

PERMIT

30285

Pursuant to the provisions of Section 16.08.920 of the Long Beach Municipal Code and a minute order adopted by the City Council of the City of Long Beach, at its June 19, 2007 meeting, the CITY OF LONG BEACH ("City") hereby grants permission to AMERICAN HERITAGE MARINE INSTITUTE LLC, dba AMERICAN PRIDE CHARTERS with a business address of 21520 "G" Yorba Linda Blvd., #444, Yorba Linda, California, 92887 ("Permittee") to use and occupy portions of the docks, the slips and end ties in the Rainbow Harbor as determined by the Marine Bureau of the City's Department of Parks, Recreation and Marine ("Permit Area").

1. PERMIT AREA: The Permit Area shall be that area shown in Exhibit "C". The Permit Area shall be subject to change at the discretion of the Manager of the Marine Bureau of the Department of Parks, Recreation and Marine or his or her designee ("Manager of the Marine Bureau") on thirty day written notice, or in accordance with Rainbow Harbor Rules and Regulations.

2. USES: Permittee warrants that it will keep its vessel(s) in use for the uses described below on a near continuous basis during business hours agreed between the Permittee and the City Manager or his or her designee ("Manager").

A. The Permit Area and the improvements thereof shall be used for the purpose of berthing Permittee's vessel(s) and for embarking and disembarking passengers in connection with dinner cruises, yacht parties, whale watching, harbor tours and charters, except as referenced in subparagraph 2.D. below.

B. No use not specifically permitted by this section shall be allowed without the written permission of the Manager.

C. Permittee shall not be in breach of this warranty if the Permit Area fails to be in continuous use no more than forty-five (45) days in a calendar year, no more than thirty (30) of which shall be consecutive without the permission of the Manager of the Marine Bureau.

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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D. Permittee shall not operate scuba-diving charters, sportfishing charters, or point-to-point water taxi service within the limits of the City of Long Beach.

2.1. Delivery and Loading.

Permittee, its subpermittees, concessionaires or other person or entity person or entity operating under a contract with Permittee or on behalf of Permittee delivering, loading or unloading goods, services or merchandise to the Permit Area shall use the area(s) marked for loading located at Pine Avenue Circle, Shoreline Park parking lot and Aquarium Way for access. Permittee shall instruct all parties delivering, loading or unloading goods, services or merchandise to use hand trucks orushman type carts with inflatable tires. No trucks or vans shall be allowed within the Permit Area or Rainbow Harbor.

2.1.1. Delivery and Loading Hours.

Delivery, loading and unloading shall be limited to the hours from midnight until 9:00 a.m., seven (7) days a week. Permittee shall contact the Manager of the Marine Bureau to coordinate deliveries outside of the house defined.

2.2. Rainbow Harbor Rules and Regulations.

Permittee shall comply with the Rainbow Harbor Rules and Regulations of the City of Long Beach whether known by that or some other name or names.

2.3. Customer Satisfaction.

Permittee shall make available customer satisfaction evaluation surveys to all customers.

3. TERM: The term of this Permit shall commence at 12:01 a.m. on May 15, 2007 and shall terminate at midnight on June 30, 2012. Notwithstanding the foregoing, either party may terminate this Permit at any time for any or no reason upon ninety (90) days' written notice to the other party. Upon termination of this Permit (whether by lapse of time or otherwise), Permittee shall quit and surrender possession of the Permit Area and

1 remove its personal property therefrom. The term of this permit may be extended
2 beyond May 14, 2012, for three (3) additional periods of three (3) years at the sole
3 discretion of the City Manager of the City of Long Beach.

4 **4. COMPENSATION:**

5 **4.1. Dock Fee.** Permittee shall pay to the City for the use of the Permit
6 Area an amount equal to \$14.00 per lineal foot, per month, or other fee
7 subsequently adopted by the City Council of the City of Long Beach, occupied
8 and/or reserved by Permittee for any time such slip or end tie is so used. The
9 Dock Fee shall be paid on or before the first day of each month during the term of
10 this Permit. The Dock Fee shall be paid in advance and Permittee shall not have
11 any right of abatement, deduction, set off, prior notice or demand.

12 **4.2. Permit Fee.**

13 **A.** Permittee shall pay to the City percentage fees in the amount of five
14 percent (5%) of Permittee's "gross receipts" (as that term is defined in
15 subparagraph 4.5 below) derived from Permittee's Long Beach Operations per
16 month on the twentieth (20th) day of each month following each and every month
17 in which gross receipts are received whether received by Permittee, its
18 subpermittees, concessionaires or other person or entity operating under a
19 contract with Permittee from all permitted concessions, operations and activities.
20 Permittee shall not have any right of abatement, deduction, set off, prior notice or
21 demand.

22 **B.** In the event that the five (5) percent of gross receipts derived from
23 Permittee's Long Beach Operations paid by Permittee to City does not exceed
24 Four Thousand Two Hundred Dollars (\$4,200.00) for each calendar year
25 ("Minimum Payment"), then Permittee shall pay to City the difference between
26 Four Thousand Two Hundred Dollars and the amount of Permit Fees paid during
27 the calendar year on or before January 31 of each year.

28 **C. Adjustment of Minimum Payment.**

1 In the event the term of this Permit is extended beyond May 14, 2012, the
2 annual Minimum Payment shall be increased each year by the Consumer Price
3 Index (CPI) (all Urban Consumers) for the Los Angeles - Riverside - Orange
4 County, California area. The Minimum Payment shall not be reduced pursuant to
5 this section and each annual increase shall not exceed eight (8) percent. The CPI
6 statistical data reported for the month of March each year shall be used to
7 calculate the increase in the Minimum Payment for the following calendar year.
8 For example, if the term of the Permit is extended beyond May 14, 2012, the
9 Minimum Payment for calendar year 2013 shall be increased from Four Thousand,
10 Two Hundred Dollars (\$4,200.00) by the CPI increase for the period of March
11 2011 through April 2012.

12 4.3. In-Kind Credits. During the Permit term, Permittee shall have the
13 option to apply for in-kind credits by contributing services in support of the Long
14 Beach Tidelands. Permittee must submit a proposal at least 90 days prior to the
15 advertising or start the activity. City shall provide written response within sixty (60)
16 days of receipt of proposal. City reserves the right to request additional
17 information. In-kind contributions are subject to the approval of the Director of
18 Parks, Recreation and Marine. Approval of in-kind contributions one year does not
19 guarantee approval of the same proposal in succeeding years.

20 In-kind contributions shall be valued at a dollar for dollar ratio against the
21 retail price of services and shall be credited against Permittee's dock fees. In-kind
22 contributions in excess of Permittee's annual dock fees are acceptable. However,
23 credits for services contributed shall be limited to Permittee's annual dock fees
24 and for the same period in which service is provided, January 1 through December
25 31. Credits will not be rolled-over to the next calendar year. The Marine Bureau
26 will oversee the tracking of the approved credits.

27 4.4. Charges for Late Payments.

28 A. If Dock Fee payment is not received within ten days after the same has

1 become due, a late fee shall be assessed. The late fee shall be, in addition to the
2 amount of the Dock Fee, a sum equal to ten percent (10%) thereof.

3 B. If Permit Fee payment is not received on the twentieth (20th) day
4 following the preceding month, a late fee shall be assessed. The late fee shall be
5 5% or \$50, whichever is greater.

6 C. If the Minimum Payment, if any, is not received on or before January 31
7 of each year, a late fee shall be assessed. The late fee shall be 5% or Fifty
8 Dollars (\$50.00) whichever is greater.

9 D. In addition to the late fees above, interest shall accrue on all amounts
10 owed from the due date, at a rate of ten (10) percent per annum until paid.

11 E. The late fees above are intended to compensate City for its additional
12 administrative costs resulting from Permittee's failure, and has been agreed upon
13 by City and Permittee, after negotiation, as a reasonable estimate of the additional
14 administrative costs that will be incurred by City as a result of Permittee's failure.
15 The actual cost in each instance is extremely difficult, if not impossible, to
16 determine. These late fees will constitute liquidated damages and shall be paid to
17 City together with such unpaid amounts. The payment of these late fees shall not
18 constitute a waiver by city of any default by Permittee under this Permit.

19 4.5. Gross Receipts. "Gross receipts" as used herein shall include the
20 following:

21 A. The gross selling price of all boat tickets or other charges for the use of
22 or passage aboard any Permittee authorized vessel that docks or ties up at the
23 Permit Area.

24 B. The gross selling price for all food, beverages, and other merchandise
25 or services sold or delivered by Permittee, its permitted licensees,
26 concessionaires, and persons, firms, or corporations aboard said vessels.

27 C. Gross receipts shall include sales for cash, credit, or services whether
28 collected or not. Gross receipts shall not include, or if included shall be deducted

1 (but only to the extent they have been included), any sales and use taxes,
2 transportation taxes, excise taxes, franchise taxes, and other similar taxes now or
3 in the future imposed on the sale of tickets, food, beverages, merchandise, or
4 services, but only if such taxes are added to the selling price, separately stated,
5 collected separately from the selling price and collected from customers. Gross
6 receipts shall not include any value imputed to charitable charters (i.e., any
7 charter in which Permittee does not collect a fee or reimbursement for expenses).

8 **4.6. Statement of Gross Receipts.**

9 A. Permittee shall prepare and deliver or cause to be prepared and
10 delivered to the City at:

11 Department of Parks, Recreation and Marine
12 2760 Studebaker Road
13 Long Beach, CA 90815-1697
14 Attention: Contract Manager

15 within twenty (20) days after the end of each month during the term of this permit
16 or extension thereof, a financial statement showing in reasonable detail
17 Permittee's gross receipts for the preceding calendar month or partial calendar
18 month and a computation of the percentage fee provided for herein.

19 B. Permittee shall within thirty (30) days of each calendar year deliver to
20 the City, at the address set forth in subparagraph 4.5.A. above, a statement
21 showing gross receipts of the preceding calendar year or partial calendar year.
22 Such statement shall be prepared and delivered to City in accordance with
23 generally accepted accounting practices containing a statement of gross receipts
24 and a computation of percentage of gross receipts.

25 C. Each statement shall be signed and certified to be correct by an officer
26 of Permittee.

27 **5. FEES AND CHARGES:** All fees and charges associated with the permitted
28 concessions, operations and activities and any changes to fee schedules shall be subject

1 to the prior written approval of the Manager.

2 6. AUDIT: The City shall be entitled during the initial term or any extension
3 thereof and within three (3) years after the expiration or termination of this Permit to
4 inspect, examine, and audit all Permittee's books of account, records, cash receipts, and
5 other pertinent data so City can ascertain Permittee's gross receipts. Permittee shall
6 cooperate fully with City in making any such inspection, examination, and audit. The
7 inspection, examination, or audit shall be conducted during usual business hours. If an
8 audit shows that there is a deficiency in the payment of any sum due the City, the
9 deficiency shall become immediately due and payable. The costs of the audit shall be
10 paid by the City unless the audit shows that Permittee understated gross receipts by
11 more than three percent (3%), in which case Permittee shall pay all City's costs of the
12 audit. If it is determined by an audit that there is an overpayment of percentage fees, a
13 refund shall become due from the City.

14 7. BOOKS OF ACCOUNT AND RECORDS:

15 A. Permittee shall keep, within the City of Long Beach, complete and
16 accurate books of account, records, cash receipts, and other pertinent data
17 showing all gross receipts, all in accordance with generally accepted accounting
18 principles.

19 B. Permittee shall install and maintain accurate receipt printing cash
20 registers or computer systems and shall record on the cash registers or computer
21 systems every sale of merchandise and services or other transactions at the time
22 of the transaction on either a cash register having a sealed, continuous cash
23 register tape with cumulative totals that numbers, records and duplicates each
24 transaction entered into the register, or serially numbered sales slips.

25 If Permittee chooses to record each sale by using a cash register, the
26 continuous cash register tape will be sealed or locked in such a manner that it is
27 not accessible to the person operating the cash register.

28 If Permittee chooses to record each sale by using a computer system, the

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computer generated receipts shall be retained in chronological order (including those canceled, voided or not used) for three (3) years.

If Permittee chooses to record each sale on individual slips, the sales slips (including those canceled, voided, or not used) will be retained in numerical sequence for three (3) years.

C. For the purpose of ascertaining the number of Rainbow Harbor passengers, Permittee will submit monthly, in writing, vessel schedules, including the name of the boat, and the passenger counts with the gross receipts statements to the Accounting Section of the Department of Parks, Recreation and Marine at the following address:

Department of Parks, Recreation and Marine
2760 Studebaker Road
Long Beach, CA 90815-1697
Attention: Accounting Section

D. Permittee, will prepare or cause to be prepared, preserve, and maintain, for a period of not less than three (3) years these books, accounts and records:

1. daily cash register summary tapes and sealed, continuous cash register tapes or prenumbered sales slips or computer transaction receipts on transaction summary reports;
2. a single, separate bank account into which all receipts of business or other revenue from operations on or from the Permit Area are deposited;
3. all bank statements detailing transactions in or through any business bank account;
4. daily or weekly sales capitulations;
5. a general ledger or a summary record of all cash receipts and disbursements from operations on or from the Permit Area;
6. copies of all tax returns filed with any governmental authority that reflect in any manner sales, income, or revenue generated in or from the

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Permitted Premises, including, but not limited to, federal income tax returns and state sales or use tax returns;

7. daily vessel schedules, including the name(s) and identification number(s) of the boat(s), and passenger counts;

8. other records or accounts that City may reasonably require in order to ascertain, document, or substantiate gross receipts.

E. Permittee shall keep within the City of Long Beach all of the books, records, and other documents in the manner recited in this paragraph, and will make said books, records and documents available for inspection, examination, or audit by City or City's designated representative upon giving Permittee five (5) days' prior notice of City's intention to exercise its rights under this paragraph. In connection with an examination of audit, City will have the right to inspect the records of sales from any other store operated by Permittee, but only if the examination is reasonably necessary to ascertain gross sales from the Permit Area. If upon inspection or examination of Permittee's available books and records of account, City determines that Permittee has failed to maintain, preserve, or retain the documents, books, and records that this Permit requires Permittee to maintain in the manner set forth in this paragraph, City will give the Permittee sixty (60) days to cure the deficiencies. Further, if Permittee is found to be deficient in maintaining any of documents, books, or records, Permittee will reimburse City for all reasonable expenses incurred by City in determining the deficiencies, including without limitation any audit or examination fees.

F. The receipt by City of any statement or any payment of compensation for any period shall not bind City as to the correctness of the statement or payment.

8. **IMPROVEMENTS:** Permittee shall not install, erect, or construct any building, improvement, or structure on the Permit Area nor alter the same without the prior written approval of the Manager. In the event Permittee, with the prior written approval of the

1 Manager, shall make any improvement to the structures within the Permit Area, title to
2 any such improvement shall vest in the City.

3 Any approval shall be subject to conditions as may be required for such
4 improvements and imposed by the Manager.

5 **9. ADVERTISING:**

6 9.1. Advertising Signs. Permittee, at its cost, may place or erect and
7 maintain signs on the Permit Area, provided that Permittee obtains prior written
8 approval from the Department of Parks, Recreation and Marine. Further,
9 Permittee's sign shall be in compliance with City's sign ordinance and conditions
10 of the Department of Parks, Recreation and Marine.

11 9.2. Advertising Budget. Within thirty (30) days after the commencement
12 date of the term of this Permit, and within thirty (30) days after the end of each
13 calendar year during the term of this Permit, Permittee shall submit to the Manager
14 a written budget describing in reasonable detail proposed expenditures for
15 advertising, publicity and promotion (including direct expenses for salaries
16 associated therewith) proposed to be made during the calendar year. Beginning in
17 year 2, the budget shall not be less than one percent (1%) of Permittee's gross
18 sales for previous calendar year. Permittee shall submit to the Manager upon
19 demand a detailed statement of expenditures made by it to advertise, publicize
20 and promote the permitted concession, operations and activities. In the event
21 Permittee fails or refuses to comply with the provisions of this paragraph, such
22 failure or refusal shall be deemed a material breach and the City may terminate
23 this Permit upon fifteen (15) days written notice Permittee.

24 **10. UTILITIES:** Permittee, at its cost, shall promptly pay or cause to be paid all
25 utility fees, costs and charges resulting from such use or assessments for utilities levied
26 against the Permit Area for any period during the term of this Permit. If Permittee
27 requires utilities which are beyond the capacity provided, Permittee shall coordinate and
28 submit request for additional services through the Manager of the Marine Bureau.

1 11. TRASH REMOVAL AND DISPOSAL: The City shall provide, for Permittee,
2 trash bins at each dock for trash disposal except the floating docks located at Pierpoint
3 Landing. Trash from Permittee's operation shall be disposed of in the trash bins for
4 collection by the Maintenance Operations Bureau of the Department of Parks, Recreation
5 and Marine. The Maintenance Operations Bureau shall perform collection services from
6 the water and the collection schedule shall be according to demand. The City shall have
7 the right to modify or change the trash removal operation and Permittee agrees to accept
8 and comply with such modifications or changes.

9 12. MAINTENANCE AND REPAIR: The City shall maintain the Permit Area and
10 the improvements thereon in good condition and repair, reasonable wear and tear
11 excepted. Permittee understands that the water area within the Rainbow Harbor area is
12 subject to collection of debris from the Los Angeles River runoff. Further, Permittee
13 acknowledges that water conditions including debris and sediment may occur at times in
14 the adjacent area of the Los Angeles River which could affect access to the Rainbow
15 Harbor. City shall not be required to dredge the Permit Area or adjacent area of the Los
16 Angeles river. Neither the City nor its officers or employees shall be liable and Permittee
17 waives all claims for damage to its vessels or its business as a result of any such
18 condition. Permittee's vessels and their gear and Permittee's property thereon shall be at
19 the Permit Area at Permittee's risk and the City shall not be liable for damage thereto or
20 theft or appropriation thereof.

21 13. DAMAGE OR DESTRUCTION OF IMPROVEMENTS:

22 13.1. Responsibility for Repair. If any dock or improvement at any time on
23 the Permit Area shall be damaged or destroyed by any cause whatsoever during
24 the Permit term, Permittee shall, with reasonable promptness, report the damage
25 to the City. The City shall have responsibility to make repairs to replace the same,
26 to at least the condition existing immediately prior to such damage or destruction.
27 The Permittee shall be responsible for reimbursing the City for the pro rata share
28 of expenses incurred to repair or replace the damage or destruction to the Permit

1 Area to the extent contributed to by the act or omission of Permittee, its employees
2 or agents. Permittee shall be responsible for reimbursing the City even though the
3 proceeds of any insurance policies covering the loss ("Insurance Proceeds") shall
4 be insufficient to reimburse Permittee therefore; provided, however, that if such
5 proceeds of insurance are more than sufficient to pay the cost of any such
6 rebuilding, Permittee shall be entitled to receive any surplus. City at its discretion
7 may authorize Permittee to make repairs to replace the same to at least the
8 condition existing immediately prior to such damage or destruction. Such
9 authorization shall be in writing.

10 13.2. Insurance Proceeds. Insurance Proceeds shall be held by an
11 Insurance Trustee mutually agreed to by the parties, but shall be paid to the
12 Permittee or as Permittee may direct from time to time as the restoration of the
13 Permit Area progresses, to pay or reimburse City for the cost of such restoration
14 upon the written request of City accompanied by evidence satisfactory to the
15 Insurance Trustee that:

16 A. an amount equal to the amount requested is then due and payable or
17 has been paid and is properly a part of such cost of restoration;

18 B. that the net Insurance Proceeds not yet advanced will be sufficient for
19 the completion of the restoration.

20 If at any time during the period of restoration and/or reconstruction the City shall
21 determine that the Insurance Proceeds are insufficient to cause such restoration,
22 then upon delivery of written notice thereof and specifying the deficit Permittee
23 shall deposit in trust with the Insurance Trustee such additional sums as may be
24 required to complete the restoration of the Permit Area. Upon receipt by the
25 Insurance Trustee of evidence satisfactory to it that:

26 A. the restoration of the Permit Area has been completed;

27 B. the cost thereof has been paid in full; and

28 C. there are no mechanic's or similar liens for labor or materials supplied in

1 connection therewith, the balance, if any, of such Insurance Proceeds shall be
2 paid to Permittee or as the Permittee may direct.

3 13.3. Procedure for Restoration of Improvements. Following damage to all
4 or any portion of the Permit Area, Permittee shall reimburse the City for restoration
5 of the Permit Area and/or the improvements thereon, whether or not insurance
6 proceeds are sufficient to do so.

7 13.4 No Termination. Except as otherwise expressly agreed to in writing
8 by the parties hereto, no destruction of or damage to the Permit Area,
9 improvements thereon or any part thereof, whether such damage or destruction be
10 partial or total or whether such damage or destruction shall have been covered by
11 insurance or not, shall entitle or permit either City of Permittee to surrender to
12 terminate this Permit or relieve Permittee from liability to pay in full the fee payable
13 by Permittee hereunder. Permittee hereby waives any rights now or hereafter
14 conferred upon it by statute or other law to surrender this Permit or to quit or
15 surrender the Permit Area or any part thereof, or to receive any suspension,
16 diminution, abatement or reduction of fees or other sums of charges payable to
17 Permittee hereunder on account of any such destruction or damage.

18 14. INSURANCE: Concurrent with the execution of this Permit and in partial
19 performance of Permittee's obligations hereunder, Permittee shall procure and maintain
20 at Permittee's expense for the duration of this Permit, including any extensions, renewals,
21 or holding over thereof, the following insurance coverages from insurance companies that
22 are admitted to write insurance in the State of California or from authorized nonadmitted
23 insurers that have ratings of or equivalent to an A:VIII by A.M. Best and Company:

24 A. Commercial General Liability insurance (equivalent in coverage scope to
25 ISO form CG 00 01 11 85 or 11 88) in an amount not less than One Million Dollars
26 (\$1,000,000) combined single limit per occurrence and covering the Permittee's
27 operations under or in connection with this Permit. If the policy contains a general
28 aggregate, the general aggregate shall be in an amount not less than Two Million

1 Dollars (\$2,000,000). Such insurance shall include, as may be applicable to
2 Permittee's operations under or in connection with this Permit, broad form
3 contractual liability, products and completed operations liability and liquor liability.
4 The City of Long Beach, its officials, employees and agents shall be added as
5 additional insureds by endorsement (equivalent in coverage scope to ISO form CG
6 20 26 11 85). This insurance shall contain no special limitations on the scope of
7 protection afforded to the City, its officials, employees and agents, and shall
8 provide cross-liability protection.

9 B. Protection and Indemnity including, as may be applicable to Permittee's
10 operations under or in connection with this Permit, injury to passengers, damage
11 to piers, docks and pilings and property on piers and docks, wreck removal, and
12 collision liability in an amount not less than One Million Dollars (\$1,000,000) per
13 occurrence for each vessel operating under this Permit. If the policy contains a
14 general aggregate, the general aggregate shall be in an amount not less than Two
15 Million Dollars (\$2,000,000). The City of Long Beach, its officials, employees and
16 agents shall be added as additional insureds by endorsement. This insurance
17 shall contain no special limitations on the scope of protection afforded to the City,
18 its officials, employees, and agents, and shall provide cross-liability protection.

19 C. Workers' Compensation as required by the State of California
20 endorsed, as applicable, to include United States Longshoremen and Harbor
21 Workers' Compensation Act coverage and Jones' Act coverage and Employer's
22 Liability insurance with minimum limits of One Million Dollars (\$1,000,000).

23 Any self-insurance program or self-insured retention must be approved separately
24 in writing by City and shall protect the City of Long Beach, its officials, employees, and
25 agents in the same manner and to the same extent as they would have been protected
26 had the policy or policies not contained retention provisions.

27 Each insurance policy shall be endorsed to state that coverage shall not be
28 suspended, voided, materially changed, or canceled by either party except after thirty

1 (30) days prior written notice to City, and shall be primary to City. Any insurance or self-
2 insurance maintained by City shall be excess to and shall not contribute to insurance or
3 self-insurance maintained by Permittee.

4 Permittee shall deliver to City certificates of insurance and the required
5 endorsements for approval as to sufficiency and form prior to commencement of this
6 Permit. The certificates and endorsements for each insurance policy shall contain the
7 original signature of a person authorized by that insurer to bind coverage on its behalf.
8 Permittee shall, at least thirty (30) days prior to expiration of such policies, furnish City
9 with evidence of renewals. City reserves the right to require complete certified copies of
10 all said policies at any time.

11 Such insurance as required herein shall not be deemed to limit Permittee's liability
12 relating to performance under this Permit. The procuring of insurance shall not be
13 construed as a limitation on liability or as full performance of the indemnification and hold
14 harmless provisions of this Permit. Permittee understands and agrees that,
15 notwithstanding any insurance, Permittee's obligation to defend, indemnify, and hold City,
16 its officials, agents, and employees harmless hereunder is for the full and total amount of
17 any damage, injuries, loss, expense, costs, or liabilities caused by or in any manner
18 connected with the operations of Permittee.

19 Not more frequently than every three (3) years, if in the opinion of City the amount
20 of the foregoing insurance coverages is not adequate, Permittee shall amend the
21 insurance coverage as required by City's Risk Manager or designee.

22 Any modification or waiver of the insurance requirements herein shall be made
23 only with the written approval of the City's Risk Manager or designee.

24 **15. INDEMNIFICATION:**

25 **15.1. General Indemnity.** Permittee shall defend and indemnify the City of
26 Long Beach and its officers and employees while acting within the scope of their
27 duties from and against any and all actions, suits, proceedings, claims and
28 demands, costs (including attorneys' fees and court costs), expense and liability of

1 any kind or nature whatsoever ("claims") for injury to or death of persons or
2 damage to property (including property owned by or under the control of the City)
3 which may be brought, made, filed against, imposed upon or sustained by the City,
4 its officers or employees based upon or arising out of:

5 A. An act or omission of Permittee, its officers, agents, employees,
6 contractors, licensees or invitees or of any person entering upon the Permit Area
7 with the express or implied invitation of Permittee;

8 B. A violation by Permittee, its officers, agents, employees, contractors,
9 licensees or invitees or of any other person entering upon the Permit Area with the
10 express or implied invitation of Permittee of any law ordinance or governmental
11 order of any kind;

12 C. The use or occupancy of the Permit Area by Permittee, its officers,
13 agents, employees, contractors, licensees or invitees or of any other person
14 entering upon the Permit Area with the express or implied invitation of Permittee.

15 This indemnity shall not include claims based upon or arising out of the sole
16 negligence, gross negligence, or willful misconduct of the City, its officers and
17 employees. Further, this indemnity shall not require payment of a claim by the
18 City or its officers or employees as a condition precedent to the recovery under the
19 same.

20 This indemnification provision supplements and in no way limits the scope
21 of the indemnifications set out in subparagraph 15.2 below. The indemnity
22 obligation of Permittee under this paragraph shall survive the expiration or
23 termination, for any reason, of this Permit.

24 **15.2. Environmental Release and Indemnification.**

25 Permittee hereby agrees to hold harmless, defend and indemnify the City
26 and its employees, members and officials from and against all liability, loss,
27 damage, costs, penalties, fines and/or expenses (including attorneys' fees and
28 court costs) arising out of or in any way connected with or the activities, acts or

1 omissions of Permittee, its permittees, employees, contractors or agents on or
2 affecting the Permit Area without regard to fault or negligence including but not
3 limited to the release of any hazardous materials into the air, soil, groundwater or
4 surface water on, in, under or from the Permit Area whether such condition,
5 liability, loss, damage, cost, penalty, fine and/or expense shall accrue or be
6 discovered before or after termination of this Permit. This indemnification
7 supplements and in no way limits the scope of the indemnification set forth in
8 paragraph 15.1. above.

9 In addition, Permittee waives, releases, acquits and forever discharges City,
10 its employees, members and officials or any other person acting on behalf of City,
11 of and from any and all claims, actions, causes of action, demands, rights,
12 damages, costs, expenses, or compensation (collectively "claims") whatsoever
13 (including, but not limited to, all claims at common law and/or under any federal,
14 state or local environmental, health and/or safety-related law, rule, regulation or
15 order, currently existing and as amended or enacted in the future ("Environmental
16 Law"), whether direct or indirect, known or unknown, foreseen or unforeseen,
17 which Permittee now has or may have or which may arise in the future on account
18 of or in any way growing out of or in connection with any hazardous materials on,
19 under from, or affecting the Permit Area, or any law or regulation applicable
20 thereto. Permittee acknowledges that it is familiar with Section 1542 of the
21 California Civil Code which reads: "A general release does not extend to claims
22 which the creditor does not know or suspect to exist in his favor at the time of
23 executing the release, which if known by him must have materially affected his
24 settlement with the debtor"; and hereby releases the Permittee from any unknown
25 claims and waives all rights it may have under Section 1542 of the Civil Code or
26 under any other statute or common law principle of similar effect.

27 15.2.1. Exclusions.

28 A. Contamination on, beneath, or abutting the Permit Area which

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existed prior to the initial commencement date of the Permit.

B. Contamination which has emanated or emanates from a location off site the Permit Area and which has trespassed onto, underneath or across the Permit Area.

C. Contamination which is unrelated to Permittee's use, occupancy of Permittee's subpermittees, invitees, or guests, on the Permit Area.

D. Permittee need not indemnify City for activities carried on or around the Permit Area by City as part of occasional use of the Permit Area by City or its other permittees, licensees, or the like or actions of the public who have not been permitted or solicited by Permittee.

15.3. Definition. "Hazardous material" means any substance:

A. the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; or

B. which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 U.S. C. Section 6901 et seq.); or

C. which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of California or any political subdivision thereof; or

D. the presence of which on the Permit Area causes or threatens to cause a nuisance upon the Permit Area or to adjacent properties or poses

1 or threatens to pose a hazard to the health or safety of persons on or about
2 the Permit Area; or

3 E. the presence of which on adjacent properties could constitute a
4 trespass by Permittee; or polychlorinated bipheynols (PCBs), asbestos or
5 urea formaldehyde foam insulation.

6 16. FORCE MAJEURE: City and Permittee shall not be deemed to be in default in
7 the performance of the terms, covenants or conditions of this Agreement if either party is
8 prevented from performing said terms, covenants or conditions by causes beyond its
9 control, including, without limitation, acts of God or the public enemy; failures due to
10 nonperformance or delay of performance by suppliers or contractors; any order, directive
11 or other interference by municipal, state, federal or other governmental official or agency;
12 any catastrophe resulting from the elements, flood, fire, explosion, or any other cause
13 reasonably beyond the control of a party, but excluding strikes or other labor disputes,
14 lockouts, work stoppages or financial inability.

15 17. VESSELS: Permittee agrees, with respect to its operation of charter cruises
16 and its use of the Permit Area, Permittee shall at all times comply with the Rainbow
17 Harbor Rules and Regulations of the City of Long Beach, including other conditions
18 herein:

19 A. Permittee shall submit weekly, in writing, daily vessel schedules,
20 including the name(s) and identification number(s) of the boat(s), and passenger
21 counts. The schedules shall be submitted by the Friday of the preceding week.
22 Permittee may amend the reported information to make changes to or correct
23 information pursuant to the vessel schedule, boat name or identification number
24 and passenger count. Permittee must give the Manager of the Marine Bureau
25 prior written notification of any changes.

26 B. Permittee, at its cost, shall maintain each of its vessels in good,
27 seaworthy condition. At all times, if any condition is discovered affecting the safety
28 of the vessel or its seaworthiness, that vessel shall be immediately withdrawn from

1 service and all necessary repairs promptly commenced. Permittee's vessels shall
2 be attractive in design and shall at all times be maintained in a neat and clean
3 condition free from deteriorations. To maintain an attractive appearance at all
4 times, Permittee, at its cost, shall cause its vessels to have all gear stored and to
5 be regularly painted. No rips, tears or missing pieces or excessive fading shall be
6 permitted.

7 18. LICENSE AND CERTIFICATION: Permittee shall not permit any person
8 charged with the responsibility of operating any of its vessels providing dinner, harbor or
9 charter cruises to do so unless and until that person is qualified and duly licensed to
10 operate and in compliance with the U.S. Coast Guard regulations, the vessel or vessels
11 to which that person is assigned. Permittee shall deliver to the Manager of the Marine
12 Bureau copies of such licenses for all vessel operators. Permittee's vessel operators and
13 crew and ticket sellers shall at all times be dressed in clean, well-kept coordinated
14 uniforms, except when performing required maintenance.

15 Permittee's vessels shall at all times be certified and licensed and inspected by
16 those governmental agencies having jurisdiction over Permittee's activities. Permittee
17 shall at all times comply with all United States Coast Guard regulations.

18 19. PARKING: Parking facilities at Shoreline Village shall not be used by
19 Permittee's patrons.

20 19.1. Parking/Traffic Management. Permittee and employees of Permittee
21 may be required to participate in a parking/traffic management program which may
22 designate parking areas for Permittee's employees.

23 20. STORAGE ON DOCKS: Storage of items on dock, except in dock
24 boxes/containers approved by City is prohibited.

25 21. ASSIGNMENT OR TRANSFER: Permittee shall not assign or transfer this
26 Permit nor shall any interest herein be assignable or transferable by operation of law or
27 by any process or proceedings of any court or otherwise. Any attempted transfer or
28 assignment shall be void and confer no rights whatsoever upon a transferee or assignee.

1 Notwithstanding the foregoing, Permittee may grant subpermits, licenses or
2 concessions to others provided Permittee shall first obtain the written consent of the
3 Manager. The Manager shall not be required to give any consent to a proposed
4 subpermitting, licensing or grant of concession rights, unless and until Permittee has
5 submitted to the Manager such additional information regarding the identity of proposed
6 subpermittee, licensee or concessionaire and the terms and conditions of the proposed
7 transaction as may be required by the Manager to make a determination to grant or
8 withhold such consent. Further, the Manager shall have the right to impose such further
9 conditions in connection with the granting of consent as may be required to assure that
10 public health, safety, welfare and convenience will be best served by the proposed
11 subpermit, license or concession.

12 If Permittee shall be adjudicated a bankrupt or become insolvent or any interest in
13 this Permit be taken by virtue of attachment, execution, or receivership, the City may
14 terminate this Permit upon five (5) days written notice to Permittee.

15 **22. HOLDING OVER:** This Permit shall terminate without any further notice as of
16 the Permit expiration date set forth in paragraph three above. Any holding over by
17 Permittee after the Permit expiration date shall not constitute a renewal or extension or
18 give Permittee any rights in or to the Permit Area except as expressly provided in this
19 Permit. Any holding over after the Permit expiration date with the consent of City shall be
20 construed to be a tenancy from month to month, at fees equal to the fees due for the last
21 year of the Permit term, and shall otherwise be on the terms and conditions herein
22 specified.

23 **23. INSPECTION:** The City's authorized representatives shall have access to and
24 across the Permit Area during business hours and, in the event of an emergency, at any
25 other time for inspection, repair of publicly-owned utilities and structures, and for fire and
26 police purposes. The City, acting through the Marine Bureau of the Department of Parks,
27 Recreation and Marine, shall have the right, but not the obligation, to board and inspect
28 any such vessels to assure compliance by Permittee with the provisions of this Permit.

1 City shall coordinate inspections with Permittee.

2 **24. GENERAL PROVISIONS:**

3 **24.1. Notices, Demands and Communication Between the Parties.** Written
4 notices, demands, and communication between City and Permittee shall be in
5 writing and shall be sufficiently given if personally served or if mailed by registered
6 or certified mail, postage prepaid, return receipt requested addressed as follows:

7

8 **TO CITY:** City Manager
13th Floor, City Hall
9 333 West Ocean Boulevard
10 Long Beach, California 90802

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11 **WITH A COPY TO:** Director of Parks, Recreation & Marine
2760 Studebaker Road
12 Long Beach, California 90815-1697

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13 **TO PERMITTEE:** American Heritage Marine Institute LLC
21520 "G" Yorba Linda Blvd., #444
14 Yorba Linda, CA 92887

15 Either party may change its address by notifying the other party of the
16 change of address. Notice shall be deemed communicated within forty-eight (48)
17 hours from the time of mailing if mailed as provided in this paragraph.

18 **24.2. Conflict of Interest.** No member, official or employee of City shall
19 have any personal interest, direct or indirect, in this Permit, nor shall any such
20 member, official or employees participate in any decision relating to this Permit
21 which affects his personal interest or the interests of any corporation, partnership
22 or association in which he is, directly or indirectly, interested. No member, official
23 or employee of City shall be personally liable to Permittee, or any successor in
24 interest, in the event of any default or breach by City or for any amount which may
25 become due to Permittee or successor or on any obligations under the terms of
26 this Permit.

27 **24.3. Defaults and Remedies.**

28 **24.3.1. Defaults - General.** Failure by either party to perform any

1 term or provision of this Permit constitutes default under this Permit, if not cured
2 within thirty (30) days from the date of receipt of a written notice from the other
3 party specifying the claimed default provided that is such default cannot
4 reasonably be cured within such thirty (30) day period, the party receiving such
5 notice of default shall not be in default under this Permit if such party commences
6 the cure of such default within such thirty (30) day period and thereafter diligently
7 prosecutes the steps to cure such default to completion.

8 24.3.2. Institution of Legal Actions. In addition to any other rights or
9 remedies, either party may institute legal action to cure, correct, or remedy any
10 default, to recover damages for any default, or to obtain any other remedy
11 consistent with the purpose of this Permit. Such legal actions must be instituted in
12 the South Branch of the Superior Court of the County of Los Angeles, State of
13 California, in an appropriate municipal court in that county, or in the Federal
14 District court in the Central District of California. The prevailing party in any action
15 commenced pursuant to this Permit shall be entitled to recover reasonable costs,
16 expenses and attorneys' fees.

17 24.3.3. Applicable Law. The laws of the State of California shall
18 govern the interpretation and enforcement of this Permit. Permittee during its use
19 and occupancy of the Permit Area shall at all times comply with all laws,
20 ordinances, rules, and regulations of and obtain permits from all federal, state, and
21 local governmental authorities having jurisdiction over the Permit Area, Permittee's
22 vessels and Permittee's activities thereon.

23 24.3.4. Service of Process. In the event any legal action is
24 commenced by Permittee against City, service of process on City shall be made
25 by personal service upon the City Clerk of the City, or in such other manner as
26 may be provided by law.

27 In the event that any legal action is commenced by City against
28 Permittee, service of process on Permittee shall be made as provided by law and

1 shall be valid whether made within or without the State of California.

2 24.3.5. Rights and Remedies Are Cumulative. Except as otherwise
3 expressly stated in this Permit, the rights and remedies of the parties are
4 cumulative, and the exercise by either party of one or more such rights or
5 remedies shall not preclude the exercise by it, at the same or different times, of
6 any other rights or remedies for the same default or any other default by the other
7 party.

8 24.3.6. Inaction Not a Waiver of Default. Any failures or delays by
9 either party in asserting any of its rights and remedies as to any default shall not
10 operate as a waiver of any default or of any such rights or remedies or deprive
11 either such party of its right to institute and maintain any actions or proceedings
12 which it may deem necessary to protect, assert or enforce any such rights or
13 remedies.

14 24.3.7. Remedies. In the event of a default by Permittee, which is
15 not cured by Permittee within the times specified in this Permit, City without
16 further notice to Permittee, may declare this Permit and/or Permittee's right of
17 possession at an end and may reenter the Permit Area by process of law, in which
18 event, City shall have the right to recover from Permittee:

19 24.3.7.1. The worth at the time of award of the unpaid fees which
20 has been earned at the time of termination, plus interest;

21 24.3.7.2. The worth at the time of award of the amount by which the
22 unpaid fees which would have been earned after termination until the time of
23 award exceeds the amount of such fee loss that Permittee proves could have
24 been reasonably avoided, plus interest;

25 24.3.7.3. The worth at the time of award of the amount by which the
26 unpaid fees for the balance of the term after the time of award exceeds the
27 amount of such fee loss for the same period the Permittee proves could be
28 reasonably avoided, plus interest thereon; and

1 24.3.7.4. The remedies of City as hereinabove provided are
2 cumulative to the other provisions of this Permit.

3 24.4. Enforced Delay: Extension of Time of Performance. In addition to
4 other provisions of this Permit, performance by either party hereunder, shall not be
5 deemed to be in default where delays or defaults are unavoidable or performance
6 is rendered impracticable, due to war; enemy action; insurrection; civil disturbance,
7 strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of
8 public enemy; epidemics; quarantine restrictions; freight embargoes; lack of
9 transportation; governmental restrictions or moratoria; failure or inability to secure
10 materials or labor by reason of regulations or order of any governmental entity;
11 litigation including eminent domain proceedings or related legal proceedings, acts
12 or failure to act of the other party; acts or failure to act of any public or
13 governmental agency or entity; and the time for such performance shall be
14 extended for a period equal in length to such delay(s).

15 24.5. Partial Invalidity. If any term or provision of this Permit or the
16 application thereof to any party or circumstances shall, to any extent, be held
17 invalid or unenforceable, the remainder of this Permit, or the application of such
18 term or provisions, to persons or circumstances other than those as to whom or
19 which it is held invalid or unenforceable, shall not be affected thereby, and each
20 term and provision of this Permit shall be valid and enforceable to the fullest extent
21 permitted by law.

22 24.6 Right to Contest Laws. Permittee shall have the right after notice to
23 City to contest or to permit its subpermittees to contest by appropriate legal
24 proceedings, without costs or expense to City, the validity of any law, ordinance,
25 order, rule, regulation or requirement to be complied with by Permittee under this
26 Permit and to postpone compliance with the same except such laws as may be
27 adopted by City, provided such contest shall be promptly and diligently prosecuted
28 at no expense to City so long as City shall not thereby suffer any civil penalties,

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sanction or be subjected to any criminal penalties or sanctions, and Permittee shall protect and save harmless City against any liability and claims for any such noncompliance or postponement of compliance.

24.7. Entire Agreement, Waivers and Amendments. This Permit constitutes the entire understanding and agreement of the parties. This Permit integrates all the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations between the parties with respect to all or any part of the subject matter hereof.

24.8. Waivers. All waivers of the provisions of this Permit must be in writing by the appropriate authorities of City or Permittee and all amendments hereto must be in writing by the appropriate authorities of City and Permittee.

24.9. Successors in Interest. The provisions of this Permit shall be binding upon and shall inure to the benefit of the heirs, executors, assigns and successors in interest of the parties hereto.

24.10. Nondiscrimination. In connection with performance of this Agreement and subject to applicable laws, rules and regulations, Consultant shall not discriminate in rendering services hereunder on the basis of race, color, religion, national origin, sex, sexual orientation, AIDS, HIV status, age, disability, handicap or veteran status.

24.11. No Joint Venture or Partnership. Nothing in this agreement shall be construed as creating either a partnership or joint venture between the parties hereto.

24.12. Jointly Drafted. This agreement is jointly drafted by the parties hereto and it is not to be construed against either party as the drafter.

24.13. Municipal Powers. Nothing contained herein shall be construed as a limitation upon powers of City as a chartered city of the State of California. This Permit is entered into by City in its proprietary capacity and nothing contained herein shall relieve Permittee from complying with all requirements, rules,

1 regulations or ordinances of the City of Long Beach.

2 24.14. No Mineral Rights. This Permit creates no rights in Permittee to
3 minerals, or proceeds from mineral production, which may lie below the Permit
4 Area including but not limited to any unitized oil.

5 24.15. No Relocation Benefits. Permittee shall have no rights to relocation
6 benefits mandated by the laws of the State of California as to this Permit Area.

7 24.16. Americans with Disabilities Act. Permittee shall have and be
8 allocated the sole responsibility to comply with the Americans with Disabilities Act
9 ("ADA") as may be applicable with respect to Permittee's operation and the
10 Permittee shall indemnify and hold City harmless from and against any claims of a
11 violation of the ADA.

12 25. TAXES: This Permit may create a possessory interest subject to property
13 taxation and Permittee may be liable for the payment of property taxes levied on such
14 possessory interest. Permittee shall pay or cause to be paid, prior to delinquency, all
15 taxes, assessments and other governmental and district charges that may be levied or
16 assessed for buildings, improvements or property located on the Permit Area and upon
17 possessory interests created by this Permit. Satisfactory evidence of such payments
18 shall be delivered by Permittee upon demand therefore.

19 26. COASTAL DEVELOPMENT PERMIT: Permittee acknowledges that the
20 California Coastal Commission requires that any permit issued for operation within the
21 Rainbow Harbor area shall be subject to the terms and conditions of Coastal
22 Development Permit no. 5-96-124, and Coastal Development Permit no. 5-98-161. The
23 conditions of Coastal Development Permit no. 5-96-124, and Coastal Development
24 Permit no. 5-98-161 are incorporated herein and attached as Exhibits A and B
25 respectively:

26 Exhibit A - Coastal Development Permit no. 5-96-124

27 Exhibit B - Coastal Development Permit no. 5-98-161

28 27. FOURTH OF JULY: Permittee recognizes that it is the responsibility of the

1 City to maintain a safe and secure environment for the public at all times. Annually, the
2 Rainbow Harbor area experiences exceptional visitor and activity levels related to the 4th
3 of July. To mitigate the impact to public safety and security, the City may limit Rainbow
4 Harbor activity. Permittee agrees to be bound by reasonable restrictions on its activities
5 in or around the Permit Area on such day or day(s) of 4th of July activities each year of
6 the term of this Permit. Such restrictions may include limitations on the hours
7 businesses may operate including those of Permittee in the Permit Area. Permittee
8 waives any and all claim that it might ever have against City as a result of any adverse
9 impact on its operations or business as a result of City restrictions.

10 28. SPECIAL EVENTS: Permittee recognizes that the area of the City in which
11 Permittee will operate further to this Permit is annually impacted by Special Events,
12 including but not limited to the running of the Long Beach Grand Prix. Permittee waives
13 any and all claim that it might ever have against City or the operators of said Special
14 Events, including but not limited to the Grand Prix as a result of any adverse impact on its
15 operations or business as a result of said Special Events.

16 29. EMPLOYMENT COOPERATION. Permittee acknowledges that the
17 Queensway Bay Project, including Permittee's operations under this Permit, is subject to
18 the hiring requirements set forth in 24 C.F.R. Section 570.209. Such requirements
19 mandate that the Queensway Bay Project create 1,143 new jobs for low- or moderate-
20 income persons (as defined in 24 C.F.R. Section 570.3) (hereinafter 'low-income hires').
21 Accordingly, Permittee agrees that it shall use good faith efforts to create such low
22 income hires, and shall report to the City of Long Beach, on an annual basis, the name,
23 position, date of hire and income level for all low-income hires for its operations under
24 this Permit. Permittee further agrees that all permits, subpermits, concession
25 agreements and licenses entered into by Permittee regarding any portion of the permit
26 area shall require that all subpermittees, concessionaires and licensees comply with such
27 requirements. In furtherance of these requirements, Permittee agrees that it will
28 reasonably cooperate with the City of Long Beach, through its Training and Employment

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 Development Officer and staff with recruitment, screening and tracking. In implementing
2 such efforts, the City of Long Beach, through its Training and Development Officer and
3 staff, will provide to Permittee and all Queensway Bay permittees, subpermittees,
4 concessionaires and licensees, staff assistance, at no cost, to pre-screen and qualify all
5 potential job applicants. Such services include assisting with community outreach to
6 recruit qualified job applicants and conducting pre-screening sessions to determine the
7 most qualified applicants for jobs. All qualification and hiring decisions will be made by
8 Permittee or its subpermittees, concessionaires or licensees. As part of its
9 implementation program, the City of Long Beach will also provide for up to 240 hours of
10 on-the-job training if the employee is determined to need such training and he/she meets
11 Federal Job Training Partnership Act (JTPA) program eligibility. The City of Long Beach
12 Training and Employment Development Officer is responsible for providing the staff
13 necessary for pre-employment assistance. The requirements set forth in this Section
14 shall terminate upon the City's written verification that 1,143 low-income hires have been
15 created for the Queensway Bay Project.

American Heritage Marine Institute LLC
dba American Price Charters

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18 June 26, 2007
19 7/23/07, 2007

By: Neelan H. Clinton

By: J. Chiu

"PERMITTEE"

CITY OF LONG BEACH, a
municipal corporation

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21
22
23 September 20, 2007

By: Quentin Path
City Manager

24
25 "CITY"
26 Approved as to form, this 13th day of September, 2007.

ROBERT E. SHANNON, City Attorney

27
28 By: Jay J. Anderson
~~Principal~~ Deputy

EXHIBIT A

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
 245 W. BROADWAY, STE. 380
 P.O. BOX 1450
 LONG BEACH, CA 90802-4416
 (310) 590-5071

Page 1 of 8
 Date: 13 November 1996
 Permit No. 5-96-124

COASTAL DEVELOPMENT PERMIT

On 12 September 1996, the California Coastal Commission granted to City of Long Beach this permit subject to the attached Standard and Special conditions, for development consisting of

Construct a downtown commercial harbor in Shoreline Park and Lagoon, reconstruct and improve Shoreline Park, demolish the Golden Shore public boat launch in order to create a 6.4 acre habitat mitigation area, transport approximately 109,000 cubic yards of excavated sand to 8th Place Beach area for beach replenishment, [and dispose of approximately 325,000 cubic yards of dredged materials at the LA-2 offshore disposal site (see Consistency Certification No. CC-98-96)].

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 200 W. Shoreline Drive (Shoreline Park), 199 S. Golden Shore (Golden Shore boat launch), and public beach between 1st Place and 15th Place (beach replenishment), City of Long Beach.

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS
 Executive Director

By: 

Title: Coastal Program Analyst

ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

 Date

 Signature of Permittee

COASTAL DEVELOPMENT PERMIT

Page 2 of 8
Permit No. 5-96-124

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

1. Regional Bicycle Route

Pursuant to the July 11, 1996 letter signed by Robert Paternoster, Director of the Queensway Bay Project, and addressed to Charles Posner, Coastal Program Analyst, the Commission's Long Beach office:

- a) During the construction phase of the proposed project, the City shall provide and maintain a temporary bicycle route connecting the existing Los Angeles River bicycle path to the existing beach bicycle path. The temporary bicycle route shall maintain regional bicycle circulation through the Downtown Shoreline area by generally following the route described in the July 11, 1996 letter.

COASTAL DEVELOPMENT PERMIT

Page 3 of 8
Permit No. 5-96-124

- b) Prior to the closing or demolition of any portion of the existing regional bicycle route, a replacement bicycle route shall be constructed and opened in order to maintain the connection between the Los Angeles River bicycle path and the beach bicycle path.
- c) Prior to the removal of the temporary bicycle route, the City shall construct, open and maintain the proposed permanent regional bicycle route which connects the Los Angeles River bicycle path to the beach bicycle path as shown on Exhibit #11 of this report.

2. Public Restrooms

The City shall provide public restroom facilities in Riverfront Park. Either temporary or permanent restroom facilities shall be available for public use when Riverfront Park officially opens, and thereafter. The City shall install permanent restroom facilities in Riverfront Park within one year of the official opening the park to the public, or within such additional time as may be granted by the Executive Director for good cause. The permanent restroom facilities will require a Coastal Development Permit or a permit amendment approved by the Commission.

3. Parking Meters

Any parking meters installed on public parking spaces in Riverfront Park shall allow ninety minutes of parking when the maximum amount of coins are deposited. In addition, the users of such public parking spaces shall be permitted to use the metered parking spaces for at least four hours (if the required amount of coins are added) before being required to vacate the parking space.

4. Public Access

The City shall provide and maintain unobstructed public access to and along the Pine Avenue Pier, the Queensway Bay Harbor esplanade, and the plaza areas in front of and adjacent to the aquarium structure free of charge for the life of the development approved herein. Public access to the Pine Avenue Pier may only be interrupted for special events with a duration of six hours or less, or by special events permitted by a subsequent Coastal Development Permit. Public access may also be interrupted subject to those temporary safety limitations necessitated by unsafe conditions resulting from waves, extreme weather or required maintenance activities.

5. Public Boat Docks

The City shall provide and maintain a minimum of 200 linear feet of docking area within the Queensway Bay Harbor which shall be reserved for short-term public docking which shall be available for free or at rates comparable to automobile parking. Short-term shall be defined as any term between one hour and six hours. This public docking area shall not be leased or reserved by any individual, business or organization. Additional short-term and/or long-term public docking areas over and

COASTAL DEVELOPMENT PERMIT

Page 4 of 8
Permit No. 5-96-124

above this minimum requirement may be provided. All public docking areas shall be identified with signage which clearly communicates the availability and limitations of the public docking facilities.

6. Future Uses and Improvements

This approval is limited to the uses and development specifically described in the project description and related findings contained in Coastal Development Permit 5-96-124. Any additional development, including intensification of use such as the lease of docks areas, esplanade areas, park areas, or the commercial use of docks by party boats or cruise ships, will require an amendment to the permit or a new Coastal Development Permit.

7. Leases to Private Operators

The lease of any area subject to the terms and conditions of Coastal Development Permit 5-96-124 to private operators shall explicitly incorporate the terms and conditions of Coastal Development Permit 5-96-124. In addition, such leases shall incorporate provisions for use, public access and public recreation consistent with all terms and conditions contained herein.

8. Chemical Management Plan

Prior to the issuance of the Coastal Development Permit, the City shall submit a Chemical Management Plan for the review and approval of the Executive Director. The purpose of the Chemical Management Plan shall be to address how the City will construct and operate the Queensway Bay Harbor in a manner that protects water quality from pollutants, typically associated with commercial harbors, such as boat cleaning chemicals, pesticides, fuels and oil. The Chemical Management Plan shall identify the equipment and structures that will be installed at the harbor to assist users in preventing any discharge of pollutants into the harbor. The Chemical Management Plan shall be in compliance with the standards and regulations of the California Regional Water Quality Control Board, the United States Environmental Protection Agency (EPA), and all other applicable local, state and federal regulations. The Executive Director will approve the Chemical Management Plan if it contains the following minimum elements:

- a. Harbor users shall be prohibited from discharging pollutants, including pesticides, varnishes, paints, sewage, cleaners, fuel, etc. into the harbor.
- b. The City will install the equipment necessary to prevent or reduce any discharge of pollutants into the harbor, including the equipment for the proper disposal of pollutants in compliance with all local, state and federal regulations.

The approved Chemical Management Plan shall be prominently posted near all docks and shall be explicitly incorporated into all leases to private

COASTAL DEVELOPMENT PERMIT

Page 5 of 8
Permit No. 5-96-124

operators within the harbor. The Queensway Bay Harbor shall be constructed and operated consistent with the plan approved by the Executive Director. Should the City need to revise the plan, the proposed revisions shall be submitted to the Executive Director in order to determine if the proposed changes shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

9. Public Boat Launch

Within two years of the demolition of the Golden Shore public boat launch, the City shall construct and open to the public a new boat launch of not less than two launching lanes and 60 parking spaces for autos with boat trailers within the Queensway Bay area.

10. Golden Shore Public Parking

The City shall retain a minimum of thirteen (13) existing public metered parking spaces in the existing public parking lot located near the entrance of the recreational vehicle park and the Golden Shore public boat launch (See Exhibit #15).

11. Habitat Mitigation Project

- a) The City shall construct, monitor and maintain the proposed habitat mitigation project consistent with the standards contained in the "Planting Plan, August 1996" and the "Monitoring Plan, August 1996" prepared for Moffatt & Nichol Engineers by Wetlands Research Associates, Inc.
- b) The implementation of the grading and planting plans (Exhibit #15) for the proposed habitat mitigation project shall commence prior to or simultaneous with the commencement of the proposed dredging of Shoreline Lagoon. Once the grading has commenced for the habitat mitigation project, the construction and planting of the habitat mitigation site shall proceed continuously until it is completed in conformance with the approved plan.
- c) The five-year monitoring period proposed by the "Monitoring Plan, August 1996," prepared for Moffatt & Nichol Engineers by Wetlands Research Associates, Inc., shall commence upon completion of the first planting of the project site. The City shall notify the Executive Director upon completion of the first planting of the project site.
- d) Upon completion of the first year of the monitoring period, and annually thereafter, the City shall submit to the Executive Director a report which documents the implementation of the planting and monitoring plans and which documents the status of the habitat mitigation project in relation to the performance standards contained in those plans.

COASTAL DEVELOPMENT PERMIT

Page 6 of 8
Permit No. 5-96-124

- e) Any additional work or modifications to the habitat mitigation project which are necessary to meet the performance standards contained in the planting and monitoring plans shall be submitted to the Executive Director. Any change in the approved habitat mitigation project shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.
- f) The City shall be responsible for the ongoing maintenance of the habitat mitigation project and site. The required maintenance shall include regular cleaning and trash pick-up.

12. Siltation Control

Prior to the issuance of the Coastal Development Permit, the City shall submit, for the review and approval of the Executive Director, an erosion control and siltation prevention plan which controls erosion from the upland portions of the construction sites, and prevents silt from the upland portions of the construction sites from entering coastal waters during the construction of the proposed harbor and habitat mitigation project. The plan shall conform to the standards of the California Regional Water Quality Control Board and the U.S. Army Corps of Engineers. The approved plan shall be implemented during construction of the proposed project.

13. Turbidity Control

The City shall minimize negative impacts on the marine environment by using silt curtains, sand bags, or other forms of barriers during construction of the proposed harbor and habitat mitigation project to confine turbid water to the immediate areas of all dredging, excavation and deposition.

14. Suitability of Materials for Beach Replenishment

Prior to the issuance of the Coastal Development Permit, the City shall submit a written agreement, subject to the review and approval of the Executive Director, to provide a qualified expert at the sand source site to inspect and monitor all material proposed to be deposited at the approved deposition site. The inspector shall determine the geotechnical suitability of all such material using the sediment compatibility criteria contained in the Dredged Material and Sand Testing Program - Queensway Bay Downtown Harbor Facilities, City of Long Beach, by Kinnetic Laboratories, Inc. & ToxScan, Inc., June 19, 1996. Only material deemed "compatible" by the qualified expert pursuant to the criteria contained in the above-stated document may be deposited at the approved deposition site. All contracts involving the subject project shall include the above stated condition of approval.

COASTAL DEVELOPMENT PERMIT

Page 7 of 8
Permit No. 5-96-124

15. Beach and Recreational Facility Closures

During the proposed beach replenishment project, all beach areas and recreation facilities shall remain open and available for public use during the normal operating hours on weekends. On weekdays, beach area closures shall be minimized and limited to areas immediately involved in transportation and deposition. On all days, except for the portions of the beach where transportation and deposition is occurring, all beach areas and recreation facilities shall remain open and available for public use during the normal operating hours. On all days, the beach bicycle path shall remain open and available for public use during the normal operating hours.

16. Timing of Beach Replenishment Project

In order to reduce impacts on the grunion and the California least tern during the grunion breeding runs and the least terns' nesting and foraging season, no beach replenishment shall occur during the period commencing March 15 and ending September 1. However, limited beach replenishment activities may occur between March 15 and May 16 if the City submits, for the review and approval of the Executive Director, a mitigation program approved by the California Department of Fish and Game which insures that no adverse impacts will occur during grunion breeding or to least tern foraging areas.

17. Conformance with the Requirements of the Resource Agencies

The City shall comply with all permit requirements and mitigation measures of the California Department of Fish and Game, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Any change in the approved project which are required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

18. Foundation Design

Prior to the issuance of the Coastal Development Permit, the City shall submit for review and approval by the Executive Director, final plans for the proposed harbor and habitat mitigation site which have been reviewed and approved for structural soundness and safety by a qualified engineer. The submitted plans must be in substantial conformance with the plans approved by the Commission and must contain the foundation design recommendations contained in the Geotechnical Investigation Report for Queensway Bay Downtown Harbor by Advanced Earth Sciences, Inc., June 28, 1996. Any changes in the design of the proposed project which was approved by the Commission which may be required by the engineer shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations. The proposed harbor and habitat mitigation site shall be constructed in a manner consistent with the final approved plans.

COASTAL DEVELOPMENT PERMIT

Page 8 of 8
Permit No. 5-96-124

19. Assumption of Risk

By acceptance of this Coastal Development Permit, the City agrees that: (a) the site may be subject to extraordinary hazard from storms, waves and erosion; and (b) the City hereby waives any future claims of liability against the Commission or its successors in interest for damage from such hazards.

20. City Acceptance of Conditions

Prior to the issuance of the Coastal Development Permit, the City Council shall adopt and submit a resolution, subject to the review and approval of the Executive Director, agreeing to abide by all terms and conditions of Coastal Development Permit 5-96-124. The City and its representatives shall abide by all terms and conditions of Coastal Development Permit 5-96-124.

CP:b11

Attach Exhibit Nos. 11 & 15

7727F

Q BAY

QUEENSWAY BAY
BUSINESS DISTRICT

LEGEND:

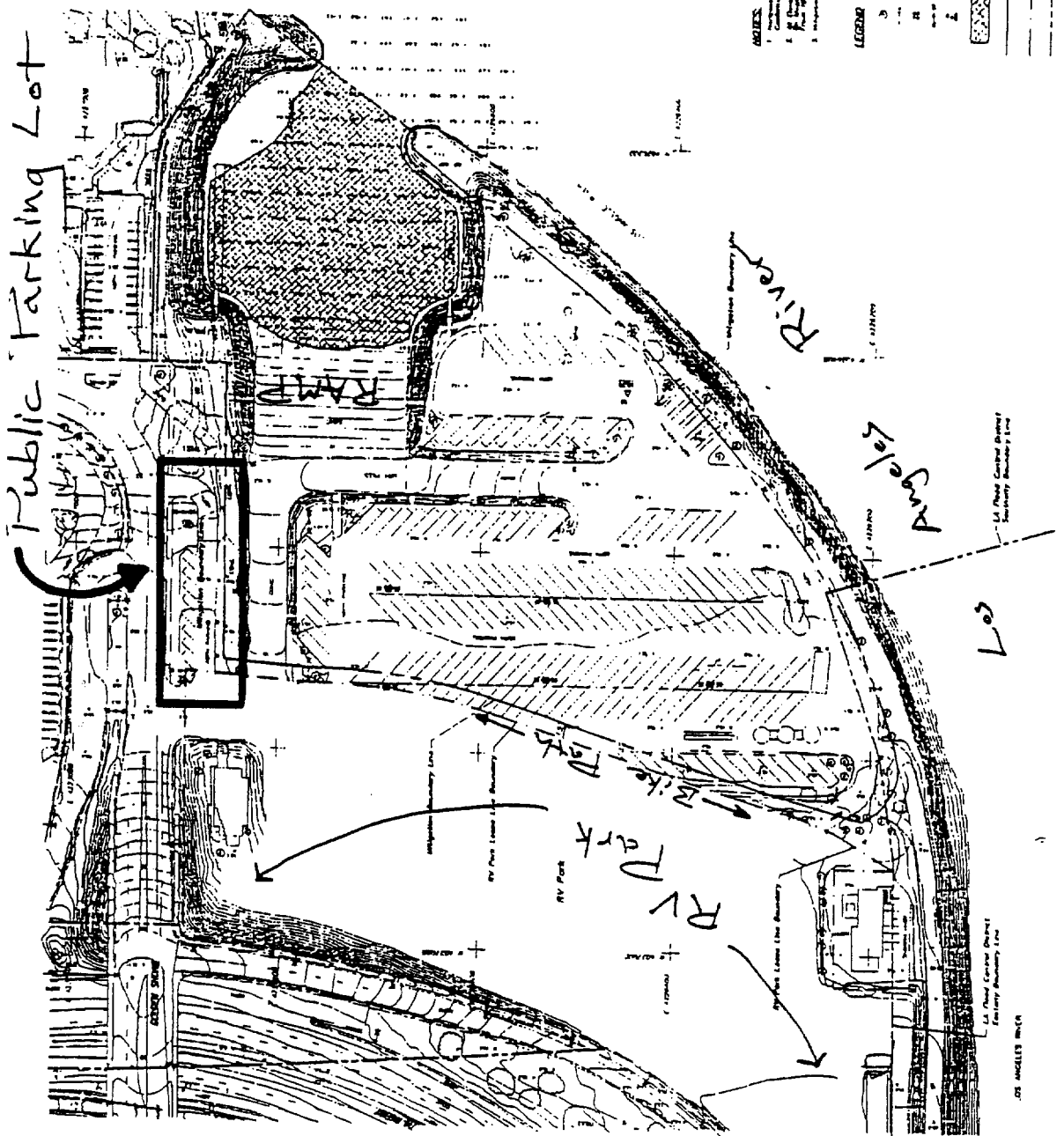
VEGETATION:

UTILITIES:

SOILS DEVELOPMENT:

EXISTING SITE CONDITIONS

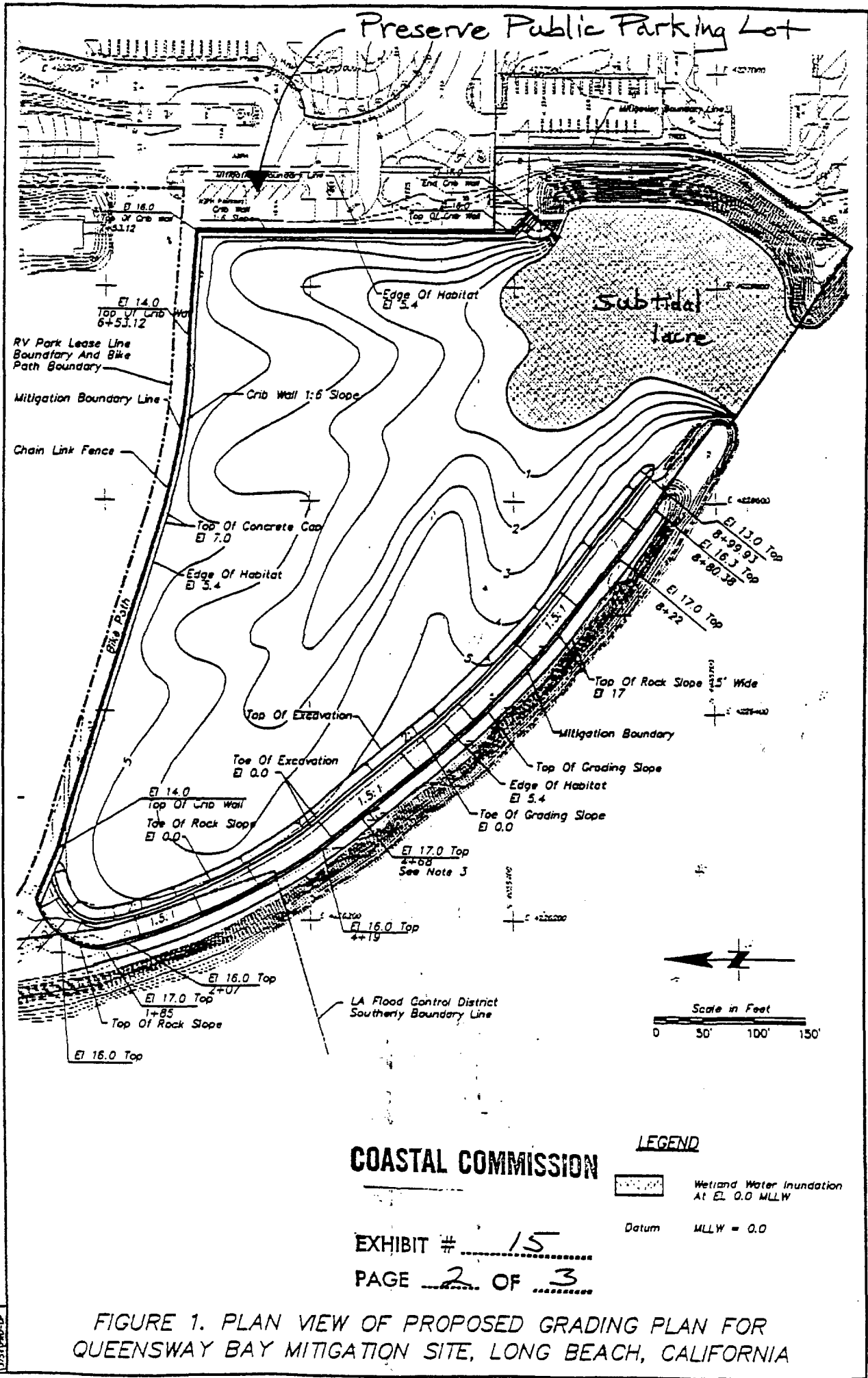
MTP-1



- NOTES:**
1. Containments shown on this plan are for informational purposes only. The applicant is responsible for obtaining all necessary permits and approvals from the appropriate agencies.
 2. All structures shown on this plan are subject to the City of Los Angeles Building Department's review and approval.
 3. All structures shown on this plan are subject to the City of Los Angeles Department of Public Works' review and approval.
 4. All structures shown on this plan are subject to the City of Los Angeles Department of Water's review and approval.
- LEGEND:**
- 1. Public Access Point
 - 2. Containment Structure
 - 3. Existing Water
 - 4. Proposed Boundary Line
 - 5. All Other Access Point
 - 6. City of Los Angeles' Public Access Point
 - 7. City of Los Angeles' Public Access Point
 - 8. City of Los Angeles' Public Access Point
 - 9. City of Los Angeles' Public Access Point
 - 10. City of Los Angeles' Public Access Point
 - 11. City of Los Angeles' Public Access Point
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 - 17. City of Los Angeles' Public Access Point
 - 18. City of Los Angeles' Public Access Point
 - 19. City of Los Angeles' Public Access Point
 - 20. City of Los Angeles' Public Access Point

Golden Shore Boat Launch
Existing

COASTAL COMMISSION



Preserve Public Parking Lot

Subtidal Lake

Edge Of Habitat El 5.4

RV Park Lease Line Boundary And Bike Path Boundary

Mitigation Boundary Line

Chain Link Fence

Crib Wall 1:5 Slope

Top Of Concrete Cap El 7.0

Edge Of Habitat El 5.4

Top Of Excavation

Toe Of Excavation El 0.0

El 14.0 Top Of Crib Wall

Toe Of Rock Slope El 0.0

Edge Of Habitat El 5.4

Toe Of Grading Slope El 0.0

El 17.0 Top See Note 3

El 15.0 Top

El 16.0 Top

El 17.0 Top

Top Of Rock Slope

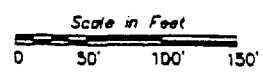
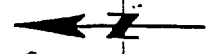
El 16.0 Top

Top Of Rock Slope El 17

Mitigation Boundary

Top Of Grading Slope

LA Flood Control District Southerly Boundary Line



LEGEND

Wetland Water Inundation At El. 0.0 MLLW

Datum MLLW = 0.0

COASTAL COMMISSION

EXHIBIT # 15

PAGE 2 OF 3

FIGURE 1. PLAN VIEW OF PROPOSED GRADING PLAN FOR QUEENSWAY BAY MITIGATION SITE, LONG BEACH, CALIFORNIA

1751 PRO-12

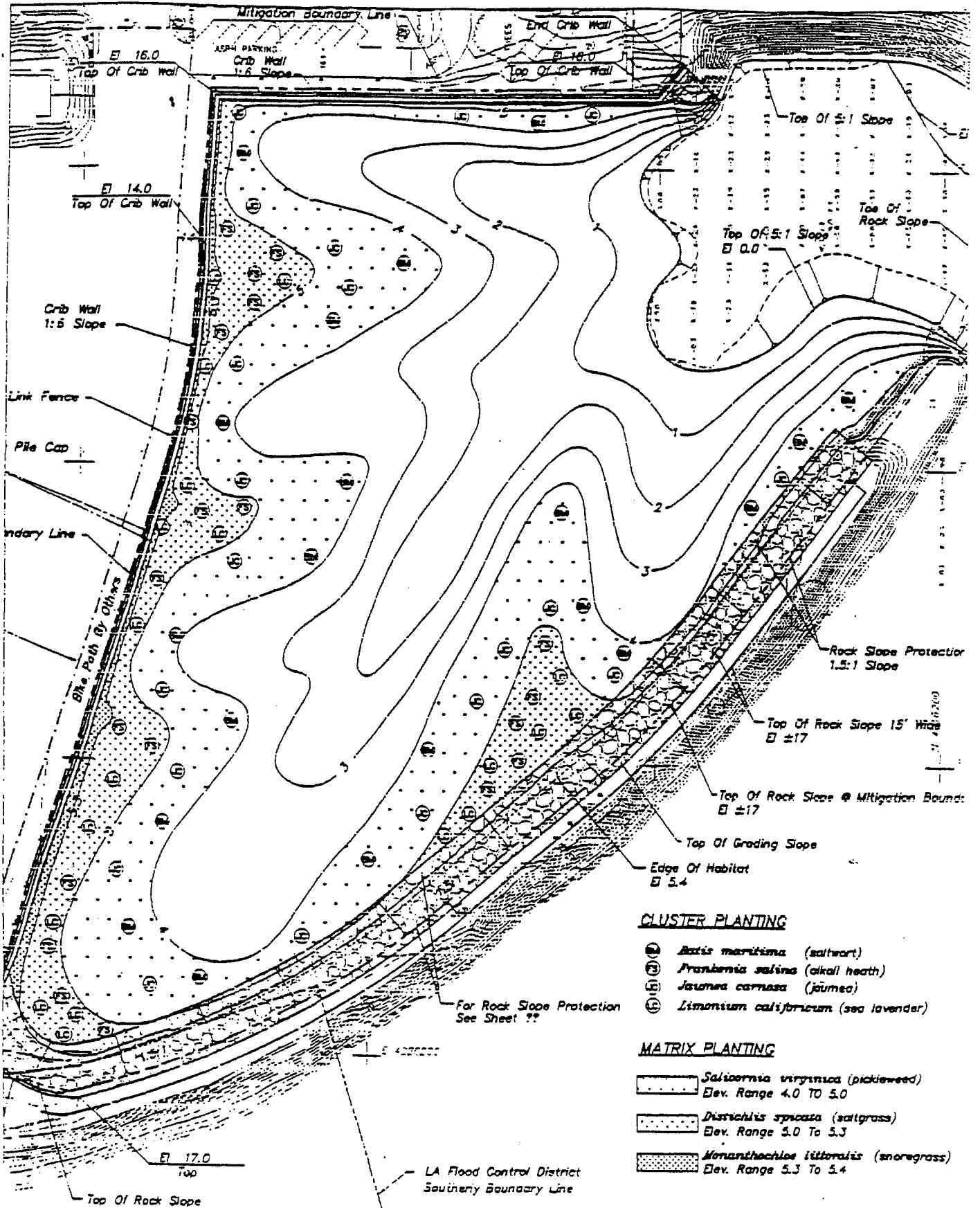


Figure 8: MITIGATION PLANTING PLAN

COASTAL COMMISSION

EXHIBIT # 15

PAGE 3 OF 3

RESOLUTION NO. C- 26100

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONG BEACH ACCEPTING ALL TERMS AND CONDITIONS OF CALIFORNIA COASTAL COMMISSION COASTAL DEVELOPMENT PERMIT 5-96-124 ISSUED IN CONNECTION WITH THE QUEENSWAY BAY PROJECT

WHEREAS, on September 12, 1996, the California Coastal Commission granted to the City of Long Beach a Coastal Development Permit to: construct a downtown commercial harbor in Shoreline Park and Lagoon; to reconstruct and improve Shoreline Park; to demolish the Golden Shore public boat launch in order to create a 6.4 acre habitat mitigation area; to transport approximately 109,000 cubic yards of excavated sand to the 8th Place Beach area for beach replenishment; and to dispose of approximately 325,000 cubic yards of dredged materials at the LA-2 offshore disposal site; and

WHEREAS, the aforementioned Coastal Development Permit is subject to certain standard and special conditions for development, which conditions are fully set forth in the Notice of Intent to Issue Permit, a copy of which is attached hereto and incorporated herein by this reference; and

WHEREAS, it is the City's intent to abide by all terms and conditions of Coastal Development Permit 5-96-124;

NOW, THEREFORE, the City Council of the City of Long Beach resolves as follows:

Section 1. That the City agrees to accept all terms and conditions of Coastal Development Permit 5-96-124.

John R. Calhoun
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
(310) 570-2200

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
10 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

**AMENDMENT TO COASTAL DEVELOPMENT PERMIT****5-96-124-A2****page 1 of 2**

August 20, 1997

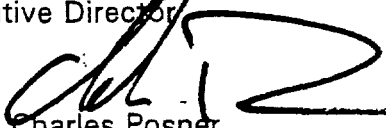
Permit Number 5-96-124 issued to City of Long Beach for:

construct a downtown commercial harbor (Rainbow Harbor) in Shoreline Park and Lagoon, reconstruct and improve Shoreline Park, demolish the Golden Shore public boat launch to create a 6.4 acre habitat mitigation area.

at: 200 W. Shoreline Drive, (Shoreline Park & Rainbow Harbor), City of Long Beach, Los Angeles County has been amended to include the following change: amend previously approved Rainbow Harbor and Shoreline Park project to include minor revisions to the previously approved plans and construction of two public restrooms, concession building, three tensile structures, lighthouse, water feature, informational signs, and light standards.

This amendment will become effective upon return of a signed copy of this form to the Commission office. Please note that the original permit condition unaffected by this amendment are still effect.

PETER M. DOUGLAS
Executive Director

By: 
Title: Coastal Program Analyst

ACKNOWLEDGMENT

I have read and understand the above permit and agree to be bound by the conditions as amended of Coastal Development Permit 5-96-124.

Date: _____

Signature _____

AMENDMENT TO COASTAL DEVELOPMENT PERMIT

5-96-124-A2

Page: 2

SPECIAL CONDITIONS:

No new special conditions are added to the permit by this amendment. However, the original special conditions of Coastal Development Permit 5-96-124 remain in full force and effect.

CP:

96-124-A2

c:\msoffice\winword\template\amend.dot Printed on August 20, 1997

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(62) 590-5071



IMMATERIAL AMENDMENT **TO COASTAL DEVELOPMENT PERMIT**

November 13, 1998

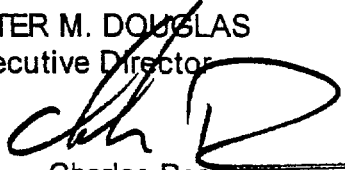
Permit Number **5-96-124** issued to **City of Long Beach** for:

Construction of a downtown commercial harbor (Rainbow Harbor) in Shoreline Park and Lagoon, reconstruct and improve Shoreline Park, and demolish the Golden Shore public boat launch in order to create a 6.4 acre habitat mitigation area.

at: 200 W. Shoreline Drive (Shoreline Park & Rainbow Harbor), Long Beach, Los Angeles County has been amended to include the following change: Grant the City a one-year time extension to comply with special condition nine of coastal development permit 5-96-124.

This amendment was determined by the Executive Director to be immaterial, was duly noticed, and no objections were received. Please note that the original permit condition unaffected by this amendment are still effect.

PETER M. DOUGLAS
Executive Director


By: Charles Posner
Title: Coastal Program Analyst

ACKNOWLEDGMENT

I have read and understand the above permit and agree to be bound by the conditions as amended of Coastal Development Permit 5-96-124.

Date: _____

Signature _____

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



5-96-124-A4

AMENDMENT TO COASTAL DEVELOPMENT PERMIT

DATE January 19, 2000

Permit No: 5-96-124

issued to: City Of Long Beach, Attn: City Manager James C. Hankla

for: **One-year time extension to comply with special condition nine of Coastal Development Permit 5-96-124.**at: **200 W. Shoreline Drive And 199 So. Golden Shore, Long Beach (Los Angeles County)**

has been amended to include the following changes:

One-year time extension (until January 2001) for City compliance with special condition nine of Coastal Development Permit 5-96-124 requiring the construction of a new public boat launch ramp (located on the South Shore of Queensway Bay).

This amendment was determined by the Executive Director to be immaterial, was duly noticed, and no objections were received or the Commission concurred with the Executive Director's determination of immateriality (Sec. 13166 (b)(2)).

This amendment will become effective upon return of a signed copy of this form to the South Coast Area office. Please note that the original permit conditions are still in effect.

Sincerely,
PETER M. DOUGLAS
Executive Director

A handwritten signature in black ink, appearing to read 'Chuck Posner', written over a horizontal line.

By: CHUCK POSNER
Coastal Program Analyst

ACKNOWLEDGMENT

I have read and understand the above amendment and agree to be bound by the remaining conditions of Permit No: 5-96-124.

Date: _____

Signature _____

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
100 OceanGate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

RECEIVED
South Coast Region



DEC 8 - 2004

**AMENDMENT TO COASTAL DEVELOPMENT PERMIT
5-96-124-A5**

December 3, 2004
Page 1 of 1

Permit Number **5-96-124** issued to **City of Long Beach** for:

Construct a downtown commercial harbor (Rainbow Harbor) in Shoreline Park and Lagoon, reconstruct and improve Shoreline Park, and demolish the Golden Shore public boat launch to create a 6.4-acre habitat mitigation area.

At: **100 Aquarium Way, Downtown Shoreline, City of Long Beach, Los Angeles County**, has been amended to include the following change:

Install new signage and refurbish an existing water fountain on the Rainbow Harbor Esplanade in order to create the "Rio de la Vida/River of Life" interpretive exhibit. Includes the installation of three new fountain nozzles and a one thousand square foot ceramic mural on the existing fountain walls, placement of granite boulders within the existing fountain area, attachment of two 8'x 1.5' graphic panels to the existing security railing, and erection of two ten-foot high freestanding interpretive signs (2.75'x 5') next to the fountain.

This amendment will become effective upon return of a signed copy of this form to the Commission office. Please note that this permit amendment does not affect the special conditions of Coastal Development Permit 5-96-124 as previously amended, and all previously imposed special conditions still apply to the approved development. No new special conditions are being imposed by this permit amendment.

PETER M. DOUGLAS
Executive Director

By: Charles R. Posner
Title: Coastal Program Analyst

ACKNOWLEDGMENT

I have read and understand the above amendment and agree to be bound by the remaining conditions of Permit No: 5-96-124.

Date: 12/4/04

Signature Barbara Long

EXHIBIT B

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

Page: 1 of 4
Date: July 22, 1998
Permit No: 5-98-161

**COASTAL DEVELOPMENT PERMIT**

On **10 June 1998**, the California Coastal Commission granted to **City of Long Beach** Coastal Development Permit **5-98-161**, subject to the attached Standard and Special Conditions, for development consisting of: establishment of on-the-water commercial concessions to be provided by approximately forty vessels operating out of Rainbow Harbor. More specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at Rainbow Harbor, Downtown Shoreline, City of Long Beach.

Issued on behalf of the California Coastal Commission on July 22, 1998.

PETER DOUGLAS
Executive Director

By: 
Title: Coastal Program Analyst

ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance . . . of any permit . . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 CAL. ADMIN. CODE SECTION 13158(a).

Date

Signature of Permittee

Please sign and return one copy of this form to the Commission office at the above address.

COASTAL DEVELOPMENT PERMIT

No. 5-98-161

Page 2 of 4

STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Compliance.** All development must occur in strict compliance with the proposal set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. **Inspections.** The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS:

1. **Public Boat Docks**

Prior to the issuance of the Coastal Development Permit, the City shall submit a plan which identifies at least 200 linear feet of docking area within Rainbow Harbor which is reserved for short-term public docking as required by Coastal Development Permit 5-96-124. The public docking area shall not be leased or reserved by any individual, business or organization. The vessels which provide the commercial uses permitted by this permit (Coastal

COASTAL DEVELOPMENT PERMIT

No. 5-98-161

Page 3 of 4

Development Permit 5-98-161) shall not be permitted to uses the public docking areas. All public docking areas shall be identified with signage which clearly communicates the availability, cost and time limits of the public docking facilities.

2. Public Parking

All parking spaces within the Shoreline Park parking lot shall be reserved for the use of the general public and shall be available for use on a first-come, first-served basis. There shall be no reserved parking spaces or exclusive use of the parking spaces within the Shoreline Park public parking lot by any person or group other than the general public (handicapped spaces excluded).

3. Temporary Trailer

A 440 square foot trailer may be placed in the Shoreline Park public parking lot on a temporary basis for the administration of fishing and diving boat expeditions operating at Pierpoint Landing in Rainbow Harbor. The trailer must be removed from the Downtown Shoreline area prior to September 15, 1998. The Executive Director may grant an extension to the September 15, 1998 deadline for good cause.

4. Shoreline Park and Rainbow Esplanade

The commercial uses and associated activities permitted by this permit (Coastal Development Permit 5-98-161) shall not interfere with public use or access to Shoreline Park and the Rainbow Esplanade. The park and esplanade areas shall be kept free of any barriers which could impede public access through the area, or impede public use of the area.

5. Leases to Private Operators

The lease of any dock area in Rainbow Harbor to private operators shall explicitly incorporate the terms and conditions of Coastal Development Permits 5-96-124 and 5-98-161. Such leases shall incorporate provisions for use, public access and public recreation consistent with all terms and conditions contained in Coastal Development Permits 5-96-124 and 5-98-161.

6. Assumption of Risk

By acceptance of this Coastal Development Permit, the City agrees that:
(a) the site may be subject to extraordinary hazard from storms, waves, floods, and earthquake induced liquefaction; and (b) the City hereby waives

COASTAL DEVELOPMENT PERMIT

No. 5-98-161

Page 4 of 4

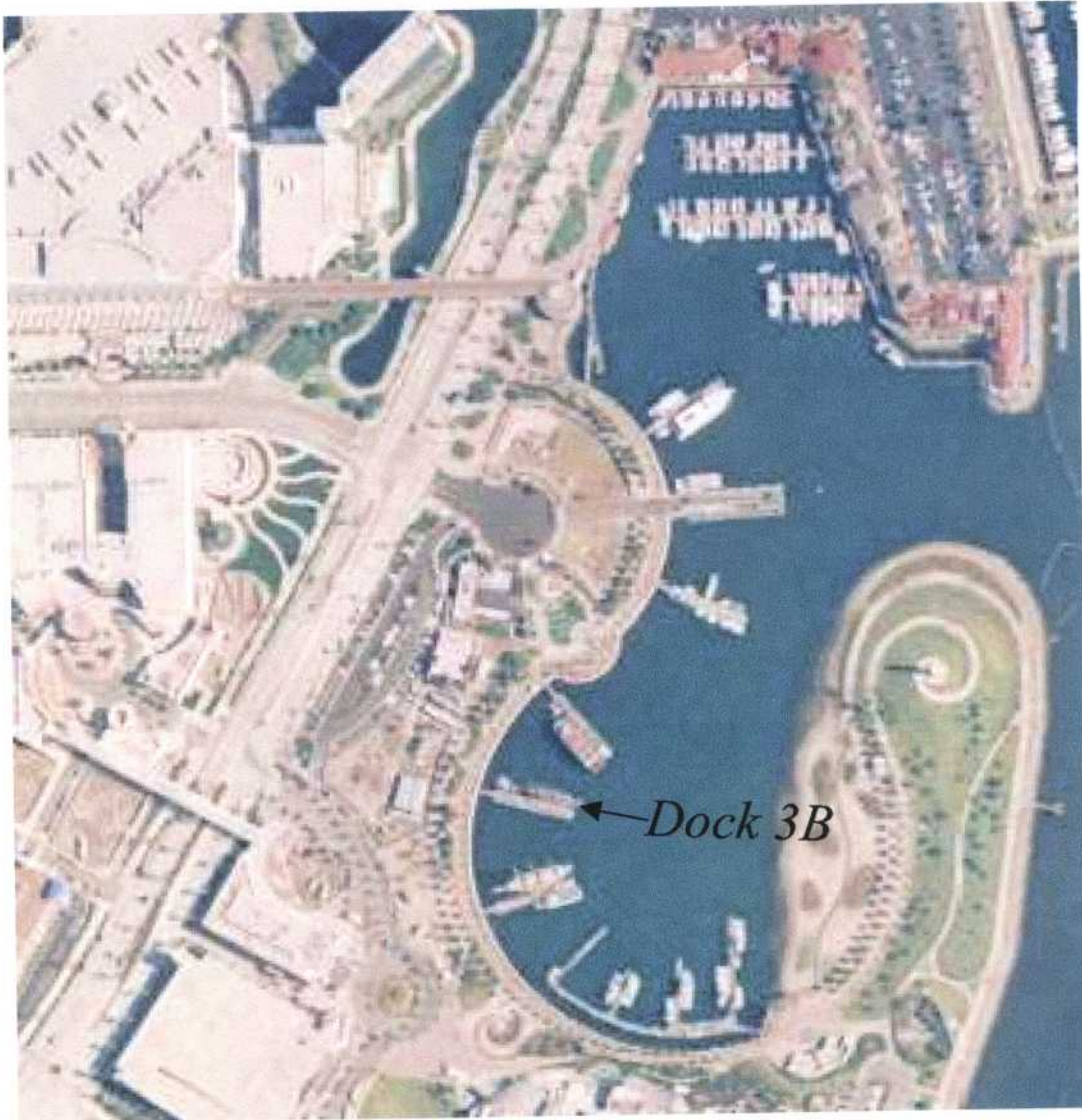
any future claims of liability against the Commission its successors in interest for damage from such hazards.

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98161per.doc.

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Exhibit C
Permit Area



American Heritage
Dock 3B