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**BELMONT VETERANS
MEMORIAL PIER LEASE**

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1 **BELMONT VETERANS MEMORIAL PIER LEASE**

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3 This Belmont Veterans Memorial Pier Lease is made and entered in duplicate
4 as of January 19, 2007 pursuant to a minute order adopted by the City Council of the City
5 of Long Beach, at its April 18, 2006 meeting, by and between the CITY OF LONG BEACH,
6 a municipal corporation and trust grantee of the State of California of certain tide and
7 submerged lands within the limits of said City ("City") and BEACH VENTURES, INC., a
8 California Corporation with a business address of 5411 East Ocean Boulevard, Long
9 Beach, California, 90802 ("Lessee").

10 WHEREAS, City is the trust grantee of the State of California of certain tide
11 and submerged lands upon which the premises are situated. The terms, conditions and
12 restrictions of the trust are expressed in Chapter 676, Statutes of 1911, Chapter 102,
13 Statutes of 1925 and Chapter 158, Statutes of 1935. Said trust conditions and grants were
14 amended by Chapter 29, Statutes of 1956, First Extraordinary Session and Chapter 138,
15 Statutes of 1964, First Extraordinary Session. Neither this Lease nor the rights and
16 privileges granted Lessee in and to the premises shall be construed to imply the
17 conveyance to Lessee of any right or interest in the premises except which may be created
18 pursuant to said statutory grants and the Constitution of the State of California. This Lease
19 and Leasehold estate created thereby shall be subject and subordinate to said statutory
20 grants and limitations imposed by the Constitution of the State of California; and

21 WHEREAS, Lessee has requested a lease to conduct various operations and
22 services on the Belmont Veterans Memorial Pier including food cart and snack services,
23 restaurant operations, alcoholic beverage services, bike, boat, jet ski, and kayak rentals,
24 bait and tackle sales, vessel provisioning, tram and beach shuttle services, fishing charters,
25 whale watching tours, sailing charters and operation of a welcome center; and

26 WHEREAS, subject to appropriate approvals, City desires Lessee to provide
27 the above operations and services.

28 NOW, THEREFORE, in consideration of the mutual terms, covenants and

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1 conditions in this Lease, the parties agree as follows:

2 1. PREMISES: City leases to Lessee, and Lessee leases from City, a portion
3 of the Belmont Veterans Memorial Pier located in the City of Long Beach, County of Los
4 Angeles, State of California. The area of the Belmont Veterans Memorial Pier to be leased
5 to Lessor is described as the area seaward of the entry portal and the entry portal and
6 shown on Exhibit "A". ("Premises") Exhibit "A" is by this reference made a part hereof.

7 2. USES: City's primary purpose for entering into this Lease is to provide
8 services needed by the public. In furtherance of that purpose, Lessee, during the term,
9 shall use the Premises for the uses described below on a near continuous basis during
10 business hours agreed between the Lessee and the City Manager or his or her designee
11 ("Manager").

12 A. The Premises and the improvements thereof shall be used for the
13 purpose of providing food cart and snack services, restaurant operations, alcoholic
14 beverage services, bike, boat, jet ski, and kayak rentals, bait and tackle sales, vessel
15 provisioning, tram and beach shuttle services, shore boat services, fishing charters, whale
16 watching tours, sailing charters and operation of a welcome center.

17 B. Lessee acknowledges that commencement of certain activities, services
18 and operations described above may require specific approvals, permits and or licenses
19 and Lessee shall at all times comply with all laws, ordinances, rules, and regulations of and
20 obtain and maintain all necessary approvals, license and /or permits from all federal, state,
21 and local governmental authorities having jurisdiction over the Premises and Lessee's
22 activities thereon.

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

25 D. Lessee shall not be in breach of this warranty if the Premises fails to be
26 in continuous use no more than forty-five (45) days in a calendar year, no more than thirty
27 (30) of which shall be consecutive without the permission of the Manager.

28 E. Lessee shall not operate point-to-point water taxi service within the limits

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1 of the City of Long Beach.

2 2.1. Long Beach Marina Rules and Regulations.

3 Lessee shall comply with the Long Beach Marina Rules and Regulations of
4 the City of Long Beach whether known by that or some other name or names.

5 2.2. Customer Satisfaction. Lessee shall make available customer
6 satisfaction evaluation surveys to all customers.

7 3. TERM: The term of this Lease shall commence at 12:01 a.m. on
8 September 1, 2006 and shall terminate at midnight on August 31, 2016. Upon termination
9 of this Lease (whether by lapse of time or otherwise), Lessee shall quit and surrender
10 possession of the Premises and remove its personal property therefrom. The term of this
11 Lease may be extended beyond August 31, 2016, for two (2) additional periods of five (5)
12 years at the sole discretion of the City Manager of the City of Long Beach.

13 4. COMPENSATION:

14 4.1. Percentage Rent.

15 A. Lessee shall pay to City percentage rents as follows:

16 Bike rentals	15 percent
17 Movies, catered events, special events	10 percent
18 All alcohol sales	10 percent
19 Cart sales, retail/merchandise sales	7.5 percent
20 Bait and tackle sales	7.5 percent
21 Food sales	8 percent
22 Vessel charters from Pier	5 percent
23 Vessel rentals, vessel provisioning	5 percent
24 Shuttle services, shore boat services	5 percent

25
26 of Lessee's "gross receipts" (as that term is defined in herein) per month on the
27 twentieth (20th) day of each month following each and every month in which gross
28 receipts are received whether received by Lessee, its sublessees, concessionaires

1 or other person or entity operating under a contract with Lessee from all Permitted
2 concessions, operations and activities. Lessee shall not have any right of
3 abatement, deduction, set off, prior notice or demand.

4 B. In the event that percent of gross receipts derived from Lessee's
5 operations paid by Lessee to City does not exceed Thirteen Thousand Five
6 Hundred Dollars (\$13,500.00) for each calendar year ("Minimum Payment"), then
7 Lessee shall pay to City the difference between Thirteen Thousand Five Hundred
8 Dollars and the amount of Percentage Rent paid during the calendar year on or
9 before January 31 of each year. Said payment shall be included with the
10 statements required pursuant to Section 4.4 (B), said Minimum Payment shall be
11 prorated for any partial calendar year at One Thousand One Hundred Twenty Five
12 Dollars (\$1,125.00) per month.

13 C. Increase of Percentage Rent.

14 Every five years during the term of this Lease, or any extensions thereof, City has
15 the right to increase the various Percentage Rents paid by Lessee to the City. The
16 various Percentage Rents shall be increased using the Consumer Price Index (CPI)
17 (all Urban Consumers) for the Los Angeles - Riverside - Orange County, California
18 area. Percentage Rents shall not be reduced pursuant to this section. Each
19 increase shall not be less than three (3) percent and shall be no greater than six (6)
20 percent.

21 The CPI statistical data reported for the month of January shall be used to calculate
22 the increase in the Percentage Rent.

23 4.2. Charges for Late Payments.

24 A. If Percentage Rent is not received when due, a late fee shall be
25 assessed. The late fee shall be 5% or Fifty Dollars (\$50.00), whichever is greater.

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

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

3 D. The late fees above are intended to compensate City for its
4 additional administrative costs resulting from Lessee's failure, and has been agreed
5 upon by City and Lessee, after negotiation, as a reasonable estimate of the
6 additional administrative costs that will be incurred by City as a result of Lessee's
7 failure. The actual cost in each instance is extremely difficult, if not impossible, to
8 determine. These late fees will constitute liquidated damages and shall be paid to
9 City together with such unpaid amounts. The payment of these late fees shall not
10 constitute a waiver by City of any default by Lessee under this Lease.

11 4.3. Gross Receipts. "Gross receipts" as used herein shall include the
12 following:

13 A. The gross selling price of all boat tickets or other charges for the
14 use of or passage aboard any Lessee authorized vessel that docks or ties up at the
15 Premises.

16 B. The gross selling price for all food, beverages, and other
17 merchandise or services sold or delivered by Lessee, its permitted licensees,
18 concessionaires, and persons, firms, or corporations aboard said vessels.

19 C. Gross receipts shall include sales for cash, credit, or services
20 whether collected or not. Gross receipts shall not include, or if included shall be
21 deducted (but only to the extent they have been included), any sales and use taxes,
22 transportation taxes, excise taxes, franchise taxes, and other similar taxes now or
23 in the future imposed on the sale of tickets, food, beverages, merchandise, or
24 services, but only if such taxes are added to the selling price, separately stated,
25 collected separately from the selling price and collected from customers. Gross
26 receipts shall not include any value imputed to charitable charters (i.e., any charter
27 in which Lessee does not collect a fee or reimbursement for expenses).

28 4.4. Statement of Gross Receipts.

1 A. Lessee shall prepare and deliver or cause to be prepared and
2 delivered to the City at:

3 Department of Parks, Recreation and Marine

4 2760 Studebaker Road

5 Long Beach, CA 90815-1697

6 Attention: Accounting Section

7 within twenty (20) days after the end of each month during the term of this Lease
8 or extension thereof, a financial statement showing in reasonable detail Lessee's
9 gross receipts for the preceding calendar month or partial calendar month and a
10 computation of the percentage fee provided for herein.

11 B. Lessee shall within thirty (30) days of each calendar year deliver
12 to the City, at the address set forth in subparagraph 4.4.A. above, a statement
13 showing gross receipts of the preceding calendar year or partial calendar year. Such
14 statement shall be prepared and delivered to City in accordance with generally
15 accepted accounting practices containing a statement of gross receipts and a
16 computation of percentage of gross receipts.

17 C. Each statement shall be signed and certified to be correct by an
18 officer of Lessee.

19 5. FEES AND CHARGES: All fees and charges associated with the
20 permitted concessions, operations and activities and any changes to fee schedules shall
21 be subject to the prior written approval of the Manager.

22 6. AUDIT: The City shall be entitled during the initial term or any extension
23 thereof and within three (3) years after the expiration or termination of this Lease to
24 inspect, examine, and audit all Lessee's books of account, records, cash receipts, and
25 other pertinent data so City can ascertain Lessee's gross receipts. Lessee shall cooperate
26 fully with City in making any such inspection, examination, and audit. The inspection,
27 examination, or audit shall be conducted during usual business hours. If an audit shows
28 that there is a deficiency in the payment of any sum due the City, the deficiency shall

1 become immediately due and payable. The costs of the audit shall be paid by the City
2 unless the audit shows that Lessee understated gross receipts by more than three percent
3 (3%), in which case Lessee shall pay all City's costs of the audit. If it is determined by an
4 audit that there is an overpayment of percentage fees, a refund shall become due from the
5 City.

6 **7. BOOKS OF ACCOUNT AND RECORDS:**

7 A. Lessee shall keep, within the City of Long Beach, complete and accurate
8 books of account, records, cash receipts, and other pertinent data showing all gross
9 receipts, all in accordance with generally accepted accounting principles.

10 B. Lessee shall install and maintain accurate receipt printing cash registers
11 or computer systems and shall record on the cash registers or computer systems every
12 sale of merchandise and services or other transactions at the time of the transaction on
13 either a cash register having a sealed, continuous cash register tape with cumulative totals
14 that numbers, records and duplicates each transaction entered into the register, or serially
15 numbered sales slips.

16 If Lessee chooses to record each sale by using a cash register, the
17 continuous cash register tape will be sealed or locked in such a manner that it is not
18 accessible to the person operating the cash register.

19 If Lessee chooses to record each sale by using a computer system, the
20 computer generated receipts shall be retained in chronological order (including those
21 canceled, voided or not used) for three (3) years.

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

25 C. For the purpose of ascertaining the number of Lessee's passengers,
26 Lessee will submit monthly, in writing, vessel schedules, including the name of the boat,
27 and the passenger counts with the gross receipts statements to the Accounting Section of
28 the Department of Parks, Recreation and Marine at the following address:

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

D. Lessee, 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 Lease 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 Lease 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 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. Lessee 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 Lessee five (5) days' prior notice of City's intention

1 to exercise its rights under this paragraph. In connection with an examination of audit, City
2 will have the right to inspect the records of sales from any other store operated by Lessee,
3 but only if the examination is reasonably necessary to ascertain gross sales from the
4 Premises. If upon inspection or examination of Lessee's available books and records of
5 account, City determines that Lessee has failed to maintain, preserve, or retain the
6 documents, books, and records that this Lease requires Lessee to maintain in the manner
7 set forth in this paragraph, City will give the Lessee sixty (60) days to cure the deficiencies.
8 Further, if Lessee is found to be deficient in maintaining any of documents, books, or
9 records, Lessee will reimburse City for all reasonable expenses incurred by City in
10 determining the deficiencies, including without limitation any audit or examination fees.

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

13 8. IMPROVEMENTS: Lessee shall not install, erect, or construct any
14 building, improvement, or structure on the Premises nor alter the same without the prior
15 written approval of the Manager and work so approved shall be in accordance with the
16 following.

17 A. Compliance with Law. Lessee's work shall comply with all applicable
18 governmental laws, rules, regulations and orders. Prior to commencement of construction,
19 Lessee shall procure, at its sole expense, all necessary building, fire, safety and other
20 Permits. City will cooperate with Lessee in obtaining such Permits provided, however,
21 City's cooperation shall not be deemed or construed as a waiver of any right or obligation
22 of City acting in its governmental capacity.

23 B. No Liens. Lessee shall keep the Premises free from all liens for any
24 work done, labor performed or material furnished by or for Lessee. Lessee shall defend,
25 indemnify and hold City, its officials and employees harmless from and against all claims,
26 liens, demands, causes of action, liability, loss, costs and expenses, including reasonable
27 attorney's fees, for any such work done, labor performed, or materials furnished on the
28 Premises or to Lessee for construction or repair. If a lien is imposed on the Premises as

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1 a result of construction or repair, Lessee shall: (i) record a valid release of lien; or (ii)
2 deposit with City cash in an amount equal to 125% of the amount of the lien and authorize
3 payment to the extent of said deposit to any subsequent judgment holder with regard to
4 the lien; or (iii) procure and record a lien release bond in accordance with California Civil
5 Code Section 3143 issued by a surety authorized to do business in California.

6 C. Notice of Nonresponsibility. Lessee shall give notice to City twenty (20)
7 days prior to the commencement of Lessee's work or other work of improvements for the
8 purpose of enabling City to post and record notices of nonresponsibility under the
9 provisions of Section 3094 of the California Civil Code, or any other similar notices which
10 may be allowed by law.

11 D. Notice of Completion. On completion of Lessee's work, Lessee shall file
12 a Notice of Completion in the Official Records of the Los Angeles County Recorder.

13 E. Contracts for Work. All contracts entered by Lessee relating to the
14 Premises shall contain the following statement:

15 This contract shall in no way bind the City of Long Beach nor
16 obligate it for any costs or expenses whatsoever under this
17 contract.

18 F. Completion of Work. Lessee's work shall be deemed to have been
19 completed upon execution and delivery to City of notice certifying completion thereof and
20 further certifying that all costs and expenses thereof have been paid and that there are no
21 unpaid costs or expenses of any nature related thereto.

22 G. Ownership of Improvements. Any building, structure or other
23 improvement constructed or placed on the Premises by Lessee, at Lessee's cost, shall
24 be and become the property of City without the payment of any compensation therefor.

25 9. ADVERTISING:

26 9.1. Advertising Signs. Lessee, at its cost, may place or erect and maintain
27 signs on the Premises, provided that Lessee obtains prior written approval from the
28 Department of Parks, Recreation and Marine. Further, Lessee's sign shall be in

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1 compliance with City's sign ordinance and conditions of the Department of Parks,
2 Recreation and Marine.

3 9.2. Advertising Budget. Within thirty (30) days after the commencement
4 date of the term of this Lease, and within thirty (30) days after the end of each
5 calendar year during the term of this Lease, Lessee shall submit to the Manager a
6 written budget describing in reasonable detail proposed expenditures for
7 advertising, publicity and promotion (including direct expenses for salaries
8 associated therewith) proposed to be made during the calendar year. Beginning in
9 year 2, the budget shall not be less than one percent (1%) of Lessee's gross sales
10 for previous calendar year. Lessee shall submit to the Manager upon demand a
11 detailed statement of expenditures made by it to advertise, publicize and promote
12 the permitted concession, operations and activities. In the event Lessee fails or
13 refuses to comply with the provisions of this paragraph, such failure or refusal shall
14 be deemed a material breach and the City may terminate this Lease upon fifteen
15 (15) days written notice to Lessee.

16 10. UTILITIES: Lessee, at its cost, shall promptly pay or cause to be paid
17 all utility fees, costs and charges resulting from such use or assessments for utilities levied
18 against the Premises for any period during the term of this Lease.

19 11. TRASH REMOVAL AND DISPOSAL: Lessee shall keep the Premises
20 in a neat and sanitary condition, as determined by the Manager in his/her sole discretion,
21 including but not limited to removing and cleaning any graffiti, waste, refuse, trash or debris
22 from the Premises. No offensive or refuse matter constituting a fire hazard or nuisance
23 shall be deposited or remain on the Premises. All refuse, trash, debris and/or waste
24 material shall be removed from the Premises, at Lessee's sole cost, in plastic bags of ten
25 mils or thicker. The City shall have the right to modify or change the trash removal
26 operation of Lessee and Lessee agrees to accept and comply with such modifications or
27 changes.

28 12. MAINTENANCE AND REPAIR:

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1 A. Lessee shall maintain, at its sole cost and to the satisfaction of Manager,
2 the Premises and all improvements, thereon including but not limited to the restrooms,
3 restaurant and food concession areas, in a safe, clean, good condition, in substantial
4 repair, and in compliance with all applicable laws, rules and regulations. Lessee shall
5 remove graffiti within 24 hours after it appears. Lessee's duty to maintain shall include but
6 not be limited to the duty to repair and replace the improvements, as needed. If Lessee
7 fails to maintain the Premises, City may notify Lessee of said failure. If Lessee fails to
8 correct the situation within 30 days after notice or such longer period as may be
9 established by City, then City may make the necessary correction and the cost thereof,
10 including but not limited to the cost of labor, materials, equipment and administration, shall
11 be paid by Lessee as additional rent, within 10 days after receipt of a statement of said
12 costs from City. City may at its option, choose other remedies available herein or by law.
13 Lessee hereby waives the extent permitted by law any right to make repairs at the expense
14 of City or to vacate the Premises in lieu thereof as may be provided by law. City shall have
15 no obligation to perform any maintenance on the Premises.

16 B. Lessee understands that the water area within the area of the Belmont
17 Veterans Memorial Pier is subject to collection of debris from the Los Angeles and San
18 Gabriel rivers runoff. Further, Lessee acknowledges that water conditions including debris
19 and sediment may occur which could affect water access to the Belmont Veterans
20 Memorial Pier. City shall not be required to dredge the area adjacent to the Belmont
21 Veterans Memorial Pier. Neither the City nor its officers or employees shall be liable and
22 Lessee waives all claims for damage to its vessels or its business as a result of any such
23 condition.

24 13. NO CITY LIABILITY: City, its boards, commissions, officials and
25 employees shall not be liable for and Lessee hereby waives all claims against them for
26 loss, theft, or damage to vessels, equipment, furniture, trade fixtures, furnishings, records,
27 and other personal property in, on or at the Premises, for loss or damage to Lessee's
28 business, or injury to or death of persons in, on or at the Premises from any cause except

1 to the extent caused by the gross negligence or willful misconduct of the City, its Board,
2 commissions, officials and employees.

3 14. DAMAGE OR DESTRUCTION OF IMPROVEMENTS:

4 14.1. Responsibility for Repair. If any building or improvement at any time
5 on the Premises shall be damaged or destroyed by any cause whatsoever during
6 the Lease term or extension thereof, Lessee shall, with reasonable promptness,
7 report the damage to the City. The City shall have responsibility to make repairs to
8 replace the same, to at least the condition existing immediately prior to such
9 damage or destruction. The Lessee shall be responsible for reimbursing the City for
10 the pro rata share of expenses incurred to repair or replace the damage or
11 destruction to the Premises to the extent contributed to by the act or omission of
12 Lessee, its employees or agents. Lessee shall be responsible for reimbursing the
13 City even though the proceeds of any insurance policies covering the loss
14 ("Insurance Proceeds") shall be insufficient to reimburse Lessee therefor; provided,
15 however, that if such proceeds of insurance are more than sufficient to pay the cost
16 of any such rebuilding, Lessee shall be entitled to receive any surplus. City at its
17 discretion may authorize Lessee to make repairs to replace the same to at least the
18 condition existing immediately prior to such damage or destruction. Such
19 authorization shall be in writing.

20 14.2. Insurance Proceeds. Insurance Proceeds shall be held by an
21 Insurance Trustee mutually agreed to by the parties, but shall be paid to the Lessee
22 or as Lessee may direct from time to time as the restoration of the Premises
23 progresses, to pay or reimburse City for the cost of such restoration upon the written
24 request of City accompanied by evidence satisfactory to the Insurance Trustee that:

- 25 A. an amount equal to the amount requested is then due and payable or has
26 been paid and is properly a part of such cost of restoration;
27 B. that the net Insurance Proceeds not yet advanced will be sufficient for the
28 completion of the restoration.

1 If at any time during the period of restoration and/or reconstruction the City shall
2 determine that the Insurance Proceeds are insufficient to cause such restoration,
3 then upon delivery of written notice thereof and specifying the deficit Lessee shall
4 deposit in trust with the Insurance Trustee such additional sums as may be required
5 to complete the restoration of the Premises. Upon receipt by the Insurance Trustee
6 of evidence satisfactory to it that:

- 7 A. the restoration of the Premises has been completed;
- 8 B. the cost thereof has been paid in full; and
- 9 C. there are no mechanic's or similar liens for labor or materials supplied in
10 connection therewith, the balance, if any, of such Insurance Proceeds shall
11 be paid to Lessee or as the Lessee may direct.

12 14.3. Procedure for Restoration of Improvements. Following damage to all
13 or any portion of the Premises, Lessee shall reimburse the City for restoration of the
14 Premises and/or the improvements thereon, whether or not insurance proceeds are
15 sufficient to do so.

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

- 22 A. Commercial General Liability insurance (equivalent in coverage scope to
23 ISO form CG 00 01 11 85 or 11 88) in an amount not less than One Million Dollars
24 (\$1,000,000) combined single limit per occurrence and covering the Lessee's
25 operations under or in connection with this Lease. If the policy contains a general
26 aggregate, the general aggregate shall be in an amount not less than Two Million
27 Dollars (\$2,000,000). Such insurance shall include, as may be applicable to
28 Lessee's operations under or in connection with this Lease, broad form contractual

1 liability, products and completed operations liability and liquor liability. The City of
2 Long Beach, its officials, employees and agents shall be added as additional
3 insureds by endorsement (equivalent in coverage scope to ISO form CG 20 26 11
4 85). This insurance shall contain no special limitations on the scope of protection
5 afforded to the City, its officials, employees and agents, and shall provide cross-
6 liability protection.

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

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

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

25 Each insurance policy shall be endorsed to state that coverage shall not be
26 suspended, voided, materially changed, or canceled by either party except after thirty (30)
27 days prior written notice to City, and shall be primary to City. Any insurance or self-
28 insurance maintained by City shall be excess to and shall not contribute to insurance or

1 self-insurance maintained by Lessee.

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

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

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

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

21 **16. INDEMNIFICATION:**

22 **16.1. General Indemnity.** Lessee shall defend and indemnify the City of
23 Long Beach and its officers and employees while acting within the scope of their
24 duties from and against any and all actions, suits, proceedings, claims and
25 demands, costs (including attorneys' fees and court costs), expense and liability of
26 any kind or nature whatsoever ("claims") for injury to or death of persons or damage
27 to property (including property owned by or under the control of the City) which may
28 be brought, made, filed against, imposed upon or sustained by the City, its officers

1 or employees based upon or arising out of:

2 A. An act or omission of Lessee, its officers, agents, employees,
3 contractors, licensees or invitees or of any person entering upon the Premises with
4 the express or implied invitation of Lessee;

5 B. A violation by Lessee, its officers, agents, employees, contractors,
6 licensees or invitees or of any other person entering upon the Premises with the
7 express or implied invitation of Lessee of any law ordinance or governmental order
8 of any kind;

9 C. The use or occupancy of the Premises by Lessee, its officers, agents,
10 employees, contractors, licensees or invitees or of any other person entering upon
11 the Premises with the express or implied invitation of Lessee.

12 This indemnity shall not include claims based upon or arising out of the sole
13 negligence, gross negligence, or willful misconduct of the City, its officers and
14 employees. Further, this indemnity shall not require payment of a claim by the City
15 or its officers or employees as a condition precedent to the recovery under the
16 same. This indemnification provision supplements and in no way limits the scope
17 of the indemnifications set out in subparagraph 16.2 below. The indemnity
18 obligation of Lessee under this paragraph shall survive the expiration or termination,
19 for any reason, of this Lease.

20 **16.2. Environmental Release and Indemnification.**

21 Lessee hereby agrees to hold harmless, defend and indemnify the City and its
22 employees, members and officials from and against all liability, loss, damage, costs,
23 penalties, fines and/or expenses (including attorneys' fees and court costs) arising
24 out of or in any way connected with or the activities, acts or omissions of Lessee,
25 its Lessees, employees, contractors or agents on or affecting the Premises without
26 regard to fault or negligence including but not limited to the release of any
27 hazardous materials into the air, soil, groundwater or surface water on, in, under or
28 from the Premises whether such condition, liability, loss, damage, cost, penalty, fine

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1 and/or expense shall accrue or be discovered before or after termination of this
2 Lease. This indemnification supplements and in no way limits the scope of the
3 indemnification set forth in paragraph 16.1. above.

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

22 16.2.1. Exclusions.

23 A. Contamination on, beneath, or abutting the Premises which
24 existed prior to the initial commencement date of the Lease.

25 B. Contamination which has emanated or emanates from a
26 location off site the Premises and which has trespassed onto,
27 underneath or across the Premises.

28 C. Contamination which is unrelated to Lessee's use,

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occupancy of Lessee's sublessees, invitees, or guests, on the Premises.

D. Lessee need not indemnify City for activities carried on or around the Premises by City as part of occasional use of the Premises by City or its other Lessees, licensees, or the like or actions of the public who have not been Permitted or solicited by Lessee.

16.3. 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 Premises causes or threatens to cause a nuisance upon the Premises or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Premises; or

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

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

10 18. VESSELS: Lessee agrees, with respect to its operation of charter cruises
11 and its use of the Premises, Lessee shall at all times comply with the Long Beach Marina
12 Rules and Regulations of the City of Long Beach, including other conditions herein:

13 A. Lessee shall submit weekly, in writing, daily vessel schedules, including
14 the name(s) and identification number(s) of the boat(s), and passenger counts to
15 the Manager of the Marine Bureau. The schedules shall be submitted by the Friday
16 of the preceding week. Lessee may amend the reported information to make
17 changes to or correct information pursuant to the vessel schedule, boat name or
18 identification number and passenger count. Lessee must give the Manager of the
19 Marine Bureau prior written notification of any changes.

20 B. Lessee, at its cost, shall maintain each of its vessels in good, seaworthy
21 condition. At all times, if any condition is discovered affecting the safety of the
22 vessel or its seaworthiness, that vessel shall be immediately withdrawn from service
23 and all necessary repairs promptly commenced. Lessee's vessels shall be
24 attractive in design and shall at all times be maintained in a neat and clean
25 condition free from deteriorations. To maintain an attractive appearance at all
26 times, Lessee, at its cost, shall cause its vessels to have all gear stored and to be
27 regularly painted. No rips, tears or missing pieces or excessive fading shall be
28 permitted.

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

9 Lessee's vessels shall at all times be certified and licensed and inspected by those
10 governmental agencies having jurisdiction over Lessee's activities. Lessee shall at all times
11 comply with all United States Coast Guard regulations.

12 20. ASSIGNMENT OR TRANSFER: Lessee shall not assign or transfer this
13 Lease nor shall any interest herein be assignable or transferable by operation of law or by
14 any process or proceedings of any court or otherwise. Any attempted transfer or
15 assignment shall be void and confer no rights whatsoever upon a transferee or assignee.

16 Notwithstanding the foregoing, Lessee may grant subleases, licenses or
17 concessions to others provided Lessee shall first obtain the written consent of the
18 Manager. The Manager shall not be required to give any consent to a proposed sublease,
19 licensing or grant of concession rights, unless and until Lessee has submitted to the
20 Manager such additional information regarding the identity of proposed sublessee, licensee
21 or concessionaire and the terms and conditions of the proposed transaction as may be
22 required by the Manager to make a determination to grant or withhold such consent.
23 Further, the Manager shall have the right to impose such further conditions in connection
24 with the granting of consent as may be required to assure that public health, safety, welfare
25 and convenience will be best served by the proposed sublease, license or concession.

26 If Lessee shall be adjudicated a bankrupt or become insolvent or any interest
27 in this Lease be taken by virtue of attachment, execution, or receivership, the City may
28 terminate this Lease upon five (5) days written notice to Lessee.

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1 21. HOLDING OVER: This Lease shall terminate without any further notice
2 as of the Lease expiration date set forth in paragraph three above. Any holding over by
3 Lessee after the Lease expiration date shall not constitute a renewal or extension or give
4 Lessee any rights in or to the Premises except as expressly provided in this Lease. Any
5 holding over after the Lease expiration date with the consent of City shall be construed to
6 be a tenancy from month to month, at fees no less than the fees due for the last year of
7 the Lease term or any extension, and shall otherwise be on the terms and conditions
8 herein specified.

9 22. INSPECTION: The City's authorized representatives shall have access
10 to and across the Premises during business hours and, in the event of an emergency, at
11 any other time for inspection, repair of publicly-owned utilities and structures, and for fire
12 and police purposes. The City, acting through the Marine Bureau of the Department of
13 Parks, Recreation and Marine, shall have the right, but not the obligation, to board and
14 inspect any such vessels to assure compliance by Lessee with the provisions of this Lease.
15 During any inspection, the City shall have the right to use photographic devices, equipment
16 or other instruments for recording conditions and events on the Premises.

17 23. GENERAL PROVISIONS:

18 23.1. Notices, Demands and Communication Between the Parties.

19 Notices, demands, and communication between City and Lessee shall be in writing
20 and shall be sufficiently given if personally served or if mailed by registered or
21 certified mail, postage prepaid, return receipt requested addressed as follows:

22
23 TO CITY: City Manager
 13th Floor, City Hall
 333 West Ocean Boulevard
 Long Beach, California 90802

24
25 WITH A COPY TO: Director of Parks, Recreation & Marine
 2760 Studebaker Road
 Long Beach, California 90815-1697

26
27 TO LESSEE: Beach Ventures, Inc.
 5411 East Ocean Boulevard
 Long Beach, CA 90802

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

23.2. Conflict of Interest. No member, official or employee of City shall have any personal interest, direct or indirect, in this Lease, nor shall any such member, official or employees participate in any decision relating to this Lease which affects his personal interest or the interests of any corporation, partnership or association in which he is, directly or indirectly, interested. No member, official or employee of City shall be personally liable to Lessee, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease.

23.3. Defaults and Remedies.

23.3.1. Defaults - General. Failure by either party to perform any term or provision of this Lease constitutes default under this Lease, if not cured within thirty (30) days from the date of receipt of a written notice from the other party specifying the claimed default provided that such default cannot reasonably be cured within such thirty (30) day period, the party receiving such notice of default shall not be in default under this Lease if such party commences the cure of such default within such thirty (30) day period and thereafter diligently prosecutes the steps to cure such default to completion.

23.3.2. Institution of Legal Actions. In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Lease. Such legal actions must be instituted in the South Branch of the Superior Court of the County of Los Angeles, State of California, or in the Federal District court in the Central District of California. The prevailing party in any action commenced pursuant to this Lease shall be entitled to recover reasonable costs, expenses and

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1 attorneys' fees.

2 23.3.3. Applicable Law. The laws of the State of California shall
3 govern the interpretation and enforcement of this Lease. Lessee during its
4 use and occupancy of the Premises shall at all times comply with all laws,
5 ordinances, rules, and regulations of and obtain Permits from all federal,
6 state, and local governmental authorities having jurisdiction over the
7 Premises, Lessee's vessels and Lessee's activities thereon.

8 23.3.4. Service of Process. In the event any legal action is
9 commenced by Lessee against City, service of process on City shall be
10 made by personal service upon the City Clerk of the City, or in such other
11 manner as may be provided by law.

12 In the event that any legal action is commenced by City against Lessee,
13 service of process on Lessee shall be made as provided by law and shall be
14 valid whether made within or without the State of California.

15 23.3.5. Rights and Remedies Are Cumulative. Except as otherwise
16 expressly stated in this Lease, the rights and remedies of the parties are
17 cumulative, and the exercise by either party of one or more such rights or
18 remedies shall not preclude the exercise by it, at the same or different times,
19 of any other rights or remedies for the same default or any other default by
20 the other party.

21 23.3.6. Inaction Not a Waiver of Default. Any failures or delays by
22 either party in asserting any of its rights and remedies as to any default shall
23 not operate as a waiver of any default or of any such rights or remedies or
24 deprive either such party of its right to institute and maintain any actions or
25 proceedings which it may deem necessary to protect, assert or enforce any
26 such rights or remedies.

27 23.3.7. Remedies. In the event of a default by Lessee, which is not
28 cured by Lessee within the times specified in this Lease, City without

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1 further notice to Lessee, may declare this Lease and/or Lessee's right of
2 possession at an end and may reenter the Premises by process of law, in
3 which event, City shall have the right to recover from Lessee:

4 23.3.7.1. The worth at the time of award of the unpaid fees
5 which has been earned at the time of termination, plus interest;

6 23.3.7.2. The worth at the time of award of the amount by
7 which the unpaid fees which would have been earned after
8 termination until the time of award exceeds the amount of such fee
9 loss that Lessee proves could have been reasonably avoided, plus
10 interest;

11 23.3.7.3. The worth at the time of award of the amount by
12 which the unpaid fees for the balance of the term after the time of
13 award exceeds the amount of such fee loss for the same period the
14 Lessee proves could be reasonably avoided, plus interest thereon;
15 and

16 23.3.7.4. The remedies of City as hereinabove provided are
17 cumulative to the other provisions of this Lease.

18 23.4. Partial Invalidity. If any term or provision of this Lease or the
19 application thereof to any party or circumstances shall, to any extent, be held invalid
20 or unenforceable, the remainder of this Lease, or the application of such term or
21 provisions, to persons or circumstances other than those as to whom or which it is
22 held invalid or unenforceable, shall not be affected thereby, and each term and
23 provision of this Lease shall be valid and enforceable to the fullest extent permitted
24 by law.

25 23.5. Entire Agreement, Waivers and Amendments. This Lease constitutes
26 the entire understanding and agreement of the parties. This Lease integrates all the
27 terms and conditions mentioned herein or incidental hereto, and supersedes all
28 negotiations between the parties with respect to all or any part of the subject matter

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hereof.

23.6. Waivers. All waivers of the provisions of this Lease must be in writing by the appropriate authorities of City or Lessee and all amendments hereto must be in writing by the appropriate authorities of City and Lessee.

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

23.8. Nondiscrimination. In connection with performance of this Lease and subject to applicable laws, rules and regulations, Lessee 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.

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

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

23.11. 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 Lease is entered into by City in its proprietary capacity and nothing contained herein shall relieve Lessee from complying with all requirements, rules, regulations or ordinances of the City of Long Beach.

23.12. No Mineral Rights. This Lease creates no rights in Lessee to minerals, or proceeds from mineral production, which may lie below the Premises including but not limited to any unitized oil.

23.13. No Relocation Benefits. Lessee shall have no rights to relocation benefits mandated by the laws of the State of California as to this Premises.

23.14 Americans with Disabilities Act. Lessee shall have and be allocated the sole responsibility to comply with the Americans with Disabilities Act of 1990

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1 ("ADA"), as amended, with respect to the Premises and Lessee shall defend,
2 indemnify and hold Lessor, its officials and employees harmless from and against
3 all claims of failure to comply with or violation of the ADA.

4 24. TAXES: This Lease may create a possessory interest subject to
5 property taxation and Lessee may be liable for the payment of property taxes levied on
6 such possessory interest. Lessee shall pay or cause to be paid, prior to delinquency,
7 all taxes, assessments and other governmental and district charges that may be levied
8 or assessed for buildings, improvements or property located on the Premises and upon
9 possessory interests created by this Lease. Satisfactory evidence of such payments
10 shall be delivered by Lessee upon demand therefor.

11 25. FOURTH OF JULY: Lessee recognizes that it is the responsibility of
12 the City to maintain a safe and secure environment for the public at all times. Annually,
13 the Belmont Veterans Memorial Pier experiences exceptional visitor and activity levels
14 related to the 4th of July. To mitigate the impact to public safety and security, the City
15 may limit activity at the Belmont Veterans Memorial Pier. Lessee agrees to be bound
16 by reasonable restrictions on its activities in or around the Premises on such day or
17 day(s) of 4th of July activities each year of the term of this Lease. Such restrictions
18 may include limitations on the hours of business operations. Lessee waives any and
19 all claims that it might ever have against City as a result of any adverse impact on its
20 operations or business as a result of City restrictions.

21 26. SPECIAL EVENTS: This Lease contemplates certain activities such
22 as filming, however, this Lease does not provide authorization for Lessee to engage in
23 any specific filming, special event or activity which requires a Special Event Permit
24 pursuant to the Long Beach Municipal Code. Consideration for filming or other special
25 events is at the sole discretion of the City and must be coordinated through the City of
26 Long Beach Special Events Bureau, separate and apart from this Lease, and will be
27 subject to conformance with the Long Beach Municipal Code.

28 //

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BEACH VENTURES, INC.,
a California Corporation

~~SEPT. 18,~~ 2006

By: *Bob Hammer*

_____, 2006

By: _____

"LESSEE"

CITY OF LONG BEACH, a
municipal corporation

January 19, 2006/7

By: *Macdonald*
City Manager

"CITY"

Approved as to form this 2ND day of January,

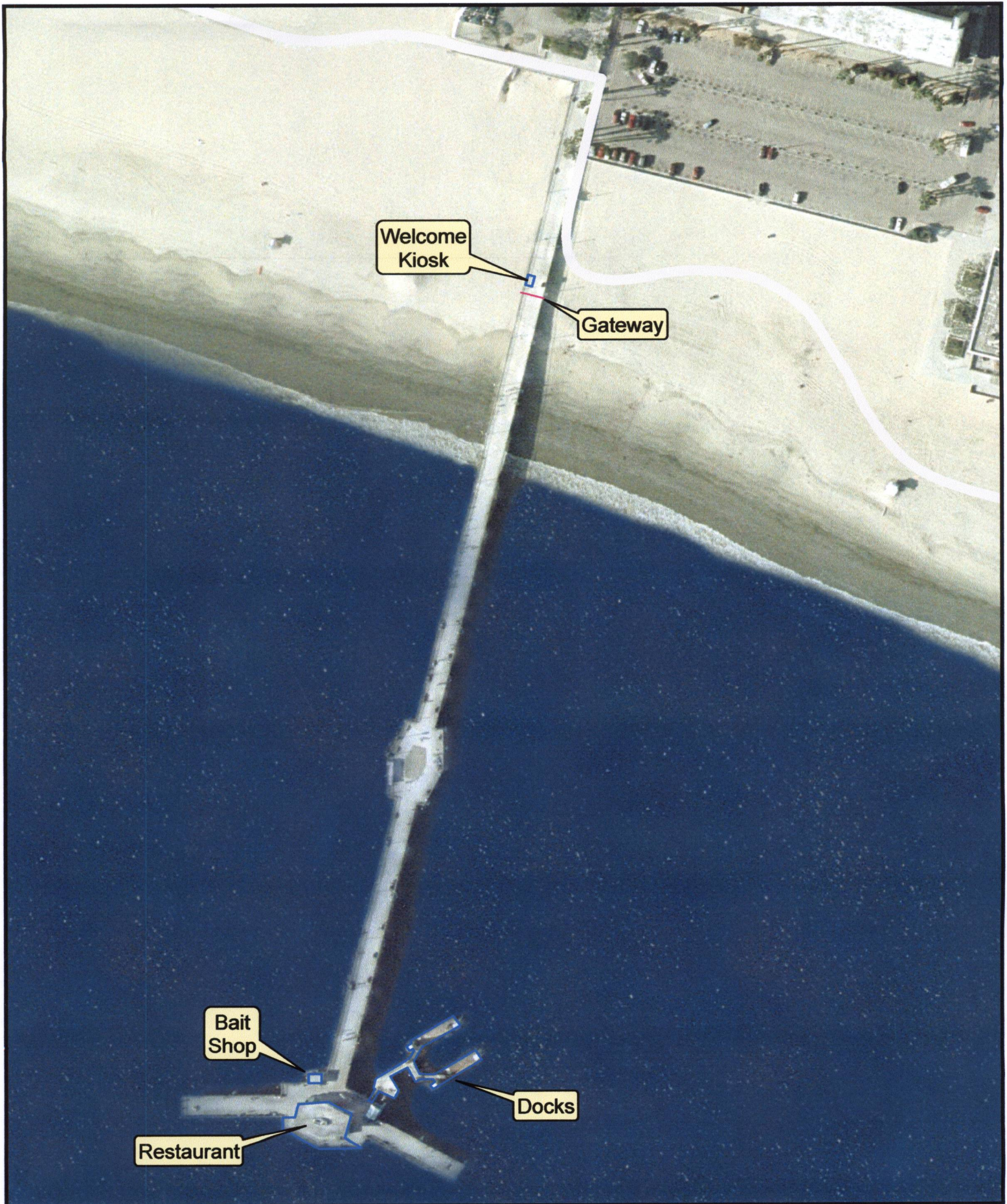
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ROBERT E. SHANNON, City Attorney

By: *Charles Parkin*
Deputy

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EXHIBIT "A"



Belmont Pier Beach Ventures Inc. Lease Area

