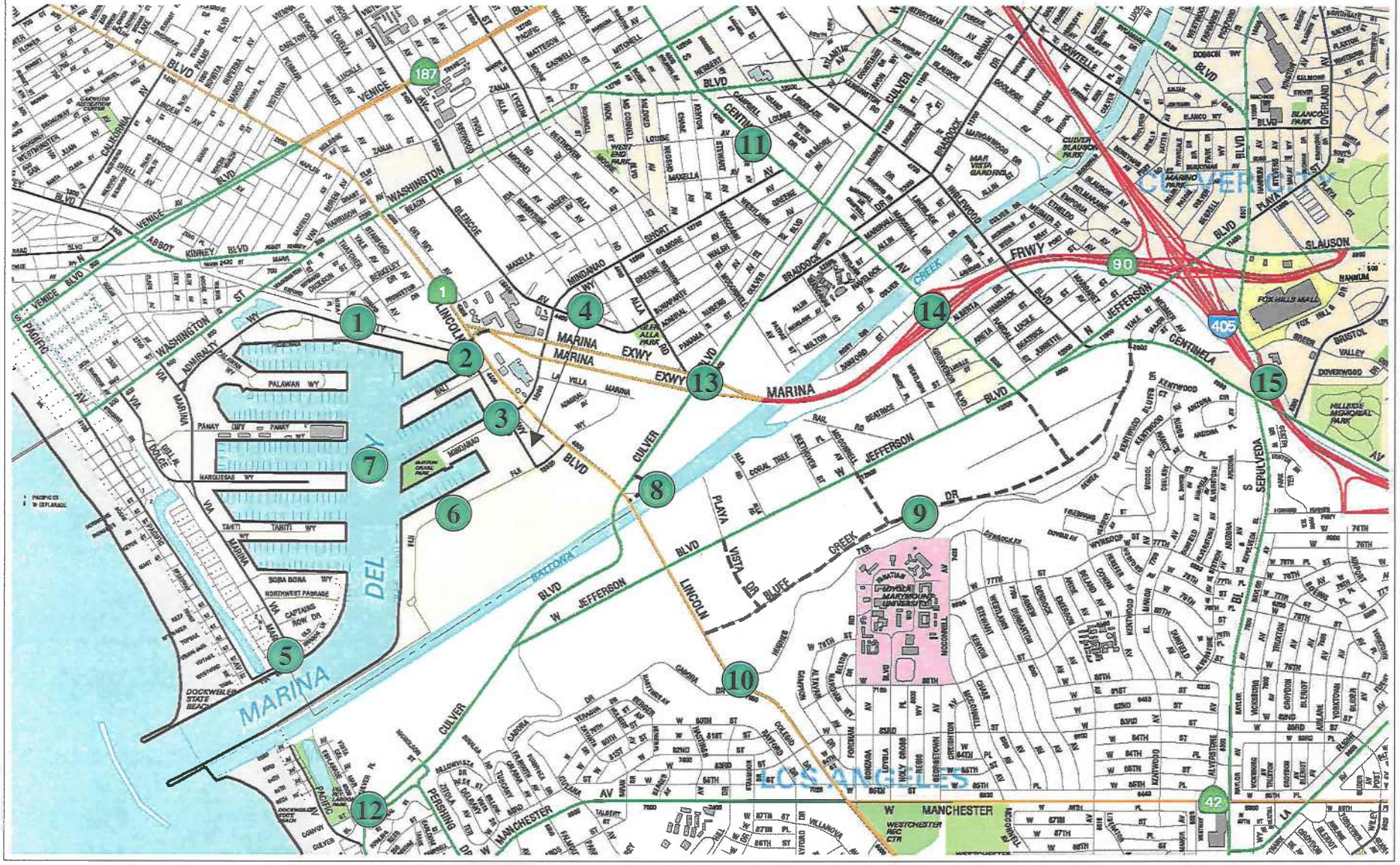

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TRAFFIC IMROVEMENTS UNDER CONSTRUCTION IN THE MARINA DEL REY AREA

NEW ROADS

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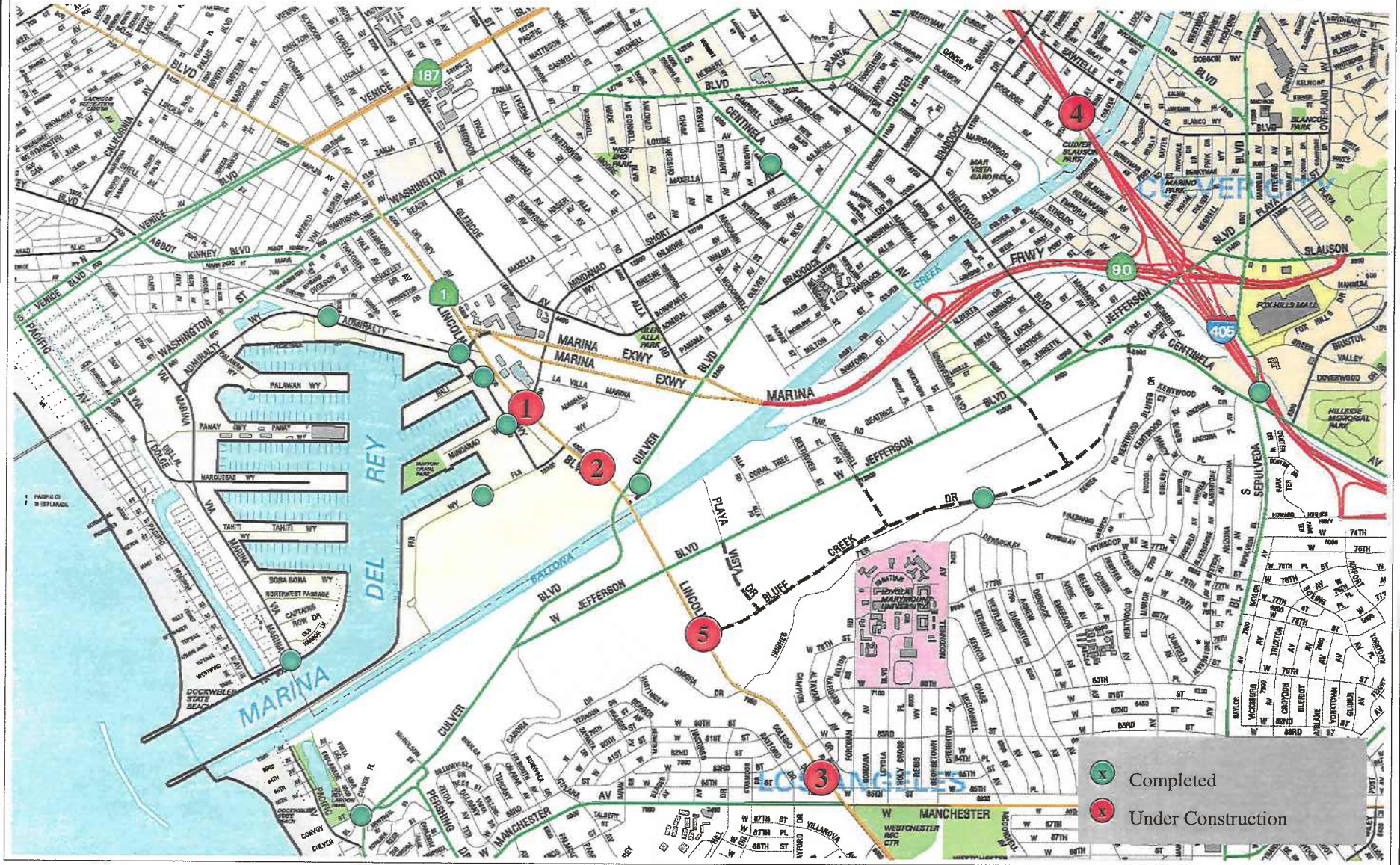

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PROPOSED TRAFFIC IMROVEMENTS IN THE MARINA DEL REY AREA

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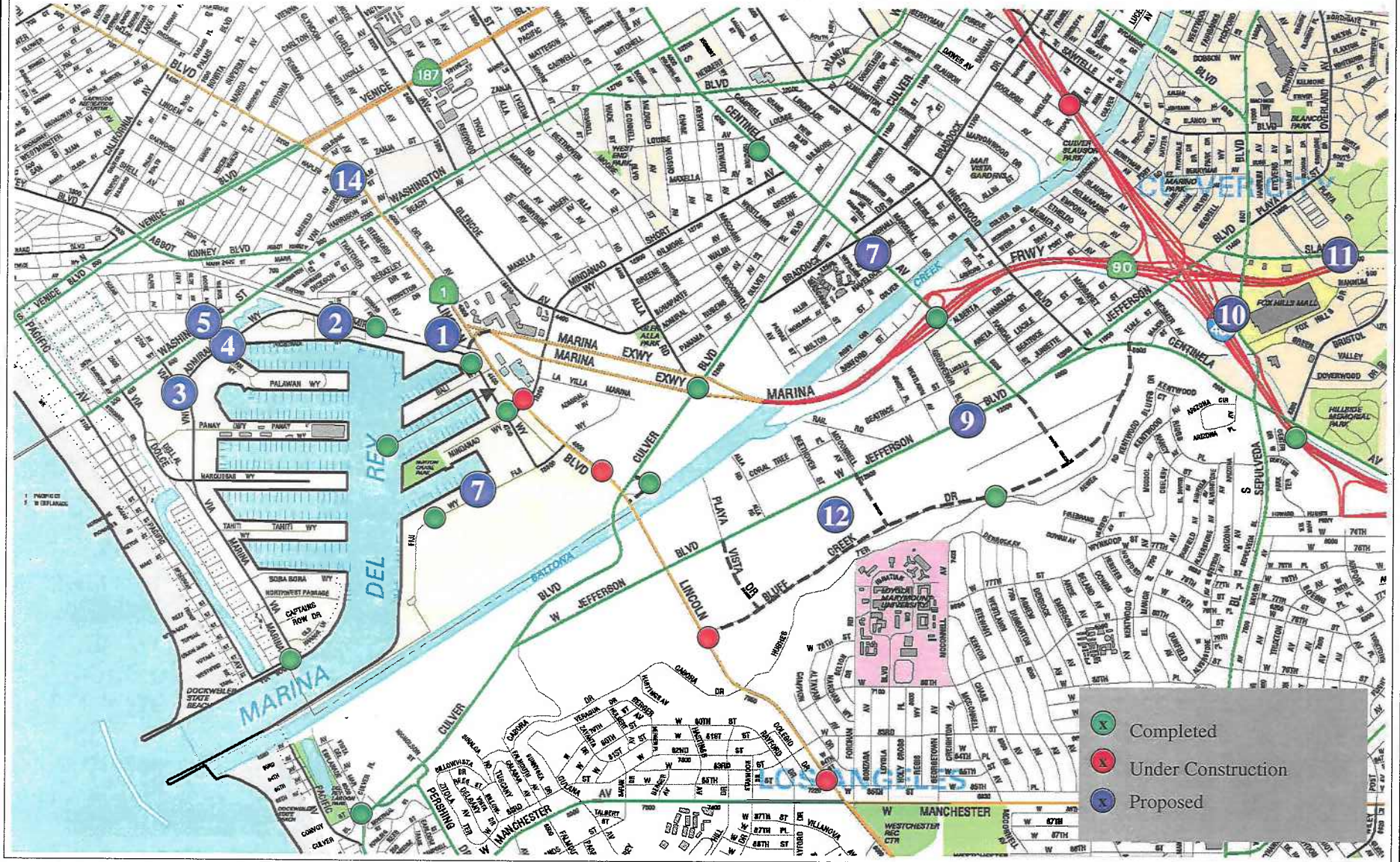

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Beaches & Harbors

Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

March 8, 2007

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director Stan

SUBJECT: **ITEM 5c - APPROVAL OF OPTION FOR LEASE TO FACILITATE REDEVELOPMENT - PARCEL 52/GG (BOAT CENTRAL) - MARINA DEL REY**

Item 5c on your agenda pertains to an option to lease Parcel 52/GG (Boat Central), in order to facilitate development of a dry-stack boat storage facility and appurtenant facilities.

Attached is a copy of the Board letter that explains the details of the proposed transaction. The exhibits to the Board letter include a copy of the proposed Option for Lease and a copy of the proposed lease.

Your Commission's endorsement of my recommendation to the Board of Supervisors to approve the Option for Lease as contained in the attached letter is requested.

SW:ks
Attachment

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Los Angeles County Beaches & Harbors
Caring for Your Coast

Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

DRAFT

March 8, 2007

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

Dear Supervisors:

APPROVAL OF OPTION FOR LEASE TO FACILITATE REDEVELOPMENT – PARCELS 52R & GG (BOAT CENTRAL) - MARINA DEL REY
(4th DISTRICT)
(4 VOTES)

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the proposed Option for Lease Agreement ("Option"), attached as Exhibit A, is categorically exempt under the California Environmental Quality Act pursuant to class 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.

2. Approve and authorize the Chairman of the Board to sign the attached Option granting to MDR Boat Central, L.P., a California limited partnership ("Lessee"), upon fulfillment of stated conditions, the right to lease Parcels 52R and GG for 60 years.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Subsequent to the Board-authorized release of the "Request For Proposals For Development Of Boat Storage Facilities On Parcels 52R And GG In Marina del Rey" in April 2003, and it's re-issuance in March 2005, and upon a committee's evaluation of the proposals received and its resulting recommendations, concurred in by the Director, your Board authorized exclusive negotiations for an option for a long-term lease with Lessee for the proposed development. The proposed Option is the result of

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negotiations with Lessee and is designed to allow the Lessee to exercise its option and receive the benefits of the lease ("Exhibit B") upon demonstration that it has satisfied all of the conditions for exercise contained in the Option and has received all planning, zoning, environmental and other entitlement approvals required to be obtained from governmental authorities for the construction of the development project.

The proposed project creates additional boat storage spaces in Marina del Rey by utilizing a vertical storage method, allowing a greater number of boats to be stored in a given area. The dry-stack boat storage building contains approximately 47,084 square feet of space, is 70 feet high, is partially built out over the water (97 feet on the west side and 45 feet on the east side), and will accommodate between 346 to 367 boats, depending on size, and 28 boat trailers. There will be additional outside storage space for 30 mast-up sailboats and no less than 131 parking spaces. The proposed project will not only accommodate the number and types of boats presently dry-stored in the Parcel 77 surface storage lot, which will be displaced when Parcel 77 is merged into the expanded Chace Park, but will provide significant additional capacity for boats currently in wet slips or kept outside of the Marina. In addition, the project will include a 3,070 square foot office/lobby area, a 1,600 square foot maintenance facility, a 3,265 square foot Sheriff Boatwright facility with a 2,200 square foot yard area, and three dedicated public wash down spaces (one to be built on-site and two others to be built at a later date in a place to be determined by the Director). All new docks will be constructed, except for the existing Sheriff/County maintenance docks, which must be replaced no later than ten years from the start of the lease. The lease provides for a term of 60 years for Parcels 52R and GG; payment of a non-refundable $100,000 option fee; and establishment of a sinking fund, namely a Capital Improvement Fund. Total development costs shall not be less than $7.5 million (in 2005 dollars).

Once the Lessee has obtained all necessary project entitlements and has fulfilled the other requirements entitling it to exercise the Option, the Director will return to your Board for authority to execute the lease. The finalized lease will be in substantially similar form to Exhibit B, reflecting revisions necessitated by changes to the project arising from the entitlement process and to facilitate financing.

The Department has obtained an appraisal that confirms the return to the County from the lease for Parcels 52R and GG is equivalent to, or greater than, fair market value.

Implementation of Strategic Plan Goals

In furtherance of the County's Strategic Goal #4, "Fiscal Responsibility," the recommended action will allow the Department to implement that portion of its Strategic Plan that enhances strategic partnerships with existing and prospective lessees through proactive implementation of the Marina del Rey Asset Management Strategy toward

property redevelopment that ensures County revenue consistent with fair market values. The County's Strategic Goal "1, "Service Excellence," is promoted through the development of new boater serving facilities at Marina Beach.

The following chart details the proposed deal terms of the lease as they relate to your Board's existing lease policy:

BOARD POLICY ITEM	PROPOSED DEAL TERMS – PARCELS 52R/GG
REDEVELOPMENT Redevelopment of existing improvements	• Construction of a dry storage building, partially built over the water, with a maximum height of 70', to accommodate a minimum of 345 dry stack spaces and using an overhead gantry crane, with a 1,600 sq. ft. maintenance facility and 28 trailer storage spaces. • Construction of: 3,070 sq. ft. office/lobby; 3,265 sq. ft. Sheriff Boatwright facility with yard; 30 mast-up storage spaces; a dedicated public wash down space; and no less than 131 on-site parking spaces. • Complete replacement of existing docks with new docks made of concrete or other Director approved material, except that Sheriff/Maintenance docks may be delayed for up to ten years, pending Director approved marine engineer report. A 2nd dock replacement must be completed by the 40th year following the 1st dock replacement. • Construction to be completed within 24 months from commencement of the lease, subject to Force Majeure. • Total development cost not less than $7,500,000. • Starting with the 5th year following completion of construction, an annual capital improvement fund equal to 1.5% of gross revenue will be maintained throughout the term of the extended lease and will be utilized solely for capital improvements as defined in the lease and as approved by County and must be fully expended by ten years prior to the expiration of the lease.
LEASE TERM	• Option for a 60-year lease for Parcels 52R/GG.
EXTENSION FEE Fee equal to or commensurate with value of the extension	• Not applicable, as this is a new lease. • Option Fee of $100,000, payable immediately upon Board approval of Option. Option Fee payment is non-refundable if Option is not exercised.

MARKET RATE RENTS Ensure fair market rents	• Minimum annual rent of $75,000 per year ($6,250 per month) commences upon exercise of Option and continues through completion of construction. • Minimum annual rent for the first year following completion of construction (or the required completion date) shall be: 1st Year - $ 75,000 2nd Year - $150,000 3rd Year - $250,000 • Commencing with the 4th year after completion, and every three years thereafter, minimum annual rent reset to 75% of the previous three years' average total rent paid to County. • Percentage Rents: Slip Rental/Transient Slips – 25% Boat Brokerage (% of commission/fee) - 5% Boat Sales (% of Gross Receipts) – 1% Parking (Commissions) – 7.5% Parking (Lessee operated) – 20% Oil/Fuel/Petroleum Products – 6% Boat Haul Out & Repair – 5% Office Rentals – 12.5% Vending (Commissions) – 5% Vending (Owned) – 25% Retail – 4% Misc. Sales – 5% Dry Stack/Mast-Up storage percentage rent set at 20% of gross revenue. If during the first three years after completion of construction lessee can show that Dry Stack occupancy is less than the percentages shown below for the corresponding year, then the percentage rent factor for that year shall be set at 16%. Year 1 - 33% Year 2 - 66% Year 3 - 75% • Percentage and minimum rents are subject to renegotiation to Fair Market Rental ten years after completion of construction (or the required completion date) and every ten years thereafter.
PARTICIPATION IN SALE AND REFINANCE Secure County participation in sale and refinance of leasehold	Sale Participation: First sale exempt if sale or refinance occurs during the first ten years following CO Date. Subsequent Sale Participation: 5% of gross proceeds or 20% of net proceeds upon assignment or other direct or indirect transfer of leasehold. • Refinance Participation: 20% of net loan proceeds not reinvested in leasehold, except where initial construction loan provides for a permanent loan. Transfers to be permitted to affiliates or related parties (for estate planning purposes or otherwise) without triggering obligation for Sale Participation.
COUNTY ADMINISTRATIVE COSTS Ensure payment for County costs for lease negotiation and administration	• Not applicable for a new lease.

COUNTY INCOME CONTINUITY Ensure County revenue flow during redevelopment	• Minimum annual rent of $75,000 per year to commence upon exercise of Option and will continue through completion of construction (or the required completion date).
RIGHT TO RECAPTURE	• County shall have the right to purchase the leasehold interest if Lessee desires to either assign or sell the leasehold or a controlling interest in Lessee.
LEASE ASSIGNMENT-DISCLOSURE ISSUES	• Lessee has agreed to County disclosure requirements as to identity, operating experience and character/reputation of proposed assignees, as well as to disclosure of financial information in conformity with County policies.
APPRAISAL	• The Department has obtained an independent appraisal confirming the return to the County from the lease is equivalent to, or greater than, fair market value.
DOCKMASTER	• Dockmaster to be maintained during the term of the lease.
PROMENADE	• Lessee to construct promenade in compliance with LCP and subject to County's reasonable approval of plans.
REGULATORY APPROVALS	• Density, site coverage, open space, view corridors and building height issues are subject to Lessee obtaining all County and Coastal planning and entitlement approvals, including that of Design Control Board. • Lessee must obtain all regulatory approvals within 18 months of grant of Option by Board of Supervisors. If Lessee is unable to obtain all necessary approvals within the 18-month requirement, the Director may grant up to two six-month extensions if Lessee can demonstrate it has diligently pursued those approvals. The foregoing 18-month (or 24-month or 30-month) period is subject to litigation and appeal tolling provisions.

Additional Matters

OTHER TERMS	1. Ten years prior to expiration of lease, Lessee to structure funding for removal of improvements (at County's election). 2. Rental renegotiation and insurance disputes subject to rent-a-judge procedure pursuant to "baseball" type arbitration. 3. Maintenance standards for improvements to conform to Marina del Rey standards as revised from time to time. 4. Lease administrative items include: a) late fee of 6% plus interest at prime plus 3% for any late payments; b) security deposit equal to three months' minimum rent; c) insurance levels reset/renegotiated upon execution of the lease and every five years thereafter; d) County approval rights over all construction plans and specifications; and e) enhanced audit and record-keeping standards. 5. Liquidated damages of $100 per day (adjusted for inflation) for each cited maintenance deficiency that remains uncured after a specified cure period, to be assessed against the security deposit.

FISCAL IMPACT/FINANCING

The lease reflects the County's current market rate percentage rents for all relevant categories. It will produce two categories of fiscal benefit to the County: 1) an option fee; and 2) increased revenue due to construction of a new dry-stack boat storage facility on an existing parking lot and a parcel used by the Department of Beaches and Harbors for administrative offices and by the County Sheriff's Department for its boatwright shop and auto servicing/repair facility.

Option Fee

Upon exercise of the Option, Lessee will pay a non-refundable option fee of $100,000.

Increased Revenue Due to New Construction

The total revenue earned from the existing Parcel 52R public parking lot during 2006 was approximately $24,000. After construction and stabilization, our economic consultant has estimated that the total County rent from the new boat storage project will amount to approximately $340,000 annually, an annual increase of approximately $316,000.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Parcels 52R and GG encompass approximately 3.09 acres of land and 1.04 acres of water area and are currently utilized as a public parking lot and County facilities. The proposed Option is the result of negotiations with Lessee and is designed to allow the Lessee to exercise its Option and receive the benefits of the lease upon demonstration

that it has satisfied all of the conditions for exercise contained in the Option and has received all planning, zoning, environmental and other entitlement approvals required to be obtained from governmental authorities for the construction of the development project.

An amendment to the Marina del Rey Local Coastal Program will be required to create a Waterfront Overlay Zone on the subject parcels in order to allow the intended use on the property and for gaining approval of the proposed over-the-water component of the dry-stack building and its boat launch/retrieval system.

Entering into a lease is authorized by Government Code Sections 25907 and 25536. The lease term is in conformance with the maximum 99-year period authorized by California law.

At its meeting of March 14, 2007, the Small Craft Harbor Commission _____ the Director's recommendation that your Board approve the attached Option, which has been approved as to form by County Counsel.

ENVIRONMENTAL DOCUMENTATION

Approval of the Option is categorically exempt under the California Environmental Quality Act pursuant to class 4(j) of the County's Environmental Document Reporting Procedures and Guidelines. Execution of the Option does not authorize construction of any improvements on the parcel. The discretionary land use entitlements and corresponding environmental documentation necessary to implement the proposed development plan contemplated by the Option will be considered by the Department of Regional Planning.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Before construction can commence, the existing public parking on Parcel 52R must be replaced as part of the redevelopment plan for Fisherman's Village and the County will relocate its landside uses to alternate facilities. There will be no impact on the Parcel GG docks that are used by the Sheriff and the Department's maintenance vessels.

CONCLUSION

Please authorize the Chairman of the Board to execute three originals of the Option and authorize the Executive Officer of the Board to acknowledge the Chairman's signature and return two executed originals of the Option to the Department of Beaches and Harbors and retain one executed original for your files.

Respectfully submitted,

Stan Wisniewski, Director

Attachments (2)

c: Chief Administrative Officer
County Counsel

SW:PW:GB:

LEASE OPTION AGREEMENT
(PARCELS 52R AND GG)

THIS LEASE OPTION AGREEMENT ("**Agreement**") is made and entered into as of the _____ day of _____, 2006, by and between the COUNTY OF LOS ANGELES ("**County**") and MDR BOAT CENTRAL, L.P., a California limited partnership ("**Lessee**").

RECITALS

A. County owns fee title to certain real property in Marina del Rey commonly known as Parcels 52R and GG and more particularly described on Exhibit A attached hereto (the "**Premises**").

B. County and Lessee desire to enter into this Agreement pursuant to which County grants Lessee an option to lease the Premises from County on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Lessee agree as follows:

1. **Grant of Option**. County hereby grants to Lessee an option (the "**Option**") to lease the Premises from County for a term of sixty (60) years in accordance with the terms and provisions of a Lease Agreement in the form attached to this Agreement as Exhibit B (the "**Lease**").

2. **Option Term**. The Option shall be exercisable by Lessee during the period commencing on the date of this Agreement and expiring on that date (the "**Option Expiration Date**") which is the earlier of (a) forty-five (45) days following the Entitlement Receipt Date (as defined in Section 3 below), or (b) eighteen (18) months after the date of this Agreement (the date set forth in this clause (b) is referred to as the "**Outside Date**").

3. **Exercise of Option**. The Option shall be exercisable by Lessee only by strict satisfaction on or before the Option Expiration Date of the following terms and conditions: (a) Lessee shall notify County in writing of its exercise of the Option (the "**Option Exercise Notice**"); (b) Lessee shall accompany the Option Exercise Notice with (i) Lessee's execution and delivery to County of the Lease with any blank or bracketed terms set forth in Exhibit B completed in accordance with the terms and provisions of this Agreement pertaining to the completion of such blank or bracketed terms, and (ii) Lessee's payment of the amount of the Security Deposit required to be delivered by Lessee under Article 7 of the Lease; (c) the Entitlement Receipt Date shall have occurred; (d) Lessee shall have provided evidence satisfactory to County of its having sufficient financial resources, as determined by the Director of the Department of Beaches and Harbors of the County ("**Director**"), to complete the Development Work (as defined below); and (e) Director shall have approved all plans, specifications and other materials for the Development Work required to be submitted to Director pursuant to Section 5.3 of this Agreement.

Upon Lessee's proper and timely exercise of the Option, County shall execute and deliver the Lease not later than forty-five (45) days following the date of Lessee's exercise of the Option. The Effective Date (as such term is defined in the Lease) of the Lease shall be the date the Lease is executed and delivered by County, which date shall be inserted into page 1 of the Lease concurrent with County's execution and delivery thereof. If Lessee's construction financing is in a position to close within the above forty-five (45) day period County agrees to cooperate with Lessee to effectuate a concurrent closing of the construction financing and County's delivery of the Lease such that the Effective Date of the Lease is the same as the date of the close of Lessee's construction financing; provided, however, in no event shall the execution and delivery of the Lease be contingent upon the close of Lessee's construction financing and neither the foregoing forty-five (45) day period nor the Effective Date of the Lease shall be extended if Lessee's construction financing is not then in a position to close.

For purposes hereof, the "**Entitlement Receipt Date**" shall mean the date upon which: (A) Lessee has received all planning, zoning and other entitlement approvals required to be obtained from governmental authorities (including County, the Design Control Board, Regional Planning and the California Coastal Commission) for the construction of the Development Work, including without limitation, Design Control Board approval, and Lessee shall have satisfied all conditions to the issuance of any building permit(s) required for the construction of the Development Work, except for the payment by Lessee of the fees required to be paid for the issuance of such building permit(s) (the "**Entitlements**"), and such approvals are final, (B) any appeal period to contest the issuance of the Entitlements shall has lapsed, and (C) there is no proceeding or litigation pending to appeal the issuance of the Entitlements, or to enjoin or restrain the performance of the Development Work (not including any proceeding or litigation brought by or on behalf of any partner, shareholder or member of, or any other person or entity affiliated with, or otherwise directly or indirectly having an ownership interest in, Lessee (a "**Lessee Affiliate**")), or if such a proceeding or litigation has been pending, then the issuance of a dismissal, decision or judgment rendered thereon in favor of the validity of the Entitlements, which dismissal, decision or judgment is not subject to further appeal. For purposes of this Agreement, the "**Development Work**" shall have the meaning given such term in Section 5.1 of the Lease.

4. **Option Fee**. In consideration of County's grant of the Option to Lessee and as a condition to the exercise of the Option by Lessee, Lessee shall pay to County the sum of One Hundred Thousand Dollars ($100,000.00) (the "**Option Fee**") not later than ten (10) days following the mutual execution of this Agreement by Lessee and County. The Option Fee shall be non-refundable.

5. **Entitlements and Plan Preparation During Option Term**.

5.1 **Obtaining Entitlements**. Lessee shall use its best efforts to obtain the Entitlements and to cause the Entitlement Receipt Date to occur as soon as possible following the date of this Agreement. Such efforts shall include Lessee's expenditure of such funds, including, without limitation, application fees, travel costs, architectural fees and consulting and lobbying fees, as reasonably necessary to expedite the permit, license and other approval processes.

5.2 **County Cooperation**. In its proprietary capacity, the Department of Beaches and Harbors of the County of Los Angeles (the "**Department**") shall cooperate with and assist Lessee, to the extent reasonably requested by Lessee, in Lessee's efforts to obtain the Entitlements. Such cooperative efforts may include the Department's joinder in any application for the Entitlements where joinder therein by the Department is required or helpful; provided, however, that Lessee shall reimburse County for the Actual Costs (as defined in the Lease) incurred by the Department in connection with such joinder or cooperative efforts. Notwithstanding the foregoing, Lessee and County acknowledge that the approvals given by County under this Agreement and/or the Lease shall be approvals pursuant to its authority under Section 25907 of the California Government Code and given in its proprietary capacity; that approvals given under this Agreement and/or the Lease in no way release Lessee from obtaining, at Lessee's expense, all permits, licenses and other approvals required by law for the construction of the Development Work and operation and other use of the Premises; and that the Department's duty to cooperate and County's approvals under this Agreement and/or the Lease do not in any way modify or limit the exercise of County's governmental functions or decisions as distinct from its proprietary functions pursuant to this Agreement and/or the Lease.

5.3 **Plans and Specifications for Development Work**. The Development Work shall be constructed by Lessee in accordance with and subject to the terms and provisions of Article 5 of the Lease. The requirements of Article 5 of the Lease include, without limitation, the obligation of Lessee to prepare and submit to the Director for the Director's approval certain plans, specifications, construction cost estimates and other materials pertaining to the Development Work, as set forth in more detail in Section 5.3 of the Lease. The schedule for the preparation, submittal and approval of such plans, specifications, construction cost estimates and other materials shall generally proceed in accordance with the terms and provisions of the Lease. Notwithstanding the foregoing, during the period commencing on the date of this Agreement and expiring on the earlier of Lessee's exercise of the Option or the Option Expiration Date, Lessee shall prepare and submit to Director for Director's approval, any portions of the plans, specifications and other materials described in Section 5.3 of the Lease that are required to be submitted to governmental authorities (including the County, the Design Control Board and the California Coastal Commission) in connection with Lessee's applications for and/or receipt of the Entitlements for the Development Work. Lessee shall accompany such plans, specifications and other materials with the construction cost estimates described in such Section 5.3, as applicable. The standards and time periods for Director's review and approval of the materials submitted by Lessee pursuant to this Section 5.3 shall be in accordance with the terms and provisions of Section 5.3 of the Lease, which terms and provisions are hereby incorporated into this Agreement by reference. Such plans, specifications and other materials shall be prepared and submitted to Director by Lessee in accordance with a schedule which shall facilitate Lessee's satisfaction of all conditions precedent to the exercise of the Option not later than the Outside Date. In addition to the plans, specifications and materials required to be submitted by Lessee to Director pursuant to this Section 5.3, Lessee shall have the right, at its election, to deliver to Director, for Director's approval, additional plans, specifications and materials pertaining to the Development Work. Director shall notify Lessee of its approval or disapproval of such additional plans, specifications and materials within the time frames and in accordance with the requirements of Section 5.3 of the Lease.

6. **Delay in Exercise of Option**.

6.1 **Delay in Receipt of Entitlements**. If Lessee, despite its best efforts, is unable to cause the Entitlement Receipt Date to occur on or before eighteen (18) months after the date of this Agreement as a result of a delay beyond normal entitlement processing periods in the processing by the applicable governmental authorities of Lessee's applications for the Entitlements (an "**Extraordinary Governmental Delay**"), then the Director may, in the exercise of its reasonable discretion, grant Lessee one or more extensions of the Outside Date. Any such extension shall be limited to the period of the Extraordinary Governmental Delay and in no event shall the Outside Date be extended beyond thirty (30) months after the date of this Agreement pursuant to this Section 6.1. If Director shall determine not to grant Lessee an extension as provided above, then Lessee shall have the right, within thirty (30) days following Director's denial, to submit a written request to the Board of Supervisors of County to reconsider such denial by the Director.

6.2 **Contest Delay**. If as of the Outside Date (as such date may have been extended pursuant to Section 6.1 above), the Entitlement Receipt Date has not occurred because (a) the Development Work is the subject of a pending proceeding or litigation to appeal the issuance of the Entitlements or to enjoin or restrain the performance of the Development Work (other than any proceeding or litigation brought by or on behalf of a Lessee Affiliate), or (b) a moratorium, temporary restraining order, injunction or other court order prohibits the issuance of the Entitlements for the Development Work, and such moratorium, temporary restraining order, injunction or other court order also pertains to all other similar projects in Marina del Rey on land leased from the County, then as long as Lessee continues to diligently prosecute or pursue the defense or removal of such proceeding, litigation, moratorium or court order, the Outside Date shall be extended until not later than forty-five (45) days following the date that such proceeding, litigation, moratorium or court order is resolved in favor of the issuance or validity of the Entitlements, with no further right of appeal; provided, however, in no event shall the Outside Date be extended beyond the fifth (5th) anniversary of the date of this Agreement. Lessee shall not be required to pay to County a fee for any extension of the Outside Date pursuant to this Section 6.2.

6.3 **General Requirements for an Extension of the Outside Expiration Date**. The Outside Expiration Date shall not be extended under this Section 6 if Lessee is in breach or default of this Agreement. No Extraordinary Governmental Delay shall be considered to have commenced under Section 6.1 above until such time as Lessee shall have notified Director in writing of such delay. If Lessee desires to have the Outside Expiration Date extended pursuant to this Section 6, then Lessee must deliver written notice to Director of its request for the extension not later than thirty (30) days prior to the Outside Expiration Date, as such date may have been previously extended; provided, however, that if the basis for the extension does not arise until later than thirty (30) days prior to the Outside Expiration Date, then Lessee shall be required to deliver its written request for the extension promptly following its discovery of the basis for the requested extension.

7. **Right of Inspection**. During the period from the date of this Agreement until the earlier of the termination of this Agreement or Lessee's exercise of the Option, County shall permit Lessee and its authorized agents and representatives to enter upon the Premises at

reasonable times during normal business hours to inspect and conduct tests and studies of the Premises that Lessee desires to conduct. Lessee shall not conduct any intrusive tests or studies without the prior written approval of County, which approval shall not be unreasonably withheld. Lessee shall notify County, in writing, of its intention, or the intention of its agents or representatives, to enter the Premises at least forty-eight (48) hours prior to such intended entry. As a condition to any entry onto the Premises, Lessee shall first execute a right of entry agreement in form satisfactory to County. County shall have the right to be present for any inspection, test or study. Lessee shall bear the cost of all inspections, tests and studies pertaining to the Premises.

8. **Miscellaneous**.

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

8.2 **Waivers**. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms or provisions of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or provision of this Agreement, nor shall failure on the part of either party to require exact, full and complete compliance with any of the covenants, conditions, terms or provisions of this Agreement be construed to in any manner change the terms hereof or estop that party from enforcing the full provisions hereof.

8.3 **Notices**. All notices required or permitted to be given under this Agreement shall be given in accordance with the terms and provisions of Section 15.10 of the Lease.

8.4 **Captions**. The captions contained in this Agreement are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Agreement.

8.5 **Attorneys' Fees**. In the event of any action, proceeding or arbitration arising out of or in connection with this Agreement, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees, including without limitation, attorneys' fees for County Counsel's services where County is represented by the County Counsel and is the prevailing party.

8.6 **No Assignment**. Lessee shall have no right to assign or transfer its rights or obligations under this Agreement to any other person or entity, without the express written consent of County, which consent may be withheld by County in its sole and absolute discretion.

8.7 **Entire Agreement**. This Agreement sets forth the full and complete understanding of the parties relating to the subject matter hereof, and supercedes any and all agreements, understandings and representations made prior hereto with respect to such matters.

8.8 **Joint Effort**. Preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not be construed more severely against one of the parties than against the other.

8.9 **Applicable Law**. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

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

8.11 **Successors and Assigns**. Subject to Section 8.6 above, the rights and obligations of the parties under this Agreement shall be binding upon the parties' respective successors and assigns.

8.12 **Exhibits**. Exhibits A and B attached to this Agreement are hereby expressly incorporated into this Agreement by reference.

[SIGNATURES ARE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, County and Lessee have entered into this Agreement as of the day and year first written above.

THE COUNTY OF LOS ANGELES

By: _____
Chair, Board of Supervisors

MDR BOAT CENTRAL L.P., a California limited partnership

By: MDR Boat Central, LLC, a California limited liability company

By: Pacific Marina Developments, Inc., a California corporation, Its Manager

By: _____
Thomas J. Hogan, President

ATTEST:

SACHI A. 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

LEGAL DESCRIPTION OF PREMISES

Legal Description

The premises is comprised of Marina del Rey Parcels 52R and GG as outlined in red below. A full written legal description will be provided prior to execution of the lease.

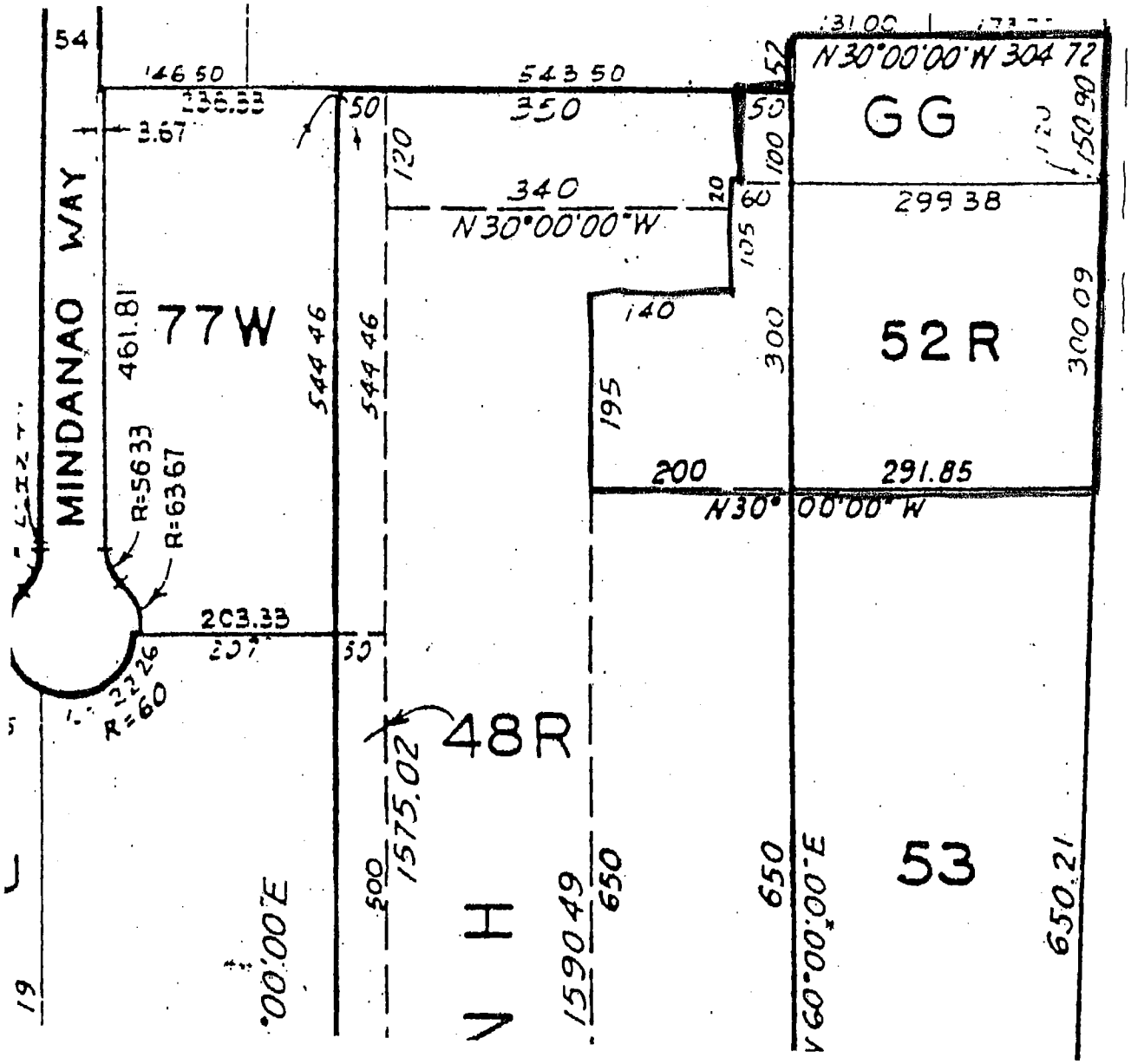

EXHIBIT B

LEASE

LEASE AGREEMENT

by and between

County of Los Angeles

and

MDR BOAT CENTRAL L.P.,
a California limited partnership

(Parcels 52R and GG — Lease No. ____)

Dated as of _____, _____

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LEASE AGREEMENT
PARCELS 52R AND GG — MARINA DEL REY

THIS 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 MDR BOAT CENTRAL, L.P., a California limited partnership (together with its permitted successors and assigns, "**Lessee**"), as lessee.

WITNESSETH

WHEREAS, County owns fee title to certain real property in Marina del Rey commonly known as Parcels 52R and GG and more particularly described in Exhibit A attached hereto (the "**Premises**").

WHEREAS, County and Lessee have entered into that certain Lease Option Agreement dated _____, 2006 (the "**Option Agreement**"), pursuant to which County has granted Lessee an option (the "**Option**") to lease the Premises from County on the terms and conditions set forth in this Lease; and

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

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto and each of them do agree 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, (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.

1.1.4 "**ADJUSTMENT DATES**" shall have the meaning set forth in subsection 4.2.1.3.

1.1.5 "**ADMINISTRATIVE CHARGE**" shall have the meaning set forth in Section 4.6.

1.1.6 "**AGGREGATE TRANSFER**" shall have the meaning set forth in subsection 4.6.3.

1.1.7 "**ALTERATIONS**" shall have the meaning set forth in Section 5.2.

1.1.8 "**ANCHORAGE FACILITIES**" shall mean all anchorage-related Improvements on the Premises, including without limitation, all docks, gangways and related components.

1.1.9 "**ANNUAL MINIMUM RENT**" shall have the meaning set forth in subsection 4.2.1.

1.1.10 "**APPLICABLE COSTS**" shall have the meaning set forth in subsection 4.8.1 or 4.8.2, as applicable.

1.1.11 "**APPLICABLE LAWS**" shall have the meaning set forth in subsection 1.2.1.

1.1.12 "**APPLICABLE RATE**" shall mean an annually compounded rate of interest equal to the lesser of (a) ten percent (10%) per annum or (b) the Prime Rate, as defined in subsection 4.3.5, plus three percent (3%) per annum; however, the Applicable Rate shall in no event exceed the maximum rate of interest which may be charged pursuant to Applicable Laws. In the event that the Applicable Rate as determined by the first sentence of this definition exceeds such maximum rate of interest, then the Applicable Rate shall be deemed the maximum rate permissible under Applicable Laws notwithstanding the first sentence of this definition.

1.1.13 "**APPROVED GOVERNMENTAL CHANGES**" shall mean any changes to the Development Work (or other Alterations, as applicable) required by the California Coastal Commission or other applicable governmental agency as a condition to the issuance of required governmental permits and approvals for such Development Work (or other Alterations, as applicable), except for any change that is a Material Modification.

1.1.14 "**ASSIGNMENT STANDARDS**" shall have the meaning set forth in Section 11.2.

1.1.15 "**AUDITOR-CONTROLLER**" shall mean the Auditor-Controller of the County of Los Angeles, California.

1.1.16 "**AWARD**" shall have the meaning set forth in subsection 6.1.3.

1.1.17 "**BASE VALUE**" shall have the meaning set forth in subsection 4.8.1.1.

1.1.18 "**BENEFICIAL INTEREST**" shall have the meaning set forth in subsection 4.6.4.

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

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

1.1.21 "**CALCULATION NOTICE**" shall have the meaning set forth in Section 4.7.

1.1.22 "**CAPITAL IMPROVEMENT FUND**" shall have the meaning set forth in Section 5.12.

1.1.23 "**CHANGE OF OWNERSHIP**" shall have the meaning set forth in subsection 4.6.1.

1.1.24 "**CHANGE OF CONTROL**" shall have the meaning set forth in subsection 4.6.1.

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

1.1.26 "**CO DATE**" shall mean the date of the issuance of the first certificate of occupancy (whether temporary or permanent) for the Improvements to be constructed as part of the Development Work.

1.1.27 "**CONDEMNATION**" shall have the meaning set forth in subsection 6.1.1.

1.1.28 "**CONDEMNOR**" shall have the meaning set forth in subsection 6.1.4.

1.1.29 "**CONSUMER PRICE INDEX**" shall mean the Consumer Price Index--All Urban Consumers for Los Angeles-Riverside-Orange County, as published from time to time by the United States Department of Labor or, in the event such index is no longer published or otherwise available, such replacement index as may be agreed upon by County and Lessee.

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

1.1.31 "**COUNTY OPTION**" shall have the meaning set forth in subsection 11.2.4.

1.1.32 **"COUNTY OPTION PRICE"** shall have the meaning set forth in subsection 11.2.4.

1.1.33 **"COUNTY POOL RATE"** shall have the meaning set forth in subsection 4.3.5 of this Lease.

1.1.34 **"DATE OF TAKING"** shall have the meaning set forth in subsection 6.1.2.

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

1.1.36 **"DEVELOPMENT PLAN"** shall have the meaning set forth in Section 5.1.

1.1.37 **"DEVELOPMENT WORK"** shall have the meaning set forth in Section 5.1.

1.1.38 **"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.

1.1.39 **"DISQUALIFICATION JUDGMENT"** shall have the meaning set forth in subsection 16.15.1.

1.1.40 **"DOCUMENTED TRANSACTION COSTS"** shall have the meaning set forth in subsection 4.8.1.3.

1.1.41 **"EFFECTIVE DATE"** shall mean the date set forth in the first preamble paragraph of this Lease.

1.1.42 **"ENCUMBRANCE"** shall have the meaning set forth in subsection 12.1.1.

1.1.43 **"ENCUMBRANCE HOLDER"** shall have the meaning set forth in subsection 12.1.1.

1.1.44 **"ENR INDEX"** shall mean the Engineering News Record (ENR) Construction Cost Index for the Los Angeles Area, or such substitute index as the parties may mutually agree upon if such index is no longer published or otherwise available.

1.1.45 **"EVENTS OF DEFAULT"** shall have the meaning set forth in Section 13.1.

1.1.46 **"EXCLUDED TRANSFERS"** shall have the meaning set forth in subsection 4.6.2.

1.1.47 **"EXTENDED TIME"** shall have the meaning set forth in Section 15.15.

1.1.48 **"FAIR MARKET RENTAL VALUE"** shall have the meaning set forth in subsection 4.3.1.

1.1.49 **"FINAL PLANS AND SPECIFICATIONS"** shall have the meaning set forth in subsection 5.3.3.

1.1.50 **"FINANCING EVENT"** shall have the meaning set forth in Section 12.1.

1.1.51 **"FIRST DEPOSIT MONTH"** shall have the meaning set forth in Section 5.12.

1.1.52 **"FORCE MAJEURE"** means fire, earthquake, flood, tornado or other act of God, civil disturbance, war, organized labor dispute, freight embargo or other similar cause or event beyond the control of Lessee.

1.1.53 **"FORCE MAJEURE DELAY"** shall have the meaning set forth in subsection 5.6.1.

1.1.54 **"GROSS ERROR"** shall have the meaning set forth in subsection 16.15.4.

1.1.55 **"GROSS PROCEEDS"** shall have the meaning set forth in Section 4.8.

1.1.56 **"GROSS RECEIPTS"** shall have the meaning set forth in subsection 4.2.2.2.

1.1.57 **"IMPROVEMENTS"** means all buildings, structures, fixtures, fences, anchorage facilities, fountains, walls, paving, parking areas, driveways, walkways, plazas, landscaping, permanently affixed utility systems and other improvements now or hereafter located on the Premises. The inclusion of structures, fixtures, fences, anchorage facilities, fountains, and utility systems in the foregoing definition is not intended to constitute a characterization by County or Lessee with regard to the nature of any particular item of personal property located at the Premises for income tax purposes.

1.1.58 **"IMPROVEMENT COSTS"** shall have the meaning set forth in subsection 4.8.1.2.

1.1.59 **"INCOME APPROACH"** shall have the meaning set forth in Section 6.5.

1.1.60 **"INITIATING PARTY"** shall have the meaning set forth in the first paragraph of Article 16.

1.1.61 **"INSTITUTIONAL LENDER"** shall have the meaning set forth in subsection 12.1.3.1

1.1.62 **"INSURANCE RENEGOTIATION DATE"** shall have the meaning set forth in Section 9.3.

1.1.63 **"LATE FEE"** shall have the meaning set forth in Section 4.5.

1.1.64 **"LEASE"** shall mean this Lease Agreement.

1.1.65 **"LEASE YEAR"** shall have the meaning set forth in Section 2.1.

1.1.66 **"LESSEE"** shall have the meaning set forth in the first paragraph of this Lease.

1.1.67 **"LESSEE SALE PRICE"** shall have the meaning set forth in subsection 11.2.4.

1.1.68 **"MAJOR SUBLEASE"** shall have the meaning set forth in subsection 11.1.1.

1.1.69 **"MAJOR SUBLESSEE"** shall have the meaning set forth in subsection 11.1.1.

1.1.70 **"MATERIAL MODIFICATION"** shall mean a modification to the Development Work (or other Alterations, as applicable) as 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 Development Work (or the other Alterations that are then proposed to be constructed by Lessee); (2) the proposed modification is structural in nature; (3) the modification affects or is visible from the exterior of the Improvements; (4) the modification is not in material compliance with the Development Work listed in Section 5.1(a) through (j) of this Lease; or (5) the modification is not in material compliance with the Permitted Uses under this Lease.

1.1.71 **"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 facilities in Marina del Rey.

1.1.72 **"MONTHLY MINIMUM RENT"** shall have the meaning set forth in subsection 4.2.1.

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

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

1.1.75 **"NET REFINANCING PROCEEDS"** shall have the meaning set forth in subsection 4.8.5.

1.1.76 **"NET TRANSFER PROCEEDS"** shall have the meanings set forth in subsections 4.8.1 and 4.8.2.

1.1.77 **"NOTICE OF COMPLETION"** shall have the meaning set forth in subsection 5.7.7.

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

1.1.79 **"OPTION AGREEMENT"** shall have the meaning set forth in the preamble to this Lease.

1.1.80 **"PARTIAL TAKING"** shall have the meaning set forth in Section 6.5.

1.1.81 **"PAYMENT BOND"** shall have the meaning set forth in subsection 5.4.3.2.

1.1.82 **"PERCENTAGE RENT"** shall have the meaning set forth in subsection 4.2.2.

1.1.83 **"PERFORMANCE BOND"** shall have the meaning set forth in subsection 5.4.3.1.

1.1.84 **"PERMITTED CAPITAL EXPENDITURES"** shall have the meaning set forth in Section 5.12.

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

1.1.86 **"PREMISES"** shall have the meaning set forth in the preamble to this Lease.

1.1.87 **"PRIME RATE"** shall have the meaning set forth in subsection 4.3.5.

1.1.88 **"PROPOSED TRANSFER"** shall have the meaning set forth in subsection 11.2.4.

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

1.1.90 **"PUBLIC IMPROVEMENTS"** shall have the meaning set forth in Section 15.20.

1.1.91 **"PURCHASE MONEY NOTE"** shall have the meaning set forth in subsection 4.7.2.

1.1.92 **"REMOVAL SECURITY FUND"** shall have the meaning set forth in subsection 2.3.2.

1.1.93 **"RENEGOTIATION DATES"** shall have the meaning set forth in Section 4.3.

1.1.94 **"REPLY"** shall have the meaning set forth in Section 16.5.

1.1.95 **"REQUIRED COMPLETION DATE"** shall have the meaning set forth in Section 5.6.

1.1.96 **"RESPONDING PARTY"** shall have the meaning set forth in the first paragraph of Article 16.

1.1.97 **"SEAWALL"** shall have the meaning set forth in Section 10.5.

1.1.98 **"SECOND DOCK REPLACEMENT"** shall have the meaning set forth in Section 5.11.

1.1.99 **"SECTION"** shall mean a section of this Lease.

1.1.100 **"SECURITY DEPOSIT"** shall have the meaning set forth in Section 7.1.

1.1.101 **"SHALL"** and **"WILL"** are mandatory and the word **"MAY"** is permissive.

1.1.102 **"STATE"** shall mean the State of California.

1.1.103 **"STATEMENT OF POSITION"** shall have the meaning set forth in subsection 16.6.

1.1.104 **"SUBLEASE"** shall have the meaning set forth in subsection 11.1.1.

1.1.105 **"SUBLESSEE"** shall have the meaning set forth in subsection 11.1.1.

1.1.106 **"SUBSECTION"** shall mean a subsection of a Section of this Lease.

1.1.107 **"TERM"** shall have the meaning set forth in Section 2.1.

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

1.1.109 **"UNINSURED LOSS"** shall have the meaning set forth in Section 10.2.

1.1.110 **"UNREASONABLE COUNTY ACTIVITY"** shall have the meaning set forth in subsection 5.6.2.

1.1.111 **"WRITTEN APPRAISAL EVIDENCE"** shall have the meaning set forth in subsection 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.

1.2.1 **As-Is**. Lessee accepts the Premises and existing Improvements 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 Effective Date. Lessee hereby represents that in connection with its exercise of the Option and its acceptance of the Premises Lessee has been given the opportunity to perform such tests, inspections, reviews studies and investigations respecting the Premises and the existing Improvements as it considers necessary or appropriate to adequately evaluate the condition and other aspects of the Premises. Lessee hereby accepts the Premises and the existing Improvements 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 and/or any Improvements located thereon, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Premises and/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, HVAC, plumbing, sewage and utility systems, facilities and appliances, and the square footage of the land and within the Improvements and within each space therein, (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/or any 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 and/or any Improvements located thereon for any particular purpose, (v) the zoning or other legal status or entitlement or lack thereof of the Premises or any other public or private restrictions on use of the Premises, (vi) the compliance of the Premises and/or any Improvements located thereon with any applicable codes, laws, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions of the County, State, the United States of America, the California Coastal Commission and/or any other governmental or quasi-governmental entity ("**Applicable Laws**") or of any other person or entity (including, without limitation, relevant provisions of the Americans with Disabilities Act ("**ADA**"), (vii) the presence of any underground storage tank or hazardous materials on, under or about the Premises or the adjoining or neighboring property, (viii) the quality of any labor and materials used in any Improvements, (ix) subject to subsection 1.2.2 below, the condition of title to the Premises, and (x) the economics of the operation of the Premises and/or any Improvements located thereon.

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 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.

2. **TERM**.

2.1 **Term**. The term of the Lease ("**Term**") shall commence on the Effective Date and, unless terminated sooner in accordance with the provisions of this Lease, expire at 11:59 p.m. on _____ [**INSERT DATE THAT IS DAY PRECEDING THE 60TH ANNIVERSARY OF THE EFFECTIVE DATE**]. For purposes of this Lease, "**Lease Year**" shall mean each calendar year (or partial calendar) during the Term of this Lease. Notwithstanding the foregoing, with respect to any provision in this Lease that refers to a specified number of Lease Years after the Effective Date, the number of Lease Years after the Effective Date shall be calculated based on the following: (a) if the Effective Date is prior to July 1 of a calendar year , then the first Lease Year after the Effective Date shall mean the period from the Effective Date through December 31 of the calendar year during which the Effective Date occurs, and (b) if the Effective Date is on or after July 1 of a calendar year, then the first Lease Year shall mean the period from the Effective Date through December 31 of the calendar year following the calendar year during which the Effective Date occurs.

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 or hereafter constructed by Lessee upon the Premises, and all alterations, additions, or betterments 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**. At the election of County, all Improvements (and all alterations, additions, and betterments thereto) shall remain upon and be surrendered with the Premises as part thereof and title thereto shall vest in County without compensation therefor 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 receive any and all proceeds which are attributable to the Condemnation of Improvements or personal property belonging to Lessee immediately prior to the taking of possession by the Condemnor as said rights are set forth in Article 6 of this Lease, or to remove any furniture or equipment not intended to be 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 associated 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 approved by County, such approval not to be unreasonably withheld or delayed, which report details and estimates the cost of removing all Improvements on the Premises at the expiration of the Term. County may give written notice (the "**County Removal Notice**") at any time, no later than the later of (a) six (6) months following Lessee's delivery of the removal cost report described above, or (b) nine (9) years prior to the expiration of the Term, or concurrently upon any earlier termination, of County's election to require Lessee to remove, at the sole cost and expense of Lessee, not later than the expiration of the Term or earlier termination of this Lease, all or any portion of the at grade, above grade and below grade Improvements of any kind whatsoever placed or maintained on the Premises, whether placed thereon or maintained by Lessee or others, including, but not limited to, concrete foundations, pilings, structures and buildings. If pursuant to the County Removal Notice County elects to require the removal of all or any portion of the Improvements, then Lessee shall, upon the expiration or termination of this Lease, (a) demolish and remove the Improvements required by County to be removed, (b) restore those portions of the Premises on which Improvements have been removed to a good, usable and buildable condition, consisting of a level, graded buildable pad with no excavations, hollows, hills or humps, and (c) surrender possession of the Premises to County.

If County elects to require Lessee to remove all or a portion of the Improvements pursuant to the County Removal Notice, then Lessee shall, no later than the date that is thirty (30) days after Lessee's 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 (the "**Removal Security Fund**"), 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, and (ii) a schedule satisfactory to County for the delivery by Lessee of the Removal Security Fund on a periodic basis over the remaining Term of the Lease, which schedule shall in all events provide for a full funding of the Removal Security Fund not later than two (2) years prior to the expiration of the Term. The amount of the Removal Security Fund shall be no less than the estimated costs to remove the Improvements set forth in the report described above, adjusted annually to reflect the increase or decrease, if any, in the ENR Index over the ENR Index as of the date of the cost estimation set forth in such expert report; provided, however, that in no event shall such adjustment result in a Removal Security Fund of an amount less than that set forth in the expert report. If County requires Lessee to establish a Removal Security Fund, then Lessee shall have the right to credit to such removal fund the monthly Capital Improvement Fund deposits thereafter required to be made by Lessee during the remaining Term pursuant to Section 5.12 of this Lease, to the extent that in the Director's reasonable judgment sufficient funds remain available from time to time in the Capital Improvement Fund to satisfy the purposes of Section 5.12 of this Lease. Any uncured failure by Lessee to fund the Removal Security Fund as required under this subsection 2.3.2 shall constitute an Event of Default.

If County elects to require Lessee to remove all or a portion of the Improvements pursuant to the County Removal Notice, Lessee shall not be required to make additional

capital improvements to the Improvements for the remainder of the Term for any reason other than as required to comply with the maintenance, repair and replacement (if repair is not possible) obligations of Lessee under this Lease or as required to satisfy the obligations of Lessee under this Lease with respect to compliance with Applicable Laws. If County requires the Removal Security Fund, Lessee shall have the right to use all amounts remaining in the Capital Improvement Fund at the end of the Term for the Improvement removal purposes described in this subsection 2.3.2, if and to the extent that such funds were not required for Capital Improvement Fund purposes. If a Removal Security Fund is required, but County does not require the removal of the Improvements at the end of the Term, then the Removal Security Fund (including any Capital Improvement Funds that were transferred to the Removal Security Fund and were not required for Capital Improvement Fund purposes under Section 5.12) shall be returned to Lessee.

If County decides not to require Lessee to remove all of the Improvements on the Premises as provided above, then upon the expiration of the Term, or earlier termination of the Lease, Lessee shall turn over to County all Improvements not required to be removed by Lessee, in good and workmanlike condition, consistent with the condition of other Improvements of comparable age and construction quality.

2.3.3 **County's Right to Remove Improvements**. If Lessee fails to perform demolition, removal and restoration obligations required to be performed by Lessee hereunder, then County may, at its election, sell, remove or demolish the Improvements, and such event, Lessee shall reimburse County for any cost or expense thereof in excess of any funds received by County through the security above provided and any consideration received by County as a result of such sale, removal or demolition.

2.3.4 **Duty to Remove Equipment, Etc**. No later than the expiration of the Term or sooner termination of this Lease, Lessee shall in any event remove at its cost and expense such furniture, equipment and personal property as are not firmly affixed to the Improvements or reasonably necessary for the operation of the Premises or Improvements. If Lessee fails to remove such furniture, equipment and personal property within said period, and such failure continues for thirty (30) days after written notice from County to Lessee, Lessee shall lose all right, title and interest in and thereto, and County may elect to keep the same upon the Premises or to sell, remove, or demolish the same, in which case Lessee shall reimburse County for its Actual Costs incurred in connection with such sale, removal or demolition in excess of any consideration received by County as a result of said sale, removal or demolition.

2.3.5 **Title to Certain Improvements Passes to County; Lessee to Maintain**. Notwithstanding any contrary provision of this Lease, the County shall own the Seawall located on the Premises, and 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 that title shall vest in County, all 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, subject to the first sentence of the third paragraph of subsection 2.3.2 above.

3. **USE OF PREMISES.**

3.1 **Specific Primary Use**. The Premises shall be used for the operation and management of a boat storage facility with associated ancillary related uses, including the use of the Sheriff Boatwright facility and outdoor Sheriff yard for the purposes for which such facilities and yard were designed ("**Permitted Uses**"). Any change in use of the Sheriff Boatwright facility and outdoor Sheriff yard shall be subject to the Director's approval in its sole, but good faith discretion.

The Premises shall not be used for any purpose other than the Permitted Uses, without the prior written consent of County, which consent may be withheld by County in its sole and absolute discretion. 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, 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 in appropriate receptacles intended for such purposes, nor shall any portion of the Premises be maintained so as to render said Premises a fire hazard or unsanitary, unsightly, offensive, or a risk to public health and safety, nor shall any similar activity be permitted on any adjacent public street or adjacent property. Lessee shall be permitted to perform the Development Work on the Premises, provided that such work is conducted in compliance with Article 5 of this Lease.

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

3.2.2.1 The Premises shall not be used or developed in any way which is in violation of any Applicable Laws;

3.2.2.2 The Premises 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 No improvement on the Premises shall be permitted to fall into disrepair and 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 which shall induce, breed or harbor 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 which create a danger to the health or safety of any persons residing or working at, or persons patronizing, the Premises;

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 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 or other transmission or reception devices 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 (a) as is necessary to allow Lessee to perform its maintenance and repair obligations pursuant to this Lease, and (b) 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 No adverse environmental condition in violation of Applicable Laws shall be permitted to exist on any portion of the Premises, nor shall any toxic or hazardous wastes be permitted to be generated, treated, stored, disposed of, or otherwise deposited in or on or allowed to emanate from the Premises or any portion thereof, including, without limitation, into the surface waters and subsurface waters thereof; provided, however, that toxic or hazardous substances may be stored or used, so long as such storage and use is (a) of a type and in such quantities as ancillary to the ordinary course of business of an otherwise Permitted Use, and (b) conducted in compliance with all Applicable Laws.

3.3 **Active Public Use**. The parties acknowledge that the ultimate objective of this Lease is the complete and continuous use of the facilities and amenities located in Marina del Rey by and for the benefit of the public, without discrimination as to race, gender or religion, along with the generation and realization of revenue therefrom. Accordingly, Lessee agrees and covenants that it will operate the Premises 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 hours commensurate with the hours of operations of other similar facilities in Southern California, subject to the Operating Covenant Exceptions and except for such holidays, if any, during which similar businesses 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 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), whether pursuant to Article 5 of this Lease or otherwise, in writing, 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. Any dispute as to whether Director has unreasonably withheld its approval of a matter described in this Section 3.5 shall be submitted to arbitration pursuant to Article 16 of this Lease.

3.6 **Compliance with Regulations**. Lessee shall comply with all Applicable Laws and shall pay for and maintain any and all licenses and permits required for the use, operation, maintenance, repair or improvement of the Premises. Without limitation of the foregoing, Lessee shall comply with (a) all conditions and requirements of Coastal Development Permit No(s). _____ **[PRIOR TO LEASE EXECUTION INSERT COASTAL DEVELOPMENT PERMIT NO(S). ISSUED FOR DEVELOPMENT WORK]**, which conditions and requirements are attached to this Lease as Exhibit D and incorporated herein by this reference, and (b) 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 as may be promulgated by County from time to time for general applicability on a non-discriminatory basis to other commercial facilities in Marina del Rey, and delivered in writing to Lessee. Any dispute as to whether County has acted unreasonably in connection with the matters described in this Section 3.7 shall be submitted to arbitration pursuant to Article 16 of this Lease.

3.8 **Reservations**. Lessee expressly agrees that this Lease and all rights hereunder shall be subject to all encumbrances, reservations, licenses, easements and rights of way (a) existing as of the Effective Date, or (b) otherwise referenced in this Lease in, to, over or affecting the Premises for any purpose whatsoever, or (c) consented to by Lessee.

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 any other governmental authority 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 such other governmental authority 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 expressly set forth in this Lease. 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, 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.

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

The parties acknowledge that the Premises are and shall continue to be subject to possessory interest taxes, and that such taxes shall be paid by Lessee. This statement is intended to comply with Section 107.6 of the Revenue and Taxation Code. Lessee shall include a statement in all Subleases to the effect that the interests created therein are derived from the Lessee's interest under this Lease and that Lessee's interest requires the payment of a possessory interest tax.

4.2 **Rental Payments**. Throughout the Term, for the possession and use of the Premises granted herein, Lessee shall pay County a monthly amount equal to the greater of (a) Monthly Minimum Rent or (b) Percentage Rent.

4.2.1 **Annual Minimum Rent and Monthly Minimum Rent**. Lessee shall pay to County the minimum rent described in this subsection 4.2.1 (subject to adjustment pursuant to Sections 4.3 below) during each Lease Year of the Term (the "**Annual Minimum Rent**"). Annual Minimum Rent shall be payable by Lessee to County on a monthly basis in equal installments of one-twelfth (1/12th) of the Annual Minimum Rent (the "**Monthly Minimum Rent**"); provided, however, if any Lease Year is shorter or longer than a full calendar year, or if any month during the Term is less than a full

calendar month, then the Annual Minimum Rent and Monthly Minimum Rent, as applicable, shall be calculated on a pro rata basis based on the number of days in the applicable period as compared to the number of days in such full calendar year or month, as applicable.

4.2.1.1 During the period from the Effective Date through the earlier of the CO Date or the Required Completion Date, the Annual Minimum Rent shall be Seventy-Five Thousand Dollars ($75,000.00) per year. Lessee shall provide written notice to County of the CO Date promptly upon the occurrence thereof.

4.2.1.2 For the three (3) year period following the end of the period described in subsection 4.2.1.1 above, the Annual Minimum Rent per year shall be as follows: (a) Seventy-Five Thousand Dollars ($75,000.00) for the first year of such period, (b) One Hundred Fifty Thousand Dollars ($150,000.00) for the second year of such period, and (c) Two Hundred Fifty Thousand Dollars ($250,000.00) for the third year of such period.

4.2.1.3 Effective at the end of the period described in subsection 4.2.1.2 and effective every three (3) years thereafter until the first Renegotiation Date, and thereafter effective each third (3rd), sixth (6th) and ninth (9th) anniversaries of each Renegotiation Date (each an "**Adjustment Date**" and collectively the "**Adjustment Dates**"), the Annual Minimum Rent shall be adjusted as provided in this subsection 4.2.1.3. The Annual Minimum Rent shall be adjusted as of each Adjustment Date to the amount equal to seventy five percent (75%) of the average total Annual Minimum Rent and Percentage Rent payable by Lessee during the three (3) year period immediately preceding the Adjustment Date.

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 and/or any Sublessee shall be reported under the applicable percentage category set forth below in this subsection 4.2.2. It is understood that Article 3 of this Lease provides for the Permitted Uses of the Premises and that the percentage categories listed below may not all be applicable to this Lease and are in no way intended to expand or modify the Permitted Uses. Director, by Policy Statement and with the approval of Lessee, Auditor-Controller and County Counsel, has interpreted and may further interpret the percentage categories as set forth in this subsection 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 hereof, Lessee shall file a report of Gross Receipts by category and pay to County a sum equal to the total of the percentages set forth in categories (a) through (q) below of Gross Receipts for the previous month. Lessee shall be entitled to offset against each such Percentage Rent payment the amount of the installment of Monthly Minimum Rent paid by Lessee for such previous month.

(a) TWENTY-FIVE PERCENT (25%) of Gross Receipts or other fees for the rental or use of boat slips, anchorages, moorings, dockside storage space (including the

rental or use of transient slips) and such other facilities and services ancillary thereto as are generally provided in common to tenants thereof, including receipts obtained from persons who live on their boats;

(b) TWENTY PERCENT (20%) of Gross Receipts from the rental or other fees charged for the use of dry stack storage, mast-up storage, trailer storage or any other dry or landside storage facilities; provided, however, that if for any of the three separate years described in subsection 4.2.1.2 above the average dry stack storage occupancy rate for such year is less than the applicable minimum occupancy rate for such year set forth below, then for such year (and such year only) the Gross Receipts percentage applicable to this category (b) shall be reduced to SIXTEEN PERCENT:

Year	Minimum Occupancy Rate
1	33%
2	66%
3	75%

(c) TWELVE AND ONE-HALF PERCENT (12.5%) of Gross Receipts or other fees charged for the occupancy of (1) space used for office purposes; or (2) restaurants, retail stores or other establishments selling food, merchandise or services; provided that, except as set forth in subsection 4.2.2.4, rents or other charges for the occupancy of restaurants, retail stores or other establishments selling food, merchandise or services shall not be included in the calculation of Percentage Rent under this category (c) if the Gross Receipts from the operation of such businesses (as opposed to the rents paid for the occupancy of such space) are required to be reported under other categories of this subsection 4.2.2;

(d) ONE PERCENT (1%) of Gross Receipts from the sale of new or used boats, recreational vehicles, trailers or trailer cabanas;

(e) FIVE PERCENT (5%) of Gross Receipts received in the nature of commissions, compensation or fees for boat brokerage, vehicles or equipment rental, marine insurance or other similar services;

(f) FIFTY PERCENT (50%) of Gross Receipts from any telecommunication (including, without limitation, wireless antennae or fiber optics), cable, internet, satellite, telephone, electricity co-generation or other similar services or facilities;

(g) That percentage determined pursuant to category (q) below, of Gross Receipts from the rental of boats, or from ticket sales or other fees, charges or Gross Receipts from sport fishing or other commercial boating activities such as charter boat or bareboat charters, but not including the boating activities described in category (l) below;

(h) With respect to the installation and/or operation of coin-operated vending or service machines, including pay telephones, FIVE PERCENT (5%) of Gross Receipts received by Lessee (or a subtenant under a sublease from Lessee) in connection with such enterprise if Lessee (or a subtenant) is the operator of such enterprise, or TWENTY-FIVE

PERCENT (25%) of any commissions or other fees collected by Lessee (or a subtenant) in connection with such enterprise if a third party provider is the operator of such enterprise;

(i) TEN PERCENT (10%) of Gross Receipts from the operation of a bar, tavern, cocktail lounge, discotheque, night club or other facilities engaged primarily in the on-premises sale of alcoholic beverages, except as provided for in category (j);

(j) THREE AND ONE-HALF PERCENT (3.5%), of Gross Receipts from the operation of restaurants, restaurant/cocktail lounge combination, coffee shops, beach and theater food facilities, except that Gross Receipts from facilities established and operated as a take-out food operation shall be reported under category (p); for purposes of the foregoing, a "take-out food operation" shall mean a restaurant or other food operation a majority of the Gross Receipts from which are derived from the sale of food or beverages to be consumed off-site;

(k) SIX PERCENT (6%) of Gross Receipts from the sale of gasoline, diesel fuel, mixed fuel or other petroleum or fuel products;

(l) That percentage determined pursuant to category (q) below, of Gross Receipts from the operation of excursion, sightseeing or tour boats, or any water taxi;

(m) FIVE PERCENT (5%) of Gross Receipts from boat haul-out or repair, including maintenance, repair, painting, tugboat, salvage and boat pump-out services and similar activities;

(n) SEVEN AND ONE-HALF PERCENT (7.5%) of Gross Receipts in connection with filming or other television or motion picture activities;

(o) (1) In the case where parking facilities are operated by a third party operator under a parking operation agreement with Lessee or a subtenant of Lessee, (i) TWENTY PERCENT (20%) of the fee or other compensation paid by such third party operator to Lessee (or subtenant) if the operator is entitled to receive parking revenues and is responsible for the payment of operating expenses; or (ii) FIVE PERCENT (5%) of the Gross Receipts from the operation of such parking if the operator collects such Gross Receipts on behalf of Lessee (or subtenant) and Lessee (or subtenant) is responsible for the payment of the operating expenses for such parking operation (which operating expenses include a fee or other compensation to the parking operator for the rendering of such parking services); or

(2) In the case where parking facilities are operated by Lessee or a subtenant, FIVE PERCENT (5.0%) of Gross Receipts from such parking;

(p) FIVE PERCENT (5%) of Gross Receipts from the sale of miscellaneous goods and services consistent with the Permitted Uses, but not specifically provided for elsewhere in this subsection 4.2.2;

(q) In the case where a specific percentage in the foregoing schedule has not been provided, Director and Lessee shall negotiate in good faith to establish the specific percentage to be applied to such use. Such percentage shall be the greater of (1) the average percentage rent received by County with respect to that category of activities within Marina del Rey, California at the time of approval of the additional or related use, or (2) the most recent agreement between County and a Marina del Rey lessee, whether by arbitration or otherwise, with respect to the appropriate percentage to be applied to that use. The percentage rent for the additional or related use as determined pursuant to this category (q) shall remain in effect until the next Renegotiation Date.

4.2.2.1 **Accounting Records and Procedures**. Lessee agrees to and shall comply with, and shall cause all of its Sublessees to agree to and comply with, the recordkeeping and accounting procedures, as well as the inspection and audit rights granted to County, set forth in Article 14 of this Lease.

4.2.2.2 **Gross Receipts**. Except as herein otherwise provided, the term "**Gross Receipts**" as used in this Lease means the gross amount of all money, receipts, compensation, or other things of value, including but not limited to charges, sales price, rentals, payments, reimbursements (including, without limitation, common area maintenance or other expenses, taxes, utilities, insurance, promotional expenses or charges, and other payments or reimbursements), fees and commissions made or earned by Lessee and/or all its assignees or Sublessees, from any business, use, occupation or any combination thereof, originating, transacted, or performed in whole or in part, on the Premises, including but not limited to rentals, the rendering or supplying of services and the sale of goods, wares, food, beverages or merchandise, 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 (but the value of any free rent period shall not be imputed as Gross Receipts), collection costs, discounts from credit card operations (except as provided in subsection (4)(h) 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 reported by Lessee and its Sublessees must include the usual charges for any services, goods, rentals or facilities provided by Lessee or its Sublessees. Bona fide bad debts actually accrued for amounts owed by customers or patrons may be deducted from Gross Receipts to the extent that such amounts have been previously reported as Gross Receipts; however, there shall be no deduction for bad debts based on past experience or transfer to a bad debt reserve. Subsequent

collection of bad debts previously not reported as Gross Receipts shall be included in Gross Receipts at the time they are collected.

(4) Gross Receipts shall not include any of the following items:

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

b. an amount equal to the cash refunded or credit allowed on merchandise returned by customers, but only to the extent that the sales relating to such merchandise were made in, about or from the Premises; provided that whenever a credit slip is accepted 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 stock in trade;

d. receipts from insurance claims other than rental interruption or business interruption insurance related to the replacement of Gross Receipts;

e. interest earned by Lessee on funds arising from the Premises or the use thereof, deposited or maintained by Lessee in banks or similar financial institutions;

f. tips and gratuities paid to employees;

g. goods or meals provided to employees of the business operation at cost or less, and complimentary meals offered for promotional purposes, provided, however, that the amounts excluded under this paragraph (g) in connection with a particular business operation shall not exceed two percent (2%) of the Gross Receipts from such business operation in any year;

h. receipts from vending machines used solely by employees of the business operation;

i. fees or charges paid to credit card companies in connection with customer purchases made by use of a credit card, provided, however, that the amounts excluded under this paragraph (i) in connection with a particular business operation shall not exceed the actual charges for such matters;

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

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

(5) Gross Receipts shall not include amounts reimbursed to Lessee for the Cost of each Sublessee's submetered electricity, water and gas for such Sublessee's space, provided that (1) each Sublessee's obligation to reimburse Lessee for such utility charges is separate and apart from such Sublessee's obligation to pay rent for its occupancy of the Premises; (2) the reimbursed sum is in an amount equal to the Cost of the Sublessee's usage of such utilities; and, (3) the receipt is actually credited against the cost of the Sublessee's usage of such utilities. For the purpose of the foregoing sentence, the "Cost" of the Sublessee's usage of utilities shall mean the actual costs incurred by Lessee, exclusive of overhead and general and administrative expenses, in paying the portion of the respective utility bill that is allocable to the Sublessee based on such Sublessee's submetered consumption of such utilities, and in paying the portion of any third party submeter reading and service charge to each submeter that is actually read and a direct allocation of the submeter service charge to each such submeter that is serviced. County shall have the right to approve all submeters and to challenge the legitimacy or amount of any Cost, and all disputes regarding such County approvals or challenges, if not resolved by the parties within thirty (30) days after notice to Lessee of such disapproval or challenge, shall be resolved by arbitration pursuant to Article 16 of this Lease.

4.2.2.3 **Excess Payments Credit**. If rent payments actually made by Lessee in a particular Lease Year exceed the total rentals actually due for that year as computed on an annual basis at the end of each 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 Section 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 of its discovery and verification of such overpayment.

4.2.2.4 **Effect of Sublessee, etc. Doing Business**. Except as specifically provided to the contrary in this Lease, where a Sublessee is conducting a business or engaged in any use or occupation or any combination thereof on Lessee's leasehold, Lessee shall pay Percentage Rent based on whichever of the following results in the greater Percentage Rent: (1) the Gross Receipts of each Sublessee under one or more of categories (a) through (q) of this Section 4.2.2; or (2) the Gross Receipts received by Lessee from such Sublessee; provided, however, that this subsection 4.2.2.4 shall not be applicable to the uses described in clause (1) of category (c) of this subsection 4.2.2.

4.2.2.5 **Interest; Etc**. Interest, service or late charges collected in conjunction with a transaction, sale or activity of Lessee or Sublessee shall be reported in the same percentage category as the transaction, sale or activity is reported.

4.2.2.6 **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.

4.2.2.7 **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 **Renegotiation of Annual Minimum and Percentage Rents**. Effective as of the day following the tenth (10th) anniversary of the earlier of the CO Date or the Required Completion Date, and each ten (10) years thereafter (each a "**Renegotiation Date**" and collectively, the "**Renegotiation Dates**"), the Annual Minimum Rent and Percentage Rent shall be readjusted to the Fair Market Rental Value (as defined below) of the Premises.

4.3.1 **Fair Market Rental Value**. As used herein, "**Fair Market Rental Value**" shall mean, as of each Renegotiation Date, the fair market rent (including an annual minimum rent), expressed as respective percentages of Gross Receipts in accordance with the categories enumerated in subsection 4.2.2, which the Premises would bring, on an absolute net basis, taking into account the Permitted Uses, all relevant and applicable County policies and all of the other terms, conditions and covenants contained in the Lease, if the Premises were exposed for lease for a reasonable time on an open and competitive market to a lessee for the purpose of the Permitted Uses, where County and the respective tenant are dealing at arms length and neither is under abnormal pressure to consummate the transaction, together with all restrictions, franchise value, earning power and all other factors and data taken into account in accordance with California law applicable from time to time to eminent domain proceedings.

4.3.2 **Renegotiation Period**. Not more than one (1) year nor less than nine (9) months prior to the Renegotiation Date, Lessee shall deliver to County written notice setting forth Lessee's determination of the Fair Market Rental Value of the Premises. Lessee's notice shall include a list of comparable properties and/or complete copies of any appraisals which it has utilized in its determination, together with such other information regarding such comparable properties or the Premises as Lessee deems relevant or as may be reasonably requested by County. Within one hundred twenty (120) days after receipt of Lessee's notice, if County disagrees with Lessee's determination, County shall deliver to Lessee written notice of such disagreement, together with County's determination of Fair Market Rental Value and a list of comparable properties and/or complete copies of any appraisals which it has utilized in its determination, together with such other information regarding such comparable properties or the Premises as County deems relevant or as may be reasonably requested by Lessee, to the extent available to County. If County fails to deliver to Lessee notice of its disagreement within the aforementioned period and such failure continues for fifteen (15) days after receipt of written notice from Lessee, then Lessee's determination of Fair Market Rental Value shall be binding on County as of the Renegotiation Date; provided, however, that Lessee's notice to County shall conspicuously state in bold faced type that such

determination of Fair Market Rental Value shall be binding on County unless County delivers notice of its disagreement within such fifteen (15) day period.

If Lessee fails to deliver the notice described in the first sentence of this subsection, setting forth Lessee's determination of Fair Market Rental Value, and such failure continues for fifteen (15) days after receipt of written notice from County, then County shall submit its determination of Fair Market Rental Value to Lessee. Lessee shall have fifteen (15) days after the submittal by County to Lessee of County's determination of Fair Market Rental Value to deliver to County written notice of Lessee's agreement or disagreement with County's determination. If Lessee fails to deliver notice of such disagreement within such fifteen (15) day period and County's notice to Lessee conspicuously stated in bold faced type that such determination of Fair Market Rental Value shall be binding on Lessee unless Lessee delivers notice of its disagreement within such fifteen (15) day period, then County's determination of Fair Market Rental Value shall be binding on Lessee as of the Renegotiation Date.

4.3.3 **Negotiation of Fair Market Rental Value**. If County (or Lessee, as the case may be) does so notify Lessee (or County, as the case may be) of its disagreement as provided in subsection 4.3.2, County and Lessee shall have sixty (60) days from the end of the applicable response period in which to agree upon the Fair Market Rental Value for the Premises. County and Lessee shall negotiate in good faith during said sixty (60) day period. If the parties do so agree, they shall promptly execute an amendment to this Lease setting forth the Fair Market Rental Value so jointly determined, to be effective upon the Renegotiation Date. Director shall be authorized to execute any such amendment on behalf of County. During the period of negotiation, Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to the obligation to continue to pay to County Annual Minimum Rent and Percentage Rent at the then-existing levels.

4.3.4 **Arbitration**. If County and Lessee fail to reach agreement during the sixty (60) day period set forth in subsection 4.3.3, then, unless the parties agree otherwise, the Fair Market Rental Value of the Premises shall be determined by arbitration as set forth in Article 16 of this Lease and the parties shall execute an amendment to this Lease setting forth the Fair Market Rental Value as determined by arbitration. In order to determine the Fair Market Rental Value of the Premises, the arbitrator shall take into consideration all of the terms, conditions and covenants of this Lease, the earning power and all of the factors and data relating to such value required or proper to be considered in determining the fair rental value of leaseholds under the laws of eminent domain in the State of California. During the period of arbitration, County and Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to Lessee's obligation to pay to County Annual Minimum Rent and Percentage Rent at then existing levels.

4.3.5 **Retroactivity**. In the event that, pursuant to subsections 4.3.3 or 4.3.4 hereof, the parties execute an amendment to this Lease setting forth the Fair Market Rental Value and the Annual Minimum Rent, such amendment, if executed prior to the Renegotiation Date, shall be effective as of the Renegotiation Date; if executed after the

Renegotiation Date, such amendment shall be retroactive to the Renegotiation Date. In the event that such amendment is executed after the Renegotiation Date, then, within thirty (30) days after such execution, Lessee shall pay to County, or County shall at its election pay or credit to Lessee, the difference, if any, between (a) such Fair Market Rental Value for the Premises and (b) the actual Annual Minimum Rent and Percentage Rent paid by Lessee to County, for the period of time from the Renegotiation Date until the date of such payment. Lessee (with respect to overpayments) or County (with respect to underpayments) shall further be entitled to interest on each portion of such payment from each date on which the applicable rental payments were payable under this Lease to the date paid or credited, whichever is applicable, at the following rates, compounded quarterly:

(1) the interest rate applicable to the first six (6) months following the Renegotiation Date shall be equal to the average daily rate for the non-restricted funds held and invested by the Treasurer and Tax Collector of Los Angeles County during that period, computed by the Auditor-Controller ("**County Pool Rate**"); and,

(2) the interest rate applicable to any period of time in excess of six (6) months following the Renegotiation Date shall be the average prime rate of interest published in the Wall Street Journal (the "**Prime Rate**") plus one percent (1%) for the period between the date which is six (6) months after the Renegotiation Date and the date of payment.

4.4 **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 day of the calendar month following each month of the Term, calculated as follows: the Lessee shall calculate the total Percentage Rent owed to County for the relevant month of the Term; it shall deduct from said amount the total Monthly Minimum Rent paid to County for that same month; if the resulting amount is a positive number, Lessee shall pay that amount to County; if that amount is a negative number, no Percentage Rent shall be paid to County for that month but nevertheless the Monthly Minimum Rent shall be paid every month of the Term hereof. Percentage Rent payments shall be reconciled annually at the end of each Lease Year, with any Excess Percentage Rent Payments credited as provided in subsection 4.2.2.3.

Payment may be made by check or draft issued and payable to The County of Los Angeles, and mailed or otherwise delivered to the Department of Beaches and Harbors, Los Angeles County, 13483 Fiji Way, Trailer No. 2, Marina del Rey, California 90292, or such other address as may be provided to Lessee by County. Lessee acknowledges that County shall have no obligation to issue monthly rental statements, invoices or other demands for payment, and that the rental payments required herein shall be payable notwithstanding the fact that Lessee has received no such statement, invoice or demand.

4.5 **Late Fees**. In the event any payment hereunder is not received by County by the date due, Lessee acknowledges that County will experience additional management,

administrative and other costs that are impracticable or extremely difficult to determine. Therefore, a fee ("**Late Fee**") of six percent (6%) of the unpaid amount shall be added to any amount that remains unpaid five (5) days after such amount was due and payable; provided, however, that Lessee shall not be required to pay a Late Fee in the case of the first instance in any calendar year that a payment is not made by Lessee within the foregoing five (5) day period, so long as such delinquency is cured within one (1) business day after written notice from County. In addition to any Late Fee, any unpaid rent due shall additionally bear interest at an annual rate equal to the Prime Rate plus three percent (3%), computed from the date when such amounts were due and payable, compounded monthly, until paid. Lessee acknowledges that such Late Fee and interest shall be applicable to all identified monetary deficiencies under this Lease, whether identified by audit or otherwise, and that interest on such amounts shall accrue from and after the date when such amounts were due and payable as provided herein (as opposed to the date when such deficiencies are identified by County).

4.6 **Changes of Ownership and Financing Events**. Except as otherwise provided in this Section 4.6, each time Lessee proposes either (a) a Change of Ownership (that is not an Excluded Transfer) or (b) a Financing Event, County shall be paid (1) an Administrative Charge equal to the Actual Cost incurred by County in connection with its review and processing of said Change of Ownership or Financing Event ("**Administrative Charge**") and (2) subject to the remaining provisions of this Section 4.6, a Net Proceeds Share, in the event County approves such proposed Change of Ownership or Financing Event and such transaction is consummated. "**Net Proceeds Share**" shall mean the applicable amount determined pursuant to Section 4.8 of this Lease. Changes of Ownership and Financing Events are further subject to County approval as provided in Articles 12 and 13 of this Lease.

4.6.1 **Change of Ownership**. "**Change of Ownership**" shall mean (a) any transfer by Lessee of a five percent (5%) or greater direct ownership interest in this Lease, (b) the execution by Lessee of a Major Sublease or the transfer by the Major Sublessee under a Major Sublease of a five percent (5%) of greater direct ownership interest in such Major Sublease, (c) any transaction or series of related transactions not described in subsection 4.6.1(a) or subsection 4.6.1(b) which constitute an Aggregate Transfer of fifty percent (50%) or more of the beneficial residual interests in Lessee or a Major Sublessee, or (d) a Change of Control (as defined below) of Lessee or a Major Sublessee.

For the purposes of this Lease, "**Change of Control**" shall refer to a transaction whereby the transferee acquires a beneficial residual interest in Lessee or a Major Sublessee which brings its cumulative beneficial residual interest in Lessee or a Major Sublessee, as appropriate, to over fifty percent (50%).

4.6.2 **Excluded Transfers**. Notwithstanding anything to the contrary contained in this Lease, Changes of Ownership resulting from the following transfers ("**Excluded Transfers**") shall not be deemed to create an obligation to pay County a Net Proceeds Share or any Administrative Charge:

4.6.2.1 a transfer by any direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability

company that is a direct or indirect owner in Lessee's ownership structure) as of the Effective Date or the date on which a Change of Ownership occurred as to the interest transferred, to any other direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) as of the Effective Date, including in each case to or from a trust for the benefit of the immediate family (as defined in subsection 4.6.2.3 below) of any direct or indirect partner or member of Lessee who is an individual, including a series of transfers resulting in an Aggregate Transfer at all times during and after which greater than fifty percent (50%) of all beneficial residual interests in Lessee continue to be owned by one or more direct or indirect partners, shareholders or members of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) as of the Effective Date;

4.6.2.2 a transfer to a spouse in connection with a property settlement agreement or decree of dissolution of marriage or legal separation, as long as such transfer does not result in a change in the management of Lessee;

4.6.2.3 a transfer of ownership interests in Lessee or in constituent entities of Lessee (i) to a member of the immediate family of the transferor (which for purposes of this Lease shall be limited to the transferor's spouse, children, parents, siblings and grandchildren), (ii) to a trust for the benefit of a member of the immediate family of the transferor, (iii) from such a trust or any trust that is an owner in a constituent entity of Lessee as of the Effective Date, to the settlor or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer described in this subsection 4.6.2.3 is the result of gift, devise, intestate succession or operation of law, or (iv) in connection with a pledge by any partners of a constituent entity of Lessee to an affiliate of such partner;

4.6.2.4 a transfer of a beneficial interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation or other entity whose stock and/or securities is/are traded publicly on a national stock exchange or is traded in the over-the-counter market and the price for which is regularly quoted in recognized national quotation services;

4.6.2.5 a mere change in the form, method or status of ownership (including, without limitation, the creation of single purpose entities) so long as the ultimate beneficial ownership remains the same as of the Effective Date, or as otherwise excluded in accordance with subsections 4.6.2.1 through 4.6.2.4 above;

4.6.2.6 any transfer resulting from a Condemnation by County; or

4.6.2.7 any assignment of the Lease by Lessee to a parent, subsidiary or affiliate of Lessee in which there is no change to the direct and indirect beneficial ownership of the leasehold interest.

4.6.3 **Aggregate Transfer**. **"Aggregate Transfer"** shall refer to the total percentage of the shares of stock, partnership interests, membership interests or any other equity interests (which constitute beneficial residual interests in Lessee or a Major Sublessee, as appropriate) transferred or assigned in one transaction or a series of related transactions (other than those enumerated in subsection 4.6.2) occurring since the later of (a) the Effective Date, (b) the execution by Lessee of this Lease or a Major Sublease, as appropriate, or (c) the most recent Change of Ownership upon which an Administrative Charge was paid to County; provided, however, that there shall be no double counting of successive transfers of the same interest in the case of a transaction or series of related transaction involving successive transfers of the same interest. Isolated and unrelated transfers shall not be treated as a series of related transactions for purposes of the definition of Aggregate Transfer.

4.6.4 **Beneficial Interest**. As used in this Lease, **"beneficial residual interest"** shall refer to the ultimate direct or indirect ownership interests in Lessee (or a Major Sublessee, as applicable), regardless of the form of ownership and regardless of whether such interests are owned directly or through one or more layers of constituent partnerships, corporations, limited liability companies or trusts.

4.6.4.1 **Interests Held By Entities**. Except as otherwise provided herein, an interest in Lessee, this Lease or a Major Sublease held or owned by a partnership, limited liability company, corporation or other entity shall be treated as owned by the partners, members, shareholders or other equity holders of such entity in proportion to their respective equity interests, determined by reference to the relative values of the interests of all partners, members, shareholders or other equity holders in such entity. Where more than one layer of entities exists between Lessee or a Major Sublessee, as appropriate, and the ultimate owners, then the foregoing sentence shall be applied successively to each such entity in order to determine the ownership of the beneficial interests in Lessee, this Lease or a Major Sublease, as appropriate, and any transfers thereof.

4.6.4.2 **Ownership of Multiple Assets**. The proceeds of any event constituting or giving rise to a Change of Ownership shall be apportioned to this Lease or a Major Sublease, whichever is appropriate, and to any other assets transferred in the same transaction in proportion to the relative fair market values of the respective assets transferred. The Net Proceeds Share shall be calculated only by reference to the amount of such proceeds apportioned to this Lease, a Major Sublease or the beneficial interests therein, whichever is appropriate.

4.7 **Calculation and Payment**. A deposit of Fifteen Thousand and 00/100 Dollars ($15,000) toward the Administrative Charge shall be due and payable upon Lessee's notification to County of the proposed Change of Ownership (that is not an Excluded Transfer) or Financing Event and request for County's approval thereof. If the transaction is approved, the balance of the Administrative Charge, if any, and the Net Proceeds Share shall be due and payable concurrently with the consummation of the transaction constituting the Change of Ownership or Financing Event giving rise to the obligation to pay such fee, regardless of whether or not money is transferred by the parties in connection with such consummation. If County disapproves the

proposed transaction then, within thirty (30) days after notice of its disapproval, County shall deliver to Lessee a written notice setting forth the Administrative Charge (including documentation in support of the calculation of the Administrative Charge), together with a refund of the amount, if any, of the deposit in excess of the Administrative Charge otherwise allowable under Section 4.6. In the event that the Administrative Charge exceeds the deposit, then Lessee shall pay County the balance of the Administrative Charge otherwise allowable under Section 4.6. within thirty (30) days after receipt of the notice from County setting forth the Administrative Charge (including documentation in support of the calculation of the Administrative Charge) and any additional supporting documentation reasonably requested by Lessee within five (5) business days after its receipt of such notice. Together with its request for County approval of the proposed transaction, Lessee, a Major Sublessee or the holder of a beneficial interest in this Lease or a Major Sublease, whichever is appropriate, shall present to County its calculation of the Net Proceeds Share (if any) anticipated to be derived therefrom, which shall include the adjustment to Improvement Costs, if any, which may result from the payment of such Net Proceeds Share ("**Calculation Notice**"). Each Calculation Notice shall contain such detail as may be reasonably requested by County to verify the calculation of the Net Proceeds Share. Within thirty (30) days after the receipt of the Calculation Notice and all information or data reasonably necessary for County to verify the calculations within the Calculation Notice, County shall notify the party giving the Calculation Notice as to County's agreement or disagreement with the amount of the Net Proceeds Share set forth therein or the related adjustment of Improvement Costs, if any. Failure of County to approve the Calculation Notice in writing within such thirty (30) day period shall be deemed to constitute County's disapproval thereof. Failing mutual agreement within thirty (30) days after the expiration of said thirty (30) day period, the dispute shall be resolved by arbitration as set forth in Article 16 of this Lease in the manner prescribed herein for the resolution of disputes concerning Fair Market Rental Value. In the event County approves a Change of Ownership or Financing Event but a dispute exists as to the Net Proceeds Share in respect thereof or the related adjustment, if any, in Improvement Costs, then the transaction may be consummated after County has disapproved Lessee's Calculation Notice; provided, however, that (i) Lessee shall remit to County as otherwise required hereunder the undisputed portion of the Net Proceeds Share and (ii) Lessee shall deposit the disputed portion of the Net Proceeds Share into an interest bearing escrow account at the closing of the transaction (or deliver to County a letter of credit or other security reasonably acceptable to County in the amount of the disputed portion), which disputed portion shall be distributed in accordance with the arbitration of the dispute pursuant to Article 16 of this Lease, in the manner prescribed herein for the resolution of disputes concerning Fair Market Rental Value.

4.7.1 **Transfer of Less Than Entire Interest**. Where a Change of Ownership has occurred by reason of the transfer of less than all of an owner's beneficial interest in Lessee, this Lease or a Major Sublease, the Net Proceeds Share shall be due and payable with respect to those portions of such beneficial interest that have been acquired by the transferee since the latest of (a) the Effective Date, (b) the most recent event creating Lessee's obligation to pay a Net Proceeds Share (including without limitation an approval by County of a transfer at a price which falls below the threshold for paying a Net Proceeds Share, but excluding any event as to which the Net Proceeds Share is expressly stated to be $0 under the provisions of Section 4.8 below) with respect to this Lease (or a

Major Sublease), or (c) the date which is twelve (12) months prior to the transfer which constitutes the Change of Ownership.

4.7.2 **Purchase Money Notes**. If the transferor of an interest accepts a note made by the transferee of such interest in payment of all or a portion of the acquisition cost (a "**Purchase Money Note**"), such note shall be valued at its face amount; provided that if the interest rate on such Purchase Money Note is in excess of a market rate, then the value of such note shall be increased to reflect such above-market rate. Any disputes between County and Lessee as to whether the interest rate on a Purchase Money Note is in excess of a market rate or with respect to the valuation of a Purchase Money Note with an above-market rate of interest, shall be settled by arbitration pursuant to Article 16 below.

4.7.3 **Obligation to Pay Net Proceeds Share and Administrative Charge**. With respect to a Change of Ownership giving rise to the Administrative Charge and Net Proceeds Share, the obligation to pay the Administrative Charge and Net Proceeds Share shall be the joint and several obligation of the transferor and transferee. In the event that the Administrative Charge or Net Proceeds Share is not paid when due with respect to the beneficial interest in this Lease, then County shall have the remedies set forth in Section 13.3 hereof; provided, however, in the case of a transfer of an interest in Lessee (as opposed to a transfer by Lessee of an interest in the Lease or the Premises) in which the transferor and transferee fail to pay the Administrative Charge and/or Net Proceeds Share due hereunder, as long as Lessee uses its best efforts to cause the payment of the required Administrative Charge and Net Proceeds Share to be made, County shall, for a period of up to three (3) years following the Change of Ownership, forebear from exercising any right to terminate the Lease as a result thereof; provided further that at the end of such three (3) year period County shall no longer have any obligation to forebear from terminating the Lease if the Administrative Charge and Net Proceeds Share, plus interest as described below, has not been paid in full. An Administrative Charge and Net Proceeds Share not paid when due hereunder shall bear interest at the Prime Rate plus three percent (3%). For purposes of determining whether County is required to forebear from terminating the Lease as described above, Lessee's obligation to use its best efforts to cause the payment of the unpaid Administrative Charge and/or Net Proceeds Share shall include the obligation at Lessee's expense, to institute a legal action against the transferor and transferee within ninety (90) days following the date of the transfer and to diligently prosecute such legal action to completion..

4.8 **Net Proceeds Share**. In the case of the first Change of Ownership occurring during the first ten (10) years after the CO Date (and any Financing Event to fund such first Change of Ownership), the Net Proceeds Share shall be $0. In the case of the second and each subsequent Change of Ownership (excluding Excluded Transfers) during the ten (10) year period after the CO Date, and in the case of each Change of Ownership (excluding Excluded Transfers) after the first ten (10) years following the CO Date, the Net Proceeds Share shall be a sum equal to the greater of (a) five percent (5%) of the gross sale or transfer proceeds or other consideration given for the interests transferred (but in the case of a transfer to a party affiliated with or otherwise related to the transferor, such consideration shall in no event be deemed to be less than the fair value of the interests transferred) (the "**Gross Proceeds**"), or (b) twenty percent (20%) of

the Net Transfer Proceeds from such transfer. Notwithstanding the foregoing, if the Gross Proceeds are less than 105.26% of the Applicable Costs (as defined in subsection 4.8.1 or 4.8.2 below, as applicable), then the Net Proceeds Share under the immediately preceding sentence shall be calculated only in accordance with clause (b) in such sentence (i.e., the Net Proceeds Share shall be twenty percent (20%) of the Net Transfer Proceeds from such transfer).

In the case of the following Financing Events, the Net Proceeds Share shall be $0: (i) the origination of the initial construction loan for the construction of the Development Work (the "**Initial Construction Loan**"), or (ii) the conversion or refinancing of the Initial Construction Loan to permanent financing if the Initial Construction Loan included a forward commitment for such permanent financing. With respect to any other Financing Event not described in the immediately preceding sentence or in the first sentence of Section 4.8 above, the Net Proceeds Share (if any) shall be equal to twenty percent (20%) of the Net Refinancing Proceeds from such Financing Event. Notwithstanding the foregoing, in connection with any Financing Event used to fund the cost of the acquisition of an Ownership Interest in Lessee that constitutes an Excluded Transfer, if such Financing Event is secured by the Ownership Interest that is transferred, then the Net Refinancing Proceeds from such Financing Event shall not include the portion of the proceeds of such Financing Event used to fund the acquisition cost of such Ownership Interest.

Notwithstanding any contrary provision of this Section 4.8, in the calculation of Net Transfer Proceeds and Net Refinancing Proceeds derived from a Change of Ownership or Financing Event, as applicable, pursuant to the remaining provisions of Section 4.8 below, there shall be no duplication of any amounts to be subtracted from the total consideration received in connection with such transaction, even if a particular amount qualifies for subtraction under more than one category.

4.8.1 **Transaction by Original Lessee**. In the case of a transfer by Lessee (but not a successor or assignee of Lessee) constituting a Change of Ownership, "**Net Transfer Proceeds**" shall mean the Gross Proceeds less the sum of the following costs with respect to Lessee (but not its successors or assignees) ("**Applicable Costs**"):

4.8.1.1 The amount (the "**Base Value**") of the Option Fee (as defined in the Option Agreement); plus

4.8.1.2 The final actual construction costs paid by Lessee in connection with the construction of the Development Work, and other capital renovations to the Premises, or other physical capital Improvements or Alterations to the Premises in compliance with Article 5 herein (but not periodic maintenance and repair), which costs have been submitted to County within thirty (30) days after the completion of such Improvements, along with evidence reasonably satisfactory to Director that such costs have been incurred (the amounts described in this subsection 4.8.1.2 are referred to as "**Improvement Costs**"). Notwithstanding the foregoing, with respect to Improvements or Alterations which are not part of the Development Work, Lessee shall submit Improvement Costs on an annual basis within ninety (90) days following the end of each fiscal year. If by the date that is ninety (90) days after the completion of the Development Work (or other Improvements) the final amount

of the Improvement Costs is not established because of a dispute or disputes between Lessee and its contractor(s), then Lessee shall note such dispute(s) in its submission of the Improvement Costs (including a description of the costs and the amounts under dispute). Lessee shall thereafter notify County in writing within thirty (30) days after the resolution of any such dispute as to any final adjustment required to the amount of the Improvement Costs to reflect the resolution of such dispute. Improvement Costs shall include all hard and soft costs, construction period interest on Lessee's construction loan, and developer fees incurred by Lessee, as long as such developer fees do not exceed four percent (4%) of hard construction costs; plus

4.8.1.3 Commissions, title and escrow costs, documentary transfer taxes, reasonable attorneys' fees, prepayment fees, penalties or other similar charges (such as yield maintenance premiums or defeasance costs), and other bona fide closing costs actually paid to third parties and documented to the satisfaction of Director, which costs were directly attributable to the consummation of the particular transaction giving rise to the obligation to pay County a Net Proceeds Share (collectively, "**Documented Transaction Costs**"); plus

4.8.1.4 That portion of the principal amount of any Financing Event after the Effective Date that constituted Net Refinancing Proceeds on which Lessee paid County a Net Proceeds Share.

4.8.2 **Transfer by Lessee's Successor**. In the case of a transfer by a successor Lessee (a transfer by a Lessee other than the original Lessee) that constitutes a Change of Ownership (that is not an Excluded Transfer), "**Net Transfer Proceeds**" shall mean the Gross Proceeds minus the Applicable Costs. For purposes of this subsection 4.8.2, Applicable Costs shall mean the sum of the following with respect to such successor Lessee:

4.8.2.1 The greatest of (a) the sum of the Base Value, plus Improvement Costs incurred prior to the acquisition of the leasehold interest by such successor, (b) the purchase price such successor paid to Lessee or such successor's seller for the interest acquired (or the fair market value of the interests transferred in connection with the seller's acquisition of the leasehold if utilized in connection with the calculation of Net Transfer Proceeds with respect to that sale) or (c) the original principal amount of any Financing Event or Financing Events (on a non-duplicative basis) after such successor Lessee's acquisition of the leasehold and with respect to which County was paid a Net Proceeds Share, plus the principal amount of any financing existing as of the date on which such seller acquired the leasehold or subsequently obtained by Lessee, if such financing has not been refinanced, but without duplication.

4.8.2.2 Improvement Costs actually paid by such successor Lessee after such successor Lessee's acquisition of its leasehold interest in the Premises (but not duplicative of the principal amount of any Financing Event described in clause 4.8.2.1(c) above, the proceeds of which were used to fund such Improvement Costs); provided that such costs have been submitted to County, with an appropriate Lessee

certification and evidence reasonably satisfactory to Director that such costs have been incurred, as provided in subsection 4.8.1.2.

4.8.2.3 Documented Transaction Costs with respect to the transfer of the interest by the successor.

4.8.3 **Transfers of Major Sublessee's Interest**. With respect to any Change of Ownership described in subsection 4.6.1(b), subsections 4.8.1 and 4.8.2 shall apply, except that any rents or other amounts received by Lessee from the Major Sublessee and with respect to which a percentage is passed through to County under any provision of this Lease (other than payment of Net Proceeds Share) shall be disregarded in the computation of Net Transfer Proceeds.

4.8.4 **Other Transfers**. With respect to any Change of Ownership that is not an Excluded Transfer and is not described in subsections 4.8.1 through 4.8.3 (e.g., a transfer of an interest in an entity holding a direct or indirect ownership interest in this Lease or in a Major Sublease), subsections 4.8.1 and 4.8.2 shall apply to such Change of Ownership, except that in lieu of deducting the amounts described in either subsections 4.8.1.1 and 4.8.1.2, on the one hand, or subsections 4.8.2.1 and 4.8.2.2, on the other hand, as applicable, in determining Net Transfer Proceeds, the cost to the transferor of the interest being transferred or which was transferred in the past but constitutes a portion of an Aggregate Transfer (which cost shall in no event be deemed to be less than a pro rata share of the amounts described in subsection 4.8.1.1 and 4.8.1.2, on the one hand, or subsections 4.8.2.1 and 4.8.2.2, on the other hand, as applicable, for such interest or for each interest in the aggregation pool in the case of an Aggregate Transfer) shall be deducted. Furthermore, in the event that any such Change of Ownership produces a Net Proceeds Share, the then existing Improvement Costs shall be increased by an appropriate amount to reflect the basis on which the Net Proceeds Share was calculated, and the basis of the interest that was transferred and for which a Net Proceeds Share was paid shall also be increased for subsequent transfers of the same interest, as if realized by Lessee upon a transfer of a comparable interest in this Lease or in a Major Sublease, as appropriate.

4.8.5 **Net Refinancing Proceeds**. **"Net Refinancing Proceeds"** shall mean the gross principal amount of any Financing Event after the Effective Date as described in Section 4.8 above for which a Net Proceeds Share may be owed, plus in the case of secondary financing the original principal balance of any existing financing that is not repaid as a part of such secondary financing, minus (i) the greatest of (a) the Base Value, (b) the original principal amount of any subsequent refinancing by Lessee in connection with which County was paid a Net Proceeds Share (plus if the financing described in this clause (b) was secondary financing, the original principal balance of any then existing financing that was not repaid as a part of such secondary financing), or (c) in the case of a successor Lessee, the purchase price such successor paid to Lessee or such successor's seller for the interest acquired, (ii) any portion of the proceeds of the Financing Event which shall be used for Improvement Costs, (iii) other Improvement Costs incurred by Lessee and not paid for or repaid with the proceeds of any Financing Event, and (iv) Documented Transaction Costs with respect to such Financing Event.

4.8.6 **Transfers to which Sections 4.6 through 4.8 Apply**. The provisions of Sections 4.6 through 4.8 hereof shall apply to all transfers of beneficial interests in this Lease or a Major Sublease which constitute a Change of Ownership, unless such transfers are otherwise excluded pursuant to this Lease. Furthermore, the provisions of Sections 4.6 through 4.8 of this Lease, and the principles set forth therein, shall apply to any transfer or series of transfers which County can demonstrate was primarily structured for the purpose of avoiding the obligation to pay Net Proceeds Share set forth in Sections 4.6 through 4.8 of this Lease and which, viewed together, would otherwise constitute a Change of Ownership.

4.8.7 **Payment**. Net Proceeds Share shall be due and payable concurrently with the transfer giving rise to the obligation to pay such share and shall be the joint and several obligation of the transferee and transferor. Net Proceeds Share not paid when due shall be subject to a late fee of six percent (6%) of the amount due, together with interest on such Net Proceeds Share and late fee at the Applicable Rate from the date due until paid; provided that in the case of a dispute as to the correct amount of the Net Proceeds Share there shall be no late fee payable as long as Lessee timely pays to County the undisputed portion of the Net Proceeds Share and deposits the disputed portion thereof in an interest bearing escrow account at the closing of the transaction (or delivers to County a letter of credit or other security reasonably acceptable to County in the amount of such disputed portion). In the event that the proceeds of the transaction giving rise to the obligation to pay Net Proceeds Share are comprised, in whole or in part, of assets other than cash, then the cash payment of the Net Proceeds Share shall reflect the fair market value of such non-cash assets as of the date of the Change of Ownership, which shall be set forth in the Calculation Notice. Notwithstanding the foregoing, in the case of a Change of Ownership described in subsection 4.6.1(b), the Net Proceeds Share shall be payable to County as and when the Net Transfer Proceeds are received, with the Net Proceeds Share being equitably apportioned to the payments derived by Lessee from said Change of Ownership (other than any payments passed through to County under this Lease).

4.8.8 **Shareholder, Partner, Member, Trustee and Beneficiary List**. Prior to the Effective Date, prior to each subsequent Change of Ownership or Financing Event, and upon the request of County (which requests shall be no more frequent than once per year), Lessee shall provide County with an updated schedule listing the names and mailing addresses of (i) all shareholders, partners, members and other holders of equity or beneficial interests in Lessee, this Lease or the Major Sublessee under any Major Sublease, and (ii) all shareholders, partners, members and other holders of equity or beneficial interests in any of the constituent shareholders, partners, members or other holders of equity or beneficial interests in Lessee or any Major Sublessee under any Major Sublease, if such interest exceeds a five percent (5%) or greater beneficial interest in Lessee or the Major Sublessee under a Major Sublease. In the event that such shareholder, partner, member or other interest holder is a trust, Lessee shall include in such schedule the name and mailing address of each trustee of said trust, together with the names and mailing addresses of each beneficiary of said trust with greater than a five percent (5%) actuarial interest in distributions from, or the corpus of, said trust; provided, however, that to the extent that Lessee is prevented by Applicable Laws from obtaining

such information regarding the beneficiaries of said trust(s), Lessee shall have complied with this provision if Lessee uses its best efforts to obtain such information voluntarily and provides County with the opportunity to review any such information so obtained. Lessee agrees to use its best efforts to provide County with any additional information reasonably requested by County in order to determine the identities of the holders of five percent (5%) or greater beneficial interests in Lessee or a Major Sublessee.

5. DEVELOPMENT WORK; ALTERATIONS.

5.1 **Development Work**. Promptly following the Effective Date Lessee shall commence the performance of the Development Work on the Premises described in the development plan attached to this Lease as Exhibit B (the "**Development Plan**"). The construction work described in the Development Plan, along with all associated improvements, hardscape, landscape and other site work approved by County and to be performed in connection with the work described in such Development Plan, is referred to herein as the "**Development Work.**" The Development Work shall include, without limitation, the construction of the following:

(a) an approximately 44, 550 square foot dry storage building, partially over the water, with a maximum height of 70 feet, to accommodate the following elements: (i) 345 dry stack spaces, (ii) overhead gantry crane or other similar lifting mechanism compatible with the approved dry storage building height and design, with a lifting capacity of 19,000 lbs., (iii) 2 launch/retrieval elevators with provision for up to 2 additional elevators, (iv) 1,600 square foot ground floor boat maintenance facility, and (v) 24 trailer storage spaces;

(b) 2,400 square feet of ground floor office space/lobby area;

(c) 3,000 square foot Sheriff Boatwright facility including loft area;

(d) 2,175 square foot outdoor Sheriff yard;

(e) 30 mast-up storage spaces;

(f) 1 5-ton boat launch/retrieval hoist;

(g) 3 dedicated public wash down spaces (1 to be built onsite as part of the project and 2 others to be built at a later date in a place to be determined by Director);

(h) complete replacement of all existing docks with new concrete (or other material approval by Director) docks yielding approximately 1,250 lineal feet of docks to accommodate 65 short-term dock spaces, except that Lessee may postpone replacing the existing Sheriff/Maintenance docks for a period of up to 10 years after the Effective Date, subject to Director's reasonable approval of a written certification provided at Lessee's cost by an independent third-party marine engineer reasonably acceptable to County, stating that the docks have a safe remaining useful life of at least 5 years;

(i) the Public Improvements described in Section 15.20; and

(j) 131 on-site surface parking spaces.

There shall be no changes, modifications or exceptions to the Development Plan, except as expressly approved in advance in writing by the Director or otherwise in accordance with this Article 5. The scope, design, density, site coverage, layout and open space, view corridors, height, construction materials, landscaping, hardscaping and other improvement specifications pertaining to the Development Work shall be in accordance with the Development Plan, and shall be subject to County's approval as set forth in this Article 5. Lessee shall be responsible for the acquisition and compliance with all required governmental (including, without limitation, County, Coastal Commission and Design Control Board) planning and entitlement approvals for the Development Work. Lessee shall be solely responsible for all costs and expenses incurred in connection with the design, entitlement and construction of the Development Work. Lessee shall expend not less than the Minimum Development Cost (as defined below) for the cost of the design, entitlement and construction of the Development Work (which amount may include a development fee not to exceed four percent (4%) of the hard construction costs), which expenditures shall be subject to verification and reasonable approval by County. The "**Minimum Development Cost**" shall mean $7,500,000, increased (but not decreased) by the same percentage increase (if any) in the ENR Index from January 1, 2006 through the date of the commencement of construction of the Development Work.

5.2 **Application of Article 5 to Development Work**. The remaining sections of this Article 5 pertain to the construction of the Development Work and to any other Alterations (as defined below) which Lessee may be required or desire to make to the Premises during the Term, including without limitation, the Second Dock Replacement described in Section 5.11 below. For purposes of this Lease, Alterations shall mean the construction of any alterations or modifications to the Improvements located on the Premises or the construction of any new Improvements. Both the Development Work and the Second Dock Replacement shall be considered to be Alterations. Accordingly, except as expressly provided in this Article 5, all of the terms and provisions of Article 5 of this Lease shall be applicable to the Development Work and the Second Dock Replacement.

5.3 **Plans and Specifications for Alterations**. Lessee shall make no Alterations without the prior written approval of the Director. Prior and as a condition precedent to the construction of any Alterations, Lessee shall submit to Director, for Director's approval, the plans, specifications and other materials described in this Section 5.3 pertaining to such Alterations (except to the extent such submittals and approvals have been previously completed with respect to Development Work pursuant to the Option Agreement). All Alterations must be consistent with the Permitted Uses set forth in Article 3 of this Lease.

5.3.1 **Schematics and Narrative**. Lessee shall submit to the 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. Director shall have sixty (60) days within which to approve or disapprove such submission. Failure of Director to approve such submission

in writing within said sixty (60) day period shall be deemed disapproval of said submission. Following any deemed disapproval of such submission by Director, Director shall, within thirty (30) days after receipt of a written request from Lessee, disclose to Lessee in writing Director's objections to the submission. After approval of schematic plans (or subsequent approval of preliminary or final plans) 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, Lessee shall promptly advise Director in writing of such changes and Director shall not disapprove those changes that constitute Approved Governmental Changes.

5.3.2 **Preliminary Plans and Specifications**. After Director's approval of the materials submitted pursuant to subsection 5.3.1, Lessee shall submit to Director six (6) sets of preliminary plans, outline specifications and construction cost estimates for the Alterations. The preliminary plans, outline specifications and construction cost estimate shall conform to, expand upon and reflect a natural evolution from the descriptions and estimates set forth in the approved schematic plans and narrative. Any difference in the scope, size, configuration, arrangement or motif of the Improvements from those described in the approved schematics and narrative shall be separately identified and described. Director shall have twenty-one (21) days 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 faced type:

> "PURSUANT TO SUBSECTION 5.3.2 OF THE LEASE AGREEMENT, IF THESE MATERIALS CONTAIN NO SUBSTANTIAL CHANGES (OTHER THAN APPROVED GOVERNMENTAL CHANGES) FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU, YOU HAVE TWENTY ONE (21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY ONE (21) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM."

Following any 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.

5.3.3 **Final Plans and Specifications**. After approval of the preliminary plans, Lessee shall submit for approval by Director six (6) complete sets of final plans, detailed specifications and a construction cost statement 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 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 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 construction specifications and construction cost statement contain substantial changes from the preliminary plans, outline specifications and construction cost estimates (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 construction specifications and construction cost statement, Lessee must deliver to Director a transmittal letter containing the following text prominently displayed in bold faced type:

> "PURSUANT TO SUBSECTION 5.3.3 OF THE LEASE AGREEMENT, IF THESE MATERIALS CONTAIN NO SUBSTANTIAL CHANGES (OTHER THAN APPROVED GOVERNMENTAL CHANGES) FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU, YOU HAVE TWENTY ONE (21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY ONE (21) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM."

Following any 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; 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.

5.4 **Conditions Precedent to the Commencement of Construction**. No Development Work or Alterations shall be commenced until each and all of the following conditions have been satisfied:

5.4.1 **Permits and Other Approvals**. Lessee shall have received and furnished the Department with copies of all permits, licenses and other governmental approvals necessary for commencement of the Development Work or Alterations, as the case may be. All permits, licenses and other governmental approvals necessary for subsequent stages of the Development Work or Alterations shall be furnished to the County prior to commencement of such stages.

5.4.2 **Copies of Construction Contracts**. Lessee shall have furnished County with copies of any contract(s) entered into between Lessee and any general contractor(s) employed for the purpose of constructing the Development Work or Alterations, as the case may be.

5.4.3 **Performance and Payment Bonds**. Lessee shall, at its own cost and expense, have furnished County with the following separate corporate surety bonds not less than ten business (10) days prior to the commencement of construction, which bonds must be in form and content reasonably satisfactory to County:

5.4.3.1 A corporate surety performance bond ("**Performance Bond**") issued by a surety company licensed to transact business as such in the State of California, in an amount not less than one hundred percent (100%) of the amount of all hard construction costs approved by County in conjunction with the approved work. 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.

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

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

In the event that construction is performed by a licensed general contractor on behalf of Lessee, provided that such contractor provides County with a bond or bonds compliant with this subsection, and in all material respects reasonably satisfactory to County and otherwise complying with this subsection, County will accept such contractor's bonds in lieu of the Performance Bond and/or Payment Bond by Lessee required by this subsection 5.4.3. Any bonds provided by Lessee or its general contractor pursuant to this subsection may name the Lessee's lender as an additional obligee.

5.4.4 **Alternative Security**. In lieu of providing the Payment and Performance Bonds, Lessee may, in its discretion, provide any one or a combination of the following alternative security reasonably acceptable to Director : (i) a completion guaranty, in form and substance reasonably acceptable to County, made by an individual or entity with a sufficient net worth and liquidity, in the sole discretion of Director, to comply with the terms of such guaranty in view of the potential financial responsibility involved, (ii) a certificate of deposit, cash or United States governmental security, (iii) a letter of credit, or (iv) a set aside letter from Lessee's construction lender. The security described in clauses (ii), (iii) and (iv) above shall be in an amount equal to one hundred percent (100%) of the construction contract price for hard costs, and shall permit County to draw thereon to complete the construction of the Improvements if same have not been completed by Lessee or if a material Event of Default has occurred under this Lease. Any alternative security provided by Lessee pursuant to this subsection may name County and Lessee's construction lender as co-beneficiaries. A condition precedent to Lessee's right to provide the alternate security described in this subsection 5.4.4 shall be delivery by Lessee to County of an opinion of counsel from a firm and in a form acceptable to County to the effect that the construction work does not constitute a public work of improvement requiring the delivery of the bonds described in subsection 5.4.3 above. Director shall have the authority, in his reasonable discretion, to modify, waive or reduce the amount of any bonds or alternate security required hereunder.

5.4.5 **Evidence of Financing**. Lessee shall have provided evidence satisfactory to County of its having sufficient financial resources, as determined by Director, to complete the Development Work or Alterations, as applicable. Lessee shall furnish Director with copies of all final notes, guarantees, partnership, shareholder or limited liability company agreements, construction loan and/or permanent loan commitments, documents evidencing equity contributions, documents creating and/or perfecting security interests, and all documents and exhibits referred to in any of the foregoing, together with any and all recorded documents affecting an interest in the Premises, promptly after such document or instrument becomes effective.

5.4.6 **Work Schedule**. With respect to the Development Work, Lessee shall have provided County with a construction schedule which will result in the substantial

completion of the Development Work on or before the Required Completion Date, as such date may be extended as provided in this Article 5.

5.5 **County Cooperation**. In its proprietary capacity, the Department shall cooperate with and assist Lessee, to the extent reasonably requested by Lessee, in Lessee's efforts to obtain the appropriate governmental approvals, consents, permits or variances which may be required in connection with the performance by Lessee of the Development Work described in Section 5.1 above and the Second Dock Replacement described in Section 5.11 below, as applicable. Such cooperative efforts may include the Department's joinder in any application for such approval, consent, permit or variance, where joinder therein by the Department is required or helpful; provided, however, that Lessee shall reimburse County for the Actual Cost incurred by the Department in connection with such joinder or cooperative efforts. Notwithstanding the foregoing, Lessee and County acknowledge that the approvals given by County under this Lease are approvals pursuant to its authority under Section 25907 of the California Government Code; that approvals given under this Lease in no way release Lessee from obtaining, at Lessee's expense, all permits, licenses and other approvals required by law for the construction of Improvements on the Premises and operation and other use of such Improvements on the Premises; and that the Department's duty to cooperate and County's approvals under this Lease do not in any way modify or limit the exercise of County's governmental functions or decisions as distinct from its proprietary functions pursuant to this Lease.

5.6 **Completion of Development Work**. Lessee shall comply with all time deadlines and schedules described in this Article 5 relating to the completion of the design and construction of the Development Work, subject to Force Majeure Delay (as such term is defined in subsection 5.6.1 below). Lessee's failure to do so shall, if not cured within the applicable cure period set forth in subsection 13.1.3, constitute an Event of Default. Subject to the provisions of this Section 5.6, all of the Development Work (except for the replacement of the existing Sheriff/Maintenance docks, to the extent permitted under Section 5.1(h)) shall be substantially completed on or before twenty four (24) months following the Effective Date (the "**Required Completion Date**"). For purposes of this Lease, the terms "substantial completion" or "substantially completed" as they pertain to the Development Work shall mean the completion of the Development Work in accordance with the Final Plans and Specifications, subject to minor so-called punch list items that do not interfere with the use and occupancy of the Development Work. Without limitation of any other requirements for substantial completion, the Development Work shall not be considered substantially completed until Lessee has received a temporary certificate of occupancy or equivalent approval required for the legal occupancy and use of all of the Development Work.

5.6.1 **Force Majeure Delay**. Lessee shall diligently pursue the substantial completion of the Development Work by the Required Completion Date. Any Force Majeure Delay in the construction of the Development Work shall extend the Required Completion Date by the length of time of such Force Majeure Delay, although Lessee shall to the extent possible commence and proceed to complete the portions, if any, of the Improvements that can be completed notwithstanding such Force Majeure Delay. Any extension of the Required Completion Date due to Force Majeure Delay shall be limited to the period of the Force Majeure Delay and no such delay shall be considered to have commenced until such time as Lessee shall have notified Director in writing of such

delay. The aggregate amount of extensions to the Required Completion Date due to Force Majeure Delay shall not exceed twelve (12) months.

For purposes of this Article 5, "**Force Majeure Delay**" shall mean delays in construction due to (a) fire or other casualty, earthquake, tidal wave or flood, tornado or other act of God; (b) civil disturbance, war, organized labor dispute or freight embargo; (c) a hidden condition, including without limitation environmental contamination, relating to the foundation, substructure or subsurface of the Premises which was not known to Lessee as of the commencement of such construction activity; (d) an injunction or restraining order issued pursuant to a court action commenced by a plaintiff other than County or the California Coastal Commission acting in their governmental capacity, Lessee or any person or entity affiliated with Lessee; (e) Unreasonable County Activity (as defined in subsection 5.6.2 below) after the commencement of construction; or (f) any other unforeseeable event beyond the control of Lessee. As a condition to clause (d) above constituting a Force Majeure Delay, Lessee shall, regardless of whether it is a named party in the action, diligently pursue the removal of any such restraining order or injunction and shall exhaust all commercially reasonable efforts to appeal such restraining order or injunction.

Lessee and Director shall discuss and attempt to agree on the length of time of any entitled Force Majeure Delay pursuant to this subsection 5.6.1. If they are unable to agree within thirty (30) days after the event or occurrence giving rise to Lessee's claim to an entitlement to a Force Majeure Delay under this subsection 5.6.1, the matter shall be arbitrated as set forth in Article 16.

Notwithstanding anything to the contrary contained in this Lease, no extension, relaxation or modification of the requirement to substantially complete the Development Work by the Required Completion Date shall relieve Lessee of its obligation to pay County the Annual Minimum Rent, Percentage Rent and other amounts set forth in Article 4 of this Lease.

5.6.2 **Unreasonable County Activity**. For the purposes of this Lease, the following shall be deemed to be "**Unreasonable County Activity**": (i) County's failure to provide required joinder, if any, in Lessee's proposals for the Improvements described in the Final Plans and Specifications before any governmental agency; or (ii) County's failure to take such other actions in its proprietary capacity reasonably requested by Lessee, at no cost or expense to County, which are necessary for Lessee to proceed with the permit/approval process or County's having taken such actions without Lessee's consent which adversely affected Lessee's rights and obligations hereunder, which were unreasonable and which actually delayed the construction; or (iii) County's failure to comply with the time periods imposed upon County under this Article 5, except in the case where a failure of County to notify Lessee of its approval or disapproval of a matter constitutes County's deemed approval of such matter, or constitutes County's deemed disapproval of such matter and County's disapproval of such matter is authorized under the circumstances. Nothing contained in this subsection 5.6.2 or this Lease shall be construed as obligating County to support proposals, issue permits, or otherwise act in a manner inconsistent with County's actions under its regulatory powers. It shall not be

Unreasonable County Activity if County fails to accelerate the County's customary regulatory permit/approval process. An extension for Unreasonable County Activity under subsection 5.6.1 above shall be available only if all of the following procedures have been followed:

(a) Within a reasonable time under the circumstances, Lessee must notify Director in writing of the specific conduct comprising the alleged Unreasonable County Activity, and the next opportunity, if any, for County to rectify such alleged conduct. If Lessee fails to notify Director in writing as specified in the immediately preceding sentence within ten (10) days following Lessee's discovery of the alleged Unreasonable County Activity, then notwithstanding any contrary provision of this subsection 5.6.2, in no event shall Lessee be entitled to an extension for any period of the delay occurring prior to the date of Lessee's notice described in this paragraph (a).

(b) Within seven (7) days following receipt of the notice alleging Unreasonable County Activity, Director shall meet with Lessee or its authorized representative in order to determine whether Unreasonable County Activity has occurred and, if so, how such Unreasonable County Activity can be rectified and the appropriate length of time of any extension pursuant to this subsection. If Director determines that Unreasonable County Activity has occurred and that County can and will take rectifying action, then the extension time shall equal the amount of actual delay directly caused by the Unreasonable County Activity. If Director determines that Unreasonable County Activity has occurred, but that County cannot take rectifying action (or if the proposed rectifying action will not produce the results desired by Lessee), then Lessee and Director shall establish the length of time of any extension based on the actual delay likely to be caused by the Unreasonable County Activity.

(c) If, within fourteen (14) days following receipt of notice alleging Unreasonable County Activity, Director and Lessee have not agreed in writing as to whether or not an extension is appropriate, or if appropriate, the length of any such extension, then the matter shall be referred to binding arbitration in accordance with Article 16 of this Lease. The arbitrator shall be instructed that, if Unreasonable County Activity has occurred, then the standards set forth in subsection (b) above will be applied to determine the length of any extension.

5.6.3 **County's Inducement; Failure to Complete**. Lessee acknowledges that the principal inducement to County to enter into this Lease Agreement is the timely completion of the Development Work. If Lessee fails to substantially complete the Development Work on or before the Required Completion Date (as such date may be extended by any Force Majeure Delay), and such failure is not cured within the cure period set forth in Section 13.1.3, then Lessee shall have committed an Event of Default under this Lease.

5.7 **Manner of Construction**.

5.7.1 **General Construction Standards**. All construction, alteration, modification or repairs permitted herein shall be accomplished by Lessee with due

diligence. Lessee shall take all 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. Dust, noise and other effects of such work shall be controlled using accepted measures customarily utilized in order to control such deleterious effects associated with construction projects in well populated and developed areas of Southern California.

5.7.2 **Utility Work**. Any work performed by or on behalf of Lessee or any occupant of the Premises to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit, or any other utility service shall be performed in a manner that minimizes interference with the provision of such services to the Premises and other persons.

5.7.3 **Construction Safeguards**. Lessee shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by or on behalf of Lessee, all necessary safeguards for the protection of workers and the public.

5.7.4 **Compliance with Construction Documents and Laws; Issuance of Permits**. All Improvements on the Premises shall be completed in substantial compliance with any construction documents approved by County and also in compliance with all applicable local, state and federal laws and regulations. Lessee shall have the sole responsibility for obtaining all necessary permits and shall make application for such permits directly to the person or governmental agency having jurisdiction thereover.

5.7.5 **Notice to Director; Damage to County Improvements**. Lessee further agrees to keep Director apprised of the progress of the work to the end that Director may, upon at least one (1) business day advance notice, timely inspect the Premises to assure proper safeguarding of any County-owned improvements existing on or around the Premises, including but not limited to the Seawall, underground conduits and utility lines. If any such County-owned improvement is damaged as a result of construction activity by Lessee or its contractors, Lessee agrees to repair such damage immediately at no cost or expense to County. Lessee shall add the work necessary to repair such damage to the construction schedule for the Development Work (or other Alteration work, as applicable), and shall complete such repair work in accordance with such schedule; provided that if such damage to County-owned improvements creates a threat to public health and safety or materially adversely affects the condition, appearance or operation of any County-owned improvement or of any other property, then Lessee shall promptly commence the completion of such repair work and complete such repair work as soon as reasonably possible thereafter. In the event that Lessee fails to effectuate such repair in accordance with the foregoing requirements, County may upon written notice to Lessee

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. This subsection 5.7.5 shall not be deemed to impose upon Lessee any obligation to repair damage to County-owned improvements existing on or around the Premises if such damage was not incurred as a result of Lessee's construction activities.

5.7.6 **Rights of Access**. Representatives of the Department of Beaches and Harbors of the County shall, upon reasonable 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 of Beaches and Harbors of the County in connection with such access. In the event of any emergency which is life-threatening or which involves the threat of potential substantial damage, County shall have the right to enter the Premises immediately and without notice to or accompaniment by Lessee.

5.7.7 **Notice of Completion**. Upon completion of the Development Work or any other Alterations, Lessee shall file or cause to be filed in the Official Records of the County of Los Angeles a Notice of Completion (the "**Notice of Completion**") with respect to the Improvements and Lessee shall deliver to County, at no cost to County, two (2) sets of reproducible final as-built plans and specifications of the relevant Improvements.

5.7.8 **Final Completion Certificate**. Promptly after completion of the Development Work, upon Lessee's request, County shall execute and deliver to Lessee a final completion certificate (the "**Final Completion Certificate**") as to the work which is the subject thereof, which shall conclusively evidence the completion of such work by Lessee in accordance with the terms of this Lease.

5.8 **Use of Plans**. Contracts between Lessee and any architect, design professional or licensed contractor in connection with the construction, alteration or modification of Improvements on the Premises shall provide, in form and content reasonably satisfactory to County, for the assignment thereof to County (and Lessee's Encumbrance Holder(s) if required by Lessee's Encumbrance Holder(s)) 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 (or if County enters into a new lease with Lessee's Encumbrance Holder pursuant to Article 12, then Lessee's Encumbrance Holder) may, at its election, use any plans and specifications created by such architect, design professional or contractor in connection with the contract, upon the payment of any sums due to any party thereto. County's right to elect to use plans and specifications as described above shall not include the unauthorized right to use any trade marks, trade names or logos of Lessee or any such architect, design professional or

contractor. The assignment to County and Lessee's Encumbrance Holder(s) described in this Section 5.8 shall be effective until the Final Completion Certificate for the subject work is issued, and shall be subordinate to the security interest, if any, of Lessee's construction lender in the assigned contract, which subordination shall be in a form reasonably acceptable to Lessee's construction lender.

5.9 **Where Director Approval Not Required**. Notwithstanding the foregoing, and notwithstanding anything to the contrary in this Article 5, Lessee shall not be required to seek or obtain the approvals of Director described in this Article 5 (including those set forth in Section 5.3) for Alterations (other than the Development Work) where all of the following conditions are satisfied: (i) the total cost of the project is less than One Hundred Thousand Dollars ($100,000), adjusted annually to reflect the increase or decrease in the ENR Index from and after the Effective Date (provided, however, that in no event shall such adjustment result in a reduction of the threshold for Director approval to less than One Hundred Thousand Dollars ($100,000)); (ii) none of the proposed construction activity is structural in nature; and (iii) none of the proposed construction, additions, modifications or changes affect or are visible from the exterior of the Premises; provided, however, that whenever Lessee makes or constructs or permits any improvements in or to the Premises, Lessee shall (a) give written notice thereof (including a description of the work to be done and the permits obtained for such work), and (b) furnish a copy of "as-built" plans upon completion of such work to County.

5.10 **Protection of County**. Nothing in this Lease shall be construed as constituting the consent of County, express or implied, to the performance of any labor or the furnishing of any materials or any specific Improvements, alterations or repairs to the Premises of any part thereof by any contractor, subcontractor, laborer or materialman, nor as giving Lessee or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services, or the furnishing of any materials, in any such manner as would give rise to the filing of mechanics' liens or other claims against the County's interest in the Premises or County.

5.10.1 **Posting Notices**. County shall have the right at all reasonable times and places to post and, as appropriate, keep posted, on the Premises any notices which County may deem necessary for the protection of County's interest in the Premises 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 under this Article 5, in order to enable County timely to post such notices.

5.10.2 **Prompt Payment**. Lessee shall make, or cause to be made, prompt payment of all monies due and owing to all persons doing any work or furnishing any materials or supplies to Lessee or any of its contractors or subcontractors in connection with the Premises and the Improvements thereon. Lessee shall have the right to contest any such amount; provided, however, the entire expense of any such contest (including interest and penalties which may accrue) shall be the responsibility of Lessee.

5.10.3 **Liens; Indemnity**. Subject to Lessee's rights to contest the same prior to payment, Lessee shall keep the Premises and any Improvements thereon free and clear of all mechanics' liens and other liens arising out of or in connection with work done for

Lessee and/or any parties claiming through Lessee. Lessee agrees to and shall indemnify, defend and hold County harmless from and against any claim, liability, loss, damages, costs, expenses, attorneys' fees incurred in defending and all other expenses on account of claims of lien(s) of laborers or materialmen or others for work performed or materials or supplies furnished to Lessee or persons claiming under it.

In the event any lien is recorded, Lessee shall, within five (5) business days after demand, furnish any one of the following, as determined by Lessee: (i) the bond described in California Civil Code Section 3143, or successor statute, which results in the removal of such lien from the Premises, (ii) a set aside letter from Lessee's construction lender, in form and substance reasonably satisfactory to County, setting aside sufficient funds from Lessee's construction loan for the satisfaction of such lien, or (iii) 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.

5.11 **Second Dock Replacement**. For purposes of this Lease, the "**Second Dock Replacement**" shall mean the demolition and complete replacement, during the period between the thirtieth (30th) and fortieth (40th) anniversaries of the CO Date, of the Anchorage Facilities with new Anchorage Facilities that are first-class and state of the art as of the date of the replacement, and that comply with (a) the then most recent edition of the Minimum Standards (or successor standard), (b) the then most recent edition of Layout and Design Guidelines for Small Craft Facilities by the California Department of Boating and Waterways (or similar successor publication), and (c) design memoranda as provided by the Harbor Engineer of the Los Angeles County Department of Beaches and Harbors (or its successor).

Not later than sixty (60) days after the thirtieth (30th) anniversary of the CO Date, Lessee shall cause the condition of the Anchorage Facilities to be assessed by an independent third-party marine engineer that is reasonably approved in writing by County prior to the engagement of such engineer. The engineer shall issue a written certification to County and Lessee of the then current condition of the Anchorage Facilities (the "**Anchorage Report**"). The Anchorage Report shall be as of a date that is not more than ninety (90) days prior to the thirtieth (30th) anniversary of the CO Date. The Anchorage Report shall include a certification (a) as to whether the Anchorage Facilities are then in a safe, operable and usable condition as of the date of the Anchorage Report, and (2) if the Anchorage Facilities are in a safe, operable and usable condition as of the date of the Anchorage Report, the estimated date by which, absent intervening capital repair, replacement or renovation, it is expected that the Anchorage Improvements will likely no longer remain in a safe, operable and usable condition (the "**Expected Replacement Date**"). Lessee shall be responsible for all costs and expenses incurred in connection with the issuance of the Anchorage Report. If Lessee fails to cause the Anchorage Report to be delivered within the time period required under this Section 5.11, then in addition to any other rights or remedies of County, County shall have the right to commission the issuance of the Anchorage Report at Lessee's cost, by a marine engineer selected by County.

If the Anchorage Report discloses that the Anchorage Improvements are not in a safe, operable and usable condition, then Lessee shall diligently commence and thereafter complete the Second Dock Replacement by not later than the thirty-first (31st) anniversary of the CO Date.

If the Anchorage Report discloses that the Anchorage Improvements are in a safe, operable and usable condition, then Lessee shall complete the Second Dock Replacement on or before the Expected Replacement Date; provided, however, that the Second Dock Replacement shall in all events be completed not later than the fortieth (40th) anniversary of the CO Date regardless of whether the Expected Replacement Date extends beyond the fortieth (40th) anniversary of the CO Date.

5.12 **Capital Improvement Fund**. Commencing with the month (the "**First Deposit Month**") following the month during which fourth (4th) anniversary of the earlier of the CO Date or the Required Completion Date occurs, and continuing during the remaining Term of the Lease, Lessee shall establish and maintain a reserve fund (the "**Capital Improvement Fund**") in accordance with the provisions of this Section 5.12 for the cost of Permitted Capital Expenditures (as defined below) for the Premises. Lessee and County agree and acknowledge that the purpose of the Capital Improvement Fund shall be to provide funds for the costs of additions, replacements, renovations or significant upgrades of or to the Improvements on the Premises, including building exteriors and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural, cranes, lifts (including slings), racking system, fueling system and equipment, or roof) that significantly increase the capacity, efficiency, useful life or economy of operation of the Improvements or their major systems, after the completion of the Development Work ("**Permitted Capital Expenditures**"). Permitted Capital Expenditures shall not include any costs pertaining to the Development Work, but do include costs incurred for any subsequent replacement of the Anchorage Improvements after the completion of the Development Work. In addition, Permitted Capital Expenditures shall not include the cost of periodic, recurring or ordinary expenditures, repairs or replacements that keep the buildings or their major systems in an ordinarily efficient operating condition, but that do not significantly add to their value or appreciably prolong their useful life. Permitted Capital Expenditures must constitute capital replacements, improvements or equipment under generally accepted accounting principles consistently applied.

Commencing on the fifteenth (15th) day of the First Deposit Month and continuing on or before the fifteenth (15th) day of each month thereafter during the remaining Term, Lessee shall make a monthly deposit to the Capital Improvement Fund in an amount equal to one and one-half percent (1.5%) of total Gross Receipts for the previous month. All interest and earnings on the Capital Improvement Fund shall be added to the Capital Improvement Fund, but shall not be treated as a credit against the Capital Improvement Fund deposits required to be made by Lessee pursuant to this Section 5.12.

The Capital Improvement Fund shall be held in an account established with a reputable financial institution (including Lessee's Encumbrance Holder) acceptable to Director into which deposits shall be made by Lessee (and/or into which Lessee's Encumbrance Holder shall provide funds) pursuant to this Section 5.12. The amounts to be added to the Capital Improvement Fund shall be inclusive of amounts required to be deposited with and held by an Encumbrance Holder, provided that the Encumbrance Holder acknowledges that such amounts are subject to the requirements and shall be made available for the purposes of this Section 5.12. Disbursements shall be made from the Capital Improvement Fund only for costs which have been approved by Director and which satisfy the requirements of this Section 5.12. For the purpose of obtaining Director's prior approval of any Capital Improvement Fund disbursements, Lessee shall submit

to Director on an annual calendar year basis a capital expenditure plan for the upcoming year which details the amount and purpose of anticipated Capital Improvement Fund expenditures for which Lessee requests Director's approval, which approval shall not be unreasonably withheld. Any anticipated expenditure set forth in such capital expenditure plan which is approved by Director as an acceptable Capital Improvement Fund disbursement shall be considered pre-approved by Director (but only up to the amount of such expenditure set forth in the annual capital expenditure plan) for the duration of the upcoming year. Lessee shall have the right during the course of each year to submit to Director for Director's approval revisions to the then current capital expenditure plan in effect for such year, or individual expenditures not noted on the previously submitted capital expenditure plan. Prior to the disbursement of any amounts from the Capital Improvement Fund, Lessee shall furnish to Director applicable invoices, evidence of payment and other back-up materials reasonably acceptable to Director concerning the use of amounts from the Capital Improvement Fund.

All then-existing amounts in the Capital Improvement Fund shall be expended for Permitted Capital Expenditures not later than ten (10) years prior to the expiration of the Term of the Lease. Thereafter, if County elects to require Lessee to remove the Improvements at the end of the Term and requires Lessee to provide a Removal Security Fund to secure its obligation to perform such removal obligations in accordance with subsection 2.3.2 of this Lease, then Lessee shall have the right to contribute the deposits thereafter required to be made by Lessee under this Section 5.12 towards Lessee's obligations to fund the Removal Security Fund in subsection 2.3.2, but only if and to the extent that there are sufficient funds made available in the Capital Improvement Fund for any needed Permitted Capital Expenditures, as determined by Director in Director's sole and absolute discretion.

6. CONDEMNATION.

6.1 Definitions.

6.1.1 **Condemnation**. "**Condemnation**" means (1) the exercise by any governmental entity of the power of eminent domain, whether by legal proceedings or otherwise, and (2) a voluntary sale or transfer to any Condemnor (as hereafter defined), either under threat of Condemnation or while legal proceedings for Condemnation are pending.

6.1.2 **Date of Taking**. "**Date of Taking**" means the date the Condemnor has the right to possession of the Premises being condemned.

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 taking 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 (to the extent that funds therefor are available from the anticipated Award), Lessee's business on the Premises could not be operated at an economically feasible level. Lessee must exercise its right to terminate by giving County written notice of its election within ninety (90) days after the nature and extent of the taking and the probable amount of compensation have been determined. 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 taking 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 taking, taking into account, however, any necessary reduction in size or other change resulting from the taking; provided, however, that in case of a taking for temporary use, Lessee shall not be required to effect restoration until such taking is terminated.

6.5 **Effect of Partial Taking on Rent**. If any portion of the Premises is taken by Condemnation and this Lease remains in full force and effect as to the portion of the Premises not so taken (a "**Partial Taking**"), the Annual Minimum Rent shall be reduced as of the date of the Partial Taking to an amount equal to the Annual Minimum Rent multiplied by the ratio of the fair market value of the portion of the Premises not so taken to the fair market value of the entire Premises immediately prior to the Partial Taking, but without regard to any diminution in value resulting from the imminent taking. Upon the next Adjustment Date for Annual Minimum Rent (as described in subsection 4.2.1.3 above), for the purposes of adjusting the Annual Minimum Rent, all Annual Minimum Rent and Percentage Rent paid by Lessee to County prior to the date of the Partial 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 taking bears to the fair market value of the entire Premises immediately prior to the 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 taking, 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 Taking other than a total Taking 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 progress payments, to pay the cost of restoration of the Premises. 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 6.5 shall be predicated upon the Income Approach. Notwithstanding the foregoing, if County is the condemning authority and the taking 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 taking other than a total taking or a taking for temporary use, 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 Taking and Partial Taking with Termination**. Net Awards and Payments received on account of a total taking 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 Minimum Rent, Percentage Rent (estimated based on historical and reasonable projections of future levels of Percentage Rent) and other sums which would become due through the expiration of the Term if it were not for the taking less, in the event of a Partial Taking, an amount equal to the present value of the fair rental value of the portion of the Premises (with the Improvements thereon) not subject to the Partial Taking, from the date of the Partial Taking through the expiration of the Term and (2) the present value of the portion of the Premises (with the Improvements thereon) subject to the taking from and after the expiration of the Term or (b) in the event of a Partial Taking, the present value of the fair

market rental value of the portion of the Premises (with the Improvements thereon) subject to the Partial Taking, from and after the expiration of the Term.

Second: There shall be paid to any Encumbrance Holder an amount equal to the sum of any unpaid principal amount of any Encumbrance secured by the Premises plus costs, expenses, and other sums due pursuant the loan documents, if any, and any interest accrued thereon, all as of the date on which such payment is made; and then

Third: There shall be paid to Lessee an amount equal to the value of Lessee's interest in the remainder of the Term of this Lease, including the value of the ownership interest in and use of the Improvements constructed on the Premises, determined as of the date of such taking, less payments made under paragraph Second above. For such purposes, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4.

Fourth: The balance shall be paid to County.

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

6.7.4 **Disputes**. Any dispute under Article 6 concerning the fair market value of the Premises or any portion thereof, computation of present value or the determination of the amount of Annual Minimum Rent or Percentage Rent or other sums which would have become due over the Term of this Lease which are not resolved by the parties, shall be submitted to arbitration pursuant to Article 16 of this Lease. Such valuations, computations and determinations of value shall be made utilizing the Income Approach.

7. SECURITY DEPOSIT.

7.1 **Amount and Use**. Lessee shall deliver to and maintain with County a security deposit (the "**Security Deposit**") in an amount equal to three (3) times the Monthly Minimum Rent in effect from time to time during the Term (i.e., adjusted on each Adjustment Date or Renegotiation Date to reflect any change in the Monthly Minimum Rent during the Term of this Lease).

The Security Deposit shall secure Lessee's obligations pursuant to this Lease, and may be drawn on by County, in whole or in part, to cover (a) delinquent rent not paid by Lessee within any applicable notice and cure period, and (b) any other Events of Default of Lessee under this Lease. The Security Deposit shall be applied at the discretion of County. Lessee shall have the right to maintain the Security Deposit in form of cash or in lieu or replacement of the cash Security Deposit requirement described above, 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 reissue the letter of credit, such that Lessee once again maintains a Security Deposit equal to three (3) times the then effective Monthly Minimum Rent. Failure to maintain and replenish the Security Deposit, if not cured within the time period set forth in subsection 13.1.3, shall constitute an Event of Default hereunder.

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

8. INDEMNITY.

Except to the extent caused by the gross negligence or willful misconduct of any such indemnitee, Lessee shall at all times relieve, defend, indemnify, protect, and save harmless County and its respective Boards, officers, agents, consultants, counsel, employees and volunteers from any and all claims, costs, losses, expenses or liability, including expenses and reasonable attorneys' fees incurred in defending against the same by an attorney selected by Lessee and reasonably satisfactory to County, for the death of or injury to persons or damage to property, including property owned or controlled by or in the possession of County or any of its Board, officers, agents, employees or volunteers, to the extent that such arises from or is caused by (a) the operation, use, maintenance or occupation of the Premises by Lessee or its agents, officers, employees, licensees, concessionaires, permittees or Sublessees (other than the Seawall and other than the use of the Public Improvements by the public), (b) the acts, omissions, or negligence of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, or (c) the failure of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees to observe and abide by any of the terms or conditions of this Lease or any applicable law, ordinance, rule, or regulation. The obligation of Lessee to so relieve, indemnify, protect, and save harmless County and each of its respective Boards, officers,

agents, consultants, counsel, employees and volunteers, shall continue during any periods of occupancy or of holding over by Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, beyond the expiration of the Term or other termination of this Lease. Notwithstanding anything in this Lease to the contrary, Lessee and County acknowledge that their respective liability, if any, arising out of the use by the public of the Public Improvements shall be governed by Applicable Law.

9. **INSURANCE**.

9.1 Lessee's Insurance. Without limiting Lessee's indemnification of County, during the Term of this Lease Lessee shall provide and maintain the following insurance issued by companies authorized to transact business in the State of California by the Insurance Commissioner and having a "general policyholders rating" of at least A-VII (or such higher rating as may be required by an Encumbrance Holder) as set forth in the most current issue of "A.M. Best's Key Rating Guide" or an equivalent rating from another industry-accepted rating agency.

9.1.1 General Liability insurance (written on ISO policy form CG 00 01 or similar then-current form reasonably acceptable to County) 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 One Million Dollars ($1,000,000) per occurrence, One Million Dollars ($1,000,000) annual aggregate, and (b) the combination of such Primary Coverage and Umbrella Coverage provides County with the same protection as if Lessee had carried primary coverage for the entire limits and coverages required under this Section 9.1.1.

9.1.2 Automobile Liability insurance (written on ISO form CA 00 01 or similar then-current form reasonably acceptable to County) 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 similar then-current form reasonably acceptable to County) with limits of not less than Two Million Dollars ($2,000,000) for this location.

9.1.3 Workers Compensation and Employers' Liability insurance providing workers compensation benefits, as required by the Labor Code of the State of California and for which Lessee is responsible, and including Employers' Liability coverage with limits of not less than the following:

Each Accident:	$1,000,000
Disease - policy limit:	$1,000,000
Disease - each employee:	$1,000,000

9.1.4 Commercial Property insurance covering damage to the Premises and Improvements (excluding the Seawall), from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30), excluding earthquake, and including Ordinance or Law Coverage, written for the full replacement value of the Improvements, with a deductible no greater than $250,000 or 5% of the property value, which ever is less, and also including business interruption, including loss of rent equal to eighteen (18) months of rent, with proceeds payable to Lessee and County as their interests may appear and utilized for repair and restoration of the Premises and Improvements. Notwithstanding the foregoing, during any period during which no Improvements exist on the Premises or all of the existing Improvements are being demolished in connection with the construction of Development Work, the obligation to provide insurance under this subsection 9.1.4 shall not be applicable so long as the insurance coverage described in subsection 9.1.5 below is carried.

9.1.5 For construction projects, including any Alterations or restoration, on the Premises, Lessee or Lessee's contractor or subcontractors will provide the following insurance (County reserves the right to determine the coverage and coverage limit required on a project by project basis):

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 similar then-current form reasonably acceptable to County). This insurance shall be endorsed to include ordinance or law coverage, coverage for temporary offsite storage, debris removal, pollutant cleanup and removal, testing, preservation of property, excavation costs, landscaping, shrubs and plants and full collapse coverage during construction (without restricting collapse coverage to specified perils. This insurance shall be written on a completed-value basis and cover the entire value of the construction project, including County furnished materials and equipment, against loss or damage until completion and acceptance by Lessee.

9.1.5.2 General Liability. Such insurance shall be written on ISO policy form CG 00 01 (or similar then-current form reasonably acceptable to County) with limits as reasonably required by the County for the Alterations. The products/completed operations coverage shall continue to be maintained for the following periods: (a) in the case of the Development Work, three (3) years after

the date the Development Work is completed and accepted by the Lessee, or (b) in the case of Alterations after the completion of the Development Work, such period after the date such Alterations are completed and accepted by Lessee as reasonably determined by County, but not to exceed three (3) years after such completion and acceptance.

9.1.5.3 Automobile Liability. Such coverage shall be written on ISO policy form CA 00 01 (or similar then-current form reasonably acceptable to County) with a limit of liability as reasonably required by the County for the Alterations. Such insurance shall include coverage for all "owned," "hired" and "non-owned" automobiles, or coverage for "any auto."

9.1.5.4 Professional Liability. Such insurance shall cover liability arising from any error, omission, negligent or wrongful act of the contractor and/or licensed professional (i.e. architects, engineers, surveyors, etc.). This coverage shall also provide an extended two-year reporting period commencing upon termination or cancellation of the construction project. The limits of the coverage required under this subsection 9.1.5.4 shall be (a) One Million Dollars ($1,000,000) with respect to the prime architect for the Development Work (or such lesser amount as required by Director for the prime architect in connection with any subsequent Alterations), and (b) One Million Dollars ($1,000,000) with respect to each other contractor, subcontractor, architect, engineer, surveyor or other licensed professional rendering services in connection with the design or construction of the Development Work or subsequent Alterations, provided that Director shall have the discretion to reduce the coverage limits under this clause (b) if appropriate in the judgment of Director based on the nature and scope of the services being provided.

9.1.5.5 Asbestos Liability or Contractors Pollution Liability insurance, if construction requires remediation of asbestos or pollutants, and if such insurance is available. Such insurance shall cover liability for personal injury and property damage arising from the release, discharge, escape, dispersal or emission of asbestos or pollutants, whether gradual or sudden, and include coverage for the costs and expenses associated with voluntary clean-up, testing, monitoring and treatment of asbestos in compliance with governmental mandate or order. If the asbestos or pollutant will be removed from the construction site, asbestos or pollution liability is also required under the contractor's of subcontractor's Automobile Liability Insurance. Contractor shall maintain limits as reasonably required by the County for the Alterations.

9.1.6 If the use of the Premises or Improvements involves any manufacture, distribution or service of alcoholic beverages, Liquor Liability insurance (written on ISO policy form CG 00 33 or 34 or similar then-current form reasonably acceptable to County) with a liability limit of not less than Five Million Dollars ($5,000,000) per occurrence and an annual aggregate of Ten Million Dollars ($10,000,000), which limits may be covered by a combination of Primary Coverage and Umbrella Coverage. If

written on a claims made form, the coverage shall also provide an extended two-year reporting period commencing upon the termination or cancellation of the Lease.

9.2 Provisions Pertaining to Property Insurance. The insurance coverage required in Sections 9.1.4 and 9.1.5.1 shall name the County as an additional insured and any Encumbrance Holder as loss payee. Subject to Section 12.8, upon the occurrence of any loss, the proceeds of property and builder's risk insurance shall be held by County in trust for the named insureds as their interests appear, and shall be disbursed by County on a monthly basis to pay for work completed in accordance with then-prevailing industry custom and practice; provided, however, that if the insurance proceeds received with respect to a loss are less than $500,000 (as adjusted to reflect any increase in the ENR Index during the period from the Effective Date through the date of the loss), the Encumbrance Holder shall have the right to hold and disburse such proceeds to pay the renovation and repair of Improvements in accordance with the terms of the loan agreement or deed of trust with Lessee's Encumbrance Holder. In the event of a loss, Lessee shall be obligated 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 11 hereof. Subject to Section 12.8, any surplus or proceeds after said rebuilding or replacement shall be distributed to Lessee.

9.3 General Insurance Requirements. Subject to the immediately following grammatical paragraph, a duplicate policy or policies (or certificates of insurance) evidencing the insurance coverage required under this Article 9, in such form as shall be reasonably acceptable to County, shall be filed with Director no later than the Effective Date, provided that the evidence of the insurance coverage required under Section 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;

(b) that the full amount of any losses to the extent property insurance proceeds are available shall be payable to additional insureds notwithstanding any act, omission or negligence of Lessee which might otherwise result in forfeiture of such insurance;

(c) in any property insurance policy, a waiver of all right of subrogation against County and its respective Board of Supervisors and members thereof, and County's officers, agents, employees and volunteers with respect to losses payable under such policies;

(d) in any property insurance policy, that such policies shall not be invalidated should the insured waive, prior to a loss, any or all right of recovery against any party for losses covered by such policies;

(e) to the extent of the indemnification obligations of Lessee in favor of any additional insureds, the property and commercial general liability insurance policies shall provide coverage on a primary and non-contributory basis with respect to such additional insureds, regardless of any other insurance or self-insurance that such additional insureds may elect to purchase or maintain;

(f) that losses, if any, shall be adjusted with and payable to Lessee, County and Encumbrance Holders, if any, pursuant to a standard mortgagee clause;

(g) that such policies shall not be suspended, voided, canceled, reduced in coverage or in limits or materially changed without at least thirty (30) days prior written notice to County and all Encumbrance Holders or ten (10) business days in case of cancellation for failure to pay the premium;

(h) that the commercial general liability insurance shall apply separately to each insured against whom a claim is made, except with respect to the overall limits of said insurer's liability; and,

(i) that the property and commercial general liability insurance policies shall contain no special limitations on the scope of protection afforded to the additional insureds, and no failure to comply with the reporting provisions of such policies shall affect the coverage afforded to such additional insureds.

9.5 Failure to Procure Insurance. If Lessee fails to procure or renew the herein required insurance and does not cure such failure within five (5) business days after written notice from County, in addition to the other rights and remedies provided hereunder, County may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith. All monies so paid by County shall be repaid by Lessee, with interest thereon at the Applicable Rate, to County within five (5) business days after Lessee's receipt of written demand therefor.

9.6 Adjustment to Amount of Liability Coverage. The amounts of liability insurance required under Section 9.1.1, 9.1.2 and 9.1.3 shall be subject to renegotiation as of each fifth (5th) anniversary of the Effective Date (each, an "Insurance Renegotiation Date"). If County and Lessee cannot agree upon the amount of insurance by the sixtieth (60th) day preceding an Insurance Renegotiation Date, the matter shall be resolved by binding arbitration in accordance with 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 in writing. 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 (including the Public Improvements, but excluding the Seawall), in conformance with the Minimum Standards regarding the use and occupancy of commercial and anchorage projects in Marina del Rey, as revised from time to time by County in a manner consistent with commercially reasonable maintenance standards applicable to other commercial and anchorage 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 (including the Public Improvements) 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. Lessee's obligations shall include the obligation to keep all dock facilities in good repair and condition in accordance with the Minimum Standards.

Lessee shall undertake such repairs, alterations or replacements in compliance with Applicable Laws, the Maintenance Standard and the terms and provisions of this Article 10. Lessee shall maintain all Improvements on the Premises (except for the Seawall) in a safe, clean, wholesome and sanitary condition, in the commercially reasonable judgment of Director, and in compliance with all Applicable Laws. Lessee shall, at its own cost and expense, install, maintain and replace landscaping between the streets abutting the Premises and the building footprints on the Premises as is necessary in the commercially reasonable judgment of the Director to maintain the appearance of the Premises in a manner consistent with the Maintenance Standard. 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 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 Seawall 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 Seawall caused by Lessee, its agents, employees, subtenants 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.

Lessee shall at all times during the Term keep all Anchorage Facilities in good repair and condition in accordance with the requirements of the Minimum Standards. During the Term Lessee shall also complete float repair and replacement on an as-needed basis. Any requirement for repair of the Anchorage Facilities due to a deficiency notice issued by the Department shall be accomplished with new materials and parts rather than patching or other like method. Such required replacement of deficiency-cited items with wholly new parts and materials shall, however, be limited to the specific area or item in disrepair and shall not connote a requirement, for maintenance purposes, that areas or items surrounding the deficient area or item be replaced.

10.2 **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 Section 10.1 above, then Lessee shall promptly commence the cure thereof and shall complete such cure within the time period for such cure set forth in the County's deficiency notice, which cure period shall not be less than thirty (30) days except if the deficiency pertains to a condition that is a threat to health or safety or otherwise constitutes an emergency situation, in which case County shall have the right to immediately require Lessee to take all appropriate steps to avoid damage or injury. If Lessee fails to cure any such deficiency within the cure period set forth in County's deficiency notice (which cure period shall comply with the requirements of the immediately preceding sentence of this Section 10.2), then in addition to, and not in lieu of, any rights or remedies that County may have under Article 13 of this Lease for defaults not cured within the applicable notice and cure periods set forth therein, Lessee shall pay to County an amount equal to One Hundred Dollars ($100) per day per item of deficiency for each day after such cure period that the deficiency item remains uncured; provided, however, 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 the County, County 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 (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 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 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 have the right, in the exercise of Director's discretion, to consider such contest. If Lessee'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 Lessee in writing that either Director denies Lessee'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 (3rd) anniversary of the Effective Date to reflect any change in the Consumer Price Index over the three (3) year period immediately preceding each such adjustment. If Lessee fails to pay any amounts payable by Lessee under this Section 10.2 within ten (10) days after written notice from County, then County shall have the right to draw on the Security Deposit to cover such unpaid amounts.

10.3 **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 Seawall, except to the extent damage thereto is caused by the Lessee, its agents, employees, subtenants or contractors, or by Improvements constructed by or on behalf of Lessee), Lessee shall, except as otherwise expressly provided in this Section 10.3, promptly (taking into consideration the necessity of obtaining approvals and permits for such reconstruction) repair and/or restore such Improvements to their condition existing prior to the damage or destruction. Except as otherwise expressly provided in this Section 10.3, 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 (excluding the Seawall) 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:

10.3.1 No more than one hundred (100) days following the Uninsured Loss, Lessee shall notify County of its election to terminate this Lease; to be effective, this notice must include both a copy of Lessee's notification to the Encumbrance Holder, if any, of Lessee's intention to exercise this option to terminate and Lessee's certification under penalty of perjury that Lessee has delivered or mailed such notification to the Encumbrance Holder in accordance with this subsection 10.3.1. County shall be entitled to rely upon the foregoing notice and certification as conclusive evidence that Lessee has notified the Encumbrance Holder regarding Lessee's desire to terminate this Lease.

10.3.2 No more than sixty (60) days following the giving of the notice required by subsection 10.3.1 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.

10.3.3 No more than sixty (60) days following the loss, Lessee delivers to County a quitclaim deed to the Premises in recordable form, in form and content satisfactory to County and/or with such other documentation as may be reasonably requested by County or any title company on behalf of County, terminating Lessee's interest in the Premises and reconveying such interest to County free and clear of any and all Encumbrances and Subleases.

10.3.4 Within ten (10) days following the County's receipt of the notice referred to in subsection 10.3.1, County has not received both written notice from the Encumbrance Holder, if any, objecting to such termination and an agreement containing an effective assignment of Lessee's interest in this Lease to such Encumbrance Holder whereby such Encumbrance Holder expressly assumes and agrees to be bound by and perform all of Lessee's obligations under this Lease.

10.4 **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.

10.5 **No County Obligation to Make Repairs**. County shall have no obligation whatsoever to make any repairs or perform any maintenance on the Premises. Notwithstanding the foregoing, Director shall in its good faith discretion consider the application of funds toward the maintenance, repair and replacement of the existing seawall protecting the Premises (the "Seawall") if and to the extent such maintenance, repair and/or replacement are necessary and such funds are made available to Director for such purpose by County and its Board of Supervisors. Director shall undertake any necessary maintenance, repair and/or replacement of the Seawall with due diligence consistent with the funding provided. In the event the Seawall is in imminent danger of collapse or has collapsed, Director shall promptly seek funding from the Board of Supervisors for repair or replacement as may be necessary to avoid or repair such collapse. Except as expressly provided in this Section 10.5, County shall have no obligation to maintain or repair the Seawall.

If the Seawall is damaged to an extent that prevents Lessee from continuing to operate a boat storage facility on the Premises, Lessee shall notify County in writing of such damage. If within one (1) year following such written notice County does not complete the performance of the necessary repairs to or replacement of the affected portions of the Seawall to the extent required to permit Lessee to operate a boat storage facility on the Premises, then Lessee shall have the right to terminate this Lease upon written notice to County at any time following the expiration of such one (1) year period that Lessee continues to be prevented from operating a boat storage facility on the Premises as a result of such damage. Lessee shall deliver a copy of such termination notice to any then-existing Encumbrance Holder and provide County with Lessee's certification under penalty of perjury that Lessee has delivered a copy of such notification to the Encumbrance Holder in accordance with this Section 10.5. County shall be entitled to rely upon the foregoing notice and certification as conclusive evidence that Lessee has

notified the Encumbrance Holder regarding Lessee's desire to terminate this Lease. This Lease shall terminate thirty (30) days after the date of Lessee's termination notice unless within ten (10) days following Lessee's termination notice County receives both (a) written notice from the Encumbrance Holder objecting to such termination, and (b) an agreement containing an effective assignment of Lessee's interest in this Lease to such Encumbrance Holder whereby such Encumbrance Holder expressly assumes and agrees to be bound by and perform all of Lessee's obligations under this Lease. As a condition to the termination of this Lease, Lessee shall deliver to County a quitclaim deed to the Premises in recordable form, in form and content satisfactory to County and/or such other documentation as may be reasonably requested by County or any title company on behalf of County, terminating Lessee's interest in the Premises and reconveying such interest to County free and clear of any and all Encumbrances and Subleases. Upon termination of the Lease pursuant to this Section 10.5, Lessee shall be required to perform all obligations of Lessee under Section 2.3 of this Lease, which obligations shall survive such termination, and Lessee shall remain obligated to perform all other obligations of Lessee that accrue or arise prior to the effective date of the termination or that otherwise expressly survive a termination of this Lease.

10.6 **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.

10.7 **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 10.7, and any entry onto the Premises to perform work on the Seawall pursuant to Section 10.5 above, 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 it contractors on the Premises pursuant to this Section 10.7 or Section 10.5 above.

10.8 **Notice of Damage**. Lessee shall give prompt notice to County of any fire or material damage affecting the Premises from any cause whatsoever.

10.9 **Waiver of Civil Code Sections**. The parties' rights shall be governed by this Lease in the event of damage or destruction. The parties hereby waive the provisions of California Civil Code Section 1932 and any other provisions of law which provide for contrary or additional rights.

11. ASSIGNMENT AND SUBLEASE.

11.1 Subleases.

11.1.1 **Definition**. The term "**Sublease**" shall mean any lease, license, permit, concession or other interest in the Premises (including, without limitation, the Improvements), or a right to use the Premises or a portion thereof, which is conveyed or granted by Lessee to a third party, and which constitutes less than the unrestricted conveyance of the entire Lessee's interest under this Lease. "**Sublessee**" shall be the person or entity to whom such right to use is conveyed by a Sublease. A Sublease which grants or conveys to the Sublessee the right to possess or use all or substantially all of the Premises is sometimes referred to in this Lease as a "**Major Sublease**" and the Sublessee under such agreement is sometimes referred to in this Lease as a "**Major Sublessee**".

11.1.2 **Approval Required**. At least thirty (30) days prior to the proposed effective date of any Sublease that is not a Major Sublease, or of any assignment or material amendment of such Sublease, Lessee shall submit a copy of such Sublease (or amendment or assignment thereof) to Director for approval, which approval shall not be unreasonably withheld. To the extent practical, Director shall approve or disapprove said proposed Sublease, assignment or material amendment within thirty (30) days after receipt thereof. In no event, however, shall any such Sublease, amendment or assignment be made or become effective without the prior approval of Director. Each such Sublease shall specifically provide that the Sublessee shall comply with all of the terms, covenants, and conditions of this Lease applicable to the portion of the Premises subject to the Sublease. If Director disapproves a Sublease, Director shall notify Lessee in writing of the reason or reasons for such disapproval.

Notwithstanding any contrary provision of this subsection 11.1.2, Lessee shall not be required to obtain County's approval of any berthing agreements with individual boat owners in the ordinary course (not including any master agreement for multiple boats), as long as such berthing agreement is substantially in the form of a standard berthing agreement submitted to and approved by County and the term of such berthing agreement does not exceed twelve (12) months (each, an "Approved Berthing Agreement"). Upon written request by County, Lessee shall furnish County with a list and copy of all then-effective Approved Berthing Agreements.

11.1.3 **Major Sublease**. Lessee shall enter into a Major Sublease only with a reputable owner or manager of facilities comparable to those on the Premises. In light of the inherent detailed nature of a Major Sublease, Lessee shall deliver to County a copy of any proposed Major Sublease, or any sub-sublease or any other document pursuant to which an interest is proposed to be transferred in all or substantially all of the Premises, not less than sixty (60) days prior to the proposed effective date of such proposed Major Sublease or other document, for County's review and approval pursuant to the procedures and requirements specified in Section 11.2.

11.2 **Approval of Assignments and Major Subleases**. Except as specifically hereinbefore provided in this Article 11, Lessee shall not, without the prior written consent of

County, which shall be based upon factors described in Exhibit C hereto, which is incorporated herein by this reference ("**Assignment Standards**"), either directly or indirectly give, assign, hypothecate, encumber, transfer, or grant control of this Lease or any interest, right, or privilege therein (including without limitation the right to manage or otherwise operate the Improvements located from time to time on the Premises), or enter into a Major Sublease affecting the Premises, or license the use of all or substantially all of the Premises. Any Change of Ownership that is not an Excluded Transfer shall constitute an assignment of Lessee's interest under this Lease. In addition, for purposes of this provision, the following matters (except for Excluded Transfers) shall require the prior written consent of County to be effective: (1) the addition, removal or replacement of one or more general partners or managing members in a Lessee which is a limited partnership or limited liability entity, except (a) by death, insolvency, incapacity, resignation (except for a sole general partner, if any) or removal of a general partner or managing member and his replacement by a vote of the limited partners, the remaining general partners or remaining members, or (b) if any general partner or managing member owning more than fifty percent (50%) of the interests of the partnership or limited liability entity acquires the interest of another general partner or managing member owning fifteen percent (15%) or less of the interests in the partnership or limited liability entity; or (2) the sale, assignment, or transfer of fifty-percent (50%) or more of the stock, partnership interests or limited liability company interests in an entity that owns, or is a general partner or managing member of an entity that owns, an interest in this Lease. Lessee shall provide County with any information reasonably requested by County in order to determine whether or not to grant approval of the matters provided herein requiring County's consent. These same limitations and approval requirements as to Lessee's interest in the Lease shall also apply with respect to the Sublessee's interest under a Major Sublease.

11.2.1 **County's Use of Discretion and Limitation on Permissible Assignees**. Prior to the CO Date, County shall have the right to withhold its consent to any assignment or Major Sublease in its sole and absolute discretion. After the CO Date, County shall not unreasonably withhold or delay its consent to a proposed assignment or Major Sublease if the Assignment Standards are satisfied to the reasonable satisfaction of County. If County withholds its consent to an assignment or Major Sublease, County shall notify Lessee in writing of the reason or reasons for such disapproval.

11.2.2 **Involuntary Transfers Prohibited**. Except as otherwise specifically provided in this Lease, neither this Lease nor any of the Lessee's interest in this Lease (as opposed to ownership interests in Lessee itself) shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Lessee, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Lessee, or by any process of law including proceedings under the Bankruptcy Act.

11.2.3 **Procedure**. Requests for approval of any proposed assignment (excluding Excluded Transfers and Subleases that are not Major Subleases) shall be processed in accordance with the following procedures:

11.2.3.1 Prior to entering into any agreement requiring the approval of County pursuant to Sections 11.1 or 11.2, Lessee (or the entity seeking approval of such assignment) shall notify County and deliver to County all information relevant

to the proposed assignment, including without limitation any term sheets, letters of intent, draft Major Subleases, any other documents which set forth any proposed agreement regarding the Premises and the information set forth in subsection 11.2.3.5. County will evaluate the information provided to it and County may request additional information as may be reasonably necessary to act on the request. Under no circumstances will County formally discuss an assignment with any proposed assignee prior to reviewing the proposal with Lessee.

11.2.3.2 In completing its review of the proposal and granting or withholding its consent thereto, County will not be bound by any deadline contained in any proposed assignments, Major Subleases, escrow instructions or other agreements to which County is not a party.

11.2.3.3 Lessee acknowledges that the time needed for County to review a proposed assignment depends on many factors, including without limitation the complexity of the proposed transaction, the financial and other information submitted for review, and the workload of County's personnel. Notwithstanding the foregoing, County shall act as promptly as governmental processes permit in processing and acting upon a requested approval of an assignment of Lessee's interest under this Article 11.

11.2.3.4 Lessee shall be required to reimburse County for its Actual Costs incurred in connection with the proposed assignment, whether or not County ultimately grants its approval to the proposed assignment (without duplication of any Administrative Charge payable under Section 4.6).

11.2.3.5 Lessee or the proposed assignee shall provide County with sufficient information for County to determine if the public interest will be served by approving the proposed transaction. The information that must be provided includes, but shall not be limited to, the following:

(a) **Nature of the Assignee**. Full disclosure is required in accordance with this Lease and County's applicant disclosure policy then in effect. Additionally, a flowchart identifying the chain of ownership of the assignee and its decision-making authority shall be provided to County. County shall be advised if the proposed assignee, or any other person or entity for whom disclosure is required pursuant to County's disclosure policy, has had any leasehold or concessionaire's interest canceled or terminated by the landlord due to the tenant or Lessee's breach or default thereunder;

(b) **Financial Condition of Assignee**. County shall be provided with current, certified financial statements, including balance sheets and profit and loss statements, demonstrating the proposed assignee's financial condition for the preceding five (5) years, or such shorter period that assignee has been in existence. This requirement shall also apply to any related person or entity which will be responsible for or guarantee the obligations of the proposed assignee or provide any funds or credit to such proposed assignee.

(c) **Financial Analysis**. County shall be provided with the proposed assignee's financing plan for the operation of the Premises (unless the assignment is pursuant to a Change of Ownership that is an Excluded Transfer or is pursuant to a Change of Ownership that involves the transfer of only beneficial ownership interests in the constituent owners of Lessee, and following such transfer there is no intended change in the financing plan for the operation and improvement of the Premises) and for any contemplated improvement thereof, demonstrating such proposed assignee's financial capability to so operate the Premises and construct such improvements. Such financing plan shall include, but not be limited to, information detailing (1) equity capital; (2) sources and uses of funds; (3) terms of financing; (4) debt service coverage and ratio; and (5) loan to value ratio. The proposed assignee shall also provide County with documentation demonstrating such proposed assignee's financial viability, such as letters of commitment from financial institutions which demonstrate the availability of sufficient funds to complete any proposed construction or improvements on the Premises. Further, such proposed assignee shall authorize the release of financial information to County from financial institutions relating to the proposed assignee or other information supplied in support of the proposed assignment.

(d) **Business Plan**. County shall be provided with the proposed assignee's business plan for the Premises (unless the assignment is pursuant to a Change of Ownership that constitutes an Excluded Transfer or is pursuant to a Change of Ownership that involves the transfer of only beneficial ownership interests in the constituent owners of Lessee, and following such transfer there is no intended change in the business plan for the Premises), including pro forma financial projections for the Premises for the five (5) year period beginning upon the commencement of the proposed assignment. Such pro forma projections will include capital costs, income and expenses, as well as debt service and all other payments to providers of debt and equity, and will be accompanied by a statement of basic assumptions and an identification of the sources of the data used in the production of such projections.

(e) **Assignor's Financial Statements**. County shall be provided with certified financial statements, including balance sheets and profits and loss statements concerning the assignor Lessee and its operations for the three (3) most recent years prior to the proposed transaction.

(f) **Cure of Defaults**. County shall be provided with the proposed assignee's specific plans to cure any and all delinquencies under this Lease which may be identified by County, whether identified before or after the date of the proposed assignment.

(g) **Prospectus Materials**. County shall be provided with any materials distributed to third parties relating to the business of the proposed assignee to be conducted on, from or relating to the Premises.

(h) **Other Information**. County shall be provided with a clear description of the terms and conditions of the proposed assignment, including a description of the proposed use of the Premises and any proposed alterations or improvements to the Premises. Additionally, County shall be provided with any and all other information

which it reasonably requests of Lessee to assist in its review of the proposed transaction, including without limitation materials pertinent to the issues noted in this subsection to the extent that they exist, such as escrow instructions, security agreements, personal property schedules, appraisals, market reports, lien releases, UCC Statements, preliminary title reports, management agreements affecting the Premises, contracts in excess of $25,000 affecting the Premises, schedules of pending or threatened litigation, and attorneys' closing opinions relating to Lessee, the proposed assignee or the Premises. County shall endeavor to keep the foregoing materials confidential, subject to the Public Records Act and other Applicable Laws.

11.2.3.6 **Nondisturbance**. At the request of Lessee, County shall agree to execute a subordination, nondisturbance and attornment agreement and a ground lessor's estoppel certificate on commercially reasonable terms in favor of any Major Sublessee.

11.2.3.7 **Final Documents**. Prior to granting its approval over any proposed assignment, County shall be provided with an executed Assignment and Acceptance of Assignment in form and content as approved or supplied by the County. Ten (10) copies of each must be submitted to County, of which five (5) shall be signed originals and properly acknowledged.

11.2.4 **County Right to Recapture**. If Lessee proposes to assign its interest in this Lease or the Premises, or proposes to enter into any Major Sublease affecting the Premises (with either such proposed transaction herein referred to as a "**Proposed Transfer**"), it shall provide County with written notice of such desire and the sale price ("**Lessee Sale Price**") at which it is willing to consummate the Proposed Transfer. Within thirty (30) days thereafter, County shall provide Lessee with written notification as to whether it has elected to acquire an option to purchase the interest subject to the Proposed Transfer. During said thirty (30) day period, Lessee may continue to market the interest subject to the Proposed Transfer, provided that such interest is offered subject to County's rights as provided herein. In the event that, prior to the expiration of said thirty (30) day period, County has given notice to Lessee that it has elected to acquire said option, County shall have an assignable option to purchase the interest subject to the Proposed Transfer ("**County Option**") at the Lessee Sale Price. Such County Option shall have a term of five (5) calendar months from the date of County's notice of its election to acquire such option. During the term of the County Option, Lessee shall make the Premises and its books and records reasonably available for inspection by County and third parties as reasonably requested by County. In the event that County causes Lessee to issue the County Option and subsequently declines to purchase the interest subject to the Proposed Transfer at the Lessee Sale Price, County shall pay to Lessee at the expiration of the County Option period (or, at County's election, credit to Lessee against the next applicable installment(s) of Annual Minimum Rent and Percentage Rent), a sum (the "**County Option Price**") which represents (i) three percent (3%) of the Lessee Sale Price, plus (ii) seven percent (7%) interest per annum on said three percent (3%) of the Lessee Sale Price, from the date Lessee received notice of County's election to receive the County Option through the date on which the County Option Price, together with interest thereon, is paid or credited in full. If County either (a) fails to elect to acquire the

County Option within said thirty (30) day period, or (b) gives notice that it has elected not to acquire the interest subject to the Proposed Transfer, then during the nine (9) month period following the later of (a) or (b), Lessee shall be entitled to enter into an agreement to consummate the Proposed Transfer with a third party (subject to County's approval rights as otherwise set forth in this Lease) so long as (1) the actual price for the Proposed Transfer is equal to or greater than the Lessee Sale Price last offered to County and upon no more favorable material terms to the assignee, and (2) the transfer is consummated not later than twelve (12) months after the later of (a) or (b). In the event of a proposed Major Sublease or other permitted assignment of less than all of the Premises, County's election shall pertain to the portion of the Premises that is the subject of the proposed Major Sublease or assignment and, in the event that County elects to acquire such portion of Lessee's interest in the Premises, Lessee's Annual Minimum Rent shall be proportionally reduced and Lessee's obligation to pay Percentage Rent shall pertain only to the amounts derived from the portion of the Premises retained by Lessee. In the event that County elects to recapture all or any portion of the Premises as provided herein, Lessee agrees to execute promptly a termination agreement and such other documentation as may be reasonably necessary to evidence the termination of this Lease, to set a termination date and to prorate rent and other charges with respect to the termination. County's rights pursuant to this subsection 11.2.4 shall not apply to Financing Events or those events identified in subsection 4.6.2 of this Lease.

11.2.5 **County Credits Toward Purchase Price**. In the event that County or its assignee elects to exercise the County Option, it shall receive the following credits toward the Lessee Sale Price: (1) the Net Proceeds Share which would be payable to County in the event that a third party were to purchase the interest offered at the Lessee Sale Price and (2) an amount which represents unpaid Annual Minimum Rent, Percentage Rent, and all other amounts payable under the Lease, if any (including a provisional credit in an amount reasonably acceptable to County for any amounts that may arise from an audit by County, but that have not yet been determined as of that date), with late fees and interest as provided herein, from the end of the period most recently subject to County audit through the date of the purchase of the interest by County. In the case of any unpaid rental amounts that may be found to be owing to County in connection with any uncompleted audit by County, in lieu of a provisional credit for such amounts, Lessee may provide County with a letter of credit or other security satisfactory to County to secure the payment of such unpaid amounts when finally determined by County. During the term of the County Option, Lessee shall cause to be available to County all books and records reasonably necessary in order to determine the amount of such unpaid Annual Minimum Rent, Percentage Rent, and other amounts payable under the Lease. In the event that County or its assignee exercises the County Option, but the transaction fails to close due to a failure of the parties to agree upon an appropriate allowance for such unpaid Annual Minimum Rent, Percentage Rent, and other amounts or appropriate security for the payment thereof, then County shall have no obligation to pay or credit to Lessee the County Option Price.

11.3 **Terms Binding Upon Successors, Assigns and Sublessees**. Except as otherwise specifically provided for herein, each and all of the provisions, agreements, terms, covenants, and conditions herein contained to be performed, fulfilled, observed, and kept by Lessee

hereunder shall be binding upon the heirs, executors, administrators, successors, and assigns of Lessee, and all rights, privileges and benefits arising under this Lease in favor of Lessee shall be available in favor of its heirs, executors, administrators, successors, and assigns. Notwithstanding the foregoing, no assignment or subletting by or through Lessee in violation of the provisions of this Lease shall vest any rights in any such assignee or Sublessee. Any approved assignment of this Lease shall release the assignor of all liability arising due to actions or omissions on or after the effective date of such assignment, provided the assignee assumes all of such liability, including without limitation the obligation of assignee to cure any defaults and delinquencies under this Lease and to pay County Percentage Rent and any other amounts attributable to the period prior to the assignment, but not discovered by County or the assignee until after the assignment; provided, further, the assignor shall not be relieved of any liability for the payment of the Administrative Charge or the required portion of any Net Proceeds Share or Net Refinancing Proceeds which arise upon such assignment as provided herein.

11.4 **Family Transfers**. Notwithstanding any contrary provision of this Article 11, the County's approval shall not be required, nor shall the County's rights of recapture under subsection 11.2.4 be applicable, with respect to any transfer of ownership interests in Lessee or in constituent entities of Lessee, if such transfer is to a member of the immediate family of the transferor (or to a trust for the benefit of a member of the immediate family of the transferor) for estate planning purposes, whether such transfer is the result of gift, devise, intestate succession or operation of law.

12. ENCUMBRANCES.

12.1 Financing Events.

12.1.1 **Definitions**. For the purposes of this Lease, including without limitation the provisions of Sections 4.6 through 4.8 hereof: (i) a "**Financing Event**" shall mean any financing or refinancing consummated by Lessee or by the holders of partnership interests or other direct or indirect ownership interests in Lessee (collectively, "**Ownership Interests**"), whether with private or institutional investors or lenders, where such financing or refinancing is an Encumbrance (as defined below); for purposes of subsection 12.1.2 below and Sections 4.6 through 4.8 above, a "**Financing Event**" shall also include all of the foregoing actions involving the granting of a mortgage, deed of trust or other security interest in a Major Sublease; and (ii) an "**Encumbrance**" shall mean any direct or indirect grant, pledge, assignment, transfer, mortgage, hypothecation, grant of control, grant of security interest, or other encumbrance, of or in all or any portion of (A) Lessee's interest under this Lease and the estate so created (including without limitation a direct or indirect assignment of Lessee's right to receive rents from subtenants) or (B) Ownership Interests if an absolute assignment from the holder of such Ownership Interests to the holder of the Encumbrance would have required County's consent under this Lease, to a lender (upon County approval of the Encumbrance and consummation thereof, the "**Encumbrance Holder**") as security for a loan. The term "**Encumbrance Holder**" shall also be deemed to include any and all affiliates of such Encumbrance Holder which have succeeded by assignment or otherwise to any rights, interests or liabilities of the Encumbrance Holder with respect to the Encumbrance, or which have been designated by the Encumbrance Holder to exercise any rights or

remedies under the Encumbrance or to take title to the leasehold estate under this Lease or to Ownership Interests, and such affiliates shall enjoy all of the rights and protections given to Encumbrance Holders under this Lease. The term "**Equity Encumbrance Holder**" shall mean an Encumbrance Holder holding an Encumbrance with respect to Ownership Interests.

12.1.2 **County Approval Required**. Lessee may, with the prior written consent of Director, which shall not be unreasonably withheld, and subject to any specific conditions which may be reasonably imposed by Director, consummate one or more Financing Event(s). Lessee shall submit to Director a preliminary loan package and thereafter a complete set of all proposed transaction documents in connection with each proposed Financing Event. The preliminary loan package shall include the loan commitment (or the so-called "loan application" if the loan commitment is styled as a loan application) and any other documents, materials or other information reasonably requested by Director. Lessee shall have the right, but not the obligation, to include draft loan documents in the preliminary loan package. Director shall have sixty (60) days (thirty (30) days for the initial construction loan for the Development Work) to grant or withhold approval of the preliminary loan package. Director shall have sixty (60) days (thirty (30) days for the initial construction loan for the Development Work) after receipt of substantially complete loan documents conforming to the approved preliminary loan package in which to grant or withhold final approval of the Financing Event; provided, however, that if the preliminary loan package included draft loan documents then the foregoing sixty (60) day period shall be reduced to thirty (30) days. If not approved by Director in writing within the foregoing periods, the proposed Financing Event shall be deemed disapproved by Director (and, if so requested in writing by Lessee), Director shall within thirty (30) days of such request deliver to Lessee a written description of Director's objections to said proposed Financing Event). Lessee shall reimburse County for County's Actual Cost incurred in connection with its review of the proposed Financing Event. One (1) copy of any and all security devices or instruments as finally executed or recorded by the parties in connection with any approved Encumbrance shall be filed with Director not later than seven (7) days after the effective date thereof. The same rights and obligations set forth above in this subsection 12.1.2 shall inure to the benefit of and shall be binding upon any holder of Ownership Interests with respect to any proposed Financing Event involving Ownership Interests.

12.2 **Consent Requirements In The Event of a Foreclosure Transfer**.

12.2.1 **Definitions**. As used herein, a "**Foreclosure Transfer**" shall mean any transfer of the entire leasehold estate under this Lease or of all of the Ownership Interests in Lessee pursuant to any judicial or nonjudicial foreclosure or other enforcement of remedies under or with respect to an Encumbrance, or by voluntary deed or other transfer in lieu thereof. A "**Foreclosure Transferee**" shall mean any transferee (including without limitation an Encumbrance Holder) which acquires title to the entire leasehold estate under this Lease or to all of the Ownership Interests in Lessee pursuant to a Foreclosure Transfer. An "**Equity Foreclosure Transferee**" shall mean a Foreclosure Transferee whose acquired interest consists of all of the Ownership Interests in Lessee.

12.2.2 **Foreclosure Transfer**. The consent of County shall not be required with respect to any Foreclosure Transfer.

12.2.3 **Subsequent Transfer By Encumbrance Holder**. For each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, with respect to a single subsequent transfer of this Lease or the Ownership Interests (as applicable) by such Encumbrance Holder to any third party, (i) County's consent to such transfer shall be required, but shall not be unreasonably withheld or delayed, and the scope of such consent (notwithstanding anything in this Lease to the contrary) shall be limited to County's confirmation (which must be reasonable) that the Lessee following such transfer has sufficient financial capability to perform its remaining obligations under this Lease as they come due, along with any obligation of Lessee for which the Foreclosure Transferee from whom its receives such transfer is released under subsection 12.3.1 below, and (ii) such transferee (other than a transferee of Ownership Interests) shall expressly agree in writing to assume and to perform all of the obligations under this Lease, other than Excluded Defaults (as defined below). For clarification purposes, the right to a single transfer under this Section shall apply to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, so that there may be more than one "single transfer" under this Section.

12.3 **Effect of Foreclosure**. In the event of a Foreclosure Transfer, the Encumbrance Holder shall forthwith give notice to County in writing of such transfer setting forth the name and address of the Foreclosure Transferee and the effective date of such transfer, together with a copy of the document by which such transfer was made.

12.3.1 Any Encumbrance Holder which is a commercial bank, savings bank, savings and loan institution, insurance company, pension fund, investment bank, opportunity fund, mortgage conduit, real estate investment trust, commercial finance lender or other similar financial institution which ordinarily engages in the business of making, holding or servicing commercial real estate loans, including any affiliate thereof (an "**Institutional Lender**"), shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults as defined below) accruing during its period of ownership of the leasehold. Upon a subsequent transfer of the leasehold in accordance with subsection 12.2.3 above, such Institutional Lender shall be automatically released of any further liability with respect to this Lease, other than for (i) rent payments, property tax payments, reserve account payments and other monetary obligations under specific terms of the Lease that accrue solely during such Institutional Lender's period of ownership of the leasehold, and (ii) Lessee's indemnification obligations under this Lease with respect to matters pertaining to or arising during such Institutional Lender's period of ownership of leasehold title.

12.3.2 Any other Foreclosure Transferee (i.e., other than an Institutional Lender as provided in Section 12.3.1 above) shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults), subject to possible release of liability upon a subsequent transfer pursuant to Section 11.3 above.

12.3.3 Following any Foreclosure Transfer which is a transfer of the leasehold interest under the Lease, County shall recognize the Foreclosure Transferee as the Lessee under the Lease and shall not disturb its use and enjoyment of the Premises, and the Foreclosure Transferee shall succeed to all rights of Lessee under this Lease as a direct lease between County and such Foreclosure Transferee, provided that the Foreclosure Transferee cures any pre-existing Event of Default other than any such pre-existing Event of Default that (i) is an incurable non-monetary default, (ii) is a non-monetary default that can only be cured by a prior lessee, (iii) is a non-monetary default that is not reasonably susceptible of being cured by such transferee, or (iv) relates to any obligation of a prior lessee to pay any Net Proceeds Share (collectively, "**Excluded Defaults**"), and thereafter performs the full obligations of Lessee under this Lease. Pursuant to Section 12.3.7 below, following any Foreclosure Transfer which is a transfer of Ownership Interests, the foregoing rights under this Section 12.3.3 shall also inure to the benefit of the Lessee.

12.3.4 No Encumbrance Holder shall become liable for any of Lessee's obligations under this Lease unless and until such Encumbrance Holder becomes a Foreclosure Transferee with respect to Lessee's leasehold interest under the Lease.

12.3.5 No Foreclosure Transfer, and no single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.3, shall trigger (i) any obligation to pay an Administrative Charge nor any Net Proceeds Share, (ii) any acceleration of any financial obligation of Lessee under this Lease, (iii) any recapture right on the part of County, or (iv) any termination right under this Lease. Any Foreclosure Transfer, and any single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.3, shall be deemed to be excluded from the definition of "**Change of Ownership**" for all purposes of this Lease. For clarification purposes, the "single subsequent transfer" referred to above applies to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder (as more fully explained in subsection 12.2.3), so that there may be more than one "single subsequent transfer" benefited by this Section.

12.3.6 In the event that an Institutional Lender becomes a Foreclosure Transferee, all obligations with respect to the construction work described in Sections 5.1 or 5.11 above shall be tolled for a period of time, not to exceed twelve months, until such Institutional Lender completes a subsequent transfer of its foreclosed interest in the Lease or Ownership Interests, provided that such Institutional Lender is making commercially reasonable and diligent efforts to market and sell its foreclosed interest. Nothing in this subsection 12.3.6 shall be construed as a limit or outside date on any cure periods provided to Encumbrance Holders under this Lease.

12.3.7 Following a Foreclosure Transfer with respect to all of the Ownership Interests in Lessee, (i) any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees in this Article 12 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease, and (ii) if the Foreclosure Transferee was also an Equity Encumbrance Holder, then any and all rights, privileges and/or liability limitations

afforded to Foreclosure Transferees who are Encumbrance Holders in this Article 12 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease.

12.4 **No Subordination**. County's rights in the Premises and this Lease, including without limitation County's right to receive Annual Minimum Rent and Percentage Rent, shall not be subordinated to the rights of any Encumbrance Holder. Notwithstanding the foregoing, an Encumbrance Holder shall have all of the rights set forth in the security instrument creating the Encumbrance, as approved by County in accordance with subsection 12.1.2, to the extent that such rights are not inconsistent with the terms of this Lease, including the right to commence an action against Lessee for the appointment of a receiver and to obtain possession of the Premises under and in accordance with the terms of said Encumbrance, provided that all obligations of Lessee hereunder shall be kept current, including but not limited to the payment of rent and curing of all defaults or Events of Default hereunder (other than Excluded Defaults or as otherwise provided herein).

12.5 **Modification or Termination of Lease**. This Lease shall not be modified or amended without the prior written consent in its sole discretion of each then existing Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee. Further, this Lease may not be surrendered or terminated (other than in accordance with the provisions of this Article 12) without the prior written consent of each such Encumbrance Holder in its sole discretion. No such modification, amendment, surrender or termination without the prior written consent of each such then existing Encumbrance Holder shall be binding on any such Encumbrance Holder or any other person who acquires title to its foreclosed interest pursuant to a Foreclosure Transfer.

12.6 **Notice and Cure Rights of Encumbrance Holders and Major Sublessees**.

12.6.1 **Right to Cure**. Each Encumbrance Holder and Major Sublessee shall have the right, at any time during the term of its Encumbrance or Major Sublease, as applicable, and in accordance with the provisions of this Article 12, to do any act or thing required of Lessee in order to prevent termination of Lessee's rights hereunder, and all such acts or things so done hereunder shall be treated by County the same as if performed by Lessee.

12.6.2 **Notice of Default**. County shall not exercise any remedy available to it upon the occurrence of an Event of Default (other than exercising County's self-help remedies pursuant to Section 13.5 or imposing the daily payment set forth in Section 10.2 in the case of emergency situations), and no such exercise shall be effective, unless it first shall have given written notice of such default to each and every then existing Major Sublessee and Encumbrance Holder which has notified Director in writing of its interest in the Premises or this Lease and the addresses to which such notice should be delivered. Such notice shall be sent simultaneously with the notice or notices to Lessee. An Encumbrance Holder or Major Sublessee shall have the right and the power to cure the Event of Default specified in such notice in the manner prescribed herein. If such Event or Events of Default are so cured, this Lease shall remain in full force and effect.

Notwithstanding any contrary provision hereof, the Lender's cure rights set forth in this Section 12.6 shall not delay or toll the County's right to impose the daily payment for Lessee breaches set forth in Section 10.2.

12.6.3 **Manner of Curing Default**. Events of Default may be cured by an Encumbrance Holder or Major Sublessee in the following manner:

(a) If the Event of Default is in the payment of rental, taxes, insurance premiums, utility charges or any other sum of money, an Encumbrance Holder or the Major Sublessee may pay the same, together with any Late Fee or interest payable thereon, to County or other payee within thirty five (35) days after its receipt of the aforesaid notice of default. If, after such payment to County, Lessee pays the same or any part thereof to County, County shall refund said payment (or portion thereof) to such Encumbrance Holder or Major Sublessee.

(b) If the Event of Default cannot be cured by the payment of money, but is otherwise curable, the default may be cured by an Encumbrance Holder or Major Sublessee as follows:

(1) The Encumbrance Holder or Major Sublessee may cure the default within sixty (60) days after the end of Lessee's cure period as provided in Section 13.1 hereof (or, if the default involves health, safety or sanitation issues, County may by written notice reduce such sixty (60) day period to thirty (30) days, such 60 or 30 day period, as applicable, being referred to herein as the "initial cure period"), provided, however, if the curing of such default reasonably requires activity over a longer period of time, the initial cure period shall be extended for such additional time as may be reasonably necessary to cure such default, so long as the Encumbrance Holder or Major Sublessee commences a cure within the initial cure period and thereafter continues to use due diligence to perform whatever acts may be required to cure the particular default. In the event Lessee commences to cure the default within Lessee's applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the Encumbrance Holder's and Major Sublessee's initial cure period shall commence upon the later of the end of Lessee's cure period or the date upon which County notifies the Encumbrance Holder and/or Major Sublessee that Lessee has failed or ceased to cure the default with due diligence.

(2) With respect to an Encumbrance Holder, but not a Major Sublessee, if before the expiration of the initial cure period, said Encumbrance Holder notifies County of its intent to commence foreclosure of its interest, and within sixty (60) days after the mailing of said notice, said Encumbrance Holder (i) actually commences foreclosure proceedings and prosecutes the same thereafter with due diligence, the initial cure period shall be extended by the time necessary to complete such foreclosure proceedings, or (ii) if said Encumbrance Holder is prevented from commencing or continuing foreclosure proceedings by any bankruptcy stay, or any order, judgment or decree of any court or regulatory body of competent jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such stay, order, judgment or decree, the initial cure period shall be extended by the time

necessary to obtain such release or reversal and thereafter to complete such foreclosure proceedings. Within thirty (30) days after a Foreclosure Transfer is completed, the Foreclosure Transferee shall (if such default has not been cured) commence to cure, remedy or correct the default and thereafter diligently pursue such cure until completed in the same manner as provided in subsection (a) above. The Encumbrance Holder shall have the right to terminate its foreclosure proceeding, and the extension of any relevant cure period shall lapse, in the event of a cure by Lessee.

12.7 New Lease.

12.7.1 **Obligation to Enter Into New Lease**. In the event that this Lease is terminated by reasons of bankruptcy, assignment for the benefit of creditors, insolvency or any similar proceedings, operation of law, an Excluded Default or other event beyond the reasonable ability of an Encumbrance Holder to cure or remedy, or if the Lease otherwise terminates for any reason, County shall, upon the written request of any Encumbrance Holder with respect to Lessee's entire leasehold estate under this Lease or all of the Ownership Interests in Lessee (according to the priority described below if there are multiple Encumbrance Holders), enter into a new lease (which shall be effective as of the date of termination of this Lease) with the Encumbrance Holder or an affiliate thereof for the then remaining Term of this Lease on the same terms and conditions as shall then be contained in this Lease, provided that the Encumbrance Holder cures all then existing monetary defaults under this Lease, and agrees to commence a cure of all then existing non-monetary Events of Default within sixty (60) days after the new lease is entered into, and thereafter diligently pursues such cure until completion. In no event, however, shall the Encumbrance Holder be obligated to cure any Excluded Defaults. County shall notify the most junior Encumbrance Holder of a termination described in this Section 12.7 within thirty (30) days after the occurrence of such termination, which notice shall state (i) that the Lease has terminated in accordance with Section 12.7 of this Lease, and (ii) that such Encumbrance Holder has sixty (60) days following receipt of such notice within which to exercise its right to a new lease under this Section 12.7, or else it will lose such right. An Encumbrance Holder's election shall be made by giving County written notice of such election within sixty (60) days after such Encumbrance Holder has received the above-described written notice from the County. Within a reasonable period after request therefor, County shall execute and return to the Encumbrance Holder any and all documents reasonably necessary to secure or evidence the Encumbrance Holder's interest in the new lease or the Premises. From and after the effective date of the new lease, the Encumbrance Holder (or its affiliate) shall have the same rights to a single transfer that are provided in subsection 12.2.3 above, and shall enjoy all of the other rights and protections that are provided to a Foreclosure Transferee in this Article 12. Any other subsequent transfer or assignment of such new lease shall be subject to all of the requirements of Article 11 of this Lease. If there are multiple Encumbrance Holders, this right shall inure to the most junior Encumbrance Holder in order of priority; provided, however, if such junior Encumbrance Holder shall accept the new lease, the priority of each of the more senior Encumbrance Holders shall be restored in accordance with all terms and conditions of such Encumbrances(s). If a junior Encumbrance Holder does not elect to accept the new lease within thirty (30) days of receipt of notice from County, the right to enter into a new lease shall be provided to the next most junior Encumbrance

Holder, under the terms and conditions described herein, until an Encumbrance Holder either elects to accept a new lease, or no Encumbrance Holder so elects.

12.7.2 **Priority of New Lease**. The new lease made pursuant to this Section 12.7 shall be prior to any mortgage or other lien, charge or encumbrance on County's fee interest in the Premises, and any future fee mortgagee or other future holder of any lien on the fee interest in the Premises is hereby given notice of the provisions hereof.

12.8 **Holding of Funds**. Any Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee that is an Institutional Lender shall have the right to hold and control the disbursement of (i) any insurance or condemnation proceeds to which Lessee is entitled under this Lease and that are required by the terms of this Lease to be applied to restoration of the improvements on the Premises (provided that such funds shall be used for such restoration in accordance with the requirements of the Lease), and (ii) any funds required to be held in the Capital Improvement Fund (provided that such funds shall be used for the purposes required by this Lease). If more than one such Encumbrance Holder desires to exercise the foregoing right, the most senior Encumbrance Holder shall have priority in the exercise of such right.

12.9 **Participation in Certain Proceedings and Decisions**. Any Encumbrance Holder shall have the right to intervene and become a party in any arbitration, litigation, condemnation or other proceeding affecting this Lease. Lessee's right to make any election or decision under this Lease with respect to any condemnation settlement, insurance settlement or restoration of the Premises following a casualty or condemnation shall be subject to the prior written approval of each then existing Encumbrance Holder.

12.10 **Fee Mortgages and Encumbrances**. Any mortgage, deed of trust or other similar encumbrance granted by County upon its fee interest in the Premises shall be subject and subordinate to all of the provisions of this Lease and to all Encumbrances. County shall require each such fee encumbrance holder to confirm the same in writing (in a form reasonably approved by each Encumbrance Holder or its title insurer) as a condition to granting such encumbrance, although the foregoing subordination shall be automatic and self-executing whether or not such written confirmation is obtained.

12.11 **No Merger**. Without the written consent of each Encumbrance Holder, the leasehold interest created by this Lease shall not merge with the fee interest in all or any portion of the Premises, notwithstanding that the fee and leasehold interests are held at any time by the same person or entity.

13. **DEFAULT**.

13.1 **Events of Default**. The following are deemed to be "**Events of Default**" hereunder:

13.1.1 **Monetary Defaults**. The failure of Lessee to pay the rentals due, or make any other monetary payments required under this Lease (including, without limitation, deposits to the Capital Improvement Fund), 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, if any, 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 five (5) 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. Notwithstanding any contrary provision of this subsection 13.1.3, the proviso set forth in the immediately preceding sentence providing for an extension of the cure period beyond thirty five (35) days shall not be applicable to any failure of Lessee to comply with the Required Completion Date set forth in Section 5.1 above (as such date may be extended pursuant to such Section 5.1, and subject to Section 12.6).

13.1.4 **Nonuse of Premises**. The abandonment, vacation, or discontinuance of use of the Premises, or any substantial portion thereof, for a period of thirty five (35) days, except when prevented by Force Majeure or when closed for renovations or repairs required or permitted to be made under this Lease; provided, however, the termination of operations in a portion of the Premises by a Sublessee shall not constitute an Event of Default under this subsection 13.1.4 if Lessee uses its best efforts to recover possession of such portion of the Premises from such Sublessee and to re-sublease such portion of the Premises to another Sublessee as soon as possible; provided, further, that except as provided below operations in such portion of the Premises in accordance with this Lease must recommence no later than one hundred eighty (180) days following the date that operations in such portion of the Premises first terminated. The one hundred eighty (180) day period set forth in the immediately preceding sentence shall be tolled for delays incurred by Lessee beyond such one hundred eighty (180) day period in recovery of possession of the Premises due to the Sublessee's bankruptcy or contest of unlawful detainer proceedings, as long as Lessee diligently continues to prosecute its action to recover possession of the Premises. In addition, notwithstanding any contrary provision of this subsection 13.1.4, an Event of Default shall not be triggered under this subsection 13.1.4 due to the termination of operations by a Sublessee as long as (i) Lessee diligently attempts to re-open the subject space as soon as reasonably possible and the subject space is re-opened for business not later than three hundred sixty five (365) days after the date that such operations were closed, and (ii) during any period between the end of the one hundred eighty (180) day period set forth above in this subsection 13.1.4 (as such period

may be extended as provided above) and the date that the subject portion of the Premises is re-opened for business, Lessee pays County Percentage Rent for such space based upon an imputed Gross Receipts for such space equal to the actual Gross Receipts for such space during the one year period prior to the closure of business for such space.

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**. Lessee shall not be considered in default as to any provision of this Lease when such default is the result of or pursuant to, any process, order, or decree of any court or regulatory body of competent jurisdiction, or any other circumstances which are physically impossible to cure provided Lessee uses due diligence in pursuing whatever is required to obtain release from or reversal of such process, order, or decree or is attempting to remedy such other circumstances preventing its performance.

13.3 **Remedies**. Upon the occurrence of an Event of Default, and subject to the rights of any Encumbrance Holder or Major Sublessee to cure such Event of Default as provided in Section 12.6 hereof, County shall have, in addition to any other remedies in law or equity, the following remedies which are cumulative:

13.3.1 **Terminate Lease**. County may terminate this Lease by giving Lessee written notice of termination. On the giving of the notice, all 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 unpaid rent that would have been earned under this Lease after the date of termination of this Lease until the date Lessee surrenders possession of the Premises to County; and

13.4.3 **Other Amounts**. The amounts necessary to compensate County for the sums and other obligations which under the terms of this Lease become due prior to, upon or as a result of the expiration of the Term or sooner termination of this Lease, including without limitation, those amounts of unpaid taxes, insurance premiums and utilities for the time preceding surrender of possession, the cost of removal of rubble, debris and other above-ground Improvements, attorney's fees, court costs, and unpaid Administrative Charges, Net Proceeds Shares and Net Refinancing Proceeds.

13.5 **Others' Right to Cure Lessee's Default**. County (and any Encumbrance Holder or Major Sublessee, as provided in the last sentence of this section), at any time after Lessee's failure to perform any covenant, condition or agreement contained herein beyond any applicable notice and cure period, may cure such failure at Lessee's cost and expense. If, after delivering to Lessee two (2) or more written notices with respect to any such default, County at any time, by reason of Lessee's continuing failure, pays or expends any sum, Lessee shall immediately pay to County the lesser of the following amounts: (1) twice the amount expended by County to cure such default and (2) the amount expended by County to cure such default, plus one thousand dollars ($1,000). To the extent practicable, County shall give any Encumbrance Holders or Major Sublessees the reasonable opportunity to cure Lessee's default prior to County's expenditure of any amounts thereon.

13.6 **Default by County**. County shall be in default in the performance of any obligation required to be performed by County under this Lease if County has failed to perform such obligation within thirty (30) days after the receipt of notice from Lessee specifying in detail County's failure to perform; provided, however, that if the nature of County's obligation is such that more than thirty (30) days are required for its performance, County shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Lessee shall have no rights as a result of any default by County until Lessee gives thirty (30) days notice to any person or entity having a recorded security interest in County's fee title to the Premises whose identity and address have been disclosed in writing to Lessee. Such person or entity shall then have the right to cure such default, and County 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, 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. During any period that County is in default of its obligation to pay a sum of money to Lessee, any amount of money that may be owed by Lessee to County (but not in excess of the undisputed amount of money owed by County to Lessee for which County is in default) shall not accrue interest or late charges during such period as County remains in default of its obligation to pay Lessee such sum of money.

14. ACCOUNTING.

14.1 **Maintenance of Records and Accounting Method**. In order to determine the amount of and provide for the payment of the Annual Minimum Rent, Percentage Rent, Administrative Charge, Net Proceeds Share, Net Refinancing Proceeds and other sums due under this Lease, Lessee and all Sublessees shall at all times during the Term of this Lease, and for thirty six (36) months thereafter, keep, or cause to be kept, locally, to the reasonable satisfaction of Director, true, accurate, and complete records and double-entry books of account for the current and five (5) prior 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 (or sublessee's or licensee's, as appropriate) 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, and (B) 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 the Director in advance of installation for his approval, which approval or disapproval shall not be unreasonably withheld or delayed.

Lessee's obligations set forth in this Section 14.2 include Lessee's obligation to insure that Lessee's sublessees, licensees, permittees, concessionaires and any other occupants of any portion of the Premises keep records sufficient to permit County and County's auditors to determine the proper levels of Annual Minimum Rent, Percentage Rent, Administrative Charge, Net Proceeds Share, Net Refinancing Proceeds and other sums due under this Lease.

14.3 **Statement; Payment**. No later than the fifteenth (15th) day of each calendar month, Lessee shall render to County a detailed statement certified by Lessee's chief financial officer showing Gross Receipts during the preceding calendar month, along with a calculation in such detail as reasonably acceptable to County of any other amounts to be calculated under Sections 4.2 through 4.8 inclusive. Lessee shall accompany same with remittance of any amount required to be paid by Lessee under such Sections 4.2 through 4.8.

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 forty-eight (48) hours advance notice, County and its duly authorized representatives or agents may enter upon the Premises at any and all reasonable times during the Term of this Lease for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of County.

14.5 **Cost of Audit**. In the event that, for any reason, Lessee does not make available its (or its sublessee's or licensee's) original records and books of account at the Premises or at a location within Los Angeles County, Lessee agrees to pay all expenses incurred by County in conducting any audit at the location where said records and books of account are maintained. In the event that any audit discloses a discrepancy in County's favor of greater than two percent (2%) of the revenue due County for the period audited, then Lessee shall pay County audit contract costs, together with the amount of any identified deficiency, with interest thereon and Late Fee provided by Section 4.5.

14.6 **Additional Accounting Methods**. County may require the installation of any additional accounting methods or machines which are typically used by operators of comparable facilities 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 certified statements of Gross Receipts (including a breakdown by Percentage Rent category) and the amount of any Permitted Capital Expenditures for such Accounting Year prepared by a Certified Public Accountant who is a member of the American Institute of Certified Public Accountants and is reasonably satisfactory to County. All financial statements prepared by or on behalf of Lessee shall be prepared in a manner that permits County

to determine the financial results of operations in connection with Lessee's activities at, from or relating to the Premises, notwithstanding that Lessee may have income and expenses from other activities unrelated to its activities on the Premises.

14.9 **Accounting Obligations of Sublessees**. Lessee shall cause all sublessees, licensees, concessionaires and others conducting business operations on or from the Premises to comply with all terms of this Article 14 with respect to the maintenance, form, availability and methodology of accounting records. County shall provide written notice to Lessee of the failure of any sublessee, licensee, concessionaire or other person or entity conducting business operations on or from the Premises, to comply with this Article 14 after County's discovery of such failure, and provide Lessee with the right to cure any such failure by payment to County of amounts which may be owing to County, as shown on an audit conducted by County, or on an audit supplied by Lessee or such sublessee, licensee, concessionaire or other person or entity and accepted by County, or as otherwise determined pursuant to Section 14.10 below. In such event, County shall permit Lessee to subrogate to any right of County to enforce this provision against such sublessee, licensee, concessionaire or other person or entity, to the extent Lessee does not have a direct right of enforcement against such sublessee, licensee, concessionaire or other person or entity.

14.10 **Inadequacy of Records**. In the event that Lessee or its sublessees, licensees or concessionaires, as appropriate, 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 **Intentionally Deleted**.

15.4 **County Disclosure and Lessee's Waiver**.

15.4.1 **Disclosures and Waiver**.

15.4.1.1 "AS IS". Lessee accepts the Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party to this Lease, at the time of the execution of this Lease by Lessee and Lessee hereby represents that it has performed all investigations necessary, including without limitation soils and engineering inspections, in connection with its acceptance of the Premises "AS IS".

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

15.4.1.3 Lessee hereby waives, withdraws, releases, and relinquishes any and all claims, suits, causes of action (other than a right to terminate as otherwise provided in this Lease), rights of rescission, or charges against County, its officers, agents, employees or volunteers which Lessee now has or may have or asserts in the future which are based upon any defects in the physical condition of the Premises and the soil thereon and thereunder, regardless of whether or not said conditions were known at the time of the execution of this instrument.

15.4.1.4 California Civil Code Section 1542 provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

By initialing this paragraph, Lessee acknowledges that it has read, is familiar with, and waives the provisions of California Civil Code §1542 set forth above, and agrees to all of the provisions of subsection 15.4.1.3 above.

_____
Lessee's Initials

15.4.2 **Right of Offset**. 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.

Nothing contained herein shall be construed as consent by County to any holding over by Lessee, and County expressly reserves the right to require Lessee to surrender possession of the Premises to County as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Section 15.5 shall not be deemed to limit or constitute a waiver of any other rights or remedies of County provided at law or in equity. If Lessee fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to County accruing therefrom, Lessee shall protect, defend, indemnify and hold County harmless from all losses, costs (including reasonable attorneys' fees), damages, claims and liabilities resulting from such failure, including, without limitation, any claims made by any succeeding tenant 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.

15.9 **Place of Payment and Filing**. All rentals shall be paid to and all statements and reports herein required and other items deliverable to County hereunder shall be filed with or delivered to the Department. Checks, drafts, letters of credit and money orders shall be made payable to the County of Los Angeles.

15.10 **Service of Written Notice or Process**. Any notice required to be sent under this Lease shall be in compliance with and subject to this Section 15.10. If Lessee is not a resident of the State of California, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, Lessee shall file with Director a designation of a natural person residing in the County of Los Angeles, State of California, or a service company, such as CT Corporation, which is authorized to accept service, giving his or its name, residence, and business address, as the agent of Lessee for the service of process in any court action between Lessee and County, arising out of or based upon this Lease, and the delivery to such agent of written notice or a copy of any process in such action shall constitute a valid service upon Lessee.

If for any reason service of such process upon such agent is not possible, then any officer of Lessee may be personally served with such process outside of the State of California and such service shall constitute valid service upon Lessee; and it is further expressly agreed that Lessee is amenable to such process and submits to the jurisdiction of the court so acquired and waives any and all objection and protest thereto.

Written notice addressed to Lessee at the addresses below-described, or to such other address that Lessee may in writing file with Director, shall be deemed sufficient if said notice is delivered personally, by telecopy or facsimile transmission or, provided in all cases there is a return receipt requested (or other similar evidence of delivery by overnight delivery service) and postage or other delivery charges prepaid, by registered or certified mail posted in the County of Los Angeles, California, Federal Express or DHL, or such other services as Lessee and County may mutually agree upon from time to time. Each notice shall be deemed received and the time period for which a response to any such notice must be given or any action taken with respect thereto (including cure of any prospective Event of Default) shall commence to run from the date of actual receipt of the notice by the addressee thereof in the case of personal delivery, telecopy or facsimile transmission if before 5:00 p.m. on regular business days, or upon the 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.

Copies of any written notice to Lessee shall also be simultaneously mailed to any Encumbrance Holder, Major Sublessee or encumbrancer of such Major Sublessee of which County has been given written notice and an address for service. Notice given to Lessee as provided for herein shall be effective as to Lessee notwithstanding the failure to send a copy to such Encumbrance Holder, Major Sublessee or encumbrancer.

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

COUNTY:	Director Department of Beaches and Harbors Los Angeles County 13837 Fiji Way Marina del Rey, California 90292 Phone: 310/305-9522 Fax: 310/821-6345
With a Copy to:	Office of County Counsel Los Angeles County 500 West Temple Street Los Angeles, California 90012 Attn: County Counsel Phone: 213/974-1801 Fax: 213/617-7182
LESSEE:	MDR Boat Central, L.P. c/o Pacific Marina Development 3416 Via Lido, Suite G Newport Beach, California 92663 Attn: Mr. Thomas J. Hogan Phone: (949) 798-3818 Fax: (949) 673-6331
With a Copy to:	Allen Matkins Leck Gamble Mallory & Natsis LLP 515 South Figueroa Street Los Angeles, California 90071 Attn.: Michael J. Kiely, Esq. Phone: (213) 622-5555 Fax: (213) 620-8816

Either party shall have the right to change its notice address by written notice to the other party of such change in accordance with the provisions of this Section 15.10.

15.11 **Interest**. In any situation where County has advanced sums on behalf of Lessee pursuant to this Lease, such sums shall be due and payable 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.

15.12 **Captions**. The captions contained in this Lease are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Lease.

15.13 **Attorneys' Fees**. In the event of any action, proceeding or arbitration arising out of or in connection with this Lease, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees, including without limitation reasonable attorneys' fees for County Counsel's services where County is represented by the County Counsel and is the prevailing party, and also including all fees, costs and expenses incurred in executing, perfecting, enforcing and collecting any judgment.

15.14 **Amendments**. This Lease may only be amended in writing executed by duly authorized officials of Lessee and County. Notwithstanding the foregoing, Director shall have the power to execute such amendments to this Lease as are necessary to implement any arbitration judgment issued pursuant to this Lease. No amendment, other than one implemented through an arbitration judgment, shall be binding upon an Encumbrance Holder as to which County has been notified in writing, unless the consent of such Encumbrance Holder is obtained with respect to such amendment.

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

15.16 **Time For County Action**. Notwithstanding anything to the contrary contained in this Lease, wherever Director 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.

15.17 **Estoppel Certificates**. Each party agrees to execute, within ten (10) business days after the receipt of a written request therefor from the other party, a certificate stating: (i) that this Lease is in full force and effect and is unmodified (or stating otherwise, if true); (ii) that,

to the best knowledge of such party, the other party is not then in default under the terms of this Lease (or stating the grounds for default if such be the case); and (iii) if requested, the amount of the Security Deposit, Annual Minimum Rent, Percentage Rent and other material economic terms and conditions of this Lease. Prospective purchasers, Major Sublessees and lenders may rely on such statements.

15.18 **Indemnity Obligations**. Whenever in this Lease there is an obligation to indemnify, hold harmless and/or defend, irrespective of whether or not the obligation so specifies, it shall include the obligation to defend and pay reasonable attorney's fees, reasonable expert fees and court costs.

15.19 **Controlled Prices**. Lessee shall at all times maintain a complete list or schedule of the prices charged for all goods or services, or combinations thereof, supplied to the public on or from the Premises, whether the same are supplied by Lessee or by its Sublessees, assignees, concessionaires, permittees or licensees. Said prices shall be fair and reasonable, based upon the following two (2) considerations: first, that the property herein demised is intended to serve a public use and to provide needed facilities to the public at fair and reasonable cost; and second, that Lessee is entitled to a fair and reasonable return upon his investment pursuant to this Lease. In the event that Director notifies Lessee that any of said prices are not fair and reasonable, Lessee shall have the right to confer with Director and to justify said prices. If, after reasonable conference and consultation, Director shall determine that any of said prices are not fair and reasonable, the same shall be modified by Lessee or its Sublessees, assignees, concessionaires, permittees or licensees, as directed. Lessee may appeal the determination of Director to the Board, whose decision shall be final and conclusive. Pending such appeal, the prices fixed by Director shall be the maximum charged by Lessee.

15.20 **Public Improvements**. As part of the Development Work Lessee shall construct a pedestrian promenade along Fiji Way and a landscaped public picnic area overlooking the water on the western side of the Premises (the "**Public Improvements**"). The Public Improvements shall be designed and constructed in accordance with the Development Plan, the Local Coastal Plan and Marina del Rey design guidelines. County hereby reserves a public easement for access over and use of the Public Improvements for the pedestrian and park related uses for which they are designed and such other related uses as may be established by the County from time to time, all in accordance with such rules and regulations as are promulgated from time to time by the County regulating such public use. Lessee shall be responsible for the maintenance and repair of the Public Improvements in accordance with commercially reasonable maintenance and repair standards established by the County from time to time for other comparable public facilities in Marina del Rey. At the request of either party the exact legal description of the Premises encumbered by the public easement reserved herein shall be established based upon the final as-built drawings for the Public Improvements to be delivered by Lessee upon the completion thereof in accordance with the terms and provisions of Article 5 and such legal description shall be recorded in the Official Records of the County as a supplement to this Lease.

15.21 **Dockmaster.** During the Term of the Lease, Lessee shall maintain a dockmaster program reasonably acceptable to Director for the day to day management and operation of the

commercial dock facilities at the Premises. The level of services to be provided by the dockmaster shall be commensurate with the size and scope of the proposed slip operations.

15.22 **Seaworthy Vessels**. On or before January 1, April 1, July 1 and October 1 of each year during the Term, Lessee shall deliver to Director a report which contains the following information with respect to every vessel that is moored in the water at the Premises (including floating homes as defined in Title 19 of the Los Angeles County Code), if any: (i) the name, address and telephone number of the registered owner (and slip tenant, if other than the registered owner) for each vessel; (ii) the state registration or federal document number, and name (if any), of the vessel; (iii) whether the vessel is a power vessel, sailing vessel or floating home; and (iv) the slip number and length of the vessel, and whether the vessel is presently authorized by Lessee for liveaboard tenancy. In addition, Lessee shall require, and shall certify annually to Director, that as a condition of slip rental and continued slip tenancy, all new slip tenanted vessels from and after the immediately preceding certification (or in the case of the initial certification, from and after the Effective Date) have been required to pass seaworthiness inspection by the Harbor Patrol within sixty (60) days of such slip rental. Henceforth, all of Lessee's slip leases shall provide that any newly tenanted vessel which is unable to pass such inspection within the required period, or such reasonable extension thereof as may be granted in the Director's sole discretion, shall be ineligible for continued slip tenancy on the leasehold premises and shall be removed therefrom. The requirements of the two preceding sentences shall not be applicable to any vessel which is specifically exempted from seaworthiness requirements by Title 19 of the Los Angeles County Code.

15.23 **Water Quality Management Program**. During the Term of the Lease, Lessee shall comply with all water quality management requirements imposed by the Coastal Commission in connection with the issuance of the Coastal Development Permit for the commercial dock improvements; provided, however, that Lessee shall in all events comply at least with the water quality management requirements set forth in Exhibit E attached to this Lease. In addition, during the Term of the Lease, Lessee shall remove floating debris from the water surrounding the commercial dock facilities on the Premises in accordance with a program and regular schedule reasonably acceptable to the Director.

15.24 **Parking Requirements**. The Development Work includes the construction of 131 on-site surface parking spaces. Lessee agrees to provide managed parking services during peak operating times to facilitate available parking for an additional twenty (20) vehicles. In all events, all parking required for the use of the Premises shall be provided on-site at the Premises.

16. **ARBITRATION**.

Except as otherwise provided by this Article 16, disputed matters which may be arbitrated pursuant to this Lease shall be settled by binding arbitration in accordance with the then existing provisions of the California Arbitration Act, which as of the date hereof is contained in Title 9 of Part III of the California Code of Civil Procedure, commencing with Section 1280.

(a) Either party (the "**Initiating Party**") may initiate the arbitration process by sending written notice ("**Request for Arbitration**") to the other party (the

"**Responding Party**") requesting initiation of the arbitration process and setting forth a brief description of the dispute or disputes to be resolved and the contention(s) of the Initiating Party. Within ten (10) days after service of the Request for Arbitration, the Responding Party shall file a "**Response**" setting forth the Responding Party's description of the dispute and the contention(s) of Responding Party. If Responding Party has any "**Additional Disputes**" he shall follow the format described for the Initiating Party. The Initiating Party will respond within ten (10) days after service of the Additional Disputes setting forth Initiating Party's description of the Additional Disputes and contentions regarding the Additional Disputes.

(b) Notwithstanding anything to the contrary which may now or hereafter be contained in the California Arbitration Act, the parties agree that the following provisions shall apply to any and all arbitration proceedings conducted pursuant to this Lease:

16.1 **Selection of Arbitrator**. The parties shall attempt to agree upon an arbitrator who shall decide the matter. If, for any reason, the parties are unable to agree upon the arbitrator within ten (10) days of the date the Initiating Party serves a request for arbitration on the Responding Party, then at any time on or after such date either party may petition for the appointment of the arbitrator as provided in California Code of Civil Procedure Section 1281.6.

16.2 **Arbitrator**. The arbitrator shall be a retired judge of the California Superior Court, Court of Appeal or Supreme Court, or any United States District Court or Court of Appeals located within the State, who has agreed to resolve civil disputes.

16.3 **Scope of Arbitration**. County and Lessee affirm that the mutual objective of such arbitration is to resolve the dispute as expeditiously as possible. The arbitration process shall not apply or be used to determine issues other than (i) those presented to the arbitrator by the Initiating Party provided those disputes are arbitrable disputes pursuant to this Lease, (ii) Additional Disputes presented to the arbitrator by the Responding Party, provided that any such Additional Disputes constitute arbitrable disputes pursuant to this Lease and (iii) such related preliminary or procedural issues as are necessary to resolve (i) and/or (ii) above. The arbitrator shall render an award. Either party may, at its sole cost and expense, request a statement of decision explaining the arbitrator's reasoning which shall be in such detail as the arbitrator may determine. Unless otherwise expressly agreed by the parties in writing, the award shall be made by the arbitrator no later than the sooner of six (6) months after the date on which the arbitrator is selected by mutual agreement or court order, whichever is applicable, or five (5) months after the date of a denial of a petition to disqualify a potential arbitrator for cause. County and Lessee hereby instruct the arbitrator to take any and all actions deemed reasonably necessary, appropriate or prudent to ensure the issuance of an award within such period. Notwithstanding the foregoing, failure to complete the arbitration process within such period shall not render such arbitration or any determination made therein void or voidable; however, at any time after the expiration of the foregoing five (5) or six (6) month periods, as applicable, either party may deliver written notice to the arbitrator and the other party either terminating the arbitration or declaring such party's intent to terminate the arbitration if the award is not issued within a specified number of days after delivery of such notice. If the arbitrator's award is not issued prior to the expiration of said specified period, the arbitration shall be terminated and the parties shall recommence arbitration proceedings pursuant to this Article 16.

16.4 **Immunity**. The parties hereto agree that the arbitrator shall have the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator pursuant to this Lease.

16.5 **Section 1282.2**. The provisions of Code of Civil Procedure § 1282.2 shall apply to the arbitration proceedings except to the extent they are inconsistent with the following:

(1) Unless the parties otherwise agree, the arbitrator shall appoint a time and place for the hearing and shall cause notice thereof to be served as provided in said § 1282.2 not less than ninety (90) days before the hearing, regardless of the aggregate amount in controversy.

(2) No later than sixty (60) days prior to the date set for the hearing (unless, upon a showing of good cause by either party, the arbitrator establishes a different period), in lieu of the exchange and inspection authorized by Code of Civil Procedure § 1282.2(a)(2)(A), (B) and (C), the parties shall simultaneously exchange the following documents by personal delivery to each other and to the arbitrator:

(a) a written Statement of Position, as further defined below, setting forth in detail that party's final position regarding the matter in dispute and specific numerical proposal for resolution of monetary disputes;

(b) a list of witnesses each party intends to call at the hearing, designating which witnesses will be called as expert witnesses and a summary of each witness's testimony;

(c) a list of the documents each intends to introduce at the hearing, together with complete and correct copies of all of such documents; and,

(d) if the issue involves Fair Market Rental Value or a valuation matter, a list of all Written Appraisal Evidence (as defined below) each intends to introduce at the hearing, together with complete and correct copies of all of such Written Appraisal Evidence.

(3) No later than twenty (20) days prior to the date set for the hearing, each party may file a reply to the other party's Statement of Position ("**Reply**"). The Reply shall contain the following information:

(a) a written statement, to be limited to that party's rebuttal to the matters set forth in the other party's Statement of Position;

(b) a list of witnesses each party intends to call at the hearing to rebut the evidence to be presented by the other party, designating which witnesses will be called as expert witnesses;

(c) a list of the documents each intends to introduce at the hearing to rebut the evidence to be presented by the other party, together with complete and correct copies of all of such documents (unless, upon a showing of good

cause by either party, the arbitrator establishes a different deadline for delivering true and correct copies of such documents);

(d) if the issue involves Fair Market Rental Value or a valuation matter, a list of all Written Appraisal Evidence, or written critiques of the other party's Written Appraisal Evidence if any, each intends to introduce at the hearing to rebut the evidence presented by the other party, together with complete and correct copies of all of such Written Appraisal Evidence (unless, upon a showing of good cause by either party, the arbitrator establishes a different deadline for delivering true and correct copies of such Written Appraisal Evidence); and

(e) Witnesses or documents to be used solely for impeachment of a witness need not be identified or produced.

(4) The arbitrator is not bound by the rules of evidence, but may not consider any evidence not presented at the hearing. The arbitrator may exclude evidence for any reason a court may exclude evidence or as provided in this Lease.

16.6 **Statements of Position**. The Statement of Position to be delivered by Section 16.5 shall comply with the following requirements:

(1) Where the dispute involves rent to be charged, market values, insurance levels or other monetary amounts, the Statements of Position shall numerically set forth the existing minimum rent, percentage rent, market value, insurance level and/or other monetary amounts in dispute, the party's proposed new minimum rent, percentage rent, market value, insurance level and/or other monetary amounts, and shall additionally set forth the facts supporting such party's position.

(2) If the dispute relates to Improvement Costs, the Statements of Position shall set forth the facts supporting such party's position and the amount of each cost which the party believes should be allowed or disallowed.

16.7 **Written Appraisal Evidence**. Neither party may, at any time during the proceedings, introduce any written report which expresses an opinion regarding Fair Market Rental Value or the fair market value of the Premises, or any portion thereof, (**"Written Appraisal Evidence"**) unless such Written Appraisal Evidence substantially complies with the following standards: it shall describe the Premises; identify the uses permitted thereon; describe or take into consideration the terms, conditions and restrictions of this Lease; correlate the appraisal method(s) applied; discuss the relevant factors and data considered; review rentals paid by lessees in Marina del Rey and other marina locations within Southern California who are authorized to conduct similar activities on comparable leaseholds; and, describe the technique of analysis, limiting conditions and computations that were used in the formulation of the valuation opinion expressed. With respect to disputes regarding Fair Market Rental Value, such Written Appraisal Evidence shall express an opinion regarding the fair market rental value of the Premises as prescribed by subsection 4.3.1. Written Appraisal Evidence in connection with disputes arising out of Article 6 of this Lease shall predicate any valuation conclusions contained

therein on the Income Approach. Written Appraisal Evidence shall in all other respects be in material conformity and subject to the requirements of the Code of Professional Ethics and the Standards of Professional Practice of The Appraisal Institute or any successor entity.

16.8 **Evidence**. The provisions of Code of Civil Procedure § 1282.2(a)(2)(E) shall not apply to the arbitration proceeding. The arbitrator shall have no discretion to allow a party to introduce witnesses, documents or Written Appraisal Evidence (other than impeachment testimony) unless such information was previously delivered to the other party in accordance with Section 16.5 and, in the case of Written Appraisal Evidence, substantially complies with the requirements of Section 16.7, or such evidence consists of a transcript of a deposition of an expert witness conducted pursuant to Section 16.9. Notwithstanding the foregoing, the arbitrator may allow a party to introduce evidence which, in the exercise of reasonable diligence, could not have been delivered to the other party in accordance with Section 16.5, provided such evidence is otherwise permissible hereunder.

16.9 **Discovery**. The provisions of Code of Civil Procedure § 1283.05 shall not apply to the arbitration proceedings except to the extent incorporated by other sections of the California Arbitration Act which apply to the arbitration proceedings. There shall be no pre-arbitration discovery except as provided in Section 16.5; provided, however, each party shall have the right, no later than seven (7) days prior to the date first set for the hearing, to conduct a deposition, not to exceed three (3) hours in duration unless the arbitrator otherwise determines that good cause exists to justify a longer period, of any person identified by the other party as an expert witness pursuant to Sections 16.5 (2)(b) or 16.5 (3)(b).

16.10 **Awards of Arbitrators**.

16.10.1 **Monetary Issues**. With respect to monetary disputes (including without limitation disputes regarding Percentage Rent, Fair Market Rental Value and the amount of coverage under the policies of insurance required pursuant to Article 9 of this Lease), the arbitrator shall have no right to propose a middle ground or any proposed modification of either Statement of Position. The arbitrator shall instead select whichever of the two Statements of Position is the closest to the monetary or numerical amount that the arbitrator determines to be the appropriate determination of the rent, expense, claim, cost, delay, coverage or other matter in dispute and shall render an award consistent with such Statement of Position. For purposes of this Section 16.10, each dispute regarding Annual Minimum Rent, each category of Percentage Rent and the amount of required insurance coverage shall be considered separate disputes (a "Separate Dispute"). While the arbitrator shall have no right to propose a middle ground or any proposed modification of either Statement of Position concerning a Separate Dispute, the arbitrator shall have the right, if the arbitrator so chooses, to choose one party's Statement of Position on one or more of the Separate Disputes, while selecting the other party's Statement of Position on the remaining Separate Disputes. For example, if the parties are unable to agree on the Annual Minimum Rent and three Percentage Rent categories to be renegotiated pursuant to Section 4.3 and the amount of liability insurance coverage to be renegotiated pursuant to Section 9.3, 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 seven (7) days after the issuance of any award by the arbitrator becomes final, the County 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 Lessee, Lessee 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 County, which shall thereafter be executed by County as soon as reasonably practicable.

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

16.14.1 The award shall not be implemented if the party alleging Gross Error obtains a judgment of a court of competent jurisdiction stating that the arbitrator was guilty of Gross Error and vacating the arbitration award ("**Disqualification Judgment**"). In the event of a Disqualification Judgment, the arbitration process shall begin over immediately in accordance with this Section 16.14, which arbitration shall be conducted (with a different arbitrator) as expeditiously as reasonably possible.

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

16.14.3 For the purposes of this Section 16.14, the term "**Gross Error**" shall mean that the arbitration award is subject to vacation pursuant to California Code of Civil Procedure § 1286.2 or any successor provision.

16.15 **Notice**.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION TO NEUTRAL ARBITRATION.

_____ Initials of Lessee

_____ Initials of County

17. **DEFINITION OF TERMS; INTERPRETATION**.

17.1 **Meanings of Words Not Specifically Defined**. Words and phrases contained herein shall be construed according to the context and the approved usage of the English language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning by law, or are defined in Section 1.1, are to be construed according to such technical, peculiar, and appropriate meaning or definition.

17.2 **Tense; Gender; Number; Person**. Words used in this Lease in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter and the neuter includes the masculine and feminine; the singular number includes the plural and the plural the singular; the word "person" includes a corporation, partnership, limited liability company or similar entity, as well as a natural person.

17.3 **Business Days**. For the purposes of this Lease, "**business day**" shall mean a business day as set forth in Section 9 of the California Civil Code, and shall include "**Optional Bank Holidays**" as defined in Section 7.1 of the California Civil Code.

17.4 **Parties Represented by Consultants, Counsel**. Both County and Lessee have entered this Lease following advice from independent financial consultants and legal counsel of their own choosing. This document is the result of combined efforts of both parties and their consultants and attorneys. Thus, any rule of law or construction which provides that ambiguity in a term or provision shall be construed against the draftsperson shall not apply to this Lease.

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

17.6 **Reasonableness Standard**. Except where a different standard is specifically provided otherwise herein, whenever the consent of County or Lessee is required under this Lease, such consent shall not be unreasonably withheld 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 Section 25536 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, in recordable form and otherwise satisfactory to the parties hereto, for recording as soon as is practicable on or following the Effective Date.

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

THE COUNTY OF LOS ANGELES

By: _____
Chair, Board of Supervisors

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: _____

MDR BOAT CENTRAL L.P., a California limited partnership

By: MDR Boat Central, LLC, a California limited liability company

By: Pacific Marina Developments, Inc., a California corporation, Its Manager

By: _____
Thomas J. Hogan, President

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

[To be added]

Subject to the public easement reserved by County in Section 15.20 of this Lease.

LEGAL DESCRIPTION

Real property in the unincorporated area of the County of Los Angeles, State of California, described as follows:

LOTS 824 TO 829 INCLUSIVE, OF L.A.C.A. MAP NO. 88, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, RECORDED IN BOOK 1 PAGES 53 TO 70 OF LOS ANGELES COUNTY ASSESSOR'S MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 4224-010-900

EXHIBIT B

PARCELS 52&GG DEVELOPMENT PLAN

(attached)

LEASE EXHIBIT B – PARCELS 52&GG
March 6, 2007

Term Sheet - Lease Template Item	*Lessee Proposal Parcels 52&GG*
1) SCOPE OF WORK	
A reasonably detailed, written narrative description of the work to be done, including each of the following: ▫ **All new construction and renovation** ▫ **Timing for the start of the work** ▫ **Timing for the completion of the work** **The narrative shall include all applicable components of the project, grouped as set forth below.**	
a) Apartments, Office and Commercial (Note: for renovation-only apartment projects, use "Renovation Comparison Worksheet" instead of this section)	
• **Demolition (of existing improvements prior to commencing work)**	Complete demolition of all existing landside and waterside improvements, including all docks, Sherrif maintenance building, parking lot and landscape elements.
• **New building construction**	Construction of a new dry storage building, built partially over the water with an overhead gantry crance system, containing 345 dry stack spaces, 24 trailer storage spaces, 1,600 square foot boat maintenance facility, and a free standing building containing a 2,400 square foot office/lobby area and a 3,000 square foot Sherrif Boatwright facility.
• **Remodeled building exteriors**	Not applicable, as this project involves complete demolition of existing improvements and requires new construction.
• **Remodeled building interiors**	Not applicable, as this project involves complete demolition of existing improvements and requires new construction.

Term Sheet - Lease Template Item	*Lessee Proposal Parcels 52&GG*
• **Remodeled interior building common areas**	Not applicable, as this project involves complete demolition of existing improvements and requires new construction.
• **Remodeled exterior building common areas**	Not applicable, as this project involves complete demolition of existing improvements and requires new construction.
• **Landscaping**	The Fiji Way frontage shall be landscaped with trees and plantings as part of the 28' Promenade.
b) Marina	
• **Replacement of docks and slips, including design and materials**	Complete replacement of the existing docks with new concrete docks (or other material approved by the Director) with approximately 1,250 lineal feet of docks.
• **Retention of existing slip count, including slip count before and after by slip size**	The existing Sheriff/maintenance dock configuration shall be retained for use of the Sherrif and the Department of Beaches and Harbors.
• **Retention of marine commercial facilities, including area count before and after for each category**	Replacement of existing launch crane with a new 5 ton crane.
c) Promenade	
• **Walkway design and materials**	Construct and maintain a promenade to run the length of the Fiji Way frontage and the western side of the property leading to a public picnic area along the bulkhead, in compliance with the LCP and Marina guidelines.

Term Sheet - Lease Template Item	*Lessee Proposal Parcels 52&GG*
• **Fencing design and materials**	Fencing design and materials shall be in compliance with the LCP and Marina guidelines.
• **Lighting design and materials**	Lighting design and materials shall be in compliance with the LCP and Marina guidelines.
d) Signage	
• **New signage program**	Attractive signage shall be provided on the landside entrance to the project on Fiji Way and on the waterside entrance to the project from Basin H, to express both land and water entrances to the project.

Term Sheet - Lease Template Item	*Lessee Proposal Parcels 52&GG*
2) PLANS & DRAWINGS	
Preliminary plans for all work to be done	
a) Site Plan	
• **Reduced color site plans (8.5x11 or 11x17), showing work described above, including all structures, hardscape, promenade, landscaping and slips**	See Exhibit A-1, "Parcels 52&GG – Site Plan" Also see Exhibit A-2, "Parcels 52&GG – Stack Plan"
b) Building Elevation	
• **A reduced color elevation (8.5x11 or 11x17) rendering that shows new and/or renovated building elevations**	See Exhibit A-3, "Parcels 52&GG – Rendering from Launch Ramp Perspective No.1" See Exhibit A-4, "Parcels 52&GG – Rendering from Launch Ramp Perspective No.2" Also see Exhibit A-5, "Parcels 52&GG – Rendering from Basin H Perspective" See Exhibit A-6, "Parcels 52&GG –East & North Elevations"
c) Landscape Plan	
• **If not already included in the above materials**	See Exhibit A-1, "Parcels 52&GG – Site Plan"
d) Dock Plan	
• **Dock construction plan, including physical layout of docks and slips**	See Exhibit A-1, "Parcels 52&GG – Site Plan" Also see Exhibit A-7, "Parcels 52&GG – Site Plan – Dock Plan"

Term Sheet - Lease Template Item	*Lessee Proposal Parcels 52&GG*

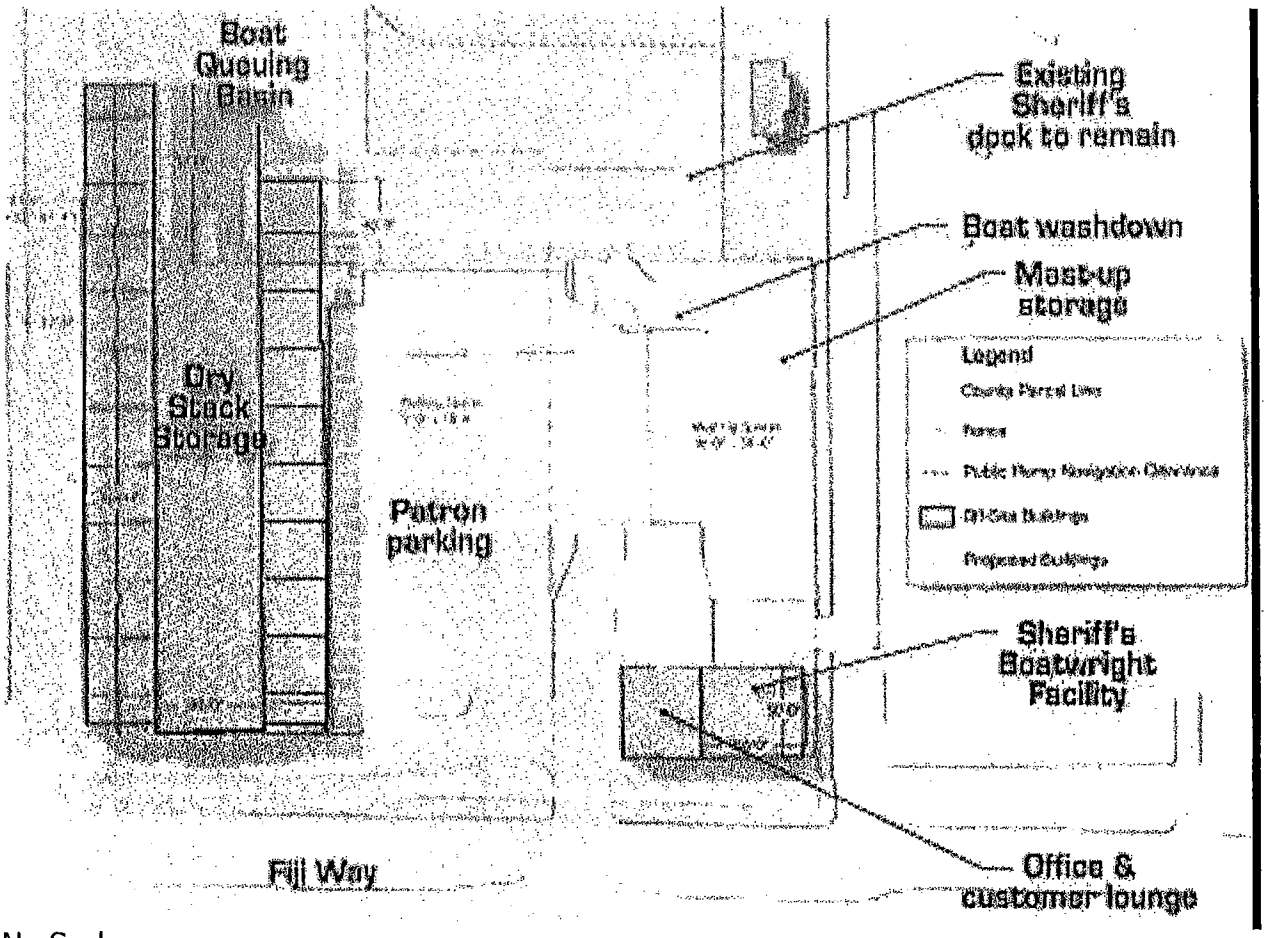
3) BUDGET

a) Budget worksheet

- **Estimated cost for all of the work agreed upon**

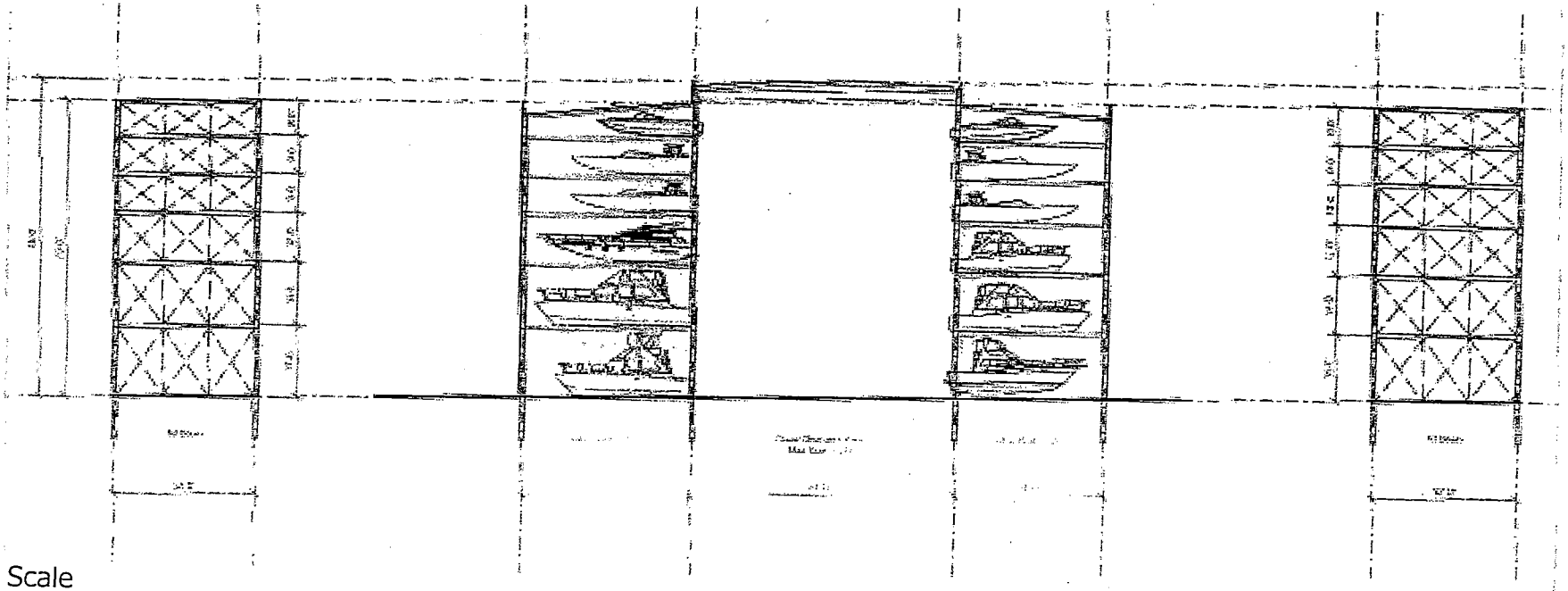
DEVELOPER CONSTRUCTION COSTS –	
Transaction & Closing Costs	$300,000
Entitlements	$215,000
Dry Stack Storage	$4,156,000
Buildings	$460,000
Mast-Up Storage	$115,000
Common Areas	$654,000
Soft Costs	$700,000
Total	$6,600,000
Financing (Years 1 & 2)	$190,000
Financing (Years 3 & 4)	$710,000
TOTAL DEVELOPMENT COSTS	$7,500,000

Exhibit A-1
Parcels 52&GG – Site Plan



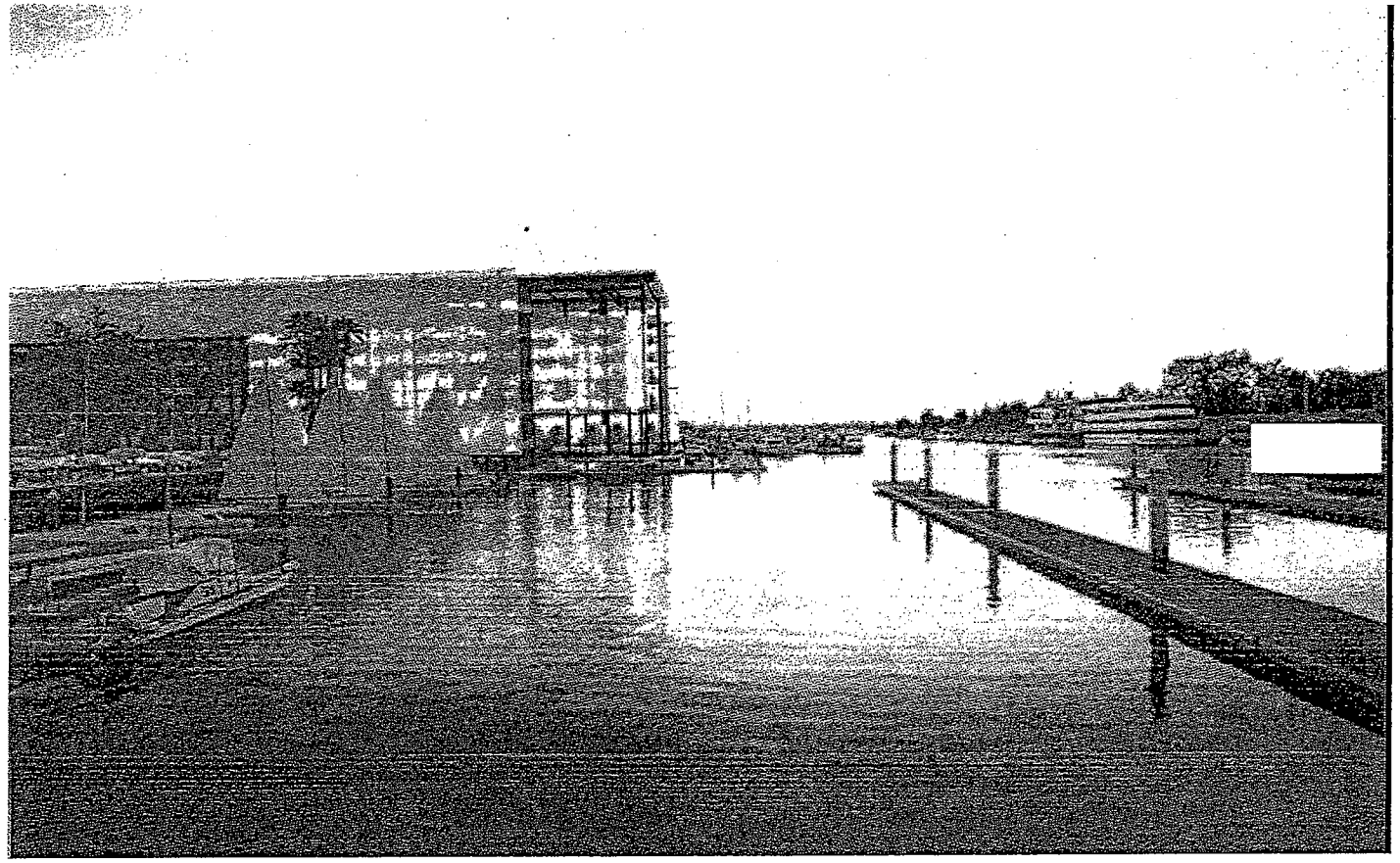
No Scale

Exhibit A-2
Parcels 52&GG – Stack Plan



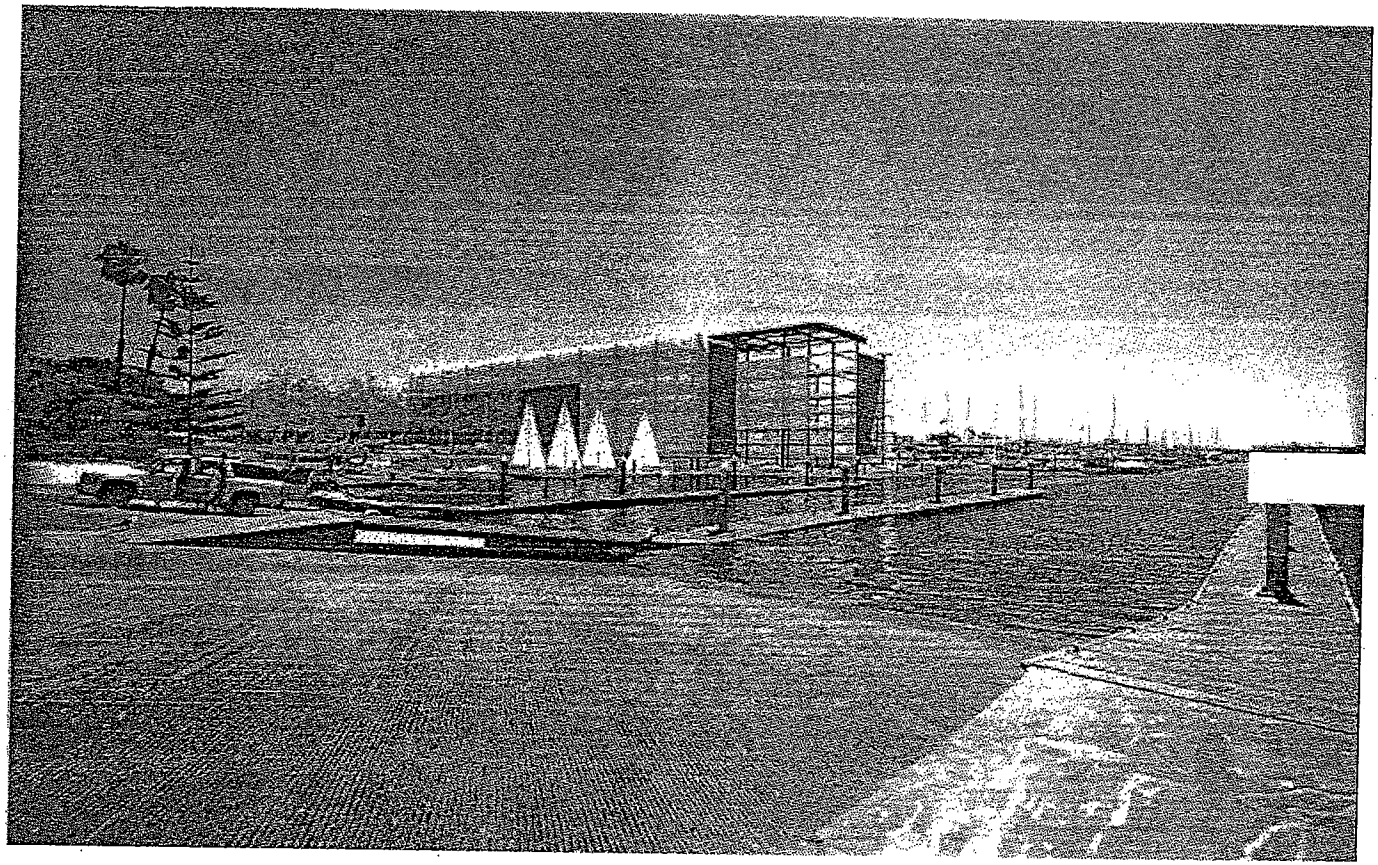
No Scale

Exhibit A-3
Parcels 52&GG – Rendering from Launch Ramp Perspective No.1



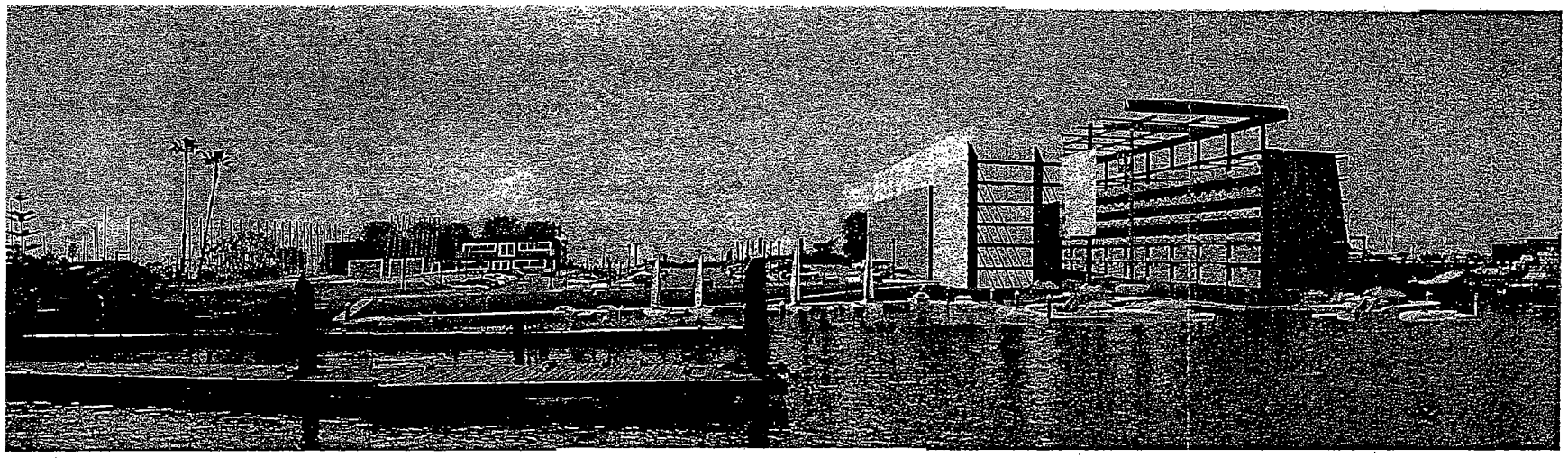
No Scale

Exhibit A-4
Parcels 52&GG – Rendering from Launch Ramp Perspective No.2



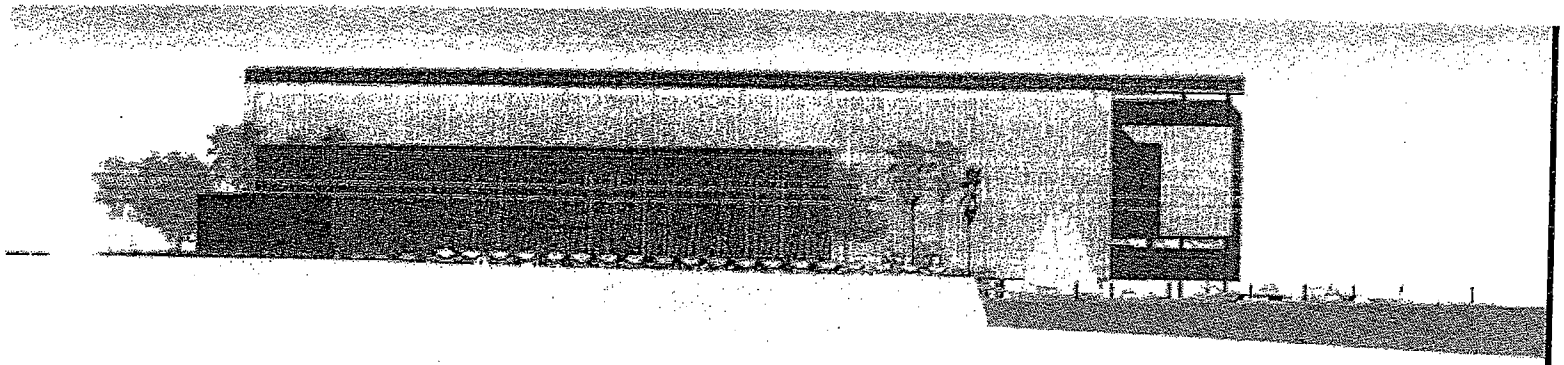
No Scale

Exhibit A-5
Parcels 52&GG – Rendering from Basin H Perspective

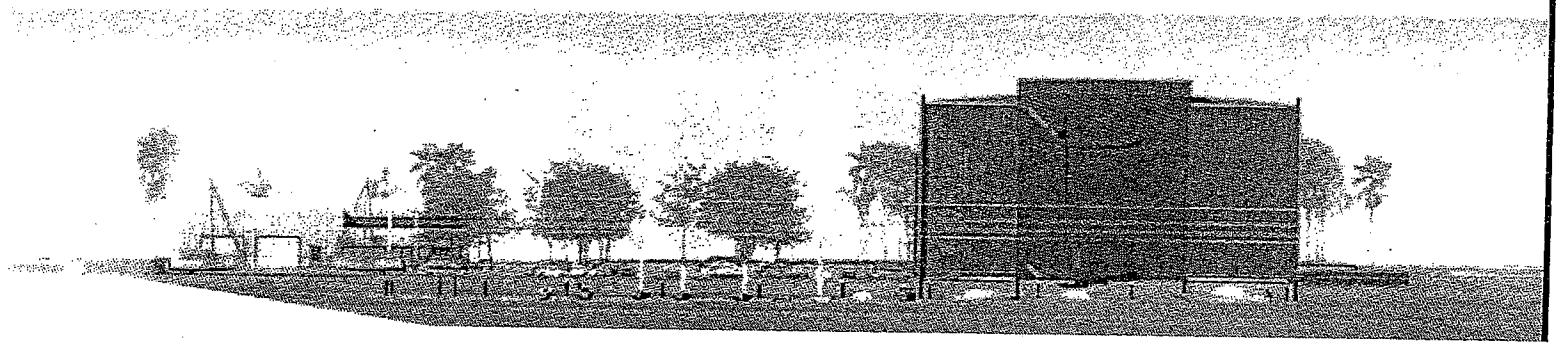


No Scale

Exhibit A-6
Parcels 52&GG – East & North Elevations

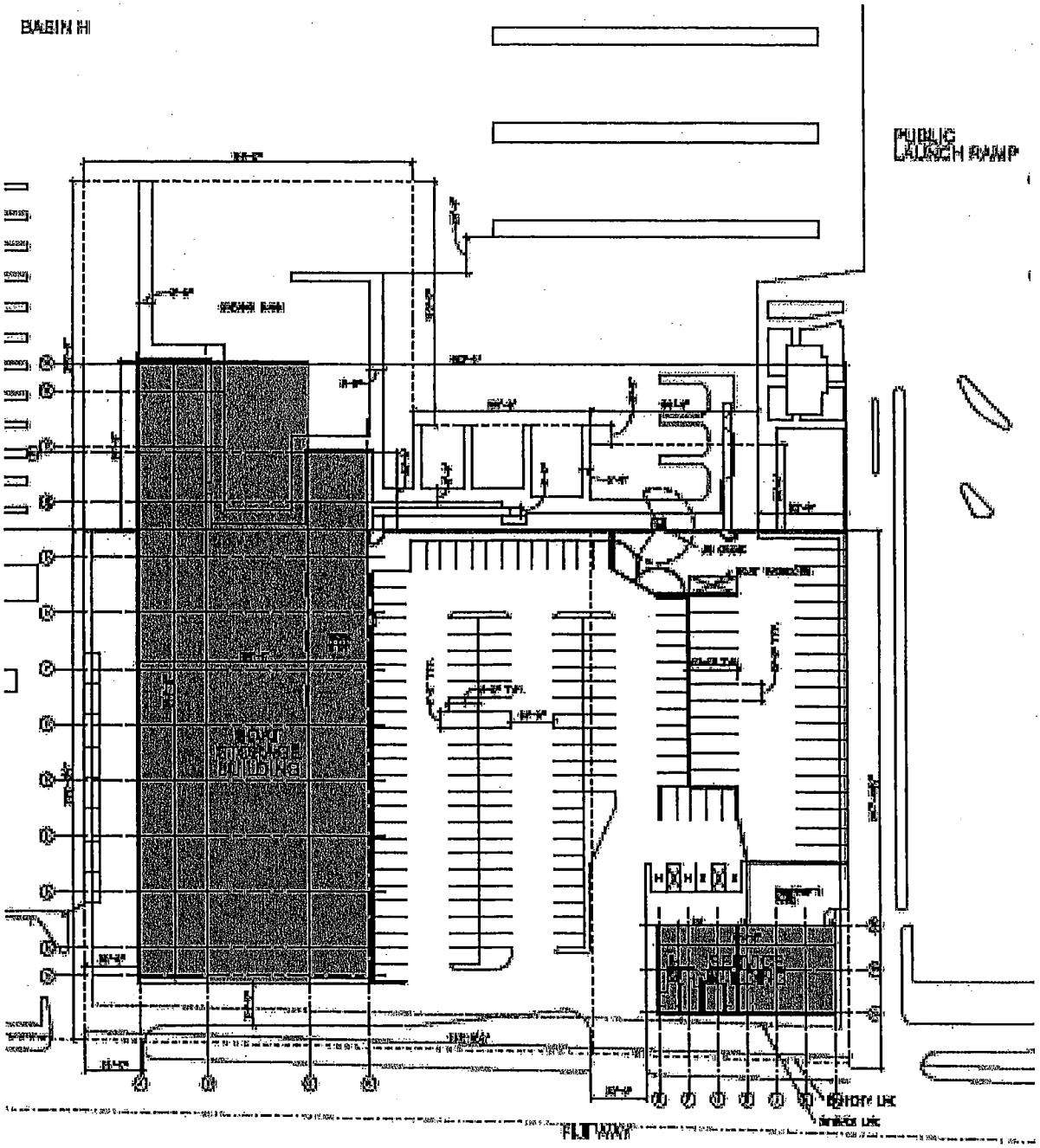


East Elevation



No Scale

Exhibit A-7
Parcels 52&GG – Site Plan – Dock Plan



No Scale

EXHIBIT C

ASSIGNMENT STANDARDS

These standards are to apply to proposed transactions requiring County's consent pursuant to Section 11.2 of the Lease. These standards and conditions are not to apply to (a) an assignment for the purpose of securing leasehold financing of the parcel by an encumbrance holder approved by County, (b) the transfer of the leasehold in connection with a foreclosure or transfer in lieu of foreclosure by an approved lender, or (c) the first transfer by that encumbrance holder if it has acquired the leasehold through a foreclosure or a transfer in lieu of foreclosure. Compliance with the following standards shall be determined by County in the exercise of its reasonable discretion.

1. The proposed lessee and Major Sublessee (if applicable) must have a net worth determined to be sufficient in relation to the financial obligations of the lessee under the Lease (or with respect to the portion of the Subleased Premises in the case of a Major Sublease), which net worth must be equal to at least six (6) times the total Annual Minimum Rent and Percentage Rent due to County under this Lease (or with respect to the Subleased Premises in the case of a Major Sublease) for the most recent fiscal year. A letter of credit, cash deposit, guarantee from a parent entity or participating individual(s) having sufficient net worth or similar security satisfactory to the County may be substituted for the net worth requirement. If the proposed transferee's net worth is materially less than the transferor's, County may disapprove the assignment or require additional security such as that described in the previous sentence.

2. The proposed lessee (or Major Sublessee, if applicable) must have significant experience in the construction (if contemplated), operation and management of the type(s) of Improvements existing on or to be constructed on the Premises (or on the portion of the proposed Subleased Premises in the case of a Major Sublease) or provide evidence of contractual arrangements for these services with providers of such services satisfactory to the County. Changes in the providers of such services and changes to the contractual arrangements must be approved by the County. All approvals of the County will not be unreasonably withheld or delayed.

3. The individual or individuals who will acquire Lessee's interest in this Lease or the Premises, or own the entity which will so acquire Lessee's interest, irrespective of the tier at which individual ownership is held, must be of good character and reputation and, in any event, shall have neither a history of, nor a reputation for: (1) discriminatory employment practices which violate any federal, state or local law; or (2) non-compliance with environmental laws, or any other legal requirements or formally adopted ordinances or policies of the County.

4. The price to be paid in connection with the transaction shall not result in a financing obligation which jeopardizes the Lessee's (or Major Sublessee's) ability to meet its rental obligations under the Lease or the Major Sublease. Market debt

service coverage ratios and leasehold financial performance, at the time of the Proposed Transfer, will be used by County in making this analysis.

5. If the proposed transferee is an entity, rather than an individual, the structure of the proposed transferee must be such that (or the assignee must agree that) the County will have reasonable approval rights regarding any future direct or indirect transfers of interests in the entity or the Lease as required under the Lease (excluding any Excluded Transfer); provided however, that a transfer of ownership of a publicly held parent corporation of Lessee that is not done primarily as a transfer of this leasehold will not be subject to County approval.

6. The terms of the proposed assignment will not detrimentally affect the efficient operation or management of the leasehold, the Premises or any Improvements thereon.

7. The proposed transferee does not have interests which, when aggregated with all other interests granted by County to such transferee, would violate any policy formally adopted by County restricting the economic concentration of interests granted in the Marina del Rey area, which is uniformly applicable to all Marina del Rey lessees.

8. The transfer otherwise complies with the terms of all ordinances, policies and/or other statements of objectives which are formally adopted by County and/or the County Department of Beaches and Harbors and which are uniformly applicable to persons or entities with rights of occupancy in any portion of Marina del Rey.

EXHIBIT D

CONDITIONS TO COASTAL DEVELOPMENT PERMIT

EXHIBIT E

WATER QUALITY MANAGEMENT REQUIREMENTS

To enrich lives through effective and caring service

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

Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

March 8, 2007

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director Stan

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

BOARD OF SUPERVISORS ACTIONS ON ITEMS RELATING TO MARINA DEL REY

In Closed Session on February 20, 2007, the Board provided instruction with respect to negotiations for a proposed lease with Woodfin Suites Hotel for Parcel 9U.

At its March 6, 2007 meeting, the Board held a de novo hearing with respect to an appeal of the Regional Planning Commission's approval of various permits and the Environmental Impact Report (EIR) that will allow for the demolition of the existing 202-unit Del Rey Shores and Del Rey Shore North apartment complexes and subsequent construction of a 544-unit apartment complex (consisting of twelve buildings) on Parcels 100 and 101. The Board unanimously voted to close the public hearing and approve the EIR and indicated its intent to approve the project when it returns for final consideration of the terms and conditions of the permits, which include detailed schematics of the buildings' elevations/articulation.

LOCAL COASTAL PROGRAM PERIODIC REVIEW – UPDATE

We were contacted at the beginning of March by Jack Ainsworth, Coastal Commission Deputy Director for the South Central Coast and South Coast District Offices, about setting up a meeting at the end of this month to discuss the Marina del Rey Local Coastal Program (LCP) periodic review. We have scheduled the meeting for March 29 and anticipate we will have a better sense after this meeting of when the matter will be scheduled for Coastal Commission consideration.

STATUS OF DREDGING PROJECT

With respect to the Marina del Rey north entrance dredging project that commenced on January 6, 2007, it is estimated that approximately 210,000 cubic meters have been dredged to date. The operation continues to proceed smoothly, although operations were curtailed at the end of February due to some mechanical

problems (since repaired) and strong swells. It is still expected that the anticipated 255,000 cubic meters will be removed by the time the project is completed on or about March 15, 2007. Even more material may end up being removed, depending upon how much additional clean sand drifts into the project area before its conclusion.

DESIGN CONTROL BOARD MINUTES

The minutes from the Design Control Board meeting for November 2006 are attached.

SW:ks

MINUTES
OF
MARINA DEL REY
DESIGN CONTROL BOARD

November 16, 2006

Department of Beaches and Harbors
Burton Chace County Park
Community Building – 13650 Mindanao Way
Marina del Rey, CA 90292

Members Present:	Susan Cloke, Chair, First District Katherine Spitz, ASLA, Vice-Chair, Third District David Abelar, Second District Peter Phinney, A.I.A., Fourth District
Members Absent:	Tony Wong, P.E., [Excused]
Department Staff Present:	Stan Wisniewski, Director Kerry Silverstrom, Chief Deputy Director Michael Fischer, Chief, Planning Division Chris Sellers, IT Technical Support Analyst Maureen Sterling, Acting Secretary
County Staff Present:	Tom Faughnan, Principal Deputy County Counsel Russ Fricano, Regional Planning Department
Guests Testifying:	Aaron Clark, Armbruster & Goldsmith, LLP Michael Pashaie, Golden West Properties Jack Hollander, Jack Hollander and Associates Laurie Pesce, Café Del Rey Frank Fronda, Café Del Rey Kevin Vasquez, Chandler Signs Nancy Vernon Marino, Marina del Rey Resident Carla Andrus, Marina del Rey Resident Daniel Christy, Marina del Rey Resident Andrea Daroca, Marina del Rey Resident Richard Young, County of Los Angeles Internal Services Division

1. **Call to Order, Action on Absences and Pledge of Allegiance**

Ms. Cloke called the meeting to order at 2:15 p.m. Mr. Phinney led the Pledge of Allegiance. Ms. Phinney (Spitz) moved to excuse Mr. Wong from the meeting. Ms. Cloke (Wong) moved to move Agenda Item 5A before Item 4B.

2. **Approval of Minutes**

Ms. Cloke suggested that on page 7, the word "diaphysis" be changed to "diaphanous".

Mr. Spitz (Phinney) moved to approve the minutes of August 31, 2006 as revised. [Unanimous consent]

Ms. Spitz suggested the following changes to the October 26, 2006 minutes: On the first line of page 10, change "the architect develop and shows prepared drawings" to "the architect develops and shows drawings". On number eight of page 10, change "authentic sustainable landscape is developed which extends the flora of adjacent wetlands" to "authentic sustainable landscape is developed".

Ms. Spitz expressed concern over the wording of item 10, concerning the possible installation of a tidal flow pipe under the Villa Venetia property. She was concerned that the wording may allow the applicant to just decide not to incorporate it.

Mr. Faughnan stated the minutes could not be reworded.

Public Comments

Ms. Marino felt the minutes were not very reflective of what the public had said.

Ms. Andrus asked about a letter submitted with the minutes.

Ms. Cloke replied that the letter was available on the public table in the back of the room as part of the revised minutes, and was distributed the night of the meeting.

Ms. Andrus asked if this was the proper time to make a suggestion about the minutes.

Ms. Cloke stated that how the minutes are kept was not on the agenda, but that if Ms. Andrus was misquoted, it would be corrected.

Board Comments

Mr. Phinney suggested asking staff to revise the October minutes and to listen carefully to the motion section, especially in regard to Item 4A approval condition #10, and to try to get a direct quotation from the tape.

Mr. Phinney (Spitz) moved to continue the minutes of October 26, 2006 until Staff could revise Item 4A approval condition #10 by giving a direct quotation from the tape [Ms. Cloke abstained]

3. Design Control Board Reviews

A. Parcels 111/112 – Marina Harbor –DCB #06-010-C

Approval of the record of the DCB's August 30, 2006 action for conditional approval of further renovations.

Mr. Phinney (Abelar) moved to approve DCB #06-010-C as submitted. [Unanimous consent]

Ms. Cloke requested the minutes reflect that Mr. Wisniewski had arrived and Ms. Siverstrom had left.

B. Parcel 64 – Villa Venetia – DCB #06-015

Approval of the record of the DCB's October 26, 2006 action for conditional approval of redevelopment.

Ms. Spitz (Phinney) made a move to approve DCB #06-015 as submitted.

Ms. Cloke asked Mr. Faughnan for a comment about the tidal flow pipe.

Mr. Faughnan replied back that he thought that was about to be clarified.

Ms. Cloke stated she wasn't at the last meeting, but thought there should be further discussion if the inclusion of a tidal flow pipe would alter the plans.

Mr. Faughnan stated that he thought the intention was to return to the Design Control Board.

Ms. Spitz asked if it would return anyway.

Mr. Faughnan replied it would return to the Board, and that if there were a tidal flow pipe to be installed on the parcel, it would be included on the project plans.

Ms. Cloke asked Mr. Faughnan if he had the language.

Mr. Faughan suggested taking out "feasible" and inserting "is to be installed on the parcel".

Mr. Phinney expressed concerns over the possible tidal flow pipe, the letter from the Department of Fish and Game and the argument about the habitat. He had concerns

about allowing the installation of the pipe to be at the discretion of the applicant and expressed thoughts about having the tape reviewed.

Mr. Faughnan replied that he didn't believe that it was within the jurisdiction of the Board to require a pipe.

Mr. Abelar didn't believe that the Board was "requiring" it. He felt that if it had to go in the project, it would be included in the project plans.

Mr. Faughnan replied that although the pipe may go through the parcel, it is technically not a part of the project. However, as it may impact the residential project, it should be included in the plans if it is indeed to be installed.

Ms. Spitz said that she might need to hear the tape again. She felt that at the last meeting, the applicant was asked if they could include the pipe it in the project plans if it was deemed feasible. She felt the minutes could not be approved without clarification from the tape.

Mr. Wisniewski said staff would will bring the tape to be played later in the meeting.

4. Old Business

A. Parcel 131 - Café Del Rey – DCB #06-019

Further consideration of signage

Mr. Fischer gave a brief overview of the project.

Ms. Cloke commented that the previous signs appeared to be the work of George Nelson, a famous designer from the sixties, and felt they might have historical significance.

Mr. Wisniewski apologized and said the chances are not good of the Department records going back fifteen years.

Ms. Pesce and Mr. Fronda gave an overview of their new sign design and explained the existing signs are full of dry rot and termite damage and need to be replaced.

Board Comments

Ms. Cloke expressed that she would like to come to a compromise and somehow keep the existing sign.

Ms. Pesce stated that while the sign may be viewed as playful and fun, it is also illegible and she has found that many patrons have had difficulty reading the sign from the street.

Mr. Young suggested the Museum of Neon Art as a place where the applicant may be able to donate the sign.

Mr. Phinney commented the new sign does not have the same playfulness and narrative as the old sign, and if the museum could not take the signs he would like to see staff document them before their removal with photographs and drawings, and also save a couple of the sign's letters.

Ms. Spitz expressed that she and the rest of the Board were sad to see the old sign go.

Mr. Phinney suggested the signs be stored for thirty days for consideration.

Mr. Wisniewski said the signs would be stored for thirty days.

Ms. Cloke (Spitz) moved to approve DCB #06-019 with the following conditions:

1) **Applicant is to contact the Museum of Neon Art (MONA) to determine if they will accept the existing wall sign as a donation. (Applicant has agreed to provide support to MONA to assist them in taking it);**
2) **Applicant is to store the existing monument sign cabinets until the MONA acceptance issue is resolved;**
3) **Removal of the existing deteriorated monument signs may proceed; and**
4) **Applicant is to obtain further approval from the Department of Regional Planning.**

[Unanimous consent]

5. New Business

A. Parcels 95 & LLS - Marina Gateway - DCB #06-022

Consideration of redevelopment project

Mr. Fischer gave a brief overview of the project.

Mr. Hollander gave an overview of the project, explaining Buildings A, B and C in greater detail.

Board Comments

Mr. Phinney said he would prefer to have the applicant change the reflective glass building to look more like the other building. He also had concerns about the scale of the fountain, and suggested using handcrafted tile.

Ms. Spitz concurred with Mr. Phinney's remarks regarding the fountain. She felt the landscape plans looked good, but that the reflective glass on the building was out of character.

Mr. Abelar inquired how much free parking would be available for visitors.

Mr. Pashaie replied there would be free parking for everyone coming into the building.

Ms. Cloke asked about the alley width and the rear elevation.

Mr. Pashaie replied the alley width was 20 feet, and there was an additional eight feet to the building length. The rear entrance would be the same as the front.

Ms. Cloke suggested changing the glass and bringing everything down to a residential scale. She felt the park was too rigid with its formal planters and raised platform area for concerts. She suggested a grassy hill where the public could have picnic lunches with trees and an amphitheater.

Mr. Clark stated for the record this project required no LCP amendment or variances of any type.

Mr. Pashaie thanked the Board for their constructive criticism, claiming the project was much better now than two months ago.

Public Comment

Ms. Andrus said the project was a massive development that was turning away from being a Marina and creating more of a "city", but without city services like a gas station, daycare, senior center and funeral home. She said this would create traffic issues, as people would have to go outside the Marina for such services. She said she would like to see a transcript of the Department of Regional Planning records that suggested the residential change to the project

Mr. Wisniewski informed that Ms. Andrus that she could request such from the Department of Regional Planning.

Ms. Andrus said the park did not have enough open space, and affordable housing needs should be addressed.

Ms. Marino wanted to know if the residents of Venice had been notified about this project. She objected to such a large community structure within the Marina, stating that parcels 95 and 97 did not match visually.

Ms. Daroca asked if the developer or the taxpayer would have the future maintenance responsibility of the park. She was concerned about the number of parking spaces and would like to see lighted parking strips. She was also concerned about the impact the Marina Gateway development would have on the surrounding residential areas.

Ms. Cloke asked if Ms. Daroca was talking about where Via Marina became Ocean Avenue.

Ms. Daroca replied yes.

Ms. Cloke asked Ms. Daroca if it was her suggestion to have a crosswalk between where the proposed park would be and the tailor shop on the other side of Washington Blvd.

Ms. Daroca replied that all of the crosswalks at that corner were treacherous because there were some many lanes of traffic.

Mr. Christy was concerned that the project would create a "tunnel" between itself and the Archstone development on adjacent Parcel 103. He said he did not want it to look like Manhattan.

Mr. Clark said he would be happy to get the findings for Ms. Andrus on the Regional Planning Commission decision. He said the project would comply with the evolving affordable housing policy for Marina del Rey, and that a traffic study would be done for the project. He stated the developer would maintain the park, pursuant to the lease. He said the Coastal Commission, Regional Planning Commission and the Board of Supervisors set forth the regulatory framework for a building envelope for the parcel, and the setbacks are consistent with the LCP.

Mr. Hollander pointed out the landscaping buffer between the buildings.

Board Comments

Ms. Spitz said the developer might ask the landscape architect to review the plants in the alley planters, because they are very small and she is unsure if they are tough enough for the planter conditions. She suggested changing to taller plants.

Ms. Cloke suggested moving more towards canopy trees than to palm trees. She also suggested a street-crossing signal similar to what is used in Beverly Hills.

Mr. Clark stated they would have to check on that because it would involve the Department of Transportation and the Department of Public Works.

Ms. Spitz suggested curb extensions.

Mr. Wisniewski suggested possible countdown clocks similar to the ones in use at Westwood Blvd. and Wilshire Blvd.

Ms. Cloke (Spitz) moved to approve DCB #06-022 with the following conditions:

1) **Examine the scale for consistency with the existing neighborhood commercial and residential scale;**
2) **Eliminate the use of reflective glass;**
3) **Examine the use of mullions or other architectural devices to reduce the massing of the glass;**
4) **Reduce the height and scale of fountains and other decorative elements to be consistent to residential scale;**
5) **Consider tile murals to break wall expanses;**
6) **Examine cornice and roof details and building materials for consistency with the neighborhood and commercial residential scale;**
7) **Reduce the use of palm trees;**
8) **Increase the use of canopy trees;**
9) **Emphasize the use of native plant materials;**
10) **Increase the size of the plant material in the alley planter boxes and select plant materials for vertical growth;**
11) **Design the park to reflect the neighborhood scale and emphasize residential and multi-use design in the park;**
12) **Emphasize use of natural materials in the park; and**
13) **Examine the intersection of Via Marina and Ocean Avenue to design increased pedestrian and vehicular safety.**

[Unanimous consent]

Mr. Wisniewski advised Ms. Spitz that staff had the tape of the October 26th meeting ready for her to listen to.

After listening to the meeting tape, Ms. Spitz stated the correct language for Item 4A approval condition #10 should be as follows:

"That if the Department of Fish and Game considers a tidal pipe feasible, it is to be included in the plans."

Ms. Cloke asked Ms. Spitz if she remembered who seconded this motion.

Ms. Spitz indicated that Mr. Phinney had.

Ms. Cloke asked Mr. Phinney if he agreed to the revised condition language.

Mr. Phinney agreed.

Ms. Cloke stated the October 26th minutes had been amended.

Ms. Cloke (Abler) moved to approve the minutes of October 26, 2006 as modified. [Unanimous consent]

Ms. Cloke stated that she understood there was a letter addressing the Board's Parcel 64 environmental concerns going from the Board of Supervisors to Regional Planning.

Mr. Phinney replied the letter had not been drafted.

Ms. Spitz stated that she would start the letter and work with Mr. Phinney, and then pass it on to Mr. Abelar.

Ms. Cloke asked Mr. Wisniewski for a date when the letter should be forward to Regional Planning.

Mr. Wisniewski said anytime within the next thirty to forty five days would be appropriate and asked what was being put on the record.

Mr. Phinney replied the Board felt strongly about some of the issues of this particular project. He asked that if he and Ms. Spitz worked on the letter over the course of the next two weeks, would it make the December 28th Agenda.

Mr. Wisniewski asked Mr. Faughnan if the letter had to be agendized.

Mr. Faughnan replied yes, if the entire Board wanted the letter on the Agenda.

Mr. Phinney replied that he expected members of the public would like to see the letter too.

Mr. Wisniewski said that the Department would make sure the letter was on the next Agenda.

Mr. Fischer asked the Board what month would they like the letter on the agenda.

Ms. Cloke said in December if there would be a meeting then, January if not.

4. Old Business

B. Parcel 19 (20) – New Department Administration Building - DCB #06-004
Further consideration of a new Department Administration Building to be constructed on a portion of Parcel 20 (to be known as Parcel 19)

Mr. Fischer gave a brief overview of the project.

Ms. Spitz asked how the Department planned to structure the design build.

Mr. Wisniewski replied the Chief Administrative Office staff gives the template for that and it can certainly be shared with the Board. Mr. Wisniewski suggested putting that on a later agenda before it was released.

Ms. Cloke stated she had a basic problem with using waterfront property for parking, and she would rather see housing on the water.

Mr. Wisniewski described the proposed parking garage to Ms. Cloke.

Ms. Cloke suggested a public workshop forum to discuss the matter, instead of a formal application.

Mr. Wisniewski replied that an idea advanced by Mr. Phinney yesterday at the public meeting for the Chace Park Master Plan suggested that perhaps the building be sited here in Marina del Rey, possibly at Chace Park.

Mr. Wisniewski said he was opposed to that suggestion, and wanted to keep Chace Park as recreational use. He said a number of other alternative locations for the facility had been considered, but unfortunately there just wasn't another place for it.

Ms. Cloke asked about the possibility of using Admiralty Park.

Mr. Wisniewski replied he did not want to displace existing park space.

Ms. Cloke replied that part of that area was a parking lot, and again suggested having a workshop to help sort out possible locations.

Mr. Wisniewski said that the Department would put a workshop on the next DCB agenda.

Ms. Cloke asked if the item could actually be a portion of the agenda.

Mr. Wisniewski answered that if the Board meant to set it aside as a workshop, the meeting could adjourn into the workshop.

Mr. Phinney commented it would be much like the recent Burton Chace Park workshop. He also commented that just an outpost for the Department could be considered for Chace Park, making it clear he was not speaking about an office building, since he also felt the park should be preserved for open space.

Public Comment

Ms. Andrus stated the proposal was outrageous, as the Pacific Mariner's Yacht Club would be displaced. She said that housing public services on waterfront property

would send a poor message, and suggested the Trizec building on Parcel 76 as a possible alternative.

Ms. Daroca asked if the County needed so much funding for general services, then why was valuable waterfront property being considered for County workers. She was angry that County workers could potentially be housed in what she called a "Taj Mahal with a view".

Ms. Marino asked what kind of community outreach would be done for the workshop and what kind of advance notice would be given. She requested a 30-day notice for any such workshop, and wanted all County residents to be made aware of it.

Ms. Cloke asked Mr. Wisniewski for guidance regarding scheduling for the workshop.

After discussion with the Board, Mr. Wisniewski decided to cancel the December meeting and have an evening meeting on January 25th with a workshop afterwards.

6. Staff Reports

All reports were received and noted.

Public Comment

Ms. Marino asked for current development status to be added to the Redevelopment Project Status Report.

Ms. Cloke informed Ms. Marino that she should address that concern to Mr. Wisniewski.

Mr. Wisniewski said that Mr. Fischer would be happy to speak to with after the meeting.

7. Comments from the Public

Ms. Marino stated that on Monday, November 20th the Regional Planning Commission was scheduled to meet at 9:00 a.m., and on their agenda was the LCP amendment to strip the Design Control Board of their conceptional review authority. She mentioned that she liked having a commission that was specifically focused on Marina del Rey review. She wanted to remind everyone of Mr. Patrick Conarpe's memorial service at Chace Park the following morning. She also asked the Board to please require that all parking be on site for any future redevelopment projects.

Ms. Andrus said she believed the minutes needed to be more comprehensive.

Ms. Cloke closed Public Comment.

Mr. Wisniewski clarified with Ms. Cloke that the January 25, 2006 DCB meeting would be at 6:30 p.m.

Ms. Cloke agreed that all other meeting dates on the proposed 2007 DCB meeting calendar would remain the same.

Ms. Spitz mentioned that if it was difficult for someone to make it to a public hearing, that they could always submit comments in writing and have them be made a part of the record.

Ms. Cloke asked if staff could tell her if the item that was on the Regional Planning Agenda was the same item that was in front of the Board of Supervisors.

Mr. Faughnan explained that Regional Planning, after direction under the Board of Supervisors, prepared the actual proposed amendment to the LCP and LEP consistent with the Board amendment motion.

Ms. Cloke asked Mr. Faughnan to e-mail the information to the Board members.

Mr. Faughnan replied that he did not have the Regional Planning staff report but that he would try to find it and e-mail the information to them.

Ms. Cloke asked for a minute of silence in memory of Mr. Conarpe.

8. Adjournment

Meeting adjourned at 5:45 p.m.

Respectfully Submitted,

Maureen Sterling
Acting Secretary for the Design Control Board

"To enrich lives through effective and caring service"

Los Angeles County Beaches & Harbors
Caring for Your Coast

Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

March 8, 2007

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director Stan

SUBJECT: **ITEM 6b – PUBLIC REQUEST FOR INFORMATION**

Small Craft Harbor Commission Mission Statement

Attached please find portions of the County Code relating directly to the Small Craft Harbor Commission. Note section 2.116.100 in particular for information about the Commission's power and duties.

Parcel 20 (Capri Apartments) Covenant for Affordable Housing

During the February 14, 2007 Small Craft Harbor Commission meeting, your Commission asked that I report back on the status of Capri Apartment's covenant for affordable housing. I am pleased to attach the covenant, now fully executed by all parties.

SW:PW:ks
Attachments (2)

13837 Fiji Way • Marina del Rey • CA 90292 • 310.305.9503 • fax 310.821.6345 • internet: http://beaches.co.la.ca.us

2.116.030 Small craft harbor commission--Continued.

The beaches and harbors commission is continued and renamed the small craft harbor commission, referred to in this chapter as the "commission." (Ord. 90-0086 § 6(a), 1990: Ord. 82-0112 § 12 (part), 1982; Ord. 9840 § 1 (part), 1969: Ord. 8076 § 1 (part), 1961: Ord. 4099 Art. 27 § 393, 1942.)

2.116.040 Small craft harbor commission--Qualifications.

Only those persons who are well qualified by training and experience in one or more of the following fields of activity shall be eligible for appointment to membership on the commission:
A. Corporate or governmental finance and investment;
B. Commercial or governmental construction;
C. Real property management;
D. Recreational harbor or port planning, management or operation;
E. Public or private corporate executive management. (Ord. 8076 § 1 (part), 1961: Ord. 4099 Art. 27 § 395, 1942.)

2.116.050 Small craft harbor commission--Composition.

A. The commission shall have five positions. A member of the commission shall be appointed to a vacant position by, and serve at the pleasure of, the board of supervisors, which shall be referred to in this chapter as the "board." Members of the commission shall be residents of Los Angeles County and shall have the qualifications stated in Section 2.116.040.
B. Each person who is a member of the commission on the effective date of this section shall serve at the pleasure of the board for the remainder of his or her term of three years. (Ord. 90-0086 § 6(b), 1990: Ord. 9840 § 1 (part), 1969: Ord. 8355 § 11, 1963: Ord. 8076 § 1 (part), 1961: Ord. 4099 Art. 27 § 394, 1942.)

2.116.060 Small craft harbor commission--Organization--Rules and regulations.

The commission shall elect a chairman and secretary from the members thereof, each of whom shall serve for one year and thereafter until his successor is elected. The commission may prepare and adopt, subject to the approval of the board of supervisors, rules and regulations for the internal government of its business, and shall designate the time and place of holding its meetings. (Ord. 8076 § 1 (part), 1961: Ord. 4099 Art. 27 § 398, 1942.)

2.116.070 Small craft harbor commission--Length of service--Vacancy.

The provisions of this section shall become applicable to a position on the commission at the expiration of the term of the member occupying that position on the effective date of the amendment codified in this section.
A. Each member of the commission shall serve at the pleasure of the board. Each position on the commission shall become vacant every four years from the date this amended section becomes applicable to each position.
B. No member of the commission may serve more than two consecutive full periods of service as specified in subsection A of this section. The board may, by order, extend this length of service or waive this limit for individuals or the commission as a whole.
C. A member's position on the commission shall become vacant upon his or her death, resignation, or removal by the board. In the case of such a vacancy, the board shall appoint a successor to serve until the position next becomes vacant under subsection A of this section.
D. The provisions of Chapter 5.12 of the County Code shall not apply to the commission. (Ord. 90-0086 § 6(c), 1990: Ord. 8076 § 1 (part), 1961: Ord. 4099 Art. 27 § 396, 1942.)

2.116.080 Small craft harbor commission--One-member meetings.

The commission may hold meetings herein designated as "one-member meetings" at which one member only shall constitute a quorum, and if but one member is present he may act. At such a one-member meeting, the member may sit as a hearing officer at hearings called and advertised by the commission and transmit his findings and recommendations to the commission. The commission may not transact any other business or take any other action of any kind at a one-member meeting. Such a one-member meeting shall be deemed a meeting as the word "meeting" is used in Section 2.116.090 and in Section 614 of Ordinance 6222, entitled "salary ordinance of the county of Los Angeles," adopted May 28, 1953, set out in Title 6 of this code. (Ord. 9453 § 1, 1967: Ord. 4099 Art. 27 § 396.5, 1942.)

2.116.090 Small craft harbor commission--Compensation.

Each member of the commission shall be paid $25.00 for each meeting of the commission actually attended by him, provided that no member of the commission shall be compensated for attendance at more than 52 meetings in any one calendar year. The members of the commission shall also be reimbursed for their actual and necessary traveling expenses when they are required to travel in the performance of their duties, including transportation, meals and lodging in accordance with the applicable provisions of Ordinance 4099. (Ord. 8382 § 1, 1963; Ord. 8076 § 1 (part), 1961: Ord. 4099 Art. 27 § 397, 1942.)

2.116.100 Small craft harbor commission--Powers and duties.

The commission shall consider and from time to time make recommendations to the director of the department of beaches and harbors and to the board of supervisors upon the following:
A. The policies and procedures of the department and the board for the planning, financing and development of small craft harbor and recreational areas, including the small craft harbor and recreational area at Playa del Rey known as the Marina del Rey;
B. The policies and procedures of the department and the board for the management and operation of small craft harbor properties, including leasing policies and procedures, the necessity and procedure for renegotiation of small craft harbor rentals, and similar matters affecting the leasing and the public use of small craft harbor properties;
C. The adequacy of rules and regulations established for the operation of small craft harbor areas, including operation and navigation of boats and public use of facilities therein;
D. Upon request of the board of supervisors, make recommendations concerning the minimum and maximum prices to be charged by small craft harbor lessees and concessionaires for goods or services supplied to the public;
E. Such other matters as may be requested by the board or the department. (Ord. 90-0086 § 6 (d), 1990: Ord. 82-0112 § 12 (part), 1982; Ord. 8076 § 1 (part), 1961: Ord. 4099 Art. 27 § 399, 1942.)

2.116.105 Sunset review date.

The sunset review date for the small craft harbor commission shall be December 31, 2009. (Ord. 2005-0035 § 1, 2005: Ord. 2001-0047 § 1, 2001.)

RECORDING REQUESTED BY AND

AFTER RECORDATION, MAIL TO:
COMMUNITY DEVELOPMENT COMMISSION
COUNTY OF LOS ANGELES
Two Coral Circle
Monterey Park, CA 91755-7425
Attn.: Director of Housing
Development and Preservation

(Space Above Line for Recorder's use)

This Agreement is recorded at the request and for the benefit of the Community Development Commission of the County of Los Angeles and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS AGREEMENT CONTAINING COVENANTS, CONDITIONS, AND RESTRICTIONS ("**Covenant and Agreement**") is executed as of the day of February, 2007, by and between the COMMUNITY DEVELOPMENT COMMISSION of the County of Los Angeles, a public body corporate and politic (**"CDC"**), the COUNTY OF LOS ANGELES by and through THE DEPARTMENT OF REGIONAL PLANNING, a public body corporate and politic (**"DRP"**), and by and through THE DEPARTMENT OF BEACHES AND HARBORS (**"BH"**), and PANAY WAY MARINA, L.P., a California Limited Partnership, (**"Lessee"**), with reference to the following:

A. Lessee leases from the County of Los Angles ("County") certain real property located within the unincorporated area of the County of Los Angeles, commonly known as 13953 Panay Way, or "Parcel 20," Marina del Rey, and more specifically described in **Exhibit "A"** attached hereto and hereby made a part hereof (the "**Site**").

B. The Regional Planning Commission for the County of Los Angeles approved Coastal Development and Conditional Use Permit Nos. 98-172-(4) on October 2, 2000 and adopted by the Board of Supervisor on January 23, 2001, to authorize the Lessee's demolition of all existing improvements on the Site and the subsequent construction, use and maintenance of a 99-unit apartment building and commercial building consisting of professional office spaces and a yacht club with appurtenant facilities (the "**Project**").

C. A condition of the Project requires the Lessee to enter into a joint covenant and agreement with CDC, DRP, and BH stipulating that Parcel 20 of the development, comprised of 99 rental units, shall designate 10 units for low-income tenants. All designated units shall be reserved for low-income tenants, as defined herein ("**Eligible Tenants**"), for the life of the ground lease.

NOW THEREFORE, pursuant to and in consideration of, the approval of the Project Permit by the Regional Planning Commission of the County of Los Angeles, and in accordance with Government Code Section 65590, it is hereby promised, covenanted and agreed to as follows:

ARTICLE 1. DEFINITIONS

1.1 "**Renter**" means an Eligible Tenant who rents a Designated Unit, and who intends to occupy said unit as a principal residence. For the purposes of this document, an Eligible Tenant shall be a Low-Income Person or Household.

1.2 "**Low-Income Person or Household**" shall mean persons or families whose gross annual household incomes do not exceed eighty percent (80%) of Area Median Income, adjusted for family size and other adjustment factors by the United States Department of Housing and Urban Development.

1.3 "**Household Income**" means the current adjusted gross income, as calculated for Federal Income Tax purposes, of a Low-Income Person or Household who is a Renter of a Designated Unit, and includes the adjusted gross income similarly calculated of all other persons who intend to reside permanently within the household.

1.4 "**Affordable Rent**" means, as to each Eligible Tenant, a rental rate which results in monthly payments which, including a utility allowance periodically established by the Housing Authority of the County of Los Angeles, does not exceed, for a Low-Income Person or Household, the product of thirty percent (30%) times sixty percent (60%) of the Area Median Income adjusted for family size appropriate to the Designated Unit, as determined annually by the State of California Department of Housing and Community Development.

Except to the extent "grandfathered" or otherwise exempted by state law, the foregoing definition of "Affordable Rent" shall be deemed amended to correspond with future amendments of the definition of "affordable rent" in California Health and Safety Code Section 50053 and supplementing regulations.

1.5 "**Area Median Income**" or "**AMI**" means the median income for Los Angeles/Long Beach Metropolitan Statistical Area as adjusted for family size and defined by the United States Department of Housing and Urban Development ("HUD"), or any successor entity designated under state law as responsible for establishing such "Area Median Income."

1.6 "**Designated Unit**" means five (5) Two-Bedroom Units and five (5) One-Bedroom Units in the 99-unit apartment building located on the Project Site.

ARTICLE 2. RENTAL PROVISIONS

2.1 **Limitations on Tenants.** Notwithstanding anything to the contrary in this Agreement, Lessee hereby covenants on behalf of itself, and its successors and assigns, which covenant shall run with the land and bind every successor and assign in

interest of Lessee, that, throughout the life of the ground lease, Lessee and such successors and assigns shall use the Site solely for the purpose of developing and operating the Project, which shall be operated in accordance with the terms of this Agreement.

A total of ten (10) Designated Units of the proposed 99 units in the Project shall be income-restricted and rented only at an Affordable Rent and exclusively to a Low-Income Person or Household as defined herein.

The unit composition/bedroom mix of the Project's 10 Designated Units shall be as follows: five (5) One-Bedroom Units and five (5) Two-Bedroom Units. The 10 Designated Units shall be dispersed throughout the Project and shall be compatible with the exterior design of the Project's market rate units in terms of appearance, materials and finished quality.

Lessee shall specifically provide in each Designated Unit lease, and shall strictly enforce the requirement, that each Designated Unit be occupied at all times by the eligible household who has leased that Designated Unit, and that any other occupant of the unit be another qualified member of the eligible household. CDC shall be identified as a third party beneficiary of that covenant and shall have the right to directly enforce that restriction in the event Lessee fails to do so. Prior to execution of any Designated Unit lease with respect to the Project, Lessee shall submit to CDC, and obtain its written approval of, a standard form occupancy lease and Lessee shall thereafter use the approved form for all leases of Designated Units in the Project, with only such further modifications thereto as are first submitted to and approved in writing by CDC.

2.2 Tenant Selection Process; Reports and Records Concerning Tenancies. Lessee shall carry out an affirmative marketing program to attract prospective tenants of all minority and non-minority groups in the housing market area regardless of race, color, religion, gender, marital status, sexual orientation, age, national origin, ancestry, or familial status. The affirmative marketing program should ensure that any group(s) of persons not likely to apply for the housing without special outreach efforts (because of existing neighborhood racial or ethnic patterns, location of the housing, or other factors), know about the housing, feel welcome to apply and have the opportunity to rent.

Lessee shall maintain such records and satisfy such reporting requirements as may be reasonably imposed by CDC to monitor compliance with the tenanting requirements described in Section 2.1 above, including without limitation, the requirement that Lessee deliver reports to CDC commencing at the close of the first full calendar year following the date of the initial occupancy of the Project, and continuing annually thereafter, setting forth the name of each tenant, the unit occupied and the income of the tenant and the amount of rent payable by each tenant. Lessee shall also be required to have each prospective tenant complete a rental application prior to occupancy and to obtain evidence from each such tenant as may be reasonably required by CDC to certify such tenant's qualification for

occupancy of the Project. Lessee's obligation to provide such reports shall remain in force and effect for the same duration as the use covenants set forth in this Article 2.

2.3 Monitoring. Lessee shall enter into a separate agreement with CDC to pay an annual fee of $125.00 per Designated Unit (adjusted annually at the end of each calendar year after the date of recordation of this document in accord with the changes in the year-end value of the Consumer Price Index published by the U.S. Bureau of Labor Statistics for the Los Angeles-Riverside-Orange County Area) to defray costs of ongoing compliance inspection and reporting regarding the on-site affordable units.

ARTICLE 3. DISCRIMINATION

3.1 Lessee's Obligation to Refrain From Discrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, gender, marital status, sexual orientation, age, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall Lessee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Site or any portion thereof. The nondiscrimination and nonsegregation covenants set forth herein shall remain in effect in perpetuity.

Lessee shall refrain from restricting the rental or lease of the Site or any portion thereof on the basis of race, color, creed, religion, gender, marital status, sexual orientation, age, national origin, or ancestry of any person. All such leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In leases: "The lessee herein covenants by and for himself or herself, and his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, gender, age, sexual orientation, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."; and

(b) In contracts: "There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, gender, marital status, sexual orientation, age, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the parties to this contract or any person claiming under or through them, establish or permit any such practice or practices of discrimination or segregation with reference to the

selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the premises."

Nothing in this Paragraph shall be construed or understood to limit, restrict or in any way waive the income requirements described in this Agreement.

ARTICLE 4. SUCCESSORS IN INTEREST

4.1 Covenants Run With the Land; Duration of Covenants. The covenants and agreements established in this Agreement shall be covenants running with the land and shall, without regard to technical classification and designation, be binding on Lessee and any successor in interest to Lessee's interest in the Site, or any part thereof, for the benefit of and in favor of CDC and its successors and assigns. The covenants of this Agreement shall remain in effect through the term of this Agreement.

The Designated Units and the maintenance thereof touch and concern the Site and inure to the benefit of any and all present or successive lessees of the Site. Therefore, whenever the word "lessee" is used herein, it shall include the Lessee as of date of execution of this Agreement, and any and all successor lessees or assigns of the Site, and the provisions hereof are expressly binding upon all such successive lessees and assigns and the parties agree all such provisions shall run with the land. CDC shall cause a fully executed copy of this Covenant and Agreement to be recorded in the Office of the Los Angeles County Recorder. This Covenant and Agreement and all benefits and burdens associated with it, shall remain in full force and effect for the entire life of Lessee's ground lease with the County.

ARTICLE 5. MISCELLANEOUS

5.1 Enforcement. In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that CDC shall be deemed the beneficiary of the terms and provisions of this Agreement and of the restrictions and covenants running with the land for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit the covenants running with the land have been provided. Each covenant of Lessee, shall, without regard to technical classification and designation, inure to the benefit of the successors, transferees and assigns of CDC for the entire period during which such covenants shall be in force and effect, and shall be binding upon the successors, transferees and assigns of Lessee, whether by merger, consolidation, sale, transfer, liquidation or otherwise. The covenants herein running with the land shall also be equitable servitudes upon the Site and each part thereof and shall bind each and every person having any interest in the Site or part thereof, whether such interest is fee, easement, leasehold, beneficial or otherwise, and each successor or assign of such person having any such interest in the Site or part thereof. CDC shall have the right, if any of the covenants set forth in this Agreement which are provided for its benefit are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or

other proper proceedings to enforce the curing of such breach to which it may be entitled. In the event that suit is brought for the enforcement of this Agreement or as the result of any alleged breach hereof, the prevailing party or parties in such suit shall be entitled to recover their reasonable attorneys' fees from the losing party or parties, and any judgment or decree rendered in such proceedings shall include an award thereof. Except for the County, and any of its agencies and/or departments, the covenants and restrictions contained in this Covenant and Agreement shall not benefit or be enforceable by any owner of any other real property or any person or entity having any interest in any such other real property.

5.2 Monitoring. The Lessee shall provide the following documents to the Director of Planning and the Director of the Los Angeles County Community Development Commission on an annual basis:

- Annual Lessee's Tenant Certification Form
- List of leased or occupied Designated Units with their location and unit type
- Exhibit depicting the unit location of the Project's 10 Designated Units
- Proof of compliance with Affirmative Marketing efforts
- Summary of Applicants

5.3 Default. Failure or delay by the Lessee to perform any term or provision of this Covenant and Agreement constitutes a default under this Covenant and Agreement. The County, or any of its agencies and/or departments, shall give written notice of the default to the Lessee in accordance with Section 5.11 hereof. The Lessee shall no longer be in default if the Lessee cures such default within thirty (30) days after receiving the Default Notice; provided, however, that if such default cannot be reasonably cured within such thirty (30) day period, the Lessee shall be given such longer period as reasonably necessary (which shall be as reasonably determined by the County, CDC, or any other interested County department or agency) and the Lessee shall no longer be in default if it commences to cure such default within such thirty (30) day period and completes such cure with reasonable and due diligence.

The waiver by one party of the performance of any covenant, condition, or promise shall not invalidate this Covenant and Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise hereunder. The exercise of any remedy shall not preclude the exercise of other remedies CDC or Lessee may have at law or at equity.

5.4 Modification. This Covenant and Agreement may be modified only by subsequent mutual written agreement executed by Lessee, CDC, DRP and BH.

5.5 Attorney's Fees. In the event of litigation arising out of any breach of this Covenant and Agreement, the prevailing party shall be entitled to recover reasonable costs and attorney's fees.

5.6 Term and Phase-In Requirements.

(a). Lessee's obligations under this Covenant and Agreement shall begin on the date that this document is recorded, and all leases of Designated Units entered into after that date shall fully comply with the terms, covenants, and restrictions of this Covenant and Agreement . This Covenant and Agreement shall expire, and all benefits and burdens associated with it shall cease, on the date that the Lessee's ground lease with the County terminates; and

(b). The parties to this Covenant and Agreement recognize and acknowledge that as of the date of recordation of this document, the Lessee has already leased ten (10) One-Bedroom Units to low-income senior persons to satisfy what the Lessee believed was its affordable housing obligation under its Project permit. Based thereon, the Lessee shall have the reasonable phase-in period of five (5) years from the date of recordation of this document to convert the ten (10) Designated Units to the unit composition/bedroom mix of five (5) One-Bedroom Units and five (5) Two-Bedroom Units reserved for and occupied by low-income persons or households in compliance with all of the terms, covenants, and restrictions of this Covenant and Agreement. Further, from the date of recordation of this document through the date that Lessee's ground lease with the County terminates, all rental decisions made by Lessee regarding the Low-Income Person or Household to whom Lessee decides to rent for purposes of complying with this Covenant and Agreement shall be made without regard to the age of any such Low-Income Person or the age of any person within such Low-Income Household. Should Lessee fail to bring the ten (10) Designated Units into compliance with all of the terms, covenants, and restrictions of this Covenant and Agreement, as determined by the CDC, by the end of the seventh (7th) year from the date of recordation of this document, Lessee shall reserve the next vacant Two-Bedroom Unit or Units for Low-Income Persons or Households until the ten (10) Designated Units contain five (5) Two-Bedroom Units reserved for and occupied by Low-Income Persons or Households. The complete phase-in of the five (5) Two-Bedroom Units pursuant to this subsection shall occur no later than the end of the eighth (8th) year from the date of recordation of this document, regardless of the number of One-Bedroom Units reserved for and occupied by low-income persons or households, which in no event shall be less than five (5) One-Bedroom Units. Furthermore, in no event shall the Lessee displace, evict or in any way require a low-income senior person to move out of the Site solely for purposes of complying with the phase-in provisions of this subsection.

5.7 Interpretation. The provisions of this document shall be liberally construed to effectuate its purpose. Time is of the essence of this Covenant and Agreement.

5.8 Severability. Invalidation of any of the covenants, conditions, restrictions, or other provisions contained in this Covenant and Agreement by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, which shall remain in full force and effect.

5.9 Headings. The caption headings of the various sections and paragraphs of this Covenant and Agreement are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective sections or paragraphs.

5.10 Effective Date. This Covenant and Agreement shall take effect upon its recording in the Office of Los Angeles County Recorder.

5.11 Notices. Formal notices, demands, and communications between the County and Lessee shall be given either by personal service, by overnight courier, or by mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the principal offices of the parties, as follows:

If to CDC: Community Development Commission
Two Coral Circle
Monterey Park, California 91755-7425
Attn: Executive Director

If to DRP: Department of Regional Planning
13th Floor
320 West Temple Avenue
Los Angeles, California 90012
Attn: Director of Planning

If to BH: Department of Beaches and Harbors
13837 Fiji Way
Marina Del Rey, California 90292
Attention: Director of Beaches and Harbors

If to Lessee: Panay Way Marina, L.P.
5150 Overland Avenue
Culver City, CA 90230
Attention: Warren L. Breslow

With a copy to: G&K Management Co., Inc.
5150 Overland Avenue
Culver City, CA 90230
Attention: General Counsel

Notices shall be effective upon receipt, if given by personal delivery, the earlier of (i) three (3) business days after deposit with United States Mail, or (ii) the date of actual receipt as evidenced by the return receipt, if delivered by certified mail, or (iii) one (1) day after deposit with the delivery service, if delivered by overnight guaranteed delivery service. Each party shall promptly notify the other party of any change(s) of address to which notice shall be sent pursuant to this Agreement.

5.12 Exhibits. Each Exhibit mentioned in this Agreement is attached hereto and incorporated herein by this reference.

5.13 Execution in Counterparts. The parties may execute this document in two or more counterparts; each counterpart shall be deemed an original instrument as against any party who has executed it.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, CDC and Lessee have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized as of date first written above.

COMMUNITY DEVELOPMENT COMMISSION OF THE COUNTY OF LOS ANGELES, a public body corporate and politic

By: _____

for Carlos Jackson, Executive Director

DEPARTMENT OF REGIONAL PLANNING OF THE COUNTY OF LOS ANGELES, a public body corporate and politic

By: _____

Bruce W. McClendon, Planning Director

DEPARTMENT OF BEACHES AND HARBORS OF THE COUNTY OF LOS ANGELES, a public body corporate and politic

By: _____

Stan Wisniewski, Director

PANAY WAY Marina, L.P., a California limited partnership

By _____

Jona Goldrich, as Trustee of the Goldrich Trust, a General Partner

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel

By: _____

LAWRENCE L. HAFETZ
Principal Deputy County Counsel

STATE OF CALIFORNIA)
) SS.
COUNTY OF Los Angeles)

On March 7, 2007, before me Gabriela Martinez, Notary Public, personally appeared Bobbette A. Glover, personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Gabriela Martinez

GABRIELA MARTINEZ
Commission # 1604349
Notary Public - California
Los Angeles County
My Comm. Expires Sep 4, 2009

STATE OF CALIFORNIA)
) SS.
COUNTY OF _____)

On _____, 200___, before me_____, Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature_____

STATE OF CALIFORNIA)
) SS.
COUNTY OF LOS ANGELES)

On February 20, 2007, before me Peggy L Amenta, Notary Public, personally appeared Jona Goldrich, personally known to me (or ~~proved to me on the basis of satisfactory evidence) to~~ be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Peggy L. Amenta

PEGGY L. AMENTA
COMM. #1714466
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My Comm. Expires Jan. 08, 2011
WMD1 WMD1

FOR COUNTY USE ONLY

State of California)
) ss.
County of Los Angeles)

On 2/26/07, before me, CONNY B. McCORMACK, Registrar-Recorder/County Clerk of the County of Los Angeles, personally appeared Stan Wisniewski

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

IN WITNESS WHEREOF, I have here set my hand.

CONNY B. McCORMACK, Registrar-Recorder/
County Clerk of the County of Los Angeles

By _____
Deputy County Clerk

THIS ACKNOWLEDGMENT IS ATTACHED
TO THE FOLLOWING DOCUMENT:

Title of document Covenants

Number of pages 10, excluding attestments

Date of document _____

DKW:ayc
P2:ACKDKW

EXHIBIT "A"

LEGAL DESCRIPTION OF SITE

Real property in the County of Los Angeles, State of California, described as follows:

APN: