

County of Ventura
Channel Islands Harbor
Oxnard, California

SECOND AMENDED AND RESTATED HARBOR LEASE

by and between

COUNTY OF VENTURA

(“County”)

and

VINTAGE MARINA PARTNERS L.P.

(“Lessee”)

SECOND AMENDED AND RESTATED HARBOR LEASE
Parcels X-2 and Y-1

County of Ventura
Channel Islands Harbor
Oxnard, California

This Second Amended and Restated Harbor Lease (“Lease”) is dated for references purposes only this ____ day of _____, 2023, by and between the County of Ventura (“County”) and Vintage Marina Partners L.P., a California limited partnership (“Lessee”).

RECITALS

A. County is the owner of that certain real property located in the County of Ventura, State of California, commonly known as the Channel Islands Harbor (“Harbor”) and shown on the Site Map attached as Exhibit A.

B. On January 17, 1984, County and G.C. Investments Inc., the predecessor-in-interest of Lessee, entered into a lease agreement for Parcel X-2 and a separate lease agreement for Parcel Y-1 in the Harbor (collectively, the “Original Leases”), each with a term commencing February 1, 1984 and expiring 40 years thereafter, on January 31, 2024.” On August 1, 1994, G.C. Investments Inc. assigned the Original Leases to Lessee, to which assignments County consented.

C. On November 21, 2006, County and Lessee entered into an Amended and Restated Harbor Lease for both Parcels X-2 and Y-1 (the “First Amended Lease”), for a term commencing December 20, 2006 and expiring January 31, 2024, with a further right to extend said term on satisfaction of certain specified conditions. This Lease amends, supersedes, replaces and restates the Original Leases and the First Amended Lease.

D. The purpose of this Lease is to provide for the development and operation of the Harbor as a public recreational and commercial amenity to be continually available for residents of and visitors to the County of Ventura.

E. Lessee undertakes to participate in such purpose by agreeing herein to operate a business or businesses upon certain portions of the Harbor (the “Leased Premises”), as described in the Basic Terms and Summary (“Summary”), the locations of which are outlined on the Site Map and which portions are legally described in Exhibit B, attached hereto. The Leased Premises consist of property on the land abutting the waters of the Harbor (the “Landside Portion”) and submerged lands (the “Waterside Portion”), immediately adjacent to the Landside Portion.

E. Capitalized terms not otherwise defined in the text are defined in Article 27 of this Lease.

NOW, THEREFORE, in consideration of the above recitals and the promises, conditions and covenants set forth herein, County and Lessee agree as follows:

ARTICLE 1. LEASED PREMISES

1.1 Lease of Leased Premises.

In consideration of Lessee's promises to pay the Rents reserved and other payments to be made by Lessee under this Lease and to perform the covenants and agreements of Lessee as set forth in this Lease, County hereby leases the Leased Premises to Lessee for the Term, and Lessee hereby leases the Leased Premises from County for the Term and promises to pay the Rents and to perform its covenants and agreements set forth herein. The Leased Premises shall include County's Improvements, if any. Notwithstanding anything else in this Lease to the contrary, this Lease shall not be deemed delivered, nor shall it be effective for any purpose, unless and until the Memorandum of Second Amended and Restated Harbor Lease has been recorded in the Official Records of the Recorder of Ventura County, California (the "Official Records").

1.2 Intentionally Deleted.

1.3 Lessee Improvements.

Lessee's Improvements, if any, to be constructed on the Leased Premises shall be designed and constructed in accordance and consistent with all the other terms and conditions of this Lease, including but not limited to Article 9, the Approved Plans for Lessee's Work, and limited to the operation, repair, maintenance, replacement or reconstruction of Lessee's existing Improvements such that any new Improvements shall be located on the same site and have substantially the same purpose and capacity as any Improvements replaced. Except as expressly set forth herein or agreed by County in a rider attached to this Lease, County shall have no responsibility for any work or Improvements that may be required to prepare the Leased Premises for Lessee's use or for any work to construct any Improvements on the Leased Premises.

1.4 No Rights of Possession Outside the Leased Premises.

This Lease confers no rights of possession by Lessee with regard to that portion of the Harbor lying outside of the Leased Premises or with regard to the Offsite Parking Area.

1.5 Representations and Warranties of the Condition of the Leased Premises.

County makes no representation or warranty as to: (a) the condition of the title to the Leased Premises, except that County is vested with the fee simple title thereto, subject to the Public Works Plan of the County of Ventura certified by the California Coastal Commission on September 19, 1986 (the "Public Works Plan") and any amendment, modification or replacements thereto, provided that this shall not be construed as an agreement by Lessee to waive or surrender any vested property rights Lessee may then have; or (b) the geological, physical or environmental condition of the Leased Premises (including without limitation, the County's Improvements, if any), or their respective fitness or availability for any particular use, except as expressly set forth herein (including without limitation in Sections 1.6.2 and 15.7).

1.6 Evaluations by Lessee.

Lessee warrants and represents to County that: (a) Lessee has conducted such property and records inspections and examinations, and has obtained title insurance policies (or refrained from obtaining title insurance policies), as Lessee deems appropriate, and that Lessee relies upon its own inspections, examinations, title reports and title insurance policies that it may have obtained and not upon any warranties or representations of County; and (b) prior to the execution of this Lease, Lessee has made such investigations, inspections, testing and evaluations of the soils, buildings, improvements, engineering problems, hazardous substances and other site conditions of the Leased Premises (“Evaluations”) as it deems appropriate, and agrees to rely on its own Evaluations and not upon any Evaluations by County.

1.6.1 “As is” Condition.

Lessee accepts the Leased Premises leased and conveyed to Lessee without warranty or representation by County except as expressly made in Section 1.5 of this Lease, and Lessee agrees that County shall not be liable for any latent or patent defect therein. Lessee accepts the Leased Premises “as is” in the condition as of the Effective Date, subject to all recorded matters, matters that would be revealed by inspection, and all Laws. Lessee warrants that it has fully informed itself as to all existing conditions and limitations affecting the construction of the Improvements and the suitability of the Leased Premises for the operation and management of the uses permitted under this Lease, and Lessee acknowledges that neither County nor any agent or representative of County has made, nor has Lessee relied on, any representation as to the condition of the Leased Premises, the suitability of the Leased Premises for construction of the Improvements or for Lessee’s intended use or the economic feasibility of the business Lessee intends to conduct.

1.6.2 Hazardous Materials.

Notwithstanding the foregoing, County warrants to each of Lessee that, the current Harbor Director is not intentionally suppressing facts to which the Harbor Director has actual knowledge of concerning (i) any discharge or release of any Hazardous Materials now present in or on the Leased Premises; or (ii) the existence of any notice from any Governmental Agency relating to the actual or potential violation of any Laws relating to Hazardous Materials or any Environmental Damages concerning the Leased Premises or (iii) the existence of any threatened or pending administrative proceeding or judicial action relating to the actual or potential violation of any Laws relating to Hazardous Materials concerning the Leased Premises or any Environmental Damages, without any duty on the part of the current Harbor Director or the County to inquire or investigate with respect to the subject matter of such representation or warranty, and the warranty of County in this subsection shall not be deemed or construed to mean or imply any constructive or imputed knowledge or awareness. Lessee acknowledges that the records or recollections of lessees of present or past County officials, employees, consultants or independent contractors other than the current Harbor Director may reveal, or lead to the revelation of, information concerning one or more of the matters covered by the foregoing warranty, and Lessee agrees that the warranty herein expressed excludes any such information and any such other information that is not now in the conscious awareness of the Harbor Director.

1.7 County's Reservations.

1.7.1 Regarding the Harbor.

County reserves the following rights: (i) without Lessee's consent, to change the name of the Harbor, the configuration, shape, size, location, number and extent of the various Other Leaseholds and the Harbor, and to eliminate or add any Other Leaseholds to any portion of the Harbor; and (ii) without Lessee's consent, to create any covenants, restrictions, easements or rights of way on or over the Harbor determined to be necessary or desirable by County in connection with the operation of the Harbor (or which are created, imposed or required by any Governmental Agency in connection with the operation of the Harbor); provided, however, that in exercising its authority pursuant to clauses (i) and (ii) County shall not materially inhibit or interfere with the uses permitted by this Lease.

1.7.2 Regarding the Leased Premises.

Notwithstanding Section 1.6.1 of this Lease, County shall not change the size or location of the Leased Premises without Lessee's prior written consent. County reserves to itself the use of any County-owned equipment, machinery, connections, pipes, ducts, conduits and wires that may currently lead to, over and through the Leased Premises and that serve other parts of the Harbor, all in a manner and in locations which will not unreasonably interfere with Lessee's use of the Leased Premises, and with the understanding that the current Harbor Director has no "actual knowledge" of the existence of any such equipment, etc.

1.7.3 Right to Enter the Leased Premises.

County reserves the right, after reasonable notice to Lessee, to enter the Leased Premises at reasonable times to make periodic inspections of the Improvements and the use and operations of the Leased Premises, to maintain the security and good public order of the Harbor, to respond to emergencies and to maintain and repair, remove or replace, add to or generally improve any County-owned improvements, equipment or facilities, provided, however that entry shall not unreasonably interfere with Lessee's beneficial use of the Leased Premises excepting temporary interference in the event of emergency. Lessee's Improvements shall be designed and constructed to allow for entry by County for the purposes set forth in this Section. County will repair any physical damage to Lessee's Improvements and indemnify, defend, and hold Lessee harmless from and against all damage, loss, costs, expenses or liabilities resulting from any entry onto the Leased Premises by County or any of its agents or representatives under this Section. In addition, upon reasonable notice to Lessee, County and its authorized representatives may enter the Leased Premises at any time during Business Hours for the purpose of exhibiting the Leased Premises to prospective purchasers or, during the final Lease Year of the Term, to prospective lessees. Lessee shall permit County, or any person authorized by County to enter upon the Leased Premises and make any necessary repairs to the Leased Premises and to perform any work therein that County, in its sole discretion, might deem necessary to prevent waste or deterioration or to enhance or preserve the Harbor. No exercise by County of these reserved rights shall entitle Lessee to any damage for any injury or

inconvenience occasioned by the exercise of such rights; provided, however, that County will repair any damage or disturbance to the Leased Premises resulting from the exercise of these reserved rights.

1.7.4 Utility Easements.

Lessee shall permit any County-authorized public utility company or district to run gas, water, sewer, electric or telephone conductors, pipes, conduits or ductwork where necessary over, under or through the Leased Premises in a manner which will not unreasonably interfere with the Lessee's use of the Leased Premises.

1.7.5 Regarding the County as Regulator.

Lessee acknowledges and agrees that neither this Lease nor any other agreement with County in its proprietary capacity as County shall bind the County in its regulatory capacity and that nothing contained herein is an agreement of the County as a Governmental Agency having regulatory jurisdiction of the Leased Premises to issue or grant to Lessee any permit (including land use permits). Lessee acknowledges that Lessee shall not have the right to apply for or to obtain a change of zoning, or to obtain a conditional use permit, a zone variance or other land use entitlement inconsistent with the Approved Plans for Lessee's Work without County's written consent, which may be withheld in the sole discretion of County. Lessee further acknowledges that County in its proprietary capacity as lessor under this Lease has control over land uses which is more restrictive and specific by virtue of its role as such a lessor than it may have in its governmental role as regulator. Nothing contained herein shall be construed to require County amend the Public Works Plan or otherwise exercise its powers as a regulatory agency.

ARTICLE 2. USE AND POSSESSION

2.1 Lessee's Business and Uses.

Lessee shall use the Leased Premises for the sole purpose of conducting thereon the uses and businesses described in the Summary and for no other purpose or use except with the prior written consent of the Director (which may be given or withheld in the sole discretion of the Director). In further limitation of the uses of the Leased Premises, as depicted on the Parcel Map attached hereto as Exhibit A. Lessee shall not further subdivide the Leased Premises, apply for or obtain a subdivision or parcel map pursuant to the California Subdivision Map Act, apply for or obtain permission to sell or lease portions of the Leased Premises under the California Subdivided Lands Act or apply for a division of the Leased Premises into separate assessor's parcels.

2.1.1 Permitted Uses of the Waterside Portion.

Lessee shall use the Waterside Portion only for (a) the construction and maintenance of Boat Slips, and for walkways and decking for the purpose of access to and from the Boat Slips, together with security gates, fences and devices for such access, (b) the rental of Boat Slips, (c) as the location of performing minor boat maintenance and repair as specified below, and (d) such other incidental ancillary Boat Slip uses not specified

herein as the Director may in his/her sole discretion authorize in writing after written request therefor by Lessee. Lessee shall not enter into a rental agreement for (and shall not otherwise allow or permit the use of a Boat Slip by or for) any Boat (a) that is not registered and identified in accordance with the requirements of Division 3.5 (“Registration and Transfer of Vessels”) of the California Vehicle Code (or such applicable successor thereof) unless such Boat is otherwise exempted from the provisions thereof by applicable Federal law, or (b) that is not Seaworthy.

2.1.1.1 “For Sale” Signs.

Lessee may allow Boat owners to display “for sale” signs no larger than 12” by 12” on their Boats. Lessee may display or feature signs for any broker for the sale of Boats; however, Lessee may not prohibit the display of “for sale” signs of any broker who is an authorized lessee or sublessee of the Harbor.

2.1.1.2 Prohibition on “Floating Home” Uses.

Lessee shall not use, nor allow any Boat Slip Renter or other person to use, any part of the Waterside Portion for the purpose of owning, operating or maintaining a marina for “floating homes” (as defined in Civil Code Section 800.3 and Health and Safety Code Section 18075.55),” nor shall Lessee, any Boat Slip Renter or any other person enter into agreements to allow any houseboat (i.e., a boat that is used for a residential or other non-water-oriented purpose and that is not capable of being used for active navigation) or any “floating home” in or on the Leased Premises, nor shall the Waterside Portion otherwise be operated in a manner that would subject the Leased Premises to the “Floating Home Residency Law” (California Civil Code, Chapter 2.7, commencing with Civil Code section 800).

2.1.1.3 Limitations on Maintenance and Repairs of Boats.

Lessee may allow the following maintenance and repair activities in the Waterside Portion solely with respect to the Boat of a Boat Slip Renter in its own Boat Slip (i.e., the specific Boat assigned to the Boat Slip of such Boat Slip Renter pursuant to a valid and effective Boat Slip Rental Agreement, but not any other vessel): (1) minor engine maintenance and repair as conventionally performed on-board in mooring slips; (2) minor repairs, including painting (except spray painting), rigging, installation and repair of electronic equipment; and (3) underwater recovery, inspection, repair and cleaning. No maintenance or repair activities for a Boat or of any of its engine, machinery or parts shall be allowed on the Landside Portion or on the Waterside Portion, except as expressly set forth above. In no event shall any Boat not assigned to a specific Boat Slip pursuant to a valid and effective Boat Slip Rental Agreement be serviced or repaired in the Leased Premises or brought into the Waterside Portion for the purposes of servicing or repair. Notwithstanding the foregoing, Lessee shall permit no activity on the Leased Premises that involves the removal of a vessel from the water or the removal of the engine or other major machinery from a vessel.

2.1.1.4 Limitations on Live-Aboard Boats.

Live-Aboard Boats will be permitted in the Leased Premises only with the prior written consent of the Director, which consent shall be granted only if: (a) the number of permitted Live-Aboard Boats will not exceed ten percent (10%) of the total authorized Boat Slips in the Waterside Portion; (b) Lessee provides, on land, sufficient and conveniently located restrooms, showers, garbage disposal facilities, and parking adequate in the Director's reasonable judgment to serve all Live-Aboard Boat occupants and guests in the Leased Premises; and (c) Lessee provides assurances satisfactory to the Director that Lessee will mix, dilute, and carry away any possible wastewater discharge from the Live-Aboard Boats.

2.1.2 Permitted Use of the Landside Portion.

Lessee shall use the Landside Portion solely for (a) the operation of lockers, dinghy racks, dinghies and boarding ladders; (b) the operation of food and beverage vending machines, ice machines, telephones and other customer service equipment in areas accessible to the users of the Leased Premises; (c) the construction and maintenance of Structures for offices; (d) the operation of toilet and shower facilities to service the Boat Slip Renters, office users and customers; and (e) automobile parking in the parking areas to service the Boat Slip Renters and invitees of the businesses on the Leased Premises. The office space to be used by Lessee shall only be those offices reasonably necessary for the administration and supervision of the business of Lessee under this Lease and for no other business of Lessee or any other person. The only Structures that may be maintained under this Section are those Structures presently located on the Leased Premises and those Structures that are to be constructed pursuant to Approved Plans. The Landside Portion shall not be used to store Boats and shall not be used for the parking or storage of automobiles except for those automobiles brought to the parking areas of the Leased Premises by Sublessees and their guests, and then only for those periods of time related to the usage of their respective Boats.

Special events, such as marketing events are encouraged. Lessee is responsible for procuring County permits, special use permits, insurance and County consent for such events.

2.1.3 Additional Restrictions on Use.

Lessee shall not make any use of the Leased Premises that is not specified above (such use is an "Unrelated Business"), and shall not add additional Structures that are not specified by Approved Plans without the written consent of the Director (which may be given or withheld in the sole discretion of the Director), nor shall Lessee increase the density for an allowed use or add any incidental use unless it has been demonstrated to County's reasonable satisfaction that the proposed change in use or density will not increase the requirements or need for parking spaces in the Leased Premises or the Harbor (unless additional parking is provided concurrently with the change in use or density to meet such increased parking requirements in a manner reasonably satisfactory to County). Lessee shall have the burden of demonstrating to County's reasonable satisfaction that such

requirements or needs have been satisfied without cost or expense to County and without burdening the Other Leaseholds or other properties owned by County in the Harbor. Lessee shall not perform or suffer others to perform or conduct any activity or operate any business that contaminates any portion of the Harbor or disposes or releases any waste, contamination, Hazardous Materials or other substances into any portion of the Harbor. Lessee shall not manage or operate any Unrelated Business on or from the Leased Premises; provided, however, that it shall not be considered a Default hereunder for Lessee to make incidental telephone calls or transmit or receive incidental written or electronic communications relating to any such Unrelated Business or otherwise to conduct a minor and incidental portion of any Unrelated Business on or from the Leased Premises by persons whose purpose of being present on the Leased Premises is to conduct the business of Lessee and not of the Unrelated Business so long as the primary place of business of any such other Unrelated Business is off of the Leased Premises and the minor and incidental use of the Leased Premises in conjunction with such other Unrelated Business in no way occupies any additional space on the Leased Premises and in no way interferes with or diminishes the use of the Leased Premises for the uses permitted as provided for herein. Lessee shall not invite others to visit the Leased Premises for meetings or to transact any business for the Unrelated Business, nor shall Lessee use the telephone number, e-mail or other means of address of Lessee at the Leased Premises for communications with the Unrelated Business; nor shall Lessee maintain or store business records of the Unrelated Business on the Leased Premises.

2.2 Certain Prohibited Uses.

The prohibited uses of the Leased Premises listed in this Section are by way of example and not limitation, and there shall be no implication that a use not listed herein is permitted. Lessee shall not, and shall not allow any of Lessee's Parties to:

(a) use the Leased Premises for dry boat storage; major repairs; sale of fuels; sale of marine equipment and supplies (except with and at the time of the sale of a Boat); booking or operation of sport fishing; or the booking or operation of charter parties (booking of charter parties may be allowed, after application by Lessee, only in writing at the discretion of the Director, and subject to such conditions as the Director may impose);

(b) use spray paint, maintain a spray paint booth or store combustible materials within the Leased Premises provided that combustible materials needed for the operation of a Boat may be located on such Boat if such materials are in a container approved by law or regulations for such use, maintained in accordance with safety standards applicable to such container and materials, and the container is located in a properly ventilated area of the Boat;

(c) conduct any business or activities not permitted under this Lease, or place any fence, Structure, building, improvement, division, rail, sign, advertising, display, device or obstruction of any type or kind outside of the Leased Premises;

(d) park, operate, load or unload any truck or other delivery vehicle except on those portions of the Leased Premises designated by County for such purposes;

(e) keep live animals of any kind in, on or about the Leased Premises, except that small domestic dogs not weighing more than 25 pounds and domestic cats may be kept on a Boat and may be allowed in or about the Leased Premises if, in the case of a dog, the dog is on a leash, the owner of the animal prevents the animal from annoying neighbors and other boaters and any animal waste is promptly removed by the animal owner and disposed of in a safe and sanitary manner outside of the Leased Premises (in no event shall such animal waste be deposited or allowed to be deposited in the waters of the Harbor or in a place that drains into the Harbor);

(f) install, use or permit to be used in, on or about the Leased Premises any paging system, or other device which may be seen, heard or experienced outside the Leased Premises, such as, but not limited to, flashing lights, searchlights, or unreasonably loud music or announcements;

(g) maintain or permit to be maintained in, on or about the Leased Premises, any pinball, mechanical, arcade or electronic games of any nature, or any vending, coin or credit card operated machines of any nature (except for any vending machines for food, candy, beverages and other similar items which are located only in areas not generally accessible to the general public and are solely for use by the Sublessees and the employees of the business(es) being conducted in the Leased Premises);

(h) use any Boat or any portion of the Leased Premises for (i) the sale, distribution, display, or offering for sale of illegal drugs, any paraphernalia used in connection with illegal drugs, or any pornographic, lewd or "adult" newspaper, book, magazine, film, picture, representation or merchandise of any kind, (ii) a drug treatment clinic, (iii) a liquor store, (iv) the sale, dispensation or consumption of liquor, wine, beer or other alcoholic products, or (v) the sale, distribution, display, or offering for sale of any item which in County's good faith judgment (which judgment may include consideration of the fact that the County is a public entity) is inconsistent with the quality of the operation of the Harbor or the general and family-oriented patronage thereof, or which may tend to injure or detract from the moral character or image of the Harbor, or which is otherwise inconsistent with the operation of the Harbor as a public recreational and commercial amenity in Ventura County, California. Notwithstanding the foregoing, a Boat Slip Renters may consume alcoholic products and may dispense (but not sell) alcoholic products to their guests for their consumption on their Boats, while such Boat is moored at its assigned Boat Slip; but only to the extent that such dispensation or consumption is for private entertainment and domestic purposes not subject to regulation under any applicable Laws and that such dispensation or consumption is not for a consideration and is otherwise in compliance with all applicable Law relating to the sale, consumption and dispensation of alcohol. Without limiting the generality of the foregoing, Lessee shall not permit or suffer raucous or offensive behavior, nuisances or breach of the peace by any individuals on the Leased Premises; or

(i) use or permit to be used the Leased Premises or any part thereof for any purpose in any manner that will constitute an unreasonable annoyance to any occupant of the Harbor, or which will be a public or private nuisance, including but not limited to the production of deleterious or offensive odors, or which will damage the reputation of the Harbor or any part thereof, or which will constitute any hazardous purpose, or in any manner which will violate, suspend or void any Insurance Requirements, or which will serve to increase the premium rate of

or make inoperative any policy or policies of insurance at any time carried on the Leased Premises or the property, buildings or improvements on the Harbor or any part thereof.

ARTICLE 3. SEAWORTHINESS AND REPORTING REQUIREMENTS

3.1 Seaworthiness.

Lessee shall not use or allow a Boat Slip Renter or other person to use any Boat Slip as a mooring for a Boat not meeting the definition of "Seaworthy" set forth in County Ordinance No. 4439, the Ventura County Harbor Ordinance, Ventura County Ordinance Code, Division 6, Chapter 4, Article I, Section 6401-18, as it may be revised from time to time. Boats moored to a Boat Slip shall all be Seaworthy. Boat Slips shall not be used for the purpose of repairing or restoring damaged Boats or Boats that are not Seaworthy, nor shall the Leased Premises be used as, or have a business that uses any portion of the Leased Premises as, a repair facility.

3.2 Reporting by Lessee.

As each Boat Slip Rental Agreement is made with a Boat Slip Renter, Lessee shall obtain a copy of the certificate of ownership of each Boat to be moored thereunder, and shall record (i) the name, zip code and telephone number of the registered owner of such Boat (and of the Boat Slip Renter if other than the registered owner); (ii) the number of the Boat Slip, a description of the Boat (length, make, etc.), and a statement of whether the Boat is presently authorized by Lessee as a Live-Aboard Boat; and (iii) the registration number assigned to the Boat in accordance with Division 3.5 of the California Vehicle Code. On or before July 1 of each year during the Term, and sooner upon the written request of County from time to time, Lessee shall deliver to Director a report which contains the foregoing information with respect to every Boat moored within the Leased Premises.

ARTICLE 4. NONDISCRIMINATION; COMPLIANCE; COOPERATION

4.1 Nondiscrimination; Compliance with Laws and Insurance Requirements.

All facilities of and services offered at the Leased Premises shall be made available to the public without discrimination as to race, sex, creed or religion. Lessee covenants and agrees not to violate or permit the violation of, and at its expense shall comply or cause to be complied with, all Insurance Requirements and all Laws, and, without limiting the generality of the foregoing, Lessee shall, at its expense, procure all licenses, permits or other authorizations required in order to lawfully and properly use, as a portion of the Harbor, the Leased Premises in the manner required and contemplated by this Lease. Nothing in this Section shall be deemed to require Lessee to cause such compliance by or on behalf of Other Lessees.

4.2 Release.

Subject to and without limitation on any of Lessee's rights expressly set forth in Article 20 of this Lease, Lessee hereby releases County from any liability for any loss or damage should Lessee's use and occupancy of the Leased Premises for the purposes set forth in this Lease be

prohibited or impaired by reason of any Law or by reason of any act of legal or governmental or other public authority, or if the operations of Lessee are impaired because of any acts or omissions of Other Lessees.

4.3 Cooperation with other Lessees; Rules and Regulations.

Lessee shall cooperate with all Other Lessees operating in the Harbor and shall conduct its operations so as to avoid interference with the use and operation of any Other Leaseholds. Upon written notice by County to Lessee, Lessee and Lessee's Parties shall observe faithfully and comply with generally applicable rules and regulations ("Rules and Regulations") governing the decorum of the Harbor and the health, safety and welfare of the occupants, visitors and patrons of the Harbor as may from time to time be promulgated or established by the various departments and agencies of the County, State and Federal authorities having jurisdiction over such matters.

ARTICLE 5. TERM

5.1 Term.

The term of this Lease shall, unless sooner terminated, expire without further notice on January 31, 2026 (the "Original Expiration Date").

5.2 Extensions of the Term under Certain Conditions.

Reference is made to Exhibit E entitled "AGREEMENT TO GRANT TWO EXTENDED TERMS FOR THE SECOND AMENDED AND RESTATED LEASE FOR LESSEE'S ELIGIBLE WORK ON PARCELS X-2 and Y-1," which Exhibit is incorporated herein as though fully set forth. Pursuant to said Exhibit, the Term may under certain circumstances and the satisfaction of specified conditions, be extended beyond January 31, 2026, for an additional three years through and including January 31, 2029, and a further additional 40 years through and including January 31, 2069. Except as provided by Exhibit E, Lessee does not have any options or rights to extend the Term of this Lease.

ARTICLE 6. RENTS; RECORDS; RECORD KEEPING; ACCESS TO RECORDS

6.1 Minimum Monthly Rent.

Lessee shall pay County without prior demand, deduction, set-off, counterclaim or notice during the Term the Rents provided in this Lease. All Rents and other payments to be made under the terms of this Lease shall be in lawful money of the United States. Lessee agrees to pay the Minimum Monthly Rent applicable to each Lease Year, in advance, on the first day of each Month, commencing on the Lease Commencement Date. For the first three (3) Lease Years of the Term, the Minimum Monthly Rent shall be \$38,600. Commencing with the fourth (4th) Lease Year, the Minimum Monthly Rent shall be adjusted in accordance with the provisions of Section 6.1.2.

6.1.1 Proration of Minimum Monthly Rent.

Intentionally deleted.

6.1.2 Adjustment of Minimum Monthly Rent.

Minimum Monthly Rent shall be adjusted as of the first day of the fourth (4th) Lease Year and as of the first day of **each** fifth (5th) Lease Year thereafter (each date of adjustment being referred to as an "Adjustment Date"), as provided in this Section. As of each Adjustment Date, the Minimum Monthly Rent shall be adjusted to an amount, rounded up to the next One Hundred and No/100 Dollars (\$100.00), equal to one-thirty-sixth (1/36th) of the product of (a) eighty percent (80%) times (b) the aggregate total of all Minimum Monthly Rent and Percentage Rent payable in the three (3) Lease Years prior to the applicable Adjustment Date; provided, however, that in no event shall the Minimum Monthly Rent as adjusted be less than the "Minimum Monthly Rent Floor" as determined as follows: (i) the Minimum Monthly Rent Floor commencing on the Lease Commencement Date shall be Twenty-Seven Thousand, Four Hundred Dollars (\$38,600); and (ii) the Minimum Monthly Rent Floor shall be increased as of the second Adjustment Date (i.e., the first day of the ninth (9th) Lease Year), and thereafter on every other Adjustment Date (i.e., every ten (10) years thereafter), to an amount equal to the greater of (i) the Minimum Monthly Rent Floor in effect for the period immediately preceding such Adjustment Date, and (ii) the minimum rent in effect on the Lease Commencement Date increased by 2% per year compounded. In no event shall the Minimum Monthly Rent ever be adjusted to an amount that is less than the Minimum Monthly Rent Floor last in effect.

6.1.3 Adjustment Procedure.

As soon as the Percentage Rent is known for the Calendar Quarter immediately preceding an Adjustment Date, County shall determine the aggregate amounts of Minimum Monthly Rent and Percentage Rent payable during the three (3) year period immediately prior to the Adjustment Date, and (subject to the provisions of Section 6.1.2 regarding the Minimum Monthly Rent Floor) one-thirty-sixth (1/36th) of eighty percent (80%) of that amount (rounded up to the next One Hundred and No/100 Dollars (\$100.00)) shall be Minimum Monthly Rent as adjusted on the Adjustment Date. By way of example and without limitation, if the aggregate amount of Minimum Monthly Rent and Percentage Rent due during the prior three (3) Lease Years is \$1,250,000, the Minimum Monthly Rent will be \$27,777.78. For purposes of calculating the adjusted Minimum Monthly Rent, but without limitation on any of County's rights or remedies with respect to Lessee's Default, in the event that Lessee has not submitted its Quarterly Statement for a particular Calendar Quarter in compliance with this Lease, the Minimum Monthly Rent for each Month of such Calendar Quarter shall be deemed, for purposes of such calculation, to be 125% of the Minimum Monthly Rent for such month. If no businesses were operated on the Leased Premises during one or more months of the three (3) year period prior to any Adjustment Date, the formula set forth above shall be modified by changing the initial fraction (i.e., one-thirty-sixth (1/36th)) to a fraction, the numerator of which is one (1) and the denominator of which is the number of months during such three (3) year period in which there were businesses operated on the Leased Premises (for example, if, during such three

(3) year period there were businesses in operation on the Leased Premises for Twenty Four (24) months, the formula would become one-twenty-fourth (1/24th) of eighty percent (80%) of the aggregate amount of Minimum Monthly Rent and Percentage Rent payable during the prior three (3) Lease Years).

6.1.4 Reconciliation of Adjustments.

The amount, if any, of the adjustment of the Minimum Monthly Rent shall be determined by County as follows: If County determines that the Minimum Monthly Rent is to be adjusted as of such Adjustment Date to an amount greater than the Minimum Monthly Rent for the prior Lease Year, County shall deliver written notice of the adjusted Minimum Monthly Rent together with County’s calculations and the assumptions upon which such calculations are based. Within thirty (30) days after Lessee’s receipt of such notice, Lessee shall pay the difference between the amount it previously paid as Minimum Monthly Rent and the newly established rate provided in the notice. If Lessee disagrees with County’s determination, Lessee shall, within twenty (20) days after its receipt of County’s calculations, deliver Lessee’s written objections to County stating the reasons therefor, together with Lessee’s determination of the adjustment Lessee deems to be correct, and the assumptions and calculations upon which such determination was made. Within twenty (20) days thereafter the Director, or his or her designee, and Lessee shall meet and confer in an attempt to agree upon the amount of the adjusted Minimum Monthly Rent. Within ten (10) days after such conference, the Director shall deliver written notice of the Director’s final determination of the adjusted Minimum Monthly Rent (together with the assumptions and calculations upon which the determination is based), which determination shall be presumed to be correct, and in all proceedings to resolve the dispute, Lessee shall bear the burden of proving that County’s determination of the adjusted Minimum Monthly Rent is incorrect. Pending resolution of the disputed amount, Lessee shall pay as Minimum Monthly Rent the amount of the adjusted Minimum Monthly Rent as initially determined by County. After resolution, any amounts owing by Lessee shall be paid within thirty (30) days after such resolution, and any overpayments by Lessee shall be credited against the Rents next due.

6.2 Percentage Rent.

In addition to Minimum Monthly Rent and Additional Rent, from and after the Lease Commencement Date, Lessee agrees to pay to County Percentage Rent. “Percentage Rent” is the aggregate total sum of each of the applicable percentages (each, a “Percentage Multiplier”) of the aggregate Gross Receipts from each Source, as listed below, generated during a Calendar Quarter, to the extent that the same exceeds the Minimum Monthly Rent paid during the same Calendar Quarter. Percentage Rent for each Calendar Quarter is due not later than twenty (20) days after the last day of that Calendar Quarter, without any prior demand, offset or deduction whatsoever.

<u>Sources</u>	<u>Percentage of Gross Receipts</u> (The “Percentage Multiplier”)
Boat Slip Rentals.....	25%

Live-Aboard Surcharges	25%
Sale/lease of new and used Boats.....	1% of sales or lease price
Commissions on Boat insurance	10%
Commissions on Boat sales and rentals	10% of Gross Commissions
Charter Boats (including 6-pack charter boats)	5%
Sales- Chandlery & Marine Items	3%
Sales- Retail-Non-Chandlery	5%
Services- Labor	3%
Space and Building Rentals	10%
All other Sources permitted by this Lease	5%
Any other Source not permitted by this Lease	35%

Except as hereinafter set forth, Lessee shall in its own name and for its own account be the party conducting the business and activities that relate to each of the Sources, and Lessee shall be deemed the recipient of all Gross Receipts therefor for the purpose of determining the Percentage Rent. Notwithstanding the immediately preceding sentence, with regard to the Sources entitled "Sale/lease of new and used Boats," "Commissions on Boat insurance" and "Commissions on Boat sales and rentals" (collectively, "Permitted Sources"), Lessee may allow a Sublessee to conduct such business in place of Lessee, provided each such Sublessee is required under its Sublease to report to Lessee (in the form of Quarterly Statements, which shall be provided by the Sublessee to Lessee on or before the date that Lessee's Quarterly Statements are due under Section 6.2.1 of this Lease) and account to Lessee for the amount of the Permitted Sources attributable to such Sublessee, and to pay an amount to Lessee equivalent to the Percentage Rent applicable to such Permitted Sources under this Lease. No such Sublease shall relieve Lessee from any liability to County to pay Percentage Rent on the full amount of all Permitted Sources, whether or not Lessee has received any payment with respect to the Permitted Sources under a particular Sublease. Sublessee payments relating to Permitted Sources as to which Lessee has not paid Percentage Rent to County, when received by Lessee, shall be held by Lessee in trust for the benefit of County (but such payment by a Sublessee shall not be construed to limit the amount of Percentage Rent payable under this Lease). Lessee shall report to County and account for the amount of each Source (including without limitation the Permitted Sources) for the purpose of determining Percentage Rent, and Lessee shall pay County the Percentage Rent attributable to each such Source (including without limitation the Permitted Sources) as set forth above. Lessee shall, in its agreements with any Sublessee which conducts a business involving Permitted Sources, require that such Sublessee provide appropriate reports and accountings for the benefit of County as well as Lessee and allow County as well as Lessee to review, inspect and audit the books and records of such Sublessees (including, but not limited to, the Returns of any such Sublessee subject to the provisions of Section 6.4.1 of this Lease) for that purpose. In the event any such Sublessee fails to so report or account for the Permitted Sources or to pay an amount equivalent to the Percentage Rent thereon to Lessee, Lessee agrees to exercise due diligence in enforcing such requirements and to pursue all appropriate and available rights and remedies of Lessee with respect to such failure, including claiming damages for failed reporting and unpaid rent, and termination of such Sublease.

6.2.1 Calculation and Adjustment of Percentage Rent Payments.

The amount of the Percentage Rent due and payable for each Calendar Quarter shall be calculated in a Quarterly Statement prepared by Lessee and submitted to County as

provided below by applying the Percentage Multiplier for each Source to the relevant portion of Gross Receipts for each Source. Each Quarterly Statement shall specify (a) the Gross Receipts for each Source, (b) allowed deductions or exclusions therefrom, and (c) payments of Minimum Monthly Rent made by Lessee for the same Calendar Quarter. The calculations of the Percentage Rent in each Quarterly Statement shall be based on line items relevant to each such Source of Gross Receipts and any deduction or exclusion therefrom in a form approved by the Director. Each Quarterly Statement shall be submitted by Lessee to County not later than the date Percentage Rent is payable for such Calendar Quarter under Section 6.2 of this Lease and shall be accompanied by (i) the payment of the Percentage Rent to which such Quarterly Statement applies, and (ii) a Quarterly Statement for such Calendar Quarter from any Sublessee conducting a business involving Permitted Sources. Receipt of any Quarterly Statement or acceptance of any tendered amount of Percentage Rent shall not be binding on County as to the accuracy of the Quarterly Statement or the amount of such Percentage Rent or any portion thereof. For the purpose of computing the Percentage Rent due, sales made during the first fractional Calendar Quarter in which the Lease Commencement Date occurs shall be added to the sales made during the first full Calendar Quarter and Lessee shall pay to County the amount by which the amount so computed by applying the Percentage Multiplier for each Source to the relevant portion of Gross Receipts for each Source during this entire period exceeds the Minimum Monthly Rent paid by Lessee during said period. Except as set forth above with respect to the first fractional Calendar Quarter, each Calendar Quarter and the Quarterly Statement therefor shall be a separate accounting period and a separate accounting, respectively. The amount, if any, by which the Minimum Monthly Rent paid for any Calendar Quarter exceeds the aggregate percentages from each Source for that same Calendar Quarter shall not be credited against or otherwise offset the Minimum Monthly Rent or Percentage Rent for any other Calendar Quarter, and there shall not be an adjustment on an annual or other basis of the aggregate Percentage Rent due during a Lease Year or other period.

6.3 Imputed Percentage Rent.

In the event Lessee shall fail to timely submit a Quarterly Statement as provided for in Section 6.2.1 of this Lease, the Percentage Rent due on the date that the Quarterly Statement for such Calendar Quarter is required to be submitted to County (the "Imputed Percentage Rent") shall be the greater of (i) Percentage Rent computed using the highest aggregate amount of Gross Receipts from all Sources for any preceding Calendar Quarter, as previously reported on any Quarterly Statement, and (ii) 125% times the then current aggregate Minimum Monthly Rent for the Calendar Quarter for which the Percentage Rent is due. In addition, in the event any Sublessee conducting a business involving Permitted Sources shall fail to submit a Quarterly Statement, the Percentage Rent due on the date that the Quarterly Statement for such Calendar Quarter is required to be submitted by such Sublessee shall be computed by including the greater of (A) the highest aggregate amount of Gross Receipts from such Permitted Sources for any preceding Calendar Quarter, as previously reported by such Sublessee on any Quarterly Statement, and (B) 125% times the then current aggregate monthly minimum or base rent payable by such Sublessee for the Calendar Quarter for which the Percentage Rent is due, and the Percentage Rent so calculated shall be deemed Imputed Percentage Rent. For purposes of the foregoing, Lessee (or any such Sublessee) shall not be deemed to have failed to timely submit a Quarterly Statement due solely

to the existence of good-faith clerical or accounting errors therein. In the event that the actual Percentage Rent for any such Calendar Quarter is later determined (whether from a subsequently delivered Quarterly Statement, an audit of the relevant books and records of Lessee, or otherwise) by Landlord to be greater than the Imputed Percentage Rent paid for such Calendar Quarter, Lessee shall immediately pay the amount of the deficiency to County, together with interest thereon at the Maximum Rate from the date the Percentage Rent was otherwise due. Nothing contained herein shall be construed (a) to allow Lessee or any such Sublessee to fail or refuse to faithfully account for Gross Receipts, to fail to submit Quarterly Statements or to fail to pay Percentage Rent as otherwise provided for herein, or (b) as a waiver of the rights of County to otherwise receive faithful accountings and Quarterly or Annual Statements from Lessee and such Sublessees and to conduct audits concerning such rights. Lessee shall not be entitled to a credit or refund if the Imputed Percentage Rent for a particular Calendar Quarter is later determined (whether from a subsequently delivered Quarterly Statement, an audit of the relevant books and records of Lessee, or otherwise) to be greater than the Percentage Rent.

6.4 Record Keeping.

Lessee shall record and shall report its Gross Receipts from each Source to County for each Calendar Quarter and comply with the provisions of this Article. Lessee shall keep and maintain (i) all such records with regard to its respective Gross Receipts, the Sources of such Gross Receipts, and credits, refunds and other pertinent transactions made with respect to the Leased Premises, (ii) detailed original records of any exclusions or deductions from Gross Receipts or the Sources, (iii) all Subleases and other agreements relating to such Sources or regarding the use, occupancy and operation of the Leased Premises, and (iv) full and accurate books of account and records consistent with this Lease and capable of being audited.

6.4.1 Records of Business Entity.

Lessee shall also keep and make available to County the records regarding the form and ownership of the business entity of Lessee, such as articles of incorporation, by-laws, stock registers, membership lists, filings with regulatory agencies, operating agreements, partnership agreements, management agreements, minutes of meetings and other documents pertaining to the form and ownership of Lessee. Upon request of County, Lessee agrees to furnish to County the name of each Owner of Lessee. In addition, Lessee agrees to make available for County's inspection during Business Hours the following tax returns and reports (collectively, "Returns") for Lessee and for any Sublessee conducting a business involving Permitted Sources: (a) state and local sales tax returns; and (b) federal and state income tax returns and any other similar reports or returns required by Law to be filed with any federal or state taxing agency that contain material information needed by County to determine or verify the amount of Lessee's Gross Receipts. Nothing herein shall require Lessee to provide business records or Returns to the extent relating to any Unrelated Business if the books, records and Returns of the Unrelated Business are distinguishable from the business records and Returns and the books, records and Returns of Lessee, as Lessee under this Lease, can be inspected and audited without reference to or inspection of such other Unrelated Business's records and Returns. Any information gained by County from such business records and Returns shall be kept confidential by County to the maximum extent permitted by law and County shall make reasonable efforts not to disclose

such information other than as necessary to carry out the purposes of this Lease, with the exception of the following: County shall be permitted to divulge the contents of any such information in connection with (i) any financing arrangements or assignments of County's interest in the Leased Premises, (ii) any administrative or judicial proceedings regarding the enforcement of this Lease or in which County is otherwise involved and where County may be required to divulge such information, (iii) when County (as a public agency) is required by Law to divulge such information, or (iv) when Lessee or the applicable Sublessee waives any right of confidentiality which it may claim to have for such information (as the case may be, "Permitted Disclosures"). Any Returns may be provided by Lessee at its place of business for review by representatives of County without copying (except that copying of a particular Return shall be permitted if disclosure of the information contained therein is permitted under the immediately preceding sentence); at the election of such party, the Returns or schedules used therein may be "blacked out" in a manner which discloses the total gross expenditures (but not individual line items of expenditure) and gross receipts (showing all details thereof) for all businesses at the Leased Premises but which conceals gross expenditures and gross receipts for any other businesses of such party.

6.4.2 System of Accounts.

Lessee shall establish and install a system of bookkeeping records and accounts ("Accounts") to be used and maintained by Lessee to accurately and timely record the results of all transactions regarding Lessee's construction activities and Lessee's use, occupancy, business operations and other activities of Lessee under this Lease consistent with the reporting requirements of this Lease and the rights of County hereunder to inspect and audit such activities and Accounts. The Accounts shall be established and maintained by Lessee in such manner and with such segregation of such Accounts that an examination of such Accounts may be conducted by persons external to Lessee (including without limitation, the County or its representatives) to allow the examiner to determine if such Accounts have truly and accurately recorded the matters for which they were established and to determine if the Quarterly Statements, Annual Statements and other financial statements and reports to be submitted by Lessee hereunder truly and accurately reflect the financial conditions to be so reported.

6.4.3 Source Documents.

All business records must be supported by source documents such as sales slips, invoices, billings, unbilled accounting documents, ledgers, bank deposit receipts, sales tax returns, cash register tapes, sales books, bank books, purchase invoices, contracts, Subleases and other agreements, and such other similar records and documents as may be reasonably necessary to verify the Gross Receipts and the basis of the calculations necessary for the determination of Percentage Rent and other transactions to which Lessee is a party and which constitute the source of the matters to be reported and for which the Accounts are to be established.

6.4.4 Location of Records.

All records required to be kept by Lessee pursuant to this Lease shall be kept at the Leased Premises or at the principal place of business of Lessee (or its Sublessee, to the extent such Sublessee conducts a business involving Permitted Sources) designated in writing to County by Lessee and maintained within seventy-five (75) miles of the main Courthouse, County of Ventura. All such records for which County has requested the right to inspect or audit shall be kept and maintained until such inspection or audit has been completed, and all other such records shall be kept and maintained for not less than four (4) years after delivery of the Annual Statement to which such records relate, unless the written approval of the Auditor be first obtained; provided, however, that Lessee (or any such Sublessee) may, with notice to County of the location from which such records are to be removed and the location at which such records will be temporarily kept, at reasonable times remove any or all the records, or permit or cause them to be removed, for legal or accounting purposes or for other purposes promotive of and consistent with these provisions and this Lease; provided that such records are thereafter returned to their original location.

6.4.5 County's Access to Records, Right to Inspect and Audit.

County may, at any time within four (4) Lease Years after its receipt of the Annual Statement for a particular Lease Year, deliver written notice to Lessee of its intent to inspect and/or audit Lessee's (and any applicable Sublessees') books, records and accounts relevant to the determination of Gross Receipts for all Calendar Quarters during such Lease Year. Such written notice shall designate a reasonable date and time (during Business Hours) for such inspection and/or audit. County shall have the right at the date and time designated in such notice to examine, inspect and make copies and abstracts of such books, accounts and records of Lessee (and such Sublessees) at the Leased Premises or at its principal place of business designated by Lessee in writing to County pursuant to Section 6.4.4 of this Lease. Such inspection and audit may continue from time to time until completed, and shall be conducted either by County or by a representative designated by County. Lessee shall make all records specified in the notice available at the time specified in the notice, to the extent practicable, and at the place where the records are to be kept, provided, however, that County, in the course of any inspection or audit, is entitled to have complete access (with or without copying equipment) to any or all records for the purpose of examination or copying.

6.4.6 Payment of Adjusted Percentage Rent.

If it is determined as a result of an audit that there has been a deficiency in the payment of any Percentage Rent, then such deficiency shall immediately become due and payable, together with interest at the Maximum Rate from the date when said payment should have been made until paid. In addition, if any of Lessee's Quarterly Statements for the Lease Year being audited is found to have understated Gross Receipts for the applicable Calendar Quarter by more than three (3%), and if County is entitled to any additional Percentage Rent for that Calendar Quarter as a result of said understatement, then Lessee, in addition to paying the deficiency and interest as aforesaid, shall reimburse County for

all reasonable costs and expenses (including, but not limited to: accounting, bookkeeper's and auditor's fees; attorneys' fees; costs allocable to salaries and benefits of County's employees dedicated to the completion of the audit; copying, reproduction and printing costs; and litigation and court costs) which may be incurred or suffered by County in determining the understatement, conducting the audit and/or collecting the underpayment. If in any two (2) Calendar Quarters during any four (4) consecutive Lease Years, any one or more of the following shall have occurred: (a) any Quarterly or Annual Statement shall be found to have intentionally or by gross negligence understated Gross Receipts by more than ten percent (10%), (b) Lessee (or any applicable Sublessee) fails to maintain its books and records as required by this Lease, (c) Lessee fails to timely submit a Quarterly Statement for any Calendar Quarter, or (d) Lessee (or any applicable Sublessee) fails to allow County the right to timely inspect and audit the Lessee's books and records as required by this Lease, or (e) if Lessee fails to submit an Annual Statement two (2) times within four (4) consecutive Lease Years, County may, at its sole option, treat such occurrence as an Event of Default and shall have all of its rights and remedies in connection therewith.

6.4.7 Adjustment of Percentage Rent.

Either County or Lessee (for purposes of this Section, a "Requesting Party") may request, in accordance with this Section, a modification of the Percentage Multiplier for any or all Sources of Gross Receipts used to calculate Percentage Rent, to become effective as of the twenty-first (21st) and thirty-first (31st) anniversary of the Lease Commencement Date (each, a "Percentage Rent Adjustment Date").

6.4.7.1 Adjustment Requests.

Not sooner than one hundred eighty days (180) days nor more than 270 days prior to a Percentage Rent Adjustment Date, the Requesting Party may deliver a written request to the other (the "Responding Party") requesting a modification of the Percentage Multiplier of any Source used to calculate Percentage Rent, together with its valuation of the Fair Market Percentage Rent and of the Percentage Multipliers proposed to yield the Fair Market Percentage Rent as of the Percentage Rent Adjustment Date, and the assumptions and data used by the Requesting Party sufficient to enable the Responding Party to understand such valuation ("Adjustment Request").

6.4.7.2 Valuation by Responding Party.

Within sixty (60) days after receipt of a complete Adjustment Request, the Responding Party, if it disagrees with the Requesting Party's valuation, shall deliver to the Requesting Party its written valuation of the Fair Market Percentage Rent and of the Percentage Multipliers for each Source proposed to yield the Fair Market Percentage Rent as of the Percentage Rent Adjustment Date, and its assumptions and data sufficient to enable the Requesting Party to understand such valuation ("Adjustment Response").

6.4.7.3 Adjustment Conference.

During the forty-five (45) day period after the Requesting Party's receipt of a complete Adjustment Response, County and Lessee shall meet and confer in an attempt to negotiate a modification of the Percentage Multipliers.

6.4.7.4 Failure to Respond.

If Responding Party fails to deliver its Adjustment Response within sixty (60) days after its receipt of a complete Adjustment Request, then the Requesting Party may provide the Responding Party with written notice of such failure, which notice shall inform the Responding Party that a failure to timely provide an Adjustment Response will result in the adoption of the proposed formula for determining Percentage Rent as set forth in the Adjustment Request. If the Responding Party does not deliver its Adjustment Response within fifteen (15) Business Days after receipt of such notice, then the Requesting Party's proposal as set forth in the Adjustment Request will be adopted as the adjusted method to calculate Percentage Rent as of the Percentage Rent Adjustment Date, and the Responding Party shall be deemed to have waived an appraisal pursuant to Section 6.4.7.7.

6.4.7.5 Failure of Parties to Agree.

If County and Lessee are unable to agree to a modification of the Percentage Multipliers within one hundred five (105) days after the Adjustment Request is given, then the Percentage Multipliers used to calculate Percentage Rent shall continue unless and until modified as provided in the following Sections.

6.4.7.6 Definition of Fair Market Percentage Rent.

As used herein, "Fair Market Percentage Rent" means the highest Percentage Multiplier applicable to the various Sources of Gross Receipts on the Percentage Rent Adjustment Date that would be agreed to by the County, being willing to lease but under no particular or urgent necessity for so doing, nor obliged to lease, and a lessee, being ready, willing, and able to lease but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the Leased Premises may be used. The Fair Market Percentage Rent shall be determined as of the Percentage Rent Adjustment Date. Notwithstanding anything to the contrary set forth in this Lease, however, in no event shall the Percentage Multiplier for each Source be more than one hundred twenty five percent (125%) or less than seventy five percent (75%) of the Percentage Multiplier in effect immediately prior to the Percentage Rent Adjustment Date.

6.4.7.7 Appraisal of Percentage Rent.

If the parties are unable to agree upon a modification of the Percentage Multipliers within the time period set forth in Section 6.4.7.5 above, then (unless waived pursuant to Section 6.4.7.4) the dispute shall be resolved by appraisal as provided herein. THE ONLY ISSUES TO BE DETERMINED BY APPRAISAL ARE THE AMOUNT OF FAIR MARKET PERCENTAGE RENT AS OF THE PERCENTAGE RENT ADJUSTMENT DATE, AND THE MODIFIED PERCENTAGE MULTIPLIERS NECESSARY TO YIELD SUCH FAIR MARKET PERCENTAGE RENT, AND NO OTHER ISSUES.

6.4.7.8 Appraisal as to Fair Market Percentage Rent.

Within ten (10) days after expiration of the time period for negotiation set forth in Section 6.4.7.5 above, County and Lessee shall each appoint an MAI Appraiser to participate in the appraisal process provided for in this Section, and shall give written notice thereof to the other party. Upon the failure of either party so to appoint, the appointing party shall have the right to apply to the presiding judge of the Superior Court of Ventura, California, to appoint an MAI Appraiser to represent the non-appointing party. Within thirty (30) days after the appointment of both appraisers, the appraisers shall meet and confer in an attempt to agree upon the Fair Market Percentage Rent and the modified Percentage Multipliers necessary to yield such Fair Market Percentage Rent. If the two appraisers fail to so agree within forty five (45) days after the appointment of both appraisers, then within ten (10) days thereafter, the two appraisers shall jointly appoint a third MAI Appraiser and give written notice thereof to County and Lessee, or if within ten (10) days of the appointment of said appraisers the two appraisers shall fail to appoint a third, then either party hereto shall have the right to make application to the presiding judge of the Superior Court of Ventura, California to appoint such third appraiser. Within 45 days after the appointment of the third appraiser, the appraisers shall determine the Fair Market Percentage Rent as of the Percentage Rent Adjustment Date, using the definition of Fair Market Percentage Rent set forth in Section 6.4.7.6 above, and the modified Percentage Multipliers necessary to yield such Fair Market Percentage Rent in accordance with the provisions hereof, and shall execute and acknowledge their determinations in writing and cause a copy thereof to be delivered to each of the parties hereto.

6.4.7.9 Appraisal Procedures.

If a third appraiser has been appointed and a majority of the appraisers are unable to agree on Fair Market Percentage Rent and the modified Percentage Multipliers necessary to yield such Fair Market Percentage Rent within 60 days of the appointment of the third appraiser, the three appraisals of Fair Market Percentage Rent shall be added together and their total divided by three (3). The resulting quotient shall be the Fair Market Percentage Rent. If, however, the low appraisal and/or high appraisal is or are more than ten percent (10%) lower and/or higher than the middle appraisal, the low and/or high appraisal shall be disregarded. If only one appraisal is disregarded, the remaining two appraisals shall be added together and their total divided by two (2). The resulting quotient shall be the Fair

Market Percentage Rent. If both the low and high appraisals are disregarded, the middle appraisal shall be the Fair Market Percentage Rent. The same procedure shall also be used to resolve differences among the appraisers as to the modified Percentage Multipliers necessary to yield such Fair Market Percentage Rent.

6.4.7.10 Payment of Fees.

Each of the parties hereto shall (a) pay for the services of its appointee, (b) pay one-half (1/2) of the fee charged by the appraiser selected by their appointees, and (c) pay one-half (1/2) of all other proper costs of the appraisal.

6.4.7.11 Determination After Percentage Rent Adjustment Date.

If the Fair Market Percentage Rent and the modified Percentage Multipliers used to calculate Percentage Rent are not determined on or before the Percentage Rent Adjustment Date, Lessee shall continue to pay the Percentage Rent then in effect. If the modified Percentage Multipliers and the resulting Percentage Rent as so determined are greater than the Percentage Rent then in effect, Lessee shall promptly pay the amount of increased Percentage Rent, if any, that became payable on and after the Percentage Rent Adjustment Date together with interest at the Maximum Rate on the unpaid amounts of Percentage Rent from such Percentage Rent Adjustment Date (or, in the circumstances described in Section 6.4.7.1, from the date the Adjustment Request is given) to the date of payment. If the modified Percentage Multipliers and the resulting Percentage Rent as so determined are less than the Percentage Rent then in effect, Lessee shall receive a credit for amounts overpaid, together with interest at the Maximum Rate from the Percentage Rent Adjustment Date (or, in the circumstances described in Section 6.4.7.1, from the date the Adjustment Request is given) to the date the credit is applied, against the next Percentage Rent payment due.

6.5 Quarterly and Annual Statements.

Lessee shall furnish to County Quarterly Statements when required under Section 6.2.1 of this Lease. Lessee shall also furnish an annual written statement ("Annual Statement"), which is due within thirty (30) days after the close of each lease year, along with the annual financial statements (balance sheet and profit and loss "P&L" statement. The Annual Statement should summarize the total gross receipts as reported quarterly per the lease during that lease year, and tie the totals reported quarterly to the total revenues during that same period as reported in the %L statement. Each Quarterly and Annual Statement shall be signed and certified to be true and correct by Lessee if Lessee is composed of individuals, or by the chief financial officer of Lessee if Lessee is a corporation, limited liability statements submitted by Lessee to third parties (such as lenders, suppliers, bankers or other similar private parties requesting such financial information). The Quarterly Statements and Annual Statements shall be kept confidential by County subject to the terms of Section 6.4.1 regarding Permitted Disclosures. The receipt by County of any Quarterly or Annual Statement or any payment of Percentage Rent for any period shall not bind it as to the correctness of the Quarterly Statement or the Annual Statement, or the correctness of any payment. Lessee agrees that any applicable statute of limitations that is or may be claimed to be a defense

to the payment of Percentage Rent for a Calendar Quarter shall not commence to run (even though the Quarterly Statement may have been delivered) until the Annual Statement for the Lease Year in which such Calendar Quarter occurs has been delivered to County in compliance with this Lease. Each year, together with the Annual Statement, Lessee shall submit to County current financial statements consisting of a balance sheet and profit and loss statement of Lessee, prepared and certified by Lessee or by an outside accountant engaged by Lessee to accurately reflect the financial condition of the Lessee; and shall furnish to County copies of any financial statements of Controlling Owner. If Lessee is not a single purpose entity, having only this Lease as its sole asset, it may prepare financial statements excluding its Unrelated Business.

6.6 Failure To Pay Items Required.

If Lessee fails to pay any of the Rents when the same are due and payable, such unpaid amounts shall bear interest at the Maximum Rate from the date due until the date of receipt by County of such payment. In addition to such interest, Lessee acknowledges that the late payment by Lessee of any Rents will cause County to incur certain internal administrative costs and expenses not otherwise provided for under this Lease, and that the exact amounts of such costs are extremely difficult or impractical to fix. Such costs and expenses will include but are not limited to internal administrative processing, accounting and review costs. Lessee shall immediately pay to County a late charge equal to the greater of two (2%) of each such late payment subsequent to the first late payment during that calendar year or One Hundred and No/100 Dollars (\$100.00). County and Lessee agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to County for its internal administrative loss suffered, not including interest, because of nonpayment or untimely payment by Lessee. Acceptance of this late charge shall not constitute a waiver of Lessee's Default with respect to such nonpayment or untimely payment by Lessee, and shall not prevent County from exercising all other rights and remedies available to County under this Lease.

6.7 Application of Payments.

County may, at its option, apply any payments received from Lessee to any interest, Minimum Monthly Rent, Percentage Rent or Additional Rent which is then due and payable. If County shall not make any specific application of a payment received from Lessee, then any payment received from Lessee shall be applied first to the interest owing, then to the Additional Rent, then to the Percentage Rent and then to the Minimum Monthly Rent which in that order has been overdue for the longest period of time. The receipt by County of the Rents or any other charges due to County, with knowledge of any breach of this Lease by Lessee or of any default on the part of Lessee in the observance or performance of any of the conditions or covenants of this Lease, shall not be deemed to be a waiver of any provisions of this Lease. No acceptance by County of a lesser sum than the Rents or any other charges then due shall be deemed to be other than on account of the earliest installment of the Rents or other charges due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of Rents or charges due be deemed an accord and satisfaction, and County may accept such check or payment without prejudice to County's right to recover the balance of such installment or pursue any other remedy provided in this Lease. The receipt by County of any Rents or any other sum of money or any other consideration paid by Lessee after the termination of this Lease, or after giving by County of any notice hereunder to effect such termination, shall not, except as otherwise expressly set forth in

this Lease, reinstate, continue, or extend the term of this Lease, or destroy, or in any manner impair the efficacy of any such notice of termination as may have been given hereunder by County to Lessee prior to the receipt of any such sum of money or other consideration, unless so agreed to in writing and signed by County. Neither acceptance of the keys nor any other act or thing done by County or by its agents or employees during the Term shall be deemed to be an acceptance of a surrender of this Lease, the Leased Premises or the Improvements, excepting only an agreement in writing signed by County accepting or agreeing to accept such a surrender.

6.8 Net Lease; No Counterclaim, Abatement, etc.

Except as expressly set forth in this Lease, all Rents shall be absolutely net to County, so that this Lease shall yield to County the full amount of the installments or payments of Rents throughout the Term, and shall be paid without assertion of any counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction. Under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall County be expected or required to make any payment of any kind whatsoever or be under any obligation or liability hereunder, except as herein expressly set forth. Lessee hereby waives, to the full extent permitted by applicable Law, all rights now or hereafter conferred by statute or otherwise, to deduct from or offset against the Rents for obligations or defaults of County.

6.9 Address for Payments.

All Rents and other payments shall be paid by Lessee to County at County's address at: 3900 Pelican Way, Oxnard, CA 93035 or at such other place as may from time to time be designated by County in writing.

ARTICLE 7. UTILITIES

7.1 Payment by Lessee; Indemnification.

Lessee shall, during the entire Term, (a) arrange for and pay any and all initial utility deposits and fees, connection and metering costs, and (b) arrange for and pay all monthly service charges for electricity, gas, telephone, water and sewage, and any other utility services furnished to the Leased Premises and the Improvements thereon. If County shall be adjudicated by a final non-appealable judgment of a court of competent jurisdiction in an action brought by Lessee to be liable to Lessee for any loss or damage resulting from an interruption of any of the above services, Lessee may offset the amount of such judgment against any Rent or other amounts due and owing hereunder provided that at the time of such offset Lessee notifies County of the offset and delivers a partial or full (as the case may be) satisfaction of judgment suitable for filing with the court rendering such judgment. Lessee shall defend, indemnify and save County harmless against any liability, charges, costs or expenses (including but not limited to reasonable attorneys' fees) on account thereof. In case any such utility charges are not paid by Lessee when due, County (without limitation on any of its other rights or remedies for Lessee's Default) may pay the utility charges to the utility company or department furnishing the utility service if Lessee fails to pay within ten (10) days after receipt of County's notice and demand that payment be made, and in such event any amounts so paid by County, together with an administrative fee of fifteen percent (15%) of

the amount so paid by County, shall be paid by Lessee to County immediately upon demand by County, as Additional Rent.

7.2 Utility Rates.

If the furnishing of any service by County should be determined to be a public utility service and rates therefor should be fixed or approved by any public authority having jurisdiction, then such rates for any such service shall supersede the provisions of this Lease with respect to the determination of the charges to be paid by Lessee for such service.

7.3 No Overloading.

Lessee shall not have the right to install any equipment which shall exceed the capacity of any utility facilities or which shall require additional utility facilities or Improvements whose plans and specifications have not received prior approval by County. If such installation is approved by County, and if County provides any additional facilities, equipment or services to accommodate Lessee's installation, Lessee agrees to pay County, upon demand, the cost of providing same. Lessee shall in no event overload or overburden any of the utility facilities serving the Leased Premises.

7.4 Utility Service by County.

If any utilities (excluding storm drainage and/or flood control) are provided in whole or in part by County, Lessee shall promptly pay to County, as Additional Rent, County's normal and customary charges or fee for such utilities. Lessee shall also deposit with County, as security for the payment of future charges, the greater of (i) an amount estimated by County that represents the charges to Lessee for one month's service, or (ii) such amount as is charged by County for similarly situated utility customers. Such charges shall be billed periodically at intervals elected by County. If the utilities to the Leased Premises are not metered separately from other users of the same utility service, the Lessee shall be charged Lessee's prorata share of the cost to the County for the procurement and distribution of such service (including a reasonable amount for management and administration). Lessee's pro rata share of any utilities expense, if not established pursuant to either a generally applicable schedule approved by County in accordance with applicable Law or an agreement with Lessee, shall be based on a fraction of the total cost to County, the numerator of which shall be the usage by the Leased Premises as reasonably determined by County, and the denominator of which shall be aggregate total of all usage for the Leased Premises and all County-operated premises in the Harbor using the same utility service. If Lessee contends that County is not or has not been reasonable in its determination of Lessee's pro rata share or in the total costs to County, and County and Lessee are unable to otherwise agree, Lessee shall at its sole cost and expense have the right to install a meter to measure the utility services so provided and the numerator shall then be the amount measured by such meter. Notwithstanding the foregoing, if meters for all subscribers to such utility service are installed, then Lessee shall pay County monthly for the utility services so metered at the rates for units of service not greater than comparable rates charged to other similarly situated utility customers. County may estimate its total periodic costs and may adjust such costs from time to time, in accordance with applicable law and based on County's experience and reasonably anticipated costs. Within 60 days following the end of each calendar year, County shall furnish Lessee a statement covering the previous year showing the

total costs to the County, the total charges payable by Lessee for said year and the payments actually made by Lessee with respect to such period as set forth above. If the sums payable by Lessee for such utility expenses exceed Lessee's prior payments, Lessee shall pay County the deficiency within 10 days after receipt of such statement. If said payments exceed the sums payable for such expenses, Lessee shall receive a credit in the amount of such excess against payments, which next become due to County under this Section.

ARTICLE 8. INDEMNITY; RELEASE; INSURANCE; WAIVER OF SUBROGATION

8.1 Indemnity.

In addition to any other indemnifications provided elsewhere in this Lease, Lessee shall defend, at Lessee's sole expense and with legal counsel acceptable to County, indemnify and hold harmless the Ventura County Harbor Department and County, its boards, commissions, districts, agencies, departments, officers, elected and appointed officials (including Board members), employees, contractors, consultants, volunteers and agents (collectively, the "Indemnified Parties") from and against all liabilities, losses, judgments, lawsuits, causes of action, obligations, debts, demands, damages, penalties, claims, costs, charges and expenses, including reasonable attorneys' fees (collectively referred to as "Claim"), which may be imposed or incurred or asserted (whether real or claimed) against County or the Indemnified Parties by reason of any of the following occurrences during the term of this Lease:

(a) Any use, non-use, possession, occupation, condition, operation, conduct of business, maintenance or management of the Leased Premises by Lessee or any of Lessee's Parties or arising from any activity, work, or other things done, permitted or suffered by Lessee or any of Lessee's Parties in or about the Leased Premises, or any part thereof, or any sidewalk, curb, vault, passageway or space adjacent thereto over which Lessee has management responsibilities or control;

(b) Any negligence or wrongful act on the part of Lessee or any of Lessee's Parties;

(c) Any accident, injury or damage to any person or property occurring in, on or about the Leased Premises, or any part thereof, or any sidewalk, curb, vault, passageway or space adjacent thereto over which Lessee has management responsibilities or control;

(d) Any failure on the part of Lessee to maintain, repair, restore or construct the Leased Premises as provided in this Lease, or any failure to perform or comply with any of the other terms, provisions, covenants and conditions contained in this Lease on his part to be performed or complied with;

(e) All liens, claims and demands arising out of the construction, alteration, repair, restoration or work of improvement on or about the Leased Premises by or on behalf of Lessee;

(f) Any action alleging or determination that any work performed in or on the Leased Premises is a "public work," as defined in California Labor Code division 2, part 7, chapter

1, section 1720 et seq., including without limitation, any claim or action brought pursuant to Labor Code section 1784; and

(g) County's approval and administration of this Lease.

Lessee agrees to give prompt notice to County in case of casualty or accidents in the Leased Premises, or in the case of any incident or omission upon which a Claim could be made. In case any action or proceeding is brought against County or any of the other Indemnified Parties by reason of any such Claim, Lessee, upon written notice from County, shall at Lessee's expense, resist or defend such action or proceeding by counsel reasonably approved by County in writing. This obligation to indemnify shall include without limitation reasonable attorneys' fees and investigation costs and all other reasonable costs, expenses and liabilities from the first notice that any Claim or demand is to be made or may be made. Notwithstanding the foregoing, neither County nor the other Indemnified Parties shall be entitled to indemnity under the foregoing provision for any Claim to the extent arising from its own willful or negligent misconduct.

8.2 Release.

County or its agents shall not be liable for interference with the light, air, or for any latent defect in the Leased Premises. County shall not be liable for and Lessee on behalf of itself and, to the maximum extent permitted by Law, Lessee's Parties, hereby releases County from any loss, damage or liability of any kind, for any injury to or death of persons, for Environmental Damages or for damage to property of Lessee or any other person from any cause whatsoever occurring from and after the Lease Commencement Date by reason of the use, construction, occupancy and enjoyment of the Leased Premises by Lessee or any of Lessee's Parties, or for any matter for which Lessee is obligated to indemnify County under this Lease. The damages for which County is released include, but are not limited to, damages resulting from (i) any labor dispute, (ii) fire, smoke, explosion, noxious odors, the presence of Hazardous Materials, falling plaster or other building materials, steam, gas, electricity, or other nuisance, (iii) water, dampness, wave action or rain which may leak from or to any part of the Leased Premises or its roof, (iv) failure or rupture of the pipes, appliances, Systems, equipment or plumbing works in the Leased Premises; and (v) interruption in utility service. County shall in no event be liable to Lessee or anyone claiming by, under or through Lessee for any loss, damage or liability resulting from the acts or omissions of Other Lessees or users of the Harbor or by any other third person who was not acting under the direction and control of County.

8.3 Insurance Provided by Lessee.

From and after delivery of possession of the Leased Premises, Lessee shall carry and maintain, at Lessee's sole cost and expense, the types of insurance, in the amounts specified and forms provided below.

8.3.1 Comprehensive General Liability.

Commercial general liability "occurrence" coverage covering the Leased Premises and Lessee's use thereof in the minimum amount of Two Million and No/100 Dollars (\$2,000,000.00) combined single limit ("CSL") bodily injury & property damage each occurrence and Two Million and No/100 Dollars (\$2,000,000.00) CSL product and general

aggregate, including personal injury, broad form property damage, products / completed operations, broad form blanket contractual, One Hundred Thousand and No/100 Dollars (\$100,000.00) fire legal liability, broad form CGL endorsement and limited U.S. oil pollution coverage. These limits shall apply to this location only. If the paragraph entitled "Use of Leased Premises" in the Summary expressly permits salvage operations that include diving to secure disabled vessels, diving operations coverage satisfactory to County as to form and amount shall also be maintained. The insurance coverage required under this Section shall include coverage for liability hazards as defined in the policy forms and endorsements for premises and operations liability, personal injury liability, broad form property damage liability and contractual liability, which shall extend to liability of Lessee arising out of the indemnities provided above.

8.3.2 Protection and Indemnity Liability.

Protection and indemnity liability coverage in the minimum amount of Two Million and No/100 Dollars (\$2,000,000.00) CSL bodily injury & property damage per any one accident or occurrence, including master & crew. If the paragraph entitled "Use of Leased Premises" in the Summary expressly permits salvage operations that include towing of disabled vessels, towers' liability coverage satisfactory to County as to form and amount shall also be maintained.

8.3.3 Marina Operators' Protection & Indemnity Liability.

Marina operators' protection & indemnity liability coverage in the minimum amount of Two Million and No/100 Dollars (\$2,000,000.00) CSL bodily injury & property damage per any one accident or occurrence.

8.3.4 Marina Operators / Boat Repairers Legal Liability.

As applicable, marina operators' / boat repairers' legal liability coverage in the minimum amount of Two Million and No/100 Dollars (\$2,000,000.00) CSL bodily injury & property damage per any one accident or occurrence.

8.3.5 Boat Dealers' Legal Liability.

As applicable, boat dealers' legal liability coverage for the stated value of Boats of others held for sale by Lessee.

8.3.6 Boatkeeper's Liability.

Boat keepers liability insurance with limits of not less than Two Million and No/100 Dollars (\$2,000,000.00) for any one occurrence.

8.3.7 Crime Insurance.

Crime insurance coverages: employee dishonesty blanket position bond, money & securities loss outside, money & securities loss inside, money orders & counterfeit papers

currency, depositors forgery including employee dishonesty - each at a minimum limit of Fifty Thousand and No/100 Dollars (\$50,000.00).

8.3.8 Direct Property Damage.

All risk physical damage insurance, including debris removal and builder's risk coverage during the course of construction, covering the Leased Premises, equipment, Lessee's trade fixtures, merchandise and personal property from time to time in, on or about the Leased Premises, all Improvements, and any heating and cooling facilities serving the Leased Premises which may be located outside the Leased Premises, provided that Lessee shall have the option to self-insure the plate glass. Such insurance (i) shall be written on a replacement cost basis in an amount equal to at least ninety percent (90%) of the replacement cost of the insured property; and (ii) shall provide protection against perils that are covered under standard insurance industry practices within the classification of all risk property and boiler and machine insurance, including, but not limited to, loss or damage from fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, domestic water damage, collapse, sprinkler leakage, vandalism, malicious mischief, flood, boiler and mechanical or machinery breakdown, malfunction, rupture, implosion, explosion or bursting and, if obtainable at commercially reasonable rates and with commercially reasonable deductibles and other terms, earthquake and other natural disaster insurance coverage. Lessee's obligations to provide insurance pursuant to this Section shall apply to all Improvements, equipment and fixtures, notwithstanding that some or all of such Improvements, equipment and fixtures may have been installed by Lessee, County, a prior lessee or any other party at any time before or after the delivery of the Leased Premises to Lessee.

8.3.9 Workers Compensation.

Workers' compensation coverage under policies from insurance companies authorized to issue such insurance under California Labor Code section 3700 or other such applicable law (unless exempted therefrom as a self-insurer) for all employees of Lessee and Employer's Liability in the minimum amounts of One Million and No/100 Dollars (\$1,000,000.00) each Accident, by Disease per policy, and by Disease for each Employee, such coverage to be in full compliance with California statutory requirements in effect from time to time, including without limitation, coverage and insurance pursuant to Insurance Code sections 11650 et seq. (or other provisions of law that amend or replace such coverage and insurance requirements for Worker's compensation) and, where applicable, coverage for U.S. Longshore & Harbor Workers' and employees subject to the Jones Act. The Worker's Compensation policy shall provide a waiver of subrogation in favor of the County.

8.3.10 Liquor Liability.

If with the consent of County liquor or alcoholic beverages are to be sold or dispensed by Lessee or any Sublessee within the Leased Premises, or are sold or dispensed by Lessee or any Sublessee without County consent even though such consent may be required, liquor liability or "dram shop" liability coverage with limits of not less than those

set forth in this Lease for commercial general liability that shall include, without limitation, such coverage limits for (i) loss of means of support and (ii) bodily injury or death and property damage.

8.3.11 Business Interruption.

Rental insurance (or, as the case may be, use and occupancy insurance) and business interruption or disruption insurance with benefits payable to County in amounts not less than the total Minimum Monthly Rent and Percentage Rent payable by Lessee to County for the previous six (6) months.

8.3.12 Motor Vehicle Liability.

Commercial automobile liability coverage in the minimum amount of One Million and No/100 Dollars (\$1,000,000.00) CSL bodily injury & property damage, including owned, non-owned and hired automobiles. Personal automobile liability coverage, in the minimum amounts of One Hundred Thousand and No/100 Dollars (\$100,000.00) per person and Three Hundred Thousand and No/100 Dollars (\$300,000.00) each accident bodily injury, and Fifty Thousand and No/100 Dollars (\$50,000.00) each accident property damage for each vehicle to be operated in association with the business of Lessee that is not insured under commercial automobile liability.

8.3.13 Policy Form.

All policies of insurance provided for herein shall be issued by insurance companies (i) with "Best's Insurance Reports" most current rating of not less than B+VII, and (ii) which are qualified to do business in California. No such policy of insurance shall provide for a deductible in excess of \$10,000.00 per loss (as increased by the corresponding increases of CPI). County and the other Indemnified Parties shall be named as additional insureds on all policies required (except workers' compensation, however the worker's compensation policy shall provide a waiver of subrogation in favor of the County). All such policies shall provide that the full amount of any losses shall be payable for County's benefit under the terms of this Lease notwithstanding any act, omission or negligence of County or Lessee which might otherwise result in a forfeiture of insurance coverage, and shall be issued in the name of Lessee with County, and if requested by County, County's mortgagee or beneficiary, named as additional insureds and loss payees, which policies shall be for the mutual and joint benefit and protection of County, Lessee and County's mortgagee or beneficiary. All public liability and property damage policies shall contain a provision that County, although named as an additional insured, shall nevertheless be entitled to recover under said policies for any loss occasioned by County and the other Indemnified Parties due to negligence by Lessee or any of Lessee's Parties. Lessee agrees to waive all rights of subrogation against County and the other Indemnified Parties. All policies of insurance delivered to County shall contain a provision that the company writing said policy will give to County in writing thirty (30) days' notice in advance of any cancellation or lapse, refusal to renew, suspension or termination of coverage, reduction of any policy limits, increase of any policy deductibles, or other alteration of any terms or conditions of the policy, or of the effective date of any reduction in the amounts of

insurance. All insurance required shall be primary coverage as respects County, and any insurance or self-insurance maintained by County shall be excess of Lessee's insurance coverage and shall not contribute to it.

8.3.14 Blanket Coverage.

Notwithstanding anything to the contrary set forth in this Article 8, Lessee's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Lessee; provided, however, that (i) County, County's mortgagee or beneficiary, and other parties in interest to County shall be named as additional insureds as their interests may appear, (ii) the coverage required to be afforded County under this Lease will not be reduced or diminished by reason of the use of such blanket policy of insurance, and (iii) all other requirements set forth herein with respect to such insurance are otherwise satisfied.

8.3.15 Actions Affecting Insurance.

Lessee shall not at any time during the Term carry any stock or goods or do anything in or about the Leased Premises which will in any way tend to increase the insurance rates upon any portion of the Harbor (including any Other Leasehold). Lessee shall pay to County, upon demand, the amount of any increase in premiums or coverage that may be required during the Term on any portion of the Harbor (including any Other Leasehold), resulting from any act of Lessee or any of Lessee's Parties in or about the Leased Premises which does so increase the insurance rates, whether or not County shall have consented to such act on the part of Lessee. If Lessee installs upon the Leased Premises any electrical equipment which constitutes an overload of the electrical lines of the Harbor, Lessee shall, at its own expense, make whatever changes are necessary to comply with the requirements of the insurance underwriters and any Governmental Agency having jurisdiction thereover, but nothing herein contained shall be deemed to constitute County's consent to such overloading. Lessee shall, at its own expense, comply with all Laws and Insurance Requirements regarding the maintenance of fire and extended coverage insurance for the Leased Premises, including the installation, if any is required, of fire alarms, extinguishers, sprinklers, or automatic dry chemical extinguishing system serving the Leased Premises.

8.3.16 Insurance Documents.

Lessee agrees to provide County with the following insurance documents on or before the Lease Commencement Date:

- (a) Certificates of insurance for all required coverages – each certificate shall indicate specifically the form on which the policy is written and the policy deductible.
- (b) Additional insured endorsements.
- (c) Waiver of subrogation endorsements (A.K.A.: “Waiver of Transfer Rights of Recovery Against Others,” “Waiver of Our Right to Recover from Others”).
- (d) 30-day notice cancellation clause endorsements.

(e) Loss Payee endorsements

Thereafter, original certificates, and/or amendatory endorsements effecting coverage thereof shall be delivered to County within fifteen (15) days prior to the expiration of each term of such policy. It is the responsibility of Lessee to confirm that all subcontractors that Lessee may use for the completion of this Lease comply with all the terms and conditions of the Insurance Provisions. Lessee agrees to permit County, at any reasonable time, to inspect Lessee's policies of insurance with respect to the Leased Premises.

8.4 No limitation of Liability.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Lessee for liability in excess of such coverage, nor shall it preclude County from taking such other actions as are available to it under any other provisions of this Lease or otherwise at law or in equity.

8.5 Hazardous Materials.

Lessee covenants that no Hazardous Materials shall be brought onto, stored, used, transported or disposed of at the Leased Premises by Lessee or any of Lessee's Parties, except in strict compliance with all Laws controlling the presence and use of such materials. No Hazardous Materials shall be placed into the plumbing or waste treatment systems of the Leased Premises except for systems designed to accept Hazardous Materials for treatment and discharge in accordance with the Laws applicable thereto. Lessee shall undertake special attention and precautions to prevent the discharge or disposal of any Hazardous Materials in or on the Leased Premises and to prevent the discharge or disposal of any waste, contamination, foul substances, trash or other offensive materials from the Leased Premises into any portion of the Harbor. Lessee shall hold harmless, indemnify and defend the County and the other Indemnified Parties from and against any direct (but not indirect or consequential) Environmental Damages resulting from events occurring on or about the Leased Premises during the Term arising from the condition of the Leased Premises or from the acts or omissions of Lessee or any of Lessee's Parties, except to the extent such Environmental Damages arise from the willful or negligent misconduct of any of the Indemnified Parties. Lessee covenants to promptly notify County when Lessee becomes aware of (a) the presence of Hazardous Materials in or on the Leased Premises which were not previously authorized by County in accordance with the provisions of this Section or otherwise approved in writing by County, and (b) the release on or into the Leased Premises, the Harbor, or the air of Hazardous Materials, whether or not caused or permitted by Lessee. Such notice shall include as much detail as reasonably possible, including, to the extent known by Lessee, the location, type and quantity of Hazardous Materials released. If the unauthorized existence of Hazardous Materials on the Leased Premises or Harbor is caused or permitted by Lessee, or Lessee releases Hazardous Materials beneath, on or above the Leased Premises or Harbor, and such existence or release results in Environmental Damages, Lessee, at its sole expense, shall promptly take all actions required by the Laws applicable thereto to return the Leased Premises and Harbor to the condition existing prior to the events which resulted in Environmental Damages. Notwithstanding the foregoing, Lessee shall take no remedial action with respect to any Environmental Damages without the prior written consent of County, and County reserves the right in its sole discretion to perform any such remedial action at Lessee's cost; provided, however, that Lessee reserves the

right to take such remedial action that may be necessary to comply with applicable Laws or to mitigate or prevent further Environmental Damages from occurring. Lessee shall, in addition, comply with any reasonable requirements of County from time to time to implement or facilitate the enforcement or administration of the provisions of this Section, will certify annually, if so requested by County, that to Lessee's knowledge it is in compliance with all Laws applicable to Hazardous Materials, and will cause every Sublease to contain provisions substantially the same as those in this Section which expressly state that they are for the benefit of and may be enforced by County. Lessee's indemnification obligation and other covenants and obligations set forth in this Section shall survive the expiration or earlier termination of this Lease as to events and occurrences during the Term hereof.

8.6 Adjustment of Coverage.

Lessee shall notify County in writing within ten (10) days of its determination that any aggregate insurance limit is exceeded. In such event, additional coverage must be purchased by Lessee as directed by County. The amounts of insurance coverage required under this Article 8 shall be reviewed periodically (but not more than once each five (5) years) upon the request of the County's "risk manager" and the amounts adjusted if necessary to conform to the amounts of coverage which prevail for comparable boat slip leases in public harbor facilities in Southern California containing not less than two thousand (2,000) boat slips, provided that such adjustment shall not be less than the corresponding increases of CPI. In addition, Lessee acknowledges that insurance underwriting standards and practices are subject to change, and, as such conditions change, County reserves the right to modify the required amounts or types of insurance or any other insurance requirements set forth in this Article 8 as determined by County's risk manager in his or her reasonable discretion, consistent with insurance provisions that prevail for comparable boat slip leases in public harbor facilities in Southern California containing not less than 2,000 boat slips and which also provide for modification of such insurance.

ARTICLE 9. LESSEE'S WORK; ALTERATIONS; COUNTY'S WORK

9.1 Lessee's Work.

Lessee's Work shall consist of any work to be performed pursuant to Approved Plans. Lessee shall design, construct and install any and all of Lessee's Work and perform such work at no cost to County. Lessee shall not commence or pursue any work to develop, construct, alter, install, restore, rehabilitate or reconstruct any of Lessee's Work unless Lessee² has first obtained Director's approval of a Scope of Development and a Schedule of Performance for the proposed Lessee's Work and the work is pursuant to Approved Plans.

9.2 Process to Obtain Approved Plans.

If Lessee intends to perform any Lessee's Work or to repair existing Improvements that is not pursuant to previous Approved Plans, Lessee shall conform to the following procedures within the times set forth in a Schedule of Performance for such Lessee's Work, and approval by the Director of the aggregate of the plans and drawings referred to below shall constitute the "Approved Plans":

9.2.1 Schematic Plans.

Lessee shall submit to the Director “schematic plans” as that term is defined and used in the “Design Criteria and Specifications for Construction and Maintenance by Lessee” promulgated by the County of Ventura for the Channel Islands Harbor, as may be amended from time to time (the “Design Criteria”). Schematic plans shall be subject to the reasonable satisfaction of the Director.

9.2.2 Preliminary Plans.

After approval of schematic plans by the Director, Lessee shall submit to the Director “preliminary plans” as that term is defined and used in the Design Criteria. Preliminary plans shall be subject to the reasonable satisfaction of the Director.

9.3 Intentionally Deleted.

9.4 Lessee’s Landside Work.

Provided Lessee shall first have obtained County’s approval of the Approved Plans therefor and otherwise satisfied the conditions precedent to such construction as provided in Section 9.6 below and furnished County with all bonds, copies of documents and other items required under such Section, Lessee may also perform Lessee’s Work on the Landside Portion pursuant to Approved Plans, and once commenced, Lessee shall diligently pursue and complete such Lessee’s Work.

9.5 Construction Standards.

Lessee warrants and represents that all design and construction for Lessee’s Work shall conform with all Laws and the construction and architectural standards established by the County for the Harbor, as may be amended from time to time, and shall meet all of the requirements contained in this Lease and either shall have been approved by or shall be in accordance with the standards and requirements of Lessee’s (and, if applicable, County’s) lender and fire insurance carrier prior to the commencement of construction. When Lessee undertakes any Lessee’s Work, Lessee covenants and agrees to proceed with due diligence to complete all Lessee’s Work, at its own cost, and in accordance with the applicable Approved Plans, Scope of Development and Schedule of Performance in the manner contemplated by this Lease.

9.6 Conditions Precedent to Construction.

Lessee shall furnish to County, prior to the commencement of any of Lessee’s Work: (i) in conformance to Civil Code Section 8150, et seq., full payment, full performance and full completion bonds (the form of which shall be subject to County’s approval), or alternative instruments subject to sole discretion of County, naming County as an obligee, for such Lessee’s Work and other required or desired work to be performed by Lessee in connection therewith; (ii) written proof that Lessee has sufficient available and committed funds (which may be a combination of Lessee’s equity investment and construction loan proceeds, to cover all development and construction costs (including both hard and soft costs) of such Lessee’s Work; (iii) written proof that Lessee has opened a construction escrow or has established a construction

account with its construction lender, or similar process acceptable to the Director, in which any loan proceeds referred to in (ii) above have been deposited for disbursement directly to contractors and materialmen only in accordance with the terms of a construction escrow agreement (or similar instrument) approved in advance by County and by Lessee's construction lender, (iv) written proof that Lessee has obtained a commitment for a permanent loan sufficient in amount to cover all amounts funded or to be funded pursuant to Lessee's construction loan, if applicable, and (v) all permits, approvals and authorizations required under applicable Law for the commencement and completion of such Lessee's Work, including, but not limited to, demolition and Building Permits and any required California Coastal Commission permits or authorizations. It is understood that to the extent Lessee elects to complete such Lessee's Work in phases, consistent with the Schedule of Performance, Lessee's satisfaction of the foregoing requirements may be similarly phased. County shall cooperate with and provide assistance to Lessee in obtaining any permits, approvals, or authorizations that may be required from any other Governmental Agency with jurisdiction over the Lessee's Work, including without limitation the California Coastal Commission; provided that such assistance is not construed to require any action of County in its regulatory capacity and does not require County to incur any costs or expend its own funds.

9.7 Construction of Improvements.

Lessee shall not make, authorize or permit to be made any Improvements, including any alterations or additions of or to the Leased Premises or any part thereof, unless such Improvements are in furtherance of and consistent with this Lease and the uses permitted hereunder, and until Lessee shall have caused plans and specifications therefor to have been prepared, at Lessee's expense, by a licensed architect and shall have obtained County's approval thereof. If such approval is granted, Lessee shall cause the work described in such Approved Plans to be performed, at its expense, promptly (in accordance with the Schedule of Performance), and in a first-class workmanlike manner by a licensed general contractor and in compliance with all applicable Laws, Governmental Agency requirements and Insurance Requirements and the standards set forth in this Lease, without interference with or disruption to the operations of County, any Other Lessees or the Harbor.

9.8 Insurance of Improvements.

If Lessee constructs any Improvements under the provisions of this Article, Lessee shall carry all insurance required by Article 8 with respect to such Improvements. None of such Improvements shall be insured under the insurance County may carry upon the Harbor or self-insured by County, nor shall County be required under any provision of Article 16 to restore, reconstruct or reinstall any such Improvements.

9.9 Certificate of Completion.

If Lessee is required or elects to perform Lessee's Work pursuant to this Lease, then upon satisfactory completion of construction and evidence that Lessee's rights as Lessee under this Lease are free and clear of any mechanics' liens, Lessee shall obtain from the Harbor Department of the County a certificate which states that Lessee has completed all construction required under this Lease (the "Certificate of Completion") upon completion of construction of Lessee's Work (both initially and after any temporary closure for casualty damage or permitted remodeling). The

requirement that the Certificate of Completion be obtained shall not limit any of Lessee's obligations under this Lease or Lessee's rights to use the Lessee's Improvements pursuant to applicable certificates of occupancy or use issued by the Government Agency having jurisdiction for issuing such certificates, and failure or delay to obtain the Certificate of Completion shall not abate or delay payment of the Minimum Monthly Rent, Percentage Rent or any other payment or submission to be made by Lessee hereunder. Notwithstanding the foregoing, Lessee shall not be in Default if issuance of a Certificate of Completion is prevented or delayed by reason of the Harbor Department's failure to process Lessee's application therefor in good faith; however, the Harbor Department's withholding of the Certificate of Completion, based upon its good faith determination that Lessee has failed to satisfy all requirements as set forth in this Section shall in no event subject County to any claims or liability. In order that County have assurance that the Lessee's Work shall have been performed in accordance with the requirements of this Lease, a Certificate of Completion shall not be issued unless the following requirements shall be satisfied:

9.9.1 Deliveries.

Lessee shall have delivered to County: (a) in addition to insurance policies required by this Lease, any additional insurance policies or enhanced coverages of current policies as may be required in anticipation of the completion of Lessee's Work prior to the opening of the completed Improvements for business (b) mechanics' lien waivers as required by this Lease or other satisfactory evidence that no such lien claims can or will be filed or a statutory lien release bond or bonds, (c) a permanent certificate of occupancy or its equivalent, (d) a certificate of Lessee's architect (which shall be in form and content satisfactory to County) stating that the construction of the Lessee's Work has been completed in accordance with the Approved Plans, (e) "as-built" plans for such Improvements (with the understanding that, unless otherwise having been prepared by or for Lessee, "as-built" plans shall not be required for ordinary and necessary operating repairs of existing Boat Slips, for similar repair of other Improvements owned by Lessee, or for Improvements as to which no Approved Plans are required pursuant to Section 15.6), and (f) all other evidence typically required in the jurisdiction where the Harbor is located as a condition to occupancy and use of property regarding compliance with all applicable building and fire codes and all other Laws.

9.9.2 Notice.

Lessee shall have given County at least five (5) days' notice of the date of completion of Lessee's Work, and allowed County to inspect Lessee's Work to determine whether all of Lessee's Work is complete in accordance with the requirements of this Lease.

9.9.3 No Default.

Lessee shall have paid County all of the various Rents which have then accrued under this Lease and shall not otherwise be in Default hereunder.

9.10 No Representation Regarding Condition of Leased Premises.

No approval by County of plans or any other matter or thing shall make County responsible for the condition of the Leased Premises or constitute a representation by County of the compliance of such plans or other matter or thing with any Laws, Insurance Requirements or other applicable requirements or constitute a waiver of any rights and remedies that County may have under this Lease or at law or in equity.

9.11 Changes to Harbor.

Subject to and without limiting its express obligations set forth in this Lease, County shall have the right at any time in its sole discretion to make or permit changes to the Harbor or any part thereof, including, without limitation, additions, removals, rearrangements, alterations, modifications or supplements to the building areas, walkways, or other areas in the Harbor outside of the Leased Premises. Subject to the same limitations, County shall also have the right at any time in its sole discretion to (i) construct, or permit to be constructed other Structures, buildings, systems, equipment or other improvements in the Harbor outside of the Leased Premises, (ii) make alterations thereof or additions thereto and to build additional stories on any buildings, and (iii) close temporarily any areas of the Harbor for maintenance purposes or (in the opinion of County) to maintain security, safety or decorum, or to the extent necessary, in the opinion of County's counsel, to prevent a dedication of any easements, rights of way, interests or any other rights on or against the properties and lands owned or controlled by County in the Harbor, or the accrual of any rights of any person or of the public to the properties and lands owned by County in the Harbor. If County desires to perform any work or construction in or to the Harbor during the period of construction of Lessee's Work, the parties shall arrange for mutually agreeable construction schedules and procedures and shall otherwise cooperate diligently in order to avoid interference with or disruption of the work of either party; provided, however, any conflicts between the parties in scheduling such work prior to the date Lessee enters into its construction contract for Lessee's Work shall be resolved by determination of the Director in his or her reasonable discretion; after the date Lessee enters into its construction contract it shall cooperate with County to reasonable rescheduling of its contractor's work to accommodate County's desired construction schedule. In addition, County shall not take any action on or with respect to County owned or controlled property in the Harbor that substantially impairs vehicular, pedestrian or utility access to and from the Leased Premises to the extent such access exists on the Lease Commencement Date.

9.12 Offsite Parking Area.

County agrees to make available an area (the "Offsite Parking Area"), which has been designed and constructed to support the parking of vehicles and is located on property in the Harbor owned or controlled by County, of sufficient size and automobile parking capacity to accommodate a ratio of 0.6 (six-tenths) of a parking space for each Boat Slip in the Leased Premises (the "Minimum Parking Capacity"). No buildings or improvements constructed in the Harbor other than the Leased Premises may rely on the Minimum Parking Capacity for purposes of supporting a Building Permit, certificate of occupancy or similar governmental authorization (but the Minimum Parking Capacity shall nevertheless be used for parking by the general public and shall not be restricted for use by or otherwise allocated to Lessee). The Offsite Parking Area may contain such number of additional parking spaces as shall be determined from time to time

by Director in his or her sole discretion, and in any event the number of parking spaces in the Offsite Parking Area shall be subject to temporary changes from time to time due to casualty damage, the performance of repairs, maintenance or alterations, Force Majeure, and other temporary closures in whole or in part of the Offsite Parking Area, without abatement or reduction of Rent. County covenants for the benefit of Lessee that the Offsite Parking Area, as it may be located from time to time, shall be used for the purpose of providing parking to the general public pursuant to the terms of this Lease. The Offsite Parking Area shall be adjacent to duly dedicated public streets or alleys, and County shall not undertake to change the zoning or other land use controls so as to prohibit its use for parking as provided hereunder, and Lessee and Lessee's Parties shall have free and unrestricted access between such streets and alleys and the Offsite Parking Area. The Offsite Parking Area need not be contiguous to the Leased Premises, but shall be located in sufficient proximity to the Leased Premises so that access to and from the Leased Premises by users of the Leased Premises is reasonably convenient for those parking in the Offsite Parking Area. With Lessee's prior consent, which shall not be unreasonably withheld, conditioned or delayed, County shall have the right to relocate the Offsite Parking Area or portions thereof to another public parking area or areas in the Harbor owned or controlled by County which shall be located in sufficient proximity to the Leased Premises so that access to and from the Leased Premises by users of the Leased Premises is reasonably convenient for those parking in the Offsite Parking Area, and which otherwise meets the foregoing requirements. The Offsite Parking Area shall not be used for storage of vehicles or other property, and County shall have the right but not the obligation to remove stored or abandoned vehicles and property therefrom. In the event Lessee becomes aware of stored or abandoned vehicles or other property in the Offsite Parking Area, it shall promptly notify County, and County shall thereafter use reasonable diligence (consistent with the status of the Offsite Parking Area as a public parking facility) to remove such vehicles in accordance with applicable Law and at no cost to Lessee.

9.13 Public Events.

Lessee shall not have any right to stage events in the Offsite Parking Area or to otherwise conduct business in or on the Offsite Parking Area except with the prior written consent of the Director, which may be given or withheld in his or her sole discretion. County reserves the right to use the Offsite Parking Area for public events from time to time in its sole discretion, in which event County shall be solely liable for all costs resulting therefrom, including any costs of repair or maintenance due to or arising out of such events; provided, however, that County shall not use or impede access to the Minimum Parking Capacity in connection with any such public events without the prior consent of Lessee.

9.14 Parking Rules and Regulations.

Lessee and Lessee's Parties shall abide by all Rules and Regulations for the Offsite Parking Area ("Parking Rules and Regulations"), as the same may be amended by County from time to time in County's sole and absolute discretion in accordance with Section 4.3 of this Lease. Lessee shall keep all of the Offsite Parking Area free and clear of any obstructions created or permitted by Lessee or resulting from Lessee's operation. County shall have the right, but not the obligation, to exclude from using or parking vehicles on the Offsite Parking Area, unauthorized persons, persons conducting themselves in a manner to endanger or harass others, persons who violate applicable Laws or Parking Rules and Regulations, persons who interfere with the peaceful or

efficient use of the Offsite Parking Area or persons behaving contrary to good decorum, including persons who are Lessee's Parties.

9.15 Non-Exclusive Rights.

The right and privilege of Lessee and Lessee's Parties to enter upon and use the Offsite Parking Area is non-exclusive, to be exercised in common with and as part of the general public, and Lessee and Lessee's Parties have no greater rights than the general public with respect to the Offsite Parking Area or any other public parking areas provided within the Harbor. Lessee and Lessee's Parties shall be subject to any Parking Rules and Regulations as aforesaid. The exercise of County's rights as the owner of the Offsite Parking Area shall include, but shall not be limited to, the location and relocation of entrances and exits, the installation and location of prohibited, restricted or reserved parking areas, and the design and location of landscaped areas. In the exercise of such rights, County shall use reasonable efforts (consistent with applicable Law and the status of the Offsite Parking Area as a public parking facility) to minimize adverse impacts on the Leased Premises and the business of Lessee therein.

9.16 Offsite Parking Area Maintenance and Expense Sharing.

County shall cause the Offsite Parking Area to be maintained for "Needed Maintenance" which shall include but not be limited to repairs to and replacement of asphalt, paving, bumpers, striping, lighting system, light standards, light bulbs, perimeter walls, curbs, sidewalks, planters, landscaping, sprinkler system as well as electricity, water, sweeping, gardening and other items of repair and/or maintenance that may be needed from time to time to maintain the Offsite Parking Area. County may initiate work for Needed Maintenance itself with or without request from Lessee or other lessees of Parcels who share in the costs, and shall not be obligated to Lessee to perform Needed Maintenance unless Lessee gives written notice of such need to County describing the need for the work, a diagram of the area or areas where the work is to be performed and a specification of the work and materials for such work. Within not less than ten (10), nor more than thirty (30) days from the date of said notice County and Lessee shall meet and confer regarding the proposed work and the need for such work. At such meeting the parties shall in good faith fully discuss the need and shall exchange information and suggestions as to the course of action to be taken. If County agrees to proceed with the work, County shall prepare plans and specifications for such work, or for such portions thereof agreed upon, and proceed with diligence to obtain bids and contracts for such work in accordance with the County's procedures and requirements. If County does not agree to perform the work, or all the work specified in the notice from Lessee, Lessee shall retain whatever rights and remedies it may have against County for the failure to perform the specified Needed Maintenance.

9.17 Sharing of Needed Maintenance Costs.

The cost ("Needed Maintenance Costs") of such Needed Maintenance, including a reasonable overhead expense of County (or other party procuring such Needed Maintenance), shall be borne jointly by County for Parcel X-1A and by the respective Lessees of Parcels X-2, X-3, Y-1, Y-3 and Y-4 in shares applicable to each Parcel. The Leased Parcels consist of Parcels X-2 and Y-1. The percentage of the total amount of the Needed Maintenance Costs to be paid by Lessee for Parcel X-2 is 19.49% and for Parcel Y-1 is 15.94%, for a total of 35.43%. The amount of

Needed Maintenance Costs allocable to Parcel X-2 and Y-1 is referred to as the Reimbursement Amount to be paid to County by Lessee.

9.18 Claim of Reimbursement for Needed Maintenance Costs.

In order to claim the Reimbursement Amount, County shall deliver to Lessee a list of the Needed Maintenance Costs and expenses incurred by County (including the cost of the preparation of plans and specifications), together with copies of the invoices and other billings incurred by County for such work, certified by the Harbor Director or other officer of the County as correct, to which there shall be added a reasonable administrative overhead charge by County. The Reimbursement Amount shall be calculated by applying the percentages allocable to Lessee to the total costs (including the overhead charge). Upon delivery to Lessee of County's certification specifying the amount of the Reimbursement Amount and submission of the substantiating invoices and billings referred to above, the Reimbursement Amount shall be due, owing and payable from Lessee to County. Commencing 10 Business Days from the date the above certification is delivered to Lessee, the Reimbursement Amount shall bear interest at the Maximum Rate until paid. The obligation of Lessee to pay the Reimbursement Amount is Additional Rent.

ARTICLE 10. MECHANICS' LIENS

10.1 No Liens.

Lessee shall do all things necessary to prevent the filing of any mechanics' or other lien against the Harbor, the Leased Premises or any part thereof, by reason of work, labor, services or materials supplied or claimed to have been supplied to Lessee or any of Lessee's Parties, or by reason of a failure to pay any Impositions which are required to be paid. During the construction of any Lessee's Work, Lessee shall cause each contractor, subcontractor or supplier which performs any of Lessee's Work to furnish County with an unconditional lien waiver (in form and content satisfactory to County) promptly upon completion of such party's services. If any such lien shall at any time be filed against the Harbor or the Leased Premises or any part thereof, Lessee shall either cause the lien to be discharged of record within ten (10) Business Days after the date of filing of the lien or, if Lessee in its discretion and in good faith determines that such lien should be contested within such time period, Lessee shall furnish such security as may be necessary or required, in County's judgment, to prevent any foreclosure proceedings against the Harbor, the Leased Premises or any part thereof and to permit a reputable title insurance company to insure over the lien during the pendency of such contest. If Lessee shall fail to discharge such lien within such ten (10) Business Day period or fail to furnish such security within such ten (10) Business Day period, such inaction shall constitute a Default under this Lease and, in addition to any other right or remedy of County resulting from such Default, if Lessee fails to take either of such actions within ten (10) additional days after receipt of County's notice of Default, County may, but shall not be obligated to, discharge the lien either by paying the amount claimed to be due or by procuring the discharge of such lien by giving security or in such other manner as is, or may be, deemed necessary by County. Lessee shall, within 10 days after County's request, hire an attorney (reasonably acceptable to County) who shall agree with County in writing to represent County and Lessee, at Lessee's sole cost, in connection with the discharge of the lien and protection of the Leased Premises and Harbor. If such written confirmation is not received by County from such attorney within such five (5) day period, County may hire an attorney to represent County's interest

in connection with any such lien, at Lessee's sole cost. Lessee shall repay to County upon demand, all sums disbursed, expended, incurred or deposited by County pursuant to the foregoing provisions of this Section 10.1, including County's costs, expenses and reasonable attorneys' fees incurred by County in connection therewith. Nothing contained in this Lease shall imply any consent or agreement on the part of County to subject County's Estate to any mechanics' or other lien law.

10.2 Notices of Non-Responsibility.

County or its representatives shall have the right to enter and inspect the Leased Premises at all reasonable times, and shall have the right to post and keep posted thereon notices of non-responsibility or such other notices which County may deem to be proper for the protection of County's interest in the Leased Premises. Lessee shall, before the commencement of any work which might result in any putative lien, give to County written notice of its intention to do so in sufficient time to enable the posting of such notices.

10.3 Security for Contested Claims.

If Lessee desires to contest any claim of lien, it shall cause such lien to be released or furnish County security in the amount of one hundred fifty percent (150%) of the amount of the claim or such lesser amount that may be required by law or a lien release bond of a responsible corporate surety in such amount, conditioned upon the discharge of the lien. If a final non-appealable judgment establishing the validity or existence of a lien for any amount is entered, Lessee shall immediately pay and satisfy such judgment.

10.4 County's Rights.

If Lessee is in Default in paying any charge for which a mechanics' lien claim and suit to foreclose the lien have been filed, and has not given County security to protect the Leased Premises and County against such claim of lien, after ten (10) days' notice and demand to Lessee County may (but shall not be so required to) pay said claim and any associated costs. The amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and payable from Lessee to County. Any payment made by County under this Section 10.4 or any other provision of this Article 10 shall be repaid to County together with a fifteen percent (15%) administrative fee, and, in addition, interest shall accrue on such amounts from the dates of County's payments at the Maximum Rate.

ARTICLE 11. FIXTURES AND PERSONAL PROPERTY; PAYMENT OF IMPOSITIONS

11.1 Removable Trade Fixtures.

Any Removable Trade Fixtures shall remain the property of Lessee and County agrees that Lessee shall have the right to remove any and all of its Removable Trade Fixtures which it may have stored or installed in the Leased Premises, provided Lessee is not in Default. Nothing in this Article shall be deemed or construed to permit Lessee to remove such Removable Trade Fixtures without the immediate replacement thereof with similar property of comparable or better quality, if such removal renders the Leased Premises unsuitable for conducting the type of business specified in this Second Amended Restated Lease. Lessee shall, at its expense, immediately repair

any damage to the Leased Premises caused by the removal of any such trade fixtures, signs, and other personal property. All Removable Trade Fixtures installed in or attached to the Leased Premises by Lessee must be of good quality and good conditions when so installed or attached.

11.2 Improvements and Lessee's Work.

The ownership of the Improvements constructed or installed by Lessee under this Lease, including but not limited to Structures, docks, Boat Slips, kiosks, lockers, dinghy racks, shower/restroom hardware and facilities, Systems, light fixtures, floor coverings and partitions, landscaping, and all items comprising Lessee's Work, shall be governed by the provisions of Article 21.

11.3 Impositions on Real Property and on Improvements and Fixtures.

Lessee shall pay before delinquency, any and all Impositions, license fees and public charges levied, assessed or imposed upon its real property and possessory interests, business operation, Removable Trade Fixtures, Improvements, merchandise and other personal property in, on or upon the Leased Premises.

11.4 Notice of Possessory Interest.

County is a public entity, and as such, County's Estate is, or may be, exempt from property tax assessments. In accordance with California Revenue and Taxation Code Section 107.6(a), County states that by entering into this Lease a possessory interest in Lessee subject to property taxes may be created, and if so, Lessee or other party in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest.

11.4.1 Payment of Taxes and Assessments.

In the event the County shall no longer be exempt from property tax assessments and Lessee is not separately assessed for its possessory interest and Improvements, Lessee shall, as Additional Rent, pay (or, if County is assessed and pays, shall pay to County) that portion of any Impositions levied against or upon the Harbor or County's interest therein that represents the value of the Lessee's leasehold interest and Improvements that would have been assessed and levied upon had they been assessed separately as a possessory interest of Lessee. The amount of any tax or excise payable by or assessed against Lessee shall be paid by Lessee before it becomes delinquent.

11.4.2 Changes in System of Taxation.

County and Lessee recognize and acknowledge that there may be changes in the current real property tax system and that there may be imposed new forms of Impositions placed on, or levied in connection with the ownership, leasing, occupancy or operation of the Harbor or the Leased Premises. Any new or increased Imposition on the Leased Premises which is imposed or increased as a result of or arising out of any change in the Structure of the real property tax system or any limitation on the real property taxes which can be assessed on real property including, but not limited to, any and all taxes, assessments, charges, levies and fees assessed or imposed due to the existence of this Lease

(including any surcharge on the income directly derived by County therefrom) or for the purpose of funding special assessment districts of the type funded by real property taxes, shall also be included within the meaning of "Impositions." With respect to any general or special assessment which may be levied against or upon the Leased Premises and which under the Laws then in force may be evidenced by improvement or other bonds, or may be paid in periodic installments, there shall be included within the meaning of "Impositions" with respect to any tax fiscal year only the amount currently payable on such bond for such tax fiscal year, or the periodic installment for such tax fiscal year. During any part of the Term which shall be less than a full tax fiscal year, Impositions applicable to the Leased Premises shall be prorated on a daily basis between County and Lessee so that Lessee shall pay only the Impositions attributable to the portion of the tax fiscal year occurring within the term of this Lease. In the event that any Impositions are payable after the end of a tax fiscal year, County may nevertheless collect Impositions applicable to the Leased Premises from Lessee as set forth above (in a tax fiscal year) and treat Lessee's payments as payments on account of Impositions payable after the tax fiscal year.

ARTICLE 12. ASSIGNING; MORTGAGING; SUBLETTING; CHANGE IN OWNERS

12.1 Restrictions on Transfer.

County and Lessee acknowledge that the Harbor is a project whose success is substantially dependent upon Lessee and the Other Lessees creating and maintaining a successful and profitable retail operation in their respective premises. Lessee acknowledges that the various parcels in the Harbor are intended to fulfill certain uses and functions, and agrees that the Lessee was selected to be "Lessee" hereunder based on the uses assigned by this Lease to the Leased Premises, and based on the identification of the Controlling Owner who is to make Major Decisions on behalf of Lessee. Lessee agrees that Lessee shall not cause, allow, suffer or otherwise enter into any Transfer, or any agreement to Transfer, without first procuring the written consent of County. County's consent to any proposed Transfer shall not be unreasonably withheld, subject to the standards, considerations, terms, covenants and conditions contained in this Lease.

12.1.1 Request to Transfer.

If Lessee desires to effect a Transfer, other than an Excluded Transfer (which shall be governed by the provisions of Section 12.1.7 below, and, in the case of a Transfer to an Approved Mortgagee for an Approved Mortgage, the provisions of Section 12.4 below), Lessee shall give written notice ("Request to Transfer") to County at least sixty (60) days before the effective date of the proposed Transfer. A Request to Transfer shall not be required for any Boat Slip rental agreement or for any Sublease, license or concession agreement concerning (in the aggregate) less than 20% of all the rental space in the Leased Premises. The Request to Transfer shall be in a form approved by County and shall include (a) a statement whether Lessee proposes to assign this Lease, sublet the Leased Premises, enter into a license or concession agreement, change ownership of Lessee, change the Controlling Owner of Lessee or relinquish, delegate or give the authority to make Major Decisions for the Leased Premises to another party, (b) the proposed effective date of the Transfer, (c) the identity of the proposed Transferee, (d) the identity of the Controlling Owner of the proposed Transferee, (e) all other material terms of the proposed Transfer,

(f) a detailed business plan (including financing plans) for the business operation that the proposed Transferee intends to conduct on the Leased Premises, (g) Lessee's warranty and representation that Lessee is not in breach or violation of any of its obligations or duties under this Lease (of, if there is such a breach or violation, a statement identifying such breach or violation and when and how such breach or violation is to be cured), (h) financial statements (balance sheets, profit and loss statements and income and expense statements) and other similar and pertinent financial data for the prior three (3) years of both the proposed Transferee and the proposed Controlling Owner in such form and certified by such individuals or firms as County may reasonably request, (i) information and references supplied by the proposed Transferee in a form approved by County designed to assist County in learning the qualifications, experience, business reputation, financial status and abilities of the proposed Transferee (such as prior operations and financing sources, lawsuits, bankruptcy filings, criminal records, foreclosures or default proceedings, and similar matters), (j) a consent by the proposed Transferee to a background check and investigation by County, and (k) a copy of the proposed agreement documenting the Transfer, or if none, a copy of any offers, draft agreements, letters of commitment or intent and other documents pertaining to the proposed Transfer. If the proposed Transfer is a transaction in which the interest of any Controlling Owner in Lessee is being transferred, altered, changed or modified, or the management of the Leased Premises is being relinquished so that the entity (for example, a corporation) that is the Lessee is to remain unchanged but the constituency of the entity is to change (e.g., by transfer of the ownership of stock), then the party or parties acquiring such interest (by acquisition of stock, assignment of partnership, transfer of membership or other evidence of ownership) or management shall be deemed the proposed Transferee.

12.1.2 Reimbursement by Lessee.

In addition to any applicable Transfer Fee, Lessee shall reimburse County, as Additional Rent, for (a) its direct costs incurred to consider each Request to Transfer (and any other instruments or documents regarding the proposed Transfer such as a proposed assignment or management agreement), and (b) its direct costs incurred in connection with any Excluded Transfer (including but not limited to the costs of making the determinations set forth in Section 12.1.7). The reimbursement required by this subsection shall not apply to the review and approval by County of Subleases, licenses, or concession agreements for conformity to Sections 12.1.1, 12.2 and 12.3. For purposes of this Section, County's direct costs shall include, but not limited to, County's staff time, consultants, attorneys and accountants; the minimum reimbursement under this Section by Lessee shall be One Thousand and No/100 Dollars (\$1,000.00), which minimum amount shall be subject to adjustment from time to time by County based on increases in the CPI. Reimbursements under this Section not paid within thirty (30) days after written demand therefor from County shall bear interest at the Maximum Rate from the date of demand until paid.

12.1.3 Guaranty.

If the proposed Transferee's net worth, as demonstrated in writing to County's reasonable satisfaction, on the effective date of the Transfer is not equal to or greater than the greater of (i) Lessee's net worth as of the Effective Date, adjusted to the date of the

proposed Transfer in accordance with CPI, or (ii) the sum of (a) 24 times the Minimum Monthly Rent then in effect as of the date of the Transfer, (b) the aggregate of all the Percentage Rent payable for the most recent eight (8) Calendar Quarters immediately prior to the date of the Transfer and (c) the amount, if any, then needed to repair, replace, restore and maintain the Leased Premises in first-class and tenantable condition as provided in Section 15.1 and to replace, replenish, restore, repair and maintain the exterior appearance of the Improvements in good and sanitary order, safe and attractive condition and repair as provided in Section 15.2. County, in its sole and absolute discretion, may (but is not obligated to) accept such lesser net worth that County in its sole discretion determines is sufficient to ensure that the Transferee will have the financial ability to perform its executory obligations under this Lease; and as part of such discretionary acceptance, County may require that the proposed Transferee delivers to County a sufficient written guaranty in a form acceptable to County from a party found by County in its sole discretion to be creditworthy (which may be a guaranty of the Controlling Owner of such Transferee) to guarantee the Transferee's obligations hereunder for such period as County determines.

12.1.4 Grounds for Withholding Consent.

County may withhold consent to a proposed Transfer if, in County's reasonable business judgment, County determines that any of the following is the case: (i) the proposed Transfer may result in deterioration in the quality of merchandising operation conducted in the Leased Premises, as compared to the merchandising operation historically conducted by Lessee prior to the date of Request to Transfer; (ii) the proposed Transferee has failed to demonstrate to County that the proposed Transferee has a good business reputation or sufficient relevant business experience; (iii) the proposed Transferee fails to demonstrate to County that (a) the net worth of the proposed Transferee as of the date of Request to Transfer (including the net worth of any guarantor(s), if applicable) is not less than the amount referred to in the first sentence of Section 12.1.3; (iv) the proposed Transferee's proposed use of the Leased Premises conflicts with use provisions and restrictions in this Lease or is otherwise incompatible with the businesses of the Other Lessees or the tenant mix of the Harbor; (v) the Percentage Rent County reasonably anticipates receiving from the proposed Transferee is significantly less than the Percentage Rent County could reasonably anticipate receiving from Lessee; (vi) the proposed Transfer would breach any covenant of County respecting the use of the Leased Premises, the radius restrictions, use or exclusivity rights regarding any Other Leaseholds, or any financing or other agreement relating to the Harbor or any portion thereof; (vii) any Guarantor fails to agree to be a Guarantor or fails to acknowledge such guarantee in writing in a form and content reasonably satisfactory to County that the liability of such Guarantor to County under its guarantee shall continue in full force and effect and is not released or discharged; (viii) the proposed Transferee is the lessee of Other Leaseholds in the Harbor and the addition of the Leased Premises to the Other Leaseholds of the proposed Transferee is determined by the Director to be excessive; (ix) Lessee is in Default of any of its duties or obligations under the terms of this Lease and such breach or violation will not be cured or remedied concurrently with such Transfer; (x) the proposed Transferee does not execute and deliver to County a written assumption (to become effective with the Transfer) of all of the Lessee's duties and obligations under this Lease in a form reasonably satisfactory to County; or (xi) County is not paid the Transfer Fee in the amount required by Section

12.1.5. Any attempted or purported Transfer without County's written consent (except for Excluded Transfers, subject to any applicable requirements of Section 12.1.7) shall be a Default hereunder and shall be void and of no force or effect. "net worth" means the amount by which the value of that portion of Transferee's (and, if applicable, the guarantor's) assets as of the date of the Transfer that are Cash Equivalent exceeds the amount of Transferee's (or guarantor's) indebtedness (including contingents obligations) as supported by financial statements of the proposed Transferee (or guarantor) that fairly represents the financial condition of Transferee (or guarantor) in accordance with accounting principles approved by Auditor and in form and content satisfactory to Auditor. "Cash Equivalents" means those portions of the assets of the Transferee (or guarantor) that are (a) cash in good funds in the account or accounts of the assignee in chartered banking institutions or in the accounts of national brokerage companies who are admitted to trading on such a national stock exchange, (b) unencumbered securities listed on national stock exchanges in accounts of the assignee (or guarantor) with such national brokerage companies that can by order of assignee be sold and the proceeds thereof be deposited in such bank or brokerage accounts as cash in good funds and (c) accounts receivable due to the assignee (or guarantor) not later than 60 days from the date of transfer from solvent debtors who are not then in default of any prior debt to the assignee (or guarantor) and within the last 12 months were not in default of any prior payment to the assignee (or guarantor)-for more than 60 days after such payment was due.

12.1.5 Transfer Fee.

Lessee promises to pay to County, as Additional Rent, a "Transfer Fee", equal to two percent (2%) of the Transfer Value of any of the following (each a "Transfer Fee Event"): (a) any Transfer, at any time, of this Lease or the Leased Premises, or any part thereof or interest therein, or of Lessee's interest in this Lease or the Leased Premises, (b) when, during any 60-calendar consecutive month period, (i) an Owner, or series of Owners, by itself or themselves, or in concert with other Owners, undertakes to Transfer or otherwise dispose of Owners' Interests in Lessee which, separately or in the aggregate, exceeds twenty-five percent (25%) or more of the equity, securities or voting interest in the Lessee or (ii) a party, either an Owner or series of Owners, or a non-owner, by itself or themselves, or in concert with others, undertakes to acquire Owners' Interest of one or more Owners which, when aggregated with any other assignments or transfers in such series, plan, arrangement or strategy, cumulatively exceeds twenty-five percent (25%) or more of the Owners' Interest in the Lessee. "Transfer Value" shall mean the sales price, exchange value, gift value or any consideration paid for each such Transfer constituting the Transfer Fee Event. For purposes of the foregoing, any transfer or assignment by an Owner within a 60-calendar month period shall be aggregated with all other Transfers by the same Owner and other Owners for purposes of determining whether a Transfer Event has occurred. Transfers that constituted a Transfer Fee Event and for which a Transfer Fee was paid shall not be included in any subsequent Transfer Fee Event. The Transfer Fee for a Transfer Fee Event is due and payable 30 days after the date of the Transfer Fee Event and shall bear interest at the Maximum Rate from the date so payable until paid. Lessee shall keep and maintain a record of each Transfer and, in the case of a Transfer of the interest of any Owner, the Transfer Value of each Transfer of an Owner's Interest, and shall provide a Transfer Notification and its Transfer Value to County as such Transfers

may occur from time to time. Failure to maintain such records reflecting the Transfers that occur and the Transfer Value of such Transfers, or the failure to pay the Transfer Fee to County when required shall be a material default. There shall be deducted from the Transfer Fee, the \$750 sum (as adjusted in Section 12.1.3), if paid to enable County to investigate the Assignee's qualifications. It is understood that the Transfer Fee shall not be payable in the case of (i) any Excluded Transfer, (ii) with respect to (A) Boat Slip Rentals, (B) Live-Aboard Surcharges, (C) Space and Building Rentals, and (D) any other amounts which are accounted for as part of Gross Receipts under Section 6.2.

12.1.6 Decision Notice.

Within sixty (60) days after County's receipt of the Request to Transfer containing all the information detailed in Section 12.1.1, Director shall submit the same to the Board with a recommendation as to whether to grant or withhold consent to such proposed Transfer, and within a reasonable time thereafter consistent with the customary meeting schedule and publication and notice requirements of the Board, the Board will either grant or withhold its consent to such proposed Transfer on behalf of County (which consent shall not be unreasonably withheld, subject to the provisions of Section 12.1.4) by mailing written notice to Lessee of its decision ("Decision Notice"). In no event shall County be obligated to grant its consent during any time when a Default exists, unless the Default is curable and (i) the period of time is extended until the Default has been cured or (ii) security, binding commitments and assurances satisfactory to County to cure such Default after the effective date of the proposed Transfer is provided to County, in which case such consent may be conditioned on such cure. If County consents to the proposed Transfer, Lessee may thereafter promptly effect a Transfer in accordance with the terms of Lessee's Request to Transfer. If County consents to the proposed Transfer and Lessee does not consummate the proposed Transfer within ninety (90) days after receipt of the Decision Notice, County's consent shall be deemed invalid and, before proceeding with such Transfer, Lessee shall be required to submit a new Request to Transfer to County and obtain County's consent to the same.

12.1.7 Certain Exceptions.

County shall not withhold consent to a Transfer, nor be entitled to a Transfer Fee, if (a) the proposed Transfer consists solely of the execution and recordation of an Approved Mortgage meeting the requirements of Section 12.4, (b) the proposed Transferee is proven by Lessee, to the reasonable satisfaction of County upon documentation and information satisfactory to County, to be an Approved Mortgagee who acquired Lessee's interest in this Lease as a result of a foreclosure of a security interest or a deed in lieu of foreclosure, (c) the proposed Transferee is proven by Lessee, to the reasonable satisfaction of County upon documentation and information satisfactory to County, to be an entity composed only of one or more of the Controlling Owners, including such entity as may result from a buy-sell arrangement between the Controlling Owners, (d) the proposed Transferee is proven by Lessee, to the reasonable satisfaction of County upon documentation and information satisfactory to County, to be a trust, limited liability company, family partnership or other

entity formed by the Controlling Owners for estate planning purposes and not for any consideration, and whose trustees and beneficiaries are the Controlling Owners and their spouses or children, or (e) the proposed Transferee is proven by Lessee, to the reasonable satisfaction of County upon documentation and information satisfactory to County, to be an entity resulting from the death, involuntary withdrawal or removal, or dissolution of any Controlling Owner. For any Transfer under clause (d) the Director, before such Transfer is effective, shall approve the form and substance of the Transfer and any new management agreement for the Leased Premises and determine that the Transferee has the ability and financial resources to continue the operation of Lessee and that the County's interests will not be materially adversely affected by such Transfer. Any Transfer meeting the criteria described above in this Section shall be an "Excluded Transfer."

12.1.8 Management Agreement Not a Transfer.

A management agreement entered into by Lessee as provided for in this Section shall not be deemed a Transfer. Lessee shall not enter into any management agreement for the management of the Leased Premises unless Lessee gives not less than fourteen (14) days' prior written notice to County of its intention to enter into such an agreement together with such written information and documentation to enable County to judge whether or not the proposed agreement and manager conform to the standards set forth below in this paragraph. County shall have fourteen (14) days after receipt of Lessee's notice within which to object to the proposed management agreement. If County does not object, Lessee may enter into the proposed management agreement in writing with a business entity to manage the operation of the Leased Premises (or portions thereof) for a period not longer than five (5) years (including extensions, if any). County may reasonably object to such proposed management agreement if the management agreement and the proposed manager do not comply with all of the following standards: (i) the proposed manager shall be adequately experienced and qualified to manage the operation of the Leased Premises in accordance with the uses permitted under this Lease, (ii) the proposed manager shall hold and will continue to hold whatever license may be required under applicable law to perform such management functions, (iii) the proposed manager shall have qualified and experienced employees who will be assigned to such management, (iv) the proposed manager shall be an established operating business entity which has the resources to continue its own operations, (v) the authority to manage granted by Lessee under the proposed management agreement shall not include the authority to the proposed manager (and Lessee shall expressly retain the right) to make Major Decisions, (vi) the management agreement shall not give to the proposed manager any rights of possession of the Leased Premises nor any interest in Lessee and (vii) the proposed manager shall not manage or have any legal or beneficial interest (whether as an owner, lessee or mortgagee) in any Other Leasehold.

12.1.9 Release from Liability; Assumption of Liability.

Except as set forth in 12.1.3, upon an approved Transfer to a Transferee to whom County has in writing consented after a Request to Transfer to such Transferee pursuant to this Lease, the assigning Lessee shall be released, from and after the effective date of the Transfer, from all of Lessee's obligations under this Lease accruing after the effective date

of such Transfer. The assigning Lessee to a Transferee to whom County has not so consented in writing shall not be released from liabilities accruing after the effective date of Transfer. Any Transferee shall be deemed by virtue of such Transfer to have agreed for the benefit of County to assume, be bound by, and perform the terms, covenants and conditions of this Lease to be performed, kept or satisfied by Lessee, or which prior to such Transfer were to be performed, kept or satisfied and remain unperformed, unkept or unsatisfied by the then Lessee, including the obligation to pay to County all amounts which shall become due and payable, or which have become due and payable but remain unpaid, under this Lease. Any Transferee of a Transfer without County's consent who enters upon the Leased Premises or takes possession of the Leased Premises shall be deemed by virtue of such entry or possession to have agreed for the benefit of County to assume, be bound by, and to perform the terms, covenants and conditions of this Lease to be performed, kept or satisfied by Lessee, or which prior to such Transfer were to be performed, kept or satisfied and remain unperformed, unkept or unsatisfied, including the obligation to pay to County all amounts which shall become due and payable, or which have become due and payable but remain unpaid, under this Lease. Notwithstanding the foregoing sentence, any entry or possession by a Transferee without County's consent shall be and remain an Event of Default by Lessee and the Transferee, for which County retains and reserves all rights and remedies, including the right to treat such Transfer as null and void and to eject or evict such Transferee from the Leased Premises.

12.1.10 Transferee's Obligations.

No Transfer to which County has so consented shall be effective for any purpose unless such Transfer is evidenced by a written instrument in form satisfactory to County, and executed by Lessee and the Transferee, a fully executed duplicate original of which shall have been delivered to County, in which such Transferee shall agree in writing for the benefit of County to assume, be bound by, and perform the terms, covenants and conditions of this Lease to be performed, kept or satisfied by Lessee, or which prior to such Transfer were to be performed, kept or satisfied and remain unperformed, unkept or unsatisfied, including the assumption by the Transferee to cure and fully perform all Defaults, whether or not such Default shall have occurred prior to the Transfer and whether or not County has delivered a notice of such default. Failure to obtain in writing County's prior consent and deliver a fully executed original of such assumption agreement or otherwise comply with the provisions of this Article shall prevent any Transfer from becoming effective. Unless agreed to the contrary in an instrument executed by County for the specific benefit of a Transferee, the consent of County to a Transfer, or a failure of County to enforce its remedies under this Lease due to a Transfer to which County has not consented, shall not be deemed or asserted as a waiver or relinquishment of any rights or remedies County has or may have for any Default of Lessee under this Lease, whether or not occurring prior to such Transfer, and County expressly reserves all rights and remedies it has or may have under this Lease notwithstanding any Transfer.

12.1.11 Transfers by Operation of Law.

This Lease shall not, nor shall any interest of Lessee herein, be assignable by operation of law without the written consent of County.

12.2 Subleasing.

After the Effective Date of this Lease, Lessee may not enter into or grant any Sublease for all or any portion of the Leased Premises except in strict compliance with the following terms and conditions:

12.2.1 Boat Slip Rental Agreements.

Lessee shall prepare for County's approval a standard form of written agreement for the rental, subletting or licensing of the use of any of the Boat Slips (referred to in this Lease as the "Boat Slip Rental Agreement" and the user thereof as the "Boat Slip Renter"), and upon approval by County, such form shall be the only form to be used for the rental of Boat Slips. County may at any time and for any reason contact any Boat Slip Renter directly provided that such contact does not materially prevent the collection of rent by Lessee under the applicable Boat Slip Rental Agreement or otherwise interfere with any obligations of either party to such Boat Slip Rental Agreement. In any event, within one (1) year prior to expiration of the Term, County may contact any Boat Slip Renter for purposes of providing a successful transition from Lessee to the entity that will become the Lessee (or otherwise have possession of the Boat Slips) upon the expiration of the Term. As each Boat Slip Rental Agreement is made with a Boat Slip Renter, Lessee shall require the Boat Slip Renter to furnish evidence that it carries liability insurance and pollution insurance in the minimum amount of Three Hundred Thousand and No/100 Dollars (\$300,000.00); Lessee shall thereafter use diligent efforts to ensure that such insurance coverages continue to be maintained during the term of such Boat Slip Rental Agreement and shall otherwise enforce all insurance requirements of each Boat Slip Rental Agreement. All insurance policies maintained by the Boat Slip Renter shall name the County as an additional insured and require that the insurance carrier waive right of subrogation in favor of the County. Not more frequently than quarterly, at the time required for the submission to County of each Quarterly Statement or at such other times requested in writing by County, Lessee shall provide County with a list ("Rent Roll") of each Boat Slip Rental Agreement, listing the number or other identification of the Boat Slip being rented, the identification number of the Boat to be moored, the term of the Boat Slip Rental Agreement, the rental being charged and the identification and contact location of the Boat Slip Renter including without limitation the Boat Slip Renter's name, address and telephone number.

12.2.2 Subleases.

Each Sublease other than a Boat Slip Rental Agreement (including any assignment, subletting or other Transfer of or under any such Sublease) shall also be in writing and shall contain provisions consistent with this Lease. No such Sublease shall be effective until Lessee has submitted the proposed Sublease (or applicable instrument of assignment, subletting or other Transfer) to County and County has consented in writing to the same. County covenants that upon receipt by County of such proposed Sublease, County shall review and evaluate the proposed Sublease and shall not unreasonably withhold consent to such Sublease. If the Sublease is for rental space that is 20% or more of all the rental space on the Leased Premises, County's consent shall be based on County's determination (based

on a reasonable evaluation of all information provided to County) that (a) the proposed Sublessee has sufficient financial strength to carry out its obligations under the Sublease, (b) the business to be conducted as represented by the Sublessee or assignee is not for a use prohibited by or incompatible with this Lease or the other businesses in the Harbor, (c) the Sublessee has sufficient qualifications, experience and abilities to fulfill its obligations under the Sublease, and (d) the form and content of the proposed Sublease complies with the requirements of this Section 12.2.2. If the Sublease is for rental space that is less than 20% of all the rental space on the Leased Premises, County's consent shall be based on County's determination (based on a reasonable evaluation of all information provided to County) that (a) the business to be conducted as represented by the Sublessee or assignee is not for a use prohibited by or incompatible with this Lease or the other businesses in the Harbor, and (b) the form and content of the proposed Sublease complies with the requirements of this Section 12.2.2. Within 60 days from the date that County received at its offices written notice of the proposed Sublease, the information regarding the qualifications of the proposed Sublessee and the form of the proposed Sublease, County shall in a writing delivered to Lessee (i) consent to the Sublease and the proposed Sublessee, or (ii) reject the proposed Sublessee or the Sublease, stating the reasons therefor, or (iii) specify additional information that County needs in order to determine whether to consent or reject the proposed Sublease. If County takes none of the foregoing actions, and provided the form of the Sublease contains the provisions outlined immediately below, County shall be deemed to have elected subclause (i) and have consented to the proposed Sublessee and the Sublease submitted by Lessee. The form of such Sublease shall include, but not be limited to, the substance of the following provisions, the terms of which shall be deemed to be incorporated in any such Sublease:

- (a) That the Sublease is subject and subordinate to this Lease.
- (b) That the term of the Sublease extends no longer than length of the Term minus one day.
- (c) That the sublessee may not assign the Sublease or sublet any portion of the Leased Premises or Improvements demised thereunder without the consent of County in the manner set forth above.
- (d) That the Sublessee agrees to and assumes the provisions in Section 6.4 of this Lease to the extent that such provisions are relevant to the business and operations of Sublessee (including but not limited to a waiver of confidentiality of its Returns to the limited extent Lessee has agreed to such a waiver); and that the Sublessee shall pay and remit to Lessee the percentage rent designated in the Sublease for the activity to be conducted by the Sublessee (which shall be in conformity with the Percentage Multipliers set forth in this Lease), to make such reports and accountings of Sublessee's activities and income, and to allow County to review, inspect and audit the books and records of such Sublessees for those purposes, all in conformity to applicable provisions of Section 6.4.
- (e) That the Sublessee shall at all times be open for business at Business Hours and shall keep and maintain within and upon its subleased premises an adequate staff of workers and (if applicable) stock of merchandise and trade fixtures to present itself as open and available

for business and to service and supply the usual and ordinary demands of its customers, and shall keep its subleased premises in a neat, clean and orderly condition.

(f) That the Sublessee shall procure and maintain insurance policies naming County as an additional insured with coverage and in the amounts of coverage in accordance with the requirements of this Lease.

(g) That the Sublessee shall not be required or permitted to prepay more than three (3) months' Minimum Monthly Rent.

(h) That the Sublease shall contain an irrevocable covenant and undertaking made for the benefit of County that (1) such Sublessee shall, at County's option, attorn to County in the event this Lease shall be terminated prior to the scheduled termination date for any default by Lessee, and (2) such attornment shall operate to create the relation of lessor and lessee directly between County herein as lessor, and Sublessee as lessee, with respect to the Sublease, all with the same force and effect as would have been the case had such lease been made by and between such Sublessee and County herein in the first instance, subject to the following conditions:

(i) County shall not be subject to any offsets or other defenses which might have been asserted against any prior sublessor (including Lessee);

(ii) County shall be discharged from all responsibility for security deposits paid to any prior sublessor (including Lessee) which were not received by County; and

(iii) County shall not be responsible or liable for or assume any obligation for the construction of any improvements, the advancement of any monies or the provision of any capital improvements pursuant to any obligation of Lessee under such Sublease. Notwithstanding the foregoing sentence, the Sublessee shall retain whatever rights it may have under the Sublease to terminate the Sublease for failure of Lessee's obligation for such construction, advancement of monies or provision of capital improvements.

12.2.3 No Modification of Subleases.

Lessee shall not modify any Sublease as to which County has consented so as to reduce the rent, shorten the term, or adversely affect in any other respect the rights of Lessee or County thereunder, or permit cancellation or accept the surrender of any such Sublease, without the prior written consent of County in each instance; provided, however, that such consent shall not be required to the institution or prosecution of any action or proceedings against a Sublessee by reason of a default on the part of such Sublessee under the provisions of such a Sublease. County shall not unreasonably withhold its consent with respect to any such matter and provided that such modification or other action does not violate any express provision of this Lease. County's failure to notify Lessee of its disapproval within 30 Business Days after its receipt of Lessee's request for approval shall be deemed an approval of said request.

12.3 Subleases Prior to this Lease.

Subleases entered into by Lessee under the Original Lease and prior to this Lease are not required to be modified to comply with this Lease unless the Sublessees so agree. Lessee agrees to deliver true copies of all such prior Subleases. In the event that a prior Sublease is modified or amended, or a new Sublease is executed between Lessee and the Sublessee, the terms and conditions of any such amendment, modification or new Sublease shall comply with this Lease.

12.4 Leasehold Mortgage.

Notwithstanding anything, which is or appears to be to the contrary in this Lease, Lessee shall not give, grant or enter into any Leasehold Mortgage, except as expressly provided for herein. Lessee covenants that all obligations to the Mortgagee shall be fully and timely paid and satisfied, and Lessee will not cause, suffer or allow a default of Lessee's obligations under any Leasehold Mortgage. Lessee shall have the right, with Director's prior written consent (with the concurrence of the County Counsel and County Executive Officer), to encumber Lessee's Estate with any Leasehold Mortgage; provided, that such Leasehold Mortgage shall meet each of the following terms, conditions and requirements in order to qualify as an "Approved Mortgage":

(a) The Leasehold Mortgage shall require copies of all notices of default under said Leasehold Mortgage to be sent to County at the same time as Lessee;

(b) The Mortgagee under the Leasehold Mortgage shall be an Approved Mortgagee;

(c) The Leasehold Mortgage shall be subordinate to County's Estate, and shall not encumber or affect County's Estate or any interest in real property other than Lessee's Estate and any easement appurtenant to Lessee's Estate to the extent it benefits the Leased Premises;

(d) Except as set forth in clause (e) below, the debt secured by the Leasehold Mortgage shall be a first priority lien on Lessee's Estate and shall not exceed seventy percent (70%) of the fair market value of Lessee's Estate as reasonably determined by County.

(e) If the Leasehold Mortgage is a second priority lien on Lessee's Estate: (i) the debt secured by such Leasehold Mortgage shall not exceed ten percent (10%) of the fair market value of Lessee's Estate as reasonably determined by County; (ii) the debt secured by such Leasehold Mortgage, taken together with the debt securing the first-priority Leasehold Mortgage, shall not exceed seventy percent (70%) of the fair market value of Lessee's Estate as reasonably determined by County; and (iii) any distribution of loan proceeds to Lessee under such Leasehold Mortgage shall be subject to County's prior written approval, and will in any event be restricted to the purposes set forth in clause (f) below.

(f) The proceeds of any Leasehold Mortgage shall be used and applied only for: (i) the reasonable costs and expenses of procuring the loan; (ii) the costs of contractors, architects, engineers and other professionals, workmanship, labor and material for the development and construction of Lessee's Improvements and the repair, restoration, maintenance or replacement thereof in accordance with budgets for such work which have been submitted to and approved by County; (iii) reasonable reserves for the repair, restoration, maintenance and

replacement of the Improvements; (iv) pay-off of an existing Approved Mortgage, (v) reasonable operating deficits relating solely to Lessee's business at the Leased Premises (and not related to any Unrelated Business) for a period not to exceed one (1) year, and (vi) other reasonable costs and expenses of procuring the loan. Proceeds of a Leasehold Mortgage shall not be used for the purpose of distributing cash to any Owner, or in returning any equity, investment or capital attributable to an Owner. No loan proceeds shall be used to pay or hold funds for debts to be incurred in the future, nor shall such proceeds be held or used to later pay, dividends, profit sharing, partnership or member distributions or any other payment or distribution to an Owner. The Approved Mortgagee shall not be responsible for directly supervising the disbursement of the loan proceeds or any misapplication thereof if (a) the Approved Mortgagee requires the Lessee to engage the services of a loan disbursing agent, reasonably satisfactory to County, who agrees to limit the disbursements from the loan disbursement account to those matters specified in subparagraph (f) and to certify such limitation to County, and (b) the loan proceeds are deposited with such designated loan disbursing agent.

(g) Notwithstanding the foregoing, subject to County's prior written approval, a "purchase money" Leasehold Mortgage which secures, in whole or in part, the purchase price payable in connection with a Transfer to which County has consented may be an Approved Mortgage, subject to the other terms and conditions of this Section; the Mortgagee of a "purchase money" mortgage need not be an Approved Mortgagee, but any Transfer of such a Mortgage shall be made only to an Approved Mortgagee.

(h) The Leasehold Mortgage shall not permit or authorize, or be construed to permit or authorize, any Mortgagee to devote the Leased Premises to any uses, or to construct anything thereon, other than those uses and Improvements provided for and authorized by this Lease.

(i) The Mortgagee, concurrently with the recordation of the Leasehold Mortgage, shall have delivered a notice in writing to County specifying: the name of the Mortgagee, an address to which notices and other correspondence to the Mortgagee are to be sent by County, and the amount of the indebtedness secured by the Leasehold Mortgage and the terms and conditions of the repayment thereof, together with a conformed copy of the recorded Leasehold Mortgage.

(j) The Mortgagee shall not have the right to assign, sell or transfer the Leasehold Mortgage except to another Approved Mortgagee.

12.5 Rights of an Approved Mortgagee.

Until such time as the lien of an Approved Mortgage has been extinguished, the following provisions shall apply with respect to such Approved Mortgage (it being understood that the provisions set forth in this Section 12.5 are solely for the benefit of the Approved Mortgagee, and are not for the benefit of, nor may they be enforced by, Lessee):

12.5.1 No Cancellation or Surrender.

County shall not agree to any mutual cancellation nor accept any unilateral surrender or tender of this Lease (except upon the expiration of the Term); provided, that

the provisions of this subsection shall not apply to any termination right of either party expressly set forth in this Lease (including, without limitation, any right of termination arising from an Event of Default, subject to Section 12.5.5 of this Lease, or the occurrence of condemnation or casualty), nor to any cancellation or surrender occurring without County's consent pursuant to the provisions of the United States Bankruptcy Code, 11 U.S.C. 101, et seq.

12.5.2 Assignment by Approved Mortgagee.

Following an Approved Mortgagee's acquisition of Lessee's Estate pursuant to a foreclosure or deed in lieu of foreclosure under an Approved Mortgage, provided that the Approved Mortgagee shall have first cured any Monetary Default of Lessee that has accrued under this Lease, the Approved Mortgagee shall be entitled to assign Lessee's Estate to a Foreclosure/Workout Assignee on such terms as are acceptable to Approved Mortgagee without providing a Request to Transfer to County, obtaining County's prior consent to such assignment, or paying a Transfer Fee, and the Approved Mortgagee shall thereafter be relieved of all obligations of Lessee first arising under this Lease after the date of such assignment, provided that (a) the assignee has a minimum net worth of Five Million and no/100 Dollars (\$5,000,000) in assets as then-currently valued (exclusive of the value of Lessee's Estate), which may be adjusted annually as of the Effective Date of this Lease by an amount equal to the aggregate percentage increase in the CPI between the effective date of this Lease and the date of such adjustment, (b) the assignee otherwise satisfies the underwriting requirements that would have to be met by the assignee if the assignee were a borrower applying to the Approved Mortgagee for a loan for the purpose of acquiring the Leased Premises in an amount equal to the original principal balance of the Approved Mortgage that was foreclosed upon, (c) the assignee's proposed use of the Leased Premises is consistent with the use provisions and restrictions in this Lease and will not breach any covenant of the County respecting the use of the Leased Premises, religious restrictions, use or exclusivity rights in any Other Leasehold, or any other financing or other agreement relating to the Harbor, and (d) not less than fifteen (15) days' prior written notice of the proposed assignment is provided to County. The Approved Mortgagee shall furnish, in advance of the assignment, such information to County as County may reasonably request, including the underwriting requirements of the Approved Mortgagee generally applicable to loans secured by ground leases then in effect, to enable County to make the determinations referred to above. This Section 12.5.2 shall not apply to any subsequent Transfers by the assignee of such Approved Mortgagee, and any such Transfers shall conform fully to the provisions of this Article 12 (and, without limitation, shall be subject to County's prior consent and payment of the Transfer Fee).

12.5.3 Amendments.

If, in connection with securing by Lessee of any Approved Mortgage, the Mortgagee requests an amendment with respect to the lender protection rights set forth in this Section, County agrees not to unreasonably withhold its consent to any such amendment; provided, that County shall not be required to consent to such an amendment if it would, in County's reasonable determination, materially impair any of County's rights or materially increase any of County's obligations under this Lease.

12.5.4 Notice of Default.

County, upon providing Lessee with any Notice of Default under this Lease, shall, at the same time, provide a copy of such notice to every Mortgagee whose loan is secured by an Approved Mortgage and who has given written notice to County of its interest in Lessee's Estate. After such notice has been given to a Mortgagee, such Mortgagee shall have the same period for remedying the Default complained of as the cure period provided to Lessee pursuant to this Lease, plus the additional period provided to such Mortgagee as specified in Section 12.5.5 below. County shall accept performance by or at the instigation of such Mortgagee as if the same had been done by Lessee.

12.5.5 Mortgagee Cure Rights.

Notwithstanding anything to the contrary contained in this Lease, County shall have no right to terminate this Lease on account of an uncured Monetary Default or Non-Monetary of Lessee unless, following expiration of the applicable cure period provided for in this Lease, County first provides each Mortgagee written notice of its intent to terminate and the Mortgagee fails to cure any such Monetary Default within 30 days after receipt of such notice or fails to cure such Non-Monetary Default within 60 days after receipt of such notice. If such Non-Monetary Default cannot reasonably be cured within said sixty (60) day period (or is such that possession of the Leased Premises is necessary for the Mortgagee to obtain possession and to remedy the Non-Monetary Default), the date for termination shall be extended for such period of time as may be reasonably required to remedy such Non-Monetary Default, provided the Mortgagee shall have fully cured any Monetary Default within said thirty (30) day period, and shall continue to pay currently all monetary obligations under this Lease as and when the same are due, and provided further that the Mortgagee commences curing such Non-Monetary Default within said sixty (60) day period and thereafter continues its good faith and diligent efforts to remedy such Non-Monetary Default (including its acquisition of possession of the Leased Premises if necessary to the cure of such Non-Monetary Default). Nothing in this Section shall be construed to require a Mortgagee to continue any foreclosure proceeding it may have commenced against Lessee after all Defaults have been cured by the Mortgagee, and if such Defaults shall be fully cured and the Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Lessee had not defaulted under this Lease. Nothing herein shall require a Mortgagee who has acquired Lessee's Estate and has taken possession of the Leased Premises to cure any Non-Monetary Default which is not capable of being cured by such Mortgagee, and such Non-Monetary Default shall be deemed to be waived following the Mortgagee's acquisition of Lessee's Estate and such Mortgagee's timely cure of all Monetary Defaults and all Non-Monetary Defaults which are capable of cure by such Mortgagee in accordance with the foregoing provisions.

12.5.6 Obligations of Mortgagee and Purchaser.

No Mortgagee, acting in such capacity, shall be deemed to be a Transferee of this Lease or of Lessee's Estate so as to require such Mortgagee, in that capacity, to assume the performance of any of the terms, covenants or conditions on the part of the Lessee to be performed hereunder, unless and until it acquires the interest of Lessee hereunder. Provided

that the Mortgagee and any proposed assignee of such Mortgagee shall deliver written notice to County of the assignment of the Mortgagee's promissory note and security therefor together with the assignee's address to which notices are to be sent, the Mortgagee may, without County's consent, assign Lessee's promissory note secured by the lien on Lessee's Estate to any other lending institution meeting the Approved Mortgagee Eligibility Requirements. Upon acquiring Lessee's Estate pursuant to a foreclosure or deed in lieu of foreclosure under a Leasehold Mortgage, the Mortgagee shall immediately notify County in writing of its name and address; and the method by which the Mortgagee acquired Lessee's Estate and the documentation to evidence such acquisition, together with the name, address and authorized person of the Mortgagee to whom correspondence and notices may be delivered. Upon taking an assignment of Lessee's Estate from a Mortgagee under Section 12.5.2 of this Lease, the assignee shall deliver to County written notice of (a) the effective date of the assignment, (b) the identity of the assignee and the Controlling Owner of the assignee, (c) information regarding the experience, and abilities of the assignee (such as prior operations, lawsuits, bankruptcy filings, criminal records, foreclosures or default proceedings) and (d) an instrument in form satisfactory to County, and executed by the assignee, in which such assignee shall agree in writing for the benefit of County to assume, be bound by, and perform the terms, covenants and conditions of this Lease to be performed, kept or satisfied by Lessee, or which prior to such assignment were to be performed, kept or satisfied and remain unperformed, unkept or unsatisfied, including the assumption by the assignee to cure all Defaults, whether or not such Default shall have occurred prior to the assignment and whether or not County has delivered a notice of such Default (provided, however, that if County has delivered an Estoppel Certificate to the Mortgagee or the prospective assignee prior to the effective date of such assignment nothing herein is intended to limit or restrict the force or effect of such Estoppel Certificate). Any such assignee, or any other Transferee of the Lessee's Estate created hereby by a conveyance in lieu of foreclosure or any purchaser at any foreclosure sale of this Lease or of the Lessee's Estate (other than the Mortgagee), shall be deemed to be a Transferee of this Lease, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Lessee to be performed hereunder from and after the date of such assignment and, from and after such date, shall be subject to all the terms of this Lease, including all restrictions on further Transfers set forth in this Article 12; provided, however, nothing herein shall require an assignee who has acquired Lessee's Estate and has taken possession of the Leased Premises to cure any Non-Monetary Default which is not capable of being cured by such assignee, and such Default shall be deemed to be waived following such assignee's acquisition of Lessee's Estate.

12.5.7 Foreclosure a Permitted Transfer.

Notwithstanding any other provision of this Lease, but subject nevertheless to the provisions of Sections 12.5.2 and 12.5.6 of this Lease, any bona fide sale of Lessee's Estate in any proceedings for the foreclosure of any Approved Mortgage, or a bona fide assignment of this Lease and of Lessee's Estate in lieu of foreclosure of an Approved Mortgage, shall be deemed to be a permitted Transfer, provided such Transfer has not been undertaken for the purpose or with the intent of circumventing any otherwise applicable restrictions upon Transfers set forth in this Lease, and, in such event, no Transfer Fee shall be due.

12.5.8 Multiple Securities.

No security interest in this Lease shall cover more than one indebtedness, except that the construction and take-out loans may be consolidated. Except as expressly permitted under clause (e) of Section 12.4 there shall be no more than one security interest in this Lease outstanding at any time during the Term of this Lease; provided that a “purchase money” mortgage allowed under the last full unnumbered paragraph of Section 12.4 shall not be considered as violating such limitation.

12.5.9 New Lease.

Except as expressly provided in the last sentence of this Section, in the event of a termination of this Lease by applicable bankruptcy law due to the rejection or disaffirmance of this Lease in a bankruptcy proceeding in which Lessee is a debtor, County shall, on written request of any Mortgagee of an Approved Mortgage who has requested notice from County in writing and furnished its name and addresses to County, made at any time within thirty (30) days after the giving of such notice by County, enter into a new lease of the Leased Premises with such Mortgagee (the “New Lease”) within twenty (20) days after the receipt of such request, which New Lease shall be effective as of the date of such termination of this Lease and shall be for the remainder of the Term, at the Rents provided for herein, and upon the same terms, covenants, conditions and agreements as are herein contained; provided that such Mortgagee shall prepare and, with the request for a New Lease, shall submit the proposed New Lease to County and shall: (i) pay to County at the time of the execution and delivery of said New Lease any and all sums for Rent payable by Lessee hereunder to and including the date thereof, less the net amount (i.e., net of all reasonable expenses) of all sums received by County from any Sublessees in occupancy of any part or parts of the Leased Premises and/or Improvements up to the date of commencement of such New Lease; (ii) pay all reasonable costs to County resulting from the preparation and execution of such New Lease; and (iii) on or prior to the execution and delivery of said New Lease, agree in writing that promptly following the delivery of such New Lease, such Mortgagee will perform or cause to be performed all of the other covenants and agreements herein contained on Lessee’s part to be performed to the extent that Lessee shall have failed to perform the same to the date of delivery of such New Lease, except where such failure to perform by Lessee is, by its nature, a Non-Monetary Default not susceptible of cure by such Mortgagee. Nothing herein contained shall be deemed to impose any obligation on the part of County to deliver physical possession of the Leased Premises to such Mortgagee unless County at the time of the execution and delivery of such New Lease shall have obtained physical possession thereof and County has insurable fee simple title to the Leased Premises, free and clear of this Lease and the claims of all persons claiming thereunder. Notwithstanding anything contained in this Section to the contrary, Mortgagee’s leasehold interest in the Leased Premises pursuant to the New Lease shall be subject to any claims by Lessee that it has a right to possession of the Leased Premises.

12.5.10 Liability of New Lessee.

The Mortgagee that becomes the Lessee under any such New Lease made pursuant to Section 12.5.9 shall be liable to perform the obligations imposed on the lessee by such New Lease to the same extent as a Mortgagee that acquires Lessee's Estate under this Lease by the foreclosure thereof or other means in reorganization; upon the transfer of the Lessee's Estate in compliance with the requirements of Section 12.5.2, above, the Approved Mortgagee shall be relieved of all obligations of the Lessee under the New Lease first arising after the date of such assignment.

12.5.11 Subleases and Rents.

After the termination of this Lease and during the period thereafter during which any Mortgagee is entitled to enter into a New Lease of the Leased Premises pursuant to Section 12.5.9, County will not voluntarily terminate any Sublease or the rights of the Sublessee thereunder (provided such Sublease is a permissible Sublease under this Lease), unless such Sublessee is in default under such Sublease and has failed to cure same within the time provided under such Sublease. During such periods, County shall receive all rent and other payments due from all Sublessees (subject to County's right to not accept such rent and other payments as set forth below), including Sublessees whose attornment it shall have agreed to accept, as agent of such Mortgagee and shall deposit such rents and payments in a separate and segregated account, but may withdraw and pay to County such sums as are required or were required to be paid to County under this Lease, at the time and in the amounts due hereunder, and may withdraw and expend such amounts as are necessary for the maintenance, operation, and management of the Leased Premises in accordance with the requirements of this Lease; and, upon the execution and delivery of such New Lease, County shall account to the Mortgagee under the said New Lease for the balance, if any (after application as aforesaid), of the rent and other payments made under said Subleases. The collection of rent by County acting as an agent pursuant to this Section shall not be deemed an acceptance by County for its own account of the attornment of any Sublessee unless County shall have agreed in writing with such Sublessee that its tenancy shall be continued following the expiration of any period during which a Mortgagee may be granted a New Lease, in which case such attornment shall take place upon such expiration but not before; provided, however, in the event County determines that it cannot accept rent payments from a Sublessee without risk of being deemed to have accepted such Sublease's attornment (and County has not previously agreed to recognize such Sublessee in the event of a Default under this Lease by Lessee), County shall have the right to direct such Sublessee to pay such rents directly to Mortgagee. If Mortgagee shall fail to exercise its right to enter into a New Lease or fail to timely execute such New Lease pursuant to Section 12.5.9, all rents collected by County on behalf of such Mortgagees pursuant to this Section shall become County's property free and clear of any claim by such Mortgagees and such Mortgagees shall have no further rights with respect thereto.

12.5.12 Legal Proceedings.

County shall give each Mortgagee of an Approved Mortgage which has given written notice of its interest in the leasehold estate to County prompt notice of any legal

proceedings between County and Lessee involving obligations under this Lease. Each said Mortgagee shall have the right to intervene in any such proceeding to protect its interest and to be made a party thereto, and the parties hereto do hereby consent to such intervention. In the event that any such Mortgagee shall not elect to intervene or become a party to any such proceedings, County shall give such Mortgagee notice of, and a copy of, any award or decision made in any such proceedings, which shall be binding on all Mortgagees not intervening after receipt of notice of the legal proceeding.

12.5.13 Notices.

Notices from County to any Mortgagee shall be mailed to the address of the Mortgagee set forth in the Approved Mortgage furnished to County or at such other address as may have been furnished to County by such Mortgagee in writing. All notices from the Mortgagee to County shall be mailed to the address designated pursuant to the provisions of this Lease or such other address as County may designate in writing from time to time. Such notices shall be given in the manner described in this Lease and shall in all respects be governed by the provisions of this Lease.

ARTICLE 13. COUNTY'S LENDER; ESTOPPEL CERTIFICATE

13.1 Encumbrance of County's Fee Estate.

Lessee acknowledges that County may encumber, pledge or otherwise hypothecate County's Estate and/or its fee estate in the Harbor from time to time in its sole discretion. No such trustee or beneficiary under a deed of trust, or holder of the rights and interest of County hereunder ("County's Mortgagee") shall be or become liable to Lessee solely as a result of such encumbrance or an assignment of this Lease as security.

13.1.1 Non-disturbance.

County's Mortgagee shall not, in the exercise of any of its rights arising or which may arise out of such encumbrance, or any instrument modifying or amending the same or entered into in substitution or replacement thereof, disturb or deprive Lessee in or of its possession or its right to possession of the Leased Premises, or of any part thereof under this Lease, or any right or privilege created for or inuring to the benefit of Lessee under this Lease, provided this Lease is then in full force and effect.

13.1.2 Lessee Not a Party.

If a Default has not occurred under this Lease, and if this Lease shall not have been terminated, then, and in such event, Lessee shall not be made a party in any action or proceeding to foreclose said encumbrance, nor shall Lessee be evicted or removed or its possession or right of possession be disturbed or in any manner interfered with, and this Lease shall continue in full force and effect as a direct lease from the purchaser in foreclosure or transferee in lieu thereof.

13.1.3 Notice to Leasehold Mortgagee.

Lessee shall give notice in writing of the existence and nature of any default of County hereunder to County's Mortgagee; provided that County's Mortgagee has given Lessee a written request for such notice including the name and address of County's Mortgagee. Lessee shall not terminate this Lease if County's Mortgagee has cured such default within sixty (60) days after receipt of such notice, or, if such default cannot reasonably be cured within said sixty (60) day period (or is such that possession of the Leased Premises is necessary for the County's Mortgagee to obtain possession and to remedy the default), the date for termination shall be extended for such period of time as may be reasonably required provided the County's Mortgagee in good faith and with reasonable diligence and continuity, proceeds to cure such default (including its acquisition of possession of the Leased Premises if necessary to the cure of such default). Lessee agrees that County's Mortgagee may, in the event of a default by County in the performance of any obligations of County which are contained in any instrument of hypothecation or evidence of indebtedness, the repayment of which is secured by County's interest hereunder, elect to cause County's leasehold estate in and to all or a portion of the Leased Premises to be sold, to hold foreclosure proceedings thereon, or to accept from County an assignment, transfer or other conveyance of those interests which are thus hypothecated, all without prejudice to Lessee.

13.2 Estoppel Certificate.

On not more than 30 days' written notice prior to a Sale or Transfer to which County has consented in writing as required by this Lease, or in the event that an Approved Mortgage is to be recorded as an encumbrance on Lessee's Estate or County's Estate is to be encumbered for an indebtedness arising out of such Sale, Transfer or Approved Mortgage, the proposed approved Transferee or Mortgagee, as the case may be, as the "Requesting Party," may request that either or both of the Lessee and County ("Requested Party") execute and deliver to the Requesting Party a certificate ("Estoppel Certificate") substantially in the form attached hereto as Exhibit F. Unless the Requested Party shall have notified the Requesting Party in writing within said thirty (30) day period of any qualifications the Requested Party may have to the statements in the Estoppel Certificate ("Estoppel Qualification Notice"), the Requesting Party and successors in interest of the Requesting Party in any transaction regarding a sale, hypothecation, pledge or other transfer of the Requesting Party's rights hereunder shall have the right to rely on the accuracy of such statements. If the Requesting Party shall not have received the requested Estoppel Qualification Notice, the failure by the Requested Party to execute and deliver the Estoppel Certificate within said thirty (30) day period shall be deemed to make conclusive and binding upon the Requested Party (for the benefit of the Requesting Party and successors in interest of the Requesting Party in any such transaction and no one else) that the statements contained in the Estoppel Certificate are true and correct, without exception, and either of the Lessee or the County, as their interests dictate in that event only, is hereby appointed attorney-in-fact to execute and deliver the Requested Party's Estoppel Certificate on behalf of the Requested Party. Neither the Lessee nor the County may be the Requesting Party for its own individual benefit.

ARTICLE 14. LESSEE'S CONDUCT OF BUSINESS

14.1 Continuous Operation.

During the Term, Lessee covenants to (and shall require its Sublessees, including, but not limited to, all operators of retail businesses in the Leased Premises, but excluding Boat Slip Renters, to covenant to) open for business with the general public adequately staffed with workers, merchandise and fixtures in order to pursue the uses permitted under this Lease (or its applicable Subleases) during the term of this Lease; and from and after the date Lessee and each such Sublessee opens for business, Lessee covenants (and shall require each such Sublessee to covenant) to continuously during Business Hours (except for reasonable temporary periods necessary for maintenance, repairs, taking inventory, and installation of equipment and tenant improvements) and uninterruptedly conduct within the Leased Premises the business which it is permitted to conduct under this Lease (or the applicable Sublease), except to the extent the Leased Premises are untenable by reason of fire or other casualty. Lessee shall (and shall cause each such Sublessee to) at all times keep and maintain within and upon the Leased Premises an adequate staff of workers and stock of merchandise and trade fixtures to present itself during Business Hours as open and available for business and to service and supply the usual and ordinary demands of its customers, and shall (and shall cause each such Sublessee to) keep the Leased Premises in a neat, clean and orderly condition. Lessee shall (and shall cause each such Sublessee to) continuously, actively and diligently operate its business and pursue the permitted uses in the entire Leased Premises (or the portions of the Leased Premises occupied by such Sublessee(s)) in a high grade and reputable manner throughout the Term, and shall provide and enforce reasonable security measures as necessary for the safety of persons on the Leased Premises. Lessee acknowledges and agrees that County does not consider Minimum Monthly Rent in itself a fair and adequate rental for the Leased Premises and would not have entered into this Lease unless Lessee had obligated itself to pay Percentage Rent, which requires such continual operation and which County expects to supplement the Minimum Monthly Rent to provide a fair and adequate rental return. It is the intent of County and Lessee that Lessee and each such Sublessee produce the maximum Gross Receipts possible during the Term. Therefore, if Lessee fails to continuously operate its business in accordance with the terms of this Lease and keep the required Business Hours, or if Lessee vacates the Leased Premises prior to the expiration of the Term or sooner termination of this Lease, Lessee shall pay Percentage Rent for the portion of the Leased Premises as to which such failure exists (but not as to the balance of the Leased Premises, if applicable) in an amount not less than the portion of the Imputed Percentage Rent allocable to such portion of the Leased Premises for each Calendar Quarter during which such failure or vacation by Lessee or Sublessee has occurred, notwithstanding that for each such Calendar Quarter Lessee also submits a Quarterly Statement. If a Sublessee fails to continuously operate its business in accordance with the terms of its Sublease with Lessee (a "Non-operating Sublease"), Lessee shall pursue commercially reasonable efforts to enforce the obligation of such Sublessee to continuously operate and, for the purposes of Lessee reporting its Gross Receipts to County in a Quarterly Statement in order to calculate the amount due as Percentage Rent for any Calendar Quarter, the Gross Receipts to Lessee derived from such Non-operating Sublease shall, for a period commencing on the ninetieth (90th) day that such failure to operate continues until the earlier of the dates that either (i) the Sublessee recommences to operate or (ii) such Sublessee's occupancy of the Leased Premises terminates, be deemed to be an amount equal to 125% of the minimum rent due from the Sublessee under such Non-operating Sublease for each such Calendar Quarter with respect to any Non-Operating Sublessee that pays percentage rent and 100% of the minimum rent due with respect to any Non-Operating Sublessee whose business is of such a nature that it is not subject to the payment of percentage rent (e.g.,

office sublessees). In addition, County shall have the right to treat any breach of Lessee's obligations for continuous operations under this Section as a Non-Monetary Default and any breach of Lessee's obligations to pay the afore-described percentages of minimum rent due under such Non-operating Subleases as a Monetary Default. In addition, County shall have the right to treat any breach of Lessee's obligations for continuous operations under this Section as a Non-Monetary Default and any breach of Lessee's obligations to pay Imputed Percentage Rent as a Monetary Default.

14.2 Prices.

Lessee shall at all times maintain a schedule available on the Leased Premises of the prices charged for all Boat Slip Rentals and related services, and shall make the schedule available to the Director upon the written request of the Director from time to time. All prices, rates and charges shall be established by Lessee in consideration not only of investment and a profit and economic return to the Lessee, but also in consideration of the need of the public for affordable cost and the generation of revenues to County from Percentage Rent based on prices, rates and charges that reflect market demand, shall be uniform according to the service rendered or the items sold or rented, and shall be available to all members of the general public without discrimination or preference.

14.3 Minimum Number of Boat Slips.

Lessee covenants that at all times during the Term of this Lease, Lessee shall make not fewer than 379 Boat Slips available for rental by Boat Slip Renters, unless excused from so doing by an express term of this Lease.

14.4 Experience and Skill.

Lessee shall through competent and attentive management give attention to efficient supervision of operations on the Leased Premises, using its best skill in a business-like manner, and shall keep employed at all times a competent supervisor for the operation of the Leased Premises and any necessary competent assistants who will be available to County regarding the operations on the Leased Premises. Lessee shall not relinquish control of or the right to make Major Decisions for such operations.

14.5 Independent Obligation of Lessee.

The obligation of Lessee to operate its business under this Lease is independent of the obligation, if any, of any Other Lessee to operate its business, and the failure of any Other Lessee to operate in the Harbor in accordance with its lease or the existence of any default by any Other Lessee under its lease shall not excuse Lessee from its obligations to operate the Leased Premises pursuant to this Lease. The failure of County to enforce any provision in another lease of property in the Harbor shall not be deemed or claimed by Lessee as a breach or default of County's obligations to Lessee under this Lease.

ARTICLE 15. REPAIRS AND MAINTENANCE

15.1 Lessee's Maintenance of the Improvements.

Lessee shall, at its own cost and expense, repair, replace, restore and maintain in first-class and tenantable condition (a) the Leased Premises, the Structures and all other Improvements and every part thereof (except that portion, if any, of the Leased Premises to be maintained by County as may be expressly provided herein) and (b) the utility meters, lines, pipes and conduits, all fixtures, air conditioning equipment and heating equipment and other equipment or fixtures exclusively serving the Leased Premises, located within and without the Leased Premises, and regardless of whether (i) such equipment or fixtures are installed or owned by County or Lessee as part of any equipment system or (ii) are attached to the exterior of or installed on the roof of any Structure by Lessee or County. Lessee shall perform all such items of repair and maintenance as may be necessary to protect the safety of persons in, on and about the Leased Premises and to comply with applicable Laws and requirements of any Governmental Agency having jurisdiction over the Leased Premises. Lessee shall promptly replace at its own expense any fixtures or operating equipment, both exterior and interior, with fixtures or operating equipment of the same kind, size and quality.

15.2 Maintenance of the Exterior Appearance of the Leased Premises.

Lessee shall, without cost and expense to County, at all times during the Term, keep, replace, replenish, restore, repair and maintain the exterior appearance of the Improvements in good and sanitary order, safe and attractive condition and repair and in compliance with all Laws applicable thereto, including, as applicable: (a) the facades and exterior architectural treatment of the Improvements, including cladding and other surface coverings, plate glass fronts, doors and decorations, (b) all locks and closing devices, fencing and security equipment, window sashes, casements or frames, doors and door frames (and shall do such reasonable periodic cleaning and painting of the exterior of the Improvements as may be reasonably required); and (c) all Lessee Common Areas, decking, walkways, parking areas and other exterior spaces on the Leased Premises, including, without limitation, (1) maintaining and, where and when necessary, replacing paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as is in all respects equal or superior in quality, use and durability; (2) removing all obstructions, ice, water, papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a safe, clean and orderly condition; (3) placing, keeping in repair, and replacing, where and when necessary, appropriate signage, markers and lines; (4) keeping in repair and replacing, where and when necessary, such exterior artificial lighting facilities as shall be reasonably required; (5) maintaining all landscaped areas and repairing automatic sprinkler systems or water lines and making replacement of shrubs and other landscaping as is reasonably necessary; and (6) maintaining the Leased Premises and all access areas thereto in first-class order, condition and repair, providing such landscape and janitorial services as shall be necessary to keep all of the above continuously safe, neat, vermin free and clean, and in regard thereof, Lessee acknowledges that the Leased Premises, being an oceanfront facility, is subject to nuisances caused by birds in the form of roosting and deposit of their droppings, and agrees to take (and cause its Sublessees to take) reasonable measures to prevent or reduce such roosting and other nuisances caused by the birds on the exterior and roof of each Structure and on the Boat Slips, and to keep the exterior of the Improvements clean and free of such droppings.

15.3 Self-Help.

In the event County determines that Lessee is in Default of Lessee's performance of its maintenance obligations under this Article 15, County shall notify Lessee in writing of such Default, describing the basis thereof. If Lessee fails to correct or commence to cure such Default within a reasonable time after receipt of such written notice (but in no event later than fifteen (15) days thereafter), or if Lessee's performance of its maintenance obligations under this Section is habitually breached by Lessee, then, upon thirty (30) days' prior written notice, County may, but is not obligated to, enter upon the Leased Premises and perform any work or provide any material reasonably necessary to correct such Default, in which case Lessee shall assume all liability for such work or material and the maintenance thereof, and shall reimburse County, as Additional Rent, for all reasonable costs incurred by County in connection therewith within fifteen (15) days following written demand therefor from County. If the Default or the condition of the Leased Premises in the reasonable opinion of the Director constitutes an imminent threat or danger to public safety or other emergency that requires immediate attention, County may enter the Leased Premises immediately after giving Lessee such written or oral notice as shall be reasonable under the circumstances to cure such Default or repair such condition. County shall not be required to furnish notice to any Mortgagee prior to the exercise of its rights under this Section.

15.4 Last Ten Years.

During the last ten (10) years of the Term, if Major Replacements are required, Lessee shall provide County with written notice thereof, together with reasonable detail of the work needed, the estimated cost of such Major Replacements, and a statement of whether or not Lessee elects to bear the entire cost of such work (including the portion attributable to the useful life of the Major Replacements that extends beyond the end of the Term). County shall have the right to contribute such portion of the cost that Lessee elects not to bear. If County elects to so contribute, it shall so inform Lessee within thirty (30) days of receipt of Lessee's notice, and, in such event, Lessee shall perform the work provided that reasonable arrangements (including, at the discretion of County, a construction escrow or similar arrangement) are made by County to pay its portion. If County does not elect to so contribute or does not make such arrangements for contribution within said thirty (30) day period, Lessee may elect either to perform the work at its own cost without contribution by County or to terminate this Lease by furnishing County with written notice of such termination, in which event this Lease will terminate sixty (60) days from the date of such notice unless, within said sixty (60) day period, County proceeds to make such arrangements for contribution. If Lessee fails to provide a written notice of termination within fifteen (15) days after the end of the aforesaid thirty (30) day period, Lessee shall be deemed to have elected to perform the work. "Major Replacements" for the purpose of this Lease are works of restoration, replacement or repair of such Improvements whose costs are not otherwise chargeable as operating expenses; that are expenditures for capital assets for reporting purposes in accordance with the Internal Revenue Code of the United States Government and the rules and regulations relating thereto, whose useable life in accordance with such Laws, rules and regulations extends beyond the end of the Term; and are not paid for or to be paid for from the proceeds of insurance, condemnation awards or by assessment or charge to Sublessees.

15.5 Protection of Harbor. Lessee shall maintain and operate the Leasehold Improvements in a manner that will direct waste materials arising on the Leased Premises to

facilities designed for their reception and disposal, and that will protect the Harbor from damage, injury, obstruction, pollution or contamination arising from the discharge or release from the Leased Premises of water, effluents, waste, trash, debris, materials and objects into the waters of the Harbor.

15.6 Approvals by County.

For all repairs and maintenance under this Article, Lessee shall comply with each and every condition for performing Lessee's Work set forth in this Lease, including County's approval of Approved Plans therefor as set forth in Section 9.2, except that such Approved Plans shall not be required for (a) non-structural repairs to the interior of the Improvements, and (b) other minor repairs for which the estimated cost does not exceed Twenty Five Thousand and No/100 Dollars (\$25,000.00) per instance of repair or maintenance or Fifty Thousand and No/100 Dollars (\$50,000.00) in the aggregate in any calendar year (subject to adjustment from time to time by County based on changes in the CPI from the Lease Commencement Date through the date of such minor repairs).

15.7 County's Revetment Maintenance.

County shall maintain the revetment adjacent to the Waterside Portion for the purpose of preventing the accumulation of sediment, silt, materials, and/or objects of any type or nature on the surface of the submerged land in the Waterside Portion that was deposited on such submerged land by surface waters discharging over or through the revetment into the Waterside Portion from the Landside Portion of the Leased Premises to an extent that causes such accumulation to obstruct the reasonable navigation of Boats between their berths on the Waterside Portion and the channels of the Harbor that lead to the Ocean (such accumulation that results in such obstruction is referred to as "Excess Revetment Accumulation"). County may at County's sole discretion undertake to perform dredging or other work ("Remedial Accumulation Work") to remove Excess Revetment Accumulation upon its own initiative or after reasonable written notice to County from Lessee specifying the extent and location of such Excess Revetment Accumulation. Lessee acknowledges and agrees that undertaking such Remedial Accumulation Work will require studies, preparation and the availability to County of special marine equipment that is capable of performing such work; and that, provided County undertakes such preparatory actions in a timely and diligent manner, County shall, within a reasonable amount of time, including delays caused by suppliers, workers and natural weather conditions, perform such Remedial Accumulation Work that it has commenced. Lessee acknowledges and agrees that the extent of dredging which County may undertake pursuant to this Lease, or for any other dredging work in the Harbor that County may at its sole discretion elect to undertake, will be to a maximum planned depth in the basin of X-2 and Y-1, or any other portion of the Harbor, of 8 feet at mean lower low tide and will not be planned to accommodate Boats having a maximum underwater depth greater than 6 feet. If the maintenance of the revetment should require the temporary removal of Boats or Boat Slips on the Waterside Portion, such temporary removal and replacement shall be accomplished by Lessee at the request of County at no cost to County (except that County, and not Lessee, shall bear the cost of removing and replacing pilings); provided, during any such period of time that such Boats or Boat Slips are removed at the request of County, the Minimum Monthly Rent (but not the Percentage Rent or other charges hereunder) otherwise due and payable during such period shall be abated by the percentage that the number of Boats removed from service for such maintenance bears to the

number of Boat Slips actually in use for mooring Boats prior to such requested removal (e.g., if the number of Boats removed is seventy five (75), and the number of Boats Slips in use prior to removal was three hundred (300), then the Minimum Monthly Rent for the months during which the reduction occurred shall be reduced by twenty five percent (25%).

ARTICLE 16. RECONSTRUCTION

16.1 Damage or Destruction by Insured Casualty.

In the event any of the Improvements are damaged by a casualty actually covered by Lessee's insurance or a casualty which is required to be insured against by Lessee pursuant to Article 8 of this Lease, Lessee shall within a reasonable period of time, except as provided for in Section 16.3.1, commence and complete the restoration, replacement or rebuilding of the Improvements, together with such alterations and additions, or variations from the original plans for the exterior elevations (including materials selection and color) or the size, bulk and scale of the Improvements and such alterations or changes as are required by then current building code, such repair or restoration to be performed in accordance with all provisions of this Lease and at no cost to County.

16.2 Damage or Destruction by Uninsured Casualty.

In the event any of the Improvements are damaged by a casualty not covered by Lessee's insurance and which is not required to be insured against by Lessee pursuant to Article 8 of this Lease, Lessee promptly shall remove the debris resulting from such casualty, and within a reasonable time thereafter shall, in accordance with all provisions of this Lease and at no cost to County, either (i) repair or restore the Improvements so damaged, (ii) erect other Improvements as may be approved by County in such location, or (iii) demolish the damaged portion of such Improvements, restore any remaining Improvements to an architectural whole (provided that the architectural integrity may be subject to temporary short-term protection measures (e.g., with plastic sheeting or boards) to remedy conditions of the undamaged Improvements that immediately endanger health or safety), remove all rubbish, and pave or plant grass and otherwise restore the area to a neat, orderly, sanitary and attractive condition. Lessee shall have the option to choose among the aforesaid alternatives, but Lessee shall, except as provided for in Section 16.3.1, be obligated to perform one of such alternatives. Lessee shall give written notice to County which alternative it elects not later than the later of (a) thirty (30) days after the occurrence of the casualty or (b), if Lessee submits plans within 90 days of such casualty for the erection of other Improvements under clause (ii) immediately above, within 30 days after County's approval or disapproval of such plans; provided that if County does not approve such plans for other Improvements within 45 days of their submittal to County, such plans shall be deemed to be disapproved.

16.3 Termination Upon Substantial Damage.

16.3.1 Termination by Lessee.

If Improvements having a replacement value of fifty percent (50%) or more of the value of all of the Improvements on the Leased Premises are damaged at any time during

the Lease Term, or if Improvements having a replacement value of thirty percent (30%) or more of the value of all of the Improvements on the Leased Premises are damaged during the last five (5) years of the Lease Term, then regardless of whether the casualty is insured against or required to be insured against by Lessee, or if Improvements having a replacement value of twenty percent (20%) or more of the value of all of the Improvements on the Leased Premises are damaged or destroyed at any time during the Lease Term by a casualty not covered (and not required to be covered) by Lessee's insurance, then Lessee may elect to terminate this Lease in lieu of such restoration, replacement or rebuilding by delivering written notice to County of such election to terminate this Lease on a date not later than sixty (60) days from the date of delivery of said notice, citing this Section. Such notice of termination shall be delivered to County not later than sixty (60) days after the occurrence of the casualty, together with a bona fide cost estimate for the anticipated costs from an independent licensed contractor, architect or other qualified party.

16.3.2 Termination by County.

Notwithstanding anything to the contrary contained in this Lease, County may, at its option, terminate this Lease upon thirty (30) days' notice to Lessee (said notice to be given not later than one hundred (100) days after the later of the occurrence of such casualty or written notification from Lessee to County of such occurrence) if: (a) Improvements having a replacement value of fifty percent (50%) or more of the value of all of the Improvements on the Leased Premises are damaged at any time during the Lease Term, or if Improvements having a replacement value of thirty percent (30%) or more of the value of all of the Improvements on the Leased Premises are damaged during the last five (5) years of the Lease Term, unless Lessee waives its right to terminate this Lease under Section 16.3.1 and agrees in writing to repair, restore or rebuild the Improvements so damaged pursuant to Section 16.1 or 16.2 above, as the case may be, (b) the damage or destruction is such that, in County's reasonable judgment, restoration cannot be completed within one hundred eighty (180) days of the commencement thereof regardless of the cost of such restoration or repair, (c) Lessee fails to timely elect any of the alternatives in subclauses (i), (ii) and (iii) of Section 16.2 above, (d) having made a prior election of one of the alternatives in subclause (i) or (ii) of Section 16.2, Lessee thereafter fails to diligently pursue the timely completion of the required repair, restoration or erection of other Improvements (as the case may be within the time periods set forth in this Lease for curing such Default), or (e) if Lessee elects only the alternative in subclause (iii) of Section 16.2 above.

16.3.3 Obligations upon Termination.

Prior to any termination under Section 16.3.1 or 16.3.2, Lessee shall repair and restore, if necessary, to an operating condition, the damaged portions of such Improvements as Lessee is required to insure, and/or repair and maintain under this Lease which are reasonably able to continue in economically feasible operation notwithstanding the damaged suffered. This Lease shall terminate on the date specified by the terminating party in its notice of termination. Upon such termination, Lessee shall also assign to County all insurance proceeds that are not applied by Lessee to the repair and restoration of the Improvements as set forth hereinabove, and, in addition, Lessee shall cooperate with

County in obtaining such insurance proceeds, except such proceeds as are reasonably allocated by the insurance company to the Removable Trade Fixtures.

16.4 Commencement of Restoration.

If the Improvements on the Leased Premises shall be damaged or destroyed, and either the provisions allowing termination of this Lease shall not apply, or the provisions of this Lease allowing termination shall apply but the parties shall not have elected to terminate this Lease, Lessee shall commence its obligations of repair and restoration set forth in this Article as soon as practicable, and shall prosecute the same to completion with all due diligence.

16.5 No Abatement of Rent.

Nothing contained in this Article shall be construed, by itself, as permitting the abatement or reduction of Rent, or (except as expressly set forth in Section 16.3.1) the termination of this Lease by Lessee. During the period of any damage, repair or restoration provided for in this Article and so long as this Lease remains in effect and is not terminated, the Minimum Monthly Rent for the Leased Premises shall not be abated in any way; provided, that Lessee shall be entitled to a full credit or offset against both the Minimum Monthly Rent and Percentage Rent Lessee would otherwise be obligated to pay in the amount of any payments County receives from the business interruption insurance required to be provided by Lessee as provided for in Section 8.3.11. Lessee's obligation to pay all other Rents under this Lease shall continue without abatement or reduction. Lessee shall continue or cause to be continued the operation of the businesses in the Leased Premises during any such period to the extent reasonably practicable. Except as expressly provided hereinabove, Lessee shall not be entitled to any abatements or reductions or to any rental offset for loss of the use of the whole or any part of the Leased Premises and/or any inconvenience or annoyance occasioned by any damage, destruction, repair or restoration.

16.6 Remedies Limited.

As a material inducement to County for entering into this Lease, Lessee irrevocably waives and releases its rights under the provisions of Section 1932(2) and 1933(4) of the California Civil Code, it being the intent of the parties hereto that the express terms of this Lease shall control under any circumstances in which those provisions might have otherwise applied.

ARTICLE 17. INTENTIONALLY DELETED

ARTICLE 18. DEFAULTS; REMEDIES; TERMINATION; SURRENDER OF POSSESSION

18.1 Defaults.

The occurrence of any of the following shall constitute a "Default" and a breach of this Lease:

18.1.1 Monetary Defaults.

Lessee's failure or refusal to pay any amount of Minimum Monthly Rent, Percentage Rent, Additional Rent, or any other sums or charges payable by Lessee under this Lease when due, or the failure or refusal to submit any Quarterly Statement or Annual Statement when due (as the case may be, a "Monetary Default").

18.1.2 Non-Monetary Defaults.

Either party's failure or refusal to perform fully and promptly any express or implied covenant of this Lease other than a Monetary Default (a "Non-Monetary Default").

18.2 Notices; Opportunity to Cure; Cure Periods; Non-Curable Defaults.

Following the occurrence of any Default, the non-defaulting party may give the defaulting party a written notice specifying the nature of the Default and the provisions of this Lease breached ("Notice of Default") and demanding that the defaulting party either fully cure each such Default or commence and diligently prosecute such cure within the time period specified in the corresponding subsections below. Any Default not cured within the allotted cure period set forth below shall be an Event of Default.

(a) For any Monetary Default, fifteen (15) days after delivery of the Notice of Default.

(b) For any Default under Articles 2, 3 or 14 of this Lease, fifteen (15) days after delivery of the Notice of Default.

(c) For any Default in Lessee's obligation to provide County with access to its books, records and accounts and other records as provided in Article 6 of this Lease, ten (10) days after delivery the Notice of Default.

(d) For any other Non-Monetary Default, thirty (30) days after delivery of the Notice of Default; provided, however, that if the nature of said Default is such that the same cannot reasonably be cured within said thirty (30) day period, the defaulting party shall have such additional time as is reasonably necessary to cure such Default, provided that at all times prior to the expiration of said thirty (30) day period and for the period thereafter that the Default remains uncured, the defaulting party is exercising reasonable diligence in its efforts to cure such Default.

Upon the occurrence of an Event of Default, the non-defaulting party may pursue all of its rights and remedies set forth in this Lease, including, but not limited to, those set forth in Section 18.4. To the extent permitted by California law, the time periods provided in this Section for cure of Lessee's Defaults or for surrender of the Leased Premises shall be in lieu of (not in addition to) any similar time periods prescribed by California law as a condition precedent to the commencement of legal action against Lessee for possession of the Leased Premises.

18.2.1 Multiple Notices of Default.

Notwithstanding anything to the contrary set forth in this Lease, if in any twelve (12) consecutive calendar Month period, Lessee shall have failed to perform or comply with three (3) or more and independent material obligations that constitute Events of Default: (i) for violation of the use provisions of Sections 2.1 or 2.2; (ii) for failure to pay Minimum Monthly Rent under Sections 6.1 or Percentage Rent under Section 6.2; (iii) for failure to keep records or to provide County with access to books and records, or to submit Quarterly Reports, Annual Reports and Annual Statements under Sections 6.1, 6.2, 6.4, or 6.5, as applicable; or (iv) for failure to maintain and repair the Leased Premises as provided in Article 15, such cumulative Events of Default shall be deemed an incurable Event of Default without any requirement for the delivery of any further Notice of Default. Notwithstanding the foregoing, for purposes of this Section 18.2.1 only, in no event shall any of the following events or occurrences be deemed an Event of Default that can be cumulated with other Events of Default to constitute an incurable Event of Default (regardless of whether such event or occurrence is in fact an Event of Default under any other provision of this Lease): (i) an Event of Default arising out of the independent act or omission of one of Lessee's Parties other than Lessee itself (i.e., an act or omission not consented to by Lessee), and so long as Lessee acts with reasonable diligence to cure or correct same; (ii) minor and unintentional underreportings of Gross Receipts and/or payment of Percentage Rent, provided that any Event of Default with respect to same is timely cured; or (iii) minor deficiencies in providing maintenance and repairs that do not materially compromise the safe, sanitary and operating condition of the Leased Premises or the operation of Lessee's business or the Harbor, provided that such minor deficiencies shall have been cured within 60 days of the service by County to Lessee of Notice of Default of such minor deficiencies.

18.2.2 Bankruptcy or Insolvency Events.

Notwithstanding anything to the contrary set forth in this Lease, any of the following events shall be deemed an incurable Event of Default without any requirement for delivery of a Notice of Default: the entry of any decree or order for relief by any court with respect to Lessee in any involuntary case under the Federal Bankruptcy Code or any other applicable federal or state Law; or the appointment of or taking possession of the Leased Premises or any substantial part of the property of Lessee by any receiver, liquidator, assignee, trustee or other similar official, or the ordering or winding up or liquidating of the affairs of Lessee and the continuance of such decree or order unstayed and in effect for a period of sixty (60) days or more (whether or not consecutive); or the commencement by Lessee of a voluntary proceeding under the Federal Bankruptcy Code or any other applicable state or federal Law or consent by Lessee to the entry of any order for relief in an involuntary case under any such Law, or consent by Lessee to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, sequestrator or other similar official of Lessee, or of any substantial property of any of the foregoing, or the making by Lessee of any general assignment for the benefit of creditors; or Lessee's taking any other voluntary action related to the business of Lessee or the winding up of the affairs of any of the foregoing.

18.3 Additional Assurances.

At any time following the occurrence of a Monetary Default by Lessee or a Non-Monetary Default by Lessee for failure to provide books, records, accounting or reports relating to the calculation of Percentage Rent, or any other Non-Monetary Default the cure for which requires the purchase of services or tangible property, within ten (10) days from a written request by County to Lessee citing this Section (and assuming such Default still has not been cured), Lessee shall provide County with current financial statements for Lessee, with evidence from Lessee that Lessee has the financial ability to cure the Default, and assurances that Lessee is undertaking to effect such cure and that Lessee will continue to perform its obligations under this Lease. Failure to timely provide such information and assurances may, at the election of County, be deemed an Event of Default and a repudiation by Lessee of its obligations under this Lease.

18.4 County's Rights and Remedies.

Upon the occurrence of an Event of Default by Lessee, County may exercise any one or more of the following rights and remedies without further notice or demand of any kind to Lessee or any other person, except as required by applicable state Law, and the enumeration of such rights and remedies herein shall not limit County in the exercise of any other right or remedy County may have on account of such Event of Default (provided, however, that in the exercise of such remedies County shall at all times comply with applicable state Law):

18.4.1 Section 1951.4 Remedy.

The remedy described in California Civil Code Section 1951.4 (a lessor may continue the lease in effect after the Lessee's breach and abandonment and recover rent as it becomes due, if the lessee has the right to sublet or assign, subject only to reasonable limitations); or

18.4.2 Termination of Lease.

The right of County to terminate this Lease and Lessee's right to possession and to reenter the Leased Premises, to take possession thereof and remove all persons therefrom, following which Lessee shall have no further claim thereon. A notice given in connection with unlawful detainer proceedings specifying a time within which to cure a Default shall terminate Lessee's right to possession if Lessee fails to cure the Default within the time specified in the notice; or

18.4.3 Re-entry.

The right of County, without terminating this Lease, to reenter the Leased Premises and take possession of all Improvements, additions, alterations, equipment and fixtures therein and occupy the whole or any part thereof for and on account of Lessee and to collect any unpaid rentals and other charges, which have become payable, or which may thereafter become payable and to remove any persons in possession thereof; or

18.4.4 Termination following Re-entry.

The right of County, even though it may have reentered the Leased Premises, to elect to terminate this Lease and Lessee's right to possession of the Leased Premises; or

18.4.5 Equitable Relief.

The right of County to equitable relief, including the right to enjoin any act or omission.

If County reenters the Leased Premises under the provisions above, County shall not be deemed to have terminated this Lease, or the liability of Lessee to pay any Rents or other charges thereafter accruing, or Lessee's liability for damages under any of the provisions hereof, by any such reentry or by any action, in unlawful detainer or otherwise, to obtain possession of the Leased Premises, unless County shall have notified Lessee in writing that it has elected to terminate this Lease. The service by County of any notice pursuant to the unlawful detainer statutes of the State of California and the surrender of possession pursuant to such notice shall not (unless County elects to the contrary by a written notice to Lessee at the time of or subsequent service of such notices) be deemed to be a termination of this Lease. If County enters or takes possession of the Leased Premises, County shall have the right, but not the obligation, to remove therefrom all or any part of the Removable Trade Fixtures and any other personal property located therein and to place the same in storage at a public warehouse, all at the sole expense and risk of Lessee. Except as may be otherwise warranted and represented to the contrary by County in a written instrument for the specific benefit of a Transferee, the consent of County to a Transfer, or to a Transfer without the consent of County, shall not waive any Default (or Event of Default) occurring prior to such Transfer or the entry of the Transferee upon the Leased Premises.

18.5 County's Damages.

If County elects to terminate possession pursuant to the provisions above, County may recover from Lessee damages, including the following:

(i) The worth at the time of award of any unpaid rental which had been earned at the time of such termination; plus

(ii) The worth at the time of award of the amount by which the unpaid rental which would have been earned after termination until the time of award exceeds the amount of such rental loss Lessee proves could have been reasonably avoided; plus

(iii) The worth at the time of award of the amount by which the unpaid rental for the balance of the Term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; plus

(iv) Any other amount necessary to compensate County for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses incurred by County in (a) retaking possession of the Leased Premises, including reasonable attorneys' fees, (b) maintaining or preserving the Leased Premises

after such Event of Default, (c) preparing the Leased Premises for reletting to a new lessee, including repairs or alterations to the Leased Premises for such reletting, together with all leasing commissions, and any other costs necessary, incidental or appropriate to relet the Leased Premises; plus

(v) At County's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under applicable Law.

As used in subsections (i) and (ii) above, the "worth at the time of award" is computed by allowing interest at the Maximum Rate. As used in subsection (iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

For purposes of this Section 18.5 only, the term "rental" shall be deemed to be total the Minimum Monthly Rent, as adjusted, Percentage Rent, Additional Rent and all other sums required to be paid by Lessee pursuant to the terms of this Lease for the applicable period of time. Any calculation of amounts due under this Section shall be made in accordance with the requirements of applicable Law and, if applicable, proof made at trial.

Even though Lessee may have breached this Lease and abandoned the Leased Premises, this Lease shall continue in effect for so long as County does not elect in writing to terminate Lessee's right to possession, and County may enforce all its rights and remedies under this Lease, including the right to recover the Rent as it becomes due under this Lease. Lessee's right to possession shall not be deemed to have been terminated by County except by an election in writing so stating. The following do not constitute a termination of Lessee's right to possession:

(i) Acts of maintenance or preservation or efforts to relet the Leased Premises;

(ii) The appointment of a receiver upon the initiative of County to protect County's interest under this Lease.

Unless otherwise specified herein, any sum accruing to County or Lessee under the terms and provisions of this Lease which shall not be paid when due shall bear interest at the Maximum Rate from the date when the sum becomes due and payable by the terms and provisions hereof until paid.

18.6 Administrative Default Fee.

In the event Lessee is in Default of an obligation listed in the Schedule of Administrative Obligations and Cost Recovery Amounts set forth in Exhibit G attached hereto (an "Administrative Default"), County may deliver a notice (an "Administrative Correction Notice") to Lessee informing Lessee of the Default and specifying in reasonable detail the nature of the Default. An Administrative Correction Notice shall not constitute a Notice of Default hereunder. Upon delivery to Lessee of an Administrative Correction Notice, Lessee shall be obligated to pay a fee (an "Administrative Fee") to County in the amount of the Cost Recovery Amount applicable to the obligation set forth in the Schedule of Administrative Obligations and Cost Recovery Amounts in Exhibit G of which Lessee is in Default. The Administrative Fee represents the internal costs to

County in preparing and delivering the Administrative Correction Notice, and does not represent or include any actual damages to the County arising from the Default itself. Any such Administrative Fee shall be due and payable upon delivery of the Administrative Correction Notice and shall constitute Additional Rent. The Cost Recovery Amounts shall be increased by 2% at the end of each Lease Year over the Cost Recovery Amounts, as increased, from the immediately prior Lease Year, with the resulting increase, if not an integer that is not divided by 5 without remainder, the increase shall be rounded up to the nearest \$5 (for example, if a Cost Recovery Amount is \$200, the new Cost Recovery Amount is 102% of \$200, or \$204, and the new increased Cost Recovery Amount shall be rounded up to \$205; for the next Lease Year, the increase would be 102% of \$205, or \$209.10 and would be rounded up to \$210). If the Administrative Fee is not paid within 10 Business Days of delivery of such Administrative Correction Notice, the Administrative Fee shall bear interest at the Maximum Rate from the date of delivery of the Administrative Correction Notice. In the event Lessee does not within 30 days of delivery to Lessee of such Administrative Correction Notice cause the Administrative Default specified in the Administrative Correction Notice to be cured and also provide County with written evidence reasonably satisfactory to County that such Administrative Default has been cured (such thirty (30) day period being referred to herein as the "Administrative Cure Period"), County may then deliver a Notice of Default with respect to such Administrative Default. If, after having delivered to Lessee an Administrative Correction Notice, Lessee fails to cure the applicable Administrative Default and present written evidence thereof to County within the Administrative Cure Period, County may deliver to Lessee a Notice of Default concerning such Administrative Default.

18.7 Fixtures and Personal Property.

Without limiting such other rights as County may have with regard to a Default by Lessee, all Improvements, additions and alterations, shall remain on the Leased Premises and if thereafter County regains possession of the Leased Premises in accordance with this Lease and applicable law, County shall have the right, subject to the superior rights of any third party owners, lessors or lienholders of such property and further subject to any limitations or requirements of applicable Law, to take the exclusive possession of same and to use the same, rent or charge free, or, at its option, to require Lessee to remove any or all of the same.

18.8 No Waiver.

The waiver by the non-defaulting party of any Default under any term, covenant or condition herein shall not be deemed to be a waiver of such term, covenant or condition generally or of any subsequent Default under the same or any other term, covenant or condition. The subsequent acceptance of Rent hereunder by County shall not be deemed to be a waiver of any preceding Default by Lessee, or of any right of County to a termination or forfeiture of the Lease by reason of such Default, regardless of County's knowledge of such Default at the time of acceptance of such Rent. No term, covenant or condition of this Lease shall be deemed to have been waived by County unless such waiver be in writing signed by County. The rights and remedies given to County in this Article 18 shall be in addition and supplemental to all other rights or remedies which County may have under Laws then in force.

18.9 Termination and Surrender of Possession.

Upon any termination of this Lease, whether by expiration of the Term, termination or cancellation pursuant to an election provided for herein, forfeiture, or otherwise, the rights, duties and obligations of County and Lessee shall be governed by applicable provisions of Article 21.

18.10 Self Help.

If Lessee shall Default in the performance of any covenant on its part to be performed by virtue of any provisions of this Lease, County may, at County's option, after providing a Notice of Default and the expiration of any cure period with respect thereto as required pursuant to the applicable provisions of this Lease, perform the covenant for the account of Lessee, and the costs incurred by County shall be immediately due and payable by Lessee to County, on demand, as Additional Rent. If County, at any time, is compelled to pay or elects to pay any sum of money or do any acts which would require the payment of any sum of money by reason of any such Default, after providing a Notice of Default and the expiration of any grace period with respect thereto as required pursuant to the applicable provisions of this Lease, the sum or sums so paid or incurred by County, together with interest thereon at the Maximum Rate, shall be immediately due and payable by Lessee to County, on demand, as Additional Rent.

18.11 Independent Obligations.

Except as otherwise expressly provided herein, this Lease shall continue in full force and effect, and the obligations of Lessee hereunder shall not be released, discharged or otherwise affected, by reason of: (a) any restriction or prevention of or interference with any use of the Leased Premises or the Harbor or any part thereof; (b) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other proceeding relating to County, or any action taken with respect to this Lease by any trustee or receiver of County with respect to this Lease by any trustee or receiver of County, or by any court, in any proceeding; (c) any claim which Lessee has or might have against County; (d) any failure on the part of County to perform or comply with any of the terms hereof or of any other agreement with Lessee; or (e) any damage to or destruction of the Leased Premises or any part thereof or any Taking of the Leased Premises or any part thereof. Except as otherwise expressly provided in this Lease, the obligations of Lessee shall be independent covenants and agreements separate from and not conditioned on the covenants and agreements of County. Except to the extent expressly set forth in the contrary elsewhere in this Lease, Lessee hereby waives, to the full extent permitted by applicable Law, all rights now or hereafter conferred by statute or otherwise to quit, terminate or surrender this Lease or the Leased Premises or any part thereof, or to any abatement, suspension, deferment, diminution or reduction of Minimum Monthly Rent, Percentage Rent or Additional Rent. If navigation by Boats within the Waterside Portion or to and from the Waterside Portion through the Harbor waters to the Ocean is prevented for any reason, except for causes created by Lessee or Lessee's Parties, for a period of not less than 18 continuous months, and such prevention of such navigation materially impairs the ability of Lessee to conduct its business on the Leased Premises in accordance with the provisions of this Lease during such period of 18 continuous months, Lessee reserves the right to terminate this Lease upon 30 days' written notice to County citing this Section 18.11 in addition to whatever other remedies to which Lessee may be entitled.

18.12 Interest.

Any amounts due County under this Lease shall bear interest as set forth for unpaid rent in Section 6.6 of this Lease.

18.13 Officers, Employees, Partners, etc. of Parties Not Liable.

No official, officer, partner, member, employee, or agent of either party to this Lease shall be personally liable for such party's performance or for any Default by such party and each party hereby waives, to the extent permitted under Law, any right to satisfy any money judgment or other monetary recourse under or in connection with this Lease against any of the other party's officers, elected and appointed officials (including Board members), employees, contractors, volunteers or agents, except that County reserves the right to seek such recourse against any member, shareholder, partner or other owner of Lessee ("Owner") if and to the extent that (i) Lessee commits an uncured Monetary Default hereunder and (ii) after such Monetary Default occurs (and before it is cured) Lessee pays or distributes any of Lessee's rents, profits, or issues to such Owner; provided that in such event the personal liability of any such Owner shall be limited to the amount of such payment or distribution during the period Lessee remains in Default and no Owner shall be jointly or severally liable for the amount of any payment or distribution to any other Owner.

ARTICLE 19. INTENTIONALLY DELETED

ARTICLE 20. EMINENT DOMAIN

20.1 General.

If any portion of or interest in the Leased Premises shall be condemned (including, without limitation, inverse condemnation) or taken by any public authority or by any other person or entity with the power of condemnation, by eminent domain or by purchase in lieu thereof (each a "Taking"), and such Taking (i) renders the development and operation of a public harbor facility on the Leased Premises in accordance with this Lease unsuitable, in the commercially reasonable judgment of Lessee, or (ii) occurs during the last five (5) years of the Term (other than a de minimis Taking), Lessee may terminate this Lease by giving written notice to County, such termination to be effective as of the date that the condemnor acquires title to all or a portion of the Leased Premises. If this Lease is not terminated, Lessee's condemnation award shall be used (to the extent necessary) for the purpose of repairing or restoring the remaining Improvements in accordance with this Lease.

20.2 Award.

Whether or not this Lease is terminated as a result of any Taking, County and Lessee shall together make one claim for an award for their combined interests in the Leased Premises including an award for severance damages if less than the whole shall be so taken. The condemnation proceeds shall be distributed to County and Lessee as their respective interests appear; provided, however, that any award for the bonus value of Lessee's Estate (that is, the present value of the economic rent for the unexpired portion of the Term, without the exercise of any option, which is

in excess of the present value of the Rent and other rights reserved to County for such portion of the Term) shall be divided equally between Lessee and County; provided, further, that in the event the condemnor is the County of Ventura at a time when the County is the lessor, such bonus value shall be retained in its entirety by Lessee. Both parties shall have the right to appear in and defend against such action as they deem proper in accordance with their own interests at their own expense. To the extent possible, the parties shall cooperate to maximize the condemnation proceeds payable by reason of the Taking. Issues between County and Lessee required to be resolved pursuant to this Article shall be joined in any such condemnation proceeding to the extent permissible under then applicable procedural rules of such court of law or equity for the purpose of avoiding multiplicity of actions and minimizing the expenses of the parties. If this Lease is not terminated pursuant to Section 20.1, it shall continue, except that commencing with the date on which Lessee is deprived of the use of any portion of the Leased Premises or of any rights under this Lease, Rent shall be abated or reduced according to the extent to which Lessee is deprived of the use or benefit of the Leased Premises or of any rights under this Lease.

20.3 Taking for Temporary Use.

If there is a Taking of the Leased Premises for temporary use for a period equal to or less than twelve (12) months, this Lease shall continue in full force and effect, Lessee shall continue to comply with Lessee's obligations under this Lease not rendered physically impossible by such Taking, neither the Term nor the Rent shall be reduced or affected in any way, but the Rent shall continue at the level of the last Rent paid prior to the Taking (including any subsequent increases in such Rent provided for under this Lease), and Lessee shall be entitled to any and all awards for the use or estate taken. If any such Taking is for a period extending beyond such twelve (12) Month period, the Taking shall be treated as a permanent Taking under Sections 20.1 and 20.2.

20.4 Notice of Certain Actions.

Either County or Lessee receiving any notice of any kind specified below shall promptly give the other notice of the receipt, contents, and date of the notice received:

- (a) Notice of intended Taking.
- (b) Service of any legal process relating to a Taking of the Leased Premises or Improvements.
- (c) Notice in connection with any proceedings or negotiations with respect to such Taking.
- (d) Notice of intent or willingness to make or negotiate a private purchase, sale, or transfer in lieu of condemnation.

20.5 Assignment of Condemnation Proceeds by Lessee.

Lessee hereby assigns, and agrees to assign, to County such portion of any compensation, damages, relocation costs, awards or other entitlements that Lessee may have or receive, or be entitled to have or receive, on account of any Taking (including any temporary Taking covered by

Section 20.3), to the extent that Lessee is indebted to County on account of any Rent due, owing and unpaid by Lessee or for any other Monetary Default.

ARTICLE 21. OWNERSHIP OF IMPROVEMENTS; SURRENDER OF LEASED PREMISES; ABANDONMENT

21.1 Ownership of Improvements.

All Lessee's Improvements shall be owned by Lessee until expiration or sooner termination of this Lease. Lessee shall not have any ownership interest in County's Improvements. Lessee shall not, however, remove any Improvements from the Leased Premises nor waste, destroy or modify any Improvements on the Leased Premises except as permitted or required by this Lease. As between County and Lessee, title to all utility lines, transformer vaults and all other utility facilities constructed or installed by Lessee upon the Leased Premises shall vest in County upon construction or installation, to the extent that they are not owned by a utility. Notwithstanding the foregoing sentence, such utility lines, transformer vaults and all other utility facilities, shall be maintained, repaired, and replaced, if and as needed, by Lessee subject to and in accordance with Section 15.1 of this Lease.

21.2 Surrender of Leased Premises.

Upon any termination of this Lease, whether by expiration of the Term or earlier termination hereunder, forfeiture, or otherwise, Lessee shall immediately cease doing business in the Leased Premises and peaceably quit and immediately surrender possession of the Leased Premises to County, and, subject to the rights of County to require Lessee to remove such Improvements and restore the Leased Premises as provided for elsewhere in this Lease, such surrender shall include all Improvements, apparatus, fixtures and alterations (except Removable Trade Fixtures). Lessee shall surrender the Leased Premises to County in good condition and repair, in which they were required by the provisions of this Lease to be kept throughout the Term. If this Lease is terminated due to an Event of Default, County shall have the right to enter upon the Leased Premises and to have the Leased Premises and the Improvements inspected at Lessee's cost to determine whether the Leased Premises and the Improvements have been properly maintained, repaired and restored in accordance with the terms of this Lease. If this Lease shall have terminated without County electing to require Lessee to remove Improvements and restore the Leased Premises as provided for in the subsections immediately below, all Improvements shall be the property of County without payment or other compensation therefor. Lessee shall repair at its own expense any damage and defacement to the Leased Premises caused by its removal of its Removable Trade Fixtures. Notwithstanding anything in this Lease to the contrary, any Removable Trade Fixtures which are not removed from the Leased Premises by the time herein required shall at the election of County become the property of County and County may thereafter either (i) retain all or any part of the same as County's property without payment therefor to Lessee, or (ii) cause all or any part of the same to be removed from the Leased Premises and disposed of, but the cost of any such removal and disposition and the cost of repairing any damage caused by such removal shall be borne by Lessee.

21.3 Removal of Improvements.

Notwithstanding the immediately preceding subsections, County has the right (i) to elect to obligate Lessee, at Lessee's sole cost and expense and at no cost or expense to County, to remove prior to the agreed expiration of the Term all or any portion of the Improvements and to restore the Leased Premises to its condition prior to the commencement of this Lease to the extent specified by County or, in the alternative (ii) to elect not to obligate Lessee to remove any Improvements ("Non-Removal"). If County does not elect to obligate Lessee to remove and restore in writing (the "Notice to Remove and Restore") delivered to Lessee not later than 6 months prior to the expiration of the full Term of this Lease, or if County at any time delivers to Lessee a written "Notice of Non-Removal," then County shall be deemed to have elected Non-Removal. In the event of such election exercised as provided below, the rights, duties and obligations of the parties shall be governed by this Section and its following subsections.

21.3.1 Demolition Report.

No earlier than the first day of the sixth (6th) Lease Year, and no later than the last day of the fifth (5th) Lease Year, prior to the expiration of the Term, Lessee shall deliver to County a report ("Demolition Report") prepared by a construction and demolition expert approved by County, such approval not to be unreasonably withheld or delayed, that details and estimates the cost of removing all Improvements on the Leased Premises at the expiration of the Term. County may give a written notice ("Notice to Remove and Restore") to Lessee at any time, except that the time allowed to County to give the Notice to Remove and Restore shall be not later than certain times under the circumstances specified as follows: (i) if the Demolition Report shall have been delivered to County in a timely manner as set forth immediately above, not later than the last day of the fourth (4th) Lease Year prior to the scheduled expiration of the Term; (ii) if the Demolition Report is not timely delivered, but is thereafter delivered, then not later than eighteen (18) consecutive months after delivery of the Demolition Report; or (iii) regardless whether the Demolition Report has been delivered or not, if there is an earlier termination of this Lease, then not later than thirty (30) days after any such earlier termination. County agrees to reimburse Lessee, within thirty (30) days of Lessee's written demand, for the reasonable cost to prepare the Demolition Report, in the event County does not timely deliver the Notice to Remove and Restore to Lessee.

21.3.2 Removal by Lessee.

Delivery to Lessee by County of the Notice to Remove and Restore shall constitute County's election to require Lessee to remove, at the sole cost and expense of Lessee, not later than the expiration of the Term, or in the case of earlier termination of this Lease, within thirty (30) days of delivery of the Notice to Remove and Restore, all or any portion of the at grade and below grade Structures, buildings and Improvements of any kind whatsoever placed or maintained on the Leased Premises, whether placed thereon or maintained by Lessee or others, including, but not limited to, concrete foundations, pilings, Boat Slips, Structures and buildings; and if such Structures are required to be removed by Lessee, then Lessee shall, upon the expiration or termination of this Lease, immediately restore, and quit and peacefully surrender, possession of the Leased Premises to County in

good, usable and buildable condition, consisting of a level, graded buildable pad with no excavations, hollows, hills or humps. If Lessee is required to remove Improvements pursuant to a Notice to Remove and Restore, Lessee shall not commence such removal earlier than 2 months prior to the expiration of the Term of this Lease. In consideration of the timely compliance by Lessee with the requirements of such Notice to Remove and Restore, Lessee shall not be liable for payment of Minimum Monthly Rent for that portion of the two (2) Month period immediately prior to the expiration of the Term during which (a) Lessee shall have commenced and thereafter continued to diligently pursue to completion the work of removal and restoration necessary to comply with the Notice to Remove and Restore and (b) Lessee shall have accounted for and paid over to County all income received by Lessee derived from the use and occupation of the Leased Premises during such period.

21.3.3 County's Discretion to Determine Improvements to be Retained.

Lessee acknowledges and agrees that the proper administration of the Harbor by County for the County's proprietary interest and in furtherance of the Harbor's public purposes as a water-oriented recreational amenity, availability of the Boat Slips and the other Improvements to service the needs of Boat owners and users is a major consideration of County in its agreement to agree to Lessee's possession and operation of the Leased Premises under the terms and conditions of this Lease. Lessee agrees that County shall have unfettered discretion to determine whether the Improvements at the termination of this Lease are to be retained for further service to or disposition by County, or are to be removed. Lessee agrees not to remove or dismantle the Boat Slips or other Improvements or remove them from service during the Term, except as may be necessary to repair, restore or replace them as required by this Lease or to comply with Lessee's obligation pursuant to a Notice to Remove and Restore. If County elects, or is deemed to have elected, Non-Removal, Lessee agrees, without further payment or compensation, not to disturb the use and occupancy of the Boat Slips by Boat Slip Renters without cause and to cooperate with County at County's request in such efforts as County may undertake to accomplish a transition of Lessee's business operations with the continuing patronage of the Boat Slip Renters on the Leased Premises to County or its designee at the termination of this Lease.

21.3.4 Lessee Not to Evict Boat Slip Renters.

Unless County has delivered a Notice to Remove and Restore, Lessee agrees not to evict, or attempt to evict, Boat Slip Renters or terminate Boat Slip Rental Agreements for the purpose of, or in anticipation of, removal by Lessee of the Improvements upon termination of the Term. If County has not delivered a Notice to Remove and Restore, County agrees to accept surrender of possession of the Leased Premises by Lessee on such termination without obligating Lessee to terminate the possession of any Boat Slip Renter under its Boat Slip Rental Agreement prior to or upon expiration or other termination of the Term. In relieving Lessee of such obligation, County shall not be deemed to have agreed for the benefit of the Boat Slip Renter to accept such Boat Slip Rental Agreement as an obligation of County (e.g., an attornment), but only to have agreed for the benefit of Lessee to relieve Lessee from any obligation the Lessee may have, or may fear it may have, to County to evict the Boat Slip Renter upon expiration of the Term. Nothing contained

herein shall be deemed to prevent, modify or otherwise affect the right of Lessee during the Term to take such actions as Lessee deems appropriate in the ordinary course of operating its business for the default or other actions or behavior of a Boat Slip Renter; for purposes of repair, maintenance or restoration of the Boat Slips for continued use; or for other good cause in exercising its rights or fulfilling its obligations under this Lease. In the event County elects Non-Removal, Lessee agrees that it shall have no right to prevent County from, or claim compensation or payment for, the use by County of the Rent Roll or other information regarding Boat Slip Renters, or by reason of agreements or contacts with Boat Slip Rental Agreements by County to accomplish the anticipated transition or take effect upon termination of this Lease. Nothing contained herein shall be deemed to allow Lessee to enter into Boat Slip Rental Agreements or Subleases that extend beyond the expiration of the Term.

21.3.5 Termination Security.

If Lessee has received the Notice to Remove and Restore, Lessee shall, no later than the date which is sixty (60) days after the date upon which Lessee received the Notice to Remove and Restore from County (except in the case of an earlier termination, in which event Lessee shall have fifteen (15) days to), provide County with a letter of credit, bond or other security or deposit of funds (“Termination Security”), in form, issuer and amount satisfactory to County, to secure the discharge, of Lessee’s removal and restoration obligations pursuant to this subsection. The amount of the Termination Security shall be equal to the greater of (i) one hundred fifty percent (150%) of the estimated cost to remove the Improvements as set forth in the Demolition Report described above (the “Estimated Costs”) or (ii) the Estimated Costs adjusted to reflect the percentage change in the CPI from the date of the Estimated Costs in the Demolition Report to the last day of the Month immediately prior to the date of the delivery of the Termination Security.

21.3.6 Withdrawal by County.

Lessee agrees that County, having delivered a Notice to Remove and Restore, may notify Lessee in writing that County withdraws such Notice at any time after it has been given if Lessee has not, prior to the time of such notice of withdrawal, incurred costs for the work required in such Notice; or if Lessee has incurred such costs, County may nevertheless withdraw such Notice if County reimburses Lessee for such incurred costs. If Lessee claims any such costs, Lessee shall deliver to County a detailed line item list of such costs and proof of payment or liability for payment thereof, and County shall have the right to audit and verify such costs. If County has delivered such Notice and thereafter County withdraws such Notice, on expiration of the Term or sooner termination of this Lease, Lessee’s Improvements shall become the property of County, free from any liens or claims whatsoever, without any further compensation therefor from County to Lessee or any other person, except as set forth in Section 21.3.7.

21.3.7 Application of Termination Security.

If County has delivered a Notice to Remove and Restore and such Notice has not been withdrawn by County, Lessee at its own expense shall, prior to the expiration of the

Term or sooner termination of this Lease and the surrender of the Leased Premises to County, remove all Improvements of any kind owned or placed on the Leased Premises by Lessee or by others, or such portions thereof designated by County, and restore the Leased Premises as required by the Notice to Remove and Restore. If Lessee shall have fully satisfied its obligations under such Notice without any cost to County, County shall return the Termination Security to Lessee. If Lessee fails to so satisfy its obligations, County may sell, remove or demolish the Improvements and restore the Leased Premises and County may apply the proceeds of the Termination Security to pay or reimburse County for such sale, removal, demolition or restoration. If such proceeds are insufficient, or County for any reason does not have access to the proceeds of the Termination Security, Lessee shall reimburse County for any cost or expense thereof in excess of any funds received by County through the Termination Security above provided and any consideration received by County as a result of such sale, removal, demolition or restoration.

21.4 Deliveries by Lessee.

Contemporaneous with the expiration of the Term or sooner termination of this Lease, Lessee shall immediately deliver to County the following:

21.4.1 Conveyances.

Such documents, instruments and conveyances as County may request to evidence County's ownership of the Leased Premises and the Improvements free and clear of the claim of Lessee and any party claiming by or through Lessee, including, without limitation, a quitclaim deed in recordable form to the Leased Premises and the Improvements.

21.4.2 Plans and Documents.

All construction plans, surveys, permits and other documents relating to the Improvements as may be in the possession of Lessee at the time and from time to time thereafter; provided that (a) Lessee makes no representation or warranty as to the accuracy or completeness of said plans, etc., (b) County releases Lessee from any claims, liabilities, or losses arising out of County's use of or reliance upon said plans, etc., (c) County agrees to indemnify, defend, and hold harmless Lessee and Lessee's Parties from and against any claims, liabilities, or losses arising out of the use of or reliance upon said plans, etc., by County or any third party to whom County directly or indirectly provides said plans, (d) Lessee makes no representation or warranty regarding the ownership rights with respect to said plans, etc., and (e) County shall assume the obligation and risk of dealing with any third party owner(s) thereof.

21.5 Abandonment.

Lessee shall not abandon or vacate the Leased Premises or the Improvements at any time during the Term. If Lessee abandons, vacates, discontinues business or fails to operate continuously as provided elsewhere in this Lease (except for reasonable temporary periods necessary for matters such as maintenance, repairs, taking inventory, installation of equipment and tenant improvements, temporary Takings, casualty losses, or events of Force Majeure) or surrenders the Leased Premises or the Improvements ("Abandonment"), or is dispossessed thereof

by process of Law or otherwise, the same shall constitute an Event of Default and, in addition to any other remedy available to County, any of Lessee's Removable Trade Fixtures or other property left in, upon or about the Leased Premises or the Improvements (except for underground storage tanks or Hazardous Materials) are, at County's option and subject to Lessee's rights under applicable Law, deemed to be abandoned and shall become the property of County. Unless County shall elect in written notice to Lessee in accordance with the other provisions of this Lease to terminate this Lease, any Abandonment of the Leased Premises or the Improvements by Lessee shall not by such Abandonment terminate the Lessee's right of possession under this Lease, in which case County reserves all rights and remedies against Lessee as otherwise provided in this Lease, and this Lease shall continue in effect and County shall continue to have the right to recover Rent and enforce all other obligations of Lessee hereunder as they become due pursuant to Section 18.4.1 of this Lease. If County elects by written notice to Lessee to accept such Abandonment as a termination of this Lease, this Lease shall terminate on a date designated by County in the notice of termination.

ARTICLE 22. INTENTIONALLY DELETED

ARTICLE 23. SALE OR MORTGAGE BY COUNTY

23.1 Sale or Mortgage.

County may, at any time, without the consent of Lessee, sell, purchase, exchange, transfer, assign, lease, or convey (collectively, "Sale"), or, subject to the provisions of Section 13.1, encumber, pledge, mortgage or hypothecate an interest in this Lease, the Leased Premises, and/or any portion of or interest in the Harbor.

23.2 County's Successor.

For the purposes of this Article, "County's Successor" shall mean any public agency (including a joint powers authority) or non-profit public benefit corporation that succeeds to all of County's interest in the Leased Premises, the Harbor, or in this Lease through a Sale.

23.3 Release on Sale.

If County's Successor expressly assumes County's duties and covenants under this Lease in an assignment and assumption agreement in a form reasonably satisfactory to Lessee and if County's Successor has the same rights and authority as County to perform such duties and covenants (including without limitation with respect to the portions of the Harbor outside the Leased Premises and the Offsite Parking Area), from and after a Sale, County shall be released from all liability toward Lessee, Lessee's Parties and their respective successors and assigns arising from this Lease or because of any act, occurrence or omission of County or County's Successor occurring after such Sale.

ARTICLE 24. QUIET POSSESSION

County agrees that Lessee, upon paying the Rents and performing the covenants and conditions of this Lease, may quietly have, hold and enjoy the Leased Premises during the Term

without hindrance by County or by anyone claiming by, through or under County, subject, however, to the condition of title under which Lessee accepted this Lease as provided for above, and further subject to any mortgages, master leases, reciprocal easement agreements, other agreements, restrictions and encumbrances to which this Lease is now or hereafter subordinate.

ARTICLE 25. DESIGNATED ORGANIZATION FOR CHANNEL ISLANDS HARBOR

At all times within the Harbor there will be a County-designated organization whose purpose is to promote the Harbor and its amenities and services, and the general welfare of the business entities within the Harbor, through the use of advertising and the establishment of an Internet website. Lessee acknowledges receipt of a copy of the current articles, charter, by-laws, rules, regulations and other governing documents of the Channel Islands Harbor Lessee's Association, which is the currently designated organization. Lessee shall have the right (but not the obligation) to be represented on the policy making body that establishes the policies and directs and manages the business affairs of the County-designated organization as related to the contributions by lessees in the Harbor. Lessee agrees to contribute funds in accordance with a reasonable method adopted by the designated organization from time to time for allocating the cost of activities among the various property owners and business owners in the Harbor, provided that in no event shall the aggregate contributions to be made by Lessee in any Lease Year exceed the greater of (a) two percent (2%) of the amount of Minimum Monthly Rent and Percentage Rent paid by Lessee under this Lease in the immediately preceding Lease Year, or (b) \$5,162.00 as adjusted by CPI Adjustment. Lessee acknowledges that the Director shall serve ex-officio as a member of the governing body. In case any such contribution to such County-designated organization required of Lessee is not paid by Lessee when due, County (without limitation on any of its other rights or remedies for Lessee's Default) may, but is not obligated to, pay such contribution to such County-designation organization if Lessee fails to pay within ten (10) days after receipt of County's notice and demand that payment be made, and in such event any amounts so paid by County, together with an administrative fee of fifteen percent (15%) of the amount so paid by County, shall be paid by Lessee to County immediately upon demand by County, as Additional Rent.

ARTICLE 26. HOLDING OVER

At the expiration of the Term, Lessee shall surrender the Leased Premises as required by Section 21.2 entitled "Surrender of Leased Premises." If Lessee holds over or remains in possession of the Leased Premises without the written consent of County, such holding-over or continued possession shall be unlawful detainer of the Leased Premises by Lessee. If Lessee holds over or remains in possession of the Leased Premises with the prior written consent of County after the expiration of the Term, unless the written consent specifies otherwise, such holding over or continued possession shall create a tenancy from month to month only, upon the same terms and conditions as are herein set forth so far as the same are applicable; provided, however, the Minimum Monthly Rent payable during the period of such holding over shall, unless the written consent specifies otherwise and without further notice from County, be one hundred fifty percent (150%) of the Minimum Monthly Rent payable for the first full Month immediately preceding the expiration of the Term, and Percentage Rent and Additional Rent shall continue to be payable during such period. If Lessee fails to surrender the Leased Premises in a timely manner upon the

expiration of the Term, after notice of termination of any such month to month tenancy, or upon any termination of this Lease prior to expiration of the Term, in addition to any other liabilities to County accruing therefrom, Lessee shall indemnify and hold County harmless from any direct or consequential loss or liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any proposed new lessee founded on such failure.

ARTICLE 27. DEFINITIONS

For the purposes of this Lease, the following underlined capitalized terms, not otherwise defined in the text of this Lease, shall have the meaning ascribed to them:

Additional Rent. (a) Any payment, sum or amount due under this Lease other than Minimum Monthly Rent, Percentage Rent or Imputed Percentage Rent that Lessee is obligated to pay directly to County without County first having paid or advanced such payment, sum or amount; (b) any payment or cost of performance of County for any payment or performance (for example, and not as limitation, to maintain insurance policies or pay insurance premiums; to repair and maintain the Improvements; to pay Impositions) for which Lessee is obligated under this Lease to pay or perform, but which Lessee does not pay or perform, and which are paid or performed by County to cure such failure or Default by Lessee; (c) any insurance proceeds (other than business interruption) received by Lessee and not used to repair or restore the Leased Premises and not otherwise paid over to County; and (d) any monetary obligations, due and payable, assumed by Lessee under a separate written agreement entered into between Lessee and County, to the extent not subject to a reasonable and good faith dispute which Lessee has communicated to County.

Approved Mortgage. A Leasehold Mortgage which qualifies as an Approved Mortgage pursuant Section 12.4 of this Lease.

Approved Mortgagee. Any construction, interim or permanent lender, or any mortgagee, trustee or beneficiary of an indebtedness secured by a Leasehold Mortgage upon the Leased Premises or any part thereof, that the County has determined satisfies the Approved Mortgagee Eligibility Requirements or that County otherwise approves in its sole and absolute discretion, and any successor-in-interest or assignee thereof who acquires the Leasehold Mortgage by assignment, provided that such successor-in-interest or assignee (a) either satisfies the Approved Mortgagee Eligibility Requirements or is approved by County in its sole and absolute discretion and (b) has given the County written notice of its acquisition of the Approved Mortgage.

Approved Mortgagee Eligibility Requirements. Unless approved by County in writing (which approval may be withheld in County's sole and absolute discretion), no lending institution shall be eligible to be an Approved Mortgagee unless the following Approved Mortgagee Eligibility Requirements are satisfied:

(i) the lending institution is a commercial bank or trust company whose deposits are insured by the Federal Deposit Insurance Corporation; or

(ii) the lending institution is a savings and loan association, insurance company, pension or retirement fund, investment banking firm, or other institutional lender engaged in the ordinary course of business as a lender in the State of California, which has net unencumbered

assets in the amount of not less than \$200,000,000.00, which amount is subject to adjustment by County from time to time based on increases in the CPI, and which either: (a) is duly licensed or registered with any regulatory agency having jurisdiction over the lending operations of the lender, or (b) has an office in and is qualified to do business in the State of California, is not under any order or judgment of any court or administrative agency restricting or impairing its operation as a lender in the State of California and is regularly engaged in the business of making commercial loans in the State of California.

Approved Plans. The plans, drawings, specifications and schedule for the development, construction, alteration, installation, restoration, rehabilitation or reconstruction of Lessee's Improvements which have been approved by County in accordance with Article 9 of this Lease and which have also been approved by Lessee's fire insurance carrier where deemed necessary by County. Plans for all improvements which would require a Building Permit or a special use permit, or equivalent, including improvements made by Sublessees, are plans required to be approved by County as "Approved Plans."

Auditor. The Auditor-Controller of the County.

Board. The Board of Supervisors of the County of Ventura, California.

Boat. A vessel, boat, ship or other Structure designed to float upon and traverse the water for the carriage of persons or goods and which is capable of being used for active self-propelled navigation.

Boat Slip/Boat Slips. The Lessee Improvements designed to be used as the berths, slips and moorings on the Waterside Portion to which Boats may be tied, harbored or moored.

Building Permit. A permit or other similar grant of approval or authority in writing duly issued or granted by a Regulatory Agency to an applicant pursuant to the Regulatory Agency's applicable building and safety codes, Laws, rules and regulations governing the construction (but not the demolition) of Structures or other Improvements ("Building Codes") by the applicant in accordance with plans and specification approved by the Regulatory Agency to be in compliance with such Building Codes.

Business Day. A day of the week other than Saturdays, Sundays, a day which is a legal holiday under the laws of the State of California and a day which is a legal holiday declared by the United States Government upon which the United States Postal Service will not make delivery of mail to the place of business or residence of the addressees of mail. Reference to a "day" in any context that does not use "Business Day" or "Business Days" shall mean a calendar day.

Business Hours. The hours of a Business Day during which owners or operators of comparable businesses, located in the trade area in which the Leased Premises are located, customarily remain open for trade or commerce in the ordinary course of their business.

Calendar Quarter. Each three (3) month period commencing January 1 of each calendar year (that is, the first Calendar Quarter of each year commences on January 1 and closes on March 31, the second Calendar Quarter commences on April 1 and closes on June 30, and so on).

Controlling Owner. An Owner, by itself, or several Owners in combination with each other, of an amount of the majority in interest in the capital, profits, losses and voting rights of the Lessee, whether such Owner or Owners hold such rights directly or through ownership of other entities or series of entities, so that the vote or decisions of such Owner or Owners without condition or veto in favor of any other party governs the Major Decisions; or if such Owners do not own such majority, such Owner or Owners is, or are, vested by contract, by-laws, charter, trusts or other agreement with the right without further condition or veto of any other party to make Major Decisions.

County. The County of Ventura, a subdivision of the State of California, or any successor to or assignee of County's interest in the Harbor.

County's Estate. All County's right, title and interest in its fee estate in the Leased Premises, its reversionary interest in the Lessee's Improvements located on the Leased Premises pursuant hereto, and its interest under this Lease.

County Executive Officer. The executive officer appointed by the Board who appoints the Director.

County's Improvements. Those Improvements that are in place on the Leased Premises at the Lease Commencement Date of the Original Lease or which are thereafter constructed or installed therein by County or at County's expense.

CPI. The Consumer Price Index-All Consumers (Los Angeles-Anaheim-, CA, All Items, Base 1982-84 = 100) as published by the United States Department of Labor, Bureau of Labor Statistics. Should the Bureau discontinue the publication of the Index, or publish the same less frequently or on a different schedule, or alter the same in some other manner including, but not limited to, changing the name of the Index or the geographic area covered by the index, County and Lessee shall adopt a substitute index or procedure which reasonably reflects and monitors consumer prices.

Default. The occurrence of a breach of this Lease as described in Section 18.1.

Director. The Director of the Harbor Department of Ventura County appointed by the County Executive Officer, or an interim Director so appointed, or the designee appointed by either the Director or an interim Director and acting on behalf of such Director.

Effective Date. As defined in the introductory paragraph to this Lease.

Environmental Damages. All claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities (including strict liability), encumbrances and liens, and any other costs and expenses, resulting from the existence on or in, or release, escape, seepage, leakage, spillage, discharge, disposal, or emission on or into the ground, water or air of Hazardous Materials in violation of or alleged to be in violation of the Laws applicable thereto, including but not limited to diminution in value of the Leased Premises and/or Harbor and any attorneys' fees, disbursements, consultant's fees and other costs resulting from (a) investigation and defense of any alleged claim, (b) directive of any Governmental Agency, whether or not the claims or

directives are groundless, false or fraudulent or ultimately defeated, and (c) any settlement or judgment.

Event of Default. A Default which continues after the giving of notice and the expiration of the applicable opportunity to cure, if any, set forth in Section 18.2.

Foreclosure/Workout Assignee. Any person who acquires title to the Lessee's Estate (a) from an Approved Mortgagee following the foreclosure of an Approved Mortgage or a deed or assignment given to the Approved Mortgagee in lieu of foreclosure; or (b) pursuant to an agreement between an Approved Mortgagee, the Lessee and an assignee of Lessee's Estate entered into at a time when the uncured monetary default has continued to exist under the Approved Mortgage for a period of more than ninety (90) days; or (c) pursuant to a plan of reorganization approved in a bankruptcy proceeding.

Governmental Agency. Any federal, state, county or city authority having appropriate jurisdiction, any political subdivision thereof, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof.

Gross Receipts. The following shall define Gross Receipts for the purposes of determining Percentage Rent.

a) Gross Receipts for "Boat Slip Rentals" includes the gross income and revenues derived from the rental of Boat Slips and from activities or business transacted on the Waterside Portion, which revenue or income is received or paid to Lessee for the provision or use of Boat Slips and other space or facilities located on the Waterside Portion, for the rendering of services and for the use of space or enterprises made in or on the Waterside Portion.

b) Gross Receipts for "Live-Aboard Surcharges" means the amounts of separate surcharges payable by a Boat Slip Renter for keeping a Live-Aboard Boat at a Boat Slip. Any Live-Aboard Surcharge shall be imposed above and beyond the Boat Slip Rental for the applicable Boat Slip. Lessee shall take no action (including, but not limited to, lowering the Boat Slip Rental for any Boat Slip below the market rate for Boat Slips of comparable length and location) for the purpose of converting Boat Slip Rentals to Live-Aboard Surcharges or otherwise circumventing the requirement that Live-Aboard Surcharges be imposed as bona fide surcharges above Boat Slip Rentals.

c) Gross Receipts for "Sale/lease of new and used Boats" means the amount of purchase price or other consideration charged (whether or not collected or received) for the sale of a new or used Boat and the lease or rental payments for the use of any new or used Boat, excluding Gross Receipts for "Boat rentals" and commissions.

d) Gross Receipts for "Commissions on Boat insurance" and "Commissions on Boat sales and rentals" mean, respectively, the amount of commissions or other compensation earned or charged (whether or not collected) by a broker, finder or other intermediary derived in whole or in part from any Boat insurance sold in, at or from the Leased Premises or any Boat sold or rented in, at or from the Leased Premises.

e) Gross Receipts for "Space and Building Rentals" means the rent or other consideration or whatever description, including without limitation fixed rent, minimum rent, percentage rent and advanced rent received by Lessee from Sublessees occupying space in Structures on the Landside Portion.

f) Intentionally deleted

g) Gross Receipts for "All other Sources permitted by this Lease" means charges (whether or not collected) for the rental of lockers, dock wheels, dinghy racks, dinghies, boarding ladders and any income derived in whole or in part from any other business incidental to a permitted Source not otherwise identified which is transacted in, at or from the Leased Premises, both for cash and on credit.

h) Gross Receipts for "Any other Source not permitted by this Lease" means any income earned or derived (whether or not collected) in whole or in part from any other business not permitted under this Lease, transacted in, at or from the Leased Premises, both for cash and on credit. The obligation of Lessee to pay the percentage designated arising from a Source not permitted by this Lease is not to be deemed or construed as the agreement of County to the operation of such non-permitted Source in violation of this Lease.

i) "Gross Receipts" as defined above shall include without limitation all:

1. Income received, or charged by Lessee for space rental, sales, charges for services or the promises of services, or other payment made in or on or attributable to the Leased Premises, or from any and all sources of income derived by Lessee in whole or in part from any business transacted in, at or from the Leased Premises (including any late fees, penalties or interest), and in cases of sales or charges on credit or by credit card, whether or not payment is actually made, but excluding the portion of income from pay telephones, vending machines, and similar devices not paid to or retained by Lessee or a Sublessee. Each sale or charge for service or use of space on credit or in installments shall be treated as a sale or charge for the whole price in the Calendar Quarter for which the sale or charge is made whether payments are made within that Calendar Quarter or not;
2. All rentals and receipts by Lessee from subtenancies, licenses and concessions or other space use or fee agreements such as for events, displays, performances, exhibits, vendor carts, kiosks, public telephone, food dispensing and other coin operated machines or sales space;
3. Any charges, fees or reimbursements, however denominated, ("CAM Charges") charged by Lessee to Sublessees to pay, defray or reimburse the capital or operating costs and expenses for taxes, insurance, maintenance, utilities (gas, water or electricity), rubbish

removal, repair, restoration, rehabilitation, capital or operating reserves or management expenses, for advertising and marketing charges and expenses and similar costs and expenses, and any other obligations of Lessee that are assigned, delegated, assumed or otherwise “passed-through” to Sublessees.; provided, however, that CAM Charges shall not include amounts paid by a Sublessee for utilities supplied to the Sublessee to the extent that the charges for such supplies are paid by each Sublessee for its actual usage of the utilities supplied as measured by separate meters for each Sublessee’s usage, and the resulting charges for such measured usage are paid directly by the Sublessee to the utility providing such supply;

4. Sums attributable to fixed, additional, participation, percentage rent or other forms of consideration, however denominated (“Sublessee Rent”), for occupancy, use of, or right to conduct business, on the Leased Premises or any portion thereof, including Sublessee Rent for all leases, subleases, licenses, concessions, rights of entry or other agreement(s) affecting or using all or any portion of the Leased Premises (but excluding any Rent payable by Lessee to County under this Lease), except where the applicable Sublessee is already accounting for and reporting Permitted Sources under Section 6.2 of this Lease;
5. Any charges, fees or reimbursement, however denominated, to defray the costs to Lessee for tenant improvements or repayment of loans by Lessee to Sublessees for tenant improvements;
6. Any fees paid arising from the sale or lease of Boats in, at or from the Leased Premises;
7. Sales taxes, excise taxes, assessments or other such collections, whether for cash or credit which is to be paid over to any taxing agency or other third party for or arising out of any goods sold, services rendered, assessed value or income derived by Lessee from all or any portion of the Leased Premises;
8. The amount of any other income received by Lessee in relation to or in connection with the Leased Premises, including insurance proceeds (unless paid directly to County), settlements, awards and judgments for damages to or for loss of income or for the failure of a Sublessee to pay Sublessee Rent or CAM Charges;
9. Deposits not refunded;

10. Income earned by Lessee from orders taken on or from the Leased Premises and arising out of or affecting the operation of the Leased Premises, even if such orders are filled or paid elsewhere;
11. Income earned by Lessee for all sales made and services performed in, at or from the Leased Premises, even if such sales or services are arranged by long distance communication (it being understood, however, that the foregoing shall not require Lessee to account for income from any Unrelated Business as part of Gross Sales);
12. The proceeds of all other sales, charges for services or the use of space or other sources of gross income not referred to above which are reasonably the subject of CAM Charges, percentage rent or other components of rent, but the payment of which was arranged with the intention to avoid inclusion as Gross Receipts for the purposes of calculating Percentage Rent or its effect is to avoid such inclusion, or if any such sale, charge or source of income was actually contracted for on premises other than the Leased Premises and the effect of such sale, charge or source of income is attributable to or for the benefit of Lessee's business on the Leased Premises.

j) The following income, receipts, revenues and collections only may be deducted from Gross Receipts, but only to the extent that such items were also reported to County in a Quarterly Statement and included as part of the Gross Receipts:

1. All sales taxes, luxury taxes, excise taxes and similar taxes and assessments required by law to be added to the price of the sales of goods, wares, merchandise or services or service charged to the buyer or customer thereof, whether now or hereafter in force, which are collected by the seller or provider thereof, included in a report or return required by law to be filed with the taxing agency, and actually paid or remitted to such taxing agency. Delinquent payments and penalties, interest or other charges for failure to report or pay such taxes shall not be a deduction.
2. Merchandise transferred or exchanged between other stores or warehouses owned by or affiliated with Lessee if such transfers or exchanges are made solely for the convenient operation of Lessee's business and not for the purpose of consummating a sale previously made at, on or from the Leased Premises, or for the purpose of depriving County of the percentage of Gross Receipts of a sale that otherwise would be made at, on, or from the Leased Premises.
3. Credits or reimbursements earned by Lessee for merchandise returned to shippers, manufacturers or wholesalers.

4. Refunds made on any sale or charge for service or use of space previously included as Gross Receipts.
5. All cash or credit received in settlement of any claims for loss or damages other than damages for or loss of rent or other income that is reportable as Gross Receipts.
6. A bulk sale of inventory or goods held for sale by Lessee not in the ordinary course of business to a purchaser of the business of Lessee, the terms of which sale and the buyer thereof have been approved in writing by the Director.
7. Any income, earnings or receipts which, under Internal Revenue Service regulations, are derived from the sale or disposal of any capital assets (excluding any assets normally sold in the course of business conducted on the Leased Premises) or from the repayment to Lessee of any indebtedness of the payer, or any income, earnings or receipts derived from Lessee's investments of any funds not invested in the Leased Premises or the operation of Lessee's business on the Leased Premises.
8. Proceeds of loans to Lessee or funds invested in Lessee.

Notwithstanding anything else that may be construed to the contrary, the amount of Gross Receipts from any Source which was collected by Lessee from a Sublessee and paid over to County shall be deducted from the amount of Gross Receipts that Lessee might otherwise be obligated to pay to County on account of Gross Receipts from such Source.

Harbor. As defined in the Recitals to this Lease.

Hazardous Materials. (a) Any petroleum or petroleum products, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other materials or pollutants which (i) pose a hazard to the Harbor or to persons on or about the Harbor or (ii) cause the Harbor to be in violation of any Hazardous Materials Laws; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty (50) parts per million; (c) any chemical, material or substance defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste" or "toxic substances" or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto, including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251, et seq.; Sections 25115, 25117, 25122.7, 25140, 25281, 25316, and 25501 of the California Health and Safety Code; Section 13050 of the California Water Code; and Title 22 of the California Code of

Regulations, Divisions 4 and 4.5, and (d) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Agency or may or could pose a hazard to the health and safety of the occupants of the Harbor or the owners and/or occupants of property adjacent to or surrounding the Harbor.

Impositions. All taxes, assessments, charges, levies, fees and other governmental charges, general and special, ordinary and extraordinary, of any kind and nature whatsoever, including, but not limited to, *ad valorem* property taxes, possessory interest taxes as set forth in Section 11.4 of this Lease, assessments for public improvements or benefits, which shall be laid, assessed, levied, or imposed upon the Leased Premises or Improvements or any part thereof and which are payable at any time during the Term, and all gross receipts taxes, rent taxes, business taxes and occupancy taxes, and shall include all of County's reasonable administrative costs and any and all costs incurred by County in contesting or negotiating the taxes with any Governmental Agency, except only franchise, estate, inheritance, succession, capital levy, transfer, income and excess profits taxes imposed upon County.

Improvement or Improvements. Structures, improvements, Systems, fixtures, equipment, attachments to Structures and construction of any kind on the Leased Premises, whether above or below the land or water surface, whether or not owned by Lessee, including but not limited to, buildings, outbuildings, walls, ceilings, roofs, water lines, sewers, electrical and gas distribution facilities, parking facilities, pavings and hard surfaces, walkways, curbs, gutters, lights, fences, hedges, landscaping, plantings, poles, signs and any other improvements of any type or kind, including Lessee's Improvements; and including any improvements on property adjacent to the Leased Premises which is designed for use in connection with the use of the Leased Premises, and all replacements, reconstructions or restorations thereof.

Insurance Requirements. All terms of any insurance policy covering or applicable to the Leased Premises or the Improvements, or any part thereof, all requirements imposed by the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Leased Premises or the Improvements, or any part thereof, or any use or condition of the Leased Premises or the Improvements, or any part thereof.

Landside Portion. As defined in the Recitals to this Lease.

Law/Laws. All present and future applicable building, subdivision, zoning, off-street parking, environmental protection or any other land use or other laws, ordinances, rules, regulations or orders of any and all Governmental Agencies regulating the conduct of or having jurisdiction over the use and occupancy of Leased Premises (including, without limitation, the Public Works Plan and the Local Coastal Plan and, to the extent applicable to the Leased Premises as a portion of the Harbor, all present and future applicable Rules and Regulations regulating the use and occupancy of the Harbor).

Lease. This Second Amended and Restated Harbor Lease.

Lease Commencement Date. The first day of the Month following the date that the Memorandum of Second Amended and Restated Harbor Lease for this Lease is recorded in the official records of Ventura County.

Lease Year. If the Memorandum of Restated Lease is recoded on the first day of a Calendar Quarter, a Lease Year is each twelve (12) month period commencing on the date of such recordation; if the Memorandum of Restated Lease is recorded on a date other than the first day of a Calendar Quarter, a Lease Year is each twelve (12) month period commencing on the first day of the next Calendar Quarter following the date of such recordation (but the partial Calendar Quarter in which the Memorandum of Restate Lease is recorded shall be deemed part of the first Lease Year). A reference to a 'year' or 'years' not qualified as a "Lease Year" shall mean a period of one year from the date from which the time is to be measured.

Leased Premises. As defined in the Recitals to this Lease.

Leasehold Mortgage. Any mortgage, pledge, assignment, lease, grant or conveyance of any interest in or to Lessee's Estate or any part thereof, or other method of securing indebtedness or other obligations by a security interest in Lessee's Estate, including deeds of trust, leases, leasebacks, repurchase agreements or other similar security agreements that encumber real property.

Lessee. The "Lessee" identified in the Summary, or any successor or assignee thereof permitted under the provisions of this Lease.

Lessee Common Areas. Those portions within the Leased Premises that have been designated, designed or improved for common use or maintenance by or for the benefit of more than one Sublessee or the invitees of more than one Sublessee; including, without limitation and by way of example, parking lots, access and perimeter roads, loading platforms and areas, service corridors and stairways, walkways, landscaped areas, elevators, escalators, ramps, arcades, balconies, directories, storm and sanitary sewers, utility lines, washrooms and comfort stations and similar improvements and facilities that are not restricted to the exclusive possession of one Sublessee.

Lessee's Estate. All of Lessee's right, title and interest in its leasehold estate in the Leased Premises, its fee estate in the Lessee's Improvements located within the Leased Premises, and its rights and interests under this Lease.

Lessee's Improvements. Those Improvements in place at any given time on the Leased Premises that were constructed or installed in the Leased Premises by Lessee or at Lessee's expense. Lessee's Improvements include, without limitation, docks, boat slips, kiosks, lockers, dinghy racks, landscaping and equipment pertinent to such items.

Lessee's Parties. Lessee, all Boat Slip Renters, Sublessees, licensees, concessionaires, and other occupants of the Leased Premises, and all of their respective agents, contractors, operators, employees, invitees, customers and patrons.

Live-Aboard Boat. A Boat that is not a transient Boat, that is capable of being used for active self-propelled navigation, and that is occupied as a residence (as that term is defined in California Government Code Section 244).

Local Coastal Plan. The Local Coastal Plan for the Harbor, which is the Public Works Plan certified by the California Coastal Commission on September 19, 1986, and any amendment, modification or replacement thereof.

MAI Appraiser. A person who is an MAI Member of the American Institute of Real Estate Appraisers (if such designation or organization does not exist, then the appraiser must hold the nearest equivalent professional credential awarded by the preeminent real estate appraisal organization in the State of California).

Major Decisions. All actions, decisions and agreements of Lessee regarding the development, construction, management, operation, leasing, sale, transfer, financing, encumbrance or other disposition or use of the interests, rights and ownership of Lessee under this Lease and Lessee's compliance with its obligations hereunder.

Maximum Rate. 300 basis points (3%) above the prime rate of interest announced by the Bank of America at its San Francisco office as charged to corporate borrowers of the highest standing for short term unsecured obligations (but in no event in excess of the maximum rate of interest then permitted to be charged by California law for non-usurious loans).

Memorandum of Second Amended and Restated Harbor Lease. The memorandum of this Lease in the form attached hereto as Exhibit C, or as otherwise agreed upon by County and Lessee.

Memorandum of Extended Lease. The Memorandum of Extended Lease in the form attached hereto as Exhibit D, or as otherwise agreed upon by the County and Lessee.

Minimum Monthly Rent. Minimum Monthly Rent as specified in this Lease, payable Monthly in advance as increased pursuant to the terms of Section 6.1. The Minimum Monthly Rent is not based on any representation or agreement regarding the actual square footage or as may be found by exact measurement, and deviation from the approximations of square footage, if any, used to describe the Leased Premises herein shall not cause an adjustment of the Minimum Monthly Rent.

Minimum Number. Minimum Number (used interchangeably with Minimum Number of Boat Slips) means the minimum number of Boat Slips to be in place, maintained and operated in the Waterside portion as specified in Section 14.3.

Month or Monthly. A calendar month period within each Lease Year.

Mortgagee. Any construction, interim or permanent lender, or any mortgagee, trustee or beneficiary of an indebtedness secured by a Leasehold Mortgage upon the Leased Premises or any part thereof.

Other Leaseholds. Those premises within the Harbor other than the Leased Premises designed for the possession of lessees under lease from County as depicted on the Site Map.

Other Lessees. Any person or entity entitled to use and occupy the Other Leaseholds.

Owner. Any person or entity which owns any legal or beneficial interest in Lessee or in any entity which has an interest in Lessee, including by way of example but not as limitation, any such interest as a stockholder, partner, investor, member or other person associated with other persons or entities for the conduct of the business of Lessee, or who has the power to vote in determining the course or conduct of the business of Lessee, or who has the right to overrule or veto any such vote.

Quarterly Statement. A written statement of the Gross Receipts, allowed deductions, Percentage Rent and Boat Slip Percentage Rent Credit, to be provided by Lessee for each Calendar Quarter pursuant to Section 6.2.2 of this Lease.

Removable Trade Fixtures. All moveable personal property of Lessee in its on-site office located on the Landside Portion reasonably required for the administration of Lessee's business on and with respect to the Leased Premises, that are not permanently affixed to the office Structure, including but not limited to business and financial records, and articles, movable desks, chairs, lighting equipment, cabinets, shelves, racks, signs, displays, counters and mirrors, and similar items which can be moved without release of attachments to the walls, ceilings or floors and which can be moved without damage to the Leased Premises. Notwithstanding the foregoing sentence, Removable Trade Fixtures shall not include (without limitation) any Structure, Boat Slips, docks, kiosks, lockers, dinghy racks, shower/restroom hardware and facilities, landscaping, Systems or other systems or devices incorporated into, attached to or reasonably necessary for the use and operation of the Leased Premises.

Rents. The aggregate of Minimum Monthly Rent, Percentage Rent, Imputed Percentage Rent and Additional Rent.

Seaworthy. Meeting the "Seaworthiness Standard" referred to in Section 3.1 of this Lease. Seaworthiness shall be determined individually for each Boat following the applicable guidelines for such determination.

Scope of Development. A written description and/or graphic depiction of the development, construction, alteration, installation, restoration, rehabilitation or reconstruction (together with such incidental analysis, restrictions or enhancements as may be appropriate) of what is to constitute Lessee's Work and from which the Approved Plans are to be derived.

Schedule of Performance. A schedule specifying the times for performance or satisfaction of conditions, as the case may be, necessary or convenient to implement the Scope of Development and to commence and complete Lessee's Work.

Site Map. Exhibit A to this Lease.

Structure. Any structural improvement, fixture or equipment permanently attached to the real property of the Leased Premises which is enclosed by exterior walls, floor and roof and is designed for human occupancy or use, the storage of materials, the conduct within of activities and business or which requires the issuance of a Building Permit, certificate of use or occupancy for such space pursuant to the applicable building and safety laws, rules and regulations. "Structures" shall exclude, without limitation, carts, vehicles, kiosks and other similar items.

Sublease. Subleases, concessions, licenses, Boat Slip Rental Agreements and any other like agreement in which a party other than Lessee is granted or permitted the right, privilege or license to use, occupy, enter upon or otherwise enjoy the Leased Premises or any portion or facility thereof, or to conduct any business, enterprise or activity thereon.

Sublessee. The party with whom Lessee contracts pursuant to a Sublease.

Summary. The “Basic Terms and Summary” attached at the front of this Lease and made a part hereof; provided, however, if there is a conflict between the terms of the Summary and the terms of this Lease, this Lease shall control.

Systems. The heating, air conditioning, ventilating, mechanical, utility, plumbing, electrical, alarm, communication and other systems incorporated into or used with the Improvements or used or useful in the convenient operation of the Leased Premises.

Transfer. Any of the following: (i) the transfer, assignment, subletting, license, concession, change of ownership, mortgage or hypothecation of this Lease or of any portion of the Leased Premises by Lessee or in the case of a Sublessee, by Sublessee, (ii) if Lessee or Sublessee is a business entity other than a publicly traded corporation, the transfer, assignment or hypothecation of more than twenty-five percent (25%), in the aggregate, of the equity, securities or voting control of Lessee, (iii) the death, withdrawal, removal, dissolution or change of the Controlling Owner of Lessee or Sublessee (subject, however, to the provisions of Section 12.1.7), (iv) the assignment or transfer of the interest of such Controlling Owner, (v) the loss, prevention, assignment, delegation or surrender of the power or right of such Controlling Owner to make Major Decisions, (vi) entry into a Leasehold Mortgage, or (vii) the relinquishment of management or control of the operations of the Leased Premises to a party not an employee of Lessee or Sublessee, as the case may be.

Transferee. The person, party or entity to whom a Transfer is made, or who, by virtue of a Transfer, succeeds to the interests of the person, party or entity who held the interest prior to the Transfer.

Waterside Portion. As defined in the Recitals to this Lease.

ARTICLE 28. SUMMARY, EXHIBITS; RIDERS

The Summary, Exhibits and Riders (if any) attached hereto are incorporated herein by this reference as though fully set forth.

ARTICLE 29. CAPTIONS AND TERMS

The captions contained in this Lease are for convenience only, are not a part of this Lease and do not in any way limit or amplify the actual terms and provisions of this Lease.

If more than one (1) person or entity is named in and executes this Lease as Lessee, then the word “Lessee” wherever used in this Lease is intended to refer to all such persons or corporations, and the liability of such persons or entities for compliance with and performance of all the terms, covenants and provisions of this Lease shall be joint and several.

ARTICLE 30. NOTICES

Wherever in this Lease it is required or permitted that notice or demand be given or served by either party to this Lease upon the other, such notice or demand shall be in writing and shall be deemed to have been duly given (a) to Lessee upon delivery thereof to Jeff Giumarra or such managing agent for notice purposes as may be designated by Lessee in writing from time to time, (b) to County upon delivery thereof at the office of the Director, (c) to either party the next day after delivery thereof by transmission by electronic facsimile to the other party at the facsimile number provided in the Summary, (d) to either party when three Business Days have elapsed after being mailed by certified or registered mail, postage prepaid and addressed to the parties at the addresses provided in the Summary or (e) by service of such notice or demand in any other manner that would constitute personal service of process under the laws of the State of California.

Either party may change its address for such notices by giving written notice thereof to the other party in the manner specified above. If a person named herein to receive delivery on behalf of Lessee is no longer an employee, manager or Owner of Lessee by reason of death, incapacity or Transfer of the interest of Lessee, County shall not be obligated to deliver notices to such designated person, and unless another person is designated in writing by Lessee, may deliver any notices to "Lessee" at the address of the location of the Leased Premises.

ARTICLE 31. OBLIGATIONS OF SUCCESSORS

The parties hereto agree that, except as otherwise specified, all of the provisions hereof shall bind and inure to the benefit of, and shall be binding on, the parties hereto, and their respective heirs, legal representatives, successors and assigns; provided, that County shall not be deemed to have assumed any personal liability to a Transferee for a Transfer to which County has not consented.

ARTICLE 32. SECURITY DEPOSIT

32.1 Security Deposit.

Concurrently with Lessee's execution of this Lease, Lessee has deposited with County a security deposit (the "Security Deposit") in the initial amount of \$231,600. This amount shall be adjusted whenever Minimum Monthly Rent is adjusted for a Lease Year to one-half (1/2) of the aggregate amount of Minimum Monthly Rent which shall become due and payable for such Lease Year. The Security Deposit may be in the form of cash deposited with County, a Certificate or Certificates of Deposit in the name of County as beneficiary fully insured by the Federal Deposit Insurance Corporation (or successor) with a term or terms not to exceed ninety (90) days, a letter of credit naming County as the beneficiary meeting all of the requirements set forth herein and otherwise upon terms acceptable to the Director, in his or her absolute discretion or such other form as County, in its absolute discretion, may allow. Said sum shall be held by County as security for the faithful performance by Lessee of all the terms, covenants and conditions of this Lease to be kept and performed by Lessee during the Lease Term.

32.2 Maintenance of Security Deposit.

Lessee shall at all times maintain the Security Deposit in the amount required. Concurrently with any adjustment to Minimum Monthly Rent, Lessee shall add to the Security Deposit held by County so that the Security Deposit shall always be equal to six (6) months' Minimum Monthly Rent.

32.3 Obligations of County Regarding Security Deposit.

County shall not have any liability to Lessee for the Security Deposit except as provided under this Lease. The Security Deposit shall not be considered an advance payment of Rent or of any other sum due hereunder or as a measure of damages in case of a Default. The Security Deposit shall be held by County solely for the purposes provided for herein. County shall not be required to keep the Security Deposit separate from its general funds, but County, at its option, may maintain the Security Deposit separate and apart from County's general and/or other funds, or may commingle the Security Deposit with County's general and/or other funds. If Lessee pays the Security Deposit in cash, Lessee shall be entitled to interest on the Security Deposit from County at the average rate earned by County from time to time on its surplus invested funds, and said interest shall be paid to Lessee or credited to Lessee's obligation to pay Rent hereunder at least annually. If the Security Deposit is provided to County in the form of an interest-bearing Certificate of Deposit or other interest bearing debt instrument, interest earned on such Certificate of Deposit or other instrument shall become part of the Security Deposit unless Lessee elects in written notice to County to withdraw such interest, in which case such interest when paid by the depository shall be paid over to Lessee. The Security Deposit shall not be mortgaged, assigned, transferred or encumbered by Lessee (except to an Approved Mortgagee or to an approved or permitted Transferee of Lessee hereunder) without the prior written consent of County and any such act on the part of Lessee shall be without force and effect and shall not be binding upon County.

32.4 Application.

If any Rent or any other sum payable by Lessee to County shall be overdue and unpaid or paid by County on behalf of Lessee, or if Lessee shall fail to perform any of its obligations under this Lease, then County may, at its option and without prejudice to any other remedy which County may have under this Lease, use, apply or retain the entire Security Deposit, or so much thereof as may be necessary, to compensate or reimburse County for any Minimum Monthly Rent, Percentage Rent, Additional Rent or other sum in Default, or for the payment of any amount which County may spend or become obligated to spend by reason of the Default or to compensate County for any other loss or damage which County may suffer by reason of the Default. If any portion of said Security Deposit is so used or applied Lessee, within five (5) days after written demand therefor, shall deposit cash or provide an additional Certificate(s) of Deposit, letter of credit, or other security meeting the requirements set forth in Section 32.1 in an amount sufficient to restore the Security Deposit to its original amount and Lessee's failure to do so shall be a Default. In the event of bankruptcy or other debtor-creditor proceedings against Lessee, the Security Deposit shall be deemed to be applied first to the payment of rental and other charges due County for the earliest periods prior to the filing of such proceedings.

32.5 Transfer of County's Interest.

If County transfers County's Estate, County may deliver the funds deposited by Lessee under this Article to County's transferee or assignee, and in such event, County shall be discharged from any further liability with respect to such Security Deposit. This Section shall also apply equally to any subsequent transfer of County's Estate.

ARTICLE 33. BROKERS

County and Lessee each represents and warrants to the other that no real estate broker or finder other than the broker(s) specified in the Summary (if any) has been involved in this transaction. County and Lessee (each, an "Indemnitor") each agree to indemnify, defend and hold harmless the other (each, an "Indemnitee") from any claim, liability, loss or expense for any broker's commission, finder's fee, acquisition fee or like payment asserted against the Indemnitee by virtue of a contract or agreement made by the Indemnitor.

ARTICLE 34. MISCELLANEOUS

34.1 Relationship of the Parties.

Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between County and Lessee or between County and any other party, or cause County to be responsible in any way for the debts or obligations of Lessee or any other party.

34.2 Severability.

If any provision of this Lease shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

34.3 Memorandum of Lease.

This Lease shall not be effective for any purpose unless and until Lessee and County shall have executed and thereafter shall have recorded a short-form Memorandum of Second Amended and Restated Harbor Lease incorporating the terms and conditions of this Lease in the Official Records. This Lease in its entirety shall not be recorded unless the recordation is requested by County. If this Lease is recorded at the request of County, then County will pay the total cost and expense of such recording.

34.4 Warranty of Authority.

If Lessee hereunder is a corporation, limited liability company, partnership or other entity, the persons executing this Lease on behalf of Lessee hereby represent and warrant that (i) their execution of this Lease on behalf of Lessee is duly authorized by all necessary corporate, company or partnership proceedings; (ii) Lessee is a valid and subsisting corporation, limited liability

company, limited partnership, general partnership or other business entity, duly formed under the laws of its state of formation and is duly qualified to do business in this state, and (iii) all of Lessee's franchise, corporate and/or partnership taxes have been paid to date.

34.5 Entire Agreement.

This Lease contains all conditions, covenants and agreements between County and Lessee relating in any manner to the Harbor and to the rental, use and occupancy of the Leased Premises and the other matters set forth in this Lease. No prior or contemporaneous agreement or understanding pertaining to the Harbor or the Leased Premises shall be valid or of any force or effect, and the conditions, covenants and agreements of this Lease cannot be altered, changed, modified, or added to, except in writing signed by County and Lessee. County and Lessee intend that this Lease supersedes all such prior or contemporaneous agreements and that this Lease constitutes the final, exclusive and complete embodiment of their agreement. No representation, inducement, understanding or anything of any nature whatsoever, made, stated or represented on County's behalf, either orally or in writing (except this Lease), has induced Lessee to enter into this Lease. Specifically, but without limitation, Lessee acknowledges that Lessee has relied solely on its own investigation and business judgment in its determination to enter into this Lease, that any statements which may have been made by any representative of County concerning the success of Lessee's business and/or the Harbor and/or the extent of Lessee's sales or profits are based upon that representative's expectations and are not to be considered as promises, covenants or guarantees of success, that the success of Lessee's business and the Harbor are based upon many factors, including certain factors not within the control of County and certain factors which are within the control of Lessee and that Lessee is not in any way entitled to the benefits of any agreements between County and Other Lessees which agreements may differ from the terms of this Lease.

34.6 Construction.

Although the printed provisions of this Lease were drawn by County, the parties hereto agree that this circumstance alone shall not create any presumption, canon of construction or implication favoring the position of either County or Lessee. The parties agree that any deletion of language from this Lease prior to its mutual execution by County and Lessee shall not be construed to have any particular meaning or to raise any presumption, canon of construction or implication, including but not limited to any implication that the parties intended thereby to state the converse or opposite of the deleted language.

34.7 Right to Lease.

County reserves the absolute right to create such Other Leaseholds in the Harbor as County, in the exercise of its sole discretion, shall determine; provided, however, that nothing in this Section is intended to limit or restrict County's obligation to provide and maintain access and parking for the benefit of the Leased Premises as provided in Section 9.12 entitled "Offsite Parking Area." Lessee does not rely on the fact, nor does County represent, that there shall be any specific occupants or number of occupants of space in the Harbor after the Lease Commencement Date.

34.8 Governing Law; Venue.

This Lease is made and entered into in the state of California and shall, in all respects, be interpreted, governed and enforced in accordance with the laws of the state of California applicable to contracts entered into and fully performed therein. The venue for any action, suit, arbitration, judicial reference or other proceeding concerning this Lease shall be in Ventura County, California.

34.9 Force Majeure.

For purposes of this Lease, neither County nor Lessee as the case may be, nor any successor in interest, shall be considered in breach of, or Default in, its obligations to construct, improve, repair, restore or make other physical improvements under this Lease as a result of the enforced delay in the performance of such obligations where delays or Defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; government restrictions or priority; unusually severe weather; inability to secure necessary labor, materials or tools; acts of the other party; acts or failure to act of any public or Governmental Agency or entity; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform (as the case may be, "Force Majeure"). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause if notice by the party claiming such extension is given to the other party within thirty (30) days after the commencement of the cause and shall continue for a reasonable period, not to exceed 12 months from the commencement of the Force Majeure (unless otherwise agreed to in writing by County) during which time the party suffering such delay shall exert its commercially reasonable best efforts to cure or eliminate the cause of such delay or prevention. Nothing contained herein shall be construed to permit delay in the payment of rents or other monetary obligations, or in the submission of notices, plans, Quarterly Statements, Annual Statements or other documentation as may otherwise be required.

34.10 Waiver of Rights of Redemption.

Lessee hereby expressly waives any and all rights of redemption granted by or under any present or future Laws in the event Lessee is evicted or dispossessed for any cause or in the event County obtains possession of the Leased Premises by reason of the violation by Lessee of any of the terms, covenants and conditions of this Lease or otherwise. The rights given to County herein are in addition to any rights that may be given to County by any statute or otherwise.

34.11 Labor Disputes.

Lessee shall perform or cause Lessee's contractor to perform all Lessee's Work in the making and/or installation of any repairs, alterations or construction of Improvements under arrangements reasonably designed to avoid any labor dispute which causes or is likely to cause stoppage or impairment of work or delivery of services in the Harbor. In the event there shall be any such stoppage or impairment as the result of any such labor dispute or potential labor disputes, Lessee shall immediately undertake such action as may be necessary to try to attempt to resolve such dispute or potential dispute, among which, without limitation, might be: (i) removing all

parties in dispute from the job site until such time as the labor dispute no longer exists, (ii) seeking an injunction to remove such parties from the Harbor, and (iii) filing appropriate unfair labor practice charges in the event of a union jurisdictional dispute. Lessee may claim that a delay in the performance of Lessee's obligations to construct improvements resulting from Lessee's undertaking to resolve such disputes or potential disputes is an enforced delay under the Section entitled "Force Majeure."

34.12 Additional Assurances and Approvals.

Each of the parties agrees that it will execute such other documents or instruments as may be necessary to carry out and effectuate the purpose and terms of this Lease. Except to the extent this Agreement provides for a specific time period or process for a party's approval or consent to any request or submittal of the other party or this Agreement authorizes a party to withhold its approval or consent in its sole or absolute discretion, whenever a party is requested to provide such approval or consent such approval or consent shall not be unreasonably withheld, conditioned, or delayed.

34.13 Gender and Person.

Whenever the context of this Lease requires, the neuter, masculine or feminine genders shall each include the others; the singular shall include the plural and the plural shall include the singular; the conjunctive shall include the disjunctive and the disjunctive shall include the conjunctive.

34.14 Counterparts.

This Lease and the documents, instruments and agreements executed in connection herewith may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

34.15 Time of Essence.

Time is of the essence in the performance of this Lease.

34.16 Exhibits Incorporated.

The Summary and all Exhibits attached hereto and referred to herein are incorporated in this Lease and are expressly made a part hereof.

IN WITNESS WHEREOF, County and Lessee have duly executed this Lease on the day and year first above written.

COUNTY:

COUNTY OF VENTURA

By: Michael Trapp
Title: Harbor Director

LESSEE

VINTAGE MARINA PARTNERS, L.P.,
a California limited partnership

By: Giumarra Vineyards Corporation,
a California corporation
Title: General Partner

By: Wafy J. Qui
Title: CEO

If Lessee is a CORPORATION, LIMITED PARTNERSHIP or a LIMITED LIABILITY COMPANY, the authorized officers must sign on behalf of the entity and indicate the capacity in which they are signing. If Lessee is a CORPORATION, the Lease must be executed by the president or vice-president and the secretary or assistant secretary, unless the bylaws or a resolution of the board of directors shall otherwise provide, in which event, a certified copy of the bylaws or a certified copy of the resolution, as the case may be, must be attached to this Lease. If Lessee is a LIMITED PARTNERSHIP, this Lease must be executed by the General Partner(s) and a true copy of the currently effective Certificate of Limited Partnership must be attached to this Lease. If Lessee is a LIMITED LIABILITY COMPANY, this Lease must be executed by all managers, if Lessee is a managed limited liability company, otherwise by all members, unless the operating agreement or a resolution of the members shall otherwise provide, in which event, a certified copy of the operating agreement or a certified copy of the resolution, as the case may be, must be attached to this Lease.

EXHIBIT A

SITE MAP

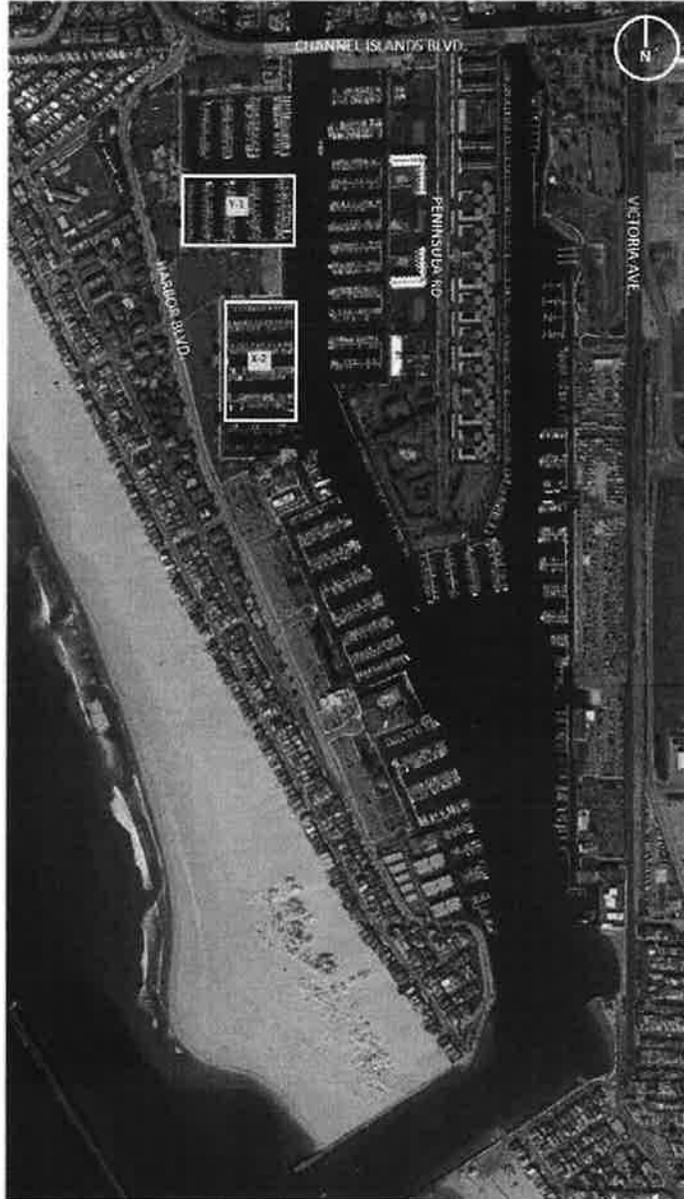


EXHIBIT B

LEGAL DESCRIPTION OF THE LEASED PREMISES



EXHIBIT 'D'
 PARCEL X-2

A portion of Lot 25 of the Patterson Ranch Subdivision, in the City of Oxnard, County of Ventura, State of California as shown on the map recorded in Book 8, page 1, of Miscellaneous Records, in the office of the County Recorder of said County and described as follows:

Parcel A

Beginning in the westerly boundary of the parcel of land described in the deed recorded on January 4, 1959, in the office of said County Recorder as Document No. 324, in Book 1946, Page 128, of Official Records, at the northerly terminus of the 60' survey of said description; thence, along said westerly boundary, North 12°43'37" West 243.27 feet; thence, leaving said westerly boundary, South 88°43'03" East 219.27 feet to the True Point of Beginning; thence,

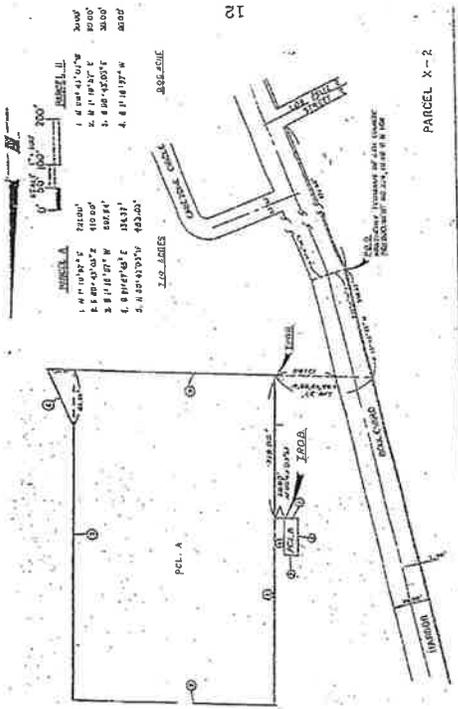
- 1st - North 1°18'57" East 721.00 feet; thence,
- 2nd - South 88°43'03" East 425.00 feet; thence,
- 3rd - South 1°16'57" West 857.54 feet; thence,
- 4th - South 21°57'45" East 134.37 feet; thence,
- 5th - North 08°43'03" West 418.03 feet to the True Point of Beginning.

Parcel B

Beginning at the True Point of Beginning of Parcel A, hence; thence, North 1°16'57" East 311.00 feet; thence, North 88°43'03" West 25.00 feet to the True Point of Beginning of this description; thence,

- 1st - North 88°43'03" West 30.00 feet; thence,
- 2nd - North 1°16'57" East 80.00 feet; thence,
- 3rd - South 88°43'03" East 30.00 feet; thence,
- 4th - South 1°16'57" West 80.00 feet to the True Point of Beginning.

Parcels X-2 and Y-1



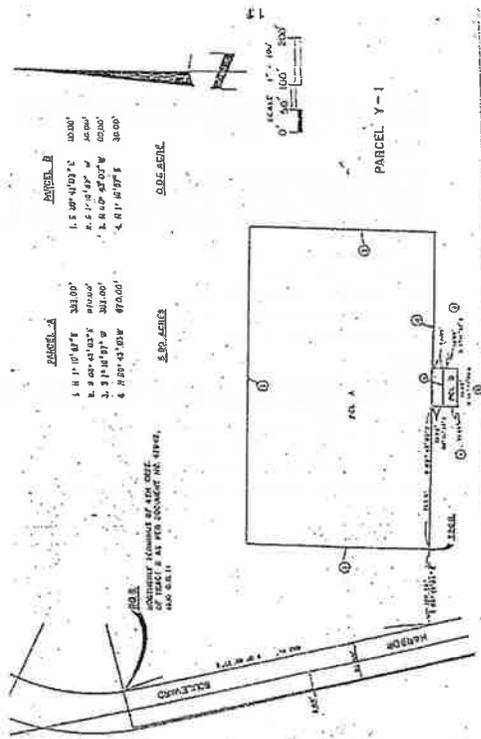


EXHIBIT "B"

PARCEL Y-1

A portion of Lots 28 and 29 of the Patterson Ranch Subdivision, in the City of Oxnard, County of Ventura, State of California as shown on the map recorded in Book 6, page 7, of Miscellaneous Records, in the office of the County Recorder of said County and described as follows:

Parcel A

Beginning in the westerly boundary of the parcel of land named Tract B and described in the deed recorded on December 23, 1959, in the office of said County Recorder as Document No. 47845 in Book 1610, page 11, of Official Records, at the northerly terminus of the 4th course of said description; thence, along said 4th course and its southerly prolongation, South 1° 16' 57" East 452.81 feet; thence, South 88° 43' 03" East 138.43 feet to the True Point of Beginning; thence,

- 1st - North 1° 16' 57" East 383.00 feet; thence,
- 2nd - South 88° 43' 03" East 670.00 feet; thence,
- 3rd - South 1° 16' 57" West 383.00 feet; thence,
- 4th - North 88° 43' 03" West 670.00 feet to the True Point of Beginning.

Parcel B

Beginning at the True Point of Beginning for Parcel A herein; thence, South 88° 43' 03" East 307.50 feet; thence, South 1° 16' 57" West 20.00 feet to the True Point of Beginning for this description; thence,

- 1st - South 88° 43' 03" East 80.00 feet; thence,
- 2nd - South 1° 16' 57" West 80.00 feet; thence,
- 3rd - North 88° 43' 03" West 80.00 feet; thence,
- 4th - North 1° 16' 57" East 30.00 feet to the True Point of Beginning.

EXHIBIT C

Recording Requested by
and when Recorded
Return to:

Office of County Counsel
County of Ventura
800 S. Victoria Avenue
Ventura, CA 93009-1830
Attn: Karen Marble

No Fee pursuant to Government Code Section 27383

MEMORANDUM OF SECOND AMENDED AND RESTATED HARBOR LEASE

This is a memorandum (“Memorandum”) of an unrecorded lease dated _____, 2023 (the “Lease”), between the County of Ventura, for the benefit of its Harbor Department, located at 3900 Pelican Way, Oxnard, California 93035 (“Lessor”), and Vintage Marina Partners, L.P., a California limited partnership (“Lessee”), operating a marina known as Vintage Marina (the “Property”), which Property is more particularly described in Exhibit A attached hereto and made a part hereof by this reference. The unrecorded Lease is a public record on file with the Clerk of the Board of the County of Ventura at 800 South Victoria Avenue, Ventura, California 93009, and may be inspected and copied during the regular business hours of the County.

For good and valuable consideration, Lessor has leased to Lessee the Property for the term and under the provisions contained in the above-mentioned unrecorded Lease, such unrecorded Lease being incorporated into this Memorandum by this reference as if set forth in full herein.

This Lease will commence on first day of the Month following the date of recording of this Memorandum in the records of the Ventura County Recorder and will run for a term expiring January 31, 2026. There are provisions for possible extension of such term found in Exhibit E to the Lease that, if exercised by the recordation of a Memorandum of Extended Lease in accordance with the terms and conditions of the Lease requiring certain performances by Lessee pursuant to said Exhibit E, Lessee may extend the term to a date that would expire no later than January 31, 2069, or such earlier applicable date that is provided for therein; there are no other provisions for extension of the term of the Lease. There is no extension of the term without recordation of the Memorandum of Extended Lease, the form of which is found in Exhibit D to the Lease. In addition, Lessor has the right to receive Rents, including Percentage Rent, as such terms are defined in the Lease.

This Memorandum is not a complete summary of the Lease. Provisions of this Memorandum shall not be used in interpreting the Lease’s provisions. In the event of conflict between this Memorandum and the unrecorded Lease, the unrecorded Lease shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Second Amended and Restated Harbor Lease as of the date and year first above written.

“Lessor”

COUNTY OF VENTURA

By: Michael Tripp
Name: Michael Tripp
Title: Harbor Director

“Lessee”

VINTAGE MARINA PARTNERS, L.P.
a California limited partnership

By: Giumarra Vineyards Corporation,
a California corporation,
Its General Partner

By: Wayne Co
Title: CEO

EXHIBIT D

Recording Requested by
and when Recorded
Return to:

Harbor Department
County of Ventura
3900 Pelican Way
Oxnard, CA 93035
Attn:

No Fee pursuant to Government Code Section 27383

**MEMORANDUM OF EXTENDED TERM FOR SECOND AMENDED AND RESTATED
LEASE**

The purpose of this MEMORANDUM OF EXTENDED LEASE (“this Memorandum”) is to extend the Term of that certain Second Amended and Restated Harbor Lease (the “Lease”) between the County of Ventura (“**Lessor**”) and Vintage Marina Partners, L.P., a California limited partnership (“**Lessee**”), operating a marina known as Vintage Marina (the “Property”), which Property is more particularly described in Exhibit A attached hereto and made a part hereof by this reference. A Memorandum for this Lease (“Lease Memorandum”) was recorded in the records in the office of the Recorder of Ventura County, California on _____, 2023, as Instrument No. _____. The recorded Lease Memorandum incorporates by reference the full text of the unrecorded Second Amended and Restated Harbor Lease that is a public record on file in the records of the Clerk of the Board of the County of Ventura, located at 800 South Victoria Avenue, Ventura, California 93009, and may be inspected and copied during the regular business hours of the County.

The unrecorded Lease provides in Section 5.1 thereof that the Term of the Lease expires on January 31, 2026, a date referred to as the “Original Expiration Date.” Pursuant to Section 5.2 of the Lease entitled “Extensions of the Term under Certain Conditions,” the Expiration Date may under certain circumstances, calculations and the satisfaction of specified conditions, including the concurrence of Lessor, be extended by election of Lessee to a date specified in this Memorandum of Extended Lease. Except as may otherwise be provided by the terms, conditions and provisions of said Section 5.2, Lessee does not have any other options or rights to extend the Expiration Date or renew the Term.

By this Memorandum of Extended Lease, Lessor and Lessee hereby agree that pursuant to the provisions of Section 5.2 of the Lease, Section 5.1 of the Lease is amended to read:

“The term of this Lease (“Term”) shall commence on the Lease Commencement Date and, unless sooner terminated, shall expire without further notice at 11:59 p.m. on _____ (the “Expiration Date”). The terms and conditions set forth in Section 5.2,

entitled ““Additional Term,”” provide that Lessee may elect to extend the Expiration Date pursuant to the provisions of said Section 5.2; provided that in no event shall Lessee have the right to elect to extend the Expiration Date to a date later than January 31, 2069.”

None of the other terms, conditions and provisions of the Lease is hereby amended, altered or modified and, except for the amendment of Section 5.1 above, the entire Lease, as so amended, remains in full force and effect.

This Memorandum is not a complete summary of the Lease. Provisions of this Memorandum shall not be used in interpreting the Lease’s provisions. In the event of conflict between this Memorandum and the Lease, the Lease shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Extended Lease as of the date and year first above written.

“Lessor”
COUNTY OF VENTURA

By: _____
Name: _____
Title: Harbor Director

“Lessee”
VINTAGE MARINA PARTNERS, L.P.
a California limited partnership
By: Giumarra Vineyards Corporation, a
California corporation, its General Partner

By: _____
Title: _____

EXHIBIT E

AGREEMENT TO GRANT TWO SEPARATE EXTENDED TERMS FOR THE SECOND AMENDED AND RESTATED LEASE FOR LESSEE'S ELIGIBLE WORK ON PARCELS X-2 AND Y-1

1. Agreement of County to Grant two Extended Terms upon Conditions Precedent. Upon receipt by County of proof satisfactory to County that Lessee has satisfied all of the conditions precedent ("Extension Conditions") listed below for Parcels X-2 and Y-1 for the First Extended Term, County shall grant Lessee an extension of the Original Expiration Date for the First Extended Term of the Lease to January 31, 2029 and, if Lessee has in a similar manner satisfied all the Extension Conditions precedent for the Second Extended Term, County shall grant Lessee a Second Extended Term to the Lease to January 31, 2069.

2. The First Extended Term. The First Extended Term for Parcels X-2 and Y-1 shall be granted by County only upon the timely satisfaction of all of the following Extension Conditions and by no other means or method, express or implied. If all of the Extension Conditions are not satisfied (or so waived by County), by the dates listed below, the agreement of County to grant the First Extended Term, as provided for in this Exhibit E, shall lapse and be of no further force or effect.

2.1. Extension Conditions. The Extension Conditions for the First Extended Term are:

2.1.1. On or before January 31, 2024, Lessee shall have provided a draft schematic plan as defined in Section 9.2.1 of this Lease ("Schematic Plan") for the construction of a new marina and landside improvements which has been approved by the Director and is consistent with the existing Coastal Commission approved Public Works Plan as such Public Works Plan controls waterside and landside development on Parcels X-2 and Y-1.

2.1.2. On or before January 31, 2026, Lessee shall complete all requirements on its part required to allow County to formally submit a Notice of Impending Development (NOID) to the California Coastal Commission for the purpose of seeking entitlements to construct a new marina and landside improvements. This shall include plans for removing existing boat slips, incidental support facilities now in place including existing buildings; and replacing those removed improvements with new, upgraded improvements. These plans, with the consent of the County's Board of Supervisors, shall be modified based on any modifications dictated by the California Coastal Commission, Army Corps of Engineers, Regional Water Quality Control Board or other governmental agency requirements. The County shall cooperate with Lessee in the completion of all requirements and plans.

2.1.3. On or before January 31, 2026, Lessee shall:

2.1.3.1. have secured or provided assurance satisfactory to County that Lessee will secure in due course all necessary entitlements from the California Coastal Commission;

- 2.1.3.2. have secured or provided assurance satisfactory to County that Lessee will secure in due course permits from the Army Corps of Engineers and the Regional Water Quality Control Board for the waterside development;
 - 2.1.3.3. have secured or provided assurance satisfactory to County that Lessee will secure in due course all necessary demolition, construction or other permits necessary to commence construction of the waterside and landside developments as previously approved by the County;
 - 2.1.3.4. have provided County with a copy of a contract with a licensed general contractor describing major works of improvement and estimated costs thereof;
 - 2.1.3.5. have provided County evidence that the Lessee has liquid capital and/or has obtained sources of financing to pay for the costs of removal, development and construction of the new waterside and landside developments as approved by the County; and
 - 2.1.3.6. have provided County an executed Memorandum of Extended Lease (in the form attached to the Lease as Exhibit D) for the two-year First Extended Term for execution and recordation by the County.
3. The Second Extended Term. The Second Extended Term for Parcel X-2 and Y-1 shall be granted by County only upon the timely satisfaction (or County's waiver in its sole and absolute discretion) of all of the following Extension Conditions and by no other means or method, express or implied. If all of the Extension Conditions are not satisfied (or so waived by County), by the dates listed below, the agreement of County to grant the Second Extended Term, as provided for in this Exhibit E, shall lapse and be of no further force or effect.
 - 3.1. Extension Conditions. The Extension Conditions for the Second Extended Term, all to be completed by January 31, 2029, are:
 - 3.1.1. Lessee shall have completed all construction of new slips, incidental support facilities and new landside improvements per plans approved by the County and other relevant governmental agencies, subject to delays or other conditions not reasonably within Lessee's control evidenced by a Certificate of Occupancy for all improvements issued by the appropriate governmental agency.
 - 3.1.2. Lessee shall provide copies of lien releases or other documentation providing evidence that all outstanding financial obligations except construction or permanent loans have been satisfied.
 - 3.1.3. Lessee shall provide evidence that insurance coverage as required in this Lease has been obtained.
 - 3.1.4. Lessee shall fully fund the security deposit and not be in default.
 - 3.1.5. Lessee shall provide to the County an executed Memorandum of Extended Lease for the forty-year Second Extended Term for execution and recordation by the County.

EXHIBIT F

ESTOPPEL CERTIFICATE

To:

Attn.: _____

Re: Second Amended and Restated Harbor Lease Dated: _____
Current County: County of Ventura
Current Lessee: _____
Located at: _____

County (or Lessee, as the case may be) hereby certifies, as of _____, 20__, and except as set forth in EXHIBIT A TO ESTOPPEL CERTIFICATE, entitled DESCRIPTION OF LEASE AND MODIFICATIONS, AMENDMENTS, SUPPLEMENTS, SIDE LETTERS, ADDENDA, RIDERS AND EXCEPTIONS, that:

1. Lessee is the present owner and holder of Lessee's interest under the Lease described above, as it may be amended to date (this "Lease") with the County of Ventura as County ("County"). The Lease covers the premises commonly known as _____ (the "Leased Premises") at the location set forth above.

2. The attached Exhibit A accurately identifies the Lease and all modifications, amendments, supplements, side letters, addenda and riders of and to it.

3. The term of the Lease commenced on the recordation of a Memorandum of Lease recorded in the land records of the County Recorder of Ventura County as Instrument No. _____, and will expire on January 31, 20__. Lessee has rights to extend the expiration date by performing certain obligations in accordance with the terms and conditions of the Lease and Exhibit E of the Lease. As of the date of this Estoppel Certificate, the expiration date (has not been extended, or has been extended to _____, as the case may be). There are no other options or right to renew or extend the term of the Lease.

4. Lessee has no option or preferential right to purchase all or any part of the Leased Premises (or the land of which the Leased Premises are a part). (Lessee) Lessee has no right or interest with respect to the Leased Premises other than as Lessee under this Lease. (County) Lessee has not made a claim to County regarding any right or interest with respect to the Leased Premises other than as Lessee under this Lease.

5. The annual minimum rent currently payable under the Lease is _____ Dollars (\$_____) and such rent has been paid through _____, 20__. The annual percentage rent currently payable under the Lease has been

paid through _____, 20__, such percentage rent is computed using the schedule of "Percentage Multipliers" and "Sources" set forth in Section 6.2 of the Lease, and there has been no adjustment of such schedule (under Section 6.4.7 of the Lease or otherwise) except as follows:

_____.

6. Additional Rent is payable under the Lease for certain causes set forth in the Lease. (Lessee) Such Additional Rent, for which there is a cause to require payment, has been paid in accordance with County's rendered bills through _____, 20___. (County) Such Additional Rent, for which a cause is known to County, has been paid in accordance with County's rendered bills through _____, 20__.

7. Lessee has made no agreement with County or any agent, representative or employee of County concerning free rent, partial rent, rebate of rental payments or any other similar rent concession that is not incorporated into the Lease.

8. County currently holds a security deposit in the amount of _____ Dollars (\$_____) which is to be applied by County or returned to Lessee in accordance with Article 32 of the Lease.

9. The Lease constitutes the entire agreement between Lessee and County with respect to the Premises, has not been modified, changed, altered or amended and is in full force and effect. There are no other agreements, written or oral, between Lessee and County which affect Lessee's occupancy of the Premises.

10. (Lessee) All insurance required of Lessee under the Lease has been provided by Lessee and all premiums have been paid. (County) To the present knowledge of County, Lessee is in full compliance with the requirement of Lessee to procure and maintain insurance as required by the Lease.

11. (Lessee/County) The undersigned is not in default of its obligations under the Lease. To the best knowledge of (Lessee/County), the other party to the Lease is not in default under the Lease. To the best knowledge of (Lessee/County), no event has occurred which, with the giving of notice or passage of time, or both, would constitute such a default of the undersigned or by the other party.

12. (Lessee) The interest of Lessee in the Lease has not been assigned or encumbered. (County) County does not have any knowledge of an assignment of or encumbrance of Lessee's Estate by Lessee.

13. (Lessee/County) Lessee is not entitled to any credit against any rent or other charge or rent concession under the Lease except as set forth in the Lease. No rental payments have been made more than one Month in advance.

14. (Lessee) Lessee is not the subject of any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships. (County) County does not know if Lessee is the subject of any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships; or

County has been notified that the following bankruptcy proceeding or other voluntary or involuntary proceeding for the adjustment of debtor-creditor relationships has been filed regarding Lessee: _____.

15. (Lessee only) Lessee represents and warrants that it has not used, generated, released, discharged, stored or disposed of any Hazardous Substances on, under, in or about the Premises, other than Hazardous Substances used in the ordinary and commercially reasonable course of Lessee's business in compliance with all applicable laws. Except for such commercially reasonable use by Lessee and its Sublessees, including Boat Slip Renters, Lessee has no actual knowledge that any Hazardous Substance is present, or has been used, generated, released, discharged, stored or disposed of by any party, on, under, in or about such Building or land, in violation of any applicable Law. As used here, "Hazardous Substance" means any substance, material or waste (including petroleum and petroleum products) which is designated, classified or regulated as being "toxic" or "hazardous" or a "pollutant" or which is similarly designated, classified or regulated, under any federal, state or local law, regulation or ordinance.

By: _____

Name: _____

Title: _____

EXHIBIT A TO ESTOPPEL CERTIFICATE

**DESCRIPTION OF LEASE AND MODIFICATIONS, AMENDMENTS,
SUPPLEMENTS, SIDE LETTERS, ADDENDA, RIDERS AND EXCEPTIONS**

EXHIBIT G

SCHEDULE OF ADMINISTRATIVE OBLIGATIONS AND
COST RECOVERY AMOUNTS

SECTION	TITLE	LESSEE'S OBLIGATION	COST RECOVERY AMOUNT
2.1	Lessee's Use & Possession	Obligation to use Leased Premises only for permitted uses and Incidental Uses and obligation to apply for/receive special event permits.	\$730
6.4	Record Keeping	Obligation to provide for County's review and audit (after proper written notice) required records of Lessee and Sublessees.	\$1075
6.2.1, 6.4	Quarterly and Annual Statements	Obligation to provide Quarterly and Annual Statements when due.	\$305
8.3,	Comprehensive General Liability	Obligation to obtain and maintain insurance coverages specified under Sections 8.4.	\$305
8.5	Hazardous Materials	Obligation to store, use or dispose of Hazardous Materials in compliance with applicable Laws.	\$305
9.2	Approved Plans	Obligation to provide Approved Plans for County's review, if required, prior to commencement of Lessee's Work.	\$460
9.6	Conditions Precedent to Construction	Obligation to furnish the items described in clauses (i) through (v) of Section 9.3, to the extent such items are required, prior to commencement of applicable Lessee's Work.	\$305
11.3	Taxes on Improvements and Fixtures	Obligation to pay taxes and assessments when due unless such taxes or assessments are in legitimate dispute.	\$305
12.1.2, 12.1.3	Subleasing	Obligation to obtain County's consent to new Subleases and modifications of existing Subleases.	\$460
14.2	Lessee's Conduct of Business	Obligation to post prices.	\$305
15.1, 15.2	Repairs and Maintenance	Obligation to maintain Leased Premises per the terms of Sections 15.1 and 15.2.	\$580

These amounts are periodically adjusted by inflation per the terms of this Lease. See next page.

LESSEE AND COUNTY AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO DETERMINE THE PRECISE AMOUNT OF INTERNALLY GENERATED ADMINISTRATIVE COSTS TO COUNTY TO ASCERTAIN WHETHER AN ADMINISTRATIVE DEFAULT BY LESSEE HAS OCCURRED, IN UNDERTAKING INVESTIGATIONS, PREPARING NOTICES AND OTHER PROCESSES TO BRING SUCH MATTER TO THE ATTENTION OF LESSEE AND TO MONITOR WHETHER THE LESSEE IS CURING OR HAS CURED SUCH ADMINISTRATIVE DEFAULT. NOTHING CONTAINED HEREIN IS ADDRESSED TO THE ACTUAL DAMAGES COUNTY MAY SUFFER FOR SUCH AN ADMINISTRATIVE DEFAULT. LESSEE ACKNOWLEDGES AND AGREES THAT THE COST RECOVERY AMOUNTS DO NOT INCLUDE, AND ARE NOT INTENDED TO INCLUDE, ANY COSTS OR EXPENSES INCURRED BY COUNTY TO ENGAGE THE SERVICES OR INCUR EXPENSES FOR THIRD PARTIES ENGAGED BY COUNTY TO ENFORCE COUNTY'S RIGHTS UNDER THIS RESTATED LEASE, SUCH AS, WITHOUT LIMITATION, ATTORNEYS (INCLUDING COUNTY COUNSEL), ACCOUNTANTS, CONSULTANTS, CONTRACTORS WHO ARE NOT EMPLOYEES OF THE HARBOR DEPARTMENT OF COUNTY, AND THAT SUCH ADMINISTRATIVE COSTS REFLECT ONLY THE INTERNAL GENERAL OVERHEAD AND ADMINISTRATIVE COSTS FOR THE HARBOR DEPARTMENT ITSELF AS A SEPARATE DEPARTMENT OF THE COUNTY OF VENTURA. LESSEE AND COUNTY HEREBY AGREE THAT THE COST RECOVERY AMOUNTS, AS INCREASED OVER TIME, REASONABLY REPRESENTS THE ADMINISTRATIVE COSTS TO THE HARBOR DEPARTMENT FOR ITS INTERNAL COSTS ATTRIBUTABLE TO THE LISTED ADMINISTRATIVE DEFAULTS. NOTHING CONTAINED HEREIN WAIVES THE OBLIGATION OF LESSEE TO PERFORM OR COMPLY WITH THE OBLIGATIONS OF THIS SECOND AMENDED AND RESTATED LEASE OR THE RIGHT OF COUNTY TO ENFORCE SUCH OBLIGATIONS AND TERMINATE THIS SECOND AMENDED AND RESTATED LEASE OR PURSUE SUCH OTHER REMEDIES AS COUNTY MAY HAVE.

Initial:

TSO Lessee

Mt County

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- B Legal Description of the Leased Premises**
- C Memorandum of Second Amended and Restated Harbor Lease**
- D Memorandum of Extended Term for Second Amended and Restated Lease**
- E Agreement to Grant Two Separate Extended Terms for the Second Amended and Restated Lease for Lessee's Eligible Work on Parcelx X-2 and Y-1**
- F Estoppel Certificate**
- G Schedule of Administrative Obligations and Cost Recovery Amounts**