

Attachment A

Lease Agreement with West Point Investment Corporation

LEASE AGREEMENT

by and between

CITY OF NEWPORT BEACH,

a California municipal corporation and charter city

"City"

and

WEST POINT INVESTMENT CORPORATION,

a California corporation

"Tenant"

Dated as of January _____, 2020

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is made and entered into as of the ____ day of January, 2020 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a municipal corporation and charter city ("City") and WEST POINT INVESTMENT CORPORATION, a California corporation ("Tenant"). City and Tenant are at times individually referred to as "Party" and collectively as "Parties" herein.

RECITALS

A. City is the owner of certain harbor frontage and tidelands, together with certain abutting upland property commonly known as the "Balboa Yacht Basin," located at 829 Harbor Island Drive, Newport Beach, California, Assessor's Parcel Number 050-210-02. The Balboa Yacht Basin includes a public marina, public restrooms, shipyard, parking lot, garage buildings used for storage, and buildings with residential apartments, offices and a restaurant ("Property"), as legally described and further depicted on Exhibit "A" attached hereto and incorporated herein by reference. The Property includes a seven hundred ninety (790) square foot office, which is depicted on Exhibit "B" attached hereto and incorporated herein by reference ("Premises").

B. City and Tenant desire to enter into this Agreement to allow Tenant to operate an office providing real estate services with a focus on coastal communities, not to include retail sales, at the Premises.

C. Pursuant to City Council Policy F-7, the City conducted a review of recent appraisals for similar office facilities, and reviewed comparable spaces on the market for rent or lease to determine the maximum or fair market value of the highest and best use rent for the Premises.

D. The uses to be made of the Premises are consistent with provisions of the Local Coastal Plan and General Plan of the City, and the terms and conditions in this Agreement are consistent with the provisions of the City Charter and the ordinances of the City.

E. The uses to be made of the Premises are consistent with provisions of the Tideland Grant pursuant to which the City obtained title to the Property.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, City and Tenant agree as follows:

1. DEFINITIONS

1.1. General Definitions. As used in this Agreement, the following words and phrases shall have the following meanings:

- (a) Alteration – any addition or change to or modification of, the Premises made by Tenant, its employees, agents, and contractors including, without limitation, fixtures and signage.
- (b) Authorized Representative – any officer, agent, employee, or independent contractor retained or employed by either Party, acting within authority given by that Party.
- (c) Common Area – the areas immediately surrounding the Premises on the Property, which are available for non-exclusive use by City, Tenant, and other tenants and/or users.
- (d) Delivery Date – the date the City provides Tenant access to the Premises.
- (e) Expiration – the lapse of the time specified as the Term of this Agreement, including any extension of the Term resulting from the exercise of an option to extend.
- (f) Good Condition – neat and broom-clean and in substantially the same condition as of the Rent Commencement Date (reasonable wear and tear and casualty excepted), and is equivalent to similar phrases referring to physical adequacy in appearance and for use.
- (g) Hazardous Materials – shall mean any substance whose nature and/or quantity of existence, storage, use, manufacture, disposal or effect, renders such substance and/or the user thereof and/or the owner of real property affected thereby, subject to or controlled by federal, state or local law, or regulation because such substance is actually or potentially injurious or a threat to public health or welfare or to the environment; or because such substance under federal, state or local law requires remediation, removal, cleanup or other action to bring such substance any areas impacted into conformance with applicable law. Hazardous Materials may also include any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any “hazardous substances”, “hazardous wastes”, “hazardous materials” or “toxic substances” under applicable federal, state and local laws, ordinances and regulations.
- (h) Law – any judicial decision, statute, constitution, ordinance, resolution, regulation, rule, administrative order, or other requirement of any municipal, county, state, federal, or other government agency or authority having jurisdiction over the Parties and/or the Premises.
- (i) Lease Year – refers to successive twelve (12) month periods, commencing with the Effective Date of this Agreement.

- (j) Maintenance or Maintain – repairs replacement, maintenance, repainting, and cleaning.
- (k) Person – one (1) or more natural persons, or legal entities, including, without limitation, partnerships, corporations, trusts, estates, associations, or a combination of natural persons and legal entities.
- (l) Provision – any term, covenant, condition, or clause in this Agreement that defines, establishes, or limits, the performance required or permitted by either Party.
- (m) Rent – includes rent, late payment penalties, interest, taxes, and other similar monetary amounts and charges payable by Tenant under the Provisions of this Agreement.
- (n) Rent Commencement Date – the date Tenant begins paying Rent, commencing the first day of the first month following the Effective Date.
- (o) Successor – assignee, transferee, personal representative, heir, or other Person succeeding lawfully, and pursuant to the provisions of this Agreement, to the rights or obligations of either Party.
- (p) Termination – the termination of this Agreement, for any reason, prior to Expiration.

2. LEASE OF PREMISES

City leases the Premises to Tenant and Tenant leases the Premises from City for the Term and on the conditions contained in this Agreement. Tenant agrees to accept the Premises in an “as is” condition as tendered by City. Tenant agrees that no representations with respect to the condition or improvements of the Premises have been made by City except as specifically set forth in this Agreement, and are otherwise being delivered in an “as-is” condition. Tenant expressly accepts the Premises in such condition and acknowledges that City has made no representations or warranties as to the suitability of the Premises for Tenant’s use.

3. TERM

3.1. Initial Term. The “Initial Term” of this Agreement shall be five (5) years from the Effective Date and shall expire on January ____, 2025, unless extended as provided in Section 3.2 below or terminated in accordance with the other provisions of this Agreement.

3.2. Option to Extend. Provided Tenant is not then in default beyond applicable notice and cure periods, and upon approval of the City, Tenant may extend the term of this Agreement for one (1) additional term of five (5) years (“Option Term”) commencing on Expiration of the Initial Term, on the same terms and conditions as contained in this Agreement. Tenant shall exercise the extension option by giving City written notice of its

intention to do so on or before one hundred twenty (120) calendar days prior to the Expiration of the Initial Term. If exercised, the Option Term shall expire on January _____, 2030.

3.3. Terms of Lease. The "Term" is defined as the Initial Term and, if exercised, the Option Term.

3.4. Hold Over. Should Tenant, upon City's written consent, hold over and continue in possession of the Premises after Expiration of the Initial Term or the Option Term, Tenant's continued occupancy of the Premises shall be considered a month-to-month tenancy subject to termination by either Party upon thirty (30) calendar days advance notice and shall be subject to all the terms and conditions of this Agreement, except the provisions of Sections 3.1 and 3.2.

3.5. Redevelopment of Property. Should City redevelop the Property or Premises during the Term of the Agreement, or any extensions thereof, which will materially interfere with Tenant's ability to occupy the Premises, City shall provide Tenant with at least one hundred eighty (180) calendar days prior written notice of termination of this Agreement.

4. RENT

4.1. Rent. Tenant agrees to pay City for the use and occupancy of the Premises the sum of **Two Thousand Five Hundred Sixty-Seven Dollars and 50/100 (\$2,567.50) per month**, payable in advance on or before the first day of the each month. Tenant shall commence payment of Rent on the Rent Commencement Date.

4.2. Late Payment. Any payment due from Tenant to City under the provisions of this Agreement which is not paid within five (5) calendar days of the date due shall be subject to a ten percent (10%) late charge plus interest on the amount due at the rate of ten percent (10%) per annum from the date due and payable by the terms of this Agreement until the same shall be paid. All late charges and interest payments hereunder, shall, as incurred, become Rent due under this Agreement. City and Tenant agree that this late charge plus interest represents a reasonable estimate of such costs and expenses and is fair compensation to City for its loss suffered by such late payment by Tenant.

4.3. Rent Adjustments. Rent shall be adjusted annually, on the first day of each Lease Year, to reflect increases in the cost of living as indicated by the Consumer Price Index described below. Rent shall be adjusted if the Consumer Price Index for the Los Angeles – Long Beach – Anaheim, CA Area, All Urban Consumers, All Items ("Index"), as published by the United States Department of Labor, Bureau of Labor Statistics ("Bureau"), increases over the Base Period Index. The initial "Base Period Index" shall be the Index for the calendar month which is four (4) months prior to the month of the Effective Date. The initial Base Period Index shall be compared with the Index for the same calendar month for each subsequent Lease Year ("Comparison Index"). The Comparison Index used for a given year's adjustment calculation will become the Base Period Index for purposes of the next annual Rent adjustment calculation. If the

Comparison Index is higher than the Base Period Index, then Rent for the next Lease Year shall be increased by the amount of such percentage change, or two and one-half percent (2.5%), whichever is less. Should the Bureau discontinue the publication of the above Index, or publish the same less frequently, or alter the same in some other manner, then the Parties shall adopt a substitute Index or substitute procedure which reasonably reflects and monitors consumer prices. City shall notify Tenant in writing of any annual adjustment pursuant to this Section 4.3.

4.4. Payment Location. All payments of Rent shall be made in lawful money of the United States of America and shall be paid to City in person or by United States' mail, or overnight service, at the Cashier's Office located at 100 Civic Center Drive, P.O. Box 1768, Newport Beach, California, 92658, or to such other address as City may from time to time designate in writing to Tenant. If requested by City, Tenant shall make payments electronically (at www.newportbeachca.gov) or by wire transfer (at Tenant's cost). Tenant assumes all risk of loss and responsibility for late charges and delinquency rates if payments are not timely received by City regardless of the method of transmittal.

4.5. Additional Rent. Any provision in this Agreement that requires Tenant to pay additional amounts classified as "Additional Rent" shall be paid within ten (10) calendar days of City's written demand therefore (unless a different time for payment is expressly provided in this Agreement). Additional Rent does not reduce or offset Tenant's obligations to pay Rent.

5. BUSINESS PURPOSES AND USE OF PREMISES

5.1. "Approved Use". The Premises are to be used by Tenant:

- (a) For the principal operation of a coastal community real estate office, not to include any retail sales; and
- (b) Tenant may not use the Premises for any other use except with prior written consent of the City.

5.2. Operation of Premises. Tenant shall operate and manage the Premises in a manner comparable to other high quality businesses providing similar real estate services. Tenant shall not use or permit the use of the Premises in any manner that: (a) creates a nuisance; (b) violates any Law; or (c) is not in compliance with all statutes, laws, permits, use restrictions and regulations of City applicable to the Premises, Tenant, and/or Tenant's use of the Premises. Tenant assumes the risk of and shall cause all its workmen, customers and independent contractors to also comply with all laws regarding their activities at the Premises. Prior to engaging in any conduct on the Premises which is inconsistent with the terms of this Agreement, Tenant must obtain written consent from the City Manager and any required City permits and approvals.

5.3. Sales Restrictions. Tenant shall not display, sell or store merchandise outside the defined exterior walls and permanent doorways of said Premises, and no sale by auction in, upon and from said Premises, whether said auction be voluntary, involuntary, pursuant to any assignment for benefit of creditors or pursuant to any

bankruptcy or other solvency proceedings, shall be conducted except such auctions that may be conducted by officers of a court with respect to any vessels in custody of Tenant.

5.4. Advertising Display. Tenant may, at its own expense, place signs in or upon the Premises subject to the prior written consent of the City as to the size, type, design and method of installation and in compliance with the City's sign code regulations and the deed restrictions applicable to the Premises. All signage placed by Tenant on, in or about the Premises shall remain the property of Tenant and shall be removed by Tenant upon Termination or Expiration of this Agreement at Tenant's expense; and any damage caused by removal shall be repaired at Tenant's expense.

5.5. Independent Contractor. City shall have no interest in the business of Tenant, and no liability for the business operations or sales of Tenant, whether or not caused by City's enforcement of City laws and regulations which apply to the Premises and/or Tenant. Nothing in this Agreement shall be deemed to constitute approval for Tenant or any of Tenant's employees or agents, to be the agents or employees of City.

5.6. No Distress Sales. No auction, fire, bankruptcy, "going out of business" or other distress sales of any nature may be conducted on the Premises without the prior written consent of the City Manager or his/her designee.

5.7. Parking. City grants a non-exclusive right to the use of parking area(s) on the Property as noted in Exhibit "A" attached hereto and incorporated herein by reference. City reserves the right to assign parking in the future, but agrees that any such assignment of parking shall not materially diminish access to the Premises.

5.8. Smoking and Vaping. In addition to all other uses prohibited by this Agreement, smoking or vaping is prohibited on the Property and the Premises. "Smoking" means and includes inhaling, exhaling, burning, or carrying any lighted smoking equipment for tobacco or any other weed or plant. "Vaping" means and includes inhaling or exhaling any vaporized liquid or solid, usually from a battery-operated electronic device.

5.9. Balboa Yacht Basin Rules and Regulations. Tenant shall comply with the Balboa Yacht Basin Rules and Regulations attached hereto and incorporated herein as Exhibit "C", which may be amended from time to time.

6. TAXES, LICENSES AND OTHER OBLIGATIONS

6.1. Payment of Taxes. Tenant shall pay directly to the appropriate taxing authorities all taxes applicable to this Agreement, fixtures and Tenant's personal property on the Premises, that are levied or assessed against Tenant during the Term. Taxes shall be paid before delinquency and before any fine, interest or penalty is due or imposed by operation of law. Tenant shall, upon request, promptly furnish to the City satisfactory evidence of payment. City hereby gives notice to Tenant, pursuant to Revenue and Tax Code Section 107.6 that this Agreement may create a possessory interest that is the subject of property taxes levied on such interest, the payment of which taxes shall be the sole obligation of Tenant. Tenant shall advise in writing any subtenant, licensee, or third

party using the Premises of the requirements of Section 107.6. Tenant shall pay, before delinquency all taxes, assessments, license fees and other charges ("Taxes") that are levied or assessed against Tenant's interest in the Premises or any personal property installed on the Premises.

6.2. Payment of Obligations. Tenant shall promptly pay, when due, any and all bills, debts, liabilities and obligations incurred by or charged to Tenant in connection with Tenant's occupation and use of the Premises.

6.3. Challenge to Taxes. Tenant shall have the right in good faith, at its sole cost and expense, to contest the amount or legality of any Taxes including the right to apply for reduction. If Tenant seeks a reduction or contests such Taxes, Tenant's failure to pay the Taxes shall not constitute a default as long as Tenant complies with the provisions of this Section. City shall not be required to join in any proceeding or contest brought by Tenant unless the provisions of any Law require that the proceeding or contest be brought by or in the name of City or any owner of the Premises. In that case, City shall join in the proceeding or contest or permit it to be brought in City's name and if requested by Tenant, City shall execute any instrument or document necessary or advisable in connection with the proceeding or contest as long as City is not required to bear any cost nor be liable for payment of such Taxes. Tenant, on final determination of the proceeding or contest, shall immediately pay such disputed tax and also discharge any decision or judgment rendered, together with all related costs, charges, interest and penalties and provide City with a copy of Tenant's payment and the underlying bill for such Taxes being paid with Tenant's next Rent payment. Tenant shall indemnify, defend and hold harmless the City, its council members, boards, commissions, committees, officers, employees, Authorized Representatives, agents and volunteers from and against any liability, claim, demand, penalty, cost or expense (including, but not limited to, attorney's fees and judgements) arising out of or in connection with any contest by Tenant pursuant to this Section. Any such contest of Taxes by Tenant shall be concluded (meaning that such Taxes shall be fully paid or cancelled by the taxing authority) by Tenant within eighteen (18) months of starting such action, or end of the Term, if earlier.

6.4. No Rent Offset. Any payments under this Section 6 shall not reduce or offset Rent payments. City has no liability for such payments.

6.5. License. Tenant shall obtain and maintain in good standing all required licenses and permits required for operation of the business on the Premises, including but not limited to a City business license as required by the Newport Beach Municipal Code.

7. UTILITIES AND REFUSE COLLECTION

7.1. Basic Utilities. City shall pay for electricity, gas, water, and trash service. Tenant shall make all arrangements for and pay for all other utilities furnished to or used on the Premises, including, without limitation, telephone service, cable television, and janitorial service. Tenant bears all risk of interruption, cancellation and/or disruption of utility services on the Premises.

7.2. Refuse Collection. Refuse collection may occur between 7:00 a.m. and 6:00 p.m. on non-holiday weekdays.

8. ALTERATIONS TO THE PREMISES

8.1. Alterations Requiring Building Permits. Any Alteration that requires a building permit from City shall require the written consent of the City Manager or his/her designee, which shall not be unreasonably withheld so long as Tenant's Approved Use is not thereby being changed.

8.2. Non-Structural Alterations Costing Less than \$10,000. Tenant shall have the right to make, at its sole expense, such non-structural changes, Alterations, improvements and additions, costing less than \$10,000 in and to the interior of the buildings, and Tenant may install therein such trade fixtures and equipment as it may deem advisable for the conduct of its business for the Approved Use of the Premises. Any Alteration costing more than \$10,000 requires the prior written consent of the City Manager or his or her designee.

8.3. Quality of Work Performed. All work shall be performed in a good and workmanlike manner, shall substantially comply with the plans and specifications submitted to City and shall comply with all applicable governmental permits and Laws in force at the time permits are issued. All work shall be performed between 7:00 a.m. and 6:00 p.m. on non-holiday weekdays. Any contractors hired by Tenant shall be fully licensed, bonded, and insured.

8.4. Payment of Costs. Tenant shall pay all costs related to the construction of any Alterations by Tenant or its agents. Tenant shall keep the Premises free and clear of all mechanics' liens resulting from construction performed at the direction of Tenant.

8.5. Indemnification and Insurance. Tenant shall indemnify, defend, and hold harmless City, its elected or appointed officers, agents, officials, employees, and volunteers, and any person or entity owning or otherwise in legal control of the Property, except for Tenant, from any and all liability, losses, penalties, damage, costs, attorney fees, expenses, causes of action, claims, or judgments with respect to any damage or damages related to any work performed on the Premises by Tenant. Tenant's contractors and any subcontractors shall obtain insurance in an amount and form to be approved by City's Risk Manager, including workers' compensation insurance as required by law, general liability, automobile liability and builder's risk insurance covering improvements to be constructed, all pursuant to standard industry custom and practice. City, its elected or appointed officers, agents, officials, employees, volunteers, and any person or entity owning or otherwise in legal control of the property shall be named as an additional insured on the contractor's and any subcontractor's policies. City shall promptly provide Tenant with a copy of any claim filed by any third party with respect to work performed by Tenant. City has no obligation to or liability to Tenant incident to City's approval of Tenant's plans or issuance of permits for any improvements to the Premises.

8.6. Disposition of Alterations at Expiration or Termination. Any Alterations made to the Premises shall remain on, and be surrendered with, the Premises on

Expiration or Termination of this Agreement (excluding Tenant's fixtures, equipment, furniture, and movable decorations). However, City may elect, not less than thirty (30) calendar days prior to Expiration or Termination of this Agreement, to require Tenant to remove, at Tenant's sole cost, any Alterations that Tenant has made to the Premises, except those Alterations existing as of the Effective Date of this Agreement or approved by City. If City requires removal of Alterations, Tenant shall, at its sole cost, remove the Alterations and restore the Premises to its condition prior to installation of such Alterations, ordinary wear and tear excepted, before the last day of the Term, or within thirty (30) calendar days after notice is given, whichever is later. Prior to Expiration or within fifteen (15) calendar days after Termination of this Agreement, Tenant may remove any movable partitions, machinery, equipment, furniture, and trade fixtures previously installed by and solely paid for by Tenant, provided that Tenant repairs any damage to the Premises cause by removal and the structural future of the foundation and bulkhead areas of the Premises are not thereby worsened by such Tenant removal.

9. REPAIRS AND MAINTENANCE OF PREMISES

9.1. Maintenance and Repair by Tenant and City. Tenant agrees that it shall keep the non-structural portion of the Premises in Good Condition throughout the Term at its sole cost, and without expense to the City. City may perform Maintenance or repairs in the event Tenant fails to commence required Maintenance or repairs within the time provided by City in the written notice requesting such maintenance or repair (which shall not be less than five (5) calendar days unless and in case of emergency or urgent situation). Absent an emergency or urgent situation, should the Maintenance or repair required by the City's written notice require more than five (5) calendar days to commence or complete, Tenant must provide City with adequate assurance of due performance within five (5) calendar days of receipt of City's written notice requesting such Maintenance or repair or City may commence such requested repairs or Maintenance. The cost of any Maintenance or repairs by the City pursuant to this Subsection shall be payable as Additional Rent upon billing by City with the Tenant's next monthly Rent payment.

9.2 Entry by City. City and its Authorized Representatives may enter upon and inspect the Premises at any reasonable time for any lawful purpose. In case of emergency, City or its Authorized Representatives may enter the Premises by the master key if Tenant is not present to open and permit an entry. During entry, City and its Authorized Representatives shall exercise reasonable care relative to the Premises and to Tenant's property. Any entry to the Premises by City shall not be construed as a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof.

10. LIENS

Tenant shall not permit to be enforced against said Premises, or any part thereof, any mechanics', materialman's, contractors' or other liens arising from, or any claims for damages growing out of, any work or repair or Alteration (except from the actions of City),

and Tenant shall pay or cause to be paid said liens and claims before any action is brought to enforce the same against Tenant or the Premises, or shall adequately indemnify City and the Premises by payment bonds acceptable to City and as provided for by Law. Tenant agrees to protect, defend, indemnify and hold harmless City and hold the Premises free and harmless from all liability for any and all such liens and claims and all costs and expenses in connection therewith. Tenant shall give City notice in writing before commencing construction of any kind on the Premises and provide any additional Tenant insurance required by this Agreement.

11. INDEMNITY AND EXCULPATION; INSURANCE

11.1. Hold Harmless Clause. Tenant agrees to indemnify, defend and hold harmless the City, its Council, Boards, Commissions, Committees, officers, agents, officials, employees, volunteers and any person or entity owning or otherwise in legal control of the Property, excluding Tenant, (collectively the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, actions, causes of action, suits, judgments, fines, penalties, liabilities, losses, damages, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to this Agreement, the Tenant, Tenant's employees, contractors or subcontractors, or agents on the Premises, or the occupation and use of the Premises, specifically including, but not limited to, any claim, liability, loss, or damage arising by and Tenant assumes all corresponding risk because of:

- (a) The death or injury of any Person caused or allegedly caused by the condition of the Premises or an act or omission of Tenant or an agent, contractor, employee, servant, sublessee or concessionaire of Tenant;
- (b) Any work performed on the Premises or materials furnished to the Premises at the request of Tenant or any agent or employee of Tenant, with the exception of Maintenance performed by City; or
- (c) Tenant's failure to perform any provision of this Agreement or to comply with any requirement of Law or any requirement imposed on the Premises by any duly authorized governmental agency or political subdivision.

Tenant's obligation pursuant to this subsection shall not extend to any claim, loss, liability, damages, costs or fees that are proximately caused by the sole gross negligence, willful misconduct, or unlawful or fraudulent conduct on the part of the Indemnified Parties.

11.2. Exculpation of City. Except as otherwise expressly provided in this Agreement, City shall not be liable to Tenant for any damage to Tenant or Tenant's property goodwill, increased Tenant operating costs, or loss of business or income by Tenant from any cause other than the sole gross negligence or willful acts of the Indemnified Parties. Except as otherwise expressly provided in this Agreement, Tenant

waives all claims against the Indemnified Parties for damages arising for any reason other than the sole gross negligence or willful acts of the Indemnified Parties. City shall not be liable to Tenant for any damage to the Premises, Tenant's property, Tenant's goodwill, or Tenant's business income, caused in whole or in part by acts of nature including, without limitation, waves, wind and tidal flows.

11.3 Insurance. Tenant shall maintain insurance in the types and amounts specified in Exhibit "D," attached hereto and incorporated herein by this reference.

12. DAMAGE OR DESTRUCTION OF PREMISES

12.1. Destruction of Premises. If the Premises are totally or partially destroyed, rendering the Premises or any portion thereof totally or partially inaccessible or unusable, Tenant shall restore the Premises, at Tenant's sole cost and effort, to substantially the same condition as immediately prior to such destruction (including all trade fixtures, personal property, improvements and Alterations as are installed by Tenant, which shall be replaced by Tenant at its expense). Alternatively, Tenant may elect to terminate this Agreement, provided the damage was not caused by Tenant, without any liability from the City, by giving written notice of such election to City within sixty (60) calendar days after the date of the occurrence of any casualty if the cost of the restoration exceeds the amount of any available insurance proceeds, if the damage has been caused by an uninsured casualty or event, or if Tenant reasonably estimates that repairs of the Premises will take more than six (6) months. Upon such termination, insurance proceeds applicable to reconstruction of the Premises (excluding Tenant's personal property therein) shall be paid to City and Tenant shall have no further liability or obligations, excluding any indemnification or hold harmless provisions under this Agreement.

12.2. Replacement of Tenant's Property. In the event of the damage or destruction of improvements located on the Premises not giving rise to Tenant's option to terminate this Agreement, Tenant shall, at its own expense, replace and repair all Tenant's trade fixtures, equipment, machinery, furnishings, furniture and inventory as soon as reasonably possible to permit the prompt continuation of Tenant's business at the Premises for the Approved Use.

12.3. Destruction of Property. In the event that all or a portion of the Property or access to the Property in areas to be maintained by the City either under this Agreement or because City owns such other areas, is damaged, deteriorates or destroyed by fire or any other casualty not attributable to Tenant nor covered by Tenant insurance and as a result the Premises or a material portion of the Premises becomes inaccessible or commercially unusable for the Approved Use, and the damage or destruction cannot reasonably be repaired within twelve (12) months after the date of the casualty, City shall have the right, by notice to Tenant within sixty (60) calendar days of such casualty, to either:

- (a) Terminate this Agreement by giving Tenant written notice (which notice shall be given, if at all, within thirty (30) calendar days following

the date of the casualty), in which case this Agreement shall be terminated thirty (30) calendar days following such City notice;

- (b) Confirm City's intention to repair such damage as soon as reasonably possible at City's expense, in which event this Agreement shall continue in full force and effect; however, Rent shall be abated in accordance with the procedures set forth in Section 13, below. Tenant may terminate this Agreement by giving City written notice at any time prior to the commencement of repairs if City agrees to repair the Property pursuant to this Section 12.3(b) and City fails to commence repairs within one hundred twenty (120) calendar days after giving Tenant written notice of its intention to repair. In such event, this Agreement shall terminate as of the date of notice from Tenant to City, and City shall have no further liability to Tenant under this Agreement; or
- (c) City has no liability to Tenant concerning such casualty or City election to repair or not repair except solely arising under Section 12.1, above.

13. ABATEMENT OF RENT

General Rule. In the event of damage or destruction of the Premises or damage to the Property that impacts the Premises and this Agreement is not terminated, Tenant shall continue to utilize the Premises for the operation of its business for the Approved Use to the extent it may be practicable and commercially reasonable. Rent shall abate in proportion to the area of the Premises that is rendered unusable for the Approved Use. The abatement of Rent shall commence on the date that use of the Premises is impacted and continue until the completion of those repairs necessary to restore full use of the Premises and Tenant's re-opening of the Premises. Tenant's obligation to pay taxes, assessments, license fees and other charges pursuant to this Agreement shall not be abated or reduced. Rent shall not abate if the damage or destruction to the Premises is the result of the negligence or willful act or omission of Tenant or its employees, officers, or agents. Tenant's right to abatement of Rent is contingent on payment of insurance proceeds, if any, equal to the amount of Rent pursuant to coverage required by Section 11, above.

14. PROHIBITION AGAINST VOLUNTARY ASSIGNMENT, SUBLETTING AND ENCUMBERING

14.1. Prohibition of Assignment. City and Tenant acknowledge that City is entering into this Agreement in reliance upon the business experience and abilities of Tenant to operate the Premises for the Approved Use. Consequently, Tenant shall not voluntarily delegate, assign or encumber its interest in this Agreement or in the Premises, or sublease substantially all or any part of the Premises, or allow any other person or entity to occupy or use all or any part of the Premises without the prior written consent of

City. City's consent to any assignment or other transfer is subject to Tenant providing City with evidence reasonably satisfactory to City that the: (a) proposed transferee has financial strength and experience comparable to Tenant; (b) the use of the Premises by the proposed transferee is consistent with the terms of this Agreement and is for the Approved Use or a use approved by the City; (c) proposed transferee agrees to assume all current and future Tenant obligations and agrees that the City is not in default of the Agreement; and (d) Tenant is not then in material default of this Agreement. Except as otherwise expressly provided herein, any dissolution, merger, consolidation, reorganization of Tenant, or the sale or other transfer resulting in a transfer of a controlling percentage of the capital stock of Tenant, shall be deemed a voluntary assignment requiring City's consent above. However, the sale or transfer of a controlling percentage of the capital stock of Tenant pursuant to a public offering(s) of equity or debt instruments issued by Tenant, or other transfers of publicly traded capital stock or debt instruments shall not constitute a voluntary assignment and shall not require City's consent or approval if there is no change in the management of Tenant's business and if such successor otherwise maintains the Approved Use and satisfies the prior experience and business expertise tests above and is at least as creditworthy as Tenant at the time this Agreement is signed. The phrase "controlling percentage" means the ownership of, or the right to vote, stock possession of at least fifty percent (50%) of the total combined voting power of all classes of Tenant's capital stock issued, outstanding, and entitled to vote for the election of directors, except for ownership of publicly traded shares, warrants or similar equity interests in Tenant traded on a national exchange or over-the-counter markets.

14.2. Exceptions. Notwithstanding the foregoing paragraphs or anything to the contrary contained herein, City's consent shall not be required for a transfer or assignment of any stock or interest by a shareholder or member if the Approved Use of the Premises is maintained, if such transfer is to a spouse, children or grandchildren or an assignment or subletting to an Affiliate, Subsidiary, or Successor of Tenant defined as follows:

- (a) An "Affiliate" is any corporation or other entity which directly or indirectly controls or is controlled or is under common control with Tenant (for purposes of this Section, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation or other entity, whether through the ownership of voting securities or by contract or otherwise);
- (b) A "Subsidiary" shall mean any corporation or other entity not less than twenty five percent (25%) of whose outstanding stock shall, at the time, be owned directly or indirectly by Tenant and which is at least as creditworthy as Tenant; and
- (c) A "Successor" shall mean a corporation or other entity in which or with which Tenant is merged or consolidated, in accordance with applicable statutory provisions for merger or consolidation of

corporations or a corporation or other entity acquiring a substantial portion of the property and assets of Tenant.

14.3. Continuing Effect. City's consent to any assignment, encumbrance, or sublease shall not relieve Tenant from its obligations or liabilities under this Agreement nor act as a waiver of the requirement that such consent be obtained to any subsequent assignment, encumbrance or sublease.

15. TENANT'S DEFAULT/CITY'S REMEDIES

15.1. Default by Tenant. The occurrence of any one (1) or more of the following events shall constitute a default and material breach of this Agreement by Tenant:

- (a) Failure of Tenant to pay Rent or any other payment required by this Agreement, as and when due, when such failure shall continue for a period of ten (10) calendar days after written notice of default from City to Tenant;
- (b) Except as specified in 15.1(a) above, the failure of Tenant to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by Tenant where such failure shall continue for a period of thirty (30) calendar days after written notice thereof from City to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) calendar days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) calendar day period and thereafter diligently prosecutes such cure to completion;
- (c) Tenant becomes a "debtor" as defined in 11 U.S.C. Section 101 or any successor statute thereto, or should any adjudications in bankruptcy be rendered against Tenant, or should Tenant take or have taken against it, in any court pursuant to any statute either of the United States or of any State, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's property, and should the same not be dismissed within sixty (60) calendar days thereafter;
- (d) The making by Tenant of any general arrangement or assignment for the benefit of creditors;
- (e) The vacating or abandonment of the Premises by Tenant for a period of thirty (30) successive calendar days, without the prior written permission of the City's Authorized Representative; excluding closures caused by any force majeure, casualty, or condemnation, or by remodeling, reconstruction, alteration, repairs or permitted closures set forth under this Agreement);

- (f) The appointment of a trustee or receiver to take possession of substantially all of the assets of Tenant's assets located at the Premises or of Tenant's interest in this Agreement, where such appointment is not discharged within sixty (60) calendar days; or
- (g) The attachment, execution or the judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in the Agreement, where such seizure is not discharged within sixty (60) calendar days.

15.2. Remedies.

- (a) Cumulative Nature of Remedies. If any default by Tenant shall continue without cure beyond the time permitted under this Agreement, City shall have the remedies described in this Section in addition to all other rights and remedies provided by law or equity, to which City may resort to cumulatively or in the alternative.
- (b) Re-entry without Termination. City may re-enter the Premises, and, without terminating this Agreement, re-let all or a portion of the Premises. City may execute any agreements made under this provision in City's name and shall be entitled to all rents from the use, operation, or occupancy of the Premises. Tenant shall nevertheless pay to City on the dates specified in this Agreement the equivalent of all sums required of Tenant under this Agreement, plus City's expenses in conjunction with re-letting, less the proceeds of any re-letting or atonement. No act by or on behalf of City under this provision shall constitute a termination of this Agreement unless City gives Tenant specific written notice of termination.
- (c) Termination Agreement. City may terminate this Agreement by giving Tenant written notice of termination with a specified termination date. In the event City terminates this Agreement, City may recover possession of the Premises (which Tenant shall surrender and vacate upon demand) and remove all persons and property. City shall be entitled to recover the following as damages:

15.2.c.1. The value of any unpaid Rent or other charges that are unpaid at the time of Termination;

15.2.c.2. The value of the Rent and other charges that would have accrued after termination less the amount of Rent and charges the City received or could have received through the exercise of reasonable diligence as of the date of the award, provided, however, that City shall use its best efforts to re-lease the Premises and upon the City's re-leasing the

Premises Tenant shall be released from all further liability for Rent and other charges that would have accrued after termination;

15.2.c.3. Any other amount necessary to reasonably compensate City for the detriment proximately caused by Tenant's failure to perform its obligations under this Agreement; and

15.2.c.4. At City's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time-to-time by applicable California law. City shall be entitled to interest at the rate of ten percent (10%) per annum on all Rent and other charges from the date due or the date they would have accrued. City shall also be entitled to an award of the costs and expenses incurred by City in maintaining or preserving the Premises after default, preparing the Premises for re-letting, or repairing any damage caused by an act or omission of Tenant.

15.2.c.5. City may exercise any other right or remedy which City may have at law or equity.

15.3. Use of Tenant's Personal Property. In the event Tenant is in default past applicable notice and cure periods, City may use Tenant's personal property and any trade fixtures located on the Premises or any of such property and fixtures without compensation or liability to Tenant for use or damage. In the alternative, City may store the property and fixtures at the cost of Tenant.

15.4. City's Right to Cure Tenant's Default. Upon continuance of any default beyond applicable notice and cure periods, City may, but is not obligated to, cure the default at Tenant's cost. If City pays any money or performs any act required of, but not paid or performed by, Tenant after notice, the payment and/or the reasonable cost of performance shall be due as Additional Rent not later than ten (10) calendar days after service of a written demand accompanied by supporting documentation upon Tenant. No such payment or act shall constitute a waiver of default or of any remedy for default or render City liable for any loss or damage resulting from performance.

15.5. Waiver of Rights. Tenant waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 or 1179, or under any other present or future law, in the event Tenant is evicted or City takes possession of the Premises by reason of any default by Tenant.

16. CONDEMNATION

16.1. Termination of the Agreement. Tenant or the City shall have the right to terminate this Agreement as of the date a public agency with lawful authority to condemn obtains possession or title to ten percent (10%), or more of the land area at the Premises, or the condemnation materially affects the conduct of Tenant's business in the Premises, or the Premises will no longer be suitable for the conduct of Tenant's business for the Approved Use. In the event of Termination pursuant to this subsection, Rent shall be prorated to the date of Termination, any unearned Rent shall be refunded to Tenant and Tenant shall have no further obligations under this Agreement. Tenant shall not grant a right of entry to any condemnor without the written consent of City.

16.2. No Termination of Agreement. If this Agreement is not terminated under Section 16.1, above, then this Agreement shall terminate as to the portion of the Premises taken upon the date which possession of said portion is taken, but this Agreement shall continue in force and effect as to the remainder of the Premises. Tenant shall, in the event of a taking of any portion of the Premises, be entitled to a reduction in the Rent in reasonable proportion to the area of the Premises so taken verses its impact on Tenant's continued operations for the Approved Use.

16.3. Allocation of Award. In the event that an award is made for an entire or partial taking or for damage to the Premises or any interest therein in any action in direct or inverse condemnation or in the event of a taking under the power of eminent domain, the Parties hereto agree that their respective rights to the award or compensation paid shall be as follows:

- (a) City shall be entitled to that Portion of the award received for the taking of the real property within the Premises, the value of this leasehold, including all buildings and other improvements to which City is entitled on Expiration or Termination of this Agreement, and for severance damages.
- (b) Tenant shall be entitled to any award that may be made for the taking of or injury to Tenant's business and profits, including any amount attributable to Tenant's personal property, fixtures, installations, or improvements in or on the Premises, Tenant's relocation expenses, but excluding any "bonus value" attributable to this Agreement.
- (c) Any interest payable on the total award shall be divided between City and Tenant in the same ratio as are the awards granted to them pursuant to the other provisions of this Section.

17. SUBJECT TO STATE LANDS COMMISSION GRANT

The Premises are located on property that may be the subject of a grant from the State of California to the City that is administered by the State Lands Commission. Tenant

shall not take any action that would cause the City to be in violation of any provisions of that grant. If the State Lands Commission terminates this grant for any reason or prevents the Premises from being used for the Approved Use, this Agreement terminates as a result and the Parties shall be released from all liabilities and obligations, excluding any outstanding Rent, indemnification or hold harmless provisions, under this Agreement.

18. WASTE OR NUISANCE

Tenant shall not commit or permit the commission of any waste on the Premises. Tenant shall not maintain, commit, or permit any nuisance as defined in Section 3479 of the California Civil Code on the Premises. Tenant shall not use or permit the use of the Premises for any unlawful purpose.

19. NO CONFLICTS OF USE, HAZARDOUS MATERIALS

Tenant shall not use, occupy or permit any portion of the Premises or Property to be used or occupied in violation of any Law. City represents and warrants that, to the best of City's knowledge: (i) Tenant's use of the Premises does not conflict with applicable Laws, and City knows of no reason why Tenant would be unable to obtain all required permits, licenses and approvals from the appropriate governmental authorities; (ii) the Premises is not in violation of any environmental laws, rules, or regulations and Tenant's contemplated uses will not cause any such violation; and (iii) the Premises is free of any and all Hazardous Materials as of the Delivery Date. In the event that the presence of any Hazardous Materials not caused by Tenant is detected at the Property at any time during the Term of this Agreement and any Option Term, all remedial work shall be performed by City at City's expense. Tenant's obligation to pay Rent shall be abated pursuant to Section 13 to the extent Tenant is unable to conduct its business upon the Premises as a result of any remedial work that is performed subsequent to Tenant opening for business. Tenant shall have the right (but not the obligation) to terminate this Agreement, upon thirty (30) calendar days advance written notice to City in the event that Hazardous Materials, not caused by Tenant, are detected at the Premises and the presence or the remediation materially affects Tenant's ability to conduct its business at the Premises.

20. EVENT OF BANKRUPTCY

20.1. Assignment. If this Agreement is assigned to any Person or entity pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. Sections 101 *et seq.* or any similar or successor statute ("Bankruptcy Code"), any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to City, shall be and remain the exclusive property of City and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any and all monies or other consideration constituting City's property under this Section not paid or delivered to City shall be held in trust for the benefit of City and be promptly paid or delivered to City.

20.2. Assumption of Obligations. Any Person or entity to which this Agreement is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Agreement and any Amendments on and after the date of such assignment.

21. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give shall be in writing and shall be deemed given three (3) calendar days after deposit with the United States Postal Service, postage prepaid, by registered or certified mail, return receipt requested or upon delivery if personally served. Unless notice of a different address has been given in accordance with this Section, all notices shall be addressed as follows:

If to City:	City of Newport Beach Attention: Real Property Administrator 100 Civic Center Drive P.O. Box 1768 Newport Beach, CA 92658
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If to Tenant:	West Point Investment Corporation Kevin Hayes 829 Harbor Island Drive, Suite D1 Newport Beach, CA 92660
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22. SURRENDER OF PREMISES

At the expiration or earlier termination of this Agreement, Tenant shall surrender, at no cost to City, the possession of the Premises. Tenant shall leave the surrendered Premises, required personal property and fixtures in good and broom-clean condition, reasonable wear and tear excepted. All property that Tenant is not required to surrender, but that Tenant does abandon shall, at City's election, become City's property at expiration or termination. City shall owe no compensation to Tenant for any personal property or fixtures left at the Premises by Tenant more than fifteen (15) calendar days after the expiration or termination of this Agreement.

23. COMPLIANCE WITH ALL LAWS

Tenant shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted and relating in any way to the Premises and/or this Agreement.

24. WAIVERS

The waiver by either party of any breach or violation of any term, covenant or condition of this Agreement, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation, or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, condition or covenant of this Agreement, or any applicable law, ordinance or regulation.

25. SEVERABILITY

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

26. CONFLICT

In case of conflict, the more specific provision of this Agreement shall control. If any conflicts arise between the terms and conditions of this Agreement, and the terms and conditions of the attached exhibits or the documents expressly incorporated by reference, the terms and conditions of this Agreement shall control.

27. APPLICABLE LAW

This Agreement shall be construed in accordance with the laws of the State of California. Any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

28. ENTIRE AGREEMENT; AMENDMENTS

28.1. The terms and conditions of this Agreement, all exhibits attached, and all documents expressly incorporated by reference, represent the entire agreement of the parties with respect to the subject matter of this Agreement.

28.2. This Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between Tenant and City.

28.3. No other agreement, promise or statement, written or oral, relating to the subject matter of this Agreement, shall be valid or binding, except by way of a written amendment to this Agreement.

28.4. The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by Tenant and the Authorized City Representative and approved as to form by the City Attorney.

28.5. Any obligation of the parties relating to monies owed, as well as those provisions relating to limitations on liability and actions, shall survive termination or expiration of this Agreement.

28.6. Each party has relied on its own inspection of the Premises and examination of this Agreement, the counsel of its own advisors, and the warranties, representations, and covenants in this Agreement. The failure or refusal of either party to inspect the Premises, to read this Agreement or other documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection, or advice.

29. TIME IS OF THE ESSENCE

Time is of the essence for this Agreement.

30. SUCCESSORS

Subject to the provisions of this Agreement on assignment and subletting, each and all of the covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns, and personal representatives of the respective parties.

31. INTERPRETATION

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

32. HEADINGS

The captions of the various sections of this Agreement are for convenience and ease of reference only and do not define, limit augment, or describe the scope, content, or intent of this Agreement.

33. NO BROKERS

Each party warrants to and for the benefit of the other than it has had no dealings with any real estate broker or other agent (attorneys excepted) in connection with the negotiation or making of this Agreement, and that no commission, fee or other compensation is owed regarding this Agreement by such other Party.

34. GENDER; NUMBER

The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the neuter, and each includes

corporation, partnership, or other legal entity whenever the context requires. The singular number includes the plural whenever the context so requires.

35. EXHIBITS

All exhibits to which reference is made in this Agreement are incorporated by reference. Any reference to "this Agreement" includes matters incorporated by reference.

36. CITY BUSINESS LICENSE

Tenant shall obtain and maintain during the duration of this Agreement, a City business license as required by the Newport Beach Municipal Code.

37. NO ATTORNEYS' FEES

The prevailing party in any action brought to enforce the terms and conditions of this Agreement, or arising out of the performance of this Agreement, shall not be entitled to recover its attorneys' fees.

38. NONDISCRIMINATION

Tenant, for itself and its successors, agrees that in the performance under this Agreement, Tenant shall not discriminate against any person because of the marital status or ancestry, gender, sexual orientation, etc. of that person or any characteristic listed or defined in Section 11135 of the Government Code.

39. MEMORANDUM OF LEASE AGREEMENT

A Memorandum of Lease Agreement, in a form and content similar to that contained in Exhibit "E" shall be recorded by the parties promptly upon execution of this Agreement. Upon execution by both parties, the Memorandum of Lease Agreement shall be recorded against the Premises in the office of the Orange County Clerk-Recorder, as required by Government Code Section 37393.

40. NO THIRD PARTY BENEFICIARIES

City (both as a lessor and as the City of Newport Beach) and Tenant do not intend, by any provision of this Agreement, to create in any third party, any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other party.

41. LAWS

It shall be the obligation of Tenant to comply with all laws, statutes, rules, and regulations relating in any way to the Premises including, but not limited to, State of California labor laws, rules and regulations and the parties agree that the City shall not

be liable for any violation by Tenant (or Tenant's agent, sublessee or any party affiliated with Tenant) thereof.

42. NO DAMAGES

Tenant acknowledges that City would not enter this Agreement if it were to be liable for damages (including, but not limited to, actual damages, economic damages, consequential damages, lost profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use) under, or relating to, this Agreement or any of the matters referred to in this Agreement, including, without limitation, any and all plans, permits, licenses or regulatory approvals, and CEQA documents. Accordingly, Tenant covenants and agrees, except as otherwise provided herein, on behalf of itself and its successors and assigns, not to sue City (either in its capacity as lessor in this Agreement or in its capacity as the City of Newport Beach) for damages (including, but not limited to, actual damages, economic damages, consequential damages, lost profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use) or monetary relief for any breach of this Agreement by City or for any dispute, controversy, or issue between City and Tenant arising out of or connected with this Agreement or any of the matters referred to in this Agreement, including, without limitation, any and all plans, permits, licenses or regulatory approvals, CEQA documents, or any future amendments or enactments thereto, and the parties expressly agree that declaratory relief, injunctive relief, mandate and specific performance shall be Tenant's sole and exclusive judicial remedies.

43. GOVERNMENT CLAIMS ACT

Tenant and City agree that in addition to any claims filing or notice requirements in this Agreement, Tenant shall file any claim that Tenant may have against City in strict conformance with the Government Claims Act (Government Code sections 900 *et seq.*), or any successor statute.

44. COUNTERPARTS

This agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 1/2/20

By: 
Aaron C. Harp
City Attorney
*01-02-20
AH*

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Grace K. Leung
City Manager

**TENANT: WEST POINT INVESTMENT
CORPORATION**, a California corporation

Date: _____

By: _____
Kevin John Hayes
Chief Executive Officer/
Chief Financial Officer

Attachments: Exhibit A – Property Legal Description and Depiction
Exhibit B – Premises Depiction
Exhibit C – Balboa Yacht Basin Rules and Regulations
Exhibit D – Insurance Requirements
Exhibit E – Memorandum of Lease


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: 1/2/20

Date: _____

By: 
Aaron C. Harp
City Attorney
*01.02.20
CHM*

By: _____
Grace K. Leung
City Manager


ATTEST:

TENANT: WEST POINT INVESTMENT
CORPORATION, a California corporation

Date: _____

Date: JANUARY 3, 2020

By: _____
Leilani I. Brown
City Clerk

By: 
Kevin John Hayes
Chief Executive Officer/
Chief Financial Officer

Attachments: Exhibit A – Property Legal Description and Depiction
Exhibit B – Premises Depiction
Exhibit C – Balboa Yacht Basin Rules and Regulations
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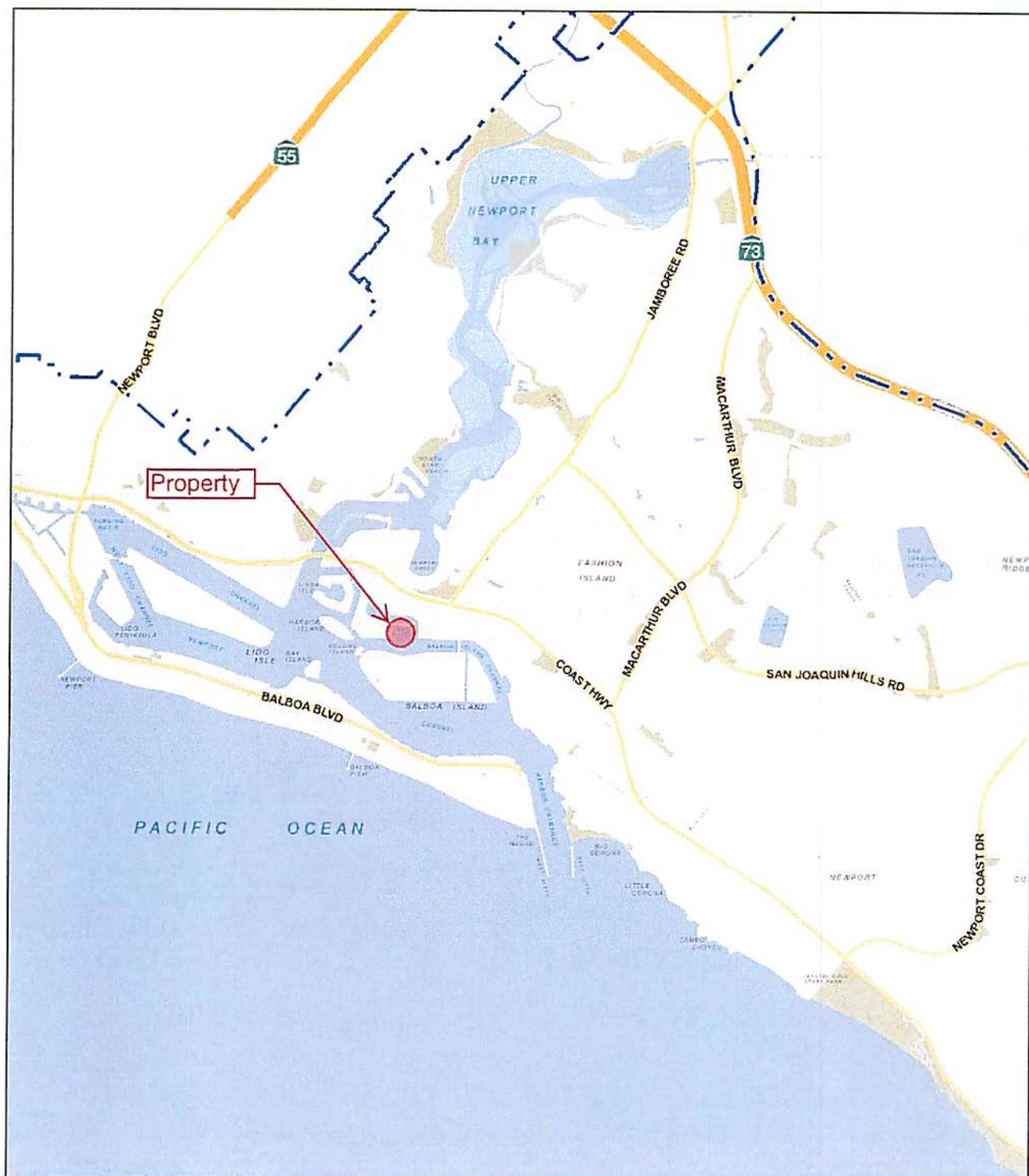
EXHIBIT "A"
Property Legal Description and Depiction

EXHIBIT "A"

Property Legal Description and Depiction

A parcel of land situated in the Northwest quarter (NW 1/4) of Section Thirty Five (35), Township Six (6) South, Range Ten (10) West, S.B.B. & M., Orange County, California, more particularly described as follows, to-wit:

Beginning at a point in the U.S. Bulkhead line between Station No. 200 and Station No. 101 as shown upon a map entitled "Harbor Lines, Newport Bay Harbor, California," approved May 2, 1936, by the Secretary of War, and on file in the office of the U.S. District Engineer at Los Angeles, California, said point of beginning being East 754.25 feet of said bulkhead Station No. 200, running thence North 424.71 feet to a point in the Northerly line of that certain parcel of land conveyed to City of Newport Beach by the Irvine Company, as described in a deed recorded September 25, 1929, in Book 306, Page 375, of official records of Orange County, California; thence South 85° 43' East 772.15 feet to the Northeasterly corner of the last mentioned parcel of land; thence South along the Easterly line of the last mentioned parcel of land 367.01 feet to a point in said U.S. Bulkhead line between Station No. 200 and Station No. 101, thence West along said bulkhead line 770 feet to the point of beginning, containing approximately seven (7) acres.



Newport
Beach
GIS



0 4,456 8,912
Feet

Disclaimer: Every reasonable effort has been made to assure the accuracy of the data provided, however, The City of Newport Beach and its employees and agents disclaim any and all responsibility from or relating to any results obtained in its use.

Imagery: 2009-2011 photos provided by Eagle Imaging www.eagleaerial.com

11/7/2013



Newport
Beach
GIS

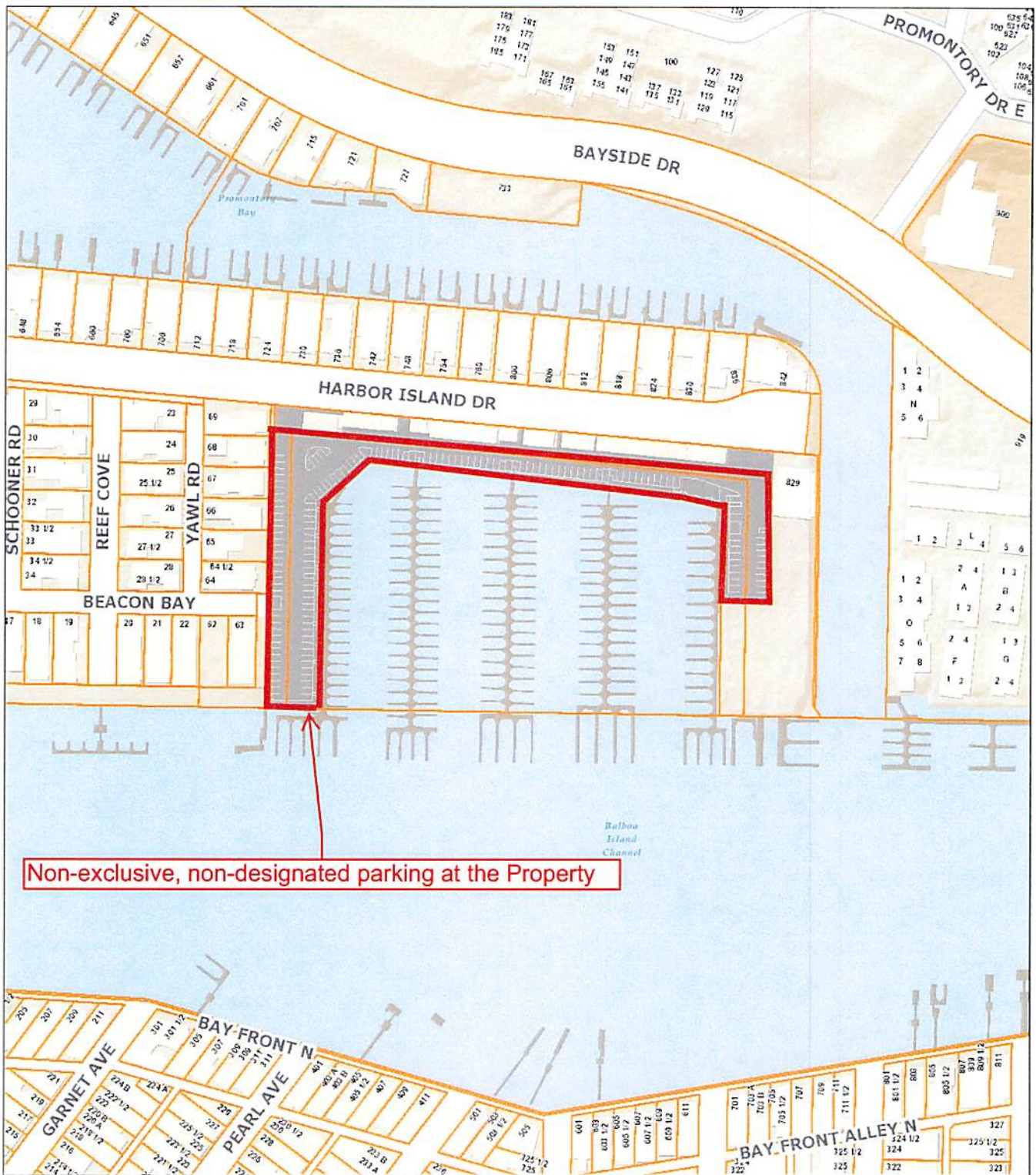


0 417 833
Feet

Disclaimer: Every reasonable effort has been made to assure the accuracy of the data provided, however, The City of Newport Beach and its employees and agents disclaim any and all responsibility from or relating to any results obtained in its use.

Imagery: 2009-2013 photos provided by Eagle Imaging www.eagleaerial.com

4/12/2016



Non-exclusive, non-designated parking at the Property

Newport
Beach
GIS



0 200 400
Feet

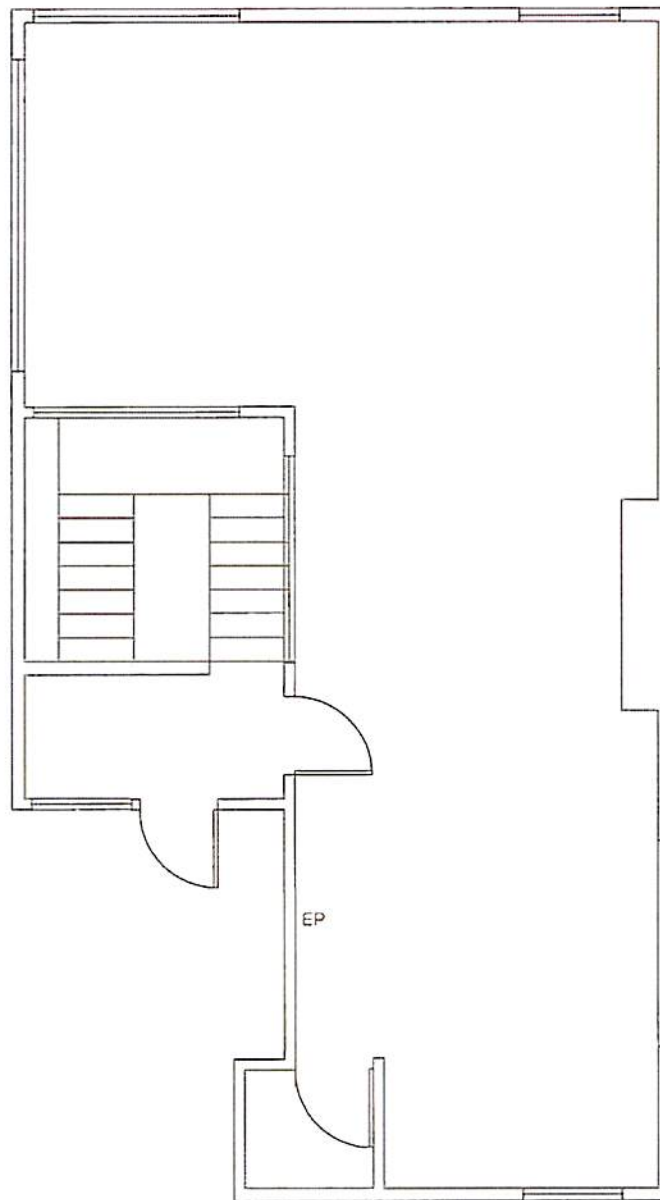
Disclaimer: Every reasonable effort has been made to assure the accuracy of the data provided, however, The City of Newport Beach and its employees and agents disclaim any and all responsibility from or relating to any results obtained in its use.

Imagery: 2009-2013 photos provided by Eagle Imaging www.eagleaerial.com

10/5/2016

EXHIBIT “B”
Premises’ Depiction

EXHIBIT B

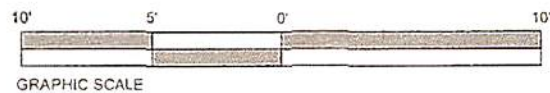


Office

RSF: 790 sf

SCALE: 1/2" = 1'-0"

SHEET SIZE: 11x17



1614

829 Harbor Island Drive
Newport Beach, CA



WorkspacePlans

kim@workspaceplans.com jill@workspaceplans.com

EXHIBIT "C"
Balboa Yacht Basin Rules and Regulations



BALBOA YACHT BASIN
829 Harbor Island Drive
Newport Beach, CA 92660
(949) 673-0360

Rules and Regulations

When a boat enters the Balboa Yacht Basin ("BYB"), it immediately comes under the jurisdiction of BYB and shall be berthed only where ordered and maneuvered as directed. Vessels may be relocated within BYB at City's discretion. The City ordinances, rules and regulations, summarized herein and as amended from time to time, and all other regulations established by regulatory bodies having jurisdiction at BYB, shall form a part of all Slip Rental Agreements as though printed thereon.

The Balboa Yacht Basin is owned by the City of Newport Beach ("City") and managed by Basin Marine Inc., located onsite at 829 Harbor Island Drive.

There is no warranty of any kind as to the condition of the floats, walks, gangways, ramps or mooring gear, nor shall City be responsible therefore, or for injuries to persons or property occurring thereon or for any other reason, whether herein specifically stated or not.

1. No Vessel may be moored at the BYB unless a current Slip Rental Agreement or Temporary Slip Rental Agreement (collectively, the "Agreements") is in effect between Vessel Owner and City. All defined terms herein shall have the same meaning as in the Agreements.
2. Only the Vessel described in the Agreements and registered to Vessel Owner may occupy the assigned Slip. Only one boat is permitted to occupy a slip at any one time, unless otherwise approved by the Marina Manager.
3. Use of boats moored at BYB for unauthorized commercial purposes is prohibited.
4. No major repairs or complete overhauls shall be made on boats in BYB. Extent of the permitted repairs shall be at the discretion of the City. Disc sanding and spray painting are strictly forbidden.
5. Supplies, materials, accessories or gear of all kinds shall not be stored within BYB except in approved lockers. No additional locker boxes shall be placed on the docks by Vessel Owner. Maximum weight in lockers shall not exceed 70 pounds.
6. City reserves the right to inspect all boats to determine if they are properly identified and equipped for safe operation in accordance with Coast Guard and other applicable regulations.
7. No Vessel Owner shall throw, discharge, pump or deposit from any boat or float any refuse, oil, spirits, flammable liquid, or other polluting matter into BYB. All such matter shall be deposited in appropriately marked containers within BYB.

8. Use of boat toilets not equipped with storage devices approved by the state or local health departments is not permitted within BYB. City reserves the right to inspect all boats for installation and proper operation of such devices and holding tanks.
9. Unnecessary operation of engines in berths is not permitted. No excessive noise is allowed. Halyards should be tied away from masts.
10. Except for entering or leaving slips, marine engines, power generating equipment or other noise making machinery shall not be operated between the hours of 5:00 P.M. and 9:00 A.M. Engines may not be operated in gear while boats are secured to dock.
11. Water or power lines shall not cross main walks.
12. All boats shall be moored by Vessel Owner in a safe manner, on cleats, with strong and adequate lines.
13. The speed limit within BYB shall be dead slow, or wakeless speed, whichever is slower.
14. Fishing from the slips is not allowed. No cleaning of fish is permitted in BYB.
15. There shall be no laundering or drying of wearing apparel on the docks or on the dock or rigging of a boat in BYB.
16. Restrooms will remain locked at all times. All keys must be returned to the Marina Manager office upon termination of the Agreement. If not returned, the Key Deposit will be retained by the City. Keys must not be duplicated.
17. Vessel Owner shall notify the Marina Manager when they expect Vessel to be away from the Slip for any period in excess of thirty (30) days. Vessel Owner shall not sublet or otherwise grant others the use of the Slip. During any absence of the Vessel, City may use the Slip for any purpose without credit or compensation to Vessel Owner.
18. For security reasons, no dinghy, sabot, float or other similar boat shall be permitted to cruise up and down the fairways. All such boats must be kept on Vessel. The use of another slip at any time, for ANY non-emergency reason is not permitted.
19. The maximum distance by which any boat (including all projections such as transom platforms, booms, gait tanks, bowsprits, etc.) may extend beyond the end of the berth may not be more than ten percent (10%) of the length of the Slip beyond the end of the Slip. No part of the Vessel shall at any time extend over any portion of any dock at BYB. No part of any boat shall extend over the main walkway.
20. All equipment and electrical connections made by Vessel Owner must be approved by the Marina Manager.
21. No fueling or transferring of fuel from docks shall be permitted at any time.
22. Vessel Owner shall be responsible for any oil, paint, or other materials spilled, dripped or otherwise applied to the concrete fingers or walks adjacent to the boat slip.

23. Boat boarding steps shall be a maximum of one-half (1/2) the width of the finger and shall be of lightweight, open construction. No storage will be allowed under the boarding steps.
24. No dinghies, masts, bicycles, hibachis, etc. shall be stored on the docks. Items left or stored on the docks will be confiscated.
25. Trash containers are provided. Vessel Owners shall not place their own trash containers on the docks.
26. No cleats, dock wheels or other accessories shall be installed by Vessel Owner. The dockmaster should be contacted if additional accessories are necessary.
27. Any paint, varnish, etc. spilled on the docks or lockers shall be cleaned up immediately. If the spill cannot be removed by Vessel Owner, he should contact the Marina Manager for assistance.
28. Vessel Owner is encouraged to inform the Marina Manager of any leaks or other malfunctions with water or electricity, etc., so that they may be corrected as soon as possible.
29. ANIMALS SHALL BE LEASHED AT ALL TIMES. Should the size or temperament of a pet disturb others or should the pet commit any nuisance on the property of BYB, such animal shall be removed from BYB by Vessel Owner.
30. Children under twelve (12) years of age are not permitted on docks without the immediate presence of a parent or other responsible adult.
31. Disorderly or discourteous conduct by Vessel Owner or guests that might injure a person, cause damage to property or harm the reputation of BYB shall be cause for termination of the Vessel Owner's Agreement.
32. Vessel Owner shall park vehicles in areas designated for Basin parking. Parking areas shall not be used for storage of trailers without City's consent.
33. Vessel Owners are advised that it will be unlawful for any unauthorized person to solicit business or to offer goods, wares, merchandise or services for sale on the premises of BYB without the consent of the City.
34. "For Sale" or other unauthorized advertising signs are prohibited in BYB.
35. City is not responsible for any losses or damage to boats at BYB. Each Vessel Owner is responsible for damage which he and/or his boat may cause to other boats or improvements in BYB.
36. No swimming is permitted in BYB waters.
37. The City will not provide space for the storage of dinghies or miscellaneous Vessel Owner equipment on Basin property.

38. Hydro-lift hoists will not be allowed in BYB.
39. The Marina Manager may ascertain that strangers aboard yachts are authorized by Vessel Owner to be aboard.
40. Riding of skateboards, bicycles or motorcycles on the docks is not permitted.

Slip Fees specified in the Agreement are determined by the size of the slip space or vessel size and permitted overhang. Rent is due in advance, payable by the first of the month. Electricity is charged for the previous month's use. Vessel is subject to impound if the account is delinquent. Vessel Owner will be liable for any cost of impounding and collection of account.

These rules and regulations are subject to change upon five day's notice.

Dave New
Balboa Yacht Basin Manager
Dave1@BasinMarine.com
(949) 673-0360

Revised February 4, 2013

EXHIBIT “D”
Insurance Requirements

EXHIBIT "D"

Insurance Requirements

Without limiting Tenant's indemnification of City, Tenant shall obtain, provide, and maintain at its own expense during the Term of this Agreement, a policy or policies of insurance of the type, amounts, and form acceptable to City. The policy or policies shall provide, at a minimum, those items described below.

1. Provision of Insurance. Without limiting Tenant's indemnification of City, and prior to commencement of work on Premises by Tenant or Tenant's agents, representatives, consultants, contractors and/or subcontractors, Tenant shall obtain, provide and maintain at its own expense during the term of this Agreement policies of insurance of the type and amounts described below and in a form satisfactory to City. Tenant agrees to provide insurance in accordance with requirements set forth here. If Tenant uses existing coverage to comply and that coverage does not meet these requirements, Tenant agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the insurance commissioner to transact business of insurance in the State of California, with an assigned policyholders' rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
 - A. Workers' Compensation Insurance. Tenant and Tenant's agents, representatives, consultants, contractors and/or subcontractors, shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Tenant and Tenant's agents, representatives, consultants, contractors and/or subcontractors, shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.
 - B. General Liability Insurance. Tenant and Tenant's agents, representatives, consultants, contractors and/or subcontractors, shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars and 00/100 (\$1,000,000) per occurrence, two million dollars and 00/100 (\$2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with no

endorsement or modification limiting the scope of coverage for liability assumed under a contract.

- C. Fire and Extended Coverage. Tenant shall maintain fire and extended coverage insurance, together with insurance against vandalism, theft and malicious mischief, on the improvements and fixtures, alterations, trade fixtures, signs, equipment, personal property and inventory on or upon the Premises from loss or damage to the extent of their full replacement value.
- D. Loss of Rent. Tenant shall maintain loss of rent insurance insuring that the Rent will be paid to City for a period up to six (6) months if the Premises are destroyed or rendered unusable or inaccessible for commercial purposes by a risk insured under a special form property coverage policy including vandalism and malicious mischief endorsements.
- E. Automobile Liability Insurance. Tenant and Tenant's consultants, contractors and/or subcontractors shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Tenant or all activities of Tenant's consultants, contractors and/or subcontractors arising out of or in connection with work to be performed on the Premises, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars and 00/100 (\$1,000,000) combined single limit each accident.
- F. Builder's Risk Insurance. During construction, Tenant shall require that Tenant's construction contractors and subcontractors maintain Builders Risk insurance or an installation floater as directed by City, covering damages to the work for "all risk" or special causes of loss form with limits equal to one hundred percent (100%) of the completed value of the work, with coverage to continue until final acceptance of the work by Tenant and City. City shall be included as an insured on such policy, and Tenant shall provide City with a copy of the policy.
- G. Pollution Liability Insurance. Tenant shall require that Tenant's construction contractors and subcontractors maintain a policy providing contractor's pollution liability ("CPL") coverage with a total limit of liability of no less than one million dollars and 00/100 (\$1,000,000) per loss and in the aggregate per policy period dedicated to this project. The CPL shall be obtained on an occurrence basis for a policy term inclusive of the entire period of construction. If all or any portion of CPL coverage is available only on a claims-made basis, then a 10-year extended reporting period shall also be purchased. The CPL policy shall include coverage for cleanup costs, third-party bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed, resulting from pollution conditions caused by contracting operations. Coverage as required in this paragraph shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The CPL shall also provide coverage for transportation and off-site disposal of materials.

The policy shall not contain any provision or exclusion (including any so-called "insured versus insured" exclusion or "cross-liability" exclusion) the effect of which would be to prevent, bar, or otherwise preclude any insured or additional insured under the policy from making a claim which would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy.

4. Endorsements: Policies shall contain or be endorsed to contain the following provisions:
 - A. Additional Insured Status. City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as an additional insured under all general liability and pollution liability policies with respect to liability arising out of Tenant's activities related to this Agreement and with respect to use or occupancy of the Premises. City, its elected or appointed officers, officials, employees, agents and volunteers shall be named as an additional insured on any of Tenant's contractor's and subcontractor's policies.
 - B. Primary and Non Contributory. Policies shall be considered primary insurance as respects to City, its elected or appointed officers, officials, employees, agents and volunteers as respects to all claims, losses, or liability arising directly or indirectly from Tenant's operations. Any insurance maintained by City, including any self-insured retention City may have, shall be considered excess insurance only and not contributory with the insurance provided hereunder.
 - C. Liability Insurance. Liability insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
 - D. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Tenant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Tenant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its consultants, contractors or subcontractors.
 - E. Reporting Provisions. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its elected or appointed officers, officials, employees, agents or volunteers.
 - F. Notice of Cancellation. The insurance required by this Agreement shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days (ten (10) calendar days' written notice of non-payment of premium) written notice has been received by City. It is Tenant's obligation to ensure that provisions for such notice have been established.

- G. Loss Payee. City shall be included a loss payee under the commercial property insurance.

5. Additional Requirements.

- A. In the event City determines that (i) the Tenant's activities on the Property creates an increased or decreased risk of loss to the City, (ii) greater insurance coverage is required due to the passage of time, or (iii) changes in the industry require different coverage be obtained, Tenant agrees that the minimum limits of any insurance policy required to be obtained by Tenant or Tenant's consultants, contractors or subcontractors, may be changed accordingly upon receipt of written notice from City. With respect to changes in insurance requirements that are available from Tenant's then-existing insurance carrier, Tenant shall deposit certificates evidencing acceptable insurance policies with City incorporating such changes within thirty (30) calendar days of receipt of such notice. With respect to changes in insurance requirements that are not available from Tenant's then-existing insurance carrier, Tenant shall deposit certificates evidencing acceptable insurance policies with City, incorporating such changes, within ninety (90) calendar days of receipt of such notice.
- B. Any deductibles applicable to the commercial property or insurance purchased in compliance with the requirements of this section shall be approved by City.
- C. Tenant and Tenant's consultants, contractors and/or subcontractors shall be subject to the insurance requirements contained herein unless otherwise specified in the provisions above or written approval is granted by the City. Tenant shall verify that all consultants, contractors and/or subcontractors maintain insurance meeting all the requirements stated herein, and Tenant shall ensure that City is an additional insured on insurance required from contractors, consultants and/or subcontractors.
- D. For General Liability coverage, contractors, consultants and/or subcontractors shall provide coverage with a format at least as broad as provided by Insurance Services Office form CG 203 80413.
- E. If Tenant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the tenant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- F. Tenant shall give City prompt and timely notice of any claim made or suit instituted arising out of or resulting from Tenant or Tenant's agents, representatives, consultants, contractors or subcontractors performance under this Agreement.
- G. Tenant shall provide certificates of insurance, with original endorsements as required above, to City as evidence of the insurance coverage required herein. Insurance certificates must be approved by City prior to

commencement of work or issuance of any permit. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement.

- H. All required insurance shall be in force on the Effective Date, and shall be maintained continuously in force throughout the term of this Agreement. In addition, the cost of all required insurance shall be borne by Tenant or by Tenant's consultants, contractors or subcontractors.
- I. If Tenant or Tenant's consultants, contractors or subcontractors fail or refuse to maintain insurance as required in this Agreement, or fail to provide proof of insurance, City has the right to declare this Agreement in default without further notice to Tenant, and City shall be entitled to exercise all available remedies.
- J. Tenant agrees not to use the Premises in any manner, even if use is for purposes stated herein, that will result in the cancellation of any insurance City may have on the Premises or on adjacent premises, or that will cause cancellation of any other insurance coverage for the Premises or adjoining premises. Tenant further agrees not to keep on the Premises or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the Premises. Tenant shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the Premises.

EXHIBIT “E”
Memorandum of Lease

EXHIBIT "E"

Memorandum of Lease

RECORDING REQUESTED AND
WHEN RECORDED RETURN TO:

City Clerk's Office
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

[Exempt from Recordation Fee - Govt. Code Sec. 6103]

MEMORANDUM OF LEASE AGREEMENT

This Memorandum of Lease Agreement ("Memorandum") is dated _____, 2020, and is made between City of Newport Beach, a California municipal corporation and charter city ("City") and West Point Investment Corporation, a California corporation ("Tenant"), concerning the Property and Premises as legally described and depicted in Attachment "A" attached hereto and by this reference made a part hereof.

For good and adequate consideration, City leases the Premises to Tenant, and Tenant leases the Premises from City, for the term and on the provisions contained in the Agreement dated _____, 2020, including without limitation provisions prohibiting assignment, subleasing, and encumbering said leasehold without the express written consent of City in each instance, all as more specifically set forth in said Agreement, which said Agreement is incorporated in this Memorandum by this reference.

The term is five (5) years, beginning _____, 2020, and ending _____, 2025, and one (1) elective additional successive "Option Term" of five (5) years, on the same terms and conditions contained in the Agreement.

This Memorandum is not a complete summary of the Agreement. Provisions in this Memorandum shall not be used in interpreting the Agreement's provisions. In the event of conflict between this Memorandum and other parts of the Agreement, the other parts of the Agreement shall control. Execution hereof constitutes execution of the Agreement itself.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum as of the date first written above.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: _____

By: _____
Aaron C. Harp
City Attorney

**CITY OF NEWPORT BEACH,
a California municipal corporation**

Date: _____

By: _____
Grace K. Leung
City Manager

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

**TENANT: WEST POINT INVESTMENT
CORPORATION, a California corporation**

Date: _____

By: _____
Kevin John Hayes
Chief Executive Officer/
Chief Financial Officer

[END OF SIGNATURES]

ATTACHMENTS: Attachment A — Legal Description and Depictions of Property and Premises

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

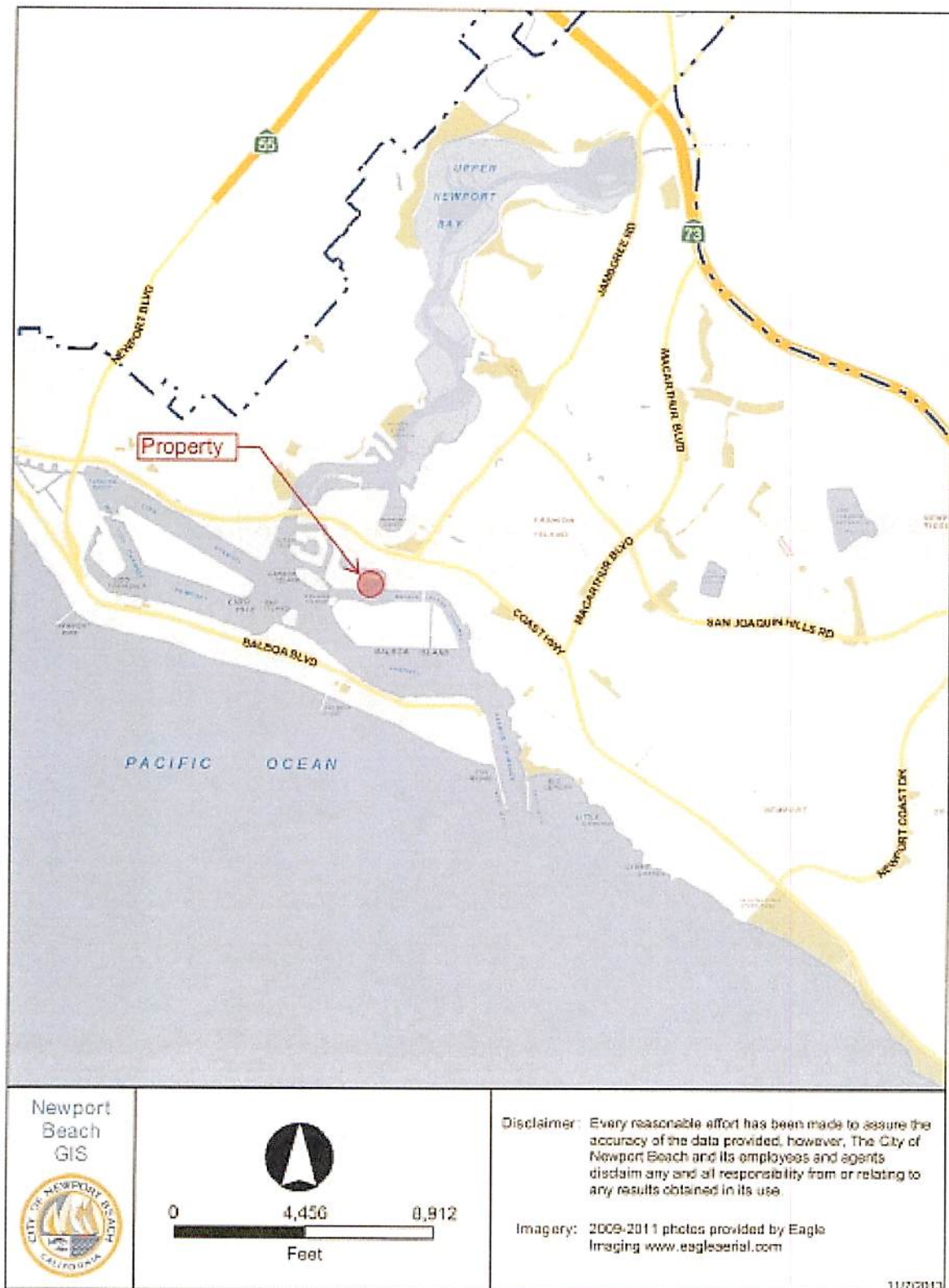
(seal)

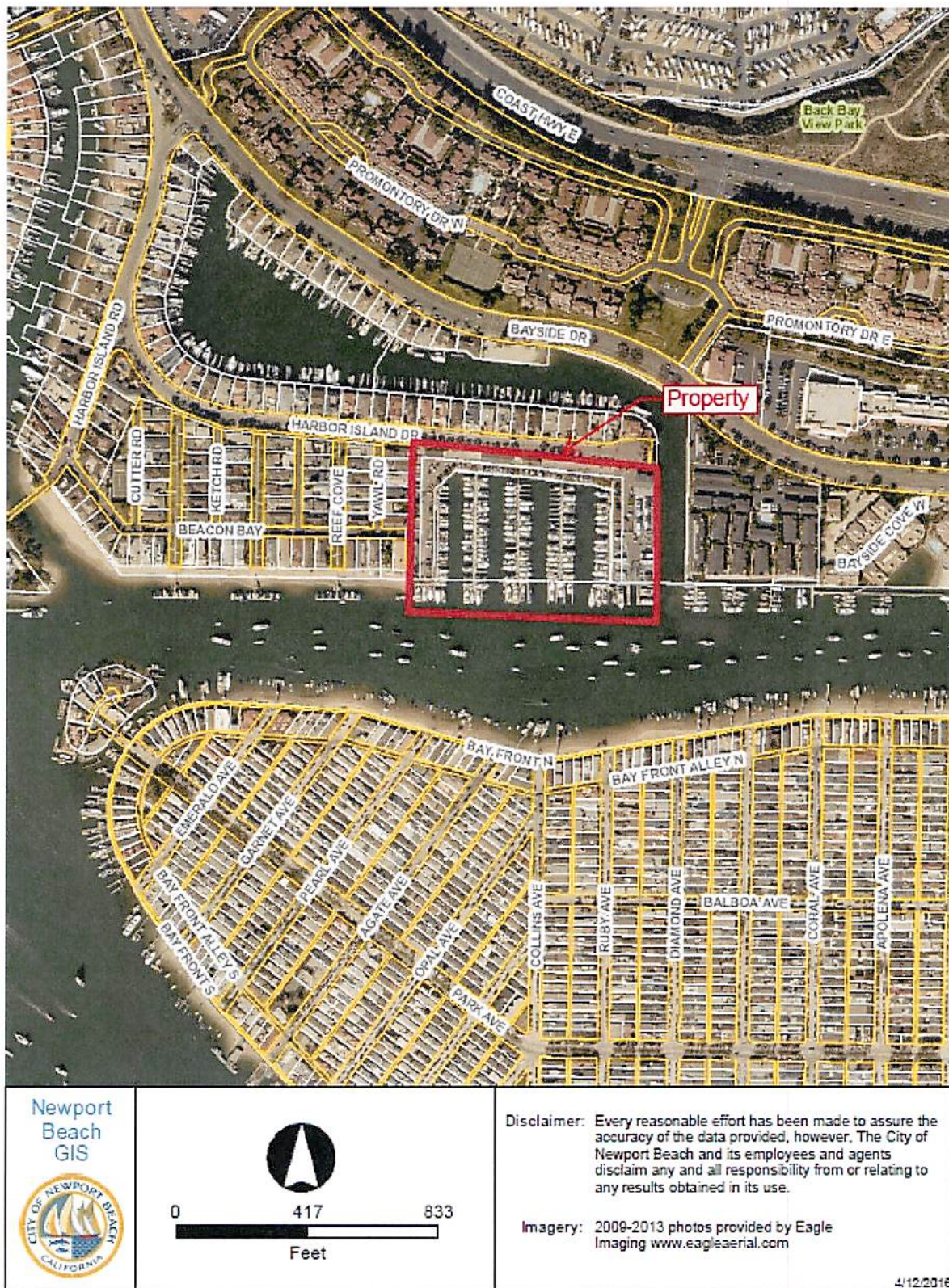
ATTACHMENT A

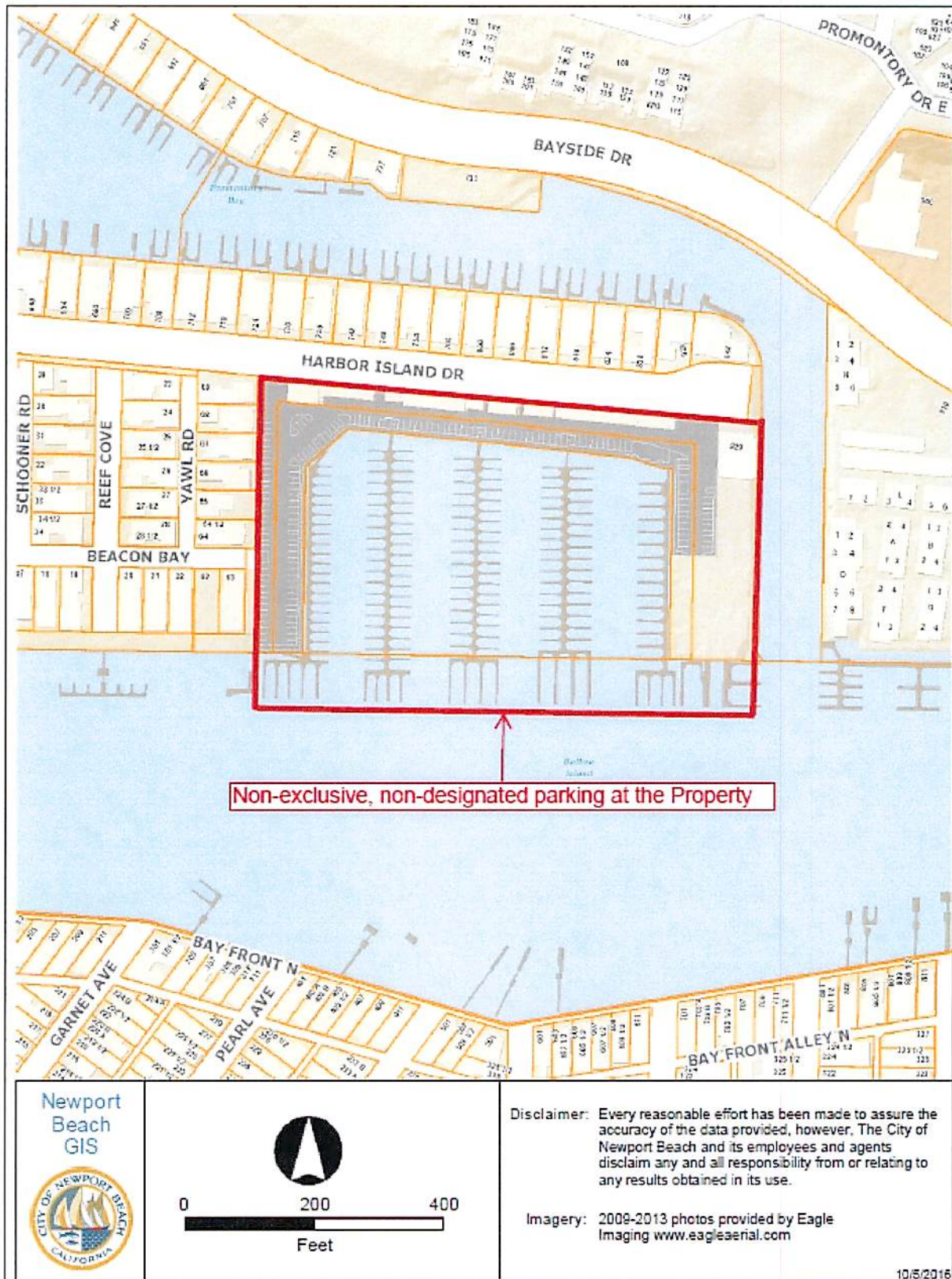
PROPERTY AND PREMISES DESCRIPTION AND DEPICTIONS

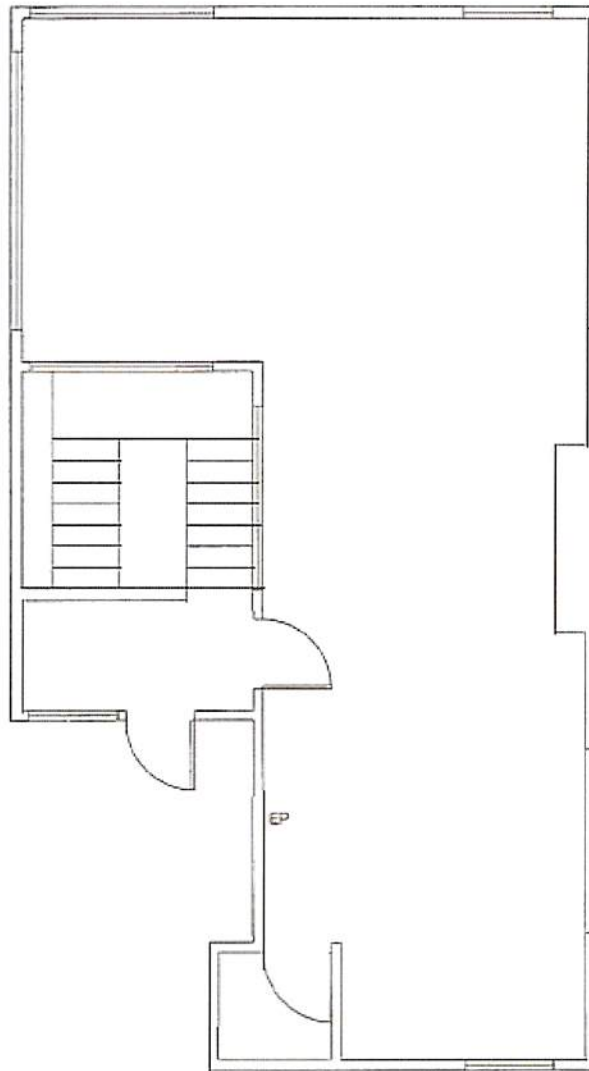
A parcel of land situated in the Northwest quarter (NW 1/4) of Section Thirty Five (35), Township Six (6) South, Range Ten (10) West, S.B.B. & M., Orange County, California, more particularly described as follows, to-wit:

Beginning at a point in the U.S. Bulkhead line between Station No. 200 and Station No. 101 as shown upon a map entitled "Harbor Lines, Newport Bay Harbor, California," approved May 2, 1936, by the Secretary of War, and on file in the office of the U.S. District Engineer at Los Angeles, California, said point of beginning being East 754.25 feet of said bulkhead Station No. 200, running thence North 424.71 feet to a point in the Northerly line of that certain parcel of land conveyed to City of Newport Beach by the Irvine Company, as described in a deed recorded September 25, 1929, in Book 306, Page 375, of official records of Orange County, California; thence South 85° 43' East 772.15 feet to the Northeasterly corner of the last mentioned parcel of land; thence South along the Easterly line of the last mentioned parcel of land 367.01 feet to a point in said U.S. Bulkhead line between Station No. 200 and Station No. 101, thence West along said bulkhead line 770 feet to the point of beginning, containing approximately seven (7) acres.







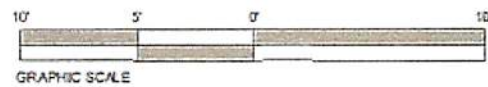


Office

RSF: 790 sf

SCALE: 1/2" = 1'-0"

SHEET SIZE: 11x17



1614

829 Harbor Island Drive
Newport Beach, CA



WorkspacePlans

kim@workspaceplans.com jill@workspaceplans.com