

FIRST AMENDMENT TO PERMIT NO. 892
BETWEEN THE CITY OF LOS ANGELES AND
TRI-MARINE FISH COMPANY, LLC

THIS FIRST AMENDMENT to Agreement No. 892 is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board"), and TRI-MARINE FISH COMPANY, LLC ("Tenant") as follows:

1. ***Exhibit A is replaced in its entirety with attached Exhibit "A-2".***
2. ***Exhibit D is added.***
3. ***Exhibit E is added.***
4. ***Exhibit F is added.***
5. ***Section 2(a) is amended to read:***

“(a) Description. The premises subject to this Agreement are as delineated and more particularly described on the Harbor Engineer’s Drawing attached hereto as **Exhibit "A-2"**. A final Harbor Engineer’s Drawing, when prepared, shall be substituted for **Exhibit "A-2"**, identified as **Exhibit "A-3"**, and maintained on file in the office of the Chief Harbor Engineer, Engineering Division, of the Harbor Department of the City (hereinafter called "Harbor Engineer"). The premises is comprised of Parcel 1 described as 85 square feet of non-exclusive wharf area; Parcel 2, described as 219,295 square feet of paved land area; Parcel 3 described as 14,435 square feet of warehouse space; Parcel 4, described as 8,570 square feet of paved land immediately adjacent to the warehouse space; Parcel 5, described as 5,965 square feet of office space; and a First Right of Refusal for Parcel 6, described as 47,425 square feet of paved land immediately adjacent to the warehouse space ("Premises").

(1) First Right of Refusal. If/when City receives a bona fide offer to negotiate a permit of Parcel 6, City shall provide Tenant written notice. Tenant shall have 30 days upon receipt of such notice to exercise a right of first refusal to Parcel 6. Tenant shall provide to City, in writing, its intent to either add Parcel 6 as part of the Premises in this Agreement or refuse. A lack of response within 30 days will constitute waiver of Tenant’s right to exercise the right of first refusal.”

6. **Section 2(c)(2) is amended to read:**

“(2) Additions and Improvements at Tenant's Expense. Notwithstanding a one-time installation of fencing to be installed by Tenant and previously installed office improvements, for which Tenant shall receive rent credits pursuant to Section 4(f), any modification, improvement, or addition to the premises and any equipment installation required by the Fire Department, Department of Building and Safety, Air Quality Management District, Regional Water Quality Control Board, Coast Guard, Environmental Protection Agency, or any other local, regional, state or federal agency in connection with Tenant's operations shall be constructed or installed at Tenant's sole expense.”

7. **Section 3(b) is amended to read:**

“(b) Term. The term of this Agreement shall be for a period of twenty (20) years, commencing on the Effective Date unless sooner terminated in accordance with Section 6 of this Agreement.”

8. **Section 4. Rent is deleted in its entirety and replaced with the following:**

“Section 4. Rent/Compensation

(a) Definitions.

(1) Tariff Charges. “Tariff Charges” shall mean all charges due and owing by Tenant under the Tariff on account of Tenant's use and occupancy of the Premises.

(2) CPI-U. “CPI-U” shall mean the Consumer Price Index for All Items, All Urban Consumers for the Los Angeles-Riverside-Orange County, California area, 1982-84=100 as published by the U.S. Department of Labor, Bureau of Labor Statistics, or a successor index selected by the Executive Director in the Executive Director's sole reasonable discretion.

(3) Base Rent. “Base Rent” shall mean the monetary sum, in U.S. Dollars, Tenant shall pay to City for its use and occupancy of the Premises per Compensation Year, excluding Tariff Charges and other Additional Rent.

(4) Additional Rent. “Additional Rent” shall mean all monetary sums, in U.S. Dollars, Tenant shall pay to City for

applicable Tariff Charges, impositions, taxes, liens and fees imposed on the Premises or Tenant's leasehold interest in the Premises, including but not limited to late fees, and any additional monetary payments which Tenant is required to pay to City as more fully set forth in this Agreement."

(b) Payments. Tenant shall render its payments at the Harbor Department Administration Building or any other place that City from time to time may designate in writing. All payments due to City under this Agreement shall be made in U.S. Dollars, either in the form of a check (drawn on a bank located in the State of California) or via electronically transmitted funds.

(c) Base Rent. As consideration for rights granted in this Agreement, Tenant shall pay to City in the manner herein described without abatement, deduction or offset, except as provided herein, the following Base Rent composed of a Minimum Annual Rent and a Monthly Percentage Rent (collectively referred to as "Base Rent"), when due, whether or not an invoice for same has been received:

(1) Minimum Annual Rent. The Minimum Annual Rent shall be Four Hundred Twenty Six Thousand Four Hundred Seventy Four Dollars (\$426,474.00), as adjusted pursuant to the terms of this Agreement. On or before the first day of each month, in advance, Tenant shall pay to City the sum of Thirty Five Thousand Five Hundred Thirty Nine Dollars (\$35,539.00) as Rent ("Minimum Monthly Rent"), as adjusted pursuant to the terms of this Agreement, for the use of the Premises.

Minimum Annual Rent shall mean the amount calculated based on a ten (10) percent annual rate of return on an estimated value of \$22.00 per square foot for land and a twelve (12) percent annual rate of return on an estimated value of \$22.00 per square foot for buildings and non-exclusive wharf, discounted twenty eight (28) percent for Tenant's participation in Percentage Rent. See **Exhibit "F"**.

(2) Percentage Rent. In addition to Minimum Monthly Rent, at such time and in such manner as set forth below, Tenant shall pay to City, on a monthly basis, one-half of one cent (\$0.005) per pound of fish products offloaded across the wharf and one-tenth of one cent (0.001) per pound of any other protein product processed and brought into the facility by truck ("Percentage Rent").

(i) Percentage Rent Verification. Tenant shall have prepared and delivered to the Harbor Department within twenty (20) days after the end of each month, on a form prepared by the Harbor Department or in a format approved by the Harbor Department, a written statement signed by Tenant's duly authorized officer or a representative showing in reasonable detail the elements and amount of the pounds of fish products off loaded across the wharf and the pounds of any other protein product processed and brought into the facility by any other means other than over the wharf for the month and for the calendar year. The payment of the monthly Percentage Rent shall be accompanied by this written statement detailing the total pounds processed for the month and for the calendar year to date.

(ii) Percentage Rent Annual Statement. Tenant shall further have prepared and delivered to City on or before the one hundred and eightieth (180th) day following the end of the annual anniversary of the effective date of this First Amendment and on or before the one hundred and eightieth (180th) day after the end of the term of this Agreement, a complete, certified, reviewed annual statement, prepared by a Certified Public Accountant and signed by Tenant's duly authorized officer or representative, showing in reasonable detail the elements and amounts of product processed and the Percentage Rent paid during the preceding year or fraction thereof.

(iii) Percentage Rent Due Date. The Percentage Rent is due and payable within twenty (20) days following the end of the preceding month. Should the term of this Agreement commence on a day other than the first day of a calendar year, the Percentage Rent for the first fractional month and the month beginning immediately thereafter shall be due within twenty (20) days following the end of the month beginning immediately after the first fractional month. The payment for the last fractional month shall be made within twenty (20) days following the end of the Term of this Agreement.

(iv) Percentage Rent During Holdover. Percentage Rent for any holdover shall be paid in the same manner as if the term of this Agreement had commenced with the first day of such holdover.

(v) Reconciliation of Percentage Rent. In the event that the City audits the monthly or annual statements submitted by Tenant and discovers an underpayment of Percentage Rent, Tenant shall pay the City the amount of underpayment within twenty (20) days of receiving written notice of the amount owed due to underpayment. Nothing in this section shall preclude Tenant from challenging the City's determination of underpayment. In the event that the City discovers an overpayment, the amount of overpayment shall be applied as a credit against future Percentage Rent or as a refund if the Term has expired. Tenant shall be entitled to the refund or rent credit only if the Rent payments due during the Permit year have been timely made and the Percentage Rent monthly and annual statements have been timely submitted to City. Tenant shall not be entitled to any interest on overpayments."

(d) Rent Deposit. Tenant shall deposit the sum equal to two times the Monthly Rent with Board at the address shown in subsection (b) of this Section 4 prior to the issuance of the Permit granted by this Agreement. Said deposit shall be held as a guarantee to cover delinquent rent. In the event all or a part of the deposit is used to apply against rent due and unpaid, Tenant shall immediately make another deposit in an amount equal to the amount so used, so that at all times during the term of this Agreement said deposit shall be maintained in the sum stated above. If, for any reason, Tenant's Monthly Rent obligation to City is increased in excess of ten percent (10%), the amount of Tenant's Deposit shall, within thirty (30) days after receiving written notice from City, correspondingly be increased to a sum two (2) times the new Monthly Rent obligation."

(e) Additional Rent. In addition to any other consideration under this Agreement, including without limitation any Base Rent, Tenant shall pay to City all Additional Rent, as listed below, when due.

(1) Tariff. Tenant shall pay City for any applicable Tariff Charges as Additional Rent.

(2) Taxes and Impositions. Tenant shall timely pay all Taxes imposed with respect to the Permit, the use or the operation of the Premises, including, without limitation, any documentary or other transfer or sales taxes, property or possessory interest taxes and any City of Los Angeles Business Tax applicable to the use and operation of the Premises. City reserves the right, without being obligated to do so, to pay the amount any such Taxes not

timely paid by Tenant, and the amount so paid by City shall be deemed Additional Rent hereunder, due and payable by Tenant immediately upon demand by City.

Tenant hereby agrees to pay as Additional Rent such assessments, fees and charges as shall be set by the Board and that shall be reasonable and not unjustly discriminatory.

Notwithstanding this Section 4(e)(2), Tenant does not waive its right to seek relief from a court of competent jurisdiction to the extent that such Tax, assessment, fee or charges are contrary to Applicable Law.

(3) Utilities and Services. Tenant shall be liable for and shall pay all charges for services furnished to the Premises, including, without limitation, heat, power, telephone, water, light, janitorial services, security services and trash collection services, and any other services in connection with its occupancy of the Premises, including, without limitation, deposits, connection fees or charges and meter rentals required by the supplier of any such service. If any such services are not separately metered or billed to Tenant, Tenant shall pay a reasonable proportion, to be determined by City, of all charges jointly metered or billed. There shall be no abatement of Rent and City shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond City's reasonable control or in cooperation with governmental request or directions. To the extent such utilities and services are provided by City, payment for same shall be Additional Rent.

(4) Rent for Non-permitted Uses. Use of the Premises for purposes not expressly permitted herein, whether approved in writing by the Executive Director or not, may result in additional charges, including charges required by the Tariff, as it may be amended or superseded. Imposing additional charges and receiving Additional Rent for non-permitted uses shall not waive City's rights to declare a default or limit City's remedies under this Agreement and at law.

(5) Rent on New Improvements. With respect to additions, improvements or alterations to the structures on the Premises authorized by City and made by Tenant, at Tenant's sole expense, during the Term of this Agreement, Tenant shall not be charged Rent for the rental value thereof unless and until title to

said additions, improvements, or alterations revert to City pursuant to the terms of this Agreement or by operation of law.

(6) Other Amounts. Any amounts due and owing from Tenant that arise from or are related to its undertaking of the Permitted Uses or its occupancy of the Premises, including without limitation, service charges for services provided by the Harbor Department.

(f) Rent Credit. Tenant shall be entitled to a rental credit for Tenant's cost of installation of fencing in the amount of \$70,000 and improvements to an office building on Parcel 5 in the amount of \$60,000, for a total amount not to exceed One Hundred Thirty Thousand Dollars (\$130,000) until completion of installation.

(1) Limitations on Rent Credit. The rent credit granted under this section shall be applied against the Minimum Annual Rent only. Should this Agreement terminate prior to exhaustion of the full rent credit for any reason other than City default, the credit shall expire and City shall have no obligation to reimburse Tenant for any unused rent credit. Furthermore, the rent credit granted herein shall be allowed only for the actual costs incurred by Tenant for installation of fencing within the Premises and prior improvements to an office building on Parcel 5. Tenant's request for rent credit, and City's obligation to grant the credit, is dependent on the costs being verified by the Harbor Department after Tenant's submission of a written statement delivered to the Harbor Department, signed by Tenant's duly authorized officer or representative, showing the itemized costs incurred and proof of payment of those costs accompanied by itemized receipts and such other documentation as may be required by the Harbor Department to verify that the expenditures were incurred and are eligible for rent credits.

(g) Reconciling Rent for Final Measurements. The Parties agree that the Rent shall be adjusted to reflect any changes in the final measurement of the Premises, or any improvements thereon, without further action of the Board or the Council. The adjusted rent shall be calculated based on \$22.00 per square foot for land and a twelve (12) percent annual rate of return on an estimated value of \$22.00 per square foot for buildings and non-exclusive wharf, discounted twenty-eight (28) percent for Tenant's participation in Percentage Rent.

(h) Delinquent Rent Payments. Rental payments required to be made by this Section 4 which have not been paid within ten (10) calendar days of the date such payments are due ("grace period") shall be subject

to a service charge assessed as simple interest at the rate of 1/30 of two percent (2%) of the invoice amount remaining unpaid each day. Tenant acknowledges it knows the day of the month its rental charges are due and that the ten (10) calendar day grace period commences from the rent due date, not the date of City's invoice. Said service charge shall be imposed even if all or a portion of any sum on deposit as a guarantee against delinquent rent is applied to the amount due. The City has the unqualified right, upon thirty (30) days' prior notice to Tenant, to change the level of the delinquency service charge.

(i) Disputed Payments. Tenant recognizes that disputes may arise over monies due City in accordance with this Agreement. Tenant and City shall make a good faith effort to resolve any disputes as expeditiously as possible. Tenant agrees, the form of case, or certificate of deposit, in City's name in an escrow account to be mutually agreed upon by the parties within sixty (60) days of the date of billing. The deposit shall be held in the escrow account pending the resolution of the dispute. Each party shall share the costs of the escrow account on a 50/50 basis. If the dispute is resolved in City's favor, City shall receive the money and all accumulated interest. If the dispute is resolved in Tenant's favor, Tenant shall receive the money and all accumulated interest. Tenant understands that its failure to provide a deposit acceptable to City within sixty (60) days shall be considered a material default of this Agreement and City shall be entitled to cancel this Agreement upon thirty (30) days' written notice. If Tenant is obligated to pay City any charges due under Port of Los Angeles Tariff No. 4 (or its successor) pursuant to the Agreement, then failure to provide a deposit shall require Tenant to make all payments in accordance with Item No. 265 of the Tariff and Tenant shall be removed from the Credit List authorized by Item No. 260 of the Tariff or as amended or superseded. This section shall not apply to any one billing for a disputed amount exceeding One Hundred Thousand Dollars (\$100,000), provided Tenant shall be required to deposit \$100,000 with City. If City prevails in the dispute and the amount due City exceeds \$100,000, Tenant shall pay the difference due within fifteen (15) days with interest at the rate set forth in Section 4(g) from the date of City's initial billing to Tenant.

(j) Annual Adjustment of Rent. On July 1 of each year during the Term of this Agreement ("Annual Adjustment Date"), the Minimum Annual Rent shall be adjusted as of the Annual Adjustment Date automatically without further notice to reflect the percentage increase (*but in no event decrease*), if any, in the CPI-U, or successor index selected by the Executive Director in the Executive Director's sole reasonable discretion ("Annual Adjustments"). Such adjusted Minimum Annual Rent shall be equal to the product obtained by multiplying the Minimum Annual Rent amount in effect on the Annual Adjustment Date by a fraction, the

numerator of which is the CPI-U index for the second month immediately preceding the Annual Adjustment Date, (the "Adjustment Index") and the denominator of which is the CPI-U index as it stood on the same month of the prior year (the "Base Index"). For accounting purposes, the Annual Adjustment shall be rounded to the nearest thousandth.

The formula illustrating the adjustment computation is as follows:

$$\text{Annual Adjusted Rent} = \text{Minimum Annual Rent as of Annual Adjustment Date} \times \frac{\text{Adjustment Index}}{\text{Base Index}}$$

(k) Five-Year Rate Adjustments. In addition to, and not as a substitute for the Annual Adjustments required in Subsection (j), above, as required pursuant to the Charter Section 607, on every fifth (5th) anniversary of the Effective Date ("Reset Date"), the Base Rent to be paid by Tenant for each five (5) year period, or any portion thereof, following the first five (5) year period of the Term ("Five-Year Adjusted Period") shall be adjusted to reflect the fair market rental for the Premises, *provided that in no case will the Base Rent be adjusted downward* ("Adjusted Base Rent"). This Adjusted Base Rent shall be mutually agreed upon between the Parties at some time not more than nine (9) months and not less than three (3) months before each Reset Date. If the Parties are able to reach agreement on the Adjusted Base Rent, then said agreement shall be presented as a recommendation to the Board. The Adjusted Base Rent shall be established by order of the Board, provided that if the Adjusted Base Rent has not been determined by the beginning of the Reset Date, the Base Rent for the new Five-Year Adjusted Period, subject to the final Adjusted Base Rent being negotiated or determined by the Appraisal Process, shall be one hundred twenty five percent (125%) of the Base Rent for the former period, and shall be paid in the same manner as provided in this Section 4 until completion of the negotiations or the Appraisal Process procedure set forth below.

(1) Appraisal Process. If the Parties cannot agree on the amount of the Adjusted Base Rent by sixty (60) days prior to the Reset Date, the following process to determine the Adjusted Base Rent shall apply (the "Appraisal Process"); provided, however, that the Parties may continue to negotiate during the Appraisal Process period and, if an agreement is reached, the Appraisal Process shall be terminated and the negotiated amount shall be presented as a recommendation to the Board. The Appraisal Process shall be:

(i) No later than fifty (50) days prior to the Reset Date, the Executive Director shall provide to Tenant a written

statement of the Executive Director's determination of the Market Rent for the Five-Year Adjusted Period ("Determination Due Date"). If Tenant disagrees with the Executive Director's determination, Tenant must provide to City a written objection within ten (10) calendar days of receipt of the Executive Director's determination. The written objection must include (a) the basis for Tenant's objection to the imposition of the new Adjusted Base Rent and (b) Tenant's election to commence the Appraisal Process. Tenant acknowledges and agrees that Tenant's failure to submit a timely, written objection shall be deemed approval of the Executive Director's determination of the Adjusted Base Rent commencing on, and retroactive to, the Reset Date.

(ii) If either (a) City has not provided Tenant with the Executive Director's determination of Market Rent by the Determination Due Date or (b) Tenant has received the Executive Director's determination but elects to commence the Appraisal Process, within ten (10) calendar days following Tenant's notice of commencement of the Appraisal Process or ten (10) calendar days following the Determination Due Date, whichever is applicable, City and Tenant shall exchange the names and qualifications of three (3) appraisers, which appraisers shall possess the qualifications set forth in the attached **Exhibit "D"**, and the Parties will utilize best efforts to agree, within ten (10) calendar days, upon a single qualified appraiser from that list whose scope of work shall be to determine the Market Rent as set forth in **Exhibit "E"**. The selected appraiser shall be instructed to determine Market Rent within sixty (60) calendar days of the selection. The Parties shall cooperate with the selected appraiser to provide information or documents in their respective custody or control which are reasonably necessary to generate an appraisal in conformity with **Exhibit "E"**. City shall retain the selected appraiser; however, the costs incurred for the appraisal shall be borne equally by City and Tenant. Tenant agrees to reimburse City for half the fees and costs for the appraisal within fifteen (15) days of receipt of an invoice for payment of same.

(iii) If, despite best efforts, City and Tenant cannot agree upon such single appraiser within the aforementioned ten (10) calendar days, or if the selected appraiser fails to transmit the required appraisal report within ninety (90)

calendar days following the appraiser's retention, City and Tenant shall each retain their own appraiser, possessing the qualifications set forth in the attached **Exhibit "D"** to determine the Market Rent pursuant to **Exhibit "E"**, within no more than sixty (60) days, unless extended by mutual written agreement of the Parties. Fees and costs of each appraiser shall be borne by the Party retaining that appraiser.

(iv) Appraisals generated pursuant to Subsections (ii) and (iii), above, shall be submitted to the Board along with the Executive Director's recommendation for the Board's determination of the appropriate Adjusted Base Rent, which determination shall be made at a public meeting. The Board shall review all the relevant facts and evidence, including the appraisals, submitted to it and shall then establish by order the Adjusted Base Rent to apply throughout the Five-Year Adjusted Period.

(2) Reconciliation of Rent Payments. The monies paid at the one hundred twenty percent (125%) rate shall count against the Adjusted Base Rent which shall accrue from the date the Five-Year Adjusted Period commenced. If the Adjusted Base Rent is more than the Base Rent paid at the one hundred twenty five percent (125%) rate, Tenant shall immediately pay City the difference due from the date the Five-Year Adjustment Period commenced to the date the Adjusted Base Rent is paid. If the Adjusted Base Rent is less than the amount paid at the one hundred twenty five percent (125%) rate, Tenant shall be entitled to a credit against future sums owed to City under this Agreement. No interest shall accrue on the amount due to City or Tenant pursuant to this provision except to the extent Tenant fails to pay any deficiency within thirty (30) days of a billing from City. If Tenant's payments are delinquent, a delinquency charge shall accrue at the rate provided in Item No. 270 of the Tariff (or its successor), currently consisting of simple interest of 1/30 of two percent (2%) of the invoice amount remaining unpaid each day.

(l) No Waiver. It is agreed by the Parties that failure by the Parties to comply timely with the Rent adjustment procedures herein shall not be construed to constitute a waiver of the right of City to a Rent adjustment."

9. ***The following language in italics and underlined is added into Section 8(a)(1):***

(1) Maintenance Performed by City at City's Expense (Except as Noted). Except as provided in subsections (a)(3), (a)(4), (a)(7) and (a)(8), City will maintain at its expense the roofs and exteriors of all buildings owned by City, the plumbing, mechanical, and electrical systems for Parcel 5 as shown on Exhibit A-2, and the structural integrity of wharf structures and buildings owned by City.

10. ***The following provision is added as Section 8(a)(1)(A):***

“(A) Lighting. The City, at its sole expense, shall install exterior lighting within Parcel 2.”

11. ***The following paragraph is added to Section 9(b)(1):***

“Immediately upon procuring any and all policies of insurance required herein, Tenant must request from Tenant’s insurance carrier(s) full certified copies of such policies of insurance. Tenant shall thereafter provide such full certified copies of such policies to City within thirty (30) days of Tenant’s receipt of such policies from Tenant’s insurance carrier(s). Tenant’s obligation to provide such copies shall survive the Termination Date regardless of whether Tenant receives such policies prior to or after the Termination Date. Tenant shall further provide written notice to City of any change of terms of any policies of insurance required herein within thirty (30) days of any such change.”

Except as amended herein, all remaining terms and conditions of Permit No. 892 shall remain in full force and effect.

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(Signature page to follow)

IN WITNESS THEREOF, the parties hereto have executed this First Amendment to Permit No. 892 on the date to the left of their signatures.

THE CITY OF LOS ANGELES, by its Board of Harbor Commissioners

Dated: _____, 2017

By: _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

Dated: 7/10/17, 2017

TRI-MARINE FISH COMPANY, LLC

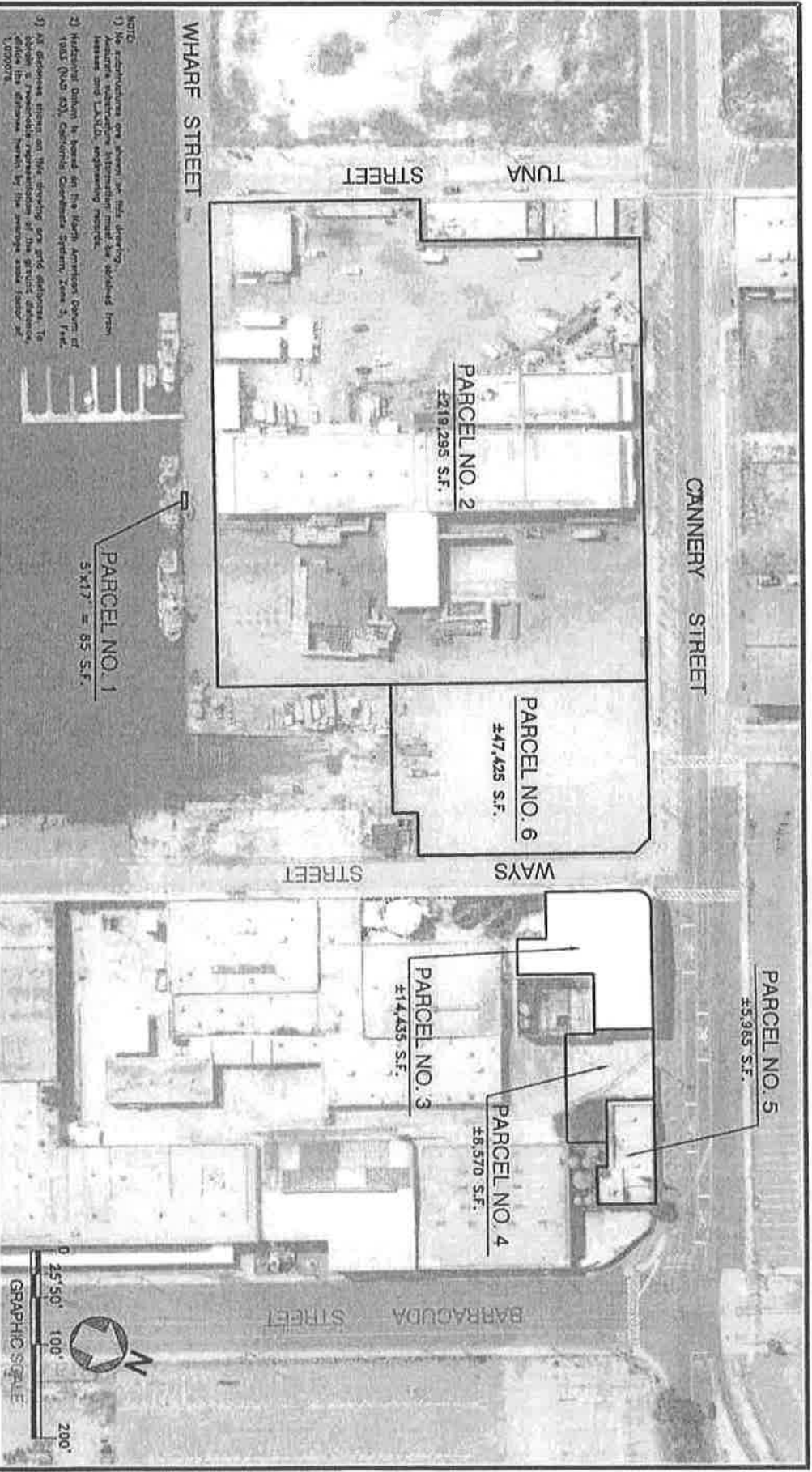
By: _____
Anthony Vucso
President
(Print/type name and title)

Attest: _____
Julie Heberer
Director-Sales
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

7-11, 2017
MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By: _____
MINAH PARK, Deputy City Attorney



NOTE:
 1) No structures are shown in this drawing. Any structures shown in this drawing must be verified from the ground and existing engineering records.
 2) Historical District is located in the North American Oceanic at (TUN) (040 00). California Coastal System, Zone 3, Part 1.
 3) All dimensions shown on this drawing are given in feet and inches. To avoid a possible misinterpretation of the graphic dimension, within the drawing herein, by the surveyor, each dimension is labeled in feet and inches.

NO.	DATE	DRAWN	REVISIONS	CHKD	APP'D	SCALE	1" = 100'	RECOMMENDED FOR APPROVAL	PERMIT MAP - AUTHORITY NO. TBD
						DRAWING: ORR	12/18	CHEIEF OF DESIGN	TRI-MARINE FISH COMPANY, LLC.
						CHECKED: O. RAMSCH	12/18	ASSISTANT CHIEF HARBOR ENGINEER	
						DESIGNED: O. RAMSCH			DRAWING NUMBER EXHIBIT A-2
						ENGR/ARCH			
								CHIEF HARBOR ENGINEER	

EXHIBIT D

APPRAISER QUALIFICATIONS

Any appraisals that provide opinions of market value shall be performed by an appraiser whose business is located in the State of California and holds a current General Appraiser license in good standing as issued by the State of California Office of Real Estate Appraisers (OREA). The appraiser must have either a MAI or SRPA designation with the Appraisal Institute (AI) or an ASA designation with the American Society of Appraisers (ASA). A copy of all licenses and certifications shall be submitted prior to commencement of work. Any appraiser selected to perform an appraisal of Port related property (land and/or water and improvements) shall have working knowledge of port related properties that is appropriate for the work being performed assuming the property has a marine-related use.

EXHIBIT E

APPRAISAL SCOPE OF WORK

Appraisers shall provide a confidential appraisal report that at a minimum contains the following specifications as a condition of acceptance by the City of Los Angeles, Harbor Department ("Harbor Department") and Tenant.

Confidentiality Agreement

The appraiser shall keep all aspects of this assignment in the strictest confidentiality from all non-intended users, including but not limited to: lenders, title companies, other City agencies, utility companies, assessors, other appraisers, and members of your staff or company that are not directly involved in this assignment. Confidentiality shall be all-inclusive, including but not limited to: the appraisal, all knowledge, facts, files, and work product of the assignment. All requests for information, data, or files regarding this assignment shall be immediately referred to the Los Angeles City Attorney's Office.

Subject Property Address

Interest Appraised

The interest to be appraised is as follows: Fee Simple Absolute Fair Market Value of the land.

Date of Appraisal

Current.

Date of Value

Current or as instructed.

Type of Appraisal

The report type will be an "Appraisal Report" as described under the 2016 version of the Uniform Standards of Professional Appraisal Practice (USPAP) as found at www.uspap.org or latest version in place at the time of appraisal.

Appraisal Standards

There is to be a full compliance with USPAP 2016 or subsequently approved standards, as well as the Specific Client Standards as set forth in this document. Appraisers shall be state licensed as Certified General Appraisers by the State of California. The license shall be current and in good standing as of the date of submittal of the appraisal report assignment. A copy of the appraiser(s) license shall be submitted as part of the appraisal assignment.

Executive Summary

An Executive Summary or Summary of Salient Facts shall be included in the appraisal as described on Pages 6 through 8 of this Exhibit D.

Personal Inspection

All appraisers listed in the appraisal certification are required to conduct a personal inspection and verify all necessary measurements of the subject property, including areas of the improvements being appraised (if any).

Engagement Contract

A signed and dated copy of the appraisal contract must be included in the addendum of each copy of the appraisal report.

Letter of Transmittal

The letter of transmittal shall clearly state all the real property value conclusions and all extraordinary assumptions of the report. It shall also contain a brief description of the properties appraised, interests appraised, dates of value, date of report, client, intended use, intended user, signature, type of appraisal, and report type.

Client of the Appraisal

Tenant /Harbor Department

Intended Use of the Appraisal

As a tool for the Harbor Department and Tenant, staff will assist in and facilitate the establishment of the Fee Simple Fair Market Value of the subject property(s) for the purpose of periodic adjustment to fair market value.

Intended Users

Harbor Department, Tenant and their respective Boards.

Purpose

Determine the fee simple fair market value of land and improvements and real estate fixtures, if any. The rental rates shall reflect typical market rental terms as common on the date of valuation.

History of Ownership

Previous five years per public records.

Exposure Time

As set forth in USPAP 2017 or latest revised standards.

Externalities

Information, including but not limited to:

- Analysis of national and local economic trends and other relevant forces that influence or impact property value.

- Descriptions of the immediate and surrounding economic areas.
- Description of the property's access features.
- Availability and market characteristics of competing properties.
- Analysis of public transportation.
- Impact of container cargo terminal activities, and other Port maritime related activities, if any, State Tidelands Trust rules and regulations or City of Los Angeles laws, rules and regulations affecting the premises.
- A conclusion as to the social, economic, governmental, and environmental characteristics of the subject property.

Graphics

The following will be included in the report:

- Report shall be presented in a letter size bound report, with front and back cover.
- Use Arial font, with size no smaller than 11 pt. for body of report.
- Location map of subject property.
- Neighborhood map of subject property.
- Aerial image/photo of subject property, including orthographic aerial image.
- Site map and Assessor Map.

Highest and Best Use

The report shall include a Highest and Best Use Analysis as if the property were vacant. The appraiser's final opinion of what the highest and best use for the property is also to be included.

Zoning

Include a discussion of current zoning as it applies to the subject property, including height restrictions, permitted uses, setbacks, coverage ratios, FAR's, landscaping, and parking requirements. If the property has Harbor Department zoning, discussion should address the possible uses that could be allowed under the zoning designation, especially if the current use is not conforming to the existing zoning (variances).

Refer to and rely upon the Harbor Department updated Master Plan, as approved by the California Coastal Commission on March 12, 2014. A copy of this update can be found at: <http://www.portoflosangeles.org/planning/update.asp>.

Los Angeles County Assessor's Information

Include the Los Angeles County Assessor's parcel identification number (AIN), and the size of the parcels involved. If there is a discrepancy between the assessor's description and the site improvements, the differences must be detailed in the report.

Determination of Realty and Personal Property

Report shall include the identification of the subject's property that would be considered part of the realty as well as any trade fixtures or personal property if identified to be appraised.

Comparable Information

Each comparable sale, improved sale, and rate of return comparable shall be described in detail that will include the verification date and source, recent photo or image of the comparable if available, as well as any other important features that may affect value. A comparable location map that locates the subject property and all comparable data shall be included along with a summary table of the comparable data. All reports must include an adjustment grid that delineates each item of adjustment as well as the direction and amount of each adjustment made. All adjustments are to be discussed and the rationale for the adjustment in the pertinent analysis section of the report.

Method of Appraisals – Scope of Assignment

Describe all information analyzed, the appraisal methodology utilized, and the reasoning supporting the analysis, opinions, and conclusions. All appraisal methods shall be considered and all appropriate appraisal methods shall be applied, however at a minimum, a rental rate comparison approach must be used. If standard approaches to value are not included, the report must contain a discussion as to the reason for each such exclusion.

- **Sales/Rental Comparison Market Approach**

This required valuation method shall include a direct comparison of comparable sales, rental data, and if possible rates of return of similar properties in the surrounding area of the subject property. Surrounding area shall be defined as the following communities: San Pedro, Wilmington, West Long Beach, Torrance, Harbor City and Carson. Adjustments to comparables should be explained in the report. If possible, inclusion of lease terms of comparable rental data should be included if available.

- **The Cost Approach**

This analysis method, if applied, will estimate the value of the improvements and will set forth the replacement cost as new, including direct costs, indirect costs, and entrepreneurial profit. Indirect costs shall include but not be limited to construction interest and costs, long-term financing costs, insurance, taxes, fees, permits, architectural and engineering fees, site costs, capital costs, utility connection fees and an estimate of construction time. A depreciation analysis will estimate total life, remaining economic life, effective age, and total accrued depreciation from all forms. Depending upon its applicability, the depreciated cost will be subtracted from the total value to estimate land value or added to the estimated land value to estimate total value.

The appraiser should note in the report the source for cost approach information and calculation method. If the Marshall Valuation Service publication is being used for cost analysis, adherence to all procedures for calculation of value should be followed diligently **per the Marshall Valuation Service publication (printed or online version)**, such as accurate selection of building class, type, exterior walls, interior finish, and heating and air conditioning. Appraiser shall include use of

multipliers for area, cost, location and story height multipliers, additives (i.e. sprinklers, elevators, and storage tanks) and include mezzanines in calculations if applicable. In the determination of effective age, if the subject property has not underwent any modernization, rehabilitation, or removal of functional inadequacies, the appraiser will provide support or market evidence for an estimated effective age younger than the actual age of the improvement in question. If the calculations for the Marshall Valuation Service are calculated via software subscription (or internet subscription), a copy of the results are to be provided in the appraisal report in the appendix of the document. Any deviations from the manual procedures should be documented and explained.

The Income Approach

This analysis, if applied, will use an income capitalization technique utilizing a market derived rate of return or capitalization rate as applicable. An analysis of the appraiser's rate of return data and rate conclusion will be provided in the appraisal report. The following income approach methods are to be included in the appraisal report as applicable, assuming the information needed is available:

- Direct Capitalization
- Building or Land Residual Method
- Discounted Cash Flow Analysis (DCF) using CPI adjustments based on Los Angeles Area Consumer Price Index – All Urban Consumers for the Los Angeles/Riverside/Orange County, California area (referred to as the "CPI-U," where 1982-84 = 100), as published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS).

A summary of the three income approach methods will be provided in the appraisal report (if applied), along with an income approach value conclusion with supporting rationale.

Reconciliation

The report shall reconcile the results of all approaches and provide an analysis that resulted in the final conclusion of the fair market value of the property. The reconciliation will state the effective date of the valuation, the interests and real property appraised, and the conclusion for the fair market value.

The Harbor Department currently utilizes a 10% rate of return for land with a 50% discount to fair market value for subsurface rights (e.g. for pipelines or underground utility lines). The rate of return is subject to change based upon the Harbor Department's Leasing Policy or as determined by the Harbor Department's Finance Division, which is changed from time to time and subsequently approved by the Board of Harbor Commissioners.

The appraiser shall use the rates of return or discount rates that are currently in effect and approved by the Board of Harbor Commissioners at the date of appraisal. In absence of an update to the Leasing Policy or Rate of Return approved by the Board of Harbor

Commissioners, the appraiser shall use the rates and discounts above as described in this reconciliation clause.

Schedule of Performance

Key Personnel. The appraiser contracted with by each party will complete the core portions of the appraisal in relation to the valuation derivation such as comparable selection, comparable adjustments and any calculations as well as deriving the final value conclusions.

Appraiser shall provide real estate appraisal services for the premises as set forth in the Subject Property Exhibit D. The services shall be performed in a timely manner.

Qualifications

A statement of the appraiser(s) qualifications, including but not limited to a description of educational history, degrees and the granting institutions, specialized training, experience in appraisal of Harbor Department properties, and professional designations.

Certification

All appraisers listed in the Certification shall have personally inspected the subject property; and as minimum, the Certification shall be prepared in conformity to USPAP 2016, or latest standards.

Summary of Salient Facts

Date(s) of Value(s):

Date of Appraisal:

Appraisal Type:

Report Format:

Appraiser(s):

Purpose of Appraisal:

Client of the Report:

Intended Use:

Intended User(s):

Property Location(s):

Property Name(s):

Property Type:

Property Rights Appraised:

Scope of Appraisal:

Assessor's Parcel Number(s):

Zoning:

Site(s):

Description of Site(s):

Area of Total Site(s):

Area of Appraised Site(s):

Highest and Best Use:

As if Vacant Land:

As if as Improved:

Utilities (Who Pays):

Special Concerns:

Environmental:

Homeland Security Compliance

ADA Compliance:

Fire and Safety Compliance:

Personal Property:

Conclusion(s):

Site Improvement:

Misc. Improvements:

Gross Building Area:

Source of SF (select one): *Diagram* *Survey* *Other*

Paved Area:

Number of Parking Spaces:

Other Improvements (fencing, landscaping, lighting, etc.):

Height:

Number of Stories and Clear Height:

Year Built:

Value Conclusions:

Value conclusion shall be provided in an estimated land value as a dollar per square foot (\$XX.XX per SF). The recommended rental rate shall be provided as a dollar per square foot per year (\$XX.XX/SF/YR)

