

PERMIT NO. 911

GRANTED BY THE HARBOR DEPARTMENT

TO

THE CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER

TRANSMITTAL 2

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THIS PERMIT ("Agreement") is made and entered into this ____ day of _____, 20____, by and between THE CITY OF LOS ANGELES HARBOR DEPARTMENT ("LAHD"), acting by and through its Board of Harbor Commissioners ("Board"), and THE CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER, 111 N. Hope Street, Los Angeles, CA 90012, ("LADWP") (individually referred to as "Party" and collectively referred to as "Parties").

ARTICLE 1

Section 1. Agreement.

For good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, LAHD hereby delivers, and LADWP hereby accepts, the Premises hereinafter described, subject to the terms, limitations, conditions, restrictions and reservations contained herein and in the Charter of the City of Los Angeles and the State Tidelands Trust and the terms and conditions provided herein.

Section 2. Premises.

2.1 Description.

2.1.1 Land and Improvements. The premises subject to this Agreement are as delineated and more particularly described on Drawing No. 45607 and Drawing No. 5-4538-1 ("Premises"). Such drawings are on file in the office of the Chief Harbor Engineer of the Harbor Department ("Harbor Engineer") and are attached hereto as Exhibit "A". The total area of the Premises is 48,585 square feet comprised of 36,027 square feet of land and 12,558 square feet of subsurface land.

2.1.2 Existing Improvements. The improvements on the Premises as of the Effective Date, which improvements are owned by LAHD and subject to this Agreement, are identified in Exhibit "B", a copy of which is attached hereto. This Agreement refers to the totality of such LAHD-owned improvements as "LAHD's Improvements."

2.1.3 New Improvements. The Parties acknowledge that new improvements may be constructed on the Premises following the Effective Date. If, following the Effective Date, an improvement is added to the Premises, the Harbor Engineer shall: (i) revise Exhibit "B" to include both a depiction of such additional improvement and a statement identifying such improvement's ownership; (ii) renumber the revised Exhibit "B" (such that, for example, after any such revision and renumbering, Exhibit "B" becomes "Exhibit "B-1""); and (iii) transmit such revised and renumbered Exhibit "B" to LADWP. Upon LAHD's transmittal to LADWP, such revised and renumbered Exhibit "B" shall be deemed to: (i) be incorporated into this Agreement without further action of the Board or the Council; and (ii) supersede any earlier issued iterations of Exhibit "B".

2.2 Acceptance and Surrender. It is understood and agreed that LADWP accepts the Premises "AS IS", "WHERE IS", with all faults and limitations, provided that nothing herein shall be construed to negate any provision of this Agreement. LADWP agrees to surrender the Premises upon the expiration or earlier termination of this Agreement in conformance with the terms and conditions of this Agreement.

Section 3. Effective Date; Term and Holdover.

3.1 Effective Date. This Agreement shall become effective on the date of its approval by the City Council of City ("Council") pursuant to Section 606 of City's Charter, and execution by the Executive Director of the Harbor Department ("Executive Director"), after approval as to form and legality by the City Attorney of the City of Los Angeles ("Effective Date").

3.2 Term. The Term of this Agreement shall be for Thirty (30) years commencing on the Effective Date and expiring on _____ ("Expiration Date"), unless sooner terminated in accordance with Agreement.

3.3 Holdover. Should LADWP remain in possession of all or any part of the Premises after the expiration of this Agreement, with or without the express or implied consent of LAHD, such occupancy shall be considered to be a "holdover" from month to month only, and not a renewal of this Agreement nor an extension for any further term, and in such case, rent or other monetary sums due hereunder for such expired Premises shall be payable in the amount of: (i) one hundred twenty-five percent (125%) of the Rent, as defined in Section 4 (Rent), payable for the last month of the term of this Agreement, or one hundred twenty-five percent (125%) of the fair market rental, whichever is higher, plus (ii) other charges payable hereunder at the time specified in the Agreement, and such month to month occupancy shall be subject to every other provision, covenant and agreement contained herein, including any applicable Rental Adjustments set forth in Section 4. The foregoing provisions of this Subsection 3.3 are in addition to and do not affect the right of re-entry or any right of LAHD hereunder or as otherwise provided by law. Nothing contained in this Subsection 3.3 shall be construed as consent by LAHD to any holding over by LADWP, and LAHD expressly reserves the right to require LADWP to surrender possession of the Premises to LAHD as provided in the Agreement, and to the extent permissible by Applicable Law, upon the expiration of this Agreement.

Section 4. Rent and Other LADWP Payments.

4.1 Definitions.

4.1.1 Compensation Year. "Compensation Year" shall mean a period of twelve (12) consecutive calendar months commencing on the Effective Date and every twelve month period thereafter. Any period of less than twelve (12) consecutive calendar months shall be a partial year. For any partial year, the Rent shall be prorated on the basis of a three hundred and sixty-five (365) day year.

4.1.2 Tariff Charges. "Tariff Charges" shall mean all charges due and owing by LADWP under the Tariff on account of LADWP's use and occupancy of the Premises.

4.1.3 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.

4.1.4 Base Rent. "Base Rent" shall mean the monetary sum, in U.S. Dollars, LADWP shall pay to LAHD for its use and occupancy of the Premises per Compensation Year, excluding Tariff Charges and other Additional Rent.

4.1.5 Additional Rent. "Additional Rent" shall mean all monetary sums, in U.S. Dollars, LADWP shall pay to LAHD for applicable Tariff Charges, impositions, taxes, liens and fees imposed on the Premises or LADWP's leasehold interest in the Premises as more fully set forth in this Agreement.

4.2 Base Rent. As consideration for rights granted in this Agreement, LADWP shall pay to LAHD in the manner herein described without abatement, deduction or offset, except as provided herein, the following Base Rent when due, whether or not an invoice for same has been received: Thirty-Seven Thousand Eighteen Dollars (\$37,018) quarterly, in advance on or before the first day of every third calendar month.

4.3 Rental Adjustments. It is agreed that the Base Rent shall be adjusted in accordance with the following procedures:

4.3.1 Annual Adjustments. Effective on the first (1st) day of the second (2nd) Compensation Year (which date and subsequent annual anniversaries shall be referred to individually as "Annual Adjustment Date"), and annually thereafter, the Base 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 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:

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

4.3.2 Five-Year Rate Adjustments.

4.3.2.1 Adjusted Base Rent. In addition to, and not as a substitute for the Annual Adjustments required in Subsection 4.3.1, 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 LADWP 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. The 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.

4.3.2.2 Negotiating the Adjusted Base Rent and the Appraisal Process. At least one (1) year prior to each Reset Date and in accordance with section 4.3.2.1 above, the parties may (but are not required to) in good faith negotiate the Base Rent applicable to each Five Year Adjusted Period. Such good faith negotiations, initiated by either party, may include the involvement of a third party reviewer to review and make non-binding recommendations regarding each party's rate adjustment proposal, discussions regarding external and internal factors that may be unique to the land and/or improvements so that the reviewer(s) can take them into consideration when making the recommendations in substantially the same manner as corroborated by the Parties and applicable to the Premises. If the parties are able to reach an agreement on the Adjusted Base Rent, then said Base Rent shall be presented as a recommendation to the Board. However, if the Parties cannot agree on the amount of the Adjusted Base Rent during this negotiation period, then no later than nine (9) months prior to the Reset Date the Parties shall jointly designate an appraiser meeting the Appraiser Qualifications as defined within Exhibit "C" (a "Qualified Appraiser"). The Appraisal Instructions to be given to the Qualified Appraiser are as defined within this Permit as Exhibit "D".

4.3.2.3 The Appraisal Process. LAHD and Tenant shall each pay one-half of the fees and expenses of the Qualified Appraiser, who shall determine the compensation amount that is most reasonable, considering comparable data selection, market information and applicable valuation methodology. The Qualified Appraiser will communicate his or her decision in writing to the Parties within ninety (90) days after engagement. The Qualified Appraiser's determination regarding compensation shall be presented as a recommendation

to the Board. LAHD shall make a good faith effort to present the compensation and rental rate(s) for approval to the Board prior to the Reset Date.

4.4 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, which are made pursuant to Subsection 102.3 (Modifications of Premises and Documents), without further action of the Board or the Council. LAHD shall inform LADWP of the revised Rent by written notice and affix such notice as an Attachment to this Agreement.

4.5 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 LAHD to a Rent adjustment.

4.6 Additional Rent.

4.6.1 Payment; Definition of Rent. In addition to any other consideration under this Agreement, including without limitation any Base Rent, LADWP shall pay to LAHD all Additional Rent, as listed below, when due. Base Rent and Additional Rent shall collectively be referred to herein as "Rent". All Rent shall be paid to LAHD at the address to set forth in Subsection 103.2.2 (Payments), or at such other place as LAHD may from time to time designate.

4.6.2 Tariff. LADWP shall pay LAHD for any applicable Tariff Charges as Additional Rent.

4.6.3 Taxes and Impositions.

(a) LADWP shall timely pay all Taxes imposed with respect to this Agreement, 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. LAHD reserves the right, without being obligated to do so, to pay the amount any such Taxes not timely paid by LADWP, and the amount so paid by LAHD shall be deemed Additional Rent hereunder, due and payable by LADWP immediately upon demand by LAHD.

(b) LADWP 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.

4.6.4 Utilities and Services. LADWP 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 LADWP, LADWP shall pay a reasonable proportion, to be determined by LAHD, of all charges jointly metered or billed. There shall be no abatement of Rent and LAHD 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 LAHD's reasonable control or in cooperation with governmental request or directions. To the extent such utilities and services are provided by LAHD, payment for same shall be Additional Rent.

4.6.5 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 LAHD's rights to declare a default or limit LAHD's remedies under this Agreement and at law.

4.6.6 Rent on New Improvements. With respect to additions, improvements or alterations to the structures on the Premises authorized by LAHD and made by LADWP, at LADWP's sole expense, during the Term of this Agreement, LADWP shall not be charged Rent for the rental value thereof unless and until title to said additions, improvements, or alterations revert to LAHD pursuant to the terms of this Agreement or by operation of law.

4.6.7 Other Amounts. Any amounts due and owing from LADWP 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.

4.6.8 LAHD's Net Return. The Parties intend that this Agreement shall constitute a "triple net lease" so that the Rent shall provide LAHD with a "net" return for the Term, free of any expenses or charges with respect to the Premises, except as specifically provided in the Agreement. Accordingly, LADWP shall pay as Additional Rent and discharge, before delinquency (but subject to the terms of this Agreement, including any applicable cure periods), each and every item of expense, of every kind and nature whatsoever, including Impositions or other amounts customarily paid by a LADWP under a "triple net lease" or otherwise payable by LADWP in accordance with the terms of this Agreement.

Section 5. Uses.

5.1 Permitted Uses. The Premises shall be used for the following purposes and no others: Operation and maintenance of LADWP electrical power distribution stations and for purposes incidental thereto ("Permitted Uses").

5.2 Limitations on Use. LADWP shall not use or allow the Premises or any part thereof to be used for purposes other than the Permitted Uses without the prior written approval of the Board (which approval may be withheld by the Board in its sole and absolute discretion), and subject to such restrictions, limitations and conditions as may be imposed by the Board.

5.3 Operating Covenant. LADWP shall manage and operate the Premises, or cause them to be managed and operated, as a electrical power distribution facility, in a manner consistent with the manner and standard by which comparable facilities are managed and operated, and shall perform maintenance and capital improvements necessary to maintain the Premises in a manner comparable to that in which comparable facilities are maintained. LADWP shall operate the facilities in a commercially reasonable manner, and in accordance therewith, shall conduct its operations with commercially reasonable frequency.

Section 6. Notices.

The Parties shall send all notices or other communication necessary under this Agreement in writing by personal service, or express mail, Federal Express, DHL, UPS or any other similar form of airborne/overnight delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, addressed to the Parties at their respective addresses as follows:

If to LAHD (or its Harbor Department): Port of Los Angeles
425 South Palos Verdes Street
San Pedro, California 90731
Attn: Executive Director

with copies to:

Los Angeles City Attorney's Office
425 South Palos Verdes Street
San Pedro, California 90731

and to:

Real Estate Division
P.O. Box 151
San Pedro, CA 90733-0151

If to LADWP:

City of Los Angeles Department of Water and Power
John Ferraro Building
Real Estate Business Unit
111 N. Hope Street, Room 1031
Los Angeles, CA 90012

Any such notice shall be deemed to have been given upon delivery or two business days after deposit in the mail as aforesaid. Either Party may change the address at which it desires to receive notice upon giving written notice of such request to the other Party.

[Insert other provisions as needed]

Article 1, Sections 7 to 99, intentionally omitted.

102.2.3 Homeland Security. Access, temporary occupancy and other rights reasonably necessary to comply with homeland security or related requirements of local, state and federal law enforcement agencies or the Harbor Department. LAHD reserves the right to install, maintain and operate on the Premises equipment related to homeland security and/or public safety with seventy-two (72) hours prior written notice to LADWP without compensation or abatement of Rent unless otherwise agreed to in writing by LAHD.

102.2.4 Environmental Initiatives. Access, temporary occupancy and other rights reasonably necessary to comply with environmental initiatives and/or policies of LAHD, local, state and federal agencies or the Harbor Department, provided that the exercise of such rights do not materially interfere with the Permitted Uses.

102.2.5 Prior Exceptions. All prior exceptions, reservations, grants, easements, leases or licenses of any kind whatsoever that appear of record in the office of the Recorder of Los Angeles County, California, or in the official records of LAHD or any of its various departments.

102.2.6 Mineral Rights Excluded. All minerals and mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil, gas and water rights, together with the full, exclusive and perpetual rights to explore for, remove and dispose of said minerals, or any part thereof, from the Premises, without, however, the right of surface entry on the Premises.

102.3 Modification of Premises and Documents.

102.3.1 Final Measurement. The Premises may be subject to final measurement by LAHD. To the extent that the final measurements differ from Exhibit "A", the Harbor Engineer shall: (i) revise Exhibit "A" to reflect the correct measurements of the Premises and any improvements thereon; (ii) renumber the revised Exhibit "A" as Exhibit "A-1"; and (iii) transmit Exhibit "A-1" to LADWP. Upon LAHD's transmittal to LADWP, such revised and renumbered Exhibit "A-1" shall be deemed to: (i) be incorporated into this Agreement without further action of the Board or the Council; and (ii) supersede Exhibit "A".

102.3.2 Modifications. Addition or deletion of Premises for which LADWP is charged, not to exceed a cumulative total of ten percent (10%) of the originally designated Premises, may be made by mutual agreement of the Parties, so long as such change in area is not a temporary use of substitute premises as set forth in Tariff Item 1035 (or its successor) or not temporary as determined by LAHD in its sole reasonable discretion. Such addition or deletion shall be by written amendment and shall specify appropriate adjustments in Rent and shall not require approval by the Board or the Council unless the modification involves an amount in excess of the Executive Director's

ARTICLE 2 – STANDARD PROVISIONS

Section 100. Applicability of Article 2.

Notwithstanding anything in this Agreement to the contrary, in the case of any inconsistency between Article 1 and Article 2 of this Agreement, the provisions of Article 1 shall be controlling.

Section 101. Definitions.

All capitalized terms used and not defined in Article 1 or Article 2 shall have the meaning ascribed to them in the Glossary of Defined Terms attached hereto and incorporated herein as Attachment 1.

Section 102. Limitations and Additional Provisions Related to Premises.

102.1 Compliance with Applicable Laws; Executive Directives. At all times in its use and occupancy of the Premises and in its conduct of operations thereon, LADWP, at its sole cost and expense, shall comply with all Applicable Laws. In addition to the foregoing, LADWP shall comply immediately with any and all directives issued by the Executive Director under authority of any such Applicable Law, subject to any and all City of Los Angeles Charter requirements and limitations. It is the Parties' intent that LADWP shall make, at LADWP's sole cost and expense, any and all alterations, improvements and changes, whether structural or nonstructural, that are required by Applicable Law.

102.2 Reservations. This Agreement and the Premises are and shall be at all times subject to the reservations and exclusions listed below and additional reservations LAHD may reasonably require after the Effective Date, of which LADWP shall receive advance written notice, for which LADWP shall receive no compensation unless otherwise provided in this Agreement.

102.2.1 Utilities or other Rights-of-Way. Rights-of-way for sewers, pipelines (public or private), conduits for telecommunications, electric, gas, and power lines, as may from time to time be determined to be necessary by the Board, including the right to enter upon, above, below or through the surface to construct, maintain, replace, repair, enlarge or otherwise utilize the Premises for such purpose, without compensation or abatement of Rent and with as minimal interference with the Permitted Uses as possible.

102.2.2 Streets and Highways. Rights-of-way for streets and other highways and for railroads and other means of transportation which are apparent from a visual inspection of the Premises or which shall have been duly established or which are reserved herein, provided that the exercise of such right after the Effective Date does not materially interfere with the Permitted Uses.

contracting authority, as that amount may be amended from time to time, in which case prior Board approval shall be required. The Executive Director shall revise and replace the following: (i) Section 2 (Premises) (ii) Section 4 (Rent and Other LADWP Payments), and (iii) Exhibit "A", as necessary to conform to these modifications.

102.4 Inspection by LADWP; No Warranties by LAHD. LADWP acknowledges that it has inspected the Premises in contemplation of entering into this Agreement and occupying the Premises for the Permitted Uses, including the construction of improvements, if any, and acknowledges and agrees that:

(a) LADWP is accepting the Premises as set forth in Subsection 2.2 (Acceptance and Surrender), that is, without representation or warranty with respect thereto, express or implied, except only as set forth in this Agreement, with regard to the physical or other condition of the Premises, including the existence of any Hazardous Substances thereon, soils condition, the presence or absence of archeological or historical remains or suitability for the intended use;

(b) LADWP has determined for itself, that the Premises are suitable for the Permitted Uses; and

(c) No individual of, or affiliated with, LAHD has made any representation or warranty with respect to the Premises or improvements existing or planned or to the suitability of the Premises for the Permitted Uses, unless the nature and extent of such representation or warranty is described in writing and attached hereto.

102.5 No Conveyance of Fee Estate. The Parties acknowledge and agree that this Agreement does not transfer or convey the Fee Estate of the Premises, and that any grant or conveyance under this Agreement is solely of the leasehold estate thereto.

102.6 Temporary Assignments. By issuing this Agreement, LAHD does not grant to LADWP the sole or exclusive right to use the Premises. Whenever the Premises, excepting the office building occupied by LADWP, if any, are not being used, in whole or in part, by LADWP for the Permitted Uses or if LAHD requires the Premises on a project or emergency basis, the Executive Director shall have the right, subject to LADWP's consent (which consent shall not be unreasonably withheld), to make temporary assignments to other persons, firms and/or corporations to use the Premises, or any part thereof, as provided in the Tariff. Any direct charges accruing against LADWP from the use of the Premises by a temporary user and the allocated costs of utilities which LADWP furnishes to such temporary user shall be paid by such temporary user. LAHD and LADWP agree to negotiate in good faith regarding any other terms and conditions of such temporary assignments.

102.7 Waste or Nuisance. LADWP shall not use the Premises in any manner that constitutes waste or nuisance.

102.8 Load Limits. LAHD warrants and represents that wharfs and paving on the Premises will support the load limits specified in Exhibit "B." LADWP shall allow no loading in excess of such limits without the prior written consent of the Harbor Department, which consent may be provided by a Harbor Engineer's Permit or a Heavy Lift Permit. Upon receipt of a notice from LAHD that the load limits on Exhibit "B" have been exceeded, LADWP immediately shall take all appropriate steps to correct such condition and, irrespective of such notice, shall, as between LAHD and LADWP, be solely responsible for any cost, expense or damage resulting from exceeding the load limits.

102.9 Wilmington Truck Route. LAHD and LADWP acknowledge that LADWP does not directly control the trucks serving the Premises. However, LADWP shall make its best efforts to notify truck drivers, truck brokers and trucking companies that trucks serving the Premises must confine their route to the designated Wilmington Truck Route ("Wilmington Truck Route" attached hereto as Exhibit "E"). The Wilmington Truck Route may be modified from time to time at the sole and absolute discretion of the Executive Director. The Harbor Department shall provide LADWP with notice of any modifications to the Wilmington Truck Route.

102.10 Maintenance Areas. LADWP shall not conduct or permit any maintenance of mobile or portable equipment on the Premises except in full compliance with all Applicable Laws attendant to the Premises and its use, including without limitation, all Environmental Laws and Mitigation Measures as hereinafter defined.

102.11 Responsibility for Financing. LADWP covenants that any financing required in connection with the use the Premises, including without limitation development and operation, shall be the sole responsibility, cost and expense of LADWP.

102.12 LADWP to Supply Necessary Labor and Equipment. LADWP shall, at its sole cost and expense, provide all equipment and labor necessary to undertake the Permitted Uses; provided, however, that nothing contained herein shall prevent LADWP from using such equipment as may be installed by LAHD at the Premises upon the payment to LAHD of all applicable charges.

102.13 Liens; Indemnity. Except where contested by LADWP in good faith in a court of competent jurisdiction, and except for non-delinquent liens arising from taxes or tax assessments, LADWP shall keep the Premises free from liens of any kind or nature arising out of its use and/or occupancy of the Premises, including any liens arising out of any labor performed for or materials furnished to or on behalf of LADWP on the Premises. LADWP agrees that it shall at all times defend and indemnify LAHD from and against all claims for labor or materials in connection with the construction, erection or installation of improvements made by LADWP upon the Premises, or from additions or alterations made to any improvements on the Premises, or the repair of the same, by or at the direction of LADWP, and the costs of defending against any such claim, including reasonable attorneys' fees. If a mechanic's or other similar lien shall at any time be filed against LAHD's interest in the Premises, which is not contested by

LADWP in good faith in a court of competent jurisdiction, LADWP shall: (i) cause the same to be discharged of record within thirty (30) days after the date of filing the same; or, (ii) otherwise free the Premises from such claim or lien and any action brought to foreclose such lien; or, (iii) promptly furnish LAHD with a bond in the amount of the lien plus twenty-five percent (25%) thereof issued by a surety company, acceptable to the Executive Director, securing LAHD against payment of such lien and against any and all loss or damage whatsoever in any way arising from the failure of LADWP to discharge such lien.

102.14 LADWP Telecommunications Equipment. LADWP shall coordinate with the Harbor Department and any other applicable Governmental Agencies prior to installing any radio or telecommunications equipment to ensure that frequencies do not interfere with public safety communications or radio frequencies.

102.15 Property of LADWP. All property brought onto the Premises by LADWP, or in the care, custody or control of LADWP, to undertake the Permitted Uses or otherwise shall be and remain the property of LADWP, subject to the terms and conditions contained herein, and shall be there at the sole risk of LADWP. LADWP hereby waives all claims against LAHD with respect to such property, except for injury or damage to such property caused by LAHD's sole negligence or willful misconduct.

102.16 Quiet Enjoyment. LAHD covenants that, so long as this Agreement has not expired or terminated in accordance with its terms and Applicable Laws attendant to the Premises and its use, LADWP shall and may peaceably and quietly have, hold and enjoy the Premises for the Term so long as the Premises are used in compliance with the State Tidelands Trust. By such covenant, LAHD makes no representation or warranty as to the condition of title of the Premises or the suitability of the Premises for the Permitted Uses. LADWP's sole remedy for breach of this Subsection 102.16 shall be an action for specific performance.

102.17 Provision of Safe Environment. LADWP shall provide for a safe environment on the Premises and follow the Harbor Department's Homeland Security rules and regulations, including without limitation, Tariff Section 2, item 298, (or its successor) and all other Applicable Laws.

Section 103. Additional Provisions Related to Rent.

103.1 Premises Subject to Tariff. LADWP accepts the Premises and shall undertake the Permitted Uses subject to each and every of the terms and conditions provided in this Agreement, and to each and every of the applicable rates, terms and conditions of the Tariff as it now exists, or as it may be temporarily amended or permanently amended or superseded. LADWP represents and warrants that it has received, read and understands the rates, terms and conditions of the Tariff and covenants that, at all times during the term of this Agreement, it shall maintain a complete and current Tariff at the address set forth in Section 6 (Notices). Except as otherwise set forth in this Agreement, LADWP is contractually bound by all Tariff rates, terms and conditions as if the same were set forth in full herein. LAHD in its sole

and absolute discretion shall determine if a conflict exists between a provision of this Agreement and a Tariff provision. In the event of such conflict, this Agreement shall at all times prevail.

103.2 Requirements Applicable to LADWP's Payment of Rent.

103.2.1 Payments. LADWP shall render its payments at the Harbor Department Administration Building or any other place that LAHD from time to time may designate in writing. All payments due to LAHD 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.

103.2.2 Proration of Payments. If any payment by LADWP is for a period shorter than one calendar month, the Rent for that fractional calendar month shall accrue on a daily basis for each day of that fractional month at a daily rate equal to 1/365 of the total annual Rent then due and payable. All other payments or adjustments that are required to be made under the terms of this Agreement and that require proration on a time basis shall be prorated on the same basis.

103.2.3 Labor Disturbance. If, by reason of strikes, other labor disputes, lockouts, or other work stoppages of which LADWP did not directly or indirectly cause and/or to which LADWP is not a party ("Labor Disturbance"), occurring at the Premises and lasting more than (30) days, LADWP is prevented from making substantial use of Premises to undertake the Permitted Uses, the Rent for the period during which the Labor Disturbance occurs shall be proportionately adjusted, commencing the thirty-first (31st) day after commencement of such Labor Disturbance, provided LADWP has, prior to such date, given LAHD written notice of such Labor Disturbance including its assertion that it has not caused such disturbance, and such reduction shall be applicable from and after said thirty-first (31st) day until LADWP is able to make substantial uses of the Premises to undertake the Permitted Uses.

103.2.4 Force Majeure Not Applicable. Any Force Majeure provision or principle, including, without limitation, the provisions of Section 110 (Force Majeure), shall not apply to any of Tenant's Rent Payment Obligations.

103.2.5 Delinquent Payments. Payments required to be made by this Section 103 which have not been paid within ten (10) calendar days of the date such payments are due shall be subject to a delinquency charge which shall accrue at the rate provided in Item No. 270 of the Tariff, currently consisting of simple interest of 1/30 of two percent (2%) of the amount remaining unpaid each day. Tenant acknowledges that it knows the day of the month its payments hereunder are due and that such payments are due to be made from that date and not the date of LAHD's invoice, if any. The delinquency service charge shall be imposed whether or not a deposit required by Subsection 103.2.6, above, is applied to the amount due. LAHD has the unqualified

right, upon thirty (30) days' prior written notice to Tenant, to change the level of the delinquency service charge.

Section 104. LADWP's Environmental Obligations During Term of Agreement.

104.1 Definitions. Additional defined terms are contained in the Glossary of Defined Terms contained in Attachment 1 and below.

104.1.1 Term Release. "Term Release" shall mean a spill, discharge or any other type of release of Environmentally Regulated Material that occurs on the Premises during the term of this Agreement or any holdover, whether caused by LADWP or a third-party, including any Assignor (other than invitees under a temporary assignment pursuant to Subsection 102.6 (Temporary Assignments) or third-parties whose access to the Premises has been requested by LAHD pursuant to Subsection 102.2 (Reservations), that contaminates or threatens to contaminate LAHD's Improvements, adjacent harbor waters, soil, sediment, groundwater or air of the Premises or of adjacent premises (including soil, sediment, groundwater or air of those adjacent premises).

104.1.2 Term Contamination. "Term Contamination" shall mean all contamination of improvements, adjacent harbor waters, soil, sediment, groundwater or air of the Premises or of adjacent premises (including soil, sediment, groundwater or air of those adjacent premises) resulting from all Term Releases and contamination that is consider a nuisance under Applicable Laws.

104.1.3 Term Characterization Work Plan. "Term Characterization Work Plan" shall mean the written work plan submitted by LADWP to LAHD, the sufficiency of which is subject to LAHD's reasonable approval, that details all work (including sampling and analysis) necessary to generate a written characterization of the nature and extent of contamination (including contamination of air, soil and water) caused by a Term Release or Term Releases and that includes detailed programs for sampling and chemical analysis of soil and groundwater, which programs shall conform with Environmental Laws, accepted principles of environmental science, established regulatory protocols and the Port of Los Angeles "Site Characterization Guidance Manual" as it exists as of the Effective Date or as it may be subsequently amended ("Site Characterization Guidance Manual"). LADWP acknowledges receipt of a copy of such Manual. Following the Effective Date, LADWP shall be solely responsible for obtaining and maintaining the current version of the Site Characterization Guidance Manual.

104.1.4 Term Characterization Report. "Term Characterization Report" shall mean the written report submitted by LADWP to LAHD, the sufficiency of which is subject to LAHD's reasonable approval, that details all findings made as a result of performing the Term Characterization Work Plan and that is in conformance with the Site Characterization Guidance Manual.

104.1.5 Term Remediation Action Plan. "Term Remediation Action Plan" shall mean the written plan submitted by LADWP to LAHD, the sufficiency of which is subject to LAHD's reasonable approval, that addresses remediation of all contamination caused by Environmentally Regulated Material in soil, harbor waters, groundwater and sediment as identified in the Term Characterization Report, that conforms with LADWP's obligations as set forth below in Subsection 104.2, and that includes a discussion of remedial action alternatives for restoration of the Premises and a timetable for each phase of restoration. The Term Remediation Action Plan shall comply with Environmental Laws, established regulatory protocols, accepted principles of environmental science and the Site Characterization Guidance Manual.

104.2 LADWP Responsibility for Existing Condition of the Premises.

104.2.1 Existing Conditions. LADWP has accepted the Premises in an "AS IS" condition as set forth Subsection 2.2 (Acceptance and Surrender). As such, LADWP shall be responsible for remediation of all contaminants which may be on, below or emanating from the Premises whether or not such contamination occurred before or after LADWP took possession of the Premises unless a Baseline Report for the Premises is obtained as set forth below.

104.2.2 Baseline Conditions, LAHD's Baseline Report. Notwithstanding Subsection 104.2.1, above, LADWP acknowledges and agrees that it has reviewed and approved the document attached hereto as Exhibit "F-1", if any, which document constitutes the written depiction of the environmental condition of the Premises on the Effective Date ("Baseline Condition") and which hereinafter shall be referred to as the "LAHD's Baseline Report." LADWP shall be responsible only for contamination above the Baseline levels for those contaminants covered in the LAHD's Baseline Report. Any contaminates not analyzed in the Baseline Report, any contamination which occurred as a result of LADWP Prior Occupancy as set forth in Subsection 104.2.4 (Existing Contamination), and any Term Contamination shall be the sole responsibility of LADWP.

104.2.3 Baseline Conditions, LADWP's Baseline Report. Notwithstanding Subsection 104.2.1, above, if the LAHD has not determined the Baseline Condition and LADWP elects, at its sole cost and expense, to prepare a Baseline Report depicting the Baseline Condition, and the LADWP's Baseline Report is approved by LAHD, in its sole but reasonable discretion, ("LADWP's Baseline Report") attached hereto as Exhibit "F-2", if any, then the LADWP's Baseline Report shall establish the condition of the Premises as of the Effective Date. LADWP shall be responsible only for contamination above the Baseline levels for those contaminants covered in the LADWP's Baseline Report. Any contaminates not analyzed in LADWP's Baseline Report, any contamination which occurred as a result of LADWP Prior Occupancy as set forth in Subsection 104.2.4 (Existing Contamination) and any Term Contamination shall be the sole responsibility of LADWP.

104.2.4 Existing Contamination. LAHD and LADWP acknowledge that prior to the Effective Date, the Premises, or portions thereof, were occupied by LADWP, or an Affiliate of LADWP, or by an assignor or transferor to LADWP, under an entitlement or agreements separate from this Agreement ("LADWP Prior Occupancy") and that as a result of such prior use and occupancy, the Premises (and/or areas adjacent to the Premises) on the Effective Date may possess contamination ("Existing Contamination"). As to LAHD, LADWP bears all responsibility for the Existing Contamination which occurred during LADWP Prior Occupancy whether or not such contamination is depicted in a Baseline Report.

104.3 LADWP Responsibility for Term Contamination.

104.3.1 Remediation. LADWP shall remediate or cause the remediation of any Term Releases, including any Existing Contamination that is not covered by a Baseline Report, such that the affected Premises (and/or areas adjacent to the Premises) are left: (a) in the Baseline Condition if a Baseline Report was prepared and approved by LAHD or (b) in an environmental condition that fully complies with the guidelines of, orders of, or directives of the Governmental Agency or Agencies that have assumed jurisdiction, if any, whichever of the two is stricter, and in conformance with Harbor Department then existing remediation procedures, and free of encumbrances, such as deed or land use restrictions, except those that may be imposed as a result of the presence of Environmentally Regulated Material despite LADWP's compliance with the foregoing requirement. As between LAHD and LADWP, LADWP shall bear sole responsibility for all Term Contamination and any costs related thereto.

104.3.2 LADWP Responsibility; Indemnity. Except for Baseline Conditions which are depicted in the LAHD's Baseline Report or the LADWP's Baseline Report, as the case may be, which are not Existing Contamination which occurred during LADWP Prior Occupancy, or conditions of the Premises resulting from LAHD or third-party activities on or about the Premises when LADWP is required by this Agreement to allow LAHD or such third-parties onto the Premises under a temporary assignment pursuant to Subsection 102.6 (Temporary Assignments), or whose access to the Premises has been requested by LAHD pursuant to Subsection 102.2 (Reservations), LADWP bears sole responsibility for full compliance with any and all Applicable Laws regarding the use, storage, handling, distribution, processing, and/or disposal of Environmentally Regulated Material, regardless of whether the obligation for such compliance or responsibility is placed on the owner of the land, on the owner of any improvements on the Premises, on the user of the land, or on the user of the improvements. Except for Baseline Conditions which are not Existing Contamination which occurred during LADWP Prior Occupancy, or conditions of the Premises resulting from LAHD or third-party activities on or about the Premises when LADWP is required by this Agreement to allow LAHD or such third-parties onto the Premises as described above, LADWP agrees that any claims, damages, fines or other penalties asserted against or levied on LAHD and/or LADWP as a result of noncompliance with any Environmental Laws shall be the sole

responsibility of LADWP and that LADWP shall indemnify and hold LAHD harmless from any and all such claims, damages, fines and penalties, as well as any costs expended to defend against such claims, damages, fines and penalties, including attorneys' and experts' fees and costs that result from Term Contamination or LADWP's non-compliance with any applicable Environmental Law during the Term regarding the use, storage, handling, distribution, processing and/or disposal of Environmentally Regulated Material. LAHD shall provide LADWP with sixty (60) days' notice to comply with any claims, damages, fines and penalties, or if LADWP has not complied with such claims, damages, fines and penalties, or if LADWP has not requested a meet and confer to discuss compliance within such sixty (60) days, then LAHD, at its sole option, may pay such claims, damages, fines and penalties resulting from LADWP's noncompliance with any of the Environmental Laws, and LADWP shall indemnify and reimburse LAHD for any such payments. As between LADWP and LAHD, LAHD shall indemnify and hold LADWP harmless, to the extent allowed by Applicable Law, from any and all such claims, damages, fines and penalties, including attorneys' and experts' fees and costs, that result from any Baseline Condition other than for Existing Contamination which occurred during LADWP Prior Occupancy whether or not the Existing Contamination was included in the Baseline Report.

104.3.3 Rebuttable Presumption When Baseline Report Prepared. LADWP acknowledges and agrees that a presumption shall exist that any contamination not specifically depicted and analyzed in the LAHD's Baseline Report or the LADWP's Baseline Report, as the case may be, constitutes Term Contamination for which, as between LAHD and LADWP, LADWP is solely responsible. LAHD shall provide written notice of the existence of any such contamination to LADWP. LADWP may rebut such presumption by providing to LAHD, within ninety (90) days of LAHD's written notice, conclusive evidence demonstrating that such contamination is not Term Contamination. Otherwise, such presumption shall be deemed confirmed making LADWP solely responsible for such contamination. Whether any information submitted by LADWP rebuts the aforementioned presumption shall be within the LAHD's sole and absolute discretion, exercised reasonably and in good faith. This provision shall survive the expiration or earlier termination of this Agreement.

104.4 LADWP Obligations In the Event of a Term Release.

104.4.1 Duty to Remediate. Upon discovery of any Term Contamination, LADWP shall, at its sole cost remediate the Term Contamination in accordance with Subsection 104.3 (LADWP Responsibility for Term Contamination).

104.4.2 Compliance with Government Agency Orders. If Applicable Law requires LADWP to report a Term Release to a Governmental Agency, LADWP shall so report and thereafter, if such Governmental Agency asserts jurisdiction over such Term Release, LADWP shall, at its sole cost and expense as between LAHD and LADWP, manage the Term Release consistent with Environmental Laws or the Governmental

Agencies with jurisdiction, if any. If a schedule for such Term Release management is not prescribed by Environmental Laws, or by the Governmental Agencies with jurisdiction if any, the Harbor Department shall reasonably prescribe such schedule in consultation with LADWP.

104.4.3 Site Characterization. Whether a Governmental Agency asserts jurisdiction over Term Contamination or not, LADWP shall characterize (including sampling and analysis) and remediate all Term Contamination in conformity with Environmental Laws, and the Port of Los Angeles "Site Characterization Guidance Manual" as it exists as of the Effective Date or as it may be subsequently amended ("Site Characterization Guidance Manual"), to the extent it does not conflict with protocols established by any other Governmental Agency asserting jurisdiction over the Term Contamination. LADWP acknowledges receipt of a copy of such Manual. Following the Effective Date, LADWP shall be solely responsible for obtaining and maintaining the current version of the Site Characterization Guidance Manual.

104.4.4 Copies to LAHD. LADWP shall provide copies to LAHD of all communications between LADWP (and any third-parties acting for or on its behalf), and any Governmental Agency with jurisdiction regarding all Term Releases and Term Contamination.

104.4.5 LAHD's Rights to Remediate. If LADWP fails to wholly or partially fulfill any obligation set forth in Subsection 104.3 (LADWP Responsibility for Term Contamination), LAHD may (but shall not be required to) take all steps it deems necessary to fulfill such obligation. Any action taken by LAHD shall be at LADWP's sole cost and expense and LADWP shall indemnify and pay for and/or reimburse LAHD for any and all costs (including any administrative costs) LAHD incurs as a result of any such action it takes.

104.5 Environmentally Regulated Material on Premises. LADWP shall not cause or permit any Environmentally Regulated Material to be generated, brought onto, handled, used, stored, transported from, received or disposed of (hereinafter sometimes collectively referred to as "handle" or "handled") in or about the Premises, except for: (i) limited quantities of standard office and janitorial supplies containing chemicals categorized as Environmentally Regulated Material; (ii) Environmentally Regulated Material set forth in Exhibit "G" which are necessary for LADWP to undertake the Permitted Uses; and (iii) Environmentally Regulated Material handled in conformity with LADWP's ECP as referenced in Subsection 104.6.2 (Environmental Compliance Program). LADWP shall handle all such Environmentally Regulated Material in strict compliance with Environmental Laws in effect during the term of this Agreement or any holdover. LADWP shall provide LAHD with an annual report indicating that either (i) there are no changes to Exhibit "G" or (ii) including an updated Exhibit "G" which reflects all additional Environmentally Regulated Material necessary for LADWP to undertake the Permitted Uses.

104.6 Environmental Compliance.

104.6.1 Generally; Notice. In its use and occupancy of the Premises, LADWP shall comply (and shall immediately halt and remedy any incident of non-compliance) with: (a) Environmental Laws; (b) all applicable environmental policies, rules and directives of the Harbor Department as set forth on Exhibit "H-1" hereto; and (c) the environmental mitigation measures ("Mitigation Measures") and Mitigation Monitoring and Reporting Program, if any, set forth collectively in Exhibit "H-2" hereto. LADWP shall immediately upon receipt provide LAHD with copies of any notices or orders or similar notifications received from any Governmental Agency regarding compliance with any Environmental Laws.

104.6.2 Environmental Compliance Program. LADWP shall establish and thereafter observe and maintain a written program to facilitate such compliance in accordance with the format and content and other requirements set forth on Exhibit "I-1" hereto, which program shall be referred to as the "Environmental Compliance Program" or "ECP." The ECP shall be prepared by LADWP and deemed incorporated as Exhibit "I-2" without further action of the Board or the City Council upon written approval thereof by the Harbor Department, which approval shall not be unreasonably withheld. The Harbor Department's review and approval of such ECP shall not relieve LADWP of its obligations pursuant to this Subsection 104.6.

104.6.3 Revision of Mitigation Measures. Following the Effective Date, upon mutual written agreement of the Board and LADWP, the Board may revise Exhibit "I-2".

104.7 Environmental Audits. LADWP shall perform annual written audits of its ECP. The results of such audits shall be maintained on Premises for review by LAHD. LAHD shall have the right to conduct, at its sole cost and expense, periodic audits of LADWP's compliance with the ECP and management of Environmentally Regulated Material. LADWP shall provide access to backup materials supporting the ECP necessary for LAHD to conduct such audits. Upon completion of such audits, should LADWP so request in writing, LAHD shall provide LADWP with copies of any written reports or resulting from such audits.

104.8 Waste Disposal. In discharging its obligations under this Section 104, if LADWP disposes of any soil, material or groundwater contaminated with Environmentally Regulated Material, within thirty (30) days of LADWP's receipt of original documents, LADWP shall provide the Harbor Department copies of all records, including a copy of each uniform hazardous waste manifest indicating the quantity and type of material being disposed of, the method of transportation of the material to the disposal site and the location of the disposal site. The name of the City of Los Angeles, the Port of Los Angeles or the Harbor Department shall not appear on any manifest document as a generator of such material.

104.9 Laboratory Testing. In discharging its obligations under this Section 104, LADWP shall perform any tests using a State of California Department of Health Services

certified testing laboratory or other similar laboratory of which the Harbor Department shall approve in writing. By signing this Agreement, LADWP hereby irrevocably directs any such laboratory to provide LAHD, upon written request from LAHD, copies of all of its reports, test results, and data gathered. As used in this Subsection 104.9, "LADWP" includes agents, employees, contractors, subcontractors, and/or invitees of the LADWP.

104.10 Survival of Obligations. Except as otherwise provided in this Section 104, this Section 104 and the obligations herein shall survive the expiration or earlier termination of this Agreement.

Section 105. Alteration of Premises by LADWP.

105.1 Alterations Require LAHD Authorization. LADWP acknowledges LAHD's interest in controlling the manner in which physical changes are made to the Premises after the Effective Date and covenants that, other than maintenance and repair undertaken in compliance with Section 108, it shall make no improvements, alterations, additions, modifications, or changes to the Premises including but not limited to the construction of works or improvements or the changing of the grade of the Premises or which effect the structural integrity of the Improvements on the Premises or which substantially change the value or utility of the Improvements ("Alteration") without obtaining the Executive Director's prior written authorization to undertake such Alteration and no Alterations shall be made for the purpose of altering the Permitted Uses unless approved in advance in writing by the Harbor Department which approval shall be in the Harbor Department's sole and absolute discretion.

105.2 Authorization Procedure. When so required, LADWP shall obtain written authorization to undertake an Alteration according to the following procedure:

105.2.1 Application for Port Permits. If LADWP desires to undertake an Alteration, LADWP shall submit to the Harbor Department a complete Application for Port Permits ("APP") that attaches a complete set of drawings, plans, and specifications reflecting the proposed Alteration. Such drawings, plans and specifications shall be prepared and stamped by a licensed engineer registered in the State of California. LADWP bears sole responsibility for the completeness of such submittal.

105.2.2 Harbor Engineer's General Permit. The Harbor Engineer shall have the right to require changes to the drawings, plans and specifications LADWP submits in connection with such APP. If the Harbor Engineer orders such a change and LADWP believes that such a change will have any detrimental effect on the structural integrity of the works, project or improvements, or increase any hazard to life or property, LADWP shall immediately notify the Harbor Engineer. If LADWP fails to provide such notification, the drawings, plans and specifications shall be treated for all purposes as if they had been originally prepared by LADWP, as changed. The Harbor Engineer's approval of LADWP's submittal, if any, shall be reflected by issuance of a Harbor Engineer's General Permit.

105.2.3 **Non-Harbor Department Permits.** LADWP acknowledges that, in addition to obtaining a Harbor Engineer's General Permit, LADWP additionally may be required to obtain permits and authorizations with respect to the proposed Alteration from City, federal and state bodies ("Non-Harbor Department Permits"), the issuance of which the Harbor Department does not control. In any event, obtaining the Harbor Engineer's General Permit and any Non-Harbor Department Permits necessary to undertake the proposed Alteration is and shall be the sole responsibility of LADWP. Every Alteration made by LADWP shall conform with Applicable Laws, as well as with the plans and specifications as approved by the Harbor Engineer.

105.2.4 **LADWP's Obligation to Obtain All Permits.** LADWP acknowledges that issuance of the Harbor Engineer's General Permit shall be conditioned upon LADWP's demonstration that it has obtained all Non-Harbor Department Permits with respect to the proposed Alteration as may be required by entities other than the Harbor Department.

105.2.5 **LADWP's Obligation to Obtain All Environmental Clearances.** LADWP acknowledges that the Alterations may require compliance with all Environmental Laws, including, but not limited to, compliance with CEQA. LADWP shall reimburse LAHD for all expenses it incurs in conjunction with the review and preparation of any needed environmental clearance for the Alterations.

105.2.6 **Payment of LAHD Fees and Reimbursement of LAHD Costs.** LADWP acknowledges that LAHD shall incur costs in processing LADWP's APP and agrees that such costs are the sole responsibility of LADWP. LADWP shall submit any fees established by the Harbor Department for processing APPs. Additionally, within fifteen (15) days of receiving an invoice by LAHD, LADWP shall reimburse LAHD for any extraordinary costs not covered by such fees, including without limitation, costs incurred in preparing and processing any environmental clearance for the Alteration.

105.2.7 **LAHD Inspection; Corrective Action.** LADWP acknowledges that LAHD may perform inspections of the Alteration to ensure that such Alteration conforms with the permits issued. LADWP shall undertake any corrective measures reasonably requested by LAHD as a result of such inspections.

105.3 Notice of Commencement and Completion of Work. LADWP shall give advance written notice to the Harbor Engineer of the date it will commence any construction. Within thirty (30) days of completion of construction, LADWP shall provide written notice to the Harbor Engineer of the date of such completion, copies of "as-built" plans for such construction, copies of all permits issued in connection with such construction and copies of all documentation issued in connection with such completed construction, including but not limited to inspection reports and certificates of occupancy.

105.4 Cost of Permits. LADWP, at its sole cost and expense, shall obtain all permits necessary for such construction.

105.5 Cost of Construction. All construction by LADWP pursuant to this Section 105 shall be at LADWP's sole cost and expense. LADWP shall keep the Premises and improvements constructed free and clear of liens for labor and materials and shall hold LAHD harmless from any responsibility in respect thereto.

105.6 Construction Contractors. LADWP shall require by contract that its construction contractors and subcontractors comply with all Applicable Laws.

105.7 LADWP's Cost for Governmental Agency Requirements. Any modification, improvement, or addition to the Premises and any equipment installation required by the City Fire Department, City Department of Building and Safety, Air Quality Management District, California or Regional Water Quality Control Board, United States Coast Guard, Environmental Protection Agency, Department of Homeland Security or any other local, regional, state or federal agency in connection with LADWP's undertaking of the Permitted Uses shall be constructed or installed at LADWP's sole cost and expense.

Section 106. Pipelines (For pipeline permits only).

106.1 Generally. LADWP shall maintain on the Premises as-built drawings that identify the precise position of any pipelines, utilities or improvements of any type LADWP places on the Premises, whether placed above or below ground, if any. Upon twenty four (24) hours' written notice by the Executive Director, LADWP shall undertake at its sole cost and expense whatever measures are reasonably necessary, including subsurface exploration for any pipeline or any other substructure under LADWP's control or servicing LADWP's operation within the Premises granted herein, to precisely locate the position of such items if LAHD considers such as-built drawings insufficient to locate such items. LADWP agrees any work necessary to locate such items or any damage which may result from the location being incorrectly described, whether incurred by LADWP or LAHD, shall be borne exclusively by LADWP. Exploration and preparation of all documentation recording the location of lines or structures shall be completed within the time specified in said notice. The subsurface exploration shall verify the vertical as well as horizontal location of all pipelines and substructures. Documentation reflecting the results of said exploration shall be filed with the Harbor Engineer.

106.2 LAHD's Rights. If LADWP neglects, fails or refuses within the time specified in said notice to begin or fails to prosecute diligently to complete the work of locating any pipeline or any other substructure under LADWP's control or servicing LADWP's operation within the Premises granted herein, the LAHD shall have the right to enter onto the Premises and perform the work designated in the notice. All subsurface exploration required by the provisions contained herein whether performed by LADWP or LAHD shall be performed at LADWP's expense. In addition, LADWP agrees to bear the cost of any and all damage of whatever nature

caused by any act, omission, or negligence of LAHD and any and all of its boards, officers, agents, consultants, and employees in the performance of said subsurface exploration as required by this provision. Work performed by LAHD or LAHD's contractors under this provision does not alter LADWP's obligation to maintain the Premises in a safe condition, both during and after completion of the work.

106.3 Rules Governing Pipelines. After installation, and in any event for the duration of this Agreement, LADWP shall comply with pipeline testing and inspection requirements, as well as the laws and regulations under CFR Title 49, Subtitle B, Chapter 1 Subchapter D, the Pipeline Safety Act, the California Public Utilities Code, the California Public Utilities Commission regulations for pipelines, the California State Lands Commission Marine Facilities Division ("CSLC/MFD"), the State of California Bureau of Conservation/Division of Oil, Gas, and Geothermal Resources ("DOGGR"), and any other federal, state, or local agency not mentioned above, and as required by the California State Fire Marshall ("CSFM") under the Pipeline Safety Act. The LAHD reserves the right to request tests for facilities not under the direct authority of the CSFM, the CSLC/MFD, the DOGGR, the California Public Utilities Commission, and the Federal Office of Pipeline Safety ("FOPS").

106.3.1 Pipeline Tests or Inspections. LADWP shall comply with the following:

(a) Within thirty (30) days from the Effective Date of this Agreement, and at least annually thereafter, LADWP shall provide the Director of Real Estate of the Harbor Department and the Director of Environmental Management of the Harbor Department with a master schedule showing dates for pipeline testing and inspection(s) in accordance with the requirements referenced in Subsection 106.3. The master schedule shall include an itemized list with corresponding line item reference numbers for each pipeline covered under this Agreement, corresponding required test(s) or inspection(s), date(s) of test(s) or inspection(s), method(s) of test(s) or inspection(s), applicable agency, the frequency of required test(s) or inspection(s), and the California State Fire Marshall Line Number and the California State Fire Marshall Test ID Number, if applicable. If LADWP's existing pipelines are modified, or new pipelines are added to LADWP's Premises, LADWP shall follow the authorization procedure described in Subsection 106.3, and provide an updated master schedule with any addition or subtraction of pipelines. The requirements of this Subsection 106.3.1 shall cover testing or inspection requirements of all agencies mentioned in Subsection 106.3, as well as any other additional required test(s) or inspection(s).

(b) If LADWP's pipeline test(s) or inspection(s) are approved by the applicable agency requiring or overseeing the test(s) or inspections(s), LADWP shall confirm in writing to the Harbor Department approval of the test(s) or inspections(s) and/or submit documentation including master schedule reference number for pipeline(s) being reported on, date(s) of test(s) or

inspection(s), method(s) of test(s) or inspection(s) and a general non-technical summary of results.

(c) LADWP shall submit a summary of its certified test or inspection approval results to the Director of Environmental Management of the Harbor Department within thirty (30) days after they have been approved by the agencies which required the pipeline testing or inspection(s), and the records of such test(s) shall be retained by LADWP for as long as is required by Applicable Law, but in any event not less than three (3) years. Records of all tests will be made available for inspection by the Executive Director.

(d) If LADWP's pipeline test(s) or inspection(s) are disapproved, and/or there are irregularities with LADWP's pipeline test(s) or inspection(s), indicating a leak or other operational deficiency, LADWP shall notify the Director of Environmental Management of the Harbor Department within three (3) days of disapproval and/or receipt of test(s) or inspection(s) results with a non-technical summary of the results including the circumstances that resulted in the disapproval or test(s)/inspection(s) irregularities as well as all test documentation produced and a description and schedule for implementation of corrective action as directed by the applicable agency requiring or overseeing the test(s) or inspection(s).

106.4 Relocation of Pipelines; Harbor Department Right to Relocate. At any time during the term of this Agreement, the Board shall have the right to make any change in the route or location of any pipeline constructed or maintained on the Premises by LADWP pursuant to the authority of this Agreement as may be required or made necessary for the progress of harbor development or the performance of any work or improvement within the jurisdiction of the Board. If the Board shall determine that any such change or relocation is necessary, the Board shall give at least ninety (90) days' written notice to LADWP and the work of removal and relocation shall be completed within such time after said written notice as shall be fixed in said notice. The cost of any such removal and relocation shall be borne by LADWP. If LADWP neglects, fails or refuses within the time specified in said notice to begin or fails to prosecute diligently to complete the work of relocating the pipelines, the Harbor Department shall provide written notice to LADWP which shall specify such neglect, failure or refusal. Upon delivery of the notice specifying LADWP's, neglect, failure or refusal, LADWP shall have such time as is reasonably necessary to cure such neglect, failure or refusal so long as LADWP commences the cure within a thirty (30) day period and thereafter diligently prosecutes such cure to completion. If LADWP fails to cure in a timely and diligent manner, LAHD shall have the right to enter the Premises and relocate the pipelines. LADWP shall be solely responsible for LAHD Costs associated with the right set forth in this Subsection 106.4 and shall pay LAHD, as Additional Rent, within thirty (30) days of receiving an invoice for payment from LAHD. LADWP hereby waives the provisions of the Water Resources Development Act of 1980, and as amended, pertaining to cost allocation for pipeline relocation.

Section 107. Utilities.

107.1 Generally. LADWP shall maintain on the Premises as-built drawings that identify the precise location of any pipelines, utilities or similar improvements of any type, that LADWP places on the Premises, or which were placed on the Premises by others and accepted by LADWP for use of the Premises, whether placed above or below ground, (which for the purposes of this Section 107, are collectively referred to as “utilities”). Upon twenty-four (24) hours’ written notice by the Harbor Department, LADWP shall undertake at its sole cost and expense whatever measures are reasonably necessary, including subsurface exploration for any utilities or any other substructure placed on the Premises by LADWP, or placed by others and accepted by LADWP for use of the Premises, to precisely locate the position of such items if the Harbor Department considers the as-built drawings as insufficient to locate such items. LADWP agrees any work necessary to locate such items or any damage which may result from the location being incorrectly described, whether incurred by LADWP or the Harbor Department, shall be borne exclusively by LADWP. Exploration and preparation of all documentation recording the location of lines or structures shall be completed within the time specified in said notice, which time shall be commercially reasonable. The subsurface exploration shall verify the vertical as well as the horizontal location of all utilities and substructures. Documentation reflecting the results of said exploration shall be filed with the Chief Harbor Engineer.

107.2 Harbor Department Right to Locate. If LADWP neglects, fails or refuses within the time specified in said notice to begin or fails to prosecute diligently to complete the work of locating any utilities or any other substructure placed on the Premise by LADWP, or placed by others and accepted by LADWP for use of the Premises, the Harbor Department shall provide written notice to LADWP which shall specify such neglect, failure or refusal. Upon delivery of the notice specifying LADWP’s, neglect, failure or refusal, LADWP shall have such time as is reasonably necessary to cure such neglect, failure or refusal so long as LADWP commences the cure within a thirty (30) day period and thereafter diligently prosecutes such cure to completion. If LADWP fails to cure in a timely and diligent manner, LAHD shall have the right to enter the Premises to identify the precise location of any utilities or improvements of any type that LADWP has placed on the Premises, or that were placed by others and accepted by LADWP for use of the Premises, whether placed above or below ground. LADWP shall be solely responsible for LAHD Costs associated with the right set forth in this Subsection 107.2 and shall pay LAHD, as Additional Rent, within thirty (30) days of receiving an invoice for payment from LAHD.

107.3 Relocation of Utilities; Harbor Department Right to Relocate. At any time during the term of this Agreement, the Executive Director shall have the right to make any change in the route or location of any utility constructed or maintained on the Premises by LADWP pursuant to the authority of this Agreement as may be required or made necessary for the progress of harbor development or the performance of any work or improvement within the jurisdiction of the Board. If the Executive Director determines that any such change or relocation is necessary, the Executive Director shall give at least ninety (90) days written notice to LADWP and the work of removal and relocation shall be completed within such time after

said written notice as shall be fixed in said notice. The cost of any such removal and relocation shall be borne by LADWP. If LADWP neglects, fails or refuses within the time specified in said notice to begin or fails to prosecute diligently to completion the work of relocating the pipelines, the Harbor Department shall provide written notice to LADWP which shall specify such neglect, failure or refusal. Upon delivery of the notice specifying LADWP's neglect, failure or refusal, LADWP shall have such time as is reasonably necessary to cure such neglect, failure or refusal so long as LADWP commences the cure within a thirty (30) day period and thereafter diligently prosecutes such cure to completion. If LADWP fails to cure in a timely and diligent manner, LAHD shall have the right to enter the Premises and relocate the utility. LADWP shall be solely responsible for LAHD Costs associated with the right set forth in this Subsection 107.3 and shall pay LAHD, as Additional Rent, within thirty (30) days of receiving an invoice for payment from LAHD.

107.4 Rules Governing Utilities. After installation, and in any event for the duration of this Agreement, LADWP shall comply with the Applicable Laws regarding utilities testing and inspection requirements.

Section 108. Maintenance and Repair.

108.1 Generally. Except for those items identified on Exhibit "J" hereto (which Exhibit "J" may be amended by the Executive Director, in the Executive Director's sole reasonable discretion), and as set forth in Subsection 108.6 (LAHD Maintenance Obligations) at all times, LADWP, at its sole cost and expense, shall keep and maintain the Premises, and all buildings, works and improvements of any kind thereon, including without limitation the paving, the improvements existing on the Premises as of the Effective Date, and LAHD's Improvements as depicted on Exhibit "B", in good and substantial repair and condition, whether or not the need for such repairs occurs as a result of LADWP's use, any prior use, the elements, or the age of such portion of the Premises or improvements thereon, and shall be responsible for and perform all necessary inspection, maintenance and repair thereof, including preventive maintenance, using materials and workmanship of similar quality to the original improvements, or updated to current standards for such improvements. LADWP shall obtain any permits, including but not limited to those issued by LAHD, necessary for such maintenance and repair. LAHD shall reimburse LADWP for any repairs made necessary by use of the Premises by a temporary user pursuant to Subsection 102.6 (Temporary Assignments).

108.2 Failure to Maintain. If LADWP fails to make any repairs or to perform required maintenance within thirty (30) days after receipt of notice from LAHD to do so, LAHD may, but shall not be obligated to, make such repairs or perform such maintenance. LADWP shall reimburse LAHD for LAHD's Costs (as defined in Subsection 108.3, below, which costs shall be deemed Additional Rent) within thirty (30) days after receipt of LAHD's invoice for work performed. In the event LADWP shall commence such repairs and diligently prosecute the same to completion or shall begin to perform the required maintenance within the thirty (30) day period, LAHD shall refrain from commencing or prosecuting further any repairs or performing any required maintenance until the work has been completed by LADWP. LADWP

shall thereafter pay on demand LAHD's costs incurred pursuant to this Subsection 108.2 prior to LADWP's commencement of repair or maintenance. The making of any repairs or the performance of maintenance by LAHD, which is the responsibility of LADWP, shall in no event be construed as a waiver of the duty or obligation of LADWP to make future repairs or perform required maintenance as herein provided.

108.3 LAHD's Costs. "LAHD's costs" for purposes of this Section 108 shall include, in LAHD's sole reasonable discretion, the cost of maintenance or repair or replacement of property neglected, damaged or destroyed, including direct and allocated costs for labor, materials, services, equipment usage, and other indirect or overhead expenses arising from or related to maintenance, repair or replacement work performed by or on behalf of LAHD.

108.4 Litter and Debris. LADWP, at its sole cost and expense, shall provide sufficient dumpsters or other like containers for trash collection and disposal and keep the Premises free and clear of rubbish, debris, litter and graffiti at all times. LADWP shall perform periodic inspections and cleaning of the storm water catch basins (including filters), maintenance holes, and drains, and, to the extent applicable to this Agreement, maintaining the submerged land underlying the water berthing area at the Premises free and clear of debris from the wharf and from vessels, and cargo loading and unloading operations of vessels berthed at said berths in connection with LADWP's undertaking of the Permitted Uses. LADWP, at its sole cost and expense, further shall keep and maintain the Premises in a safe, clean and sanitary condition in accordance with all Applicable Laws.

108.5 Fire Protection Systems. All fire protection sprinkler systems, standpipe systems, fire hoses, fire alarm systems, portable fire extinguishers and other fire-protective or extinguishing systems, with the exception of hydrant systems, which have been or may be installed on the Premises shall be maintained and repaired by LADWP, at its cost, in an operative condition at all times.

108.6 LAHD Maintenance Obligations. In addition to the improvements listed in Exhibit "J", LAHD shall be responsible for the maintenance and repair of all roofs and fire safety systems on LAHD Improvements. To the extent that the Harbor Department maintains any utilities utilized by LADWP, the Harbor Department shall assess a maintenance fee to cover the cost of such maintain which assessment shall be Additional Rent.

Section 109. Default and Termination.

109.1 LADWP's Default.

109.1.1 Event of Default. The occurrence of any of the following shall constitute a material breach and default by TenantLADWP under this Agreement:

(a) LADWP's failure to pay when due any Rent required to be paid under this Agreement if the failure continues for three (3) business days after written notice of the failure from LAHD to LADWP;

(b) LADWP's failure to comply with any term, provision or covenant of this Agreement other than paying Rent, and does not commence to cure such failure within thirty (30) days after delivery of written notice of the failure from LAHD to LADWP or does not cure the failure within ninety (90) days after delivery of such notice. An extension may be granted by the Executive Director to cure such failure, as LADWP commences to cure within thirty (30) days of delivery of the notice and diligently proceeds to cure such default to completion.

(c) LADWP's abandonment of the Premises, including but not limited to (i) LADWP's absence from or failure to use the Premises or any substantial portion thereof for three (3) consecutive days (excluding Saturdays, Sundays, and California legal holidays) while in default of any provision of this Agreement; or (ii) if not in default, LADWP's absence from or failure to use the Premises or any substantial portion thereof for a period of thirty (30) consecutive days unless LADWP, prior to the expiration of any such period of thirty (30) consecutive days, notified the Executive Director in writing that such nonuse is temporary and obtains the written consent of the Executive Director to such nonuse;

(d) To the extent permitted by law:

(1) A general assignment by LADWP or any guarantor of the Agreement for the benefit of the creditors without written consent of LAHD;

(2) The filing by or against LADWP, or any guarantor, of any proceeding under an insolvency or bankruptcy law, unless (in the case of an involuntary proceeding) the proceeding is dismissed within sixty (60) days;

(3) The appointment of a trustee or receiver to take possession of all or substantially all the assets of LADWP or any guarantor, unless possession is unconditionally restored to LADWP or that guarantor within thirty (30) days and the trusteeship or receivership is dissolved; and/or

(4) Any execution or other judicially authorized seizure of all or substantially all the assets of LADWP located on the Premises, or of LADWP's interest in this Agreement, unless that seizure is discharged within thirty (30) days;

(e) The undertaking of a use other than a Permitted Use on the Premises if LADWP fails to discontinue such use within three (3) calendar days after delivery of written notice from LAHD to LADWP demanding that LADWP cease and desist such unpermitted use.

109.1.2 LAHD's Remedies on LADWP's Default. On the occurrence of a default by LADWP, LAHD shall have the right to pursue any one or more of the following remedies in addition to any other remedies now or later available to LAHD at law or in equity. These remedies are not exclusive but are instead cumulative. Any monetary sums that result from application of this Subsection 109.1.2 shall be deemed Additional Rent.

109.1.2.1 Termination of Agreement. LAHD may terminate this Agreement and recover possession of the Premises. Once LAHD has terminated this Agreement, LADWP shall immediately surrender the Premises to LAHD. On termination of this Agreement, pursuant to Civil Code Section 1951.2 or its successor, LAHD may recover from LADWP all of the following:

(a) The worth at the time of the award of any unpaid Rent that had been earned at the time of the termination, to be computed by allowing interest at the rate set forth in Item 270 of the Tariff but in no case greater than the maximum amount of interest permitted by law;

(b) The worth at the time of the award of the amount by which the unpaid Rent that would have been earned between the time of the termination and the time of the award exceeds the amount of unpaid Rent that LADWP proves could reasonably have been avoided, to be computed by allowing interest at the rate set forth in Item 270 of the Tariff but in no case greater than the maximum amount of interest permitted by law;

(c) The worth at the time of the award of the amount by which the unpaid Rent for the balance of the term of the Agreement after the time of the award exceeds the amount of unpaid Rent that LADWP proves could reasonably have been avoided, to be computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (2%);

(d) Any other amount necessary to compensate LAHD for all the detriment proximately caused by LADWP's failure to perform obligations under this Agreement, including, without limitation, restoration expenses, expenses of improving the Premises for a new LADWP (whether for the same or a different use), brokerage commissions, and any special concessions made to obtain a new LADWP;

(e) Any other amounts, in addition to or in lieu of those listed above, that may be permitted by Applicable Law.

109.1.2.2 Continuation of Agreement in Effect. LAHD shall have the remedy described in Civil Code Section 1951.4, which provides that, when a LADWP has the right to sublet or assign (subject only to reasonable limitations), the LAHD may continue the Agreement in effect after the LADWP's breach and abandonment and recover Rent as it becomes due. Accordingly, if LAHD does not elect to terminate this Agreement on account of any default by LADWP, LAHD may enforce all of LAHD's rights and remedies under this Agreement, including the right to recover all Rent as it becomes due.

109.1.2.3 LADWP's Subleases. Whether or not LAHD elects to terminate this Agreement on account of any default by LADWP, LAHD may:

Terminate any sublease, license, concession, or other consensual arrangement for possession entered into by LADWP and affecting the Premises.

109.1.3 Acceptance of Rent Without Waiving Rights. LAHD may accept LADWP's payments without waiving any rights under this Agreement, including rights under a previously served notice of default. If LAHD accepts payments after serving a notice of default, LAHD may nevertheless commence and pursue an action to enforce rights and remedies under the previously served notice of default, including any rights LAHD may have to recover possession of the property.

109.2 Replacement of Statutory Notice Requirements. When this Agreement requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notices required by Code of Civil Procedure Section 1161 or any similar or successor statute. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by this Agreement) in the manner required by Section 6 (Notices) shall replace and satisfy the statutory service-of-notice procedures, including those required by Code of Civil Procedure Section 1162 or any similar or successor statute. Notwithstanding the foregoing, nothing herein contained shall preclude or render inoperative service of notice in the manner provided by law.

Section 110. Force Majeure.

Except as otherwise provided in this Agreement, whenever a day is established in this Agreement on which, or a period of time, including a reasonable period of time, is designated within which, either Party is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days on or during which such Party is prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of acts of God, the public enemy or public riots; failures due to nonperformance or delay of performance by suppliers or

contractors; any order, directive or other interference by municipal, state, federal or other governmental official or agency (other than LAHD's failure or refusal to issue permits for the construction, use or occupancy of LAHD's Improvements or the Premises); any catastrophe resulting from the elements, flood, fire, explosion; or any other cause reasonably beyond the control of a Party, but excluding strikes or other labor disputes, lockouts or work stoppages ("Force Majeure"); provided, however, that this Section 110 shall not apply to (1) the time for payment of Rent or any other monetary obligation, (2) the Completion Deadline, if any (3) the insurance provisions set forth in this Agreement, or (4) to extend the term of the Agreement beyond fifty (50) years. In the event of the happening of any of such contingencies events, the Party delayed by Force Majeure shall immediately give the other Party written notice of such contingency, specifying the cause for delay or failure, and such notice from the Party delayed shall be prima facie evidence that the delay resulting from the causes specified in the notice is excusable. The Party delayed by Force Majeure shall use reasonable diligence to remove the cause of delay, and if and when the event which delayed or prevented the performance of a Party shall cease or be removed, the Party delayed shall notify the other Party immediately, and the delayed Party shall recommence its performance of the terms, covenants and conditions of this Agreement.

Section 111. Indemnity.

111.1 Indemnity.

111.1.1 Generally. LADWP shall at all times relieve, indemnify, protect and save harmless LAHD and any and all of its boards, officers, agents and employees from any and all claims and demands, actions, proceedings, losses, liens, costs and judgments of any kind and nature whatsoever, including cost of litigation (including all actual litigation costs incurred by the LAHD, including but not limited to, costs of experts and consultants), for death of or injury to persons, or damage to property, including property owned by or under the care and custody of LAHD, and for civil fines and penalties that may arise from or be caused directly or indirectly by:

(a) Any dangerous, hazardous, unsafe or defective condition of, in or on the Premises, of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the Premises by LADWP, its officers, agents, employees, sublessees, licensees or invitees;

(b) Any operation conducted upon or any use or occupation of the Premises by LADWP, its officers, agents, employees, sublessees, licensees or invitees under or pursuant to the provisions of this Agreement or otherwise;

(c) Any act, error, omission, willful misconduct or negligence of LADWP, its officers, agents, employees, sublessees, licensees or invitees, arising from the use, operation or occupancy of the Premises, regardless of whether any

act, omission or negligence of LAHD, its officers, agents or employees contributed thereto;

(d) Any failure of LADWP, its officers, agents or employees to comply with any of the terms or conditions of this Agreement or any applicable federal, state, regional, or municipal law, ordinance, rule or regulation; or

(e) The conditions, operations, uses, occupations, acts, omissions or negligence referred to in subsections (a) through (d) above, existing or conducted upon or arising from the use or occupation by LADWP or its invitees on any other premises within the "Harbor District," as defined in City's Charter.

This Subsection 111.1.1 shall not be construed to make LADWP responsible for loss, damage, liability or expense to third-parties to the extent caused solely by the negligence or willful misconduct of LAHD.

111.1.2 Term Contamination Losses. LADWP shall also indemnify, defend and hold LAHD harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution of the value of the Premises, damages for loss or restriction on use of rentable or useable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Agreement term as a result of Term Contamination for which LADWP is otherwise responsible for under the terms of this Agreement. This indemnification of LAHD by LADWP includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean up, remedial, removal or restoration work required by any federal, state or local governmental agency because of Term Contamination present in the soil or groundwater on or under the Premises.

111.1.3 Survival of Obligations. The indemnity obligations in this Section 111 shall survive the expiration or earlier termination of this Agreement and shall apply regardless of the active or passive negligence of LAHD and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on LAHD.

Section 112. Damage and Destruction to Improvements.

112.1 Notice; No Rent Abatement. LADWP shall promptly give LAHD Notice of any material damage or destruction of any or all of the improvements on the Premises ("Casualty") generally describing the nature and extent thereof. There shall be no abatement or reduction of Rent on account of any Minor Casualty and all obligations of LADWP under this Agreement shall remain unchanged and in full force and effect. In the case of a Major Casualty, provided that the Major Casualty was not caused by the act or omission of LADWP or any of its employees, agents, licensees, subtenants, customers, clients or invitees, until the repair and restoration of the Premises is completed, LADWP shall be required to pay rent only for that part

of the Premises that LADWP is able to use while repairs are being made, based on the ratio that the amount of usable rentable area bears to the total rental area in the Premises.

112.2 Minor Casualty. In the event of any Minor Casualty at any time during the Term, and regardless of whether such Minor Casualty is insured or uninsured, LADWP shall be obligated to repair, rebuild or restore the damaged improvements.

112.3 Casualty Covered by Insurance. If, during the Term of this Agreement, any buildings, structures, or improvements on the Premises are partially or totally destroyed from a risk covered by the insurance required under this Agreement, thereby rendering the Premises partially or totally inaccessible or unusable, LADWP must restore the Premises to substantially the same condition as they were immediately before destruction.

112.4 Casualty Not Covered by Insurance. If, during the Term of this Agreement, improvements on the Premises are partially or totally destroyed from a risk not covered by the fire and extended coverage insurance required under this Agreement thereby rendering said Premises partially or totally inaccessible or unusable, such destruction shall not automatically terminate this Agreement. If, however, the cost of restoration exceeds ten percent (10%) of the full replacement value of improvements, as said value existed immediately before said destruction, LADWP may, at LADWP's option, terminate this Agreement by giving written notice to LAHD within sixty (60) days from the date of destruction. If LADWP elects to terminate as above provided, LADWP shall be obligated, unless otherwise directed by LAHD, to demolish all damaged improvements and remove all debris from the Premises, and otherwise comply with the restoration and surrender obligations contained in Section 117 (Restoration and Surrender of Premises), at LADWP's sole cost. If LADWP fails to exercise its right to terminate this Agreement, this Agreement shall continue in full force and effect for the remainder of the term specified herein and LADWP shall restore the Premises to substantially the same condition as they were in immediately before the damage or destruction.

112.5 Inapplicability of Civil Code Sections. The provisions of California Civil Code Sections 1932(2) and 1933(4), and any successor statutes, are inapplicable with respect to any destruction of any part of the Premises; such sections provide that a lease terminates on the destruction of the Premises unless otherwise agreed between the Parties to the contrary.

Section 113. Assignments, Transfers and Subleases.

113.1 Assignment, Transfer and Subletting; LAHD's Consent Required.

113.1.1 Generally. LADWP shall not, in any manner, transfer or assign this Agreement, or any portion thereof or 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").

113.1.2 Consent Required; Payment of LAHD's Costs. No Transfer of this Agreement, or any interest therein or any right or privilege thereunder, regardless of whether accomplished by a separate agreement, sale of stock or assets, merger or consolidation or reorganization by, or of, LADWP (or any entity that directly or indirectly controls or owns fifty percent (50%) or more of LADWP), or accomplished in any other manner, whether voluntary or by operation of law, including but not limited to assignment, sublease, transfer, gift, hypothecation or grant of total or partial control, or any encumbrance of this Agreement, shall be valid or effective for any purpose unless (i) LADWP receives the prior written consent of LAHD and (ii) LADWP satisfies the requirements in Subsection 113.3 (Procedure to Obtain Consent to Transfer). Consent to one Transfer shall not be deemed to be a consent to any subsequent Transfer. For purposes of this Subsection 113.1.2, the term "by operation of law" includes but is not limited to: (1) the placement of all or substantially all of LADWP's assets in the hands of a receiver or trustee; or (2) a transfer by LADWP for the benefit of creditors; or (3) transfers resulting from the death or incapacity of any individual who is a LADWP or of a general partner of a LADWP (except as provided in Subsection 113.2.2 (Partnerships)). LADWP acknowledges and agrees that it shall be required to pay the LAHD for all LAHD Costs incurred to review all documents submitted in response to a request to Transfer.

113.1.3 Transfer of Assets. "Transfer" also shall include the involvement of LADWP or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise) whether or not there is a formal assignment or hypothecation of this Agreement or LADWP's assets, which involvement results in a reduction of the net worth of LADWP (defined as the net worth of LADWP, excluding guarantors, established by generally accepted accounting principles) by an amount greater than twenty-five percent (25%) of such net worth as it was represented at the time of the execution of this Agreement, or at the time of the most recent Transfer to which LAHD has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater.

113.2 Transfers of Ownership.

113.2.1 Ownership or Control. The transfer of more than twenty-five percent (25%) of the economic interest in LADWP or any entity that directly or indirectly controls or owns fifty percent (50%) or more of LADWP in one or more transactions, regardless of whether LADWP is a publicly or privately held entity, shall constitute a Transfer within the meaning of this Section 113.

113.2.2 Partnerships. If LADWP is a partnership, any transfer or attempted transfer by any general partner of LADWP of more than twenty-five percent (25%) of its partnership interest in LADWP in one or more transactions shall be a prohibited Transfer within the meaning of this Section 113. Notwithstanding the foregoing, if any transfer of a general partner's interest is due to the death of a general partner and results in the

transfer to the immediate members of the general partner's family, who will be immediately and personally involved in the operation of the partnership, the LAHD shall not unreasonably withhold its consent to such transfer.

113.2.3 Guarantor. If a parent or other entity has guaranteed or otherwise secured any or all of LADWP's obligations under this Agreement and if the ownership, makeup or financial condition of such parent or other entity has, in the sole reasonable discretion of the Executive Director, materially changed at any point during the term of this Agreement, the right is reserved for LAHD to require amendments of such guaranty, the provision of new security, or a combination thereof reasonably required by the Executive Director to maintain the level of security as provided by the original guaranty. Following the Effective Date, LADWP shall have a continuing obligation to notify LAHD in writing of any and all events that do or might constitute a material change within the meaning of this Subsection 113.2.3.

113.2.4 Executive Director Authority to Modify. The Executive Director shall have the authority, but not the obligation, to unilaterally modify the foregoing conditions based on the facts of a particular case.

113.3 Procedure to Obtain Consent to Transfer. If LADWP desires to undertake a Transfer, it may seek LAHD's consent thereto. LADWP covenants that before entering into or permitting any Transfer, it shall provide to LAHD written notice at least ninety (90) days before the proposed effective date of the Transfer. Notwithstanding the foregoing, LAHD reserves the right to allow LADWP, on a case-by-case basis, to submit to LAHD for LAHD's consent, Transfers that would have become effective but for LADWP's failure to seek LAHD's prior written consent. In any event, LADWP's written request to LAHD for consent shall hereinafter be referred to as "Transfer Notice."

113.3.1 Transfer Notice. LADWP's Transfer Notice shall contain each of the following:

- (a) Specific identification of the entity or entities with whom LADWP proposes to undertake the Transfer ("Transferee");
- (b) Specific and detailed description of the Transferee's entity type, ownership (including identification of all parent and subsidiary entities), background/history, nature of the Transferee's business, Transferee's character and reputation and experience in the operations proposed;
- (c) 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;

(d) Specific and detailed description of the operations proposed to be undertaken at the Premises by LADWP and Transferee if LAHD consents to the Transfer which includes a breakdown of the responsibilities and duties of LADWP and Transferee;

(e) 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;

(f) The proposed form of a guaranty or guaranties providing greater or substantially the same protection to LAHD as any guaranty in effect prior to or contemporaneous with the proposed Transfer;

(g) 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;

(h) A general description of any planned Alterations or improvements to the Premises;

(i) A description of the worth of the proposed Transferee including an audited financial statement;

(j) Any further information relevant to the proposed Transfer that LAHD reasonably requests; and

(k) Written authorization in a form acceptable to LAHD allowing LAHD to inspect and review but not to copy, at times and locations reasonably selected by LAHD, any books and records or other information of LADWP or Transferee (or third-parties acting for or on either of their behalves) reasonably determined by LAHD to be necessary for its assessment of LADWP's request for consent.

113.3.2 Limitations on LAHD's Consent. If LAHD consents to a Transfer, the following limits apply:

(a) LAHD does not agree to waive or modify the terms and conditions of this Agreement;

(b) Such consent does not constitute either consent to any further or other Transfer by either LADWP or Transferee or a bar disqualifying submittal of

additional Transfer Notices in accordance with the terms of this Agreement following such consent;

(c) If, following such consent, LADWP remains a party to this Agreement, LADWP shall remain liable under this Agreement and any guarantor shall remain liable under its guaranty;

(d) Such consent shall not transfer to the Transferee any option granted to the original LADWP by this Agreement unless such transfer is specifically consented to by LAHD in writing;

(e) LADWP may enter into that Transfer in accordance with this Section 113 if: (a) the Transfer occurs within six (6) months after LAHD's consent; (b) the Transfer, in the sole and absolute discretion of the Executive Director, is on substantially the same terms as specified in the Transfer Notice; and (c) LADWP delivers to LAHD promptly after execution an original executed copy of all documentation pertaining to the Transfer in a form reasonably acceptable to LAHD;

(f) If the Transfer occurs more than six (6) months after LAHD's consent or, in the sole and absolute discretion of the Executive Director, the terms of the Transfer materially change from those in the Transfer Notice, LADWP shall submit a new Transfer Notice under this Section 113, requesting LAHD's consent. A material change for purposes of this Section 113 is one where the terms would have entitled LAHD to refuse to consent to the Transfer initially, or would cause, in the sole and absolute discretion of the Executive Director, the proposed Transfer to be more favorable to Transferee than the terms in the original Transfer Notice;

(g) LADWP and/or Transferee, upon LAHD'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 that insurance of the type and limits required by Subsection 111.2 (Insurance) is and shall be in full effect at all times in or around the time period in which the proposed Transfer is anticipated to occur. If requested in writing by LAHD, Transferee shall provide a guaranty agreement in a form acceptable to LAHD obligating Transferee to pay any uninsured or underinsured loss on a claim that, in LAHD's sole and absolute discretion, would have been covered by insurance fully compliant with Subsection 111.2; and

(h) Transferee shall execute and deliver a written acceptance of Transfer in a form acceptable to LAHD in which Transferee expressly assumes all of LADWP's obligations under the Agreement.

113.4 Factors Germane to LAHD Consent. In evaluating any Transfer Notice, it shall not be unreasonable for LAHD to withhold or condition its consent to a Transfer based on the following factors, among others:

(a) 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;

(b) The character, experience and reputation of the Transferee (or its operator) in operating the business contemplated by the Transfer;

(c) 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 LADWPs;

(d) Whether the proposed Transfer is consistent with the terms and conditions of this Agreement in existence when LADWP submitted the Transfer Notice and with the laws, rules and regulations applicable to the Premises and LADWP's use and occupancy thereof;

(e) Whether the information provided by LADWP in connection with Subsection 113.3.1 (Transfer Notice) justifies such consent;

(f) The Transferee's level of commitment and specific plans to invest to improve the Premises following approval of the proposed Transfer, if any;

(g) Whether there are uncured defaults including, without limitation, unpaid Rent and, if there are, whether the proposed transferee agrees to cure, remedy or otherwise correct any default by LADWP existing at the time of the Transfer, in a manner satisfactory to the Board;

(h) Whether the Transferee, its operator or any Affiliate of the Transferee or its operator is listed on any of the following lists maintained by the Officer of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of the Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of Persons with which the LAHD may not do business under Applicable Law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List, and the Debarred List; and

(i) Whether the Transferee is an entity other than a department or instrumentality of the City of Los Angeles.

113.5 Additional Conditions for Subleases. If LADWP requests consent to a Transfer consisting of a sublease of all or a portion of the Premises, the following terms and conditions shall also apply:

(a) Notwithstanding Subsection 113.3 (Procedure to Obtain Consent to Transfer), LADWP may request consent for a sublease with less than ninety (90) days' notice.

(b) LAHD reserves the right to recapture any portion of the Premises proposed by LADWP to be subleased (with appropriate amendments to this Agreement) and to undertake the transaction with the proposed Transferee directly;

(c) LADWP in no event shall be allowed to sublet more than twenty percent (20%) of the Premises to any one sublessee unless this Agreement expressly provides otherwise;

(d) LADWP shall owe to LAHD as Additional Rent, fifty percent (50%) of any amount collected from the sublessee as compensation that exceeds, on a pro rata basis, based on the preceding year's Rent, the compensation due LAHD from LADWP under Section 4 (Rent);

(e) LADWP must provide LAHD with a copy of the Sublease Agreement; and a copy of any notice of default or breach of the sublease; and

(f) No sublessee shall further Transfer or sublet all or any part of the Premises without LAHD's prior written consent.

113.6 Assignments for Security Purposes. LADWP's request to assign this Agreement to secure financing of improvements on the Premises will require Board approval and will be considered on a case-by-case basis. Consent to Assignments for security purposes will not be granted unless LADWP and its lenders satisfy the following conditions, among others, which may be reasonably imposed by the Board:

(a) Monies borrowed will be used exclusively to construct improvements or alterations on the Premises.

(b) Monies borrowed must be in a fixed amount. New borrowings or re-financings require further Board approval.

(c) The collateral covered by the security agreement securing LADWP's loan shall cover only LADWP's leasehold interests and interest in improvements on the Premises, not the interests of LAHD in improvements or land, and not any improvements or fixtures which, if removed, would leave the Premises untenable. In this Subsection 113.6, "untenable" means, the removal of improvements or fixtures

which, in the LAHD's sole and absolute discretion, would leave the Premises in a condition that prevents LAHD from renting the Premises.

(d) Nothing in the instrument which creates the security interest in the lender shall amend, modify, or otherwise affect the rights of LAHD under this Agreement or any guaranty.

(e) In the event the lender initiates any action to foreclose the interest of LADWP in this Agreement, the lender agrees to deliver to the Board in person or by registered mail a copy of any notice of default sent to LADWP and agrees, ten (10) calendar days in advance of any foreclosure sale, to give written notice to Board by registered mail. Such notices shall be addressed as follows:

Board of Harbor Commissioners
c/o Director of Real Estate Division
P.O. Box 151
San Pedro, CA 90733-0151

Such notice shall specify which of the below alternative courses of action the lender will take with respect to the Agreement and any guaranty. Any and all of the below stated alternatives are contingent upon the Board's approval in accordance with the conditions in subsection (f) below. Lender may:

(1) Assume as principal all of the obligations and duties arising on or after the foreclosure conveyance date under the Agreement; or

(2) Assume as principal all of the obligations and duties arising on or after the foreclosure conveyance date under the Agreement, and hire an operator, acceptable to the Executive Director, who shall operate the Premises pursuant to the Agreement; or

(3) Assume as principal all of the obligations and duties arising on or after the foreclosure conveyance date, and thereafter reassign the Agreement with the consent of Board. Notwithstanding any provision of this Agreement to the contrary, in the event the lender initiates any action to foreclose the interest of any subsequent assignee of the Agreement, the lender agrees to make the notifications and elections required herein.

The foregoing election by the lender shall be without prejudice to any rights the LAHD may have with respect to LADWP's default of this Agreement; provided, however, that the LAHD shall mail to both LADWP and lender a copy of any written notice of default in the performance of the terms and conditions of the Agreement, by registered mail, return receipt requested, addressed as follows:

(Name and Address of LADWP and lender is to be specified by LADWP. If no lender is specified, notice to LADWP alone is agreed to be sufficient.)

The lender shall have the option to cure such default within the time specified in such notice, provided that if such default is noncurable in nature, LAHD shall have the right to immediately reclaim the Premises and lender shall have no further interest.

(f) Any lender proposal to Transfer its interest in this Agreement or interest therein or right or privilege thereunder requires the Board's consent. The Board may withhold its consent in its reasonable discretion if the Board determines that the proposed transferee cannot meet all of the following conditions, and any other conditions which may be reasonably imposed by the Board:

(1) This Agreement shall be in full force and effect and no default shall exist or the lender shall agree in writing to cure all such defaults before the transfer.

(2) When requesting the Board's consent to such a Transfer, the lender shall demonstrate that: (a) the financial condition of the proposed transferee is as sound as that of LADWP at the time this Agreement was initially entered into or as at the time of the proposed transfer - whichever provides the better financial security to the LAHD; (b) the proposed transferee has the requisite experience and reputation or has retained an operator with the requisite experience and reputation to operate the Premises; and (c) the proposed Transfer will not unfavorably affect the revenues of the LAHD, employment or the services available to the maritime community; and the proposed transferee, its operator or any Affiliate of the proposed transferee or its operator is listed on any of the following lists maintained by the Officer of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of the Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of Persons with which the LAHD may not do business under Applicable Law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List, and the Debarred List.

(3) Even if the Board consents to such a proposed Transfer, the Board may first require that the transferee and the Board agree on a new compensation for the Premises transferred. If the Board modifies the compensation, it shall take into account the then existing Board policy for setting compensation and the prevailing market conditions.

(g) The form of all instruments and documents affecting the LAHD's interests in the Premises shall be acceptable to Executive Director and City Attorney of LAHD in their sole and absolute discretion.

(h) The Board shall have the authority, but not the obligation, to modify any of the foregoing conditions based on the facts of a particular case.

113.7 Assignment Fee. In the case of Assignments other than Assignments for Security Purposes permitted under Subsection 113.6, above, in recognition of the value added to the Assignment by virtue of the location of the Premises, LADWP shall pay to LAHD a fee ("Assignment Fee") based on the following formula:

(a) Less than Ten (10) Years Left on Term: LADWP shall pay to LAHD an Assignment Fee equal to ten percent (10%) of the economic value attributable to the assignor's leasehold interest derived from, or as a result of the use of the Premises; or

(b) Greater than Ten (10) Years or More Left on Term: LADWP shall pay to LAHD an Assignment Fee equal to fifteen percent (15%) of the economic value attributable to the assignor's leasehold interest derived from, or as a result of the use of the Premises.

113.8 Charter and Administrative Code. LADWP acknowledges that this Agreement is subject to the Charter of City and the Administrative Code of City and that approval of a Transfer may require action by several separate entities, including but not limited to the Los Angeles City Council.

113.9 Indemnity in Favor of LAHD; LADWP's Rights. In addition to and not as a substitute for the indemnities LADWP provides to LAHD pursuant to Subsection 111.1 (Indemnity), LADWP shall indemnify, defend and hold harmless LAHD and any and all of its boards, officers, agents, or employees from and against any and all claims and/or causes of action of any third-party (including but not limited to Transferee) arising out of or related to a proposed Transfer except for claims arising from the sole negligence or willful misconduct of LAHD in withholding its consent in which case LADWP's sole remedy shall be entitled only to seek specific performance.

113.10 Rent or Performance. LAHD, in its sole discretion, may accept Rent or performance of LADWP's obligations under this Agreement from any person other than LADWP pending approval or disapproval of a Transfer. LAHD's exercise of discretion to accept Rent or performance shall be reflected in writing.

113.11 Written Certification. If requested in writing by the Executive Director, LADWP shall, within ten (10) days of its receipt of such written request, certify under penalty of perjury under California Law whether it has or has not undertaken a purported Transfer.

Section 114. Records, Reports and LAHD's Right of Inspection.

114.1 Operations. LADWP shall keep full and accurate books, records and accounts relating to its operations on the Premises. LAHD shall have the right, through its representatives, at all reasonable times and on reasonable notice, to inspect such books, records and accounts in order to verify the accuracy of the sums due, owing and paid to LAHD hereunder. Tenant agrees that such books, records and accounts shall be made available to LAHD at LADWP's offices in the City of Los Angeles. LAHD shall protect, to the extent permitted by law, the confidentiality of any such books, records and/or accounts so inspected. LAHD has the right to inspect under this section only of those records which would also be available pursuant to the laws, rules and/or regulations generally requiring it to disclose records upon request, which laws, rules and/or regulations include but are not limited to the California Public Records Act (California Government Code Sections 6250 et seq.) ("Disclosure Laws")

114.2 LAHD Right of Inspection. LAHD's authorized representatives shall have access to the Premises (a) with 24-hour notice at any and all reasonable times to determine whether or not LADWP is complying with the terms and conditions of this Agreement, and (b) at any and all times, with or without notice, for fire, and police/ or homeland security purposes, to investigate any incidents involving personal injury or property damage, or for any other purpose incidental to the rights and/or duties of LAHD. The right of inspection hereby reserved to LAHD shall impose no obligation on LAHD to make inspections to ascertain the condition of the Premises, and shall impose no liability upon LAHD for failure to make such inspection. LADWP shall provide personnel to accompany LAHD's representatives on periodic inspections of the Premises to determine Tenant's compliance with this Agreement.

114.3 Report of Accidents, Casualties or Crimes. LADWP shall give the Executive Director notice in case of accidents, crimes, fires or other adverse incidents in the Premise promptly after LADWP is aware of any such event.

Section 115. Condemnation.

115.1 Generally. The Parties agree that if during the Term there is any taking of all or any part of the Premises by Condemnation, the rights and obligations of the Parties shall be determined pursuant to this Section 115.

115.2 Total Taking. LADWP may elect to treat as a Partial Taking any Taking that would otherwise qualify as a Total Taking. If a Total Taking of the Premises shall occur, and LADWP does not elect by written notice to LAHD, within sixty (60) days thereafter, to treat the same as a Partial Taking, then this Agreement shall terminate as of the effective date of such Total Taking, and the Rent shall be apportioned accordingly. The proceeds of the Total Taking shall be allocated between LAHD and LADWP in accordance with their respective interests.

115.3 Partial Taking.

115.3.1 Effect on Agreement; Award. If a Partial Taking shall occur, then any award or awards shall be applied first to repair, rebuilding or restoration of any remaining part of the Improvements not so taken. LADWP shall perform such repair, rebuilding or restoration in accordance with the applicable requirements of this Agreement. The balance of any such award or awards remaining after the repair, rebuilding or restoration shall be distributed to LAHD and LADWP as if they were proceeds of a Total Taking affecting only a portion of the Premises taken. If the Partial Taking impacts the usable area of the Premises, the LAHD shall abate or reduce the Rent payable hereunder as a result of such Partial Taking. No other sums payable under the Agreement shall be abated or reduced as a result of any Partial Taking.

115.3.2 Improvements. Should LADWP terminate this Agreement pursuant to this Section 115, title to all improvements, additions, alterations constructed or installed by LADWP upon the Premises and which have not already vested in LAHD shall thereupon vest in LAHD.

115.3.3 Waiver of CCP § 1265.130. Each Party waives the provisions of the California Code of Civil Procedure Section 1265.130 allowing either Party to petition the superior court to terminate this Agreement in the event of a partial taking of the Premises.

115.4 Temporary Taking. If a Temporary Taking shall occur with respect to use or occupancy of the Premises for a period greater than 120 days, then LADWP shall, at its option, be entitled to terminate this Agreement effective as of the commencement date of the Temporary Taking. If the Temporary Taking relates to a period of 120 days or less, or if LADWP does not elect within sixty (60) days after the 120th day of the Temporary Taking, to terminate this Agreement, then all proceeds of such Temporary Taking (to the extent attributable to periods within the Term) shall be paid to LADWP, and LADWP's obligations under this Agreement shall not be affected in any way.

115.5 Severance Damages. The entire award of compensation paid for any severance damages, whether paid for impairment of access, for land, buildings, and/or improvements shall be the property of LAHD, regardless of whether any buildings or improvements so damaged are owned or were constructed by LAHD or LADWP. However, should LAHD determine that improvements are to be restored, that portion of the severance damages necessary to pay the cost of restoration shall be paid to LADWP accompanied by evidence that the sum requested has been paid for said restoration and is a proper item of such cost and used for such purpose.

115.6 Other Condemnation. In the event of any condemnation action not resulting in a Taking but creating a right to compensation, this Agreement shall continue in full force and effect without reduction or abatement of Rent, and the award or payment made in connection

with such action shall be allocated between LAHD and Lessee in accordance with their respective interests.

115.7 Settlement or Compromise. Neither LAHD, in its Proprietary Capacity under this Agreement, nor LADWP shall settle or compromise any Taking award affecting the interests of the other Party without the consent by such other Party, such consent not to be unreasonably withheld. Each of LAHD and LADWP shall be entitled to appear in all Taking proceedings affecting its respective interest, to participate in any settlement, arbitration or other proceeding involving such a Taking and to claim its Taking award under this Agreement.

115.8 Prompt Notice. If either Party becomes aware of any Taking or threatened or contemplated Taking, then such Party shall promptly give Notice thereof to the other Party.

115.9 Control of Funds after Partial Taking. In the event of a Partial Taking where LADWP is required to, or chooses to, repair, rebuild or restore the damaged improvements, the following provisions regarding control of funds shall apply:

115.9.1 Proceeds Less Than \$1,000,000. All proceeds from any Partial Taking less than \$1,000,000 shall be distributed to LADWP and shall be applied by LADWP in accordance with Subsection 115.3 (Partial Taking).

115.9.2 Proceeds Greater Than \$1,000,000.

115.9.2.1 When Fund Control Mechanism in Leasehold Mortgage Governs. If any Leasehold Mortgage permitted by LAHD and entered into by LADWP contains a fund control mechanism providing that all proceeds from any Partial Taking in excess of \$1,000,000 shall be deposited with such Leasehold Mortgagee or a third party depository specified in such Leasehold Mortgage to be disbursed to repair, rebuild or restore the Premises, the mechanics for fund control set forth in such Leasehold Mortgage shall have priority over the corresponding mechanics for fund control set forth in Subsection 115.9.2.2, below.

115.9.2.2 When Fund Control Mechanism in This Agreement Governs. Subject to Subsection 115.9.2.1, above, if proceeds from any Partial Taking total in excess of \$1,000,000, then upon request of LAHD all such proceeds shall be deposited with the LAHD to be disbursed to repair, rebuild or restore the Premises in accordance with the procedures set forth in Section 102 (Damage or Destruction to Improvements), and the balance, if any, of such proceeds shall be allocated between LAHD and LADWP in accordance with their respective interests.

115.10 Waiver. The provisions of this Agreement governing Takings are intended to supersede the application of Chapter 10, Article 2 of the California Code of Civil Procedure and

all similar Laws, to the extent inconsistent with this Agreement. Nothing in this Section 115 shall be construed to limit LAHD's powers with respect to Takings in its Governmental Capacity.

Section 117. Restoration and Surrender of Premises.

117.1 LADWP's Restoration Obligations.

117.1.1 Generally. By the Expiration Date, or any sooner termination of this Agreement, LADWP shall quit and surrender possession of the Premises and shall be obligated to, as directed by the Executive Director, in the Executive Director's sole and absolute discretion, either (i) return the Premises to LAHD in good and usable condition, said condition to be consistent with a first class facility of similar age as repaired, maintained or upgraded by LADWP, or any Assignor, or Affiliate of LADWP under this Agreement or any prior permit, or by LAHD, or (ii) demolish all Improvements on the Premises (both LAHD Improvements and LADWP Improvements, if any) and leave the Premises in a clean level and usable condition as set forth below, or (iii) demolish some of the Improvements on the Premises, as designated by LAHD, and leave the area of the Premises where the Improvements were demolished in a clean level and usable condition as set forth below and the remainder of the Premises in good and usable condition as set forth above or (iv) pay the cost of restoration to LAHD if LAHD chooses to perform the work itself or have the work performed on its behalf. Additionally, in lieu of demolition, if the LAHD determines that any of the improvements are historical, or eligible for listing as such, the LAHD, in its sole discretion, may require LADWP to pay to LAHD an amount equal to the estimated cost of demolition to be used by the LAHD for the restoration or adaptive reuse of the historical structure or structures. If LAHD terminates this Agreement due to LADWP's default, LADWP is still obligated to restore the Premises as provided in this Section 117 or to pay the cost of restoration if LAHD chooses to perform the work.

117.1.2 Water Restoration (applicable only when the Premises include water use rights). LADWP agrees to remove all debris and sunken hulks from channels, slips and water areas within or fronting upon Premises not solely caused by LAHD. LADWP expressly waives the benefits of the "Wreck Act" (Act of March 3, 1899) 33 U.S.C. Section 401 et seq. and the Limitation of Liability Acts (March 3, 1851, c. 43, 9 Stat. 635) (June 26, 1884, c. 121, Sec. 18, 23 Stat. 57) 46 U.S.C. 189 (Feb. 13, 1893, c. 105, 27 Stat. 445) 46 U.S.C. Sec. 190-196 and any amendments to these Acts if it is entitled to claim the benefits of such Acts.

117.1.3 Restoration Requirements. In connection with Subsections 117.1.1 and 117.1.2, above, LADWP, at its sole cost and expense, shall restore the Premises (including the soil, groundwater and sediment) such that, on the Expiration Date, or earlier termination date, the Premises shall be returned to LAHD:

(a) Free of Term Contamination and in at least as good of a condition as the condition depicted in the Baseline Report, if there is a Baseline Report, and free of all contamination if there is no Baseline Report. As between LAHD and LADWP, LADWP shall bear sole responsibility for Term Contamination and any costs related thereto;

(b) Free of any encumbrances including but not limited to deed or land use restrictions as a result of any Term Release and/or any liens (UCC, federal or state tax or otherwise) on the Premises or on fixtures or equipment, or personal property left on the Premises;

(c) Free of all above-ground and below-ground works, structures, improvements and pipelines of any kind, (collectively referred to as "Structures"), placed on the Premises by LADWP, if directed to remove such Structures by LAHD. If the Premises have been improved by a prior LADWP or by both LAHD and a prior LADWP, then such Structures which were left on the Premises at LADWP's request or for LADWP's benefit shall also be the responsibility of LADWP except as may be otherwise specified by this Agreement; and

(d) In a clean, level, graded and compacted condition with no excavations or holes resulting from Structures removed if LAHD elects to have LADWP remove all Improvements or, if the LAHD elects to retain some of the Improvements, the area of the demolished improvements shall be in a clean, level, graded and compacted condition with no excavations or holes resulting from any structures the LAHD elects to have removed.

117.2 Restoration Procedure. LADWP, at its sole cost and expense, shall initiate and complete the procedures set forth below in Subsections 117.2.1 through 117.2.3, and comply with any other conditions reasonably imposed by the Executive Director for the restoration of the Premises. Provided that LADWP discharges its obligations under this Subsection 117.2 expeditiously and in good faith, LAHD shall reasonably endeavor to ensure that the requirement to discharge its obligations disturbs as little as reasonably possible LADWP's undertaking of the Permitted Uses during the Term of this Agreement. The Executive Director may alter or delete any of the procedures set forth below at the Executive Director's sole and absolute discretion.

117.2.1 Site Vacation Plan. When requested to do so in writing by the Executive Director, LADWP shall submit to LAHD a written plan hereinafter referred to as the "Site Vacation Plan". The Executive Director's written request shall state which, if any of the Improvements or Structures on the Premises the LAHD does or does not want LADWP to remove as part of the restoration of the Premises. The sufficiency of the Site Vacation Plan is subject to LAHD's reasonable approval. The Site Vacation Plan shall comply with the then existing Harbor Department procedures for Restoration.

117.2.2 Permits for Restoration. LADWP shall obtain at its sole cost and expense all permits required for the completion of its restoration obligations.

117.2.3 Adequacy of Restoration. Subject to orders or directives issued by any Governmental Agency with jurisdiction which orders or directives shall take precedence over this Subsection 117.2.3, the adequacy of LADWP's execution of the Restoration Obligations shall be within the sole reasonable discretion of the Executive Director. LADWP shall notify the Executive Director in writing when it believes it has completed all work contemplated by the Site Vacation Plan. The Executive Director shall determine the adequacy of the restoration using the Executive's Director sole reasonable discretion.

117.3 Restoration Indemnity. In addition to and not as a substitute for any remedies provided by this Agreement or at law or equity, LADWP shall defend, indemnify and hold harmless LAHD from any and all claims and/or causes of action brought against LAHD and from all damages and costs which arise out of or are related to:

(a) Claims brought by holders of liens on the Premises, Structures, and/or on fixtures and/or equipment or property left on the Premises following the Expiration Date; and

(b) Claims, causes of action, orders or enforcement actions pending against or in connection with the Premises, the Permitted Uses and/or this Agreement.

This restoration indemnity is intended to and shall survive the expiration or earlier termination of this Agreement.

117.4 No Relocation Assistance. Nothing contained in this Agreement shall create any right in LADWP or any sublessees of LADWP for relocation assistance or payment from LAHD upon expiration or termination of this Agreement (whether by lapse of time or otherwise). LADWP acknowledges and agrees that it shall not be entitled to any relocation assistance or payment pursuant to the provisions of any state or federal law, including Title 1, Division 7, Chapter 16 of the California Government Code (Sections 7260 et seq.) with respect to any relocation of its business or activities upon the expiration of the term of this Agreement or upon its earlier termination or upon the termination of any holdover.

117.5 Failure to Restore. If LAHD has directed LADWP to demolish or restore some or all of the improvements on the Premises, or otherwise restore the Premises, and LADWP has failed to do so, or failed to do so to the level required by this Agreement, on or before the earlier to occur of the date of the termination of this Agreement or the Expiration Date, LAHD shall have the right, but not the obligation, to remove and/or demolish the same at LADWP's cost. In that event, LADWP agrees to pay to LAHD, upon demand, LAHD's Costs of any such removal, demolition or restoration and further agrees that such LAHD's Costs shall be deemed Additional Rent.

Section 118. Miscellaneous.

118.1 Titles and Captions. Unless otherwise indicated, references in this Agreement to sections, subsections, paragraphs, clauses, exhibits and schedules are to the same contained in or attached to this Agreement. Additionally, the Parties have inserted the section titles in this Agreement only as a matter of convenience and for reference, and the section titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the Parties in including any particular provision in this Agreement. Unless otherwise specified, references to Section or Subsection are to sections and subsections of this Agreement.

118.2 Exhibits and Attachments. All exhibits and attachments to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. References to sections are to sections of this Agreement unless stated otherwise.

118.3 Construction of Agreement. This Agreement shall not be construed against the Party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all Parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the Parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one Party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting Party shall not be applicable.

118.4 Entire Agreement; Amendments. This Agreement and all exhibits referred to in this Agreement constitute the final complete and exclusive statement of the terms of the agreement between LAHD and LADWP pertaining to LADWP's use and occupancy of the Premises and, subject to the provisions of Subsection 118.32 (Prior Permits), supersedes all prior and contemporaneous understandings or agreements of the Parties. Neither Party has been induced to enter into this Agreement by, and neither Party is relying on, any representation or warranty outside those expressly set forth in this Agreement.

118.5 Modification in Writing. This Agreement may be modified only by written Agreement of all Parties. Any such modifications are subject to all applicable approval processes set forth in City's Charter, City's Administrative Code, or Applicable Laws.

118.6 Waivers. A failure of any Party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing. The subsequent acceptance of Rent by Board shall not be deemed to be a waiver of any other breach by LADWP of any term, covenant or condition of this Agreement, other than the failure of LADWP to timely make the particular Rent payment so accepted, regardless of Board's knowledge of such other breach. No delay, failure or omission of either Party to execute any right, power, privilege or option arising from any default, nor subsequent acceptance of guarantee then or thereafter accrued, shall impair any such right, power, privilege, or option, or be construed to be a waiver of any such default or

relinquishment thereof, or acquiescence therein, and no notice by either Party shall be required to restore or revive the time is of the essence provision hereof after waiver by the other Party or default in one or more instances. No option, right, power, remedy or privilege of either Party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to LAHD by this Agreement are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law, in that the exercise of one right, power, option or remedy by LAHD shall not impair its rights to any other right, power, option or remedy.

118.7 Joint and Several Obligations of LADWP. If more than one individual or entity comprises LADWP, the obligations imposed on each individual or entity that comprises LADWP under this Agreement shall be joint and several.

118.8 Time is of the Essence. Time shall be of the essence as to all dates and times of performance, and obligations set forth herein, whether or not a specific date is contained herein. If performance is required by the terms hereof on a Saturday, Sunday or legal holiday in California, the performance shall be made on the next business day.

118.9 Statements of LADWP as Applicant. This Agreement may be granted pursuant to an application filed by LADWP with Board. If the application or any of the attachments thereto contain any material misstatements of fact, Board may cancel this Agreement. Upon any such cancellation of the Agreement granted hereunder, LADWP shall quit and surrender the Premises as provided in Section 117 (Restoration and Surrender of Premises).

118.10 Governing Law and Venue. This Agreement is made and entered into in the State of California and shall in all respects be construed, interpreted, enforced and governed under and by the laws of the State of California, without reference to choice of law rules.

118.11 Severability. Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the Parties shall revise the part, term, condition or provision so as to comply with the Applicable Law or public policy and to effect the original intent of the Parties as closely as possible.

118.12 Termination by Court. If any court having jurisdiction in the matter renders a final decision which prevents the performance by LAHD of any of its obligations under this Agreement, then either Party may terminate this Agreement by written notice, and all rights

and obligations hereunder (with the exception of any undischarged rights and obligations) shall thereupon terminate.

118.13 License Fees and Taxes. LADWP shall pay all taxes and assessments of whatever character levied upon or charged against the interest of LADWP, if any, created by this Agreement in the Premises or upon works, buildings, improvements or other property thereof, or upon LADWP's operations hereunder. LADWP shall also pay all license and permit fees required for the conduct of its operations hereunder. Any sums due and owing to LAHD by LADWP under this Subsection 118.13, or paid by LAHD on LADWP's behalf shall be deemed Additional Rent.

118.14 POSSESSORY INTEREST. LADWP IS AWARE THAT THE GRANTING OF THIS AGREEMENT TO LADWP MAY CREATE A POSSESSORY PROPERTY INTEREST IN LADWP AND THAT LADWP MAY BE SUBJECT TO PAYMENT OF A POSSESSORY PROPERTY TAX IF SUCH AN INTEREST IS CREATED.

118.15 Conflict of Interest. The Parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Conflict of Interest Code of City's Harbor Department.

118.16 Extent of Water Frontage. In case this Agreement, or any part thereof or any improvements made hereunder, shall be assigned, transferred, leased or subleased and the control thereof be given or granted to any person, firm, or corporation so that such person, firm or corporation shall then own, hold or control more than the length of water frontage permitted or authorized under Section 654(a) of the Charter of City, or if LADWP shall hold or control such water frontage without a four-fifths vote of the Board and a two-thirds vote of the City Council approving the control of such water frontage, then this Agreement and all rights hereunder shall thereupon and thereby be absolutely terminated, and any such attempted or purported assignment, transfer or sublease, or giving or granting of control to any person, firm or corporation, which will then own, hold or control more than such permitted or authorized length of water frontage, shall be void and ineffectual for any purpose whatsoever.

118.17 State Tidelands Act, Grants and Trusts; City Charter. This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement, the Premises and LADWP's use and occupancy thereof, is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City", approved June 3, 1929 (Stats. 1929, Ch. 651), as amended, ("Act") and provisions of Article VI of the Charter of the City of Los Angeles ("Charter") relating to such lands. LADWP agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations of the Act and the Charter. LADWP further agrees that it shall not undertake any use of the Premises,

even a Permitted Use, which is or will be inconsistent with such limitations, conditions, restrictions and reservations.

118.18 LADWP Name Change. LADWP shall promptly, and in no case later than fifteen (15) days after a change in name, notify the Executive Director in writing of any changes to its name, or contact or delivery information, set forth in the preamble, or the notification sections, of this Agreement.

118.19 Signs. LADWP shall not erect or display, or agree to be erected or displayed, on the Premises, or upon works, buildings and improvements made by LADWP, any advertising matter of any kind, including signs, without first obtaining the written consent of the Executive Director and a Harbor Engineer's General Permit.

118.20 Ownership of Improvements. During the Term of the Agreement, title to all structures, improvements, or facilities, constructed or installed by LADWP ("LADWP Improvements") and all alterations constructed or installed by LADWP on LADWP Improvements shall remain in LADWP. Upon termination of this Agreement, all LADWP Improvements or alterations, other than machines, equipment, trade fixtures and similar installations of a type normally removed without structural damage to the Premises, shall become a part of the land upon which they are constructed, or of the building on which they are affixed, and title thereto shall thereupon vest in LAHD unless, however, LAHD requests LADWP to remove some or all of said improvements, in which case LADWP shall promptly remove such improvements at LADWP's sole cost and expense. In the event of removal of any improvements, LADWP shall comply with the restoration obligations of Section 111 (Indemnity and Insurance). Notwithstanding the foregoing, in the event that the Harbor Department ascertains a need to acquire LADWP owned assets prior to title to those assets vesting in LAHD, straight-line depreciation shall be applied to determine the purchase price.

118.21 Promotion of Los Angeles Harbor Facilities. LADWP shall in good faith and with all reasonable diligence use its best efforts by suitable advertising and other means to promote the use of the Premises granted by this Agreement.

118.22 Prior Permits. To the extent that LADWP and/or its predecessors or Affiliates used or occupied the Premises pursuant to prior agreements, including but not limited to Prior Permit Nos. 711 and 780, from and after the Effective Date of this Agreement, LADWP's use and occupancy of the Premises shall be governed by this Agreement; provided, however, that any provisions which survive termination or expiration of such prior agreements by the terms of the prior agreement or operation of law shall continue in full force and effect unless specifically stated otherwise in Article 1 of this Agreement.

118.23 No Third Party Beneficiaries. Nothing in this Agreement shall be deemed to confer upon any Person (other than LAHD, LADWP or LADWP's lender) any right to insist upon,

or to enforce against LAHD or LADWP, the performance or observance by either Party of its obligations under this Agreement.

118.24 Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of LAHD and shall be binding upon and inure to the benefit of the successors and permitted assigns and sublessees of LADWP.

118.25 Proprietary Capacity. The capacity of LAHD in this Agreement shall be as lessor only ("Proprietary Capacity"), and any obligations or restrictions imposed by this Agreement on LAHD shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect the governmental capacities of LAHD, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions of each pursuant to federal, State or local law ("Governmental Capacity"). Whenever not expressly otherwise stated, (a) LAHD, when acting in its Proprietary Capacity, shall not unreasonably withhold its approvals to matters requiring its approval hereunder, (b) LADWP shall not unreasonably withhold its approval to matters requiring its approval hereunder and (c) LAHD, when acting in its Governmental Capacity, shall be permitted to utilize its sole discretion with respect to matters requiring its approval hereunder.

118.26 Executive Director Authority. Whenever this Agreement refers to an action to be taken by the Executive Director, to the extent permitted by Applicable Law, that action may be taken by the Executive Director or the Executive Director's designee.

[signature page follows]

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: _____, 2016

By: _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

THE CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER

Dated: _____, 2016

By: _____

(Print/type Name and Title)

Attest: _____

(Print/type Name and Title)

APPROVED AS TO FORM AND LEGALITY

_____, 2016
MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By: _____
JOHN T. DRISCOLL, Deputy

JTD:jpr
04/06/16
Attachments

ATTACHMENT 1 - Glossary of Terms

“ACTA” means the Alameda Transportation Corridor Authority or its successor entity.

“Additional Rent” means the monetary sum, in U.S. Dollars, LADWP shall pay to City for its use and occupancy of the Premises above the Base Rent as set forth in Article 1, Section 4 of this Agreement.

“Adjusted Base Rent” means the adjustment to the Base Rent which occurs every five (5) years of the Term pursuant to Article 1, Section 4 of this Agreement.

“Affiliate” means, when used with reference to a specified person or entity, any person or entity which directly or indirectly controls, is controlled by or is under common control with the specified person or entity. A person or entity shall be regarded as in control of another entity if it owns or is under common ownership or directly or indirectly controls at least fifty (51%) of the voting stock or other equity interests of the other entity, or in the absence of ownership of at least fifty percent (51%) of the voting securities of an entity, if it possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such entity.

“Alteration” or “Alterations” means improvements, alterations, additions or changes to the Premises including, without limitation, the construction of works or improvements or the changing of the grade of the Premises, except as otherwise stated in this Agreement.

“Annual Adjustment Date” shall have the meaning set forth in Article 1, Subsection 4.3.1.

“Applicable Laws” means any and all federal, state, county or governmental agency laws, statutes, ordinances, standards, codes (including, without limitation, all building codes) rules, requirements, or orders in effect now or hereafter in effect pertaining to the use or condition of the Premises and/or LADWP’s operation and conduct of its business. Applicable Laws shall include, but not be limited to, all environmental laws and regulations in effect now or hereafter in effect including: (a) CERCLA and its implementing regulations; (b) RCRA and its implementing regulations; (c) The Federal Clean Water Act (33 U.S.C. Sections 1251-1376, *et seq.*) its implementing regulations; (d) The California Porter Cologne Water Quality Control Act (California Water Code, Division 7) and its implementing regulations; (e) The Federal Clean Air Act (42 U.S.C. Section 7401-7601) and its implementing regulations; (f) The California Clean Air Act of 1988 and its implementing regulations; (g) The California Lewis-Presley Air Quality Management Act of 1976 and its implementing regulations; and (h) Any other applicable federal, state, or local law, regulation, ordinance, order, resolution or requirement (including consent decrees and administrative orders imposing liability or standard of conduct) now or

hereafter in effect which concerns Environmental Regulated Material, the Premises and/or LADWPs use and/or occupancy of the Premises.

“Application for Port Permits” or “APP” means the application required to be submitted by LADWP for all alterations to the Premises. An APP is also required for all non-development projects such as new leases or permits, lease or permit renewals, lease or permit amendments, events, parking requests for events and foreign trade zone agreements. All references to Application for Port Permits or APP shall also mean any successor application process adopted by the Harbor Department.

“Assignment” means the transfer, or assignment of this Agreement, in whole or in part, in any manner including without limitation the involvement of LADWP or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise) whether or not there is a formal assignment or hypothecation of this Agreement or LADWP’s assets, which involvement results in a reduction of the net worth of LADWP (defined as the net worth of LADWP, excluding guarantors, established by generally accepted accounting principles) by an amount greater than twenty-five percent (25%) of such net worth as it was represented at the time of the execution of this Agreement, or at the time of the most recent Transfer to which City has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater. For purposes of this definition, the term "by operation of law" includes but is not limited to: (1) the placement of all or substantially all of LADWP's assets in the hands of a receiver or trustee; or (2) a transfer by LADWP for the benefit of creditors; or (3) transfers resulting from the death or incapacity of any individual who is a LADWP of, or a general partner of, a LADWP.

“Assignor” means collectively any transferor or assignor of LADWP’s interest in the Premises, or any portion thereof, including any and all entities that occupied the Premises prior to LADWP and actually or purportedly transferred or assigned its right of occupancy to LADWP either contractually or under operation of law, including any “Transfer” as defined in Article 2, Section 113, whether or not there was a written assignment or approval of the assignment by City.

“Appraisal Process” means the process set forth in Article 1, Subsection 4.3.2.2, to resolve disputed Adjusted Base Rent.

“Backlands” means the land area beyond 200 feet inland from the top of the bank.

“Baseline Condition” shall have the meaning set forth in Article 2, Subsection 104.2.

“Base Rent” means the monetary sum, in U.S. Dollars, LADWP shall pay to City for its use and occupancy of the Premises per Compensation Year, excluding Tariff Charges and other Additional Rent, as set forth in Article 1, Section 4 of this Agreement.

“Board” means the Board of Harbor Commissioners of the Harbor Department of the City of Los Angeles.

“Casualty” means damage or destruction of the improvements on the Premises.

“CEQA” means the California Environmental Quality Act, Sections 21000 et. seq. of the Public Resources Code and the CEQA Guidelines set forth at 14 California Code of Regulations Sections 15000 et. seq.

“Charter” or **“City Charter”** means the Charter of the City of Los Angeles as it may be amended from time to time.

“Chief Harbor Engineer” means the Chief Harbor Engineer, Engineering Division of the Harbor Department, or successor designations should that title be renamed or redesignated during the Term.

“City” means the City of Los Angeles, a municipal corporation.

“City Council” means the Council of the City of Los Angeles, the legislative body of the City pursuant to Section 20 of the Charter of the City of Los Angeles.

“City Costs” or **“City’s Costs”** means the costs, determined in the City’s sole reasonable discretion, for any work performed by or for City to comply with a LADWP obligation under this Agreement including, without limitation, the cost of maintenance or repair or replacement of property neglected, damaged or destroyed, including direct and allocated costs for labor, materials, services, equipment usage, and other indirect or overhead expenses arising from or related to maintenance, repair or replacement work performed by or on behalf of City; for the processing of any approvals or consents required or requested by LADWP; for the cost of processing an APP for the LADWP’s Premises; and, for the cost of complying with any Governmental Agencies’ orders which were the responsibility of LADWP.

“City Improvements” means those improvements on the Premises owned by the City.

“Compensation Year” means the twelve (12) month period from the Effective Date and every twelve month period thereafter.

“Condemnation” means the taking of property through acquisition or damage of all or part of the Premises by a Government Agency having the power of eminent domain.

“County” means the County of Los Angeles.

“CPI-U” means 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 of the Harbor Department in the Executive Director' sole reasonable discretion.

"Effective Date" is the date specified in Article 1, Subection 3.1 of this Agreement.

"Environmental Compliance Program" or **"ECP"** means the environmental compliance program to be developed by LADWP as set forth in Article 2, Subsection 104.6.2 of this Agreement.

"Environmental Agency" means the United State Environmental Protection Agency; the California Environmental Protection Agency and all of its sub-entities including without limitation the Regional Water Quality Control Broad - Los Angeles Region, the State Water Resources Control Board, the Department of Toxic Substances Control and the California Air Resources Board; the City of Los Angeles; the County of Los Angeles; the South Coast Air Quality Management District; the United States Environmental Protections Agency; and/or any other federal, state or local governmental agency or entity that has jurisdiction over Hazardous Substances Releases or the presence, use, storage, transfer, manufacture, licensing, reporting, permitting, analysis, disposal or treatment of Hazardous Substances in, on, under, about or affecting the Property. All references to an Environmental Agency or Agencies shall mean and include any successor Environmental Agency.

"Environmental Laws" means the environmental laws and implementing regulations which are a subset of the Applicable Laws and which are applicable to the Premises and/or LADWP's use and/or occupancy thereof, in their form as of the Effective Date or as subsequently amended, or as may be promulgated during the term of this Agreement or any holdover. Such Environmental Laws include but are not limited to:

- (a) CERCLA and its implementing regulations;
- (b) RCRA and its implementing regulations;
- (c) The federal Clean Water Act (33 U.S.C. Sections 1251–1376, et seq.) and its implementing regulations;
- (d) The California Porter Cologne Water Quality Control Act (California Water Code, Division 7) and its implementing regulations;
- (e) The federal Clean Air Act (42 U.S.C. Sections 7401-7601) and its implementing regulations;
- (f) The California Clean Air Act of 1988 and its implementing regulations;
- (g) The state Lewis Air Quality Act of 1976 and its implementing regulations; and

- (h) Any other applicable federal, state, or local law, regulation, ordinance or requirement (including consent decrees and administrative orders imposing liability or standard of conduct) now or hereinafter in effect which concerns Environmentally Regulated Material, the Premises and/or LADWP's use and/or occupancy thereof.

“Environmentally Regulated Material” means any hazardous or toxic substance, material, or waste at any concentration that is or becomes regulated by the United States, the State of California, or any local or governmental authority having jurisdiction over the Premises. Environmentally Regulated Material includes but is not limited to:

- (a) Any “hazardous substance” as that term is defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) (42 U.S.C. Sections 9601-9675) in its present or successor form;
- (b) “Hazardous waste” as that term is defined in the Resource Conservation and Recovery Act of 1976 (“RCRA”) (42 U.S.C. Sections 6901-6992k) in its present or successor form;
- (c) Any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material or substance, within the meaning of any other applicable federal, state, or local law, regulation, ordinance or requirement (including consent decrees and administrative orders imposing liability or standard of conduct concerning any hazardous, dangerous or toxic waste, substance or material, now or hereinafter in effect);
- (d) Radioactive material, including any source, special nuclear, or byproduct material as defined in 42 U.S.C. Sections 2011-2297g-4 in its present or successor form;
- (e) Asbestos in any form or condition;
- (f) Polychlorinated biphenyls (“PCBs”) and substances or compound containing PCBs; and
- (g) Petroleum products.

“Execute Director” means the Harbor Department’s Executive Director referred to in the Charter of the City of Los Angeles and any other person authorized by the Board to act for the Executive Director or the Board or the designee of the Executive Director.

“Existing Improvements” means the improvements existing on the Premises as of the Effective Date of this Agreement.

“Expiration Date” is the date set forth in Article 1, Subsection 3.2 of this Agreement.

“Fair Market Rental” means the most probable rent that a property should bring in a competitive market reflecting all conditions and restrictions of the lease agreement, including permitted uses, use restrictions and LADWP improvements.

“Five-Year Adjusted Period” means each five (5) year period of the Term of this Agreement which is subject to rental adjustment pursuant to Article 1, Section 4, of this Agreement.

“Force Majeure” shall have the meaning set forth in Article 2, Section 110 of this Agreement.

“Governmental Agency” or **“Governmental Agencies”** means any and all federal, state, county, municipal and local governmental and quasi-governmental bodies and authorities (including the United States of America, the State of California, the City, the County of Los Angeles, and any political subdivision, public corporation, district or other political or public entity) or departments or joint power authorities thereof having or exercising jurisdiction over the parties, the Premises, or such portions thereof as the context indicates.

“Governmental Authority” means any court, federal, state or local government, department, commission, board, bureau, agency or other regulatory, administrative, governmental or quasi-governmental authority, including the City of Los Angeles, of the United States of America, including any successor agency.

“Governmental Capacity” means City acting in its authorized capacity as the City of Los Angeles, a municipal corporation, as set forth in Article 2, Subsection 118.35.

“Government Entities” or **“Governmental Agency or Agencies”** means any and all federal, state, county, municipal and local governmental and quasi-governmental bodies and authorities (including the United States of America, the State of California, the City, the County, and any political subdivision, public corporation, district or other political or public entity) or departments or joint power authorities thereof having or exercising jurisdiction over the parties, the Premises, or such portions thereof as the context indicates.

“Harbor Department” or **“Department”** means the Harbor Department of the City of Los Angeles.

“Harbor District” is as defined in Section 651(a) of City’s Charter or in any successor provision of City’s Charter.

“Chief Harbor Engineer’s General Permit” of **“Harbor Engineer’s General Permit”** means the permit issued by the Chief Harbor Engineer to undertake works or improvements in the Harbor District.

“Harbor Engineer” means the Chief Harbor Engineer of the Harbor Department of the City of Los Angeles or the Harbor Engineer’s designee.

“Improvement” means, unless otherwise specified, building or buildings, but may be any permanent structure or other development such as, but not limited to, a street or utilities.

“Labor Disturbance” has the meaning set forth in Article 2, Subsection 103.2.4 of this Agreement.

“Market Rent” means the most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the lease agreement, including permitted uses, use restrictions, expense obligations, term, concessions, renewal and purchase options, and LADWP improvements.

“Major Casualty” means any casualty, whether covered by insurance or not, whose repair would exceed ten percent (10%) of the replacement cost of the damaged or destroyed improvements.

“Minor Casualty” means any casualty, whether covered by insurance or not, which is not a Major Casualty.

“Non-Harbor Department Permits” means permits issued by entities other than the Harbor Department, which entities include other departments of City, which may be necessary to undertake works or improvements in the Harbor District.

“Partial Taking” means the Condemnation of all or a portion of the Premises which does not substantially impair LADWP’s use of the Premises for the Permitted Uses.

“Party” and **“Parties”** is defined in the introductory paragraph of this Agreement.

“Permitted Uses” means the uses set forth in Article 1, Section 5 of this Agreement.

“Person” means individuals, partnerships, firms, associations, corporations, trusts and any other form of governmental or business entity, and the singular shall include the plural.

“Port Environmental Policy” means all applicable environmental policies, rules, orders and directives of the Harbor Department as they exist on the Effective Date and as they may be enacted, amended or modified from time to time.

“Premises” means the land and improvements depicted in Exhibit “A”, and as subsequently may be adjusted pursuant to the terms of this Agreement.

“Proprietary Capacity” is as defined in Article 2, Subsection 118.35, of this Agreement.

“Rent” means the combined Base Rent and Additional Rent due from LADWP to City for the use and occupancy of the Premises.

“Reset Date” means every fifth anniversary of the Effective Date as set forth in Article 1, Subsection 4.2.2.

“Severance Damages” means the compensation due to a property owner for the decrease in value of the remaining property where the Condemnation is for a portion of a larger property whose value has been diminished as a result of severance of the condemned property from the larger property.

“Site Characterization Manual” means the Site Characterization Manual of the Harbor Department, as it may be amended from time to time.

“Site Vacation Plan” is as defined in Article 2, Subsection 117.2.1 of this Agreement.

“State Tidelands Act” means the Act of the Legislature of the State of California entitled “An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City” (Stats. 1929, Ch. 651) as amended, and as it may amended from time to time.

“Submerged Lands” means land area that is located underwater from the pierhead line toward the channel line.

“Subsurface Land” means the land area which has a depth of more than three (3) feet beneath the surface.

“Taking” means the acquisition through condemnation, inverse condemnation, or agreement in lieu of condemnation, of the Premises or any part thereof.

“Tariff” means Tariff No. 4 of City of Los Angeles’ Harbor Department as it may be amended from time to time.

“Tariff Charges” means all charges due and owing by LADWP under the Tariff on account of LADWP’s use and occupancy of the Premises.

“Tax” or **“Taxes”** means the aggregate of any federal, state or local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, business,

premium, windfall profits, environmental, customs duties, permit fees, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, good and services, water, school, real property, possessory interest, personal property, sales, use, transfer, registration, value added, multi-staged, alternative or add-on minimum, special, estimated or other tax, levy, impost, stamp tax, duty, fee, withholding or similar imposition of any kind whatsoever payable, levied, imposed, collected, withheld or assessed at any time, including any interest, penalty or addition thereto, whether disputed or not, including in each case utility rates or rents, upon, concerning or applicable to the Premises, any fixtures, machinery and equipment installed or maintained on the Premises, the improvements and the use and operation of the Premises by any Governmental Authority.

“Temporary Taking” means the Condemnation of all or a portion of the Premises for a specified period of time.

“LADWP Improvements” means those improvements on the Premises which are built by the LADWP and whose ownership has not vested in City.

“LADWP’s use” and **“LADWP’s use and occupancy”** means, unless otherwise stated or evident from the context in which the term is used, the use of the Premises by LADWP, its employees, contractors, subcontractors, licensees, invitees, suppliers or anyone else present at the Premises pursuant to LADWP’s invitation or permission.

“Term” means the term of this Agreement, which shall commence on the Effective Date and end on the Expiration Date or earlier termination of this Agreement.

“Term Contamination” means all contamination of improvements, adjacent harbor waters, soil, sediment, groundwater or air of the Premises or the adjacent premises (including soil, sediment, groundwater or air of those adjacent premises) resulting from all Term Releases and contamination that is considered a nuisance under Applicable Laws.

“Term Characterization Report” means the written report required to be prepared and submitted by LADWP when there is a Term Release as set forth in Article 2, Subsection 104.1.4.

“Term Characterization Work Plan” means the written work plan required to be prepared and submitted by LADWP when there is a Term Release as set forth in Article 2, Subsection 104.1.5.

“Term Release” means a spill, discharge or any other type of release of Environmentally Regulated Material that occurs on the Premises during the Term of this Agreement, or any holdover, whether caused by LADWP, including any Assignor, or a third-party (other than invitees or third-parties whose access to the Premises has been requested by City), that contaminates or threatens to contaminate the Premises, soil, sediment, groundwater or air of

the Premises or of adjacent premises (including the soil, sediment, groundwater or air of those adjacent premises).

“Term Remediation Action Plan” means the written plan to be prepared and submitted by LADWP when there is a Term Release as set forth in Article 2, Section 104 of this Agreement.

“Tidelands” means the land between the ordinary high tide and the mean low tide.

“Total Taking” means the Condemnation of all or a substantial portion of the Premises which renders the Premises unsuitable for the Permitted Uses.

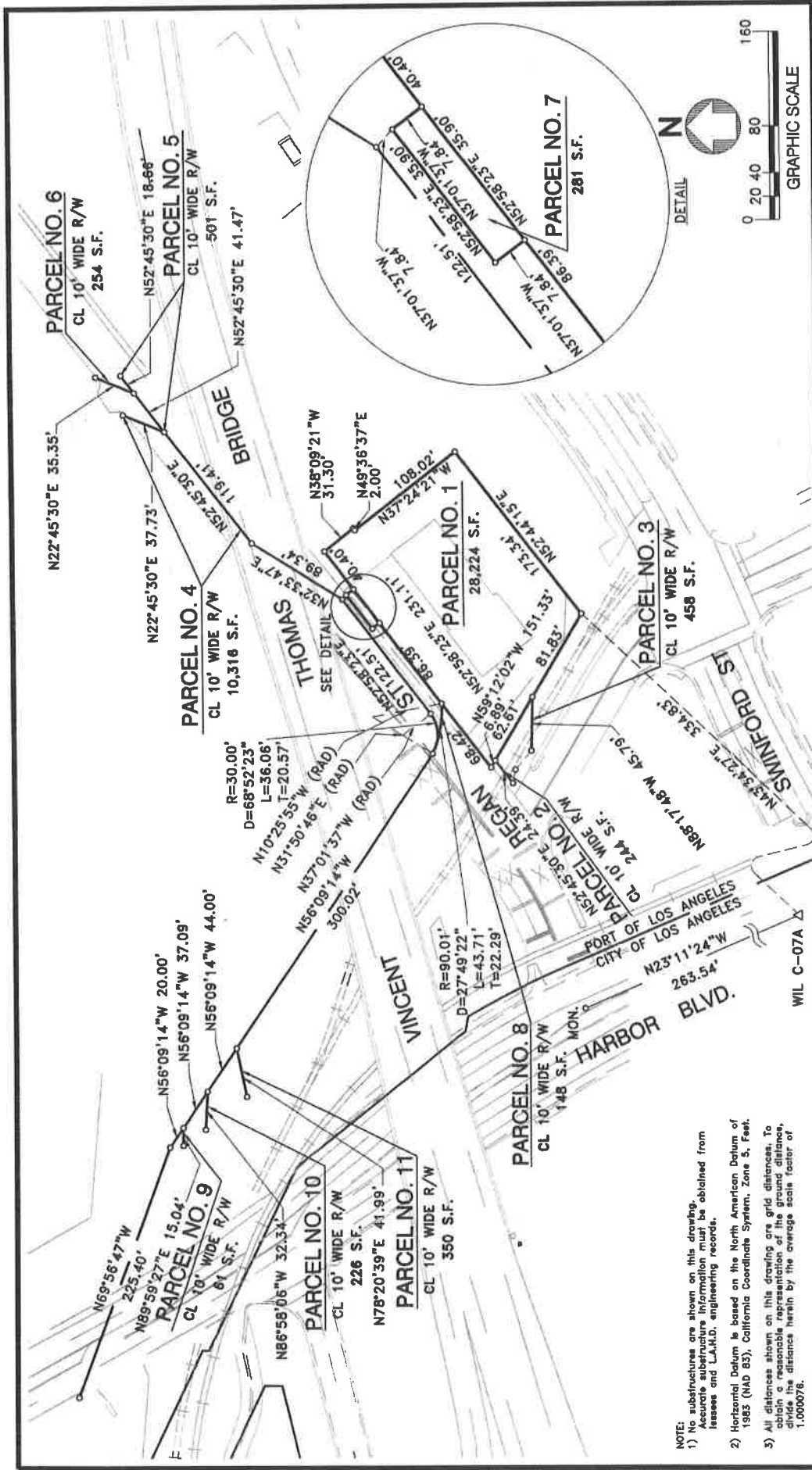
“Transfer” means the transfer, assignment or subletting of the Premises as fully defined in Article 2, Section 113 of this Agreement.

“Transferee” means the person, entity or entities with whom LADWP proposes to undertake a Transfer.

“Transfer Notice” means the written notice required to be submitted by LADWP as set forth in Article 2, Subsection 113.3.1 of this Agreement.

“Transfer of Ownership” means the transfer defined in Article 2, Subsection 113.2 of this Agreement.

“Waterfront Property” means the land area from the pierhead line extending inland to the top of the bank, plus 200 feet inland from the top of the bank.



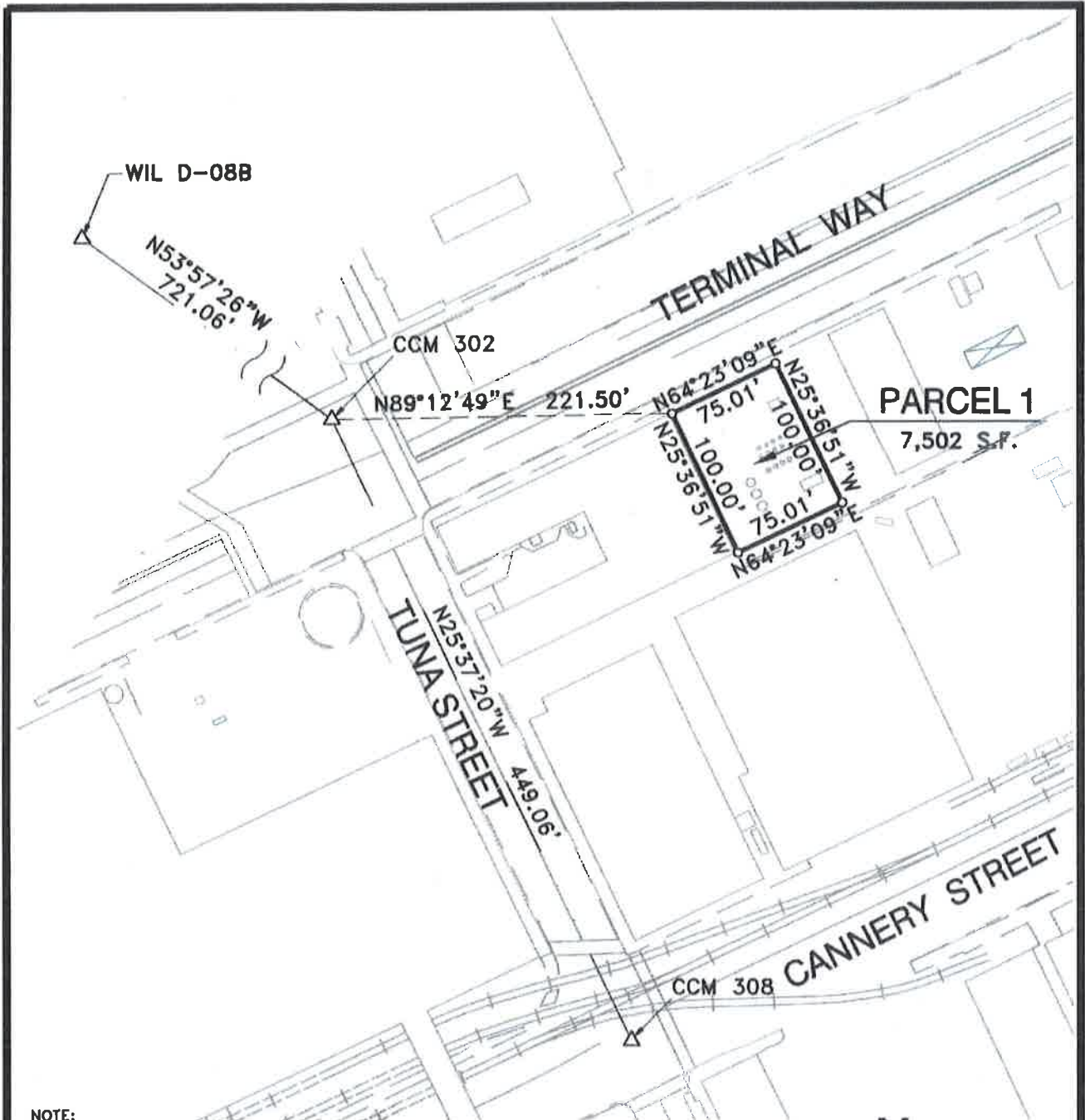
PERMIT MAP - AUTHORITY NO. P911		RECOMMENDED FOR APPROVAL		SCALE: 1"=80'	
NO.	DATE	DRAWN	REVISIONS -	CH'KD	APP'D
1	09/10	DRR	CHANGED AUTHORITY NUMBER	DRR	DRR
2	09/15	DRR	CHANGED AUTHORITY NUMBER	DRR	DRR
		DRAWN: PSOMAS 5/03		SCALE: 1"=80'	
		CHECKED: PSOMAS 5/03		CHIEF OF DESIGN	
		DESIGNED: PSOMAS 5/03		7-8-03	
		ENGR/ARCH		ASSISTANT CHIEF	
		David B. Beach		HARBOR ENGINEER	
		John D. Deane		101	
				FOR	
				HARBOR ENGINEER	
				APPROVED	
				William S. McNeil	
				CHIEF HARBOR ENGINEER	
				DRAWING NUMBER	
				45607	

EXHIBIT A-1

NOTE:
 1) No substructures are shown on this drawing. Accurate substructure information must be obtained from lessees and L.A.H.D. engineering records.
 2) Horizontal Datum is based on the North American Datum of 1983 (NAD 83), California Coordinate System, Zone 5, Feet.
 3) All distances shown on this drawing are grid distances. To obtain true distances, the horizontal distance of the ground distance, divide the distance herein by the average scale factor of 1.000076.

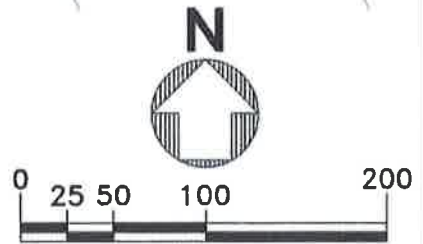


THE PORT OF
 LOS ANGELES
INCORPORATED 1907



NOTE:

- 1) No substructures are shown on this drawing. Accurate substructure information must be obtained from lessees and L.A.H.D. engineering records.
- 2) Horizontal Datum is based on the North American Datum of 1983 (NAD 83), California Coordinate System, Zone 5, Feet.
- 3) All distances shown on this drawing are grid distances. To obtain a reasonable representation of the ground distance, divide the distance herein by the average scale factor of 1.000076.



REV. NO. 2 - CHANGED AUTHORITY NUMBER (09/15) *GRR*
 REV. NO. 1 - CHANGED AUTHORITY NUMBER (09/10) *GRR* *WE* *MV*

SCALE: 1"=100'	DATE:	RECOMMENDED FOR APPROVAL	PERMIT MAP - AUTHORITY NO. P911	
DRAWN: PSOMAS	4/03	CHIEF OF DESIGN <i>Paul C. D.</i>	LOS ANGELES CITY, WATER & POWER	
CHECKED: PSOMAS	4/03	APPROVED <i>Stacey & Jones</i>	 THE PORT OF LOS ANGELES <small>ENGINEERING DIVISION P.O. BOX 811 SAN PEDRO, CA 90734</small>	
DESIGNED: PSOMAS		ASSISTANT CHIEF HARBOR ENGINEER <i>Michael R. ...</i>		
ENGR/ARCH		CHIEF HARBOR ENGINEER <i>John J. Abraham</i>	DRAWING NUMBER	5-4538-1

POLAROS_VBR-1_12/96
5-4538-2

EXHIBIT A-2

EXHIBIT B – EXISTING IMPROVMENTS/LOAD LIMITS

NONE

EXHIBIT C – APPRAISER QUALIFICATIONS

The Main Appraiser must possess an MAI or SRPA designation and must be licensed in the State of California. The Main Appraiser must perform all of the calculations and technical portions of the appraisal report as well as derive the final value conclusions within the appraisal report. The Main Appraiser must have working knowledge of the Southern California real estate market as well as experience appraising port maritime related properties as appropriate for the work that is being requested.

The Main Appraiser must be in good standing with the California Bureau of Real Estate Appraisers (CBREA) or its successor organization and have no more than one complaint filed against him or her for any reason and no complaints that have resulted in disciplinary actions. The Main Appraisers must certify in the appraisal report that he or she has never received any disciplinary actions from the CBREA. The Main Appraisers must be able to provide documentation of the sources of comparable rental rate and sales data to the reasonable satisfaction of the City and Tenant.

Any Arbitration Appraiser must be a Qualified Appraiser (meeting the above qualifications) that is not under contract with the City for appraisal services.

EXHIBIT D

APPRAISAL STATEMENT OF WORK

Appraisers shall provide a confidential appraisal report that at a minimum contains the following specifications as a condition of acceptance by the Port of Los Angeles and the Los Angeles Department of Water and Power.

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: Market Value of the Fee Simple interest in land only subject to existing encumbrances, and the Market Rental Value of the property rights described in the attached agreement labeled Permit No. 911.

Definition of Value

The definition of Market Value shall be as follows:

Market value means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- (1) Buyer and seller are typically motivated;*
 - (2) Both parties are well informed or well advised, and acting in what they consider their own best interests;*
 - (3) A reasonable time is allowed for exposure in the open market;*
 - (4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and*
 - (5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.*
- (12 CFR 34.42 Subpart g)*

Date of Appraisal

Current

Date of Value

The initial date of value will be the scheduled rental rate reset date as described within the permit.

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 the most recent version in place at the time of appraisal.

Appraisal Standards

There is to be full compliance with USPAP 2016 or subsequently approved standards, as well as the Specific Standards as set forth in this document. Appraisers shall be licensed as Certified General Appraisers by the State of California. The license shall be current and in good standing from the date of engagement to 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 subject property data, including areas being appraised and other data. This inspection must occur after the date of engagement.

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, hypothetical conditions and all extraordinary assumptions of the report. All hypothetical conditions and extraordinary assumptions will be provided to all the named users of the appraisal seven calendar days prior to engagement of the appraiser to proceed with the appraisal 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

City of Los Angeles Department of Water and Power (LADWP) or Port of Los Angeles (POLA). (Please note, legally an appraiser and cannot have two clients for a single appraisal assignment. The correct client will be the entity that contract with the appraiser, with the other department pay 50% of the appraiser's cost.)

Intended Use of the Appraisal

As a tool for POLA and LADWP staff that will assist in and facilitate the establishment of the Fee Simple Market Value of Land only and the Market Rental Value the rights described in the agreement labeled Permit No. 911. The purpose appraisal is for periodic rental adjustment to market rental value.

Intended Users

POLA, LADWP, their respective Boards, the Los Angeles City Attorney's Office, the Los Angeles City Council and related parties.

Purpose

Determine the fee simple market value of land and the market rental value of the rights described in Permit No. 911 which is attached to this document. **History of Ownership**

Previous five years per public records or what is required by USPAP, whichever is greater.

Exposure Time

As set forth in USPAP 2016 or latest revised USPAP 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 and Coastal Commission rules and regulations.
- A conclusion as to the social, economic, governmental, and environmental characteristics of the subject property.
- POLA will provide the appraiser with all lease and rental information requested by the appraiser.

Graphics

The following will at a minimum 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 an analysis of Highest and Best Use Analysis as if the property were vacant, which will exclude any site improvement such as paving, fencing and similar. As this appraisal assignment is for land only, the appraiser will not analyze the highest and best use as improved. The appraisal report will clearly state the appraiser's opinion of the highest and best use of the property as vacant.

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, parking requirements and all other zoning impacts on the subject property. If the property has Port of Los Angeles 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). The appraiser will include the name, title and date of the City of Los Angeles planner interviewed for this assignment, if applicable.

Refer to the Port of Los Angeles 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>

The appraiser will review all other governmental regulations, which include but are not limited to any Coastal Commission rules and regulations.

Encumbrances

The appraisal report will describe and discuss all encumbrances, which include easements, right of ways and similar. The final value conclusions will consider the impacts of all subject property encumbrances.

Tariff

If applicable, the area rented by LADWP under Permit No. 911 is subject to a tariff imposed by POLA or its successor or similar organization during any rate setting period, the appraiser will analyze the tariff, and the appraiser will analyze the tariff's impacts on all values requested in this Statement of Work.

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 land description and other land descriptions, the differences must be addressed in detail in the appraisal report.

Determination of Real Property (Land Only)

Report shall include the identification of the subject property's land and the easement and encumbrances.

Comparable Information

Each comparable sale, land 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.

Methodology of Appraisals

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 land sales, land rental data, and rates of return of properties which would provide insight to the Market Values requested in this document. The appraiser will first look to the communities of San Pedro, Wilmington, West Long Beach, Torrance, Harbor City and Carson for comparable sales if possible.. Adjustments to comparable data must be explained in the appraisal report. Inclusion of terms for comparable sales and rental data should be included. This data should be derived from non-POLA transactions. Also the appraiser will include a review and analysis of all rate settings, leases, licenses, permits and similar agreements completed by POLA in the twenty-four (24) months prior to the date of value. If the appraiser finds any additional data relevant to the subject property which would aid in the valuation process, the appraiser shall include this data and analysis in the appraisal report.

- **The Cost Approach**

As the appraisal is of land only, the appraiser will use the land sales comparison method under the Cost Approach. No improvement analysis will be completed. The

comparable land sales will be analyzed to aid in determining the final market value of the subject property's fee simple interest subject to existing encumbrances.

The Income Approach

As this is an appraisal of land only, the appraiser will use any applicable income approach technique to develop the Market Value of the Fee Simple interest subject to encumbrances and the Market Rental Rate for the subject property described in Permit No. 911.

At a minimum the appraiser will develop and include in the appraisal report an analysis of Market rent based on a rate of return on land value. In this analysis to develop a Market Rental Rate the appraiser will develop Market rate of return comparable sales and apply the market derived Market rate of return to the Market Value of the fee simple land interest subject to encumbrances. From this analysis the appraiser will report the Market Rental Rate.

The appraiser will use and report any other income approach technique that is deemed applicable.

Reconciliation

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

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 attached. 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 Port properties, and professional designations.

Certification

All appraisers listed in the Certification shall have personally inspected the subject property after the date of engagement; 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:

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):

Encumbrances that impact the site:

Description of Site(s):

Area of Total Site(s):

Area of Appraised Site(s):

Highest and Best Use:

As if Vacant Land:

Special Concerns:

Environmental:

Homeland Security Compliance

Trade Fixtures: Conclusion(s):

Value Conclusions:

Value conclusion shall be provided as follows:

Market Value of the Fee Simple Estate (\$ XX.XX per SF) Land Only

Market Value of the Fee Simple Estate (\$ XXX,XXX Total Value) Land Only

Market Rental Value (\$ XX.XX per SF per Year) Land only, based on proposed lease terms

Market Renal Value (\$ XXX,XXX Total Value per Year) Land only, based on proposed lease terms

EXHIBIT E – WILMINGTON TRUCK ROUTE

TRUCKS ENTERING AND LEAVING THE PORT MUST USE THE ROUTE SHOWN BELOW.
CAMIÓNES ENTRANDO Y SALIENDO EL PORTO DEVEN DE USAR LA RUTA INDICADO ABAJO.



05-03

EXHIBIT F-1 – CITY BASELINE REPORT

NONE

EXHIBIT F-2 – LADWP BASELINE REPORT

NONE

EXHIBIT G – LIST OF ENVIRONMENTAL REGULATED MATERIALS

NONE

EXHIBIT H-1 – PORT ENVIRONMENTAL POLICIES

APPLICABLE ENVIRONMENTAL POLICIES, RULES AND DIRECTIVES OF CITY'S HARBOR DEPARTMENT

1. Port of Los Angeles Environmental Management Policy, as amended, or its successor policy. Available at: http://www.portofla.org/img/Env_Mgmt_Policy.gif
2. San Pedro Bay Ports Clean Air Action Plan, as amended, or its successor plan/document. Available at: <http://www.cleanairactionplan.org>.
3. Port of Los Angeles and Port of Long Beach Water Resources Action Plan or its successor plan/document. Available at http://www.portoflosangeles.org/DOC/WRAP_Final.pdf
4. Port of Los Angeles Green Building Policy (2007), as amended, or its successor policy.
5. Port of Los Angeles Sustainable Construction Guidelines (2008), as amended, or its successor document.
6. Resolution No. 5317 – Policy for Operation of Hazardous Waste Transfer, Storage and Disposal (TSD) Facilities on Harbor Department Property and any amendments or successor resolution.

LADWP acknowledges that City has provided copies or made copies available via the Port's website, of the above policies to the LADWP.

EXHIBIT H-2 – MMRP

NONE

EXHIBIT I-1 – ECP REQUIREMENTS

NONE

EXHIBIT I-2 – LADWP’S ECP

NONE

EXHIBIT J – CITY (HARBOR DEPARTMENT) MAINTENANCE RESPONSIBILITIES

NONE

EXHIBIT K- INSURANCE REQUIREMENTS

(INDEMNIFICATION ONLY – CITY AGENCY)