

SECOND AMENDMENT TO AGREEMENT NO.
13-3125 BETWEEN THE CITY OF LOS ANGELES
AND AND WESTREC MARINA MANAGEMENT, INC.

THIS SECOND AMENDMENT to Agreement No. 13-3125 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 WESTREC MARINA MANAGEMENT, INC. ("Westrec Marina"), a California corporation, 16633 Ventura Blvd., Suite 600, Encino, CA 91436 as follows:

WHEREAS, in June, 2013, City entered into Agreement No. 13-3125 ("Agreement") with Westrec Marina for the purpose of operating and managing Cabrillo Way Marina; and

WHEREAS, Westrec Marina is being sold to Suntex Marina Investors LLC ("Suntex") and effective January 1, 2023, Westrec Marina will be dissolved and the business will operate as Westrec SMI OPCO, LLC ("Westrec SMI OPCO"), a subsidiary of Suntex; and

WHEREAS, as a result of the sale, Westrec Marina seeks to assign Agreement No. 13-3125 to Westrec SMI OPCO, and Westrec SMI OPCO seeks to assume all rights and responsibilities subject to City's consent;

NOW THEREFORE, the parties agree as follows:

(1) Section XII.D. will be added as follows:

"D. Notwithstanding Section XII.B., a one-time assignment from Westrec Marina Management, Inc. to Westrec SMI OPCO, LLC shall be permitted in accordance with the Consent to Assignment and Assumption (attached as Exhibit J) and Parent Guaranty (attached as Exhibit K)."

Except as amended herein, all remaining terms and conditions of Agreement 13-3125 shall remain in full force and effect.

(Signature page on next page)

IN WITNESS THEREOF, the parties hereto have executed this Second Amendment to Agreement No. 13-3125 on the date to the left of their signatures.

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

Dated: _____

By _____
EUGENE D. SEROKA
Executive Director

Attest _____
AMBER M. KLESGES
Board Secretary

WESTREC MARINA MANAGEMENT, INC.

Dated: 11/4/2022

By Jeffrey K. Ellis
JEFFREY K. ELLIS, VP/CEO
(Print/type name and title)

Attest: Selma Tokuhara
SELMA TOKUHARA, CASH MANAGER
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

11. 8, 2022
MICHAEL N. FEUER, City Attorney
STEVEN Y. OTERA, General Counsel

By: [Signature]
MINAH PARK, Deputy City Attorney

AGREEMENT NO. 13-3125

CONSENT TO ASSIGNMENT AND ASSUMPTION OF
AGREEMENT BETWEEN THE CITY OF LOS ANGELES
AND WESTREC MARINA MANAGEMENT, INC.

THIS CONSENT TO ASSIGNMENT AND ASSUMPTION OF AGREEMENT (hereinafter referred to as "Assignment") is entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board"), WESTREC MARINA MANAGEMENT, INC., a California corporation, 16633 Ventura Blvd., 6th Floor, Encino, CA 91436 ("Westrec Marina" or "Assignor") and WESTREC SMI OPCO, LLC, a Delaware limited liability company, 17330 Preston Road, Suite 220A, Dallas, TX 75252 ("Westrec SMI OPCO" or "Assignee").

WHEREAS, in June, 2013, City entered into Agreement No. 13-3125 ("Agreement") with Westrec Marina for the purpose of operating and managing Cabrillo Way Marina; and

WHEREAS, Westrec Marina is being sold to Suntex Marina Investors LLC ("Suntex") and effective January 1, 2023, Westrec Marina will be dissolved and the business will operate as Westrec SMI OPCO, LLC, a subsidiary of Suntex; and

WHEREAS, as a result of the sale, Westrec Marina seeks to assign Agreement No. 13-3125 to Westrec SMI OPCO, and Westrec SMI OPCO seeks to assume all rights and responsibilities pursuant to the Assignment, and the City agrees to such assignment and assumption; and

WHEREAS, as of the date of this Assignment, the Assignor is in compliance with the terms and conditions of the Agreement;

NOW THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. The Assignment and all rights, obligations, liabilities and provisions thereunder shall be subordinate to, and Assignee shall strictly comply with and not conflict with, all terms, covenants and conditions of the Agreement, or as hereinafter amended, which Assignor and Assignee agree that they have read. Assignee agrees to operate in accordance with and to assume all rights, obligations, operations, restrictions, limitations and liabilities associated with the Agreement.
2. Neither Assignor nor Assignee shall, by amendment or otherwise, alter the rights and obligations contained in the Agreement, approved by this Assignment, without the prior written consent of the City. Consent to one such change shall not be deemed to be consent to any subsequent change.
3. Assignee agrees to observe, obey and abide by the City of Los Angeles Charter and Administrative Code, and all applicable ordinances, rules and other regulations of the City.

4. This Assignment shall not be deemed to be a consent to any other subsequent transfer of any nature to any other entity. Assignee shall not assign, sell, or otherwise transfer its interest. Any such transfer shall be void.

5. Continuing Responsibility. Assignor shall remain liable in all respects for the performance of each of the terms, covenants, provisions, conditions and obligations of said Agreement and this Assignment.

6. Merger. Assignee shall provide City not less than sixty (60) days prior written notice of any merger of Assignee with or into any other entity or of any dissolution of Assignee.

7. Amendments. The Agreement, its amendments and this Assignment supersedes any and all agreements and understandings previously made between any of the parties hereto relating to the subject matter of the Agreement. The Agreement may only be modified, amended or altered in writing.

8. Successors and Assigns. The Agreement, its amendments and this Assignment shall be binding upon and inure to the benefit or detriment of Department, Assignor and Assignee, their respective successors, assigns and legal representatives.

9. Governing Law. The Agreement and this Assignment shall be construed and enforced in accordance with the laws of the State of California and venue shall lie in the appropriate U.S. Federal Court or California Superior Court located in Los Angeles County.

10. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one instrument.

11. Notices. All notices shall be in writing and addressed as follows:

Notice to City. Written notices to City shall, until receipt of written notice otherwise from City, be given by registered or certified mail, postage prepaid, and addressed to:

City of Los Angeles Harbor Department
Director of Real Estate – Waterfront
425 S. Palos Verdes Street
San Pedro, CA 90731

Notice to Assignee. Written notices to Assignee shall, until City's receipt of written notice otherwise from Assignee, be given by registered or certified mail, postage prepaid, and addressed to:

Westrec SMI OPCO, LLC
Attn: William Anderson
16633 Ventura Blvd., 6th Floor
Encino, CA 91436

With a copy to:

Suntex Marina Investors LLC
17330 Preston Road, Suite #220A
Dallas, TX 75252
Attn: Brian DeVoss, General Counsel
Email: bdevoss@suntex.com

Notice to Assignor. Written notices to Assignor shall, until City's receipt of written notice otherwise from Assignor, be given by registered or certified mail, postage prepaid, and addressed to:

Westrec Marina Management, INC.
Attn: William Anderson
16633 Ventura Blvd., 6th Floor
Encino, CA 91436

All such notices shall be effective upon receipt.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date to the left of their signatures.

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

Dated: _____

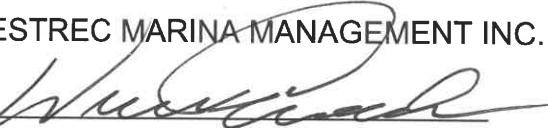
By: _____
EUGENE D. SEROKA
Executive Director


Attest: _____
AMBER M. KLESGES
Board Secretary

[Signature page continued on following page]

WESTREC MARINA MANAGEMENT INC.


Dated: _____

By: 
Name: WILLIAM W. ANDERSON
Title: PRESIDENT

Attest 

WESTREC SMI OP CO, LLC

Dated: _____

By: 
Name: WILLIAM W. ANDERSON
Title: PRESIDENT

Attest 

APPROVED AS TO FORM AND LEGALITY

_____, 2022
MICHAEL N. FEUER, City Attorney
STEVEN Y. OTERA, General Counsel

By: _____
MINAH PARK, Deputy

GUARANTY

THIS GUARANTY ("Guaranty") is made as of _____, 2022, by SUNTEX MARINA INVESTORS LLC ("Guarantor") to and for the benefit of the CITY OF LOS ANGELES, acting by and through its Board of Harbor Commissioners ("City").

WITNESSETH:

A. Westrec Marina Management, Inc. ("Westrec Marina") manages and operates the Cabrillo Way Marina under Agreement No. 13-3125 ("Agreement") for the City.

B. Westrec Marina is being sold to Suntex Marina Investors LLC ("Suntex") and effective January 1, 2023, the business will operate as Westrec SMI OPCO, LLC.

C. Westrec SMI OPCO, LLC ("Westrec SMI OPCO") is as an indirect wholly owned subsidiary of Suntex Marina Investors LLC ("Suntex"), created to assume Agreement No. 13-3125 and operate and manage Cabrillo Way Marina. Westrec SMI OPCO will be bound by all obligations, terms, conditions, and covenants under Agreement No. 13-3125 subject to City's consent to said assignments and the conditions in the Assignment.

D. As a condition to the effectiveness of the Agreement, City has requested and Guarantor has agreed to irrevocably guarantee the timely performance and payment of all obligations of Westrec SMI OPCO arising under the Agreement.

E. Guarantor acknowledges that the consummation of the transactions hereunder and under the Agreement provides direct benefits to Guarantor.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to obtain City's approval to issue the Agreement, and intending to be legally bound, Guarantor does hereby warrant, represent, and covenant unto City as follows:

1. GUARANTY AND SURETY.

Guarantor hereby absolutely, irrevocably and unconditionally guarantees, and becomes surety for, the full and timely payment and performance of duties, debts, obligations and liability of the operator under the Agreement, whether now or hereafter made, incurred or created, voluntary or involuntary, due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and regardless of whether recovery against the operator with respect to such obligations is prevented by bankruptcy, or otherwise (collectively, the "Guaranteed Obligations").

2. SUBSEQUENT ACTS BY CITY.

City may, in its sole and absolute discretion and without notice to Guarantor, take any action which might otherwise be deemed a legal or equitable release or discharge of

Guarantor's obligations hereunder without either impairing or affecting the liability of Guarantor for payment of the Guaranteed Obligations, which actions might include, by way of illustration and not limitation:

2.1 the renewal or extension of any of the Guaranteed Obligations or any payments hereunder;

2.2 the acceptance of partial payment or performance of the Guaranteed Obligations;

2.3 the settlement, release, compounding, compromise, cancellation, rearrangement or consolidation of any of the Guaranteed Obligations;

2.4 the collection of or other liquidation of any claims City may have in respect to the Guaranteed Obligations;

2.5 the granting of indulgences, forbearances, compromises, extensions or adjustments in respect to any covenant or agreement under the Agreement;

2.6 the release from liability of any Guarantor, or payment of the Guaranteed Obligations or any portion thereof;

2.7 the release, surrender, exchange or compromise of any lien, security or collateral held by City as security for the Guaranteed Obligations; or

2.8 the release or compromise of any lien or security held by City as security for the liability of any person who is guaranteeing the Guaranteed Obligations.

Any alterations of the terms of this Guaranty shall be in writing, mutually agreed to by City and by Guarantor and in conformity with the procedures set forth in City's Charter and Administrative Code.

3. EXPENSES.

Guarantor agrees to reimburse City for all expenses (including without limitation reasonable attorneys' fees, costs and expenses) incurred by City in enforcing the Guaranteed Obligations, pursuing any remedies relating to the Guaranteed Obligations set forth in the Agreement, and enforcing this Guaranty.

4. PAYMENT BY GUARANTOR.

In the event of any default by the operator with respect to the Guaranteed Obligations, Guarantor agrees to pay or perform on demand (either oral or written) such obligations. City shall not be required to liquidate any lien or any other form of security, instrument, or note held by City prior to making such demand. THIS IS A GUARANTY OF PAYMENT AND PERFORMANCE AND NOT OF COLLECTION, and Guarantor hereby waives all rights that Guarantor may have, if any, to require that any action be brought against the operator (or any other person) or to require that resort be first made against any security prior to demanding payment or performance hereunder.

5. CUMULATIVE REMEDIES.

Guarantor hereby agrees that all rights and remedies that City is afforded by reason of this Guaranty are separate and cumulative and may be pursued separately, successively, or concurrently, as City deems advisable. In addition, all such rights and remedies are nonexclusive and shall in no way limit or prejudice City's ability to pursue any other legal or equitable rights or remedies that may be available. Without limiting the generality of the foregoing, Guarantor agrees that in any action by City by reason of the Guaranteed Obligations, City at its election may proceed (a) against Guarantor together with operator, (b) against Guarantor and operator individually, or (c) against Guarantor only without having commenced any action against or having obtained any judgment against operator.

6. WAIVERS BY GUARANTOR.

6.1 Guarantor hereby waives:

6.1.1 notice of acceptance of this Guaranty and of creation of the Guaranteed Obligations;

6.1.2 presentment, notice of non-payment, and demand for payment of the Guaranteed Obligations;

6.1.3 protest, notice of protest, and notice of dishonor or default to Guarantor or to any other party with respect to any of the Guaranteed Obligations;

6.1.4 the right to receive demand for payment under this Guaranty;

6.1.5 any defense or circumstance (including, without limitation, disability, insolvency, lack of authority or power, insanity, minority, death or dissolution), other than payment of the Guaranteed Obligations, which might otherwise constitute a legal or equitable discharge of Guarantor's liability hereunder;

6.1.6 any defense of operator to the Guaranteed Obligations;

6.1.7 any rights to extension, composition or otherwise under the Bankruptcy Code or any amendments thereof, or under any state or other federal statute;

6.1.8 the right to trial by jury in any litigation arising out of, relating to, or connected with this Guaranty;

6.1.9 all rights or defenses that Guarantor may have as set forth in Division Three, Part 4, Title 13, currently Sections 2787 through 2914, of the California Civil Code, which address generally suretyship;

6.1.10 Guarantor waives any and all demands, actions, defenses, defaults, claims, breaches, causes of action, obligations, damages, and/or liabilities of any nature whatsoever existing as of the date hereof which Guarantor has or may have against City arising from or out of the Agreement.

6.2 It is expressly agreed that Guarantor shall remain liable hereon regardless of whether operator is held to be not liable on the Guaranteed Obligations. It is agreed between Guarantor and City that the foregoing waivers are of the essence of the Agreement transaction and that, but for this Guaranty and such waivers, City would decline to enter into the Agreement.

7. WAIVER AND RELEASE OF SUBROGATION AND PARTICIPATION.

Until such time as all obligations of operator under the Agreement have been satisfied, Guarantor shall have no right of subrogation in or under the Agreement, and no rights of reimbursement, indemnity or contribution from operator or any other rights by law, equity, statute or contract that would give rise to a creditor-debtor relationship between Guarantor and operator. Effective for the time period described in the preceding sentence, Guarantor hereby explicitly waives and releases any of the above-described rights of subrogation, reimbursement, indemnity, contribution, participation, and any right to require the marshaling of operator's assets under any circumstances.

8. SUBORDINATION.

Any obligation or debt of operator now or hereafter held by Guarantor is hereby subordinated to the Guaranteed Obligations and Guarantor shall not enforce or collect any such indebtedness from operator. Nevertheless, upon request by City, Guarantor shall collect, enforce and receive such indebtedness of operator to Guarantor. Any sums collected at City's request or collected in contravention of the prohibition set forth herein shall be held by Guarantor as trustee for City and shall be paid over to City on account of the Guaranteed Obligations; provided, however, such payments shall not impair, reduce or affect in any manner the liability of Guarantor under the other provisions of this Guaranty.

9. REPRESENTATIONS AND WARRANTIES.

Guarantor hereby represents and warrants to City that:

9.1 Guarantor now has no defense whatsoever to any action, suit or proceeding whatsoever that may be instituted on this Guaranty;

9.2 No other agreement or special condition exists between Guarantor and City regarding the liability of Guarantor hereunder; and

9.3 This Guaranty constitutes a valid and binding obligation of Guarantor, enforceable in accordance with its terms.

10. STRICT PERFORMANCE: WAIVERS.

No failure, delay or omission by City to exercise any of the rights, powers, remedies and privileges hereunder shall be deemed a waiver thereof and every such right, power, remedy and privilege may be exercised repeatedly. No notice to or demand on Guarantor shall be deemed to be a waiver of the right of City to take further action without notice or demand as provided herein. In no event shall any modification or waiver of the

provisions of this Guaranty be effective unless in writing executed by City. Any waiver granted shall be applicable only in the specific instance for which it is given. Failure of City to insist upon strict performance or observance of any of the terms, provisions and covenants hereof or to exercise any right herein contained shall not be construed as a waiver or relinquishment of the right to demand strict performance at another time. Receipt by City of any payment or performance on the Guaranteed Obligations shall not be deemed a waiver of the breach of any provision hereof or of the Agreement.

11. CAPTIONS.

The captions appearing herein are used for reference only and shall not be construed as limiting anything set forth herein.

12. SEVERABILITY.

If any term, covenant, condition or provision of this Guaranty, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Guaranty, or the application thereof to any other person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

13. GOVERNING LAW.

This Guaranty shall be governed by the laws of the State of California without reference to choice of law rules.

14. ASSIGNMENT: DELEGATION: BINDING EFFECT.

The duties and obligations of Guarantor may not be delegated or transferred by Guarantor without the prior written consent of City. The duties and obligations of Guarantor shall bind Guarantor's heirs, personal representatives, executors, successors and assigns.

15. TERMINATION: REINSTATEMENT: LIMITATION.

15.1 Subject to Section 15.2 below, Guarantor's obligations hereunder shall terminate, and this Guaranty shall be released, upon payment and performance in full of all duties, debts, obligations and liabilities of operator to City under the Agreement.

15.2 This Guaranty shall remain in full force and effect and continue to be effective should any petition be filed by or against operator under the Bankruptcy Code, as at any time amended, for liquidation or reorganization, or should operator become insolvent or make an assignment for the benefit of creditors or a receiver or trustee be appointed for all or any significant part of operator's assets, and this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment of the Guaranteed Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by City, whether as a "preferential transfer," "voidable preference," "fraudulent

conveyance," or otherwise, as if the portion of such payment rescinded, reduced, restored or returned had never been made.

16. NOTICES.

To City: Port of Los Angeles
425 South Palos Verdes Street
San Pedro, California 90731
Attention: Director of Real Estate, Waterfront

To Guarantor: Suntex Marina Investors LLC
17330 Preston Road, Suite #220A
Dallas, TX 75252
Attn: Brian DeVoss, General Counsel
Email: bdevoss@suntex.com

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty the day and year first above written.

Guarantor:

SUNTEX MARINA INVESTORS LLC

By: 

Name: RICHARD CARTER

Title: COO

Attest: 

Name: BRIAN DeVOSS

Title: GENERAL COUNSEL

APPROVED AS TO FORM AND LEGALITY

_____, 2022
MICHAEL N. FEUER, City Attorney
STEVEN Y. OTERA, General Counsel

By: _____
MINAH PARK, Deputy