

1 SECOND AMENDMENT TO LEASE NO. 28350

2 **28350**

3 This Second Amendment is made and entered, in duplicate, as of May 9,
4 2012, pursuant to a minute order adopted by the City Council of the City of Long Beach
5 at its meeting held on May 8, 2012, by and between the CITY OF LONG BEACH, a
6 municipal corporation ("Landlord" or "City"), and THE BOLDER GROUP, INC., a
7 California corporation ("Tenant").

8 1. WHEREAS, the parties executed Lease Agreement No. 28350,
9 dated July 1, 2003, wherein City agreed to lease real property to Tenant for a term of six
10 (6) years; and

11 2. WHEREAS, the parties executed the First Amendment dated July
12 20, 2009, which extended the term to September 30, 2014; and

13 3. WHEREAS, now the parties desire to extend the term for an
14 additional (15) fifteen months and expand the subject matter of the lease to include the
15 Shoreline Marina Fuel Dock, formerly known as the Downtown Marina Fuel Dock, and
16 adjust the monthly rent;

17 Now, therefore, in consideration of the mutual terms, covenants, and
18 conditions in this Lease Agreement, the parties agree as follows:

19 1. Section 1 of Lease No. 28350 is deleted and amended in its entirety
20 to read as follows:

21 "1. PREMISES. Landlord leases to Tenant and Tenant accepts
22 those certain parcels of real property and water area and the improvements thereon
23 ("Premises") in the City of Long Beach, State of California, more particularly described in
24 Exhibit "A" attached hereto and by this reference made a part hereof. Said Premises
25 shall include the Shoreline Marina Fuel Dock and the Alamitos Bay Marina Fuel Dock."

26 2. Section 2 of Lease No. 28350 is deleted and amended in its entirety
27 to read as follows:

28 "2. TERM. The term of this Lease shall be extended for an

1 additional fifteen (15) months, through December 31, 2015.”

2 3. Section 6 of Lease No. 28350 is deleted and amended in its entirety
3 to read as follows:

4 “6. MINIMUM MONTHLY RENT: Tenant shall pay to Landlord as
5 minimum monthly rent during this second extended term, without deduction, set off, prior
6 notice or demand, the sum of One Thousand Seven Hundred Sixty-Five Dollars and
7 Thirteen Cents (\$1,765.13) per month for the Alamitos Bay Marina Fuel Dock, and Four
8 Hundred Fifty-Eight Dollars and Thirty-Four Cents (\$458.34) for the Shoreline Marina
9 Fuel Dock.

10 Minimum monthly rent for the first (1st) month or portion thereof for the
11 Shoreline Marina Fuel Dock shall be paid and occupancy thereof shall be available to
12 Tenant not less than thirty (30) days following written notice to Tenant by Landlord that
13 the site is certified by the City and ready for use. City shall provide reasonable fencing
14 and locking gate security prohibiting shore-based access to the Shoreline Marina Fuel
15 Dock during non-operating hours. Minimum monthly rent for any partial month during the
16 term shall be prorated at the rate of 1/30th of the minimum monthly rent per day. The
17 minimum monthly rent for the term shall be subject to adjustment as provided in
18 paragraph 6.A

19 A. The minimum monthly rent shall be adjusted effective October
20 1, 2013 and for each of the leased Premises shall be 1/12th of seventy-five percent
21 (75%) of the average annual total rent paid for such location over the most recent
22 five (5) years of operation. In no event shall the minimum monthly rent decrease
23 as a result of the rent adjustment.

24 If the rent payment is not received within ten (10) days of the due
25 date, a late fee will be assessed. The late fee shall be five percent (5%) or Fifty
26 Dollars (\$50.00), whichever is greater.”

27 4. Section 13 of Lease No. 28350 is deleted and amended in its entirety
28 to read as follows:

1 “13. MAINTENANCE AND REPAIR. Subject to the specific
2 exceptions and allocation of responsibilities as between Landlord and Tenant set forth in
3 Exhibit “B” hereto, Tenant shall maintain, at its own expense, the Premises shown in
4 Exhibit “A” in a first class condition and to at least as high a standard as is met in
5 surrounding facilities, shall be responsible for the routine maintenance of the
6 improvements, equipment and docks on the Premises, and shall pay all costs associated
7 with the operation of the Premises. If Tenant fails to keep and maintain the Premises as
8 required herein, Landlord may notify Tenant of said failure. If Tenant fails to correct the
9 situation within thirty (30) days thereafter or such longer period as may be established by
10 City, City may make the necessary correction and the cost thereof, including but not
11 limited to the cost of labor, materials, equipment and administration, which shall be paid
12 by Tenant as additional rent within ten (10) days after receipt of a statement of said cost
13 from City. City may, at its option, choose other remedies available herein or by law
14 regarding any failure of Tenant covered by this Section 13 including declaring this lease
15 in default. Any failure of Tenant to perform the obligations of this Section 13 shall be, at
16 the option of City, a default under this Lease.

17 The maintenance, repair and replacement responsibilities of the Parties are
18 further set forth in Exhibit “B”.

19 5. Section 26 “Miscellaneous” is added to Lease No. 28350.

20 “26. MISCELLANEOUS

21 A. Los Angeles River – Tenant understands that the water area
22 in the area of the leased premises is subject to collection of debris from the
23 Los Angeles River runoff. Neither the City nor its officers or employees shall be
24 liable, and Tenant waives all claims for damage to its vessels or its business
25 resulting from the condition of the water within the Downtown area. Tenant’s
26 vessels, gear and property thereon, shall be at the leased premises at Tenant’s
27 risk and the City shall not be liable for damage thereto, theft or appropriation
28 thereof.

1 B. Parking – Parking facilities at Shoreline Village shall not be
2 used by Tenant’s patrons.

3 C. Fourth of July – Tenant recognizes that it is the responsibility
4 of the City to maintain a safe and secure environment for the public at all times.
5 Annually, the Rainbow Harbor area experiences exceptional visitor and activity
6 levels related to the 4th of July. To mitigate the impact to public safety and
7 security, the City may limit Rainbow Harbor activity. Tenant agrees to be bound
8 by reasonable restrictions on its activities in or around the leased premises on
9 such day or day(s) of 4th of July activities each year of the term of this Lease.
10 Such restrictions may include limitations on the hours businesses may operate,
11 including those of Tenant in the leased premises. Tenant waives any and all
12 claims that it might ever have against City as a result of any adverse impact on its
13 operations or business as a result of such City restrictions relating to 4th of July
14 activities.

15 D. Grand Prix – Tenant recognizes that the area of City in which
16 tenant will operate is annually impacted by the running of the Long Beach Grand
17 Prix. Tenant waives any and all claims that it might ever have against City or the
18 operators of said Grand Prix as a result of any adverse impact on its operations or
19 business as a result of said race.”

20 E. Landlord waives any claims it might otherwise have against
21 Tenant for failure to maintain adequate fuel or other inventory where such failure is
22 due to City imposed or approved restrictions affecting access by suppliers to the
23 Premises or either of them.

24 6. Except as expressly amended herein, all of the terms and conditions
25 in Lease No. 28350 are ratified and confirmed, shall remain in full force and effect, and
26 except where provisions clearly relate solely to the Alamitos Bay Marina Fuel Dock, shall
27 be deemed applicable to the Shoreline Marina Fuel dock as well.

28 ///

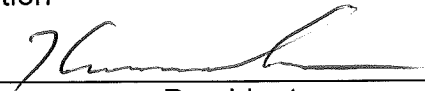
OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

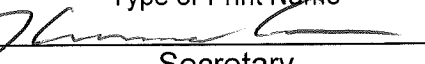
THE BOLDER GROUP, INC., a California corporation

April 26, 2012

By 
President

KENNETH U. WALKER
Type or Print Name

April 26, 2012

By 
Secretary

KENNETH U. WALKER
Type or Print Name

"Tenant"

CITY OF LONG BEACH, a municipal corporation

6.5, 2012

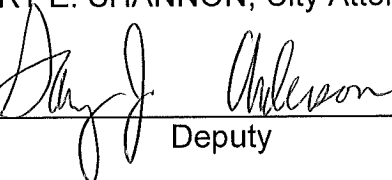
By  Assistant City Manager
City Manager

"Landlord" or "City"

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

This Second Amendment to Lease No. 28350 is hereby approved as to form on May 9, 2012.

ROBERT E. SHANNON, City Attorney

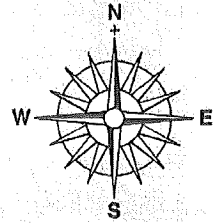
By  Deputy

ALAMITOS BAY MARINA

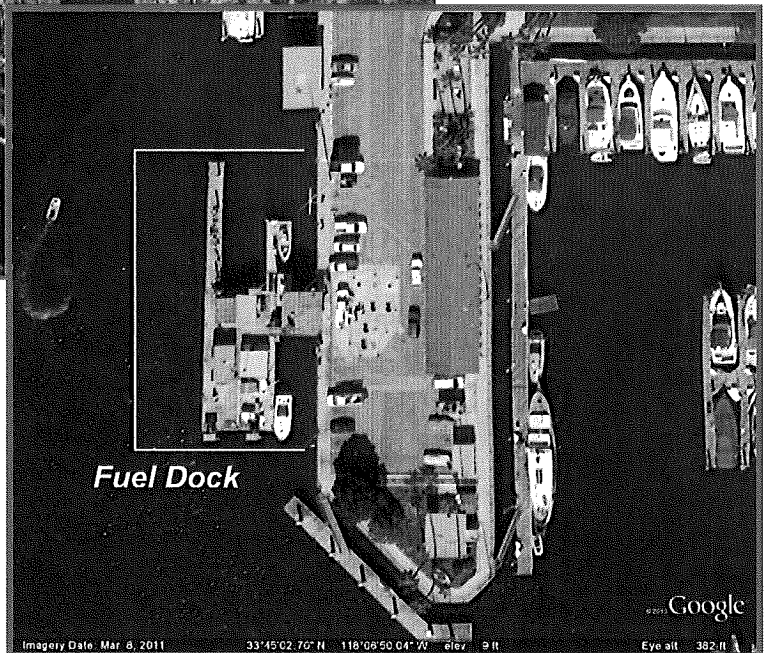
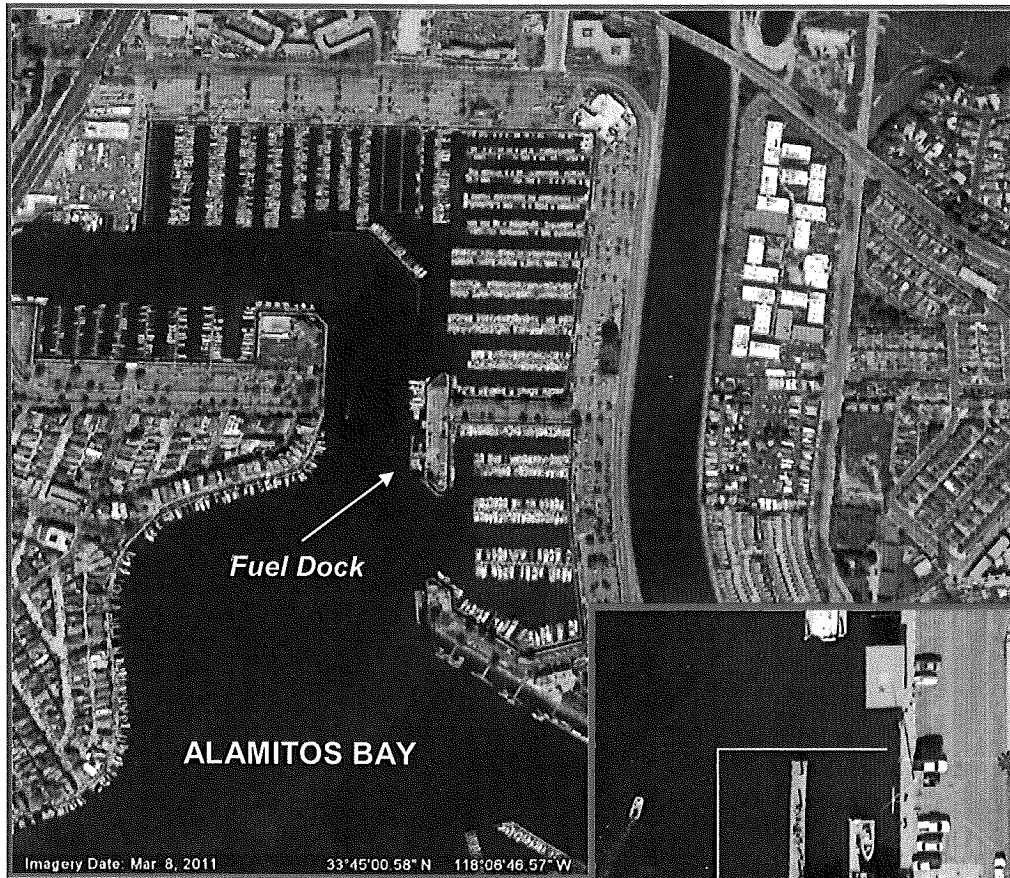
205 Marina Drive
Long Beach, CA 90803
Los Angeles County
(562) 570-3215 • Fax (562) 570-3247
Department Of Parks, Recreation & Marine

EMERGENCY NUMBERS

Fire & Police - 911
Coast Guard - Channel 16 VHF
Dial 562-435-6711 With
Cell Phone To
Get 911 Quicker



ALAMITOS BAY



Fuel Dock located within Alamos Bay Marina.

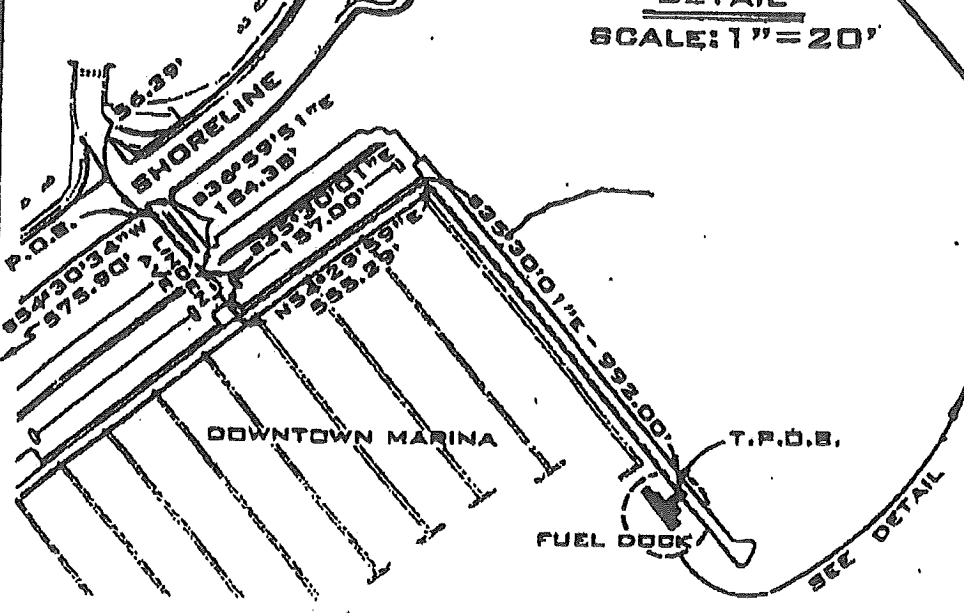
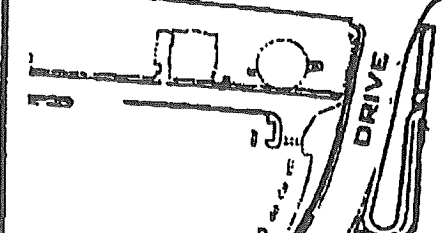
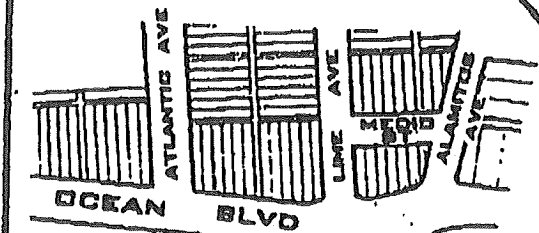
Address: 227 North Marina Dr.
Long Beach, CA 90803

EXHIBIT A

Page 3 of 4

FUEL DOCK ADDITION
 - - - - **FORMER LEASE LINE**

S34°29'59"W	-	53.25'
N35°30'01"W	-	16.00'
S54°29'59"W	-	8.00'
N35°30'01"W	-	30.00'
S54°29'59"W	-	10.00'
S35°30'01"E	-	100.00'
N54°29'59"E	-	16.00'
N35°30'01"W	-	29.50'
N54°29'59"E	-	19.50'
N35°30'01"W	-	16.50'
N54°29'59"E	-	38.75'
N35°30'01"W	-	8.00'
S54°29'59"W	-	8.00'



DETAIL
SCALE: 1" = 20'



REVISION DATE: 6-22-00

CITY OF LONG BEACH - CALIFORNIA
DEPARTMENT OF PUBLIC WORKS - CHRISTOPHER J. BARNER, AIDING DIRECTOR

LEASE AREA MAP FOR
DOWNTOWN MARINA FUEL DOCK
(REVISED)

EXHIBIT A

Page 4 of 4

**DOWNTOWN MARINA FUEL DOCK AREA
REVISED
LEGAL DESCRIPTION**

That portion of the artificially created land within the tidelands and submerged lands conveyed to the City of Long Beach by the State of California under an act of May 1, 1911, Chapter 676, Page 1304 as amended, as shown on City Engineer's File Map B-1774, sheets 1 through 4 inclusive, dated June 9, 1959, on file with the City of Long Beach, described as follows:

Beginning at the northeasterly terminus of that certain course described as "South 54° 30' 34" West 575.90 feet" in the public street dedication, Resolution C-23471 of the Long Beach City Council and recorded January 31, 1983 as Document No. 83-125119 in the office of the County Recorder of the County of Los Angeles; thence northeasterly along the prolongation of said course 56.39 feet; thence South 36° 59' 51" East 184.38 feet; thence South 35° 30' 01" East 157.00 feet; thence North 54° 29' 59" East 555.29 feet; thence South 35° 30' 01" East 992.00 feet to the TRUE POINT OF BEGINNING; thence South 54° 29' 59" West 53.25 feet; thence North 35° 30' 01" West 16.00 feet; thence South 54° 29' 59" West 6.00 feet; thence North 35° 30' 01" West 30.00 feet; thence South 54° 29' 59" West 10.00 feet; thence South 35° 30' 01" East 100.00 feet; thence North 54° 29' 59" East 16.00 feet; thence North 35° 30' 01" West 29.50 feet; thence North 54° 29' 59" East 19.50 feet; thence North 35° 30' 01" West 16.50 feet; thence North 54° 29' 59" East 38.75 feet; thence North 35° 30' 01" West 8.00 feet; thence South 54° 29' 59" West 5.00 feet to the TRUE POINT OF BEGINNING, said area containing 2208 square feet more or less.



REVISION DATE: 6-22-00

CITY OF LONG BEACH - CALIFORNIA
DEPARTMENT OF PUBLIC WORKS - CHRISTOPHER J. BARNER, ACTING DIRECTOR

**LEGAL DESCRIPTION FOR
DOWNTOWN MARINA FUEL DOCK
(REVISED)**

EXHIBIT "B"

Second Amendment to Lease No. 28350 Additional Maintenance Requirements Alamitos Bay Marina & Shoreline Marina Fuel Docks

- 1) Tenant shall cooperate with City staff, agents and vendors to allow access to the leased premises for completion of the following items during the term of the Lease. City shall arrange, contract, and pay for the following items through the standard government competitive bidding process, and shall give written notice of said costs to Tenant as soon as any such contracts are executed. All costs associated with said items shall be reimbursed to the City by the Tenant.
 - i) Underground Storage Tank (UST) regulatory compliance testing:
 - Annual monitoring system testing and certification;
 - Annual spill bucket testing;
 - Annual vapor system testing;
 - Annual line leak testing;
 - Monthly Designated Operator (DO) Inspections; and
 - Onsite documentation to be available 24/7.
 - ii) Required inspections, monitoring and items per the consent judgment agreement between the City and the State of California including, but not limited to:
 - Semi-weekly inspections by Fleet Services staff; and
 - Remote 24/7 monitoring of the entire fuel system both on land and on/in dock through the monitoring system.
 - iii) All required permits for the operation of the fuel site, including, but not limited to:
 - AQMD permits and annual permit renewals; and
 - CUPA permit and annual permit renewals.
 - iv) Annual facility employee training to existing employees and new employees within 30 days of hire date.

EXHIBIT "B"

- 2) Tenant shall cooperate with City staff, agents and vendors to allow access to the leased premises for the repair and maintenance of equipment during the term of the Lease. City shall be responsible for costs associated with the repair and maintenance of equipment including, but not limited to the following items:
- Underground Storage Tank(s) (UST);
 - Piping including underground, in/on dock and between land and dock;
 - Piping supports and containment;
 - Dispensers and under dispenser containment (UDC);
 - Hose reel containment pan;
 - Leak monitoring system;
 - Fuel pumps; and
 - Tank and transition sumps.
- 3) Tenant, at Tenant's sole cost and expense, shall be responsible for the following additional maintenance requirements:
- i) In accordance with all Federal, State and Local regulations governing UST and Marina fueling facilities, Tenant shall maintain, repair and keep in good appearance and working order the fueling system equipment including, but not limited to:
 - Fuel dispensing:
 1. Hoses;
 2. Nozzles;
 3. Hose reels; and
 4. Meters and meter calibration.
 - Fire extinguishers and cabinets.
 - ii) Perform daily system & site inspections and keep records of such. Provide copies of these records to Fleet Services each month.
 - iii) Keep all sumps and containment pans free of liquid and debris.
 - iv) Allow City staff to perform semi-weekly inspections and maintain the required site documents readily accessible 24/7 on site.

EXHIBIT "B"

- v) Maintain a good appearance by keeping all equipment and structures clean, in good repair and working order.
- vi) Notify the City (Fleet Services) of any damage or non-compliance issues with the UST and/or fueling system immediately.
- vii) Follow all Federal, State and Local rules and regulation in case of a spill, release or incident and notify the City (Fleet Services) as well as do everything possible to immediately stop any spill/release.
- viii) Be responsible for the remediation and clean up of any spill or release of fuel/petroleum into the soil, groundwater or water way surrounding the fuel site/dock.
- ix) Maintain a safe, clean, working and fueling environment.
- x) Receive Facility Employee training by the City's DO annually or upon hiring new Employees.
- xi) Notify the City (Fleet Services) of hiring new employees within five business days.

Best Management Practices (BMP) Program

- 4) By acceptance of the leased premises, the Tenant agrees that the water-borne berthing of boat(s) at the approved docks at the leased premises will be managed in a manner that protects water quality pursuant to the implementation of the following BMPs and the specific best management practices set forth in the Water Quality Management Plan for the Shoreline Marina Fuel Dock, by Pacific Coast Tank (September 2011):
 - i) Boat Cleaning and Maintenance Measures:
 - In-water hull washing which does not occur by hand shall be prohibited.
 - In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints and debris.
 - Only detergents and cleaning components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and only minimal amounts shall be used.
 - The use of detergents containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye shall be prohibited.

EXHIBIT "B"

- In-the-water hull scraping or any process that occurs under water that results in the removal of paint from boat hulls is prohibited.
- ii) Solid and Liquid Waste Management Measures:
- All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze, waste diesel, kerosene and mineral spirits shall be disposed of in a proper manner and shall not at any time be disposed of in the water or gutter.
 - Containers for recyclables shall be provided on the dock to the extent of available dock space without creating a hazard and sited so that they are convenient for boaters.
 - All trash and separate containers for recyclables, oil wastes, fish wastes, etc., shall be clearly marked, have the capacity to handle all waste streams, be sited on the dock so that they are convenient for boaters, and shall be installed or placed on-site following satisfactory arrangements with Landlord for the disposition of such collected recyclables.
 - All solid waste, including sewage, shall be properly disposed of only at appropriately designated facilities.
- iii) Petroleum Control Management Measures:
- BMPs shall be implemented to minimize the potential for accidental discharges during fueling activities.
 - Oil absorbent materials should be examined at least once a year and replaced as necessary.
 - Tenant shall recycle petroleum products and oil absorbent materials, if possible, or dispose of them in accordance with hazardous waste disposal regulations.
 - Bilges of any vessels operated by Tenant shall be cleaned and maintained.
 - The use by Tenant, its agents or employees, of detergents or soaps that can be discharged by bilge pumps is prohibited.

EXHIBIT "B"

5) **BUILDING MAINTENANCE** – The facilities are adjacent to high profile tourist areas that have been the subject of substantial public and private investment and their upkeep and overall appearance are of great importance to the community. It is therefore essential that the Tenant comply with the following maintenance obligations of this Lease.

- i) Tenant shall be fully responsible for the maintenance and repair of the exterior of all building improvements.
- ii) The buildings must be maintained in a first class condition.
- iii) Tenant shall be responsible for painting the buildings and maintaining, repairing and replacing plaster, awnings, trim, doors, windows and the roof as is necessary.
- iv) Any graffiti must be removed immediately upon discovery. If Tenant fails to immediately remove the graffiti, the City reserves the right to do so, and will invoice the Tenant for its full cost of labor and materials.
- v) Tenant shall be responsible for the upkeep of the interior of the leased premises, including but not limited to maintaining, repairing and replacing the electrical, mechanical and plumbing systems and fixtures within the leased premises as necessary.
- vi) Tenant shall be responsible for keeping the area between the buildings and dock areas free of trash and debris from the Tenant's operation.

6) **DOCK AND EQUIPMENT MAINTENANCE** – The Tenant is responsible for the maintenance and repair of all equipment and the dock areas, including compliance with the following maintenance requirements, where applicable.

- i) Maintain docks in good order, repair, and condition at all times during the lease term.
- ii) Maintain adequate inventory to service customers during all hours of operation.
- iii) Maintain and repair the rub rail, cleat, dock boxes, hose bibs and utilities, and maintain, but not replace, the decking.

EXHIBIT "B"

- iv) Any structural repairs to the dock and to the gangway, to the extent repairs are needed to correct a condition caused by the Tenant. Otherwise, Landlord shall make all structural repairs to the docks, pilings, gangway and other improvements owned by Landlord.
- v) Maintenance or repair of vessels from the docks, except at the Alamitos Bay Marina fuel dock location consistent with past practice and procedure, is prohibited, where applicable. The maintenance of all berthed vessels shall follow the Long Beach Marina Rules and Regulations.
- vi) Conduct all maintenance operations of the docks in accordance with the National Pollutant Discharge Elimination Program.
- vii) No litter, debris, freestanding oil, grease, "green waste" and other materials, substances and contaminants may be washed, swept or blown into the Alamitos Bay or Shoreline Marinas. All of the above must be removed from the docks prior to washing the docks.
- viii) For washing operations, Tenant shall use potable water only and no cleaning agent(s).

Because the City has constructed the docks, the Tenant will not be responsible for any defects associated with that construction. Tank replacement, if required, shall be the responsibility of the City.

- 7) Tenant shall also adhere to all policies and procedures listed in the following two documents, copies of which may be obtained from Landlord, if and when applicable:
 - i) Shoreline Marina Fuel Dock SUSMP/WQMP; and
 - ii) Alamitos Bay Marina Fuel Dock SUSMP/WQMP