

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

1 **MEMORANDUM OF UNDERSTANDING**

2 **30390**

3 This Memorandum of Understanding ("Agreement") is made and entered into as of
4 OCTOBER 3, 2007, for reference purposes only, pursuant to a minute order adopted by
5 the City Council of the City of Long Beach at its meeting on October 2, 2007, by and
6 between the CITY OF LONG BEACH, a municipal corporation ("City"), and THE LONG
7 BEACH YACHT CLUB, a California corporation ("LBYC", and together with City, the
8 "Parties", or individually, a "Party").

9 **RECITALS**

10 WHEREAS, in order to facilitate its rebuild of the Alamitos Bay Marina ("Marina
11 Project"), the City needs to build new docks in order to temporarily house vessels
12 displaced by the rebuild;

13 WHEREAS, City has identified the existing long dock located immediately adjacent
14 to the Long Beach Yacht Club as a potential location to temporarily house vessels;

15 WHEREAS, City desires to construct an extension to the Long Dock and in so
16 doing will replace the Long Dock (as extended and rebuilt, the "Long Dock").

17 WHEREAS, the Parties wish to clarify the respective rights and obligations of the
18 Parties with respect to the reconstruction and future use and management of the Long
19 Dock.

20 **AGREEMENT**

21 NOW THEREFORE, in consideration of the mutual obligations of the Parties to
22 each other, the Parties agree as follows:

23 **1. Long Dock Reconstruction.** Provided that City has adequate funding for the
24 Marina Project, City shall, at its own cost and expense, rebuild the Long Dock in
25 connection with the first phase of the Marina Project, and in general accordance with the
26 plans attached hereto as Exhibit "A".

27 **2. Use of Long Dock by City.** City shall have the exclusive right to use the "City
28 Area" of the Long Dock as shown on Exhibit "A" to berth vessels displaced during the

1 Marina Project.

2 **3. Management of Long Dock by LBYC.**

3 A. Upon completion of the reconstruction of the Long Dock, LBYC shall
4 manage the "LBYC Area" of the Long Dock as shown on Exhibit "A" provided that the
5 LBYC Area is used, among other things, to berth the eleven (11) Catalina 37 sailboats, or
6 such future replacement boats, operated by the Long Beach Sailing Foundation and used
7 for match races.

8 B. Upon the earlier of (i) completion of the Marina Project or (ii) the
9 determination by City in its sole discretion that it no longer needs the City Area, LBYC
10 shall manage the City Area in addition to the LBYC Area.

11 C. LBYC shall remit to City fifty percent (50%) of gross revenues generated by
12 activity conducted on any portion of the Long Dock controlled and managed by LBYC,
13 payable on a quarterly basis no later than the twentieth (20th) day of the month following
14 each calendar quarter. LBYC shall keep detailed records of all revenues in accordance
15 with generally accepted accounting principles, and shall make such records, LBYC's
16 financial statements, LBYC's tax returns, and other related financial information as may
17 be reasonably requested, available to the City Auditor of the City of Long Beach for
18 review and audit for a period of at least three (3) years after receipt of such revenue.

19 D. LBYC shall be responsible, at its own cost and expense, for the
20 maintenance of those portions of the Long Dock under its management.

21 E. LBYC shall obtain approval of the City Manager, or designee, prior to
22 renting any portion of the Long Dock for a commercial enterprise.

23 **4. Term.** This Agreement shall become effective immediately upon execution by the
24 Parties and shall remain in effect until the earlier of (i) the expiration of the term of the
25 Lease, or (ii) the end of the useful life of the reconstructed Long Dock as reasonably
26 determined by City. City shall have the right to retake control of any portion of the Long
27 Dock at any time during the term upon thirty (30) days' advance notice provided that such
28 transfer shall not impair LBYC's ability to conduct any events which were scheduled on

1 the Long Dock at the time such notice was received by LBYC.

2 **5. Indemnity.** LBYC shall defend, indemnify and hold harmless City from all claims,
3 demands, damages, causes of action, losses, liability, costs or expenses, including
4 reasonable attorney's fees, of any kind or nature whatsoever (collectively referred to in
5 this Section as "claims") which City may incur for injury to or death of persons or damage
6 to or loss of property due to the alleged acts or omissions of LBYC, LBYC's employees,
7 or agents, or any breach of this Agreement by LBYC.

8 **6. Force Majeure.** If either Party shall be delayed or prevented from the
9 performance of any act required hereunder by reason of acts of God, restrictive
10 governmental laws or regulations or other cause, without fault and beyond the
11 reasonable control of the Party obligated, performance of such-act shall be excused for
12 the period of the delay; and the period for the performance of any such act shall be
13 extended for a period equivalent to the period of such delay.

14 **7. Amendments.** This Agreement shall not be amended, nor any provision or
15 breach hereof waived, except in writing signed by the parties which expressly refers to
16 this Agreement.

17 **8. Governing Law.** This Agreement shall be governed by and construed pursuant to
18 the laws of the State of California.

19 **9. Entire Agreement.** This Agreement constitutes the entire understanding between
20 the Parties and supersedes all other agreements, oral or written, with respect to the
21 subject matter contained herein.

22 **10. Costs.** If there is any legal proceeding between the Parties to enforce or interpret
23 this Agreement or to protect or establish any rights or remedies hereunder, the prevailing
24 party shall be entitled to its costs and expenses, including reasonable attorneys' fees and
25 court costs.

26 **11. Nondiscrimination.** In connection with performance of this Agreement and
27 subject to applicable rules and regulations, the Parties shall not discriminate against any
28 employee or applicant for employment because of race, religion, national origin, color,

1 age, gender, sexual orientation, AIDS, AIDS related condition, handicap, disability or
2 Vietnam Era veteran status. The Parties shall ensure that applicants are employed, and
3 that employees are treated during their employment, without regard to these bases.
4 Such actions shall include, but not be limited to, the following: Employment, upgrading,
5 demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of
6 pay or other forms of compensation, and selection for training, including apprenticeship.
7 **12. Notices.** Any notice or approval required hereunder by any Party shall be in
8 writing and personally delivered or deposited in the U.S. Postal Service, first class,
9 postage prepaid, addressed to each Party at the respective addresses stated below.
10 Notice of change of address shall be given in the same manner as stated herein for other
11 notices. Notice shall be deemed given three (3) business days after said writing is
12 deposited in the mail or on the date personal delivery is made, whichever first occurs.

13 City of Long Beach
14 333 W. Ocean Blvd., 13th Floor
15 Long Beach, California 90802
16 Attention: City Manager

17 with a copy to:

18 City of Long Beach
19 205 Marina Drive
20 Long Beach, California 90803
21 Attention: Marine Bureau Manager

22 The Long Beach Yacht Club
23 6201 E. Appian Way
24 Long Beach, California 90803
25 Attention: Commodore

26 **13. Continuation.** Termination or expiration of this Agreement shall not affect rights
27 of City under Sections 3 or 5 which accrued prior to termination or expiration of this
28 Agreement.

14. Non-Party Beneficiary. This Agreement is intended by the Parties to benefit
themselves only and is not in any way intended or designed to or entered for the purpose
of creating any benefit or right for any person or entity of any kind that is not a Party to
this Agreement.

1 **15. Successors.** This Agreement shall inure to the benefit of, and be binding upon,
2 the Parties and their respective successors and permitted assignees.

3 **16. Counterparts.** This Agreement may be executed in several counterparts and all
4 so executed shall constitute one agreement, binding on the Parties, notwithstanding that
5 all Parties are not signatory to the original or the same counterpart.

6 **17. Headings.** The headings contained in this Agreement are for reference purposes
7 only and shall not affect the meaning or interpretation of anything contained in this
8 Agreement.

9 **18. Early Termination.** Notwithstanding anything to the contrary contained herein,
10 City shall have the right to terminate this Agreement if any third-party threatens a lawsuit
11 over the subject matter of this Agreement and City reasonably determines that such
12 threatened lawsuit is not without merit.

13 **19. Authority.** The persons executing this Agreement on behalf of City and LBYC
14 represent and warrant that they have the authority to execute this Agreement in the
15 capacity indicated next to their respective signatures.

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1 IN WITNESS WHEREOF, the parties have caused this Agreement to be duly
2 executed with all formalities required by law as of the date first stated herein.

3 THE LONG BEACH YACHT CLUB, a California
4 corporation

5 10/8, 2007

By: H.M. Lopez
Name: HARSCO M VAZ DYKE
Title: COMMODORE 2007

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7
8 10/8, 2007

By: Claudia Warner
Name: Claudia Warner
Title: Secretary

9
10 CITY OF LONG BEACH,
a municipal corporation

11
12 11/15, 2007

By: [Signature]
Title: City Manager

13 07-03027

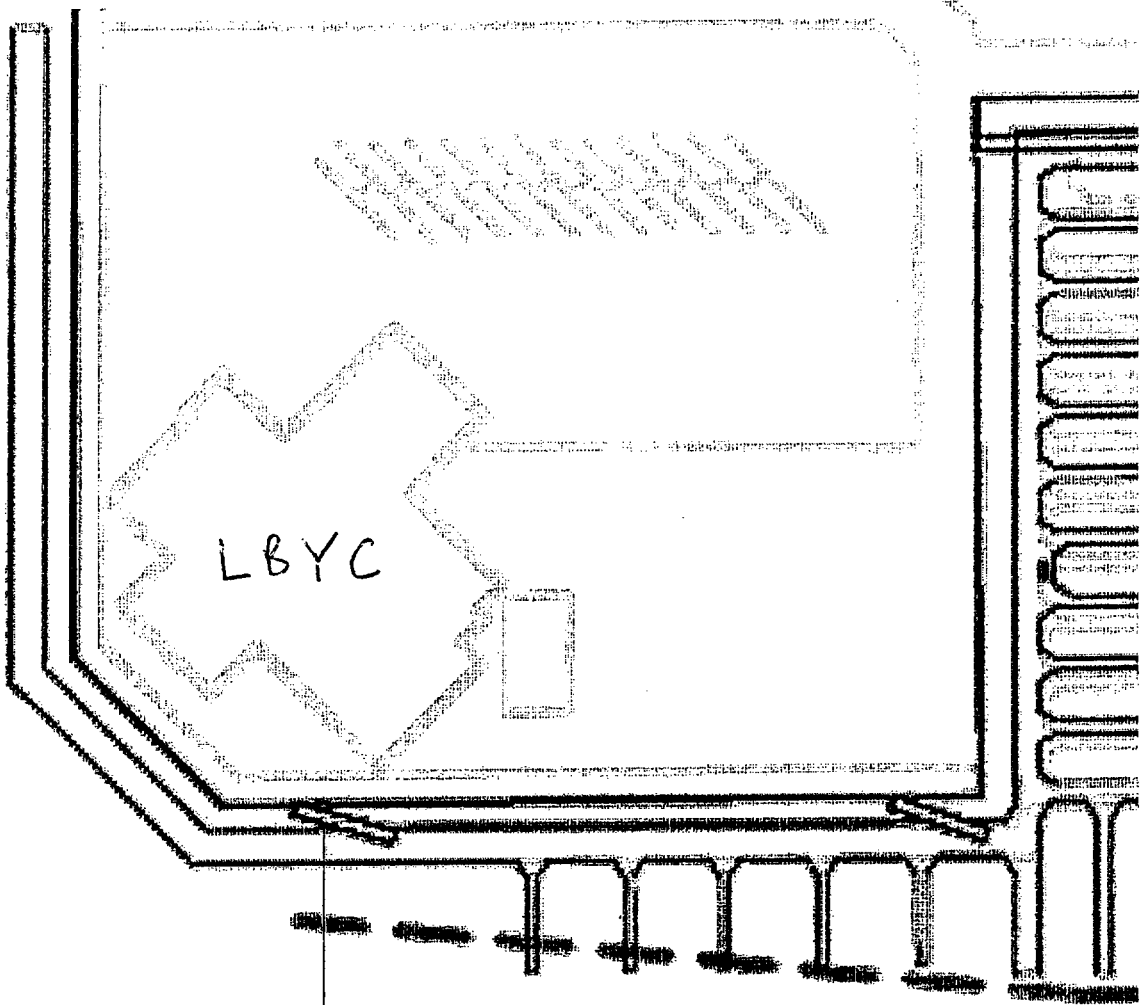
14 APPROVED AS TO FORM

15 10/16, 2007
16 ROBERT E. SHANNON, City Attorney

17 By: [Signature]
18 DEPUTY CITY ATTORNEY

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EXHIBIT "A"



CITY AREA

LBYC AREA

