AMENDMENT NO. 7 TO LEASE NO. 10665

PARCEL NO. 33R - MARINA DEL REY SMALL CRAFT HARBOR

THIS AMENDMENT TO LEASE ("Amendment" or "Amendment No. 7") is made and entered into this 9th day of August, 2016 (the "Effective Date")

BY AND BETWEEN COUNTY OF LOS ANGELES hereinafter referred to as "COUNTY",

AND

LEGADO MARINA, LLC, a Delaware limited liability company, hereinafter referred to as "LESSEE".

RECITALS:

WHEREAS, County and Lessee's predecessor in interest entered into Lease No. 10665 under the terms of which County leased to Lessee (formerly known as The Waterfront – Marina del Rey, LLC) that certain real property located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, now commonly known as Parcel 33R, which leasehold premises (the "Premises") are more particularly described as Exhibit "A" attached to and incorporated in said Lease, as amended (the lease and all amendments are collectively hereafter referred to as the "Lease"); and

WHEREAS, Section 15 of the Lease provides that as of the end of the first ten (10) years of the Lease and every tenth (10th) year thereafter (the "Rental Adjustment Date"), the square foot rental and all categories of percentage rentals shall be adjusted by Lessee and County in accordance with the standards established in Section 15; and

WHEREAS, Section 15 further provides that such adjustments shall be accomplished by agreement of the parties and in the event such agreement cannot be reached, the adjustments shall be settled by binding arbitration in the manner set forth at length in said Section 15; and

WHEREAS, Section 26 of the Lease provides that the amounts of casualty insurance required by said section shall be subject to renegotiation at the same time and in the same manner as the amounts of rent to be adjusted under the Lease; and

WHEREAS, the parties hereto have reached agreement with respect to the adjusted square foot rental and the amounts of casualty insurance which are to apply for the next ten (10)

year period commencing on April 1, 2016 (the "2016 Rental Adjustment Date");

WHEREAS, the parties hereto have determined that no adjustments to the percentage rental rates are required as of the 2016 Adjustment Date;

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby deemed a contractual part hereof, and the mutual agreements. covenants and restrictions contained herein, the parties agree as follows:

1. Security Deposit. Effective as of the 2016 Adjustment Date, Section 7 of the Lease is deleted in its entirety and the following substituted therefor:

> Security Deposit. The security deposit shall be maintained at an amount equal to three (3) monthly installments of the current annual square foot rental. The security deposit shall be retained by County to cover delinquent rent and any other financial obligations of the Lessee under this Lease, and shall be so applied at the discretion of County.
>
> In the event all or any part of the security deposit is applied against any rent or other financial obligation of Lessee due and unpaid, the Lessee shall immediately reimburse the County an amount equal to that portion of the security deposit applied by County so that at all times during the life of this Lease said full security deposit shall be maintained with County. Failure to maintain the full amount of the security deposit shall constitute an event of default as provided for in Section 21. Upon forfeiture or termination of this Lease, any portion of said security deposit due the Lessee shall be returned.

2. Square Foot Rental. Effective as of the 2016 Adjustment Date, the first paragraph of Section 12 of the Lease is deleted in its entirety and the following substituted therefor:

> As of April 1, 2014, the annual square foot rental for the whole of the Premises was adjusted to $163.673.33. The annual square foot rental shall be readjusted on April 1 of every third year thereafter (the Square Foot Adjustment Date"). On the Square Foot Adjustment Date, the annual square foot rental shall be readjusted to equal seventy-five percent (75%) of the annual average of all rents payable by Lessee under the lease for the immediately preceding three year period, however, that in no event shall annual square foot rental be readjusted to an amount that is less than the then-in effect annual square foot rental.

3. Property Insurance. Commencing as of the Effective Date, the second paragraph of Section 25 of the Lease is deleted in its entirety and the following substituted therefor:

Such insurance shall be written for the full replacement cost of the Property, with a deductible no greater than $250,000 or 5% of the property value whichever is less. This coverage shall be at least as broad as that provided by the Causes-of-Loss Special Form (ISO for CP1030), including earthquake (If Lessee deems it reasonable), ordinance or law coverage, flood, and business interruption equal to two years annual rent. The County and the Board of Supervisors, its officers, agents and employees shall be named as additional insured under such liability insurance policy or policies. Insurance proceeds shall be payable to the Lessee and County as their interest may appear and be utilized for repair and restoration of the Premises. Failure to use such insurance proceeds to timely repair and restore the Premises shall constitute a material breach of the Lease.

4. Indemnity Clause and Casualty Insurance. Commencing as of the Effective Date, Section 26 of the Lease is deleted in its entirety and the following substituted therefor:

Indemnity Clause and Casualty Insurance. Except to the extent caused by the gross negligence or willful misconduct of any such indemnitee, Lessee shall at all times relieve, defend, indemnify, protect, and save harmless County and its respective Boards, officers, agents, consultants, counsel, employees and volunteers from any and all claims, costs, losses, expenses or liability, including expenses and reasonable attorneys' fees incurred in defending against the same by an attorney selected by Lessee and reasonably satisfactory to County, to the extent arising from or caused by (a) the operation, maintenance, use, or occupation of the Premises (other than the Promenade and the Seawall) or the Improvements by Lessee or its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, including any occurrence in or on the Premises or Improvements, (b) the acts, omissions, or negligence of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, (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, or (d) the performance of the Redevelopment Work or any Alterations. The obligation of Lessee to so relieve, indemnify, protect, and save harmless County and each of its respective Boards, officers, agents, consultants, counsel, employees and volunteers, shall continue during any periods of occupancy or of holding over by Lessee, its agents, officers, employees, licensees, concessionaires, 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 operation, maintenance, use and/or occupation of the Promenade shall be governed by Applicable Law. In addition, Lessee shall not be required to indemnify, defend or hold County harmless with respect to the existence of any Hazardous Substances that might be present in seawater passing over, under, through or around any portion of the Premises or any Improvement as long as (I)

such Hazardous Substances did not originate at or from the Premises or Improvements, and (II) with respect to Hazardous Substances that did not originate at or from the Premises or Improvements, were not caused by the acts or omissions of Lessee or its Sublessees, or its or their respective contractors, employees, agents, representatives, consultants, customers, visitors, permittees or licensees.

Lessee shall maintain in full force and effect during the term of this Lease, Commercial General Liability Insurance providing scope of coverage equivalent to ISO policy form CG 00 01, naming Lessor and its Agents as an additional insured, with limits of not less than:

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

Liquor Liability Insurance (written on ISO policy form CG 00 33 or 34 or their equivalent) shall be provided and maintained by the Lessee if and when the manufacturing, distribution or service of alcoholic beverages occurs in the Premises, with limits of not less than $5 million per occurrence and $10 million aggregate. If written on a "claims made" form, the coverage shall also provide an extended two (2) year reporting period commencing upon the expiration or earlier termination of this Agreement, or replacement coverage shall be maintained until such time. Lessee agrees that County, its Board of Supervisors and members thereof, and County's and Board officers, agents and employees, shall be named as additional insureds under such liability insurance policy or policies."

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

5. Worker's Compensation Insurance. Commencing as of the Effective Date, Section 27 of the Lease is deleted in its entirety and the following substituted therefor:

Workers Compensation and Employers' Liability insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than $1 million per accident. If Lessee's employees will be engaged in maritime operations, coverage also shall be

arranged to provide workers compensation benefits as required by the U.S. Longshore and Harbor Workers Compensation Act. Jones Act or any other federal law for which Lessee is responsible. A certificate evidencing such insurance coverage shall be filed with the Director prior to entry upon the premises herein demised.

6. Miscellaneous. Except as herein specifically amended, all terms, conditions and provisions of the Lease shall be and continue to remain in full force and effect and are unmodified, and each of the parties hereto reaffirms and reacknowledges its respective obligations under the Lease as amended hereby.

IN WITNESS WHEREOF, County has, by order of its Board of Supervisors, caused this Amendment to Lease to be subscribed by the Chairman of said Board and attested by the Executive Officer thereof, and the Lessee has executed the same.

LESSEE:

LEGADO MARINA, LLC, a Delaware limited liability company

By: EM C DEVELOPMENT LLC, MANAGING MEMBER

By: _____

EDWARD M. CZUKER, PRESIDENT

ATTEST:

LORI GLASGOW
Executive Office-Clerk
of the Board of Supervisors

By: LaChelle Smitherman
Deputy

COUNTY OF LOS ANGELES

By: Hilda L. Solis
Hilda L. Solis, Chair
Board of Supervisors

APPROVED AS TO FORM:

MARY C. WICKHAM
County Counsel

By: _____
Senior Deputy

HOA.100757475.1

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

#24 AUG 09 2016

LORI GLASGOW
EXECUTIVE OFFICER

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Parcels 490 to 493 inclusive, and 537 to 541 inclusive, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, recorded in Book 1, pages 53 to 70 inclusive, of Assessor's Maps, in the office of the Recorder of said county.

Excepting therefrom that portion thereof which lies within the following described boundaries:

Beginning at a point in the southerly line of said Parcel 541 distant North 85°59'32" East thereon 145.00 feet from the southwesterly corner of said last mentioned parcel; thence North 4°00•28" West to the northwesterly line of said last mentioned parcel; thence northeasterly and easterly along said northwesterly line and the northerly line of said last mentioned parcel to the center line of that certain 20 foot easement for fire access, storm drain and harbor utilities purposes, in said Parcels 537 and 540, as said center line is shown on said map; thence northerly along said center line to the northwesterly line of said Parcel 537; thence northeasterly along said last mentioned northwesterly line to the northeasterly corner of said last mentioned parcel; thence southerly along the easterly lines of said Parcels 537, 540 and 541 to the southeasterly corner of said Parcel 541; thence westerly along the southerly line of said last mentioned parcel to the point of beginning.

Also reserving and excepting therefrom unto the County of Los Angeles, easements for sanitary sewer, storm drain, fire access and harbor utility purposes over those portions thereof designated on said map to be reserved by said county for such purposes.

(310) 305-9503 • 13837 Fiji Way, Marina del Rey, CA 90292 • beaches.lacounty.gov

Caring for Your Coast

Gary Jones
Director

Kerry Silverstrom
Chief Deputy

John Kelly
Deputy Director

Brock Ladewig
Deputy Director

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

24 August 9, 2016

LORI GLASGOW
EXECUTIVE OFFICER

August 09, 2016

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

Dear Supervisors:

APPROVAL OF AMENDMENT NO. 7 TO LEASE NO. 10665 TO UPDATE INSURANCE PROVISIONS AND SECURITY DEPOSIT PARCEL 33R – LEGADO MARINA, LLC - MARINA DEL REY
(FOURTH DISTRICT) (4 VOTES)

SUBJECT

Request for approval of a lease amendment for Parcel 33R (Killer Shrimp) that maintains existing percentage rental rates, adjusts the security deposit, and updates the insurance provisions.

IT IS RECOMMENDED THAT THE BOARD:

1. Find that the proposed Amendment No. 7 to Lease No. 10665 is categorically exempt under the California Environmental Quality Act pursuant to Class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines.

2. Approve and authorize the Chair of the Board to sign the attached Amendment No. 7 to Lease No. 10665, maintaining all existing percentage rental rates, adding a provision to safeguard minimum rent against future downward adjustments, adjusting the security deposit, and updating the insurance provisions for the ten-year period ending April 1, 2026.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

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

County's interests. County rents are typically computed as the greater of either a fixed minimum rent or the total of varying percentages of the lessee's gross receipts from uses of the leasehold.

County lease No. 10665 with Legado Marina, LLC (Lessee) for Parcel 33R in Marina del Rey (Lease) requires review of rent and insurance provisions as of April 1, 2016. Based upon an appraisal of comparable rates at other Marina leaseholds, the parties have agreed to keep all percentage rental rates unchanged.

The next minimum rent adjustment will be made on April 1, 2017, to an amount which, pursuant to the Lease, equals 75% of the average annual rent payable to the County over the prior three years. Amendment No. 7 provides that all annual minimum rent adjustments shall either increase the annual minimum rent or maintain it at the then-current amount.

As of the 2016 Rental Adjustment Date, Amendment No. 7 to the Lease also provides that the security deposit be maintained at an amount equal to three times the monthly minimum rent. Changes to the Lease indemnity clause, insurance requirements, and miscellaneous insurance provisions conforming to the Chief Executive Office Risk Management Branch's current requirements will be incorporated into the Lease as of the date the Amendment is executed.

Implementation of Strategic Plan Goals

The recommended action will keep County percentage rental rates at Parcel 33R comparable to other Marina del Rey parcels and incorporate updated insurance, security deposit, and minimum rent provisions in fulfillment of Strategic Plan Goal No. 1, Operational Effectiveness/ Fiscal Sustainability.

FISCAL IMPACT/FINANCING

The recommended action will have no fiscal impact.

Operation Budget Impact

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

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Commonly known as The Waterfront, Parcel 33R in Marina del Rey consists of approximately 94,969 square feet of land and 13,043 square feet of water area. It is improved with two restaurants, Killer Shrimp and Killer Café, and a dock. The 60-year ground lease between the County and the Lessee was executed in 1962.

Amendment No. 7 has been approved as to form by County Counsel. At its meeting of July 13, 2016, the Small Craft Harbor Commission unanimously endorsed the Director's recommendation that your Board approve and execute the proposed Amendment.

ENVIRONMENTAL DOCUMENTATION

The proposed Amendment No. 7 is categorically exempt under the provisions of the California

Environmental Quality Act (CEQA) pursuant to Section 15301 of the CEQA Guidelines (Existing Facilities) and Class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no impact on current services from your Board's approval of Amendment No. 7.

CONCLUSION

Please have the Chair of the Board of Supervisors sign all three copies of Amendment No. 7 and have the Executive Officer of the Board return two executed copies, as well as a copy of the adopted Board letter to the Department of Beaches and Harbors.

Respectfully submitted,

GARY JONES
Director

GJ:BL:SP:MR:ms

Enclosures

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors
Auditor-Controller

STATEMENT OF PROCEEDINGS FOR THE

REGULAR MEETING OF THE BOARD OF SUPERVISORS

OF THE COUNTY OF LOS ANGELES HELD IN ROOM 381B

OF THE KENNETH HAHN HALL OF ADMINISTRATION

500 WEST TEMPLE STREET, LOS ANGELES, CALIFORNIA 90012

Tuesday, August 9, 2016

9:30 AM

24. Recommendation: Approve and authorize the Chair to sign an amendment to a lease agreement with Legado Marina, LLC for Parcel 33R in Marina del Rey (4), to maintain all existing percentage rental rates, adding a provision to safeguard minimum rent against future downward adjustments, adjusting the security deposit and updating the insurance provisions for the 10-year period ending April 1, 2026. **(Department of Beaches and Harbors) 4-VOTES** (16-3795)

Eric Preven addressed the Board.

On motion of Supervisor Kuehl, seconded by Supervisor Solis, this item was approved.

Ayes: 5 - Supervisor Ridley-Thomas, Supervisor Kuehl, Supervisor Knabe, Supervisor Antonovich and Supervisor Solis

Attachments: Board Letter
Video
Audio

Agreement No. 10665, Supplement 7

The foregoing is a fair statement of the proceedings of the regular meeting, August 9, 2016, by the Board of Supervisors of the County of Los Angeles and ex officio the governing body of all other special assessment and taxing districts, agencies and authorities for which said Board so acts.

Lori Glasgow, Executive Officer
Executive Officer-Clerk
of the Board of Supervisors

By Lori Glasgow

Lori Glasgow
Executive Officer

ATTEST: LORI GLASGOW
EXECUTIVE OFFICER
CLERK OF THE BOARD OF SUPERVISORS

By LaChelle Smith, Deputy