

FOURTH AMENDMENT TO PERMIT NO. 724
BETWEEN THE CITY OF LOS ANGELES AND
LOS ANGELES YACHT CLUB

PERMIT NO. 724 ("Permit") entered into by and between the CITY OF LOS ANGELES ("City") acting by and through its Board of Harbor Commissioners ("Board") and LOS ANGELES YACHT CLUB ("Tenant") on March 4, 1993, is amended a fourth time, with respect to the following:

WHEREAS, the Permit has a term of thirty years expiring March 3, 2023. (The term Permit as used herein refers to the Permit, as amended.)

WHEREAS, City and Tenant have agreed to extend the term of the Permit for twenty (20) additional years, subject to required City approvals, and to add provisions to the Permit allowing assignment or sublease under certain conditions. The amendment and its terms are in the best interest of the City because, among other things, it will allow Tenant (Los Angeles Yacht Club and its recreational operations) to remain a vibrant, supporting element to the transformation of the San Pedro Waterfront.

WHEREAS, City and Tenant desire to amend the Permit to reflect the correct square footage of the premises, to amend provisions regarding assignment and rent, and to document Tenant's non-exclusive right to use neighboring property for parking, as provided below.

WHEREFORE, for good and valuable consideration, City and Tenant enter into this Fourth Amendment to Permit No. 724 on the following terms and conditions.

AMENDMENT

City and Tenant agree that the Permit is amended a fourth time, as follows:

1. Premises. Harbor Engineering Drawing No. 2-2418-1 has been revised and is hereby attached to the Permit as Exhibit A-4 replacing the current premises map, to reflect the correct square footage of the leased premises which is: Parcel 1 - 8,975 sf; Parcel 2 - 6,512 sf; Parcel 4 – 200 sf; = Total 15,687 sf. (A copy of said Harbor Engineering Drawing No. 2-2418-1 Revision 2/Exhibit A-4 is attached hereto.)
2. Right to use neighboring land for parking. Tenant has the right to use on a non-exclusive basis portions of neighboring premises (which are currently leased and/or shall be leased to another tenant), as follows:
 - i. Parcel 3 - 22,931 sf and Parcel 5 - 5,632 sf as identified on Exhibit A-4; and

- ii. Up to 10 unidentified parking spaces in Parcel No. 5 identified on Harbor Engineering Drawing No. 2-2441-1 revision 1 attached hereto as Exhibit 1.
3. Term. Section 3 of the Permit is amended by adding the following subsection 3(a)(i), extending the term of the Permit an additional twenty (20) years and changing the expiration date, as follows:
- “(i) Extension of Term. Notwithstanding Section 3(a), the term of this Agreement is extended an additional twenty (20) years for a total of fifty (50) years, expiring on March 3, 2043.”

4. Rent. Section 4 of the Permit is amended by adding the following subsection 4(a)(i), requiring annual rental adjustments based on the Consumer Price Index, as follows:
- “(i) Annual Adjustments. On March 4th of each year (which date and subsequent annual anniversaries shall be referred to individually as the “Annual Adjustment Date”) and annually thereafter, the fixed minimum monthly rent (referred to herein as “Base Rent”) amount shall be adjusted as of the Annual Adjustment Date automatically without further notice to reflect the percentage increase (but not any decrease), if any, in 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 (“CPI-U”) or successor index selected by the Executive Director in the Executive Director’s sole reasonable discretion (“Annual Adjustments”). Such adjusted Base Rent shall be equal to the product obtained by multiplying the Base 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:

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

5. Assignment and Sublease. Section 10 of the Permit is amended by deleting in its entirety subsection 10(a), Assignments/Subleases Prohibited, and replacing it with the following:
- “(a) Transfers, Assignments and Subleases.

- (i) Generally, Tenant, shall not, in any manner, transfer or assign this Agreement, or any portion thereof of any interest therein ("Assignment") voluntarily or involuntarily without the prior written consent of the Board, nor sublet or sublease the whole or any part of the Premises, nor license or permit the use of the same, in whole or in part, without the prior written consent of the Executive Director (collectively, referred to as a "Transfer").
- (ii) Initial Condition to Transfer: A condition precedent to a Transfer shall be Tenant entering into a new permit with City for premises in the Harbor District for the operation of a yacht club.
- (iii) Procedure to Obtain Consent to Transfer. If Tenant desires to undertake a Transfer, it must seek City's consent thereto.
- (iv) Tenant covenants that before entering into or permitting any Transfer, it shall provide to City written notice at least ninety (90) days before the proposed effective date of the Transfer. Notwithstanding the foregoing, City reserves the right to allow Tenant, on a case-by-case basis, to submit to City for City's consent, Transfers that would have become effective but Tenant's failure to seek City's prior written consent. Tenant's written request to City for consent shall hereinafter be referred to as "Transfer Notice."

(a) Transfer Notice. Tenant's Transfer Notice shall contain each of the following:

1. Specific identification of the entity or entities with whom Tenant proposes to undertake the Transfer ("Transferee");
2. Specific and detailed description of the Transferee's character and reputation and experience in the operations proposed;
3. Specific and detailed description of the type of Transfer proposed (e.g., assignment, sublease, grant of control, etc.) and the rights proposed to be transferred;
4. Specific and detailed description of the operations proposed to be undertaken at the Premises by Tenant and Transferee if City consents to the Transfer which includes a breakdown of the responsibilities and duties of Tenant and Transferee;
5. All of the terms of the proposed Transfer, including the total consideration payable by Transferee; the

- specific consideration (if any) payable by Transferee in connection with the Premises and/or uses under this Agreement if the proposed Transfer is part of an acquisition or purchase that involves assets outside this Agreement; the proposed use of the Premises; the effective date of the proposed Transfer; and a copy of all documentation concerning the proposed Transfer;
6. The proposed form of a guaranty or guaranties providing greater or substantially the same protection to City as any guaranty in effect prior to or contemporaneous with the proposed Transfer;
 7. A business plan for the Transferee including specific estimates of revenue anticipated under each of the following categories; existing contracts, contracts under negotiation and other specified sources;
 8. A general description of any planned alterations or improvements to the Premises;
 9. A description of the worth of the proposed Transferee including an audited financial statement;
 10. Any further information relevant to the proposed Transfer that City reasonably requests; and
 11. Written authorization in a form acceptable to City allowing City to inspect and review but not to copy, at times and locations reasonably selected by City, any books and records, or other information of Tenant or Transferee (or third-parties acting for or on either of their behalves) reasonably determined by City to be necessary for its assessment of Tenant's request for consent.

(b) Limitations on City's Consent. If City consents to a Transfer, the following limits apply:

1. City does not agree to waive or modify the terms and conditions of this Agreement;
2. Such consent does not constitute either consent to any further or other Transfer by either Tenant or Transferee or a bar disqualifying submittal of additional Transfer Notices in accordance with the terms of this Agreement following such consent;
3. If the Transfer is consented to, Tenant shall remain primarily liable under the Agreement, and any guarantor shall remain liable under its

- guaranty, unless specifically agreed to by City in writing;
4. Any consent shall not transfer to the Transferee any option granted to the original Tenant by this Agreement unless such specifically agreed to by City in writing;
 5. Tenant and/or Transferee, upon City's written request, shall provide proof, in a form satisfactory in the sole reasonable discretion of the Risk Manager of City's Harbor Department, demonstrating insurance of the type and limits required by the Permit. If requested in writing by City, Transferee shall provide a guaranty agreement in a form acceptable to City, if requested by City; and
 6. Transferee shall execute and deliver a written acceptance of Transfer in a form acceptable to City in which Transferee expressly assumes all of Tenant's obligations under the Agreement.
 7. Tenant acknowledges that the time needed for City to review a proposed Transfer depends on many factors including the Initial Condition to Transfer set forth above in Section 6(a)(2); the completeness of financial and other information submitted for review; and time needed for governmental processes (e.g., approval by the Board of Harbor Commissioners). In completing review of the proposed Transfer, City will not be bound by any deadline contained in any proposed assignments, purchase agreements, escrow instructions, or any other agreements to which City is not a party.

(c) Factors Germane to City Consent. In evaluating any requested Transfer, it shall not be unreasonable for City to withhold or condition its consent to a Transfer based on the following facts, among others:

1. The net worth, financial condition and creditworthiness of the Transferee and the existence of any guaranty provided by the Transferee's parent or related entity or entities;

2. The character, experience and reputation of the Transferee (or its operator) in operating the business contemplated by the Transfer;
3. Whether the Transfer will negatively impact the short-term or long-term development, land use or other plans of City's Harbor Department and whether consent to such Transfer would violate any of the legal duties of City's Harbor Department, including duties owed to other tenants;
4. Whether the proposed Transfer is consistent with the terms and conditions of the Agreement in existence when Tenant submitted the Transfer Notice and with the laws, rules, and regulations applicable to the Premises and Tenant's use and occupancy thereof;
5. The Transferee's level of commitment and specific plans to invest to improve the Premises following approval of the proposed Transfer, if any; and
6. Whether there are uncured defaults including, without limitation, unpaid Rent. If there are any uncured Tenant defaults existing at the time of the proposed Transfer, the proposed Transferee or Tenant shall cure, remedy or otherwise correct any such Tenant default in a manner satisfactory to Board as a condition to the Transfer."

Except as amended herein, all terms of Permit 724, as amended, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Fourth Amendment to Permit 724 on the date to the left of their signatures.

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

Dated: _____, 201_

By _____
Executive Director

Attest _____
Board Secretary

[signatures continue on next page]

LOS ANGELES YACHT CLUB,
a California corporation

Dated: February 18 2017

By Willard R. Bell III

Its Willard R. Bell III, Commodore-LAYC.
Type/Print Name and Title of Officer

By [Signature]

Its DARIUS SARIRI, GM
Type/Print Name and Title of Officer

APPROVED AS TO FORM AND LEGALITY

_____, 2017
MICHAEL N. FEUER, City Attorney
Janna B. Sidley, General Counsel

By _____
Estelle M. Braaf, Deputy