

PUBLIC SEAWALL MOORING LEASE PERMIT

P - 00299

This Public Seawall Mooring Lease Permit ("Lease Permit") is granted this 1st day of January, 2021, pursuant to Resolution No. [RES-20-0101] adopted by the City Council of the City of Long Beach ("City") at its meeting of August 18, 2020, to MARK T HERCUS or BETTY L HERCUS ("Permittee"), whose address is 156 RIVO ALTO CANAL, L.B., CA, 90803, for the limited-term private use and occupancy of public waterways located upon tidelands, as more particularly described and depicted in Exhibit "A" ("Premises"), which is attached hereto and incorporated by reference.

This Lease Permit is granted with reference to the following facts:

1. As required by the California Coastal Commission, the City has developed the Public Seawall Mooring Lease Program ("Lease Program") with rental fees established in relation to the lease area and temporal length of each lease, for the limited-term private use and occupancy of public waterways upon tidelands.

2. Permittee's Premises and associated improvements are located within areas that are subject to the Lease Program.

3. Permittee desires to enter into this Lease Permit for Permittee's limited-term private use and occupancy of public waterways upon tidelands, as described and depicted in Exhibit "A".

The use and occupancy of public waterways is hereby granted upon and subject to the following terms and conditions:

4. PREMISES. Premises as described and depicted in Exhibit "A" shall include the square footage of public waterways occupied by docks, floats, gangways, or piers, including berthing space surrounding the private structures. Berthing space is defined as waters around the edge of the structure where a vessel could be tied. The width of the berthing area extends from the outer edge of the structure to the pierhead line, as established in Section 16.08.740 of the Long Beach Municipal Code, or any amendment thereto.

5. LIMITATION ON DOCK FLOAT SIZE. In order to reduce further encroachment or development into the navigable channel, the dimensions of each dock float in the Rivo Alto Canal and Naples Canal shall be restricted to a width of six feet (6'), effective upon the earlier of: (i) at such time the docking structure is substantially repaired or replaced; or (ii) [December 31, 2023]. Each dock, and any vessels moored permanently or temporarily at the dock, must conform to all other Long Beach Marina Rules and Regulations, including but not limited to the pier head and property width guidelines as established in Sections 16.08.740 and 16.08.750 of the Long Beach Municipal Code.

6. TERM. This Lease Permit shall be valid for a period of five (5) years beginning on September 1, 2020 and expiring on August 31, 2025, unless terminated earlier as provided herein. A new permit may be issued by the City in its sole discretion upon expiration, provided the (i) Permittee is not in default of its obligations under this Lease Permit, (ii) Permittee is not in violation of any Section of Title 16 of the Long Beach Municipal Code or any Long Beach Marina Rules and Regulations, and (iii) the Premises are maintained. The City's policy is to re-issue lease permits to the upland property owner who also owns the physical structure associated with the Premises that occupy the water space.

7. RENT. Permittee shall pay to the City initial annual rent in the amount of Fifty-Seven Cents (\$0.57) per square foot of water space occupied by docks, floats, gangways, or piers, including berthing space surrounding the structures, as calculated pursuant to Resolution No. [RES-15-0072] or any successor/amended resolution. Resolution No. [RES-15-0072] and any successor/amended resolution are automatically incorporated by reference into this Lease Permit, without any further action by the parties, when adopted by the Long Beach City Council. Effective each September 1 during the term of this Permit, the rent under this Lease Permit shall increase by the percent change in the Consumer Price Index (CPI) for the immediately preceding month of May for All Urban Consumers, All Items, Base Period 1982-84=100, for the Los Angeles-Riverside-Orange County, CA area, from the month of May from the previous year, as published by

1 the United States Department of Labor, Bureau of Labor Statistics. In no event shall the
2 rent decrease during the term of this Lease Permit.

3 8. UTILITIES AND TAXES. Permittee is solely responsible for obtaining
4 all utilities and paying all taxes (including possessory interest tax, if applicable), fees and
5 assessments for the Premises or improvements located thereon.

6 9. MAINTENANCE. Permittee assumes full responsibility for operation
7 and maintenance and repair of the Premises, the physical structure associated with the
8 Premises that occupy the water space, and associated improvements throughout the term
9 of this Lease Permit at its sole cost, and without expense to the City.

10 10. LIABILITY FOR DAMAGES. Permittee waives all claims against the
11 City for damage to persons and/or property sustained by Permittee on or about Permittee's
12 vessel, dock, float, pier, gangway, or other private structures permitted in the public
13 waterways and adjacent public right-of-way. Neither the City of Long Beach nor any of its
14 officers, employees, or contractors shall be liable for such claim for damage to any persons,
15 and/or property. All property belonging to Permittee located at said location shall be there
16 at the risk of the Permittee and the City shall not be liable for damage thereto nor theft or
17 misappropriation.

18 11. INDEMNIFICATION. Permittee agrees to indemnify, defend, save
19 and keep the City of Long Beach, its officers, agents, and employees free and harmless
20 from and against any and all liability as well as from and against any and all loss, claims,
21 demands, damages, expenses and costs of whatsoever nature arising out of or in any
22 manner resulting, directly or indirectly, from Permittee's operations on or the condition, use
23 or misuse of the Premises, including liability, claims or damages to or as a result of any
24 structures or fixtures on the Premises or appurtenances to it.

25 12. TRANSFER / ASSIGNMENT. This Lease Permit does not and shall
26 not be construed as the grant, conveyance or transfer of an interest in real property. This
27 Lease Permit or any rights granted hereunder may not be transferred, sublet or assigned
28 in any manner to any party. Notwithstanding the foregoing, this Lease Permit shall be

transferred, in connection with the transfer of the fee interest in the upland real property associated with this Lease Permit, to the new owner of such upland real property.

13. COMPLIANCE WITH ALL APPLICABLE LAWS. Nothing in this Lease Permit shall be construed to excuse compliance by Permittee with any and all of the laws and ordinances of City and State; neither shall this Lease Permit be deemed to obviate the necessity of Permittee's obtaining such other permits or paying other fees as are required to repair, construct and/or maintain any physical structures, or to moor vessels in the area, including but not limited to payment of the annual inspection fee as prescribed in Section 16.08.760 of the Long Beach Municipal Code.

14. TERMINATION. This Lease Permit may be terminated by the City after notice to Permittee of Permittee's failure to observe and comply with provisions of this Lease Permit, the Long Beach Municipal Code or the Long Beach Marina Rules and Regulations (collectively, the "Applicable Regulations"). Permittee acknowledges that Permittee has read and understands the Applicable Regulations and that they are subject to change. Permittee, in Permittee's use and occupancy of the public waterways, agrees to comply with and be bound by the Applicable Regulations now in force and as hereafter changed. Notice of cancellation must be received in writing by the fifth (5th) day of a calendar month in order to be effective on the last day of that month. Upon termination of this Lease Permit, Permittee shall promptly remove all vessels, other personal property, docks and other improvements from the Premises. If Permittee fails to promptly remove all vessels, other personal property, docks or other improvements from the premises, City will remove the same and the cost of such removal will be reimbursed by Permittee.

15. PROPERTY RIGHT PROTECTION. The Premises, the physical structure associated with the Premises that occupy the water space, and associated improvements maintained under this Lease Permit are all private property and shall be protected to the maximum extent under the law from unlawful seizure.

IN WITNESS WHEREOF, the parties have caused this Lease Permit to be duly executed with all formalities required by law as of the date first written above.

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

December 22, 2020 Wm. J. Harris

"PERMITTEE"

CITY OF LONG BEACH, a municipal
corporation

4/25, 2022 By Shirley Hallenar
City Manager

"CITY"

Approved as to form this 22 day of December, 2021.

CHARLES PARKIN, City Attorney

By Att. L.
Deputy City Attorney

EXHIBIT A

