

OFFICE COPY

ORIGINAL

BALLENA BAY LEASE

(1) PROPERTY LEASED. In consideration of the faithful performance of the terms and conditions herein contained on the part of Marina Operators, Inc., a California corporation, (hereinafter referred to as "Marina Operators") to be performed, the City of Alameda, a municipal corporation, (hereinafter referred to as "City") lets unto Marina Operators and Marina Operators leases from City all of that certain real property situated in the City of Alameda, County of Alameda, State of California, particularly described in Exhibit "A" and Exhibit "B" hereto, which exhibits are incorporated herein by reference, including all buildings and improvements existing thereon at the commencement of this lease or constructed thereon during the term of this lease and any renewal of this lease.

(2) TERM. The term of this lease shall be twenty-five (25) years commencing on the date this lease is executed. Marina Operators shall have the option or privilege to renew this lease for an additional twenty-five (25) years. Said option or privilege may be exercised by Marina Operators giving notice in writing to City of such election to renew at any time prior to ninety (90) days before the expiration of the initial term of this lease. Said renewal shall be on the same terms and conditions as for the original term of this lease except that lease payments

shall be in the amount set forth in paragraph (3) hereof and except there shall be no option or privilege to renew after the initial renewal term.

(3) LEASE PAYMENTS. Marina Operators shall pay to City as and for lease payments for the demised premises, including all existing and future improvements, on the first business day of January of each year, the sum set forth in the following schedule:

1979 through and including 1982	\$ 23,400.00
1983 through and including 1987	\$ 24,900.00
1988 through and including 1992	\$ 26,600.00
1993 through and including 1997	\$ 28,600.00
1998 through and including 2002	\$ 31,000.00
2003	\$ 33,700.00

In the event the option to renew set forth in paragraph (2) hereof is exercised, Marina Operators shall pay to City as and for lease payments for the demised premises, including all existing and future improvements, on the first business day of January of each year the sum set forth in the following schedule:

2004 through and including 2007	\$ 33,700.00
2008 through and including 2012	\$ 37,000.00
2013 through and including 2017	\$ 40,400.00
2018 through and including 2022	\$ 44,600.00

2023 through and including 2027	\$ 49,500.00
2028	\$ 55,200.00

Provided, however, that if the initiative measure, popularly known as the Jarvis-Gann Initiative, passed by the people of the State of California on June 6, 1978, as Proposition 13, shall be held to be invalid or shall be held to be inapplicable to Marina Operators' possessory interest in the demised premises, then each lease payment provided for above shall be reduced by the sum of Seven Thousand Dollars (\$7,000).

(4) USE. Marina Operators may use the demised premises for such purposes and uses as may have heretofore or may hereafter be approved by City under the ordinances of City regulating land use, including the zoning ordinance of City, as said ordinances may from time to time be amended or supplemented.

Provided, however, that no use of the demised premises shall be made which may be prohibited or is not permitted pursuant to California Statutes 1917, Chapter 594, as said statute may from time to time be amended.

(5) ASSIGNMENT OF MASTER LEASE. Marina Operators shall not sell, assign or otherwise transfer its right, privilege, title or interest in this lease and thus divest itself of responsibility to City without the written

consent of City first had and obtained. The consent of City to any such requested transfer by Marina Operators shall not be unreasonably withheld. A consent to one assignment or transfer shall not be construed as a consent to any subsequent assignment or transfer.

(6) SUBLEASE. Marina Operators may sublet the demised premises or any part thereof or any right or privilege appurtenant thereto and allow any other person to occupy or use such premises so long as it is consistent with the purposes of this lease. No consent or approval of City shall be required for any such sublease, provided, however, that Marina Operators may not divest itself of any responsibility to City by such sublease.

(7) RIGHT OF FIRST REFUSAL. In the event that during the term of this lease it becomes legally possible to sell the demised premises, and City desires to sell, and City receives a bona fide offer to purchase the property from a third party on terms and conditions acceptable to City, Marina Operators shall have the prior right to purchase the demised premises on the same terms and conditions as are contained in the third party's bona fide offer. Prior to any sale of the demised premises to a third party, City shall give notice of the terms and conditions of the proposed sale to Marina Operators. Marina Operators may exercise its prior right to purchase by giving notice in writing to City of its exercise of

that right within sixty (60) days after receipt by Marina Operators from City of the notice of the terms and conditions of the proposed sale.

In the event that Marina Operators does not exercise its prior right to purchase and a sale to the third party is concluded, said third party shall take the demised premises subject to this lease, including Marina Operators' prior right to purchase, as above set forth, in the event of any subsequent proposed sale.

(8) MAINTENANCE AND REPAIR. Marina Operators shall, at its sole cost and expense, maintain, repair and keep the demised premises in good and sanitary order and condition save and except such parts of the demised premises that shall be either dedicated and accepted by City or on which City shall agree to perform maintenance and repair at City's cost and expense. Marina Operators shall not make any major alterations or changes in the demised premises except in accordance with plans and specifications previously approved by the Planning Board, Building Department or City Engineer of City as the case may be.

Marina Operators hereby waives all rights to make repairs at the expense of City as provided in Section 1942 of the Civil Code of the State of California and all rights provided by Section 1941 of said Civil Code.

(9) ENTRY AND INSPECTION. City reserves and shall

always have the right to enter upon the demised premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interest therein or to inspect the operations conducted thereon. In the event such entry or inspection by City discloses that the demised premises or any part thereof are not safe, healthy and satisfactory condition or a violation of any municipal, state or federal ordinance, statute or law, or any breach of condition of this lease, City shall notify Marina Operators that such condition must be corrected within a time period to be specified by City which time shall not be less than ninety (90) days. Said time period specified by City shall be extended by any period during which Marina Operators' performance is delayed by strike, riot, war, act of God or any other cause beyond the control of Marina Operators. At the end of said specified time period as extended, not so corrected, City shall have the right, after thirty (30) days' written notice to Marina Operators, to have any necessary maintenance work done for and at the expense of Marina Operators. Marina Operators agrees to pay promptly any and all costs incurred, including reasonable expenses of City, in having such necessary work done to keep said demised premises in a safe, healthy and satisfactory condition.

(10) OWNERSHIP OF IMPROVEMENTS. All structures, buildings, improvements and landscaping installed or

constructed by Marina Operators or any sublessee on and as a part of said demised premises shall be, and without cost to City become, the sole property of City at the termination of this lease and any valid renewals or extensions thereof, and Marina Operators shall on demand execute a quitclaim deed with respect thereto. Title to all structures, buildings, or improvements installed or constructed by Marina Operators or any sublessee shall remain in Marina Operators' or such sublessee prior to termination of this lease.

Machinery, stock in trade, appliances, fixtures, furniture and furnishings not firmly affixed to said structures, buildings or improvements shall remain the property of Marina Operators or sublessee.

(11) BREACH. In the event of a breach of any agreement, covenant or condition herein contained on the part of Marina Operators to be kept and performed, City may at its option send Marina Operators by registered mail a written notice to cure such breach. If Marina Operators shall fail to cure such breach within such time as may be necessary for Marina Operators to cure such breach acting with reasonable diligence, this agreement and all rights of Marina Operators hereunder may be terminated at the option of City. Marina Operators' time period to cure such breach shall be extended by any period during which Marina Operators' performance is delayed by strike, riot,

war, act of God or any other cause beyond the control of Marina Operators. In case suit shall be brought because of the breach of any agreement, covenant or condition herein contained on the part of Marina Operators to be kept or performed, the prevailing party shall pay to the other party reasonable attorneys' fees which shall be fixed by the court as part of the costs of such suit.

(12) LEASE ENCUMBRANCE. City does hereby consent and agree that Marina Operators and any sublessee may encumber this lease, any sublease and the leasehold estate by deed of trust, mortgage or other security instruments to assure the payment of any promissory note or notes of Marina Operators or any sublessee in connection with development, construction or permanent financing.

The City further consents and agrees that in the event any deed of trust, mortgage or other security type instrument should at any time be in default and be foreclosed, City will accept the mortgagee or beneficiary thereof as its new tenant under this lease with all the rights and privileges of Marina Operators, and that in the event that said mortgagee or beneficiary desires to assign this lease to its nominee, City hereby agrees that upon the filing of an application for the consent to such assignment, City shall give its consent thereto.

Anything in this lease to the contrary notwithstanding, City shall not exercise any remedy available to it for

default hereof by Marina Operators unless and until City, as a condition precedent to such exercise, shall have given notice to said beneficiary or mortgagee, by registered or certified mail, postage prepaid, addressed as said beneficiary or mortgagee shall from time to time instruct City (or, in the absence of such instruction, addressed as shown on said deed of trust or mortgage), which notice shall specify the nature and extent of said claimed default. Thereafter, said beneficiary or mortgagee shall have the right and power to cure said default in the manner hereinafter provided and thereby cause this lease to remain in full force and effect.

(a) If said default be in the payment of rental, taxes, insurance premiums, amount claimed under mechanic's lien on the demised premises or any other sum of money required to be paid by Marina Operators, said beneficiary or mortgagee may pay the same to City or other proper payee within sixty (60) days after the mailing aforesaid; if so paid, said default shall be cured and this lease shall remain in full force and effect. If, after any such payment to City, Marina Operators pays the same to City, or in the event City waives default, City shall promptly refund such payment to said beneficiary or mortgagee.

(b) If said default be other than specified in subparagraph (a) above, City shall not exercise any such

remedy if:

(i) Within sixty (60) days after the mailing aforesaid, said beneficiary or mortgagee commences foreclosure (by judicial action or trustee' sale) of its mortgage or deed of trust; and

(ii) Such foreclosure be prosecuted with reasonable diligence; and

(iii) Within a reasonable time after foreclosure sale, the purchaser thereof cures such default, if said default is curable from both a feasible and practical standpoint, or if said default is not curable from a feasible and practical standpoint, or if default is impossible to cure, said default shall be incontrovertibly deemed cured upon such foreclosure sale.

(13) WAIVER. The waiver by City of any breach of any agreement, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same, or any other agreement, covenant or condition herein contained.

(14) QUIET POSSESSION. In the event that Marina Operators performs all covenants, conditions and agreements herein contained, Marina Operators shall at all times during the term of this lease peaceably and quietly have, hold and enjoy the demised premises for the term hereof. If Marina Operators is dispossessed through action of a title superior to City's, this lease shall not be void or

voidable nor shall City be liable to Marina Operators for any loss or damage resulting therefrom, but there shall be no lease payments payable by Marina Operators to City during the period or periods during which Marina Operators is prevented from having the quiet possession of the demised premises.

(15) COMPLIANCE WITH LAW. Marina Operators shall at its sole cost and expense conform to, abide by and comply with all requirements of municipal, county, state and federal authorities now in force or which may hereafter be in force pertaining to the demised premises or the operations conducted thereon and shall faithfully observe and secure observance with, in the use of the demised premises, all municipal ordinances and county, state and federal statutes now in force or which may hereafter be in force. Provided, however, that Marina Operators shall not be deemed to have breached the covenants of this paragraph in the event that such a violation shall occur without knowledge thereof on the part of Marina Operators, or if beyond the control of Marina Operators.

(16) MECHANIC'S LIEN BOND. Marina Operators and any sublessee shall save City free and harmless and indemnify City against all claims for labor and materials in connection with improvements, repairs, or alterations to demised premises and the cost of defending against such claims, including a reasonable attorneys' fees.

(17) TAXES. Marina Operators shall pay and discharge all taxes and assessments which may be levied during the term hereof upon the demised premises.

(18) OPERATIONS. Marina Operators or any sublessee shall not discriminate in rates, tolls or charges for the use of any facilities operated on or services provided on the demised premises.

(19) WASTE, DAMAGE OR DESTRUCTION. Marina Operators shall not commit or suffer to be committed any waste or injury to property or any public or private nuisance thereon.

If any damage or destruction shall occur upon the demised premises or any part thereof from any cause which shall result in the demised premises or any part thereof becoming untenable, unsightly or unfit for use, Marina Operators shall, at its option, elect to do either of the following:

(a) Repair or rebuild the damaged or destroyed premises in accordance with the condition of such premises prior to such damage or destruction or in accordance with any plans and specifications first approved by City, or

(b) Clear and remove from the demised premises all debris resulting from such damage or destruction.

Marina Operators shall select either of said courses of action and complete the same within a reasonable time after the occurrence of such damage or destruction.

(20) CONDEMNATION. If any part of the demised

premises shall be taken or condemned for a public or quasi-public use, and a part thereof remains which is susceptible of occupation hereunder, this lease shall, as to the part so taken, terminate as of the date title shall vest in the condemnor, and the lease payments payable hereunder shall be adjusted to that Marina Operators shall be required to pay for the remainder of the term only such portion of such lease payments as the value of the part remaining after the condemnation bears to the value of the entire premises at the date of condemnation. If all of the demised premises or such part thereof be taken or condemned so that there does not remain a portion susceptible for occupation hereunder, this lease shall thereupon terminate. If a part or all of the demised premises be taken or condemned, Marina Operators and City shall be entitled to their proportionate interests in the condemnation award based upon their respective interests in the demised premises.

(21) HOLD HARMLESS. City, its agent, officers and employees, shall not be held liable, for any claims, liabilities, penalties, fines or for any damage to the goods, properties or effects of Marina Operators or any of Marina Operators' representatives, agents, employees, guests, licensees, invitees, patrons, sublessees or clientele or of any other persons whatsoever, nor for personal injuries to, or death of them, or any of them,

caused by or resulting from any acts or omissions of Marina Operators in or about the demised premises, or any act or omission of any person or from any defect in any part of the demised premises or from any other cause or reason whatsoever. Marina Operators further agrees to indemnify and save free and harmless City and its authorized agent, officers, and employees against any of the foregoing liabilities and any costs and expenses incurred by City on account of any claim or claims therefor. Provided, however, that this hold harmless clause between Marina Operators and City shall not apply to any injury, death or damage caused by City, its officers, employees or authorized agents.

(22) INSURANCE. Marina Operators agrees to take out and maintain public liability insurance with an insurance carrier satisfactory to City in which the City of Alameda, the City Council and all officers and employees of the City of Alameda shall be named as additional insureds. Said insurance shall protect against loss from liability imposed by law for damages on account of bodily injury, including death resulting therefrom, suffered or alleged to be suffered by any person or persons whatsoever resulting directly or indirectly from any act or activities of Marina Operators or any person acting for Marina Operators or under Marina Operators' control or direction and also to protect against loss from liability imposed by law for

damages to any property of any person caused directly or indirectly by acts or activities of Marina Operators or any person acting for Marina Operators or under Marina Operators' control or direction. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this lease. Marina Operators shall maintain the minimum amount of not less than Five Hundred Thousand Dollars (\$500,000) for one person injured in one accident, and not less than One Million Dollars (\$1,000,000) for more than one person injured in one accident, and in the amount of not less than One Hundred Thousand Dollars (\$100,000) with respect to any property damage aforesaid. If the operation under this lease results in an increased or decreased risk, in the opinion of the City Manager, then the minimum limits hereinabove designated shall be changed accordingly by notice in writing. If Marina Operators does not keep such insurance in full force and effect, City may take out the necessary insurance and pay the premium, and the repayment thereof shall be deemed to be a part of the lease payments and paid as such on the next date upon which lease payments become due. Provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Marina Operators may be held responsible for the payment of damages to persons or property resulting from its activities or the activities of any person or

persons for which it is otherwise responsible. During the term of this lease, Marina Operators agrees to defend, in the name of and on behalf of City, all claims or suits for damages and all fixed costs and interest on all such legal proceedings and pay all sums which City may become liable to pay as damages imposed upon City by law arising out of accidental bodily injury or death suffered or alleged to have been suffered by any person while within or upon the demised premises and to pay all sums which City may become liable to pay as damages imposed upon City by law resulting from accidental injury to or destruction of property not owned, leased, occupied, or used by, or in the care, custody of, or control of Marina Operators or of City or of any employee of Marina Operators or of City, subject to the following conditions:

(a) This agreement shall not apply to any injury, death or damage caused by City, its officers, employees or authorized agents.

(b) City shall not voluntarily assume any liability or incur any expenses or settle any claim without the written consent of Marina Operators.

(c) Marina Operators shall deliver to City a policy or certificate of bodily injury and property damage liability insurance issued by a company licensed to transact such business in the State of California, indicating that Marina Operators has in that company bodily injury

and property damage liability insurance as required in this paragraph, and that the policy has been endorsed or does otherwise cover the contractual liability imposed by this lease and that the insurance company shall notify City at least ten (10) days prior to termination of the policy or limitation thereof in any manner by said insurance company.

(d) Marina Operators also agrees upon commencement of construction of the demised premises, to take out and maintain during the entire remaining term of this lease, fire, and extended coverage insurance on all property of an insurable nature located upon and as a part of the demised premises. Said insurance shall be written by an insurance carrier satisfactory with City and in an amount sufficient to cover at least eighty percent (80%) of the insurable value of said property. Marina Operators shall require that a policy or certificate of such insurance be filed with City and that said insurance shall not be terminated or limited in any manner prior to the termination date specified in the policy without at least ten (10) days' prior written notice to City. Marina Operators shall pay the premium for such insurance.

City reserves the right to reasonably increase the percentage of coverage when, in the opinion of the City Manager, the value of the improvements covered is increased, subject to the availability of such insurance at the

increased limits.

(23) HOLDING OVER. Any holding over after the expiration of the term of this lease for any cause shall be construed to be a tenancy from month to month at any rental selected by City which has been in effect during the term and shall otherwise be on the terms and conditions herein specified insofar as applicable.

(24) SURRENDER AND CANCELLATION. The voluntary termination or other surrender of this lease by Marina Operators or a mutual cancellation thereof shall operate as an assignment to City of any subleases or subtenancies. Any such surrender or mutual cancellation shall have no effect upon the rights of any lender unless the surrender or mutual cancellation provides for full satisfaction of the lender's trust deed or mortgage. A voluntary and mutually agreeable termination, surrender or cancellation shall not prohibit Marina Operators from negotiating with City for a new lease under similar terms, conditions, and stipulations as herein contained, without penalty being attached thereto.

In the event of termination of this lease for whatever reason, whether by expiration of the lease term or under other provisions of this lease, Marina Operators shall be under no obligation whatsoever to restore the demised premises to the condition which existed at the commencement of the term nor to demolish, destroy or remove any improvement,

building or use constructed thereon and as a part thereof during said terms, save and except that in the event of damage or destruction, Marina Operators shall clear and remove from the demised premises all debris resulting from such damage or destruction. City shall be under no obligation to compensate Marina Operators for improvements made by Marina Operators which are authorized by the provisions of this lease, save and except for a wrongful breach of this lease by City.

(25) BINDING. Time is of the essence of each and all of the terms and provisions of this lease and this lease shall inure to the benefit of and be binding upon the parties hereto and any successors of Marina Operators or sublessees as fully and to the same extent as though specifically mentioned in each instance, and all covenants, conditions and agreements in this lease shall extend to and bind any assigns, or sublessees of Marina Operators.

(26) NOTICES. All notices to be given by the parties hereto to each other shall be given in writing by depositing the same in the United States mail, postage prepaid, and addressed to the respective parties hereto as follows:

CITY:

City Manager
City Hall
City of Alameda
Alameda CA 94501

MARINA OPERATORS:

Marina Operators, Inc.
1144 Ballena Blvd.
Alameda CA 94501

Such addresses may be changed by written notice given

by either party to the other from time to time. Notice shall be deemed received one (1) day after deposit in any United States Post Office located in Alameda County, State of California, postage prepaid.

(27) MINERAL RESERVATIONS. Nothing contained in this lease shall be construed to vest in Marina Operators any right, title or interest in or to any deposit of oil, oil shale, coal, gas, phosphate, gravel, metal or other mineral deposits upon or under the demised premises and all such deposits are hereby expressly reserved to City.

(28) That certain Master Lease by and between City and Pan-Pacific Development Company, a California corporation, on April 17, 1968, as amended, as to which Marina Operators is successor in interest to Pan-Pacific Development Company, is hereby cancelled and terminated.

IN WITNESS WHEREOF, this lease is executed by City under and pursuant to Ordinance No. 1936 N.S. authorizing such execution and is executed by Marina Operators, Inc., under and pursuant to a resolution of its board of directors.

Dated: January 1, 1979

CITY OF ALAMEDA,
a municipal corporation,

By C. J. Quinn Mayor

Approved as to form:

Carl J. Stens
City Attorney

Attest: William M. Ottomano
City Clerk

MARINA OPERATORS, INC., a
California corporation

By W. S. [Signature]
President

Attest [Signature]
Secretary

Real property in the City of Alameda, County of Alameda, State of California, described as follows:

BEGINNING at the Southeasterly corner of Lot 31, Section 10, Township, 2 South Range 4 West, Mount Diablo Base and Meridian, as said Lot is shown on "Map No. 2 of Salt Marsh and Tide Lands situated in the County of Alameda, State of California, 1871" prepared by order of the Board of Tide Land Commissioners and filed in the office of said Commissioners in San Francisco, certified copies thereof having been filed with the County Recorder of the City and County of San Francisco and in the office of the Surveyor General of the State of California, (now the office of Department of Finance, Division of State Lands), said corner having coordinates of Y=466,225.06 feet and X=1,484,685.12 feet based on the California Coordinate System, Zone III, as are all bearings and distances in this description.

Thence along the line of the Alameda Basin as said line is located by and listed in the field notes of Map No. 2, G. F. Allardt's survey of Salt Marsh and Tide Lands, and is shown on the aforesaid Map No. 2 of Salt Marsh and Tide Lands, South 63° 48' 58" East 500.00 feet; thence South 1° 05' 26" West 1300.48 feet to the United States Bulkhead line of 1948 between Stations 155 and 157 thereof;

Thence along said United States Bulkhead line North 63° 44' 23" West 2512.21 feet to its intersection with a line drawn Southwesterly perpendicular to said Alameda Basin line from the Southwesterly corner of Lot 19 in Section 10 Township 2 South, Range 4 West, Mount Diablo Base and Meridian, as said Lot 19 is shown on the aforesaid Map No. 2 of Salt Marsh and Tide Lands;

Thence along said perpendicular line North 26° 11' 02" East 1174.39 feet to said Southwesterly corner of Lot 19:

Thence along said Alameda Basin Line South 63° 48' 58" East 1460.68 feet to the beginning.

Excepting therefrom any right, title or interest in or to any deposit of oil, oil shale, coal, gas phosphate, gravel, metal or other mineral deposits upon or under the demised premises and all such deposits, as reserved by Lessor.

Real property in the City of Alameda, County of Alameda, State of California, described as follows:

COMMENCING at the southeasterly corner of Lot 31, Section 10, Township 2 South, Range 4 West, Mount Diablo Base and Meridian, as said Lot is shown on "Map No. 2 of Salt Marsh and Tide Lands Situate in the County of Alameda, State of California, 1871" prepared by order of the Board of Tide Land Commissioners and filed in the Office of said Commissioners in San Francisco, certified copies thereof having been filed with the County Recorder of the City and County of San Francisco and in the office of the Surveyor General of the State of California, (now the office of Department of Finance, Division of State Lands), said corner having coordinates of $y=466,255.06$ feet and $x=1,484,685.12$ feet based on the California Coordinate System, Zone III, as are all bearings and distances in this description;

Thence along the line of the Alameda Basin as said line is located by and listed in Field Notes of Map No. 2, G. F. Allardt's survey of Salt Marsh and Tide Lands, and is shown on the aforesaid Map No. 2 of Salt Marsh and Tide Lands, S. $63^{\circ} 48' 58''$ E. 500.00 feet;

Thence South $1^{\circ} 05' 26''$ West 296.77 feet to the True Point Of Beginning;

Thence South $88^{\circ} 54' 34''$ East 13.00 feet;

Thence South $1^{\circ} 05' 26''$ West 267.00 feet;

Thence North $88^{\circ} 54' 34''$ West 13.00 feet;

Thence North $1^{\circ} 05' 26''$ East 267.00 feet to the True Point Of Beginning.

Excepting therefrom any right, title or interest in or to any deposit of oil, oil shale, coal, gas phosphate, gravel, metal or other mineral deposits upon or under the demised premises and all such deposits, as reserved by Lessor.