

Ballena Isle

BALLENA BAY LEASE
MASTER AGREEMENT

By and Between

CITY OF ALAMEDA
("Lessor")

and

BALLENA ISLE MARINA, L.P.
("Lessee")

Dated as of July 18, 2007

MASTER AGREEMENT

THIS BALLENA BAY LEASE MASTER AGREEMENT (the "Master Agreement") is entered into effective this 18th day of July, 2007 by and between THE CITY OF ALAMEDA, a municipal corporation ("Lessor") and BALLENA ISLE MARINA, L.P., a California limited partnership ("Lessee").

RECITALS

A. Lessor and Marina Operators, Inc. ("MOI"), a California corporation, as lessee, entered into that certain Lease, dated January 1, 1979, a memorandum of which was recorded March 28, 1979, as Series No.: 79-57010 in the Official Records of the County of Alameda (the "Official Records") as assigned by MOI to Ballena Isle Marina ("BIM"), a California limited partnership, by agreement recorded October 18, 1983, as amended by an Amendment to Lease, dated May 8, 1985, a memorandum of which was recorded January 29, 1988, as Series No.: 88-23323 in the Official Records, as Series No.: 83-195351 in the Official Records, as amended by letter dated January 22, 1988 to extend the term of the Lease to December 31, 2029, and as amended by an Amendment to Lease, dated October 29, 1993, which was recorded October 28, 1994, as Series No.: 94-346237 in the Official Records, as assigned by BIM to Ballena Isle Marina, LLC ("LLC"), a California limited liability company, by agreements recorded June 8, 1998 as Series No.: 98-189980 in the Official Records and recorded June 17, 1998 as Series No.: 98-204440 in the Official Records (collectively the "Lease").

B. Lessee succeeded to all of LLC's right, title and interest in the Lease on or about July 11, 2001, as result of conversion under Section 17540.1, et seq. of the California Corporations Code.

C. Upon the notification of the conditions hereinafter described, Lessor and Lessee now desire to terminate the Lease and divide the leasehold estate that is the subject of the Lease into three (3) separate leasehold estates.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Definitions. The following capitalized terms shall have the meanings set forth below:

"CC&R's" shall mean that certain document entitled "Declaration of Easements, Covenants, Conditions and Restrictions" attached hereto as Exhibit "D" and by this reference made a part hereof.

"Commercial Parcel" shall mean that certain real property specifically described in the Commercial Parcel Lease.

"Commercial Parcel Lease" shall mean that certain document entitled "Ballena Bay Lease (Commercial Parcel)" attached hereto as Exhibit "A" and by this reference made a part hereof.

"Commercial Parcel Transferee Approval Procedure" is defined in Section 3.

"Controlling Owner" means an Owner, by itself, of an amount of the majority in interest in the capital, profits, losses and voting rights of the Transferee, whether such Owner holds such rights directly or through ownership of other entities or series of entities, so that the vote or decisions of such Owner without condition or veto in favor of any other party governs the Major Decisions of the Transfers, or if such Owner does not own such majority, such Owner is vested by contract, by-laws, charter, trust or other agreement with the right to without further condition or veto of any other party to make Major Decisions.

"Lease Trifurcation" is defined in Section 3.7.

"Major Decisions" shall mean all actions, decisions and agreements of a Transferee regarding the development, construction, management, operation, leasing, sale, transfer, financing, encumbrance or other disposition or use of the interest, rights and ownership of a Transferee and such Transferee's compliance with its obligations under this Master Agreement and the Commercial Parcel Lease.

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

"Person" means any individual, sole proprietorship, corporation, general partnership, limited partnership, limited liability company, joint venture, business trust, trust, estate, unincorporated organization or any other form of legal entity.

"Remainder Parcel" shall mean that certain real property specifically described in the Remainder Parcel Lease.

"Remainder Parcel Lease" shall mean that certain document entitled Ballena Bay Lease (Remainder Parcel)" attached hereto as Exhibit "B" and by this reference made a part hereof.

"Transfer" is defined in Section 3.1 below.

"Transferee" shall mean any Person who is attempting to satisfy the Commercial Parcel Transferee Approval Procedure identified in Section 3 below.

"Waterside Parcel" shall mean that certain real property specifically described in the Waterside Parcel Lease.

"Waterside Parcel Lease" shall mean that certain document entitled Ballena Bay Lease (Waterside Parcel)" attached hereto as Exhibit "C" and by this reference made a part hereof.

2. Conditions Precedent to Lease Trifurcation. In order for the Lease Trifurcation to occur under Section 3.7 below, Lessee must provide Lessor with a Transferee who successfully completes the Commercial Parcel Transferee Approval Procedure detailed in Section 3 below and comply with any applicable provisions of the California Subdivision Map Act.

3. Commercial Parcel Transferee Approval Procedure. Lessor and Lessee acknowledge that the Ballena Bay is a project whose success is dependent upon creating and maintaining successful and profitable operations on the Commercial Parcel, the Remainder Parcel and the Waterside Parcel. Lessor and Lessee also acknowledge that Lessee intends to assign its leasehold interest in the Commercial Parcel to a third party in order to trigger the Lease Trifurcation, which assignment must meet the requirements of this Section 3 (the "Commercial Parcel Transferee Approval Procedure"), and shall require Lessor's consent and that such consent shall not be unreasonably withheld, conditioned or delayed.

3.1 Request to Transfer. In order to initiate the Commercial Parcel Transferee Approval Procedure identified in this Section 3, Lessee shall give written notice (the "Request to Transfer") to Lessor at least thirty (30) days before the effective date of the proposed Transfer of the Commercial Parcel (the "Transfer"). The Request to Transfer shall include (a) the proposed effective date of the Transfer; (b) the identity of the proposed Transferee; (c) the identity of the Controlling Owner of the proposed Transferee; (d) the material terms of the proposed Transfer; (e) a detailed business plan (including financing plans) for the proposed business operation(s) that the proposed Transferee intends to conduct on the Commercial Parcel; (f) Lessee's warranty and representation that Lessee is not in breach or in violation of any of its obligations or duties under the Lease (or, 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); (g) 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 Lessor may reasonably request; (h) information and reference(s) supplied by the proposed Transferee designed to assist Lessor 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); (i) a consent by the proposed Transferee to a background check and investigation by Lessor; and (j) 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.

3.2 Reimbursement by Lessee. Lessee shall reimburse Lessor for Lessor's direct costs incurred to consider each Request to Transfer (and any other instruments or documents regarding the proposed Transfer such as a proposed assignment agreement). For purposes of this Section, Lessor's direct cost shall include, but not be limited to, Lessor's actual out-of-pocket costs for consultants, attorneys and accountants, but not for any costs associated with Lessor's internal staff.

3.3 Guaranty. If the proposed Transferee's net worth, as demonstrated in writing to Lessor's reasonable satisfaction, on the effective date of the Transfer is equal to or greater than the greater of (i) Lessee's net worth as of the date of the Request for Transfer or (ii) the sum of ten (10) times the monthly rent under the Commercial Parcel Lease plus the

amount, if any, that is needed to repair, replace, restore and maintain the Commercial Parcel in first class condition as provided in the Commercial Parcel Lease, then Lessor shall accept such proposed Transferee's net worth as sufficient so long as the proposed Transferee delivers to Lessor a sufficient written guaranty in a form reasonably acceptable to Lessor from a party found by Lessor in its reasonable discretion to be creditworthy (which may be a guaranty executed by the Controlling Owner of such Transferee) to guarantee the Transferee's obligations under the Commercial Parcel Lease for such period that the Lessor reasonably determines necessary.

3.4 Grounds for Withholding Consent. Lessor may withhold consent to a proposed Transfer if, in Lessor's reasonable business judgment, Lessor determines that any of the following is the case: (i) the proposed Transfer may result in the deterioration of the quality of the operations conducted on the Commercial Parcel, as compared to the operation historically conducted by Lessee prior to the date of the Request for Transfer; (ii) the proposed Transferee has failed to demonstrate to Lessor that the proposed Transferee has a good business reputation or sufficient relevant business experience to successfully operate the Commercial Parcel; (iii) the proposed Transferee fails to demonstrate to Lessor that (a) the net worth of the proposed Transferee as of the date of the Request to Transfer (including the net worth of any guarantor(s), if applicable) is equal to or more than the amount referred to in Section 3.3 above; (iv) the proposed Transferee's use of the Commercial Parcel is incompatible with the businesses and/or operations conducted on the Waterside Parcel and the Residual Parcel; (v) the proposed Transfer would breach any covenant of Lessee respecting the use of the Commercial Parcel, the radius restrictions, use or exclusivity rights regarding either the Waterside Parcel or the Residual Parcel or any financing or other agreement relating thereto; (vi) any proposed guarantor fails to agree to be a guarantor or fails to acknowledge such guarantee in writing in a form and content reasonably satisfactory to Lessor that the liability of such guarantor to Lessor under its guaranty shall continue in full force and effect is not released or discharged; (vii) Lessee is in default of any of its duties or obligations under the terms of the Lease beyond the expiration of any applicable cure periods in such breach or violation will not be cured or remedied concurrently with such Transfer; and (viii) the proposed Transferee does not execute and deliver to Lessor the Commercial Parcel Lease (to become effective with the Transfer) in the form of Exhibit "A" attached hereto. Any attempted or purported Transfer without Lessor's written consent shall be a default under the Lease and shall be void and of no force or effect.

3.5 Transfer Consideration. Lessor acknowledges and agrees that a Transferee who successfully completes the Commercial Parcel Transferee Approval Procedure under this Section 3, shall pay to Lessee consideration for Lessee's assignment of its rights and obligations under the Lease with respect to the Commercial Parcel, which will afford such Transferee the right to enter into the Commercial Parcel Lease with Lessor. Lessor also understands and acknowledges that the aforementioned consideration shall be paid directly to Lessee and no part or percentage thereof shall be due and payable to Lessor. Notwithstanding the foregoing, Lessee shall use the aforementioned consideration in accordance with its obligations under the Waterside Parcel Lease.

3.6 Decision Notice. Within thirty (30) days after Lessor's receipt of the Request to Transfer containing all of the information detailed in Section 3.1 above, Lessor will either grant or withhold its consent to such proposed Transfer (which consent shall not be unreasonably withheld, conditioned or delayed) by mailing written notice to Lessee of its

decision (the "Decision Notice"). In no event shall Lessor be obligated to grant its consent during any time when a default under the Lease exists following the expiration of any applicable cure periods, unless (i) the default is curable; (ii) the period of time is extended until the default has been cured; and (iii) security, binding commitments and assurances reasonably satisfactory to Lessor to cure such default after the effective date of the proposed Transfer are provided to Lessor, in which case such consent may be conditioned on such cure. If Lessor consents to the proposed Transfer, the Lease Trifurcation shall occur and Lessor, Lessee and Transferee shall adhere to the provisions of Section 3.7 below. No transfer to which Lessor has so consented shall be effective for any purpose unless such Transfer is evidenced by the full execution and delivery of the Commercial Parcel Lease and the CC&R's.

3.7 Lease Trifurcation. Immediately upon receipt of Lessor's Decision Notice approving the Transferee: (a) Lessor and Lessee shall execute and deliver both the Remainder Parcel Lease and the Waterside Parcel Lease; (b) Lessor and Transferee shall execute and deliver the Commercial Parcel Lease (collectively the "Lease Trifurcation"); and (c) Lessor, Lessee and the Transferee shall execute, acknowledge and deliver the CC&R's. Promptly thereafter, Lessee shall cause one fully executed and acknowledged copy of the CC&R's to be recorded with the Alameda County Recorder. Upon full execution and delivery of the Commercial Parcel Lease, Remainder Parcel Lease and Waterside Parcel Lease, the Lease Trifurcation shall be deemed completed and the Lease shall automatically be terminated and considered null and void, and, except as otherwise provided herein and/or in the Lease, neither Lessor nor Lessee shall owe any further obligation to the other thereunder.

4. General Provisions.

4.1 Governing Law. This Master Agreement shall be construed and enforced in accordance with the internal laws of the State of California without regard to its conflicts law.

4.2 Recovery of Litigation Costs. If any legal action or any arbitration or other proceeding is brought for the enforcement of this Master Agreement, or because of any alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Master Agreement, the successful or prevailing party shall be entitled to recover such party's reasonable attorneys' fees and other costs incurred by such party in that action or proceeding, in addition to any other relief to which such party may be entitled.

4.3 Entire Agreement. This Master Agreement represents the entire agreement of the parties hereto with respect to the subject matter hereof, superseding all prior agreements, understandings, discussions, negotiations and commitments of any kind. This Master Agreement may not be amended or supplemented, nor may any rights hereunder be waived, except in a writing signed by the party or parties affected.

4.4 Section Headings. The section headings in this Master Agreement are included for convenience only, are not a part of this Master Agreement and shall not be used in construing it.

4.5 Severability. In the event that any provision or any part of any provision of this Master Agreement is held to be illegal, invalid or unenforceable, such illegality, invalidity

or unenforceability shall not affect the validity, legality or enforceability of any other provision or part thereof.

4.6 Notices. All notices hereunder shall be deemed given when personally delivered, delivered via overnight courier or when sent by United States certified or registered mail, postage prepaid, to the parties hereto at their respective addresses set forth below, or at such other addresses as the parties shall from time to time designate in like manner to the other party:

If to Lessee:	Ballena Isle Marina, L.P. c/o Almar Ltd. 28441 Highridge Road Rolling Hills Estates, California 90274
If to Lessor:	City Manager City of Alameda 2263 Santa Clara Avenue, Room 320 Alameda, California 94501

4.7 Successors and Assigns. This Master Agreement shall be binding on, and shall inure to the benefit of, the parties hereto, their respective heirs, legal representatives, successors and assigns.

4.8 Further Assurances. Each party to this Master Agreement agrees to perform any further acts and to execute and deliver any documents that may be reasonably necessary to carry out the provisions of this Master Agreement.

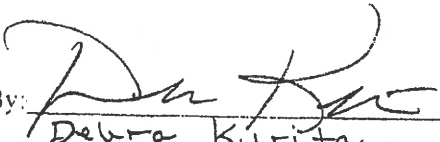
4.9 Waiver. Failure to insist on compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such terms, covenants or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one time or more times be deemed a waiver or relinquishment of such rights or powers at any other time or times.

4.10 Counterparts. This Master Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

"Lessor"

CITY OF ALAMEDA,
a municipal corporation

By: 
Debra Kurita
City Manager

Approved as to Form

2956703000514010


CITY ATTORNEY

"Lessee"

BALLENA ISLE MARINA, L.P.,
a California limited partnership

By: Almar Ltd., a California corporation
Its: General Partner

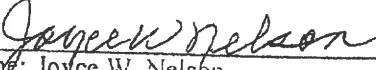
By: 
Name: Joyce W. Nelson
Title: President

EXHIBIT "A"

COMMERCIAL PARCEL LEASE

(See Attached)

BALLENA BAY LEASE
(COMMERCIAL PARCEL)

by and between

CITY OF ALAMEDA
("Lessor")

and

("Lessee")

Dated as of _____, 2007

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**BALLENA BAY LEASE
(COMMERCIAL PARCEL)**

THIS BALLENA BAY LEASE (this "Lease") is made and entered into this ____ day of _____, 2007, by and between the CITY OF ALAMEDA, a municipal corporation ("Lessor"), and _____, a California _____ ("Lessee").

RECITALS

A. Lessor is the owner of that certain real property that consists of approximately fifty-four (54) acres, including approximately twenty-seven (27) acres of land area and twenty-seven (27) acres of submerged lands, more commonly known as 1150 Ballena Bay and shown on the site map attached hereto as Exhibit "A" (the "Site Map") and incorporated herein by this reference.

B. Ballena Bay has been developed as a small recreational craft marina for approximately five-hundred (500) boats and shoreline facilities consisting of, among other things, office buildings, restaurants, storage facilities, parking lots, walks, streets and utility systems.

C. For the purpose of further developing the Ballena Bay, Lessor has divided the Ballena Bay into three (3) separate parcels pursuant to the terms and conditions of three (3) separate leases including this Lease.

D. One parcel and leasehold estate consists of the commercial buildings and related facilities (the "Commercial Parcel") and is shown on the Site Map and described with more particularity at Exhibit "B" attached hereto and incorporated herein by this reference (the "Leased Premises"). A second parcel and leasehold estate consists of the continuous linear public waterfront, marina slips and related facilities and is shown on the Site Map as the "Waterside Parcel." The third parcel and leasehold estate consists of the land intended for development for residential purposes and is shown on the Site Map as the "Remainder Parcel."

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee, hereby agree as follows:

ARTICLE 1

LEASED PREMISES

In consideration of Lessee's promise 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, Lessor hereby leases the Leased Premises to Lessee for the term of this

Lease, and Lessee hereby leases the Leased Premises from Lessor for the term and promises to pay the rents and to perform the covenants and agreements of Lessee.

ARTICLE 2

TERM

The term of the Lease shall be for a period commencing on the date hereof (the "Commencement Date") and, unless sooner terminated as herein provided shall expire without further notice at 11:59 p.m. on the 31st day of December, 2060 (the "Termination Date").

ARTICLE 3

USE

3.1. Lessee agrees that the Commercial Parcel shall be used only and exclusively for the development and operation of approximately ____ sq. ft., in the aggregate, of office and retail space used by Lessee and/or its tenants for activities related to promoting the public trust through activities related to commerce, navigation, fishing or public access to and enjoyment of the waterfront.

3.2. Except as expressly provided herein, Lessee shall not use or permit the Leased Premises to be used for any other uses or purposes whatsoever. No use of the Leased 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.

3.3. Lessee shall pay Lessor One Hundred Percent (100%) of the gross receipts for any service or use that is not permitted under this Lease. This payment is subject to the due date for rent and the provisions for delinquent rent provided in ARTICLE 4 herein. The existence of the One Hundred Percent (100%) charge in this Paragraph 3.3 and the payment of this charge or any part thereof, does not constitute an authorization for a particular service or use, and does not waive any Lessor rights to terminate a service or use or to default Lessee for participating in or allowing any unauthorized use of the Leased Premises.

ARTICLE 4

RENT

Lessee agrees to pay to Lessor rent in accordance with the following:

4.1. The term of this Lease shall be divided into the following rental periods, hereinafter "Rental Periods":

"First Rental Period" means _____, 20__ to _____, 20__ [five years from commencement].

"Second Rental Period" means the day following the last day of the First Rental Period and ending on the Expiration Date.

4.2. The minimum annual rent ("Minimum Annual Rent") during the term of this Lease shall be as follows:

(a) During the First Rental Period, \$50,000.00 for the first year of the First Rental Period; \$70,000.00 for the second year of the First Rental Period; \$90,000.00 for the third year of the First Rental Period; \$110,000.00 for the fourth year of the First Rental Period; and \$125,000.00 for the fifth year of the First Rental Period;

(b) During the first five (5) years of the Second Rental Period, the greater of (i) \$125,000 per annum, or (ii) seventy-five percent (75%) of the average annual percentage rent which would have been the percentage rent for the three (3) years immediately preceding the last day of the First Rental Period utilizing the percentage multipliers determined in accordance with ARTICLE 5 herein; and

(c) Commencing on the fifth (5th) anniversary of the first day of the Second Rental Period and every five (5) years thereafter for the remaining term of this Lease, seventy-five percent (75%) of the average of the actual annual rent paid by Lessee to Lessor for the three (3) years immediately preceding the first day of each such five (5) year period.

4.3. During the First Rental Period, on or before the 20th day of each month, Lessee shall pay an amount equal to one-twelfth (1/12th) of the Minimum Annual Rent then in effect.

4.4. Percentage rents shall be calculated on a monthly basis and shall be based on the fair market percentage rent determined in accordance with the provisions of ARTICLE 5 herein for the Second Rental Period.

4.5. Beginning with the Second Rental Period, on or before the 20th day of each month, Lessee shall render to Lessor, in a form reasonably prescribed by Lessor, a detailed report of gross income for that portion of the accounting year which ends with and includes the last day of the previous calendar month. The accounting year shall be twelve (12) calendar months. The first accounting year shall begin on the first day of the first month during which the percentage rent described in this Lease becomes effective. Subsequent accounting years shall begin upon each anniversary of that date during the Lease term or any extension thereof. Each report shall be signed by Lessee or a responsible agent under penalty of perjury and shall include the following:

(a) The total gross income for said portion of the accounting year, itemized as to each of the business categories for which a separate percentage rent rate is established.

(b) The related itemized amounts of percentage rent computed, as herein provided, and the total thereof.

(c) The total rent previously paid by Lessee for the accounting year within which the preceding month falls.

4.6. Concurrently with the rendering of each monthly statement, during the Second Rental Period Lessee shall pay the greater of the following two amounts:

(a) The total percentage rent computed for that portion of the accounting year beginning on the first day of the accounting year and ending with and including the last day of the preceding month [Section 4.5(b) above], less total rent previously paid for the accounting year [Section 4.5(c) above], or

(b) One-twelfth (1/12th) of the Minimum Annual Rent then in effect, multiplied by the number of months from the beginning of the accounting year to and including the preceding month, less total rent previously paid for the accounting year [Section 4.5(c) above].

4.7. All payments shall be delivered to and statements required under this ARTICLE 4 shall be filed with Lessor's Treasurer. Checks shall be made payable to the City of Alameda and mailed to _____, or delivered to _____

_____. Lessor may change the designated place of payment and filing at any time upon ten (10) days' written notice to Lessee. Lessee assumes all risk of loss and responsibility for late charges, as hereinafter described, if payments are made by mail.

4.8. Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease. Accordingly, in the event Lessee is delinquent in rendering to Lessor an accounting of rent due or in remitting the rent due in accordance with the rent provisions of this Lease, Lessee shall pay, in addition to the unpaid rent, five percent (5%) of the delinquent rent. If rent is still unpaid at the end of fifteen (15) days, Lessee shall pay an additional five percent (5%) for a total of ten percent (10%) of the delinquent rent. The parties hereby agree that said late charges are appropriate to compensate Lessor for loss resulting from rent delinquency including, without limitation, lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Acceptance of such late charges and any portion of the late payment by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of its other rights and remedies. The City Manager of Lessor shall have the right to waive for good cause any late charges upon written application of Lessee for any such delinquency period.

4.9. All payments by Lessee to Lessor shall be by a good and sufficient check. No payment made by Lessee or receipt or acceptance by Lessor of a lesser amount than the correct amount of rent due under this Lease shall be deemed to be other than a payment on account of the earliest rent due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance or pursue any other available remedy.

4.10. Lessee shall, at all times during the term of this Lease, keep or cause to be kept, accurate and complete records and double entry books of account of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted herein. The records must be supported by source documents of original entry such as sales invoices, cash register tapes, bank depository documentation, purchase invoice or other

pertinent supporting documents. Financial statements (a balance sheet and income/expense statement), based upon the double entry books of account, shall be prepared not less than annually and copies thereof delivered to Lessor within one hundred and twenty (120) days following the end of each calendar year during the term of this Lease.

All retail sales shall be recorded by means of cash registers, except as expressly provided herein. All cash registers shall be equipped with sales totalizer counters for all sales categories, as herein provided, which counters are locked in, constantly accumulating, and which cannot be reset. Said registers shall further contain tapes upon which sales details are imprinted. Beginning and ending sales totalizer counter readings shall be made a matter of daily record. Retail sales may be recorded by a system other than cash registers, provided such system is first approved in writing by the City Manager of Lessor.

4.11. All Lessee's books of account, records, financial statements, and documentation related to this Lease or to business operations conducted within or from the Leased Premises, shall be kept either at the Leased Premises or at such other locations as are acceptable to Lessor, which alternate locations shall include Lessee's principal place of business within the State of California so long as Lessee has provided Lessor with written notice thereof. Lessor shall have the right at any and all reasonable times upon fifteen (15) days prior written notice to examine and audit said books, records, financial statements, and documentation, without restriction, for the purpose of determining the accuracy thereof, the accuracy of the monthly statements of gross income submitted and the accuracy of rent paid to Lessor. In the event that the Lessee's business operations conducted within or from the Leased Premises are part of a larger business operation of the Lessee, and any part of the books, records, financial statements and documentation required herein is prepared only for the larger operation, and not solely for the business operations of the Leased Premises, then the Lessor shall also have the right to examine and audit that part of said books, records, financial statements, and documentation of the larger business operation.

Lessee's failure to keep such books of account, records, financial statements, and documentation and make them available for inspection by Lessor is a breach of this Lease. The Lessor shall have the discretion to require the installation of any additional, reasonable accounting methods or controls it may deem necessary, subject to prior written notice. In the event the Lessee does not make available the original records and books of account at the Leased Premises or within the limits of Alameda County, Lessee agrees to pay all additional and reasonable travel expenses incurred by Lessor in conducting an audit at the location where said records and books of account are maintained.

Additionally, if the audit reveals a discrepancy of more than five percent (5%) between the rent due as reported by Lessee and the rent due as determined by the audit, and/or Lessee has failed to maintain complete and accurate books of account, records, financial statements, and documentation in accordance with this Lease, then Lessee shall pay the cost of the audit, as determined by the Lessor, plus the rent determined to have been underpaid. In addition, should Lessee fail to pay said amounts within thirty (30) days after written notice from Lessor, then Lessee shall pay an additional fee of ten percent (10%) of said unpaid amounts as compensation to Lessor for administrative costs and loss of interest as previously described herein, along with the rent determined to have been underpaid.

Furthermore, if the audit reveals that rent due to Lessor is less than five percent (5%) between the rent due as reported by Lessee and the rent due as determined by the audit, and should Lessee fail to pay said unpaid rent within thirty (30) days after written notice from Lessor, then Lessee shall pay an additional fee of ten percent (10%) of said unpaid rent as compensation to Lessor for administrative costs and loss of interest as previously described herein, along with the rent determined to have been underpaid.

Lessee agrees to pay such amounts and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that Lessor will incur from Lessee's late payment. Acceptance of late charges and any portion of the late payment by Lessor shall in no event constitute a waiver of Lessee default with respect to late payment, nor prevent Lessor from exercising any of the other rights and remedies granted in this Lease. The City Manager of Lessor shall have the right to waive for good cause any late charges upon written application of Lessee for any such delinquency period.

4.12. Gross income upon which the percentage rent is to be based shall include all income resulting from occupancy or use of the Leased Premises in any manner, whether by Lessee, its sublessees or concessionaires, or parties operating through Lessee, its sublessees, or concessionaires, from whatever source derived and whether for cash or credit.

Gross income shall include any manufacturer's or importer's excise tax included in the prices of the goods sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge.

Gross income, however, shall not include any of the following: (1) sales of United States postage; (2) any sales or excise taxes payable by Lessee to any governmental agency as a direct result of operations under this Lease, provided that the amount of such taxes is shown on the books and records elsewhere herein required to be maintained; (3) gratuities, provided the customer voluntarily determines the amount of said gratuity to be paid, or the customer is aware that the Lessee has added a pre-established gratuity to the charge for the services rendered and said additional amount is segregated and identified as a gratuity on the billing to the customer. Further, refunds for goods returned shall be deducted from current gross income upon their return; (4) security deposits (provided, however, in the event any security deposit is applied by the Lessor towards any rent due the Lessor, such security deposit shall, upon any such application, be treated as gross income subject to percentage rent); (5) any income, earnings or receipts which, under the Internal Revenue Code of 1986, as amended, are derived from the sale or disposal of any capital assets; (6) any income, savings or receipts derived from Lessee's investments or any funds not invested in the Leased Premises; (7) proceeds of loans to the Lessee and (8) funds invested in the Lessee.

ARTICLE 5

PERCENTAGE RENT

5.1. Effective on the first day of the Second Rental Period and continuing for a period of ten (10) years (i.e. until the tenth (10th) anniversary of the commencement of the Second Rental Period) percentage rent shall be eleven percent (11%) of the gross income (as more

particularly described in Section 4.12) from the conduct of Lessee's business on the Leased Premises. Commencing on the tenth (10th) anniversary of the first day of the Second Rental Period and every ten (10) years thereafter, percentage rent shall be adjusted based on the fair market percentage rent as of each such date as determined in accordance with the provisions of this ARTICLE 5.

5.2. Beginning six (6) months prior to the commencement of the Second Rental Period (and every ten (10) years thereafter), the percentage rent provided for in this Lease shall be mutually agreed upon by Lessor and Lessee; provided, however, the Minimum Annual Rent shall be further adjusted in accordance with Paragraph 4.2 herein.

5.3. In the event the parties cannot agree to the percentage rent for the first ten (10) year period beginning on the tenth (10th) anniversary of the first day of the Second Rental Period (or any ten (10) year adjustment period thereafter) within three (3) months prior to the commencement of such rental period, the percentage rent for said rental period shall be determined by three (3) appraisers as hereinafter provided. All of the appraisers shall be qualified real estate appraisers and designated member of the Appraisal Institute (or, if the Appraisal Institute is not then in existence, an organization of substantially the same stature) with at least five (5) years experience in appraising commercial real estate, that are licensed to practice in the State of California. —

(a) For purposes of this Lease, percentage rent for the Fifth Rental Period shall mean, as of the commencement of the Fifth Rental Period, the fair market percentage rent for the use permitted under this Lease then being charged by lessors of comparable marina facilities of comparable size and quality as the Leased Premises located within the northern California area, taking into consideration (i) the age and condition of the improvements to the Leased Premises, (ii) the then remaining term of this Lease and (iii) any other factors utilized by qualified appraisals based upon recognized real estate appraisal principles and methods.

(b) The parties agree that, after notice by either party to the other requesting an appraisal determination of percentage rent, each party shall appoint one appraiser within thirty (30) days. Notice of the appointment shall be given by each party to the other party when made. Should either party fail to appoint its appraiser within said time period, then the party that has appointed its appraiser may petition the Superior Court of the State of California, County of Alameda, to appoint the second appraiser. The party making the application shall give the other party notice of its application. All costs, including attorney fees associated with the court's appointment of the second appraiser, shall be borne by the party which failed to appoint its appraiser.

(c) The two appraisers shall immediately choose a third appraiser to act with them. If they fail to select a third appraiser within thirty (30) days following the appointment of the second appraiser, on application by either party, the third appraiser shall be promptly appointed by the then presiding judge of the Superior Court of the State of California, County of Alameda, acting in his/her individual capacity. The party making the application shall give the other party notice of its application.

(d) By no later than thirty (30) days following the appointment of the third appraiser, Lessor and Lessee shall each provide the other and each of the three appraisers with (i) its rent proposal which shall consist of the percentage rent (and/or gallonage and/or flat rents if applicable) for the rental period in question (the "Rent Proposal") and (ii) its appraisal report prepared by an appraiser with qualifications no less than the qualifications of appraisers appointed under Sections 5.3(a) and 5.3(b), if any. Neither Lessor nor Lessee shall be required to submit a separate appraisal report.

(e) Within thirty (30) days following the selection of the third appraiser, the three appraisers shall conduct a meeting in the City of Alameda, California. The three appraisers shall hear and consider the presentations of the Lessor and Lessee and their appraisal witnesses and any additional written information furnished by Lessor or Lessee. The amount and kind of evidence allowed and the rules of discovery and testimony shall be decided solely by the third appraiser after consultation with the appraisers appointed by the Lessor and Lessee.

5.4. The award determined by the appraisers shall be effective and retroactive to the first day of the Fifth Rental Period. The award shall be in writing and shall be made no later than fifteen (15) days following the meeting provided for in Section 5.3(e). The award shall be either Lessor's Rent Proposal or Lessee's Rent Proposal. The appraisers shall not possess any right or authority to propose a compromise between Lessor's Rent Proposal and Lessee's Rent Proposal or the modification of either Rent Proposal. The appraisers shall select whichever of the two Rent Proposals sets forth the percentage rent that the majority of the appraisers believe is closest to the market percentage rent for the Leased Premises for the rental period in question. A unanimous decision of the three appraisers is not required. Within ten (10) days of the date the award is made, (a) the underpayment of the percentage rent, if any, shall be paid by Lessee to Lessor, or (b) the overpayment of the percentage rent, if any, may be credited by Lessee against percentage rent next coming due until any such overpayment has been credited in full.

ARTICLE 6

[INTENTIONALLY OMITTED]

ARTICLE 7

IMPROVEMENTS

7.1. In accordance with the procedures described herein, Lessee may, at its own expense, make alterations or changes, or cause to be made, built, installed, or removed any structures, machines, appliances, utilities, signs, or other improvements necessary or desirable for the authorized use of the Leased Premises; provided, however, said work shall be in accordance with plans and specifications, including but not limited to working drawings, hereinafter "Plans," previously submitted to and approved in writing by Lessor, which approval may not be unreasonably withheld.

7.2. No construction, installation, or removal of any improvement upon the Leased Premises shall commence without Lessor's prior written approval, which approval may not be unreasonably withheld. Any and all changes to such Plans must be approved by Lessor, which

approval may not be unreasonably withheld. Further, all work shall be in accordance with all applicable laws, regulations, ordinances, and codes.

7.3. Notwithstanding the foregoing, within the interior of any enclosed building structure, and without Lessor's prior consent, Lessee shall have the right to install and/or remove machines, equipment, appliances, and trade fixtures that are necessary or desirable for the authorized use of the Leased Premises.

7.4. When reasonably required by Lessor, Lessee shall, at its sole cost and expense, pave and/or landscape the entire portion of the Leased Premises not covered by structures. All paving and/or landscaping shall be in accordance with Plans which must be submitted to and approved in writing by Lessor, which approval may not be unreasonably withheld, prior to the commencement of any such paving and/or landscaping.

7.5. Lessee shall notify Lessor prior to submitting application(s) to any governmental regulatory agency for any development or construction permit or license pertaining to the Leased Premises. Lessee shall also provide Lessor with a copy of all application(s) within five (5) days of making said application(s), along with copies of all Plans submitted as part of the application(s). Lessee shall also provide Lessor, within ten (10) days of Lessee's receipt, a copy of all permits, licenses, or other authorizations subsequently issued.

7.6. Lessee agrees that no banners, pennants, flags, spinners, or other advertising devices, nor any temporary signs, shall be flown, installed, placed, or erected on the Leased Premises without Lessor's prior written approval, which approval may not be unreasonably withheld.

ARTICLE 8

CONSTRUCTION OF IMPROVEMENTS

8.1. During the first year of the term of the Lease, Lessee shall commence the construction of and diligently proceed to completion the renovation work at the Leased Premises described in Exhibit "C" attached hereto and by this reference made a part hereof (hereinafter "Commercial Project") at an assumed cost of not less than Four Hundred Thousand Dollars (\$400,000). The Commercial Project shall be completed substantially in accordance with plans and specifications, including but not limited to working drawings (hereinafter "Commercial Plans") previously approved in writing by Lessor, subject to changes thereto as may be approved by Lessor, which approval may not be unreasonably withheld. Said Commercial Plans, and any approved changes thereto, are by this reference made a part hereof. In the event of any inconsistency between the Plans and the terms and conditions of this Lease, the terms and conditions of this Lease shall prevail.

(a) Within sixty (60) days following completion of any substantial improvement that is part of the Commercial Project, but at not less than quarterly intervals, Lessee shall furnish Lessor an itemized statement of the actual construction cost of such improvement. Any statement delivered by Lessee hereunder shall be sworn to and signed, under penalty of perjury, by Lessee or its responsible agent.

(b) Lessee shall maintain true, accurate, and complete records to support said statements. Such records shall include, but are not limited to a general ledger, vendor invoices, cancelled checks, construction loan documentation, agreements with third-party contractors, and contractor progress payment billings. Additionally, should Lessee perform any construction in-house, Lessee shall substantiate the actual work performed by maintaining a payroll journal, copies of cancelled payroll checks, and timecards or other payroll documents which show dates worked, hours worked, and pay rates.

(c) Books and records herein required shall be maintained and made available either at the Leased Premises or at such other location as is agreeable to Lessor. Further, Lessor shall have the right at any and all reasonable times to examine and audit said books and records without restriction for the purpose of determining the accuracy thereof, and the accuracy of the aforesaid statement. In the event Lessee does not make available the original books and records at the Leased Premises or within the limits of Alameda County, Lessee agrees to pay all additional and reasonable travel related expenses incurred by Lessor in conducting an audit at the location where said books and records are maintained.

8.2. No construction of any improvements upon the Leased Premises, including, but not limited to, the Commercial Project, may trigger additional environmental reviews of the Leased Premises or the need to meet current city parking code requirements; the commercial buildings may be expanded to increase gross leasable area by up to, but not exceeding, twenty-five percent (25%) without triggering the need to meet current city parking code requirements.

8.3. Commencing with the month (the "First Deposit Month") following the first day of the Second Rental Period, and continuing during the remaining term of the Lease, Lessee shall establish and maintain a reserve fund (the "Capital Improvement Fund") in accordance with the provisions of this Section 8.3 for the cost of Permitted Capital Expenditures (as defined below) for the Leased Premises. Lessee and Lessor agree and acknowledge that the purpose of the Capital Improvement Fund shall be to provide funds for the costs of additions, replacements, renovations or significant upgrades of or to the Leased Premises, including building exteriors and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural or roof) that constitute capital replacements, improvements or equipment under generally accepted accounting principles consistently applied ("Permitted Capital Expenditures").

Commencing on the fifteenth (15th) day of the First Deposit Month and continuing on or before the fifteenth (15th) day of each month thereafter during the remaining term, Lessee shall make a monthly deposit to the Capital Improvement Fund in an amount equal to two percent (2%) of total gross income subject to percentage rent for the previous month. All interest and earnings on the Capital Improvement Fund shall be added to the Capital Improvement Fund, but shall not be treated as a credit against the Capital Improvement Fund deposits required to be made by Lessee pursuant to this Section 8.3.

The Capital Improvement Fund shall be held in an account established with a reputable financial institution (including Lessee's Consented-To-Lender, which shall be deemed a depository acceptable by Lessor) reasonably acceptable to Lessor into which deposits shall be made by Lessee (and/or into which Lessee's Consented-To-Lender shall provide funds) pursuant

to this Section 8.3. The amounts to be added to the Capital Improvement Fund shall be inclusive of amounts required to be deposited with and held by Consented-To-Lender, provided that the Consented-To-Lender acknowledges that such amounts are subject to the requirements and shall be made available for the purposes of this Section 8.3. Disbursements shall be made from the Capital Improvement Fund only for costs which constitute Permitted Capital Expenditures which have been approved by the Lessor, which such approval shall not be unreasonably withheld, conditioned or delayed. For the purpose of obtaining the Lessor's prior approval of any Capital Improvement Fund disbursements, Lessee shall submit to Lessor on an annual calendar year basis a capital expenditure plan for the upcoming year which details the amount and purpose of anticipated Capital Improvement Fund expenditures for which Lessee requests Lessor's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Any anticipated expenditure set forth in such capital expenditure plan which is approved by Lessor as an acceptable Capital Improvement Fund disbursement shall be considered pre-approved by Lessor (but only up to the amount of such expenditure set forth in the annual capital expenditure plan) for the duration of the upcoming year. Lessee shall have the right during the course of each year to submit to Lessor for Lessor's approval revisions to the then current capital expenditure plan in effect for such year, or individual expenditures not noted on the previously submitted capital expenditure plan. Prior to the disbursement of any amounts from the Capital Improvement Fund, Lessee shall furnish to Lessor applicable invoices, evidence of payment and other back-up materials reasonably acceptable to Lessor concerning the use of amounts from the Capital Improvement Fund.

All then-existing amounts in the Capital Improvement Fund shall be expended for Permitted Capital Expenditures not later than ten (10) years prior to the expiration of the term of the Lease. Thereafter, if Lessor elects to require Lessee to remove the improvements at the end of the term and requires Lessee to provide a Removal Security Fund to secure its obligation to perform such removal obligations, in accordance with Section 32.3 of this Lease, then Lessee shall have the right to contribute the deposits thereafter required to be made by Lessee under this Section 8.3 towards Lessee's obligations to fund the Removal Security Fund in Section 32.3, but only if and to the extent that there are sufficient funds made available in the Capital Improvement Fund for any needed Permitted Capital Expenditures, as reasonably determined by Lessor.

ARTICLE 9

TITLE TO IMPROVEMENTS

9.1. For the purpose of this ARTICLE 9, "improvements" shall include, but are not limited to, subsurface improvements. On the Commencement Date of this Lease, all existing structures, buildings, installations, and improvements located on the Leased Premises are owned by and title thereto is vested in Lessee. All said existing structures, buildings, installations, and improvements, as well as structures, buildings, installations, and improvements of any kind placed on the Leased Premises by Lessee subsequent to the Commencement Date of this Lease shall, at the option of Lessor, be removed by Lessee at Lessee's expense; provided, however, Lessor may only exercise said option effective as of the Termination Date or sooner termination of this Lease. If Lessor exercises such option, Lessee shall remove such structures, buildings, installations, and/or improvements within sixty (60) days after the Termination Date of this

Lease or sooner termination thereof, whichever occurs earlier. Lessee agrees to repair any and all damage occasioned by any such removal. Title to any such structures, buildings, installations, and/or improvements not so removed within said sixty (60) days shall vest in Lessor, without cost to Lessor and without any payment to Lessee, except that Lessor shall have the right to have them removed and to repair any and all damage occasioned by their removal, all at the expense of Lessee.

9.2. On the Commencement Date of this Lease, all existing machines, appliances, equipment, and trade fixtures located on the Leased Premises are owned by and title thereto is vested in Lessee. Furthermore, all machines, appliances, equipment, and trade fixtures placed on the Leased Premises by Lessee subsequent to the Commencement Date of this Lease are also owned by and title thereto is vested in Lessee. All machines, appliances, equipment, and trade fixtures shall be removed by Lessee, at Lessee's expense, within sixty (60) days after the Termination Date of this Lease or sooner termination thereof, whichever occurs earlier. Provided, however, Lessee agrees to repair any and all damage occasioned by their removal.

9.3. If machines, appliances, equipment, and trade fixtures required by Lessor to be removed are not removed by Lessee within sixty (60) days after the Termination Date of this Lease or sooner termination thereof, whichever occurs earlier, the same may be considered abandoned and shall thereupon become the property of Lessor without cost to Lessor and without any payment to Lessee, except that Lessor shall have the right to have them removed and to repair any and all damage occasioned by their removal, all at the expense of Lessee.

9.4. During any period of time employed by Lessee under this ARTICLE 9 to remove structures, buildings, installations, improvements, machines, appliances, equipment, and trade fixtures, Lessee shall pay no rent to Lessor.

ARTICLE 10

LIENS

10.1. Lessee shall defend, indemnify, and hold harmless Lessor against all claims and liens for labor, services, or materials in connection with improvements, repairs, or alterations made by Lessee or Lessee's sublessees, contractors, and agents on the Leased Premises, and the costs of defending against such claims and liens, including reasonable attorneys' fees.

10.2. In the event any such claim or lien, or any other claim(s), lien(s) or levy(ies) whatsoever of any nature caused by Lessee or Lessee's sublessees, contractors, and agents, is filed against the Leased Premises or the leasehold interests of Lessee therein, Lessee shall, upon written request of Lessor, deposit with Lessor a bond conditioned for the payment in full of all claims upon which said lien(s) or levy(ies) have been filed. Such bond shall be acknowledged by Lessee, as principal, and by an entity licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company, as surety. Lessor shall have the right to declare this Lease in default in accordance with the provisions of ARTICLE 13 hereof in the event the bond required by this Paragraph 10.2 has not been deposited with Lessor within ten (10) days after written request has been delivered to Lessee.

10.3. This provision shall not apply to a foreclosure of a trust deed or mortgage encumbering the leasehold if the encumbrance has previously received Lessor consent in accordance with ARTICLE 11 herein.

ARTICLE 11

LEASE ENCUMBRANCE

11.1. Lessor's Consent to Encumbrance. Lessee shall not encumber the Lease, leasehold interest, and the improvements thereon by a deed of trust, mortgage, or other security instrument to assure the payment of Lessee's promissory note, without Lessor's prior written consent, in each instance, which such consent shall not be unreasonably withheld, conditioned or delayed; provided, upon Lessor's request, Lessee shall provide Lessor with reasonably satisfactory evidence that the debt service coverage ratio (reasonably projected ratio of the net operating income from the Leased Premises, i.e. all gross operating revenue anticipated to be received during the next twelve (12) month period, less all amounts reasonably projected for the operation and maintenance of the Leased Premises, including the amount of any rent payable to the Lessee hereunder, for the same twelve (12) month period) with respect to the indebtedness secured by the encumbrance in favor of a Consented-To-Lender is at least 1.25 to 1. If Lessee enters into any deed of trust, mortgage, or other security instrument that encumbers the Lease, leasehold interest, or the improvements thereon without Lessor's prior written consent, Lessor shall have the right to declare this Lease in default. In the event Lessee requests Lessor's consent to any Lease encumbrance, hereinafter referred to as a "transaction" in this ARTICLE 11, Lessee shall reimburse Lessor for all Lessor's reasonable costs and expenses associated with said transaction. Said costs shall include reasonable legal fees and disbursements relating to or arising out of any such transaction, regardless of whether such transaction is consummated. Notwithstanding any other provision of this Article 11, until such time as the Marina Project is completed as provided in Section 8.1, the net proceeds (i.e. the loan amount, less any and all fees and costs incurred in connection with obtaining the loan and the payoff of any loan secured by a pre-existing encumbrance on Lessee's leasehold interest) from any loan by a Consented-To-Lender shall be used exclusively for renovation and construction of the Marina Project to the extent necessary to complete the Marina Project.

11.2. Definition of "Consented-to-Lender". The term "Consented-to-Lender" as hereinafter used in this Lease means the lender holding an encumbrance consented to by Lessor. It may include one or more lenders holding obligations of the Lessee secured by a single deed of trust, mortgage, or other security instrument.

11.3. Voluntary Lease Surrender. Without the prior written consent of the Consented-To-Lender, should Lessee owe the Consented-to-Lender any amounts under any security instrument encumbering this Lease, leasehold interest, or the improvements thereon, Lessor will not accept the voluntary surrender, cancellation, or termination of this Lease before the expiration of the term thereof.

11.4. Loan Default. If a deed of trust mortgage, or other security instrument consented to by Lessor is in default at any time, the Consented-to-Lender or an affiliate of the Consented-

to-Lender (provided the affiliate is an entity the majority of which is owned by the Consented-to-Lender) shall, as provided below, have the right, without Lessor's prior consent, to:

- (a) Accept an assignment of the Lease in lieu of foreclosure; or
- (b) Cause a foreclosure sale to be held pursuant to either judicial proceedings or power of sale as provided in its deed of trust, mortgage, or other security instrument; provided, however, no assignment to a successful bidder, other than the Consented-to-Lender, or its affiliate (provided the affiliate is an entity the majority of which is owned by the Consented-to-Lender) shall be effective without Lessor's prior written consent under Section 11.6.
- (c) A new lease pursuant to Section 11.10(h) herein.

11.5. No Lease Obligations. Before said Consented-to-Lender or any other future consented-to assignee, acquires the leasehold interest, it shall, as an express condition precedent, agree in writing to assume each and every obligation under the Lease. Furthermore, before any said Consented-to-Lender, or any other future consented-to assignee or purchaser may subsequently assign or sublease all or any portion of the leasehold interest shall, in each instance, obtain Lessor's prior written consent. Further, a Consented-to-Lender that has: (i) acquired the leasehold interest and assumed the Lessee's obligations, or (ii) entered into a new lease pursuant to ARTICLE 13 herein, concurrently with a termination of this Lease, shall be released from any further obligations under this Lease after it assigns the leasehold interest to an assignee consented to by Lessor, in accordance with this ARTICLE 11.

11.6. Lessor's Consent to Assignment. Whenever a Consented-to-Lender is required by the provisions of this ARTICLE 11 to obtain Lessor's prior consent to an assignment to the successful bidder upon a foreclosure by said Consented-to-Lender, then Lessor will grant such consent if:

- (a) The principal(s) of such assignee, purchaser, or sublessee are reputable (meaning the absence of reputations for dishonesty, criminal conduct, or association with criminal elements -- "reputable" does not mean "prestigious," nor does the determination of whether one is reputable involve considerations of personal taste or preference);
- (b) The principal(s) of such assignee, purchaser, or sublessee possess sufficient business experience and financial means to perform Lessee's obligations under this Lease--according to the then-current standards for business experience and financial means that Lessor generally requires of new or renewed lessees at the time of the request; and
- (c) The assignee, purchaser, or sublessee agrees in writing to assume each and every obligation under this Lease.
- (d) Further, Lessor will not unreasonably or arbitrarily withhold such consent. Provided, however, no such assignee, purchaser, or sublessee shall subsequently: (i) assign, transfer, or sublease any or all of the Leased Premises without Lessor's prior written consent, in accordance with ARTICLE 12 herein; or (ii) encumber the Lease, leasehold interest, and improvements thereon without Lessor's prior written consent, in accordance with this ARTICLE 11.

(e) Provided, further, if said Consented-to-Lender becomes the lessee by reason of: (i) being the successful bidder upon foreclosure, or (ii) an assignment in lieu of foreclosure, or (iii) being the lessee of a new lease entered into pursuant to Section 11.10(h) herein, then said Consented-to-Lender may, upon a subsequent assignment or subleasing of all or substantially all of the Leased Premises, take back from its assignee, purchaser, or sublessee, a purchase money deed of trust, mortgage, or security instrument. Provided, however, said Consented-to-Lender must execute and submit to Lessor documentation substantially in the same form and content as was originally submitted to Lessor when consent was granted to the earlier encumbrance. Only said Consented-to-Lender or the successful bidder upon said foreclosure may enforce the provisions of this ARTICLE 11. Further, no other third party shall have the rights or remedies, as third-party beneficiaries, or otherwise, hereunder.

(f) The burden of producing evidence and the burden of proof showing Lessor that a prospective assignee, purchaser, or sublessee meets each and all of the aforesaid qualifications and standards shall be on said Consented-to-Lender or successful bidder upon foreclosure. Lessor's decision shall be based upon Lessor's high duty of care in administering a valuable public resource, which it holds in trust for the people of the State of California. In the absence of fraud or arbitrary or unreasonable action in applying or failing to apply said standards, Lessor's decision shall be final.

11.7. Notice of Foreclosure Sale. Said Consented-to-Lender shall include a statement in any Notice of Foreclosure Sale covering the foregoing requirements for Lessor's consent to an assignment upon said foreclosure.

11.8. Subsequent Encumbrance. Except for subleases, utility easements, and other necessary rights-of-way, Lessor shall not expressly consent to a subsequent lien or encumbrance against the Leased Premises without said Consented-to-Lender's prior written consent.

11.9. Assignment of Security Interest. Said Consented-to-Lender shall not assign its security interest in the Leased Premises in whole or in part without Lessor's prior written consent, in each instance. Provided, however, Lessor's consent to such an assignment shall be deemed granted (and such assignee will for all purposes of this Lease be deemed to be a Consented-to-Lender) if the assignment is to:

(a) A financial institution in good legal standing under the laws of its jurisdiction of incorporation having assets exceeding Five Hundred Million Dollars (\$500,000,000); or

(b) The United States of America or any state thereof, or any agency thereof;
or

(c) An assignee by operation of law (e.g., a state insurance department engaged in supervising the liquidation or rehabilitation of an insurance company lender).

(d) Provided, however, for purposes of the foregoing provisions "financial institution" shall mean: (i) an insurance company qualified to do business in the State of California; or (ii) a federally- or state-chartered bank, savings bank, or savings and loan association; or (iii) a pension or retirement fund operated for the employees and former

employees of, and regulated and controlled by, the United States of America or any state thereof, or any agency thereof: e.g., the California State Teachers' Retirement System.

(e) Provided, further, no subsequent assignment by such assignee will be permitted unless:

(i) The assignment conforms to all requirements of this ARTICLE 11;

(ii) A duplicate original(s) of such assignment is furnished Lessor; and

(iii) In case of an assignment where Lessor's consent is deemed granted: (i) assignee promptly furnishes Lessor reasonably satisfactory evidence that said assignee complies with the foregoing requirements, and (ii) said assignee expressly agrees to take such assignment subject to all Lessor's rights under this Lease.

11.10. Rights of a Consented-to-Lender. Until such time as the lien of a Consented-to-Lender (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 11.10 are solely for the benefit of the Consented-to-Lender, and are not for the benefit of, nor may they be enforced by, Lessee):

(a) Lessor 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 11.10(e) this Lease), nor to any cancellation or surrender occurring without Lessor's consent pursuant to the provisions of the United States Bankruptcy Code, 11 U.S.C. 101, et seq.

(b) Intentionally Omitted.

(c) If, in connection with securing by Lessee of any Approved Mortgage, the Consented-to-Lender requests an amendment with respect to the lender protection rights set forth in this ARTICLE 11, Lessor agrees not to unreasonably withhold its consent to any such amendment; provided, that Lessor shall not be required to consent to such an amendment if it would, in Lessor's reasonable determination, materially impair any of Lessor's rights or materially increase any of Lessor's obligations under this Lease. Further, Lessor shall not enter into any amendment of this Lease without the Consented-to-Lender's, if any, prior written approval.

(d) Lessor, upon providing Lessee with any notice of default under this Lease, shall, at the same time, provide a copy of such notice to every Consented-to-Lender whose loan is secured by an Approved Mortgage and who has given written notice to Lessor of its interest in Lessee's estate. After such notice has been given to a Consent to Lender, such Consented-to-Lender 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 Consented-to-Lender as specified in Section 11.10(e) below. Lessor shall accept performance by or at the instigation of such Consented-to-Lender as if the same had been done by Lessee.

(e) Notwithstanding anything to the contrary contained in this Lease, Lessor shall have no right to terminate this Lease on account of an uncured monetary default or non-monetary default of Lessee unless, following expiration of the applicable cure period provided for in this Lease, Lessor first provides each Consented-to-Lender written notice of its intent to terminate the Lease and the Consented-to-Lender 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 60 day period (or is such that possession of the Leased Premises is necessary for the Consented-to-Lender 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 Consented-to-Lender shall have fully cured any monetary default within said 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 Consented-to-Lender commences curing such non-monetary default within said 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 Consented-to-Lender to continue any foreclosure proceeding it may have commenced against Lessee after all defaults have been cured by the Consented-to-Lender, and if such defaults shall be cured and the Consented-to-Lender 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 Consented-to-Lender 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 Consented-to-Lender, and such non-monetary default shall be deemed to be waived following the Consented-to-Lender's acquisition of Lessee's estate and such Consented-to-Lender's timely cure of all monetary defaults and all non-monetary defaults which are capable of cure by such Consented-to-Lender in accordance with the foregoing provisions.

(f) No Consented-to-Lender, acting in such capacity, shall be deemed to be a transferee of this Lease or of Lessee's estate so as to require such Consented-to-Lender, 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 Consented-to-Lender and any proposed assignee of such Consented-to-Lender shall deliver written notice to Lessor of the assignment of the Consented-to-Lender's promissory note and security therefor together with the assignee's address to which notices are to be sent, the Consented-to-Lender may, without Lessor's consent, assign Lessee's promissory note secured by the lien on Lessee's estate to any institution which would qualify as a Consented-to-Lender under Section 11.9. Upon acquiring Lessee's estate pursuant to a foreclosure or deed in lieu of foreclosure, the Consented-to-Lender shall immediately notify Lessor in writing of its name and address; and the method by which the Consented-to-Lender acquired Lessee's estate and the documentation to evidence such acquisition, together with the name, address and authorized person of the Consented-to-Lender to whom correspondence and notices may be delivered. Upon taking an assignment of Lessee's estate from a Consented-to-Lender under Section 11.10(b) of this Lease, the assignee shall deliver to Lessor written notice of (a) the effective date of the assignment, (b) the identity 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 Lessor, and executed by the assignee, in which such assignee shall agree in writing for the benefit of Lessor 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 Lessor has delivered a notice of such default (provided, however, that if Lessor has delivered an Estoppel Certificate to the Consented-to-Lender and/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 Consented-to-Lender), 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 11; 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.

(g) Notwithstanding any other provision of this Lease, but subject nevertheless to the provisions of Sections 11.10(b) and 11.10(h) 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.

(h) 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, any Consented-to-Lender of an Approved Mortgage who has requested notice from Lessor in writing and furnished its name and addresses to Lessor, may, within thirty (30) days after the date of such rejection or disaffirmance deliver a written offer to Lessor to enter into a new lease of the Leased Premises with such Consented-to-Lender as Lessee (the "New Lease"), prepared and executed by such Consented-to-Lender, which 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. Such offer shall be accompanied by two duplicate original forms of the New Lease, executed by Consented-to-Lender, and Consented-to-Lender shall, as a condition of the acceptance and execution by Lessor of the New Lease: (i) pay to Lessor at the time of the execution by Consented-to-Lender and delivery of said New Lease any and all sums for unpaid rent payable by Lessee pursuant to this Lease had this Lease not been so rejected and terminated, to and including the date of delivery of such written offer, less the net amount (i.e., net of all reasonable expenses) of all sums received by Lessor 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 Lessor resulting from the review 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 Consented-to-Lender 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 Consented-to-Lender. Within thirty (30) days of receipt by Lessor of such written offer from Consented-to-Lender and the satisfaction of the conditions set forth above, Lessor shall accept such New Lease by executing and delivering a duplicate original copy thereof to such Consented-to-Lender. Nothing herein contained shall be deemed to impose any obligation on the part of Lessor to deliver physical possession of the Leased Premises to such Consented-to-Lender unless Lessor at the time of the execution and delivery of such New Lease shall have obtained physical possession thereof and Lessor has insurable fee simple title to the Leased Premises, free and clear of this Lease and the claims of all persons claiming thereunder.

(i) The Consented-to-Lender that becomes the Lessee under any such New Lease made pursuant to Section 11.10(h) shall be liable to perform the obligations imposed on the Lessee by such New Lease to the same extent as a Consented-to-Lender 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 11.10(b), above, the Consented-to-Lender shall be relieved of all obligations of the Lessee under the New Lease first arising after the date of such assignment.

(j) After the termination of this Lease and during the period thereafter during which any Consented-to-Lender is entitled to enter into a New Lease of the Leased Premises pursuant to Section 11.10(h), Lessor 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, Lessor shall receive all rent and other payments due from all sublessees (subject to Lessor'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 Consented-to-Lender and shall deposit such rents and payments in a separate and segregated account, but may withdraw and pay to Lessor such sums as are required or were required to be paid to Lessor 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, Lessor shall account to the Consented-to-Lender 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 Lessor acting as an agent pursuant to this Section 11.10(j) shall not be deemed an acceptance by Lessor for its own account of the attornment of any sublessee unless Lessor shall have agreed in writing with such Sublessee that its tenancy shall be continued following the expiration of any period during which a Consented-to-Lender 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 Lessor determines that it cannot accept rent payments from a sublessee without risk of being deemed to have accepted such sublease's attornment (and Lessor has not previously agreed to

recognize such sublessee in the event of a default under this Lease by Lessee), Lessor shall have the right to direct such sublessee to pay such rents directly to Consented-to-Lender. If Consented-to-Lender shall fail to exercise its right to enter into a New Lease or fail to timely execute such New Lease pursuant to Section 11.10(h), all rents collected by Lessor on behalf of such Consented-to-Lenders pursuant to this Section 11.10(j) shall become Lessor's property free and clear of any claim by such Consented-to-Lenders and such Consented-to-Lenders shall have no further rights with respect thereto.

(k) Intentionally Omitted.

Notices from Lessor to any Consented-to-Lender shall be mailed to the address of the Consented-to-Lender set forth in the Approved Mortgage furnished to Lessor or at such other address as may have been furnished to Lessor by such Consented-to-Lender in writing. All notices from the Consented-to-Lender to Lessor shall be mailed to the address designated pursuant to the provisions of this Lease or such other address as Lessor 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 12

ASSIGNMENT - SUBLEASE

12.1. Lessee shall not, without the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed:

(a) Assign or transfer the whole or any part of this Lease or any interest therein;

(b) Sublease (which shall also include management and/or operating agreements covering the Leased Premises) the whole or any part of the Leased Premises except as permitted under Section 12.2;

(c) Permit transfer of the Lease or possession of the Leased Premises by merger, consolidation, or dissolution of Lessee;

(d) Except as otherwise provided in ARTICLE 11 herein, permit hypothecation, pledge, encumbrance, transfer or sale, voluntary or involuntary, in whole or in part, of this Lease or any interest therein; or

(e) Permit the occupancy of the whole or any part of the Leased Premises by any other person or entity.

12.2. Notwithstanding the foregoing, (a) Lessor's consent shall not be required with respect to any leasing or rental by the Lessee of office space, commercial space or retail space within the improvements at the Leased Premises and (b) nothing herein contained shall be construed to prevent the occupancy of said Leased Premises by an employee or business invitee of Lessee in the ordinary course of Lessee's business.

12.3. Further, Lessee shall not, without the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed:

(a) Permit assignment, hypothecation, withdrawal, admittance, dissolution, change, pledge, encumbrance, transfer or sale, in whole or in part, including without limitation as a result of an election or action by the parties comprising Lessee, whether voluntary or involuntary, by operation of law or otherwise, of the Lessee or the general partner(s) of Lessee;

(b) Contract for the management or operation of the whole or any part of the Leased Premises; or

(c) Permit the transfer of the Lease or possession of the Leased Premises by any changes of a majority in interest of the shareholder(s), member(s) and/or general partner(s) of Lessee, including without limitation, any withdrawal, admittance or change, whether voluntary, involuntary, by operation of law, or otherwise.

12.4. It is mutually agreed that the personal qualifications of the parties controlling Lessee, specifically including, but not limited to, the general partner(s), are a part of the consideration for granting this Lease. Said parties do hereby specifically agree to, except as prohibited as a result of death or disability, maintain active control and supervision of the operations conducted on the Leased Premises.

12.5. In the event Lessee requests Lessor's consent to any Lease assignment and/or transfer, hereinafter referred to as a "transaction," Lessee shall reimburse Lessor for all Lessor's reasonable costs and expenses associated with said transaction. Said costs shall include reasonable legal fees and disbursements relating to or arising out of any such transaction, regardless of whether such transaction is consummated.

12.6. In the event Lessor consents to any Lease assignment or transfer, said consent shall be conditioned upon the following: (i) if, on the effective date of such proposed assignment, transfer, the rent being paid under this Lease is less than market rent, Lessor shall thereafter be paid additional rent to equal market rent; (ii) assignee shall agree and assume each and every obligation under the Lease; (iii) if deemed necessary by Lessor, a Lease amendment shall be executed which will include new or revised lease provisions; and (iv) assignee shall comply with other conditions and qualifications reasonably required by Lessor. Notwithstanding the foregoing, items (i), (iii), and (iv) shall not apply in the event of: (a) a Lease assignment or transfer to a third party from a Consented-to-Lender which acquired title to the Lease by foreclosure or deed in lieu of foreclosure or a new Lease pursuant to the provisions of ARTICLE 11 herein, or (b) assignment or transfer of the Lease to a Consented-to-Lender by deed in lieu of foreclosure, or to a Consented-to-Lender or a third party as the successful bidder at a foreclosure sale. Upon the effective date of any said consented-to Lease assignment or transfer, assignee shall thereafter pay to Lessor the market rent as referenced herein, subject to adjustments as provided in ARTICLE 5 herein.

12.7. In connection with the Lessor's consideration of any request for its consent to an assignment, transfer or sublease of the entirety of the Lease which requires Lessor's consent, Lessor may consider the financial condition of the proposed assignee ("Proposed Transferee"),

the Proposed Transferee's experience in the operation and management of the property of the type subject to this Lease and the character and reputation of the Proposed Transferee. In connection with the foregoing, at such time as the Lessee shall request Lessor's consent to any proposed transfer, Lessee shall provide Lessor with appropriate financial statements, including balance sheets and profit and loss statements, demonstrating the Proposed Transferee's financial condition for the preceding three (3) years, or such shorter period that the proposed assignee has been in existence. In addition, the Lessee shall provide Lessor with such additional information as may be reasonably requested by Lessor to determine the character and reputation of the Proposed Transferee, as well as the Proposed Transferee's experience in the operation and maintenance of property similar to the Leased Premises.

The following standards are to apply to proposed transactions requiring Lessor's consent pursuant to Section 12.1 of the Lease. These standards and conditions are not to apply to (a) an assignment for the purpose of securing leasehold financing of the parcel by an encumbrance holder approved by Lessor, (b) the transfer of the leasehold in connection with a foreclosure or transfer in lieu of foreclosure by a Consented-To-Lender, or (c) the first transfer by that encumbrance holder if it has acquired the leasehold through a foreclosure or a transfer in lieu of foreclosure.

(a) The Proposed Transfers must have a net worth determined to be sufficient in relation to the financial obligations of the lessee under the Lease (equal to at least six (6) times the total Minimum Annual Rent due to Lessor for the most recent fiscal). A letter of credit, cash deposit, guarantee from a parent entity or participating individual(s) having sufficient net worth or similar security satisfactory to the Lessor may be substituted for the net worth requirement. If the Proposed Transferee's net worth is materially less than the transferor's, Lessor may disapprove the assignment or require additional security such as that described in the previous sentence.

(b) The Proposed Transferee must have significant experience in the construction (if contemplated), operation and management of the type(s) of improvements existing on or to be constructed on the Leased Premises, or provide evidence of contractual arrangements for these services with providers of such services reasonably satisfactory to the Lessor. Changes in the providers of such services and changes to the contractual arrangements must be approved by the Lessor. All approvals of the Lessor will not be unreasonably withheld, conditioned or delayed.

(c) The individual or individuals who will acquire Lessee's interest in this Lease or the Leased Premises, or own the entity which will so acquire Lessee's interest, irrespective of the tier at which individual ownership is held, must be of good character and reputation and, in any event, shall have neither a history of, nor a reputation for: (1) discriminatory employment practices which violate any federal, state or local law; or (2) non-compliance with environmental laws, or any other legal requirements or formally adopted ordinances or policies of the Lessor.

(d) The price to be paid in connection with the transaction shall not result in a financing obligation which jeopardizes the Proposed Transferee's ability to meet its rental

obligations under the Lease. Market debt service coverage ratios and leasehold financial performance, at the time of the proposed transfer, will be used by Lessor in making this analysis.

(e) If the Proposed Transferee is an entity, rather than an individual, the structure of the proposed transferee must be such that (or the assignee must agree that) the Lessor will have reasonable approval rights regarding any future direct or indirect transfers of interests in the entity or the Lease as required under the Lease (excluding any excluded transfer); provided however, that a transfer of ownership of a publicly held parent corporation of Lessee that is not done primarily as a transfer of this leasehold will not be subject to Lessor approval.

(f) The terms of the proposed assignment will not detrimentally affect the efficient operation or management of the leasehold, the Leased Premises or any improvements thereon.

ARTICLE 13

DEFAULTS AND REMEDIES

13.1. Defaults. The occurrence of any one (1) or more of the following events:

(a) Abandonment of the Leased Premises. Abandonment is herein defined to include, but is not limited to, any absence by Lessee from the Leased Premises for ten (10) consecutive days or longer.

(b) Failure by Lessee to pay, when due, any Lease-required rent, other payment and/or charge herein, where such failure continues for a period of ten (10) days after written notice thereof. Provided, however, any such notice provided in this Paragraph 13.1(b) or in subsequent Paragraph 13.1(c) shall be in lieu of, and not in addition to, any notice required under Section 1161 of the California Code of Civil Procedure, as amended.

(c) Failure by Lessee to perform any other express or implied covenants or conditions in this Lease (other than any breach under ARTICLE 12, for which immediate notice of termination may be given), should such failure continue for ninety (90) days after written notice thereof.

(d) Subject to any restrictions or limitations placed on Lessor by applicable laws governing bankruptcy, Lessee's: (a) applying for, consenting to, or suffering the appointment of a receiver, trustee, or liquidation of all or a substantial portion of its assets; (b) making a general assignment for the benefit of creditors; (c) admitting in writing its inability to pay its debts or its willingness to be adjudged a bankrupt; (d) becoming unable to, or failing to, pay its debts as they mature; (e) being adjudged a bankrupt; (f) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization, or insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days of such filing); (g) convening a meeting of its creditors, or any class thereof, for purposes of effecting a moratorium, extension, or composition of its debts; or (h) suffering, or permitting to continue unstayed and in effect for ten (10) consecutive days, any attachment, levy, execution, or seizure of all or a substantial portion of Lessee's assets or of Lessee's interest in this Lease.

(e) Paragraph 13.1(e) herein shall not be applicable or binding on the beneficiary of any deed of trust, mortgage, or other security instrument on the Leased Premises which is of record with Lessor and has been consented to by resolution of Lessor, or to said beneficiary's successors in interest consented to by resolution of Lessor, as long as there remains any monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided that such beneficiary or its successors in interest, continuously and timely pays to Lessor all rent due or coming due under the provisions of this Lease and the Leased Premises are continuously and actively used in accordance with ARTICLE 17 herein, and provided that said beneficiary agrees in writing to assume and perform each and every obligation under the Lease.

13.2. Remedy in the event of any default, Lessor may exercise the following remedies:

(a) Termination: Terminate Lessee's right to possession of the Leased Premises whereupon this Lease shall terminate and Lessee shall immediately surrender possession of the Leased Premises to Lessor. In such event, Lessor shall be entitled to recover from Lessee:

(i) The "Worth at the Time of Award", as hereinafter defined, of the unpaid rent which had been earned at the time of termination;

(ii) The "Worth at the Time of Award" of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such loss that Lessee proves could have been reasonably avoided;

(iii) The "Worth at the Time of Award" of the amount by which the unpaid rent for the balance of the term of this Lease after the time of award exceeds the amount of such loss that Lessee proves could have been reasonably avoided; and

(iv) Any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease, or which would ordinarily be likely to result therefrom, including but not limited to the cost of recovering possession of the Leased Premises, expenses of reletting (including necessary repair, renovation and alteration of the Leased Premises), reasonable attorneys' fees, and any other reasonable costs.

(v) The "Worth at the Time of Award" of the amounts referred to in Paragraphs 13.2(a)(i) and 13.2(a)(ii) shall be computed by charging interest at ten percent (10%) per annum from the dates such amounts accrued to Lessor. The "Worth at the Time of Award" of the amount referred to in Paragraph 13.2(a)(iii) shall be computed by discounting such amount at one (1) percentage point above the Discount Rate of the Federal Reserve Bank of San Francisco at the time of the award.

(b) Reletting: Without terminating or effecting a forfeiture of the Lease, or otherwise relieving Lessee of any obligation herein, Lessor may, but need not, relet the Leased Premises or any portion thereof, at any time or from time to time, for such terms and upon such conditions and rent as Lessor, in its sole discretion, deems proper. Regardless of whether the Leased Premises are relet, Lessee shall continue to pay to Lessor all Lease-required amounts up to the date that Lessor terminates Lessee's right to possession of the Leased Premises; provided,

however, following a default, Lessor shall not unreasonably withhold its consent to any Lessee-requested assignment of this Lease or subletting of the Leased Premises, unless Lessor shall also elect to terminate this Lease and Lessee's right to possession of the Leased Premises, as provided in Paragraph 13.2(a). Such payments shall be due at the times provided in this Lease and Lessor need not wait until the termination of the Lease to recover said amounts. If Lessor relets the Leased Premises, or any portion thereof, such reletting shall not relieve Lessee of any obligations herein, except that Lessor shall apply the rent or other proceeds actually collected for such reletting against amounts due from Lessee herein, to the extent such proceeds compensate Lessor for Lessee's nonperformance of any obligation herein. Lessor may execute any new lease pursuant thereto in its own name. Further, Lessor shall be under no obligation to reveal to new lessee how these proceeds were applied, nor shall said new lessee have any right to collect any such proceeds. Lessor shall not, by any reentry or other act, be deemed to have accepted Lessee's surrender of the Leased Premises or Lessee's interest therein, nor be deemed to have terminated this Lease or to have relieved Lessee of any obligation herein, unless Lessor shall have furnished Lessee with express written notice of Lessor's election to do so, as set forth herein.

(c) Other: Any and/or all other rights or remedies of Lessor specified elsewhere in this Lease or provided by law.

13.3. In the event Lessor has consented to an encumbrance of this Lease for security purposes in accordance with ARTICLE 11 herein, it is understood and agreed that Lessor shall furnish copies of all notice(s) of default(s) to the beneficiary or mortgagee under said encumbrance by certified mail (provided Lessee has delivered to Lessor written request therefore, together with the name and address of any such beneficiary or mortgagee) contemporaneously with the furnishing of such notices to Lessee. Furthermore, in the event Lessee fails to cure such default(s) within the time permitted herein, said beneficiary or mortgagee shall be permitted to cure such default(s) at any time within fifteen (15) days following the expiration of the period within which Lessee may cure said default(s); provided, however, Lessor shall not be required to furnish any further notice(s) of default(s) to said beneficiary or mortgagee.

13.4. Notwithstanding the foregoing, should a default not be cured within the cure periods referred to above, said Lease shall not be terminated as to said beneficiary or mortgagee unless Lessor first legally offers to enter into a valid lease with said beneficiary or mortgagee, and said offer is not accepted in writing within thirty (30) days after said offer is made. Furthermore, such new lease must be entered into as a condition concurrent with such termination for the then-remaining term of this Lease. Furthermore, the new lease must contain the same terms, conditions, and priority as this Lease, provided the mortgagee or beneficiary promptly cures all then-existing defaults under this Lease when and to the extent it is able to cure them. Such new lease may be entered into even though possession of the Leased Premises has not been surrendered by the defaulting Lessee. In such event, unless legally restrained, Lessor shall promptly proceed to obtain possession of the Leased Premises and to deliver possession to said mortgagee or beneficiary as soon as the same is obtained. Should the mortgagee or beneficiary fail to accept said offer in writing within said thirty (30) day period, or, having so accepted said offer, should it fail promptly to cure all existing defaults under this Lease when

and to the extent it is able to cure them, then such termination shall also be effective as to said mortgagee or beneficiary.

ARTICLE 14

BANKRUPTCY

14.1. Lessor shall have the right to declare this Lease in default if Lessee: (i) becomes insolvent; (ii) makes an assignment for the benefit of creditors; (iii) becomes the subject of a bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceeding; or in the event of any judicial sale of Lessee's leasehold interest.

14.2. The conditions of this ARTICLE 14 shall not be applicable or binding on: (1) Lessee; or (2) the beneficiary in any deed of trust, mortgage, or other security instrument encumbering the leasehold interest which Lessor has consented to in writing; or (3) the aforesaid beneficiary's successors in interest which Lessor has consented to in writing, as long as there remains any monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided Lessee, such beneficiary, or such beneficiary's successors in interest continuously pay to Lessor all rent due or coming due under the provisions of this Lease, and the Leased Premises are continuously and actively used in accordance with ARTICLE 17 herein.

ARTICLE 15

EMINENT DOMAIN

If any public authority takes the whole or a substantial part of the Leased Premises under the power of eminent domain, then the term of this Lease shall cease as to the part so taken from the day the possession of that part is taken. Further, the rent shall be paid up to that day. Lessee shall then have the right either to: (i) cancel this Lease and declare the same null and void; or (ii) continue in possession of the remainder of the Leased Premises under the then-current Lease terms; provided, however, the rent and other amounts due hereunder shall be reduced in proportion to the value of the portion of the Leased Premises taken. All damages awarded for such taking shall belong to and be the property of Lessor, whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the Leased Premises. Provided, however, Lessor shall not be entitled to any award made for the taking of any of Lessee's installations or improvements on the Leased Premises.

ARTICLE 16

TERMINATION OF PRIOR AGREEMENT(S)

Any and all existing leases or rental agreements between Lessor and Lessee for the Leased Premises which have not already expired or terminated, are hereby terminated on the effective date of this Lease. Any rights, duties, and obligations of the parties, if any, pursuant to the terms, covenants, and conditions in any such hereby terminated agreements shall remain enforceable and subject to all defenses, including without limitation any applicable statute of limitations. Further, said statute(s) shall not be waived or extended because of this Lease.

Nothing herein is intended nor shall be construed as a waiver of any such rights, or as a release of any such duties or obligations, whether known or unknown at this time or upon the effective date of this Lease.

ARTICLE 17

USE OBLIGATION

Lessee shall actively and continuously use and operate the Leased Premises for the limited particular exclusive use expressly provided for in ARTICLE 3 herein, except for failure to so use caused by wars, strikes, riots, civil commotion, acts of public enemies, and acts of God. Said active and continuous use and operation enhances the value of the lands within Lessor's jurisdiction; provides needed public service; and provides additional employment, taxes, and other benefits to the general economy of the area. Lessee, however, shall not and is expressly prohibited from using the Leased Premises for any other purpose or use whatsoever, whether it is purported to be in addition to or in lieu of the particular exclusive use expressly provided in ARTICLE 3 herein.

ARTICLE 18

MAINTENANCE AND REPAIR

18.1. As part of the consideration for this Lease, Lessee shall assume full responsibility for operation and maintenance of the Leased Premises throughout the term and without expense to Lessor. Lessee shall perform all maintenance, which includes all painting, repairs, and replacements necessary to maintain and preserve the Leased Premises in a good, safe, healthy, and sanitary condition, satisfactory to Lessor and in compliance with all applicable laws. Provided, however, prior to Lessee performing any extraordinary repairs, plans and specifications must first be submitted to Lessor and receive Lessor approval, pursuant to the procedures provided in ARTICLE 7 herein. Further, Lessee shall provide approved containers for trash and garbage and keep the Leased Premises free and clear of rubbish, litter, and any other fire hazards. Lessee waives all rights to make repairs at the expense of Lessor, as provided in Section 1942 of the California Civil Code, and all rights provided by Section 1941 of said Code.

18.2. For the purpose of keeping the Leased Premises in a good, safe, healthy, and sanitary condition, Lessor always shall have the right but not the duty to enter, view, inspect, determine the condition of, and protect its interests in the Leased Premises. Provided, however, Lessor or its representatives shall: (a) conduct such entry in a manner that causes the least inconvenience and disruption to Lessee's operation as practicable; and (b) comply with all safety and security requirements of Lessee. It is not intended, however, that Lessee's safety and security requirements be used to bar Lessor's right of inspection. Further, Lessee shall provide Lessor reasonable access to the Leased Premises for such purpose.

18.3. If inspection discloses the Leased Premises are not in the condition required herein, Lessee immediately must commence the necessary maintenance work, and complete said work within ten (10) days after written notice from Lessor.

18.4. Notwithstanding, Lessor shall not be required to perform any maintenance, including painting, repairs, or replacements; or to make any improvements whatsoever on or for the benefit of the Leased Premises.

18.5. The rights reserved in this Article shall not create any obligations or increase any obligations for Lessor elsewhere in this Lease.

18.6. In the event Lessee fails to maintain, repair or make any replacements as required under the terms of this Article 18. Lessor may, but shall not be required, upon not less than thirty (30) days prior written notice (or in the case of an emergency, notice of not less than the time period which would be reasonable in light of the nature of the emergency) and Lessee's failure to timely remedy any maintenance item properly noticed, or make any repair or replacement properly noticed, undertake the maintenance, repair or replacement noticed and the actual out-of-pocket cost thereof (including, but not limited to, the cost of labor overhead, materials and equipment) shall be charged to Lessee and payable by Lessee to Lessor as additional rent within thirty (30) days following delivery by Lessor to Lessee of a statement (with supporting invoices to the extent available) setting forth in reasonable detail the cost of such maintenance, repair or replacement.

ARTICLE 19

TAXES AND UTILITIES

This Lease may result in a taxable possessory interest and be subject to the payment of property taxes. Lessee shall pay before delinquency all taxes and assessments of any kind assessed or levied upon Lessee or the Leased Premises by reason of: (i) this Lease; (ii) any buildings, machines, or other improvements of any nature whatsoever erected, installed, or maintained by Lessee; or (iii) the business or other activities of Lessee upon or in connection with the Leased Premises. Lessee also shall pay any fees imposed by law for licenses or permits for any business or activities of Lessee upon the Leased Premises, or under this Lease, and shall pay before delinquency any and all charges for utilities at or on the Leased Premises.

ARTICLE 20

CONFORMANCE WITH LAWS AND REGULATIONS

Lessee agrees that, in all activities on or in connection with the Leased Premises, and in all uses thereof, including the making of any alterations, changes, installations, or other improvements, it will abide by and conform to all laws and regulations. Said laws and regulations shall include, but are not limited to, any ordinances of the city in which the Leased Premises are located, including the Building Code thereof; any ordinances and general rules of Lessor, including tariffs; and any applicable laws of the State of California and federal government, as any of the same now exist or may hereafter be adopted or amended.

ARTICLE 21

EQUAL EMPLOYMENT OPPORTUNITY AND NONDISCRIMINATION

21.1. Lessee shall comply with Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the California Constitution; the California Fair Employment and Housing Act; the Americans with Disabilities Act of 1990; and any other applicable federal, state, or local laws and regulations now existing or hereinafter enacted, requiring equal employment opportunities or prohibiting discrimination. This shall include without limitation, laws and regulations prohibiting discrimination because of race, color, religion, sex, national origin, ancestry, physical or mental disability, veteran status, medical condition, marital status, age, sexual orientation, pregnancy, or other non-job related criteria. In complying with all such laws, including without limitation the Americans with Disabilities Act of 1990, Lessee shall be solely responsible for such compliance and required programs, and there shall be no allocation of any such responsibility between Lessor and Lessee.

21.2. Annually, Lessee shall formulate and file with Lessor an approved: (i) "Equal Employment Opportunity and Nondiscrimination Program," and (ii) "Statement of Compliance" for the promotion of equal employment opportunities and nondiscrimination. Lessee shall make such progress reports as required by Lessor, and, upon Lessor's reasonable notice, Lessee shall make available for inspection and copying all of its records relevant to compliance with this ARTICLE 21. Provided, however, Lessee is only required to file the Program and Statement when the average annual employment level operating on the Leased Premises exceeds fifty (50) employees. Provided further, should Lessee be subject to a federally-mandated affirmative action program for employees, Lessee may, in lieu of filing the Program and Statement, annually certify in writing to Lessor that Lessee is subject to such a program, and, upon Lessor's request, Lessee shall furnish evidence thereof.

21.3. For the purposes and provisions of this Article, a sublessee shall be considered the Lessee should the sublessee become the prime operator of the Leased Premises.

21.4. Lessee's compliance with this Article is an express condition hereof, and any failure by Lessee to so comply and perform shall be a default as provided in this Lease, and Lessor may exercise any right as provided herein, and as otherwise provided by law.

ARTICLE 22

PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions herein shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated thereby.

ARTICLE 23

HOLD HARMLESS

Lessee shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless Lessor and its officers, employees, and agents for any and all liability, claims, judgments, damages, proceedings, orders, directives, costs, including reasonable attorneys' fees, or demands arising directly or indirectly out of the obligations undertaken in connection with this Lease, or Lessee's use, occupancy, possession or operation of the Leased Premises, except claims or litigation arising through the sole negligence or willful misconduct of Lessor. It is the intent of this ARTICLE 23 that Lessee indemnify and hold harmless Lessor for any actions of Lessee or Lessor, including duties that may be legally delegated to Lessee as to third parties, except for those arising out of the sole negligence or willful misconduct of Lessor. This indemnity obligation shall apply for the entire time that any third party can make a claim against or sue Lessor for liabilities arising out of Lessee's use, occupancy, possession or operation of the Leased Premises, or arising from any defect in any part of the Leased Premises.

ARTICLE 24

SUCCESSORS IN INTEREST

Unless otherwise provided in this Lease, the terms, covenants, conditions, and agreements herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

ARTICLE 25

EASEMENTS

This Lease and all rights granted hereunder are subject to all easements and rights-of-way granted or reserved by Lessee and Lessor in, upon, over and across the Leased Premises pursuant to that certain Declaration of Easements, Covenants, Conditions and Restrictions dated as of even date herewith (the "Declaration of Easements"). This Lease and all rights granted hereunder are subject to all easements and rights-of-way previously granted or reserved by Lessor in, upon, over, and across the Leased Premises for any purpose whatsoever. Said Lease and granted rights shall be subject to future easements and rights-of-way for access, gas, electricity, water, sewer, drainage, telephone, telegraph, television transmission, and such other Lessor or public facilities as Lessor may determine from time to time to be in the best interests of the development of the lands within Lessor's jurisdiction. Lessor agrees to make an effort to locate future easements and rights-of-way, and to install associated public facilities, so as to produce a minimum amount of interference with Lessee's business. Further, Lessee shall not be entitled to any monetary payment or other remuneration for any such future easements and rights-of-way.

ARTICLE 26
INTENTIONALLY OMITTED

ARTICLE 27
INSURANCE

27.1. Lessee shall maintain insurance acceptable to Lessor in full force and effect throughout the term of this Lease. The policies for said insurance shall, as a minimum, provide the following:

(a) Forms of Coverage

(i) "OCCURRENCE" for Commercial General Liability covering the Leased Premises, operations, and contractual liability assumed by Lessee in this Lease in the amount of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage. The general aggregate shall be Four Million Dollars (\$4,000,000) unless a Two Million Dollars (\$2,000,000) per location aggregate limit is provided separate by endorsement. If alcoholic beverages are served or sold on the Leased Premises, Liquor Liability coverage in the amount of not less than One Million Dollars (\$1,000,000) shall be obtained. If no alcoholic beverages are served or sold on the Leased Premises, the proof of insurance shall so state.

(ii) Fire and Extended Coverage, including water damage and debris cleanup provisions, in an amount not less than ninety percent (90%) of full replacement value of all improvements located within the Leased Premises. The fire and extended coverage policies shall be endorsed with a Loss Payee endorsement in favor of Lessor. It is agreed that any insurance proceeds in excess of One Hundred Thousand Dollars (\$100,000) resulting from a loss under such policies shall be payable jointly to Lessor and Lessee to ensure that such proceeds will be reinvested in rebuilding and/or repairing the damaged portions of the Leased Premises and any damaged or destroyed improvements located thereon. Provided, however, if there is a Lessor-consented to mortgage or deed of trust encumbering the leasehold, then all fire and extended coverage policies shall be made payable jointly to the mortgagee or beneficiary and Lessee, to ensure that any proceeds shall be held by said mortgagee or beneficiary for the following purposes:

(A) As a trust fund to pay for the reconstruction, repair, or replacement of the damaged or destroyed improvements, in kind and scope, in progress payments as the work is performed. Any funds remaining after completion of said work shall be retained by said mortgagee or beneficiary and applied to reduce any debt secured by such mortgage or deed of trust. Furthermore, any funds remaining after full payment of said debt shall be paid to Lessee; or

(B) In the event that this Lease is terminated with consent of both Lessor and said mortgagee or beneficiary, and the improvements are not reconstructed, repaired, or replaced, the insurance proceeds shall be retained, without liability, by said mortgagee or beneficiary to the extent necessary to fully discharge the debt secured by said

mortgage or deed of trust. Furthermore, said mortgagee or beneficiary shall hold the balance thereof to restore the Leased Premises to a neat and clean condition. Any remaining funds shall lastly be paid to Lessor and Lessee, as their interests may appear.

(iii) In the event underground storage tanks are located on the Leased Premises, Lessee is required to comply with Code of Federal Regulations, Title 40, Chapter 1, Subchapter H or Title 23, Division 3, Chapter 18 of California Code of Regulations, collectively, herein "UST Law." At the time Lessee is required to comply with any provisions of UST Law requiring financial assurance mechanisms, Lessee shall provide Lessor with a Certified copy of its Certification of Financial Responsibility. If Lessee's program for financial responsibility requires insurance, then Lessee's policy(ies) shall name Lessor and As officers, employees, and agents as additional insureds, and all other terms of Subparagraph (b), below, shall apply. Should Lessee change its financial assurance mechanisms, Lessee shall immediately provide Lessor with a certified copy of its revised Certification of Financial Responsibility.

(b) General Requirements

(i) All required insurance shall be in force the first day of the term of this Lease, and shall be maintained continuously in force throughout the term of this Lease. In addition, the cost of all required insurance shall be borne by Lessee. During the entire term of this Lease, Lessee shall provide Lessor with Certificates, in a form acceptable to Lessor, evincing the existence of the necessary insurance policies and original endorsements effecting coverage required by this ARTICLE 27. The Certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind insurance on As behalf. Notwithstanding the forgoing, Lessor reserves the right to require complete, certified copies of all required policies at any time.

(ii) All liability insurance policies shall name, or be endorsed to name Lessor and its officers, employees, and agents as additional insureds and protect Lessor and its offices, employees, and agents against any legal costs in defending claims. All liability policies shall provide cross-liability coverage. All insurance policies shall be endorsed to state that coverage may not be suspended, voided, cancelled, or reduced in coverage, except after Lessee has furnished Lessor with thirty (30) days' prior written notice by certified mail. All insurance policies shall be endorsed to state that Lessee's insurance is primary and not excess or contributory to any insurance issued in the name of Lessor. Further, all insurance companies must be satisfactory to Lessor.

(iii) Any deductibles or self-insured retentions must be declared and acceptable to Lessor. If the deductibles or self-insured retentions are unacceptable to Lessor, then Lessee shall have the option to either: (i) reduce or eliminate such deductibles or self-insured retentions as respects the Lessor and its officers, employees, and agents; or, (ii) procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

(iv) Lessor shall retain the right at any time to review the coverage, form, and amount of insurance required herein. If, in the opinion of Lessor, the insurance provisions in this Lease do not provide adequate protection for Lessor and/or members of the

public using the Leased Premises or using services connected with Lessee's use or occupancy of the Leased Premises. Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. Lessor's requirements shall be reasonable, but shall be designed to ensure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

(v) Lessor shall notify Lessee in writing of changes in the insurance requirements. With respect to changes in insurance requirements that are available from Lessee's then-existing insurance carrier, Lessee shall deposit Certificates evidencing acceptable insurance policies with Lessor incorporating such changes within sixty (60) days of receipt of such notice. With respect to changes in insurance requirements that are not available from Lessee's then-existing insurance carrier, Lessee shall deposit Certificates evidencing acceptable insurance policies with Lessor, incorporating such changes, within one hundred twenty (120) days of receipt of such notice. In the event Lessee fails to deposit insurance Certificates as required herein, this Lease shall be in default without further notice to Lessee, and Lessor shall be entitled to exercise all legal remedies.

(vi) If Lessee fails or refuses to maintain insurance as required in this Lease, or fails to provide proof of insurance, Lessor has the right to declare this Lease in default without further notice to Lessee, and Lessor shall be entitled to exercise all legal remedies.

(vii) The procuring of such required policies of insurance shall not be construed to limit Lessee's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policies of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Lease, or with the use or occupancy of the Leased Premises.

(viii) Lessee agrees not to use the Leased Premises in any manner, even if use is for purposes stated herein, that will result in the cancellation of any insurance Lessor may have on the Leased Premises or on adjacent premises, or that will cause cancellation of any other insurance coverage for the Leased Premises or adjoining premises. Lessee further agrees not to keep on the Leased Premises or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the Leased Premises. Lessee shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the Leased Premises.

ARTICLE 28

POLICY OF LESSOR

It is Lessor's policy that prevailing wage rates shall be paid all persons employed on the lands within Lessor's jurisdiction.

ARTICLE 29

WARRANTIES-GUARANTEES-COVENANTS

Lessor makes no warranty, guarantee, covenant, including but not limited to covenants of title and quiet enjoyment, or averment of any nature whatsoever concerning the condition of the Leased Premises, including the physical condition thereof, or any condition which may affect the Leased Premises. It is agreed that Lessor will not be responsible for any loss, damage, and/or costs, which may be incurred by Lessee by reason of any such condition or conditions.

ARTICLE 30

DAMAGE TO OR DESTRUCTION OF LEASED PREMISES

30.1. Should Lessee-owned improvements be: (i) damaged or destroyed by fire, the elements, acts of God, or by any, other cause; or (ii) declared unsafe or unfit for occupancy or use by a public entity with the appropriate authority, (i) and/or (ii) hereinafter "event," Lessee shall, within ninety (90) days of such event, commence and diligently pursue to completion the repair, replacement, or reconstruction of the improvements necessary to permit full occupancy and use of the Leased Premises for the uses required herein. Repair, replacement, or reconstruction of such improvements shall be accomplished in a manner and according to Plans approved by Lessor. Provided, however, Lessee shall not be obligated to repair, reconstruct, or replace the improvements following their destruction in whole or substantial part, except to the extent the loss is covered by insurance required pursuant to ARTICLE 27 herein (or would be covered regardless of whether such required insurance is actually in effect).

30.2. If Lessee elects not to restore, repair, or reconstruct as herein required, then this Lease shall terminate. Further, Lessor shall have any rights to which it would be entitled under the provisions of ARTICLES 9 and 27 herein.

30.3. No event described herein shall relieve Lessee of its obligations to pay all rent and other amounts otherwise due hereunder.

ARTICLE 31

QUITCLAIM OF LESSEE'S INTEREST UPON TERMINATION

Upon termination of this Lease for any reason, including but not limited to termination because of default by Lessee, Lessee shall execute, acknowledge, and deliver to Lessor within thirty (30) days after receipt of written demand therefor, a good and sufficient deed whereby all Lessee's right, title and interest in the Leased Premises is quitclaimed to Lessor. Should Lessee fail or refuse to deliver the required deed to Lessor, Lessor may prepare and record a notice regarding the failure of Lessee to execute, acknowledge, and deliver such deed. Said notice shall be conclusive evidence of the termination of this Lease and of all right of Lessee, or those claiming under Lessee, in and to the Leased Premises.

ARTICLE 32

PEACEABLE SURRENDER

32.1. Upon expiration of this Lease or earlier termination or cancellation thereof, as herein provided, Lessee shall peaceably surrender the Leased Premises to Lessor in as good condition as the Leased Premises were at the Commencement Date of this Lease, except as the Leased Premises were repaired, rebuilt, restored, altered, or added to as permitted or required by the provisions of this Lease, ordinary wear and tear excepted, and subject to ARTICLE 9 herein. Nothing contained herein shall be construed to deny or abrogate the right of Lessee, prior to the expiration of the term or termination of this Lease, to receive any and all proceeds which are attributable to the condemnation of improvements or personal property belonging to Lessee immediately prior to the taking of possession by the condemnor or to remove any furniture or equipment not intended to be permanently affixed to, or reasonably necessary for the operation of, the Leased Premises, any signage identifying Lessee (as opposed to other signage used in the operation of the Leased Premises and associated improvements), or any personal property, upon the expiration of the term or earlier termination of this Lease or at any time during the term, subject to Lessee's obligations under this Lease to use the Leased Premises for the permitted uses.

32.2. If Lessee fails to surrender the Leased Premises at the expiration of this Lease or the earlier termination or cancellation thereof Lessee shall defend and indemnify Lessor from all liability and expense resulting from the delay or failure to surrender, including without limitation any succeeding lessee claims based on Lessee's failure to surrender.

32.3. No earlier than eleven (11) years, and no later than ten (10) years prior to the expiration of the term, Lessee shall deliver to Lessor a report prepared by a construction and demolition expert approved by Lessor, such approval not to be unreasonably withheld, conditioned or delayed, which report details and estimates the cost of removing all improvements on the Leased Premises at the expiration of the term. Lessor may give written notice (the "Lessor Removal Notice") at any time, no later than the later of (a) six (6) months following Lessee's delivery of the removal cost report described above, or (b) nine (9) years prior to the expiration of the term, or concurrently upon any earlier termination, of Lessor's election to require Lessee to remove, at the sole cost and expense of Lessee, not later than the expiration of the term or earlier termination of this Lease, all or any portion of the at grade, above grade and below grade improvements of any kind whatsoever placed or maintained on the Premises, whether placed thereon or maintained by Lessee or others, including, but not limited to, concrete foundations, pilings, structures and buildings. If pursuant to the Lessor Removal Notice Lessor elects to require the removal of all or any portion of the Improvements, then Lessee shall, upon the expiration or termination of this Lease, (a) demolish and remove the improvements required by Lessor to be removed, (b) restore those portions of the Leased Premises on which Improvements have been removed to a good, usable and buildable condition, consisting of a level, graded buildable pad with no excavations, hollows, hills or humps, and (c) surrender possession of the Leased Premises to Lessor.

If Lessor elects to require Lessee to remove all or a portion of the Improvements pursuant to the Lessor Removal Notice, then Lessee shall, no later than the date that is thirty (30) days after Lessee's receipt of the Lessor Removal Notice, provide Lessor with a written plan which

sets forth Lessee's proposed method of securing the discharge of Lessee's removal and restoration obligations pursuant to this subsection. Such security plan shall detail (i) the form of security proposed by Lessee (the "Removal Security Fund"), which security shall be either a deposit of funds, or a letter of credit, bond or other form of security in form and amount, and from an issuer, reasonably satisfactory to Lessor, and (ii) a schedule satisfactory to Lessor for the delivery by Lessee of the Removal Security Fund on a periodic basis over the remaining Term of the Lease, which schedule shall in all events provide for a full funding of the Removal Security Fund not later than two (2) years prior to the expiration of the Term. The amount of the Removal Security Fund shall be no less than the estimated costs to remove the Improvements set forth in the report described above, adjusted annually to reflect the increase or decrease, if any, in the ENR Index over the ENR Index as of the date of the cost estimation set forth in such expert report; provided, however, that in no event shall such adjustment result in a Removal Security Fund of an amount less than that set forth in the expert report. If Lessor requires Lessee to establish a Removal Security Fund, then Lessee shall have the right to credit to such removal fund the monthly Capital Improvement Fund deposits thereafter required to be made by Lessee during the remaining term pursuant to Section 8.3 of this Lease. Any uncured failure by Lessee to fund the Removal Security Fund as required under this Section 32.3 shall constitute an Event of Default.

If Lessor requires the Removal Security Fund, Lessee shall have the right to use all amounts remaining in the Capital Improvement Fund at the end of the term for the improvement removal purposes described in this Section 32.3, if and to the extent that such funds were not required for Capital Improvement Fund purposes. If a Removal Security Fund is required, but Lessor does not require the removal of the improvements at the end of the term, then the Removal Security Fund (including any Capital Improvement Funds that were transferred to the Removal Security Fund and were not required for Capital Improvement Fund purposes under Section 8.3) shall be returned to Lessee.

If Lessor decides not to require Lessee to remove all of the improvements on the Premises as provided above, then upon the expiration of the term, or earlier termination of the Lease, Lessee shall turn over to Lessor all improvements not required to be removed by Lessee in the condition described in Section 32.1 above.

32.4. If Lessee fails to perform demolition, removal and restoration obligations required to be performed by Lessee hereunder, then Lessor may, at its election, sell, remove or demolish the Improvements, and such event, Lessee shall reimburse Lessor for any cost or expense thereof in excess of any funds received by Lessor through the security above provided and any consideration received by Lessor as a result of such sale, removal or demolition.

32.5. If Lessee fails to surrender the Leased Premises at the expiration of this Lease or the earlier termination or cancellation thereof, Lessee shall defend and indemnify Lessor from all liability and expense resulting from the delay or failure to surrender, including without limitation any succeeding lessee claims based on Lessee's failure to surrender.

ARTICLE 33

WAIVER

Should either Lessor or Lessee waive any breach by the other of any Lease covenant condition, or agreement, such waiver shall not be, nor be construed to be, a waiver of any subsequent or other breach of the same or any other Lease covenant, condition, or agreement. Further, failure on the part of either party to require or exact the other's full and complete compliance with any of the Lease covenants, conditions, or agreements shall not be, nor be construed as in any manner Changing the terms, or preventing the enforcement in full, of the provisions hereof. In addition, Lessor's subsequent acceptance of rent hereunder shall not be deemed to be a waiver of any preceding Lessee breach of any Lease term, covenant, or condition, other than Lessee's failure to pay the particular rent so accepted, regardless of Lessor's knowledge of Lessee's preceding breach at the time rent is accepted.

ARTICLE 34

HOLDOVER

34.1. This Lease shall terminate without further notice at expiration of the term. Any holding over by Lessee after either expiration or termination shall not constitute a renewal or extension, or give Lessee any rights in or to the Leased Premises.

34.2. If Lessee, with Lessor's consent, remains in possession of the Leased Premises after Lease expiration or termination, such possession shall be deemed a month-to-month tenancy terminable upon thirty (30) days' notice furnished at any time by either party to the other. In addition, all provisions of this Lease, except those pertaining to term, shall apply to the month-to-month tenancy, and Lessee shall continue to pay all rent required by this Lease. Provided, however, if percentage rent is required by this Lease, it shall be paid monthly on or before the tenth (10th) day of each month, including the tenth (10th) day of the month following the expiration of any such holdover period.

ARTICLE 35

PARAGRAPH HEADINGS

The Table of Contents and Paragraph Headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

ARTICLE 36

ENTIRE UNDERSTANDING

This Lease contains the entire understanding and agreement of the parties. Lessee acknowledges there is no other written or oral understanding or agreement between the parties with respect to the Leased Premises, and that this Lease supersedes all prior negotiations, discussions, obligations, and rights of the parties hereto. No waiver, modification, amendment, or alteration of this Lease shall be valid unless it is expressly in writing and signed by authorized

representatives of the parties hereto. Each of the parties to this Lease acknowledges that no other party, agent, or representative has made any promise, representation, waiver, or warranty whatsoever, expressed or implied, which is not expressly contained in writing in this Lease. Each party further acknowledges it has not executed this Lease in reliance upon any collateral promise, representation, waiver, or warranty, or in reliance upon any belief as to any fact not expressly recited in this Lease.

ARTICLE 37

TIME IS OF THE ESSENCE

Time is of the essence of each and all of the terms and provisions of this Lease. This Lease shall inure to the benefit of and be binding upon the parties hereto and any successors of Lessee as fully and to the same extent as though specifically mentioned in each instance. All covenants, conditions, and agreements in this Lease shall extend to and bind any assigns and sublessees of Lessee:

ARTICLE 38

NOTICES

38.1. All notices provided for by this Lease or by law to be given or served upon Lessor or Lessee shall be in writing and: (i) personally served upon any person authorized to receive service of process on behalf of Lessor or Lessee, or any person hereafter authorized by either party in writing to receive such notice, or (ii) served by certified letter addressed to the appropriate address hereinafter set forth, or to such other address designated in writing by the respective party.

To Lessor

City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Manager

With copy to:

City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Attorney

To Lessee

With copy to:

38.2. Should any consented-to assignee, consented-to purchaser, or Consented-to-Lender notify Lessor in writing of its desire to receive notices, such party shall also be served by certified letter at such appropriate address designated in writing by the respective party, on personally served as provided herein.

38.3. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served when personally served; or, if served by certified mail, service will be considered completed and binding on the party served forty-eight (48) hours after deposit in the U.S. Mail.

ARTICLE 39

REMOVAL OF MATERIALS

39.1. Lessee shall, upon expiration of this Lease or sooner termination as herein provided, remove within sixty (60) days all materials, including without limitation all debris, and surplus and salvage items, hereinafter "Materials," from the Leased Premises and adjacent property, so as to leave the same in as good condition as when first occupied by Lessee, subject to reasonable wear and tear. Provided, however, if Lessee fails to remove all Materials within sixty (60) days, Lessor may remove, sell, or destroy said Materials at the expense of Lessee. Further, Lessee agrees to pay Lessor the reasonable cost of such removal, sale, or destruction; or, at the option of Lessor, said Materials not removed, sold, or destroyed by Lessee shall become the property of Lessor, without cost to Lessor, and without any payment to Lessee. "Materials" as used herein shall not mean or include "improvements" which are described in ARTICLE 9 hereof.

39.2. During any period of time required to remove said Materials, or to test for and/or remediate contaminants as required in ARTICLE 44 herein, Lessee shall continue to pay the full rent to Lessor in accordance with this Lease, which said rent shall be prorated daily.

ARTICLE 40

WASTE/NUISANCE

Lessee shall not use the Leased Premises in a manner that constitutes waste or nuisance.

ARTICLE 41

NUMBER AND GENDER

Words of any gender used in this Lease shall include any other gender and each word in the singular number shall include the plural whenever the tense requires.

ARTICLE 42

APPLICABLE LAW

This Lease will be governed by and construed and enforced in accordance with the laws of the State of California.

ARTICLE 43

ATTORNEY FEES

Should any suit be commenced to enforce, protect, or establish any right or remedy of any of the terms and conditions hereof, including without limitation a summary action commenced by Lessor under the laws of the State of California relating to the unlawful detention of property, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney fees and costs of suit.

ARTICLE 44

HAZARDOUS MATERIALS

44.1. Definition of "Hazardous Material." The term "Hazardous Material" shall mean any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, including oil and petroleum products, which now or in the future may be within the meaning of any applicable, federal, state, or local law, regulation, ordinance, or requirement at any concentration that is or has become regulated by the United States, the State of California, or any local government authority having jurisdiction over the Leased Premises.

44.2. Lessee Use of Hazardous Materials. Lessee shall not cause or permit any Hazardous Materials or products or materials which include any hazardous substance as a component, to be generated, brought onto, used, stored, emitted, released or disposed of in or about the Leased Premises by Lessee or its agents, employees, contractors, sublessees, or invitees unless expressly approved, at Lessor's sole discretion, in writing by Lessor after submittal by Lessee of information requested by Lessor. Equipment materials and supplies customarily used in connection with the construction of improvements; and/or standard office, food service and janitorial supplies customarily used in places of business which contain chemicals categorized as Hazardous Material are excluded from this requirement. Lessee shall use, store, and dispose of all such Hazardous Materials in strict compliance with all applicable statutes, ordinances, regulations, and other requirements in effect during the Lease Term that relate to public health and safety and protection of the environment ("Environmental Laws"); and shall comply at all times with all Environmental Laws.

44.3. Notice of Release or Investigation. If during the term of this Lease (including any extensions), Lessee becomes aware of (i) any actual or threatened release of any Hazardous Material on, in, under, from, or about the Leased Premises; or (ii) any inquiry, investigation, proceeding, or claim (collectively "Inquiry") by any government agency or other person regarding the presence of any Hazardous Material on, in, under, from or about the Leased Premises, Lessee shall give Lessor written notice of the release or Inquiry within five (5) days after Lessee learns or first has reason to believe there has been a release or Inquiry and shall simultaneously furnish to Lessor copies of any claims, notices of violation, reports, warning or other writings received by Lessee that concern the release or Inquiry.

44.4. Lessor Right to Inspect. If Lessee has in the past or continues to use, dispose, generate, or store Hazardous Materials on the Leased Premises, Lessor or its designated representatives, at Lessor's sole discretion, may at any time during the term of this Lease, but is

no way obligated to, enter upon the Leased Premises and make any inspections, tests or measurements Lessor deems necessary to determine if a release of Hazardous Materials has occurred. Lessor shall furnish Lessee a minimum of twenty-four (24) hours' notice in writing prior to conducting any inspections or tests, unless, in Lessor's sole judgment, circumstances require otherwise. Such tests shall be conducted in a manner so as to attempt to minimize any inconvenience and disruption to Lessee's operation as is practicable. If such tests indicate a release of Hazardous Materials, then Lessor, at Lessor's sole discretion, may require Lessee, at Lessee's sole expense and at any time during the term of this Lease, to have such tests for such Hazardous Materials conducted by a qualified party or parties on the Leased Premises. If Lessor has reason to believe any Hazardous Materials originated from a release on the Leased Premises have contaminated any area outside the Leased Premises, including but not limited to surface and groundwater, then Lessor, at Lessor's sole discretion, may require Lessee, at Lessee's sole expense and at any time during the term of this Lease, to have tests for such Hazardous Materials conducted by a qualified party or parties on said area outside the Leased Premises. Lessor's failure to inspect, test or take other actions pursuant to this Paragraph 44.4 regarding the Leased Premises, shall in no way relieve Lessee of any responsibility for a release of a Hazardous Material.

44.5. Clean-up Obligations. If the presence of any Hazardous Material brought onto the Leased Premises by Lessee or Lessee's employees, agents, sublessees, contractors, (or invitees, or generated by same during the term of this Lease, results in contamination of the Leased Premises, adjacent properties or the Ballena Bay, Lessee shall promptly take all necessary actions, at Lessee's sole expense, to remove or remediate such Hazardous Materials. Lessee shall provide notice to Lessor prior to performing any removal or remedial action. Lessee shall not propose nor agree to any covenant of use restriction as part of any removal or remediation required as a result of this Paragraph 44.5. To the extent Lessor incurs any costs or expenses in performing Lessee's obligation to clean-up contamination resulting from Lessee's operations or use of the Leased Premises, Lessee shall promptly reimburse Lessor for all costs and expenses incurred within thirty (30) days. Any amounts not so reimbursed within thirty (30) days after Lessee's receipt of an itemized statement therefore shall bear interest at the Prime Rate plus Five Percent (5%) per annum compounded monthly. This provision does not limit the indemnification obligation set forth in Paragraph 44.6 herein. The obligations set forth in this Paragraph 44.5 shall survive any expiration or other termination of this Lease.

(a) Clean-up Extending Beyond Lease Term. Should any clean-up of Hazardous Materials for which Lessee is responsible not be completed prior to the expiration or sooner termination of the Lease, including any extensions hereof, then: (a) Lessee shall deposit into an escrow account an amount of money equal to the balance of the estimated costs of the clean-up, together with instructions for the disbursement of such amount in payment of the costs of any remaining clean-up as it is completed, and (b) if the nature of the contamination or clean-up required of Lessee is of such a nature as to make the Leased Premises untenable or unleaseable, then Lessee shall be liable to Lessor as a holdover lessee until the clean-up has been sufficiently completed to make the Leased Premises suitable for lease to third parties. The estimated cost of the clean-up shall require approval of the Lessor.

(b) Financial Security. If Lessor determines, in its reasonable discretion, that Lessee does not have insurance or other financial resources sufficient to enable Lessee to fulfill

its obligations under this Paragraph 44.5, whether or not accrued, liquidated, conditional, or contingent, then Lessee shall, at the request of Lessor, procure and thereafter maintain in full force and effect such environmental impairment liability and/or pollution liability insurance policies and endorsements, or shall otherwise provide such collateral or security reasonably acceptable to Lessor as is appropriate to assure that Lessee will be able to perform its duties and obligations hereunder.

44.6. Indemnification. Lessee shall, at Lessee's sole expense and with counsel reasonably acceptable to Lessor, indemnify, defend, and hold harmless Lessor and Lessor's directors, officers, employees, partners, affiliates, agents, successors, and assigns with respect to all losses, including reasonable attorneys' and environmental consultants' fees, arising out of or resulting from Lessee's occupancy or use of the Leased Premises, or the violation of any Environmental Law, by Lessee or Lessee's agents, assignees, sublessees, contractors, or invitees. This indemnification applies whether or not the concentrations of any such Hazardous Material is material, the concentrations exceed state or federal maximum contaminant or action levels, or any government agency has issued a clean-up or other order. This indemnification shall survive the expiration or termination of this Lease. This indemnification includes, but is not necessarily limited to:

- (a) Losses attributable to diminution in the value of the Leased Premises;
- (b) Loss or restriction of use of rentable space(s) in the Leased Premises;
- (c) Adverse effect on the marketing of any space in the Leased Premises;
- (d) All other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant, and expert fees and expenses) resulting from the release or violation; and,
- (e) All costs (including reasonable attorneys' fees, consulting fees and subcontracted costs) incurred by Lessor in undertaking any assessment or remediation of the Leased Premises that might not have been fully resolved by Lessee by the time this Lease terminates or expires.
- (f) Lessor shall have a direct right of action against Lessee even if no third party has asserted a claim. Furthermore, Lessor shall have the right to assign said indemnity.

44.7. Termination of Lease. Upon the expiration or earlier termination of the term of this Lease, Lessee shall: (i) cause all Hazardous Materials previously owned, stored, or used by Lessee to be removed from the Leased Premises and disposed of in accordance with all applicable provisions of law; (ii) remove any underground or aboveground storage tanks or other containers installed or used by Lessee, or its predecessors, to store any Hazardous Material on the Leased Premises, and repair any damage to the Leased Premises caused by such removal; (iii) cause any soil or other portion of the Leased Premises which has become contaminated by any Hazardous Material stored or used by Lessee, or its predecessors, to be decontaminated, detoxified, or otherwise cleaned-up in accordance with the applicable requirements of any relevant government authorities; and (iv) surrender possession of the Leased Premises to Lessor

free of contamination attributable to Hazardous Materials generated or used by Lessee or stored or disposed of by any party other than Lessor in or on the Leased Premises during the term of this Lease.

ARTICLE 45

STORAGE TANKS

45.1. Underground Storage Tanks. No additional underground storage tanks ("USTs") shall be permitted to be installed on the Leased Premises during the term of this Lease without the prior written consent of Lessor in its sole and absolute discretion. In the event Lessee obtains such approval to install a UST on the Leased Premises, Lessee shall be responsible for complying with all laws and regulations pertaining to such UST, including tank monitoring of such UST as required by Lessor or the County of Alameda or any other responsible agency. Lessee further agrees to take responsibility for reporting unauthorized releases from USTs to Lessor within twenty-four (24) hours of such unauthorized release. Lessee will be responsible for all fees and costs related to the unauthorized release of any Hazardous Material including, but not limited to: investigative, surface and groundwater clean-up, and expert and agency fees. Lessee shall maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and/or property damage caused by a release from a UST. Lessee further agrees to be responsible for maintenance and repair of the USTs; obtaining tank permits; filing a business plan with Lessor or other responsible agency; and for paying UST fees, permit fees, and other regulatory agency fees relating to USTs. Lessee agrees to keep complete and accurate records on the Leased Premises for a period of not less than thirty-six (36) months from the applicable events including, but not limited to, permit applications, monitoring, testing, equipment installation, repairing and closure of the USTs, and any unauthorized releases of Hazardous Materials. Lessee also agrees to make such records available for Lessor or responsible agency inspection. Lessee further agrees to include a copy of California Health & Safety Code, Chapter 6.7, Section 25299, as part of any agreement between Lessee and any operator of USTs. Furthermore, Lessee shall be responsible for compliance with all other laws and regulations presently existing, or hereinafter enacted, applicable to USTs, including without limitation any such laws and regulations which alter any of the above requirements.

45.2. Aboveground Storage Tanks. No aboveground storage tanks ("ASTs") shall be permitted to be installed on the Leased Premises during the term of this Lease without the prior written consent of Lessor in its sole and absolute discretion. In the event Lessee obtains such approval to install an AST, Lessee shall be responsible for complying with all laws and regulations pertaining to such AST. Lessee shall, in accordance with this Lease and applicable laws and regulations, secure and pay for all necessary permits and approvals, prepare a spill prevention control counter measure plan and conduct periodic inspections to ensure compliance therewith, including conformance with the latest version of said applicable laws and regulations. In addition, Lessee shall maintain and repair said tanks to conform and comply with all other applicable laws and regulations for ASTs, including without limitation all of the requirements of California Health & Safety Code, Chapter 6.67, Sections 25270 through 25270.13 as presently existing or as hereinafter amended, including without limitation conducting daily visual inspection of said tanks, allowing Lessor, and/or responsible agency, to conduct periodic inspections. Lessee also shall comply with valid orders of the Lessor and/or responsible agency,

filing the required storage tank statement and payment of the fee therefor, establishing and maintaining the required monitoring program and systems, reporting spills as required, and payment of lawfully imposed penalties as provided therein and as otherwise provided by law. The Lessee shall be responsible for all costs associated with any unauthorized release from AST, including but not limited to, investigative, surface and groundwater clean-up, and expert and agency fees.

ARTICLE 46

ENVIRONMENTAL DISCLOSURES

46.1. Lessee understands and agrees that the Leased Premises are being leased in an "as is, with all faults" condition and that improvements, grading, filling, removal of existing improvements, and relocation of utility lines shall be made and performed by Lessee at the sole cost and expense of Lessee.

46.2. Lessee further understands and agrees that the "as-is, with all faults" condition of the Leased Premises includes any contamination of the Leased Premises, including structures, soils, groundwater, and adjacent Ballena Bay water and sediment, and that information received from Lessor regarding such matters may not be complete or accurate and should not be accepted as such.

46.3. Lessee hereby acknowledges that excavation of soils from the Leased Premises could result in exportation of a regulated waste requiring appropriate characterization, handling, transport and disposal (together "Regulated Waste Removal"). Lessor takes no responsibility and assumes no liability whatsoever for Regulated Waste Removal. Accordingly, Lessee hereby waives any claim, or potential claim, it may have to recover costs or expenses arising out of or associated with Regulated Waste Removal and agrees to indemnify, defend and hold harmless Lessor from and against any and all claims, liabilities, losses, damages, costs, and expenses arising from, out of, or in any way related to Regulated Waste Removal.

46.4. Lessor accepts no liability or responsibility for ensuring that Lessee's workers, including without limitation those conducting testing, construction and maintenance activities on the Leased Premises, are satisfactorily protected from residual contaminants in 29 Code of Federal Regulations ("CFR"). Lessee shall assess all human health risks from vapor transport or direct contact with residual hazardous substances or contaminants and incorporate such engineering and institutional controls as may be required to sufficiently protect human health of onsite workers and transient visitors. Lessee hereby waives any claim, or potential claim, it may have to recover any damages, losses, costs and expenses related to worker exposure or alleged exposure to any residual onsite contamination and to indemnify, defend and hold harmless Lessor from and against any and all such claims, liabilities, losses, damages, costs, and expenses.

ARTICLE 47

"AS-IS" LEASE AND WAIVERS

47.1. Lessee's execution of this Lease shall fully and finally constitute:

(a) Lessee's Acknowledgment. Lessee's acknowledgment that Lessor has given to Lessee sufficient opportunity to consider, inspect and review, to Lessee's complete satisfaction: (i) any and all rights, appurtenances, entitlements, obligations, and liabilities concerning the Leased Premises; (ii) the physical condition of the Leased Premises, including, without limitation, the condition of the buildings (if any) and the soil, subsoil media, and groundwater at or under the Leased Premises; (iii) the effect upon the Leased Premises of any and all applicable federal, state or local statutes, ordinances, codes, regulations, decrees, orders, laws or other governmental requirements (collectively, "Applicable Laws"); (iv) the development potential of the Premises including without limitation on the preceding clause (3), the effect of all Applicable Laws concerning land use, environmental quality and maintenance, endangered species, and traffic regulation; (v) the financial prospects of the Leased Premises and local market conditions; (vi) Lessee's determination of the feasibility of Lessee's intended use and enjoyment of the Leased Premises; and (vii) all other facts, circumstances, and conditions affecting, concerning or relating to the Leased Premises. The land use; the environmental, biological, physical and legal condition of the Leased Premises; the feasibility of Lessee's intended use and enjoyment of the Leased Premises and such other facts, circumstances and conditions being collectively referred to herein as the "Condition of the Leased Premises"; and, without limitation on any other provision of this Lease, Lessee expressly assumes the risk that adverse conditions affecting the Leased Premises have not been revealed by Lessee's investigations.

(b) Only Lessor's Express Written Agreements Binding. Lessee acknowledges and agrees that no person acting on behalf of Lessor is authorized to make, and that except as expressly set forth in this Lease, neither Lessor nor anyone acting for or on behalf of Lessor has made, any representation, warranty, statement, guaranty or promise to Lessee, or to anyone acting for or on behalf of Lessee, concerning the Condition of the Leased Premises or any other aspect of the Leased Premises. Lessee further acknowledges and agrees that no representation, warranty, agreement, statement, guaranty or promise, if any, made by any person acting on behalf of Lessor which is not expressly set forth in this Lease will be valid or binding on Lessor.

(c) As-Is Lease. Lessee further acknowledges and agrees that Lessee's execution of this Lease shall constitute Lessee's representation, warranty and agreement that the Condition of the Leased Premises has been independently verified by Lessee to its full satisfaction, and that, except to the extent of the express covenants of Lessor set forth in this Lease, Lessee will be leasing the Leased Premises based solely upon and in reliance on its own inspections, evaluations, analyses and conclusions, or those of Lessee's representatives; and that LESSEE IS LEASING THE LEASED PREMISES IN ITS "AS-IS, WITH ALL FAULTS" CONDITION AND STATE OF REPAIR INCLUSIVE OF ALL FAULTS AND DEFECTS, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF THE LESSEES EXECUTION OF THIS LEASE. Without limiting the scope or generality of the foregoing,

Lessee expressly assumes the risk that the Leased Premises do not or will not comply with any Applicable Laws now or hereafter in effect.

(d) Waivers, Disclaimers and indemnity.

(i) Waiver and Disclaimer. Lessee hereby fully and forever waives, and Lessor hereby fully and forever disclaims, all warranties of whatever type or kind with respect to the Leased Premises, whether expressed, implied or otherwise including, without limitation, those of fitness for a particular purpose, tenantability, habitability or use.

(ii) Lessor's Materials. Lessee further acknowledges that any information and reports including, without limitation, any engineering reports, architectural reports, feasibility reports, marketing reports, soil reports, environmental reports, analyses or data, or other similar reports, analyses, data or information of whatever type or kind which Lessee has received or may hereafter receive from Lessor or its agents or consultants have been furnished without warranty of any kind and on the express condition that Lessee will make its own independent verification of the accuracy, reliability and completeness of such information and that Lessee will not rely thereon. Accordingly, subject to terms of Paragraph 47.1(e) below, Lessee agrees that under no circumstances will it make any claim against, bring any action, cause of action or proceeding against, or assert any liability upon, Lessor or any of the persons or entities who prepared or furnished any of the above information or materials as a result of the inaccuracy, unreliability or incompleteness of, or any defect or mistake in, any such information or materials and Lessee hereby fully and forever releases, acquits and discharges Lessor and each person furnishing such information or materials of and from, any such claims, actions, causes of action, proceedings or liability, whether known or unknown.

(e) Release and Waiver.

(i) Release. Except to the extent of Claims (as defined bellow) against Lessor arising from any breach by Lessor of its covenants and obligations expressly provided in this Lease, Lessee, on behalf of Lessee, As successors and assigns, hereby fully and forever releases, acquits and discharges Lessor of and from, and hereby fully forever waives:

Any and all claims, actions, causes of action, suits, proceedings, demands, rights, damages, costs, expenses, losses, judgments, provisional relief, fines, penalties, and fees, including, without limitation, any and all claims for compensation, reimbursement, or contribution whatsoever (individually and collectively, "Claims"), whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, that Lessee or any of Lessee's successors or assigns now has or may have or which may arise or be asserted in the future arising out of, directly or indirectly, or in any way connected with: (A) any act or omission of Lessor (or any person acting for or on behalf of Lessor or for whose conduct Lessor may be liable), whether or not such act be the active, passive or sole negligence of Lessor, in

connection with prior ownership, maintenance, operation or use of the Leased Premises; (B) any condition of environmental contamination or pollution at the Leased Premises (including, without limitation, the contamination or pollution of any soil, subsoil media, surface water or groundwater at the Leased Premises; (C) to the extent not already included in clause (B) above, the past, present or future existence, release or discharge, or threatened release, of any Hazardous Materials at the Leased Premises, (including, without limitation, the release or discharge, or threatened release, of any Hazardous Materials into the air at the Leased Premises or into any soil, Subsoil, Surface water or groundwater at the Leased Premises); (D) the violation of, or noncompliance with, any Environmental Requirement or other Applicable Law now or hereafter in effect, however and whenever occurring; (E) the condition of the soil at the Leased Premises; (F) the condition of any improvements located on the Leased Premises including, without limitation, the structural integrity and seismic compliance of such improvements; (G) any matters which would be shown on an accurate ALTA land survey of the Leased Premises (including, without limitation, all existing easements and encroachments, if any; (H) all Applicable Laws now or hereafter in effect; (I) matters which would be apparent from a visual inspection of the Leased Premises; or (J) to the extent not already covered by any of the foregoing clauses (A) through (I) above, the use, maintenance, development, construction, ownership or operation of the Leased Premises by Lessor or any predecessor(s)-in-interest in the Leased Premises of Lessor.

(ii) Waiver of Civil Code Section 1542. With respect to all releases made by Lessee under or pursuant to this ARTICLE 47, Lessee hereby waives the application and benefits of California Civil Code §1542 and hereby verifies that it has read and understands the following provision of California Civil Code §1542:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor Lessee."

Lessee: _____

ARTICLE 48

DISPUTE RESOLUTION

Except for a default in the payment of rent, in the event of any dispute or disagreement between or among the parties arising out of or relating to the terms, conditions, interpretation, performance, default or any other aspect of this Lease, such parties shall first attempt to resolve the dispute informally. In the event the dispute is not resolved informally, prior to and as a precondition to the initiation of any legal action or proceeding, the parties shall refer the dispute to mediation before a retired State or Federal judge mutually selected by the parties. The dispute shall be mediated through informal, nonbinding joint conferences or separate caucuses with an impartial third party mediator who will seek to guide the parties to a consensual resolution of the dispute. The mediation proceeding shall be conducted within thirty (30) days (or any mutually agreed-longer period) after referral, and shall continue until any party involved concludes, in good faith, that there is no reasonable possibility of resolving the dispute without resort to a legal action or proceeding. All costs of the mediation shall be shared equally by the parties involved. Each party shall bear its own attorneys' fees and other costs incurred in connection with the mediation. In the event the parties are unable to resolve the dispute through mediation, in addition to any other rights or remedies, any party may institute a legal action.

ARTICLE 49

SECURITY DEPOSIT

49.1. Security Deposit. Concurrently with Lessee's execution of this Lease, Lessee shall deposit with the Lessor a security deposit (the "Security Deposit") in the initial amount of \$22,250.00. Notwithstanding the foregoing, the Security Deposit may be in the form of cash deposited with the Lessor, a Certificate or Certificates of Deposit in the name of the Lessor 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 the Lessor as the beneficiary meeting all of the requirements set forth herein and otherwise upon terms acceptable to the Lessor in its absolute discretion or such other form as the Lessor, in its absolute discretion, may allow. Said sum shall be held by the Lessor 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.

49.2. Return of Security Deposit. Provided no event of default under Section 13.1 of this Lease shall have occurred for the period of five (5) years following the Commencement Date, the Lessor shall release or return to the Lessee, as appropriate, the full amount of the Security Deposit; provided, however, in the event thereafter an event of default under Section 13.1 of this Lease shall occur, the Lessee shall, within thirty (30) days following Lessor's written notice to Lessee advising Lessee the Security Deposit must be reinstated, deposit with Lessor the Security Deposit (except that the amount thereof shall be equal to twenty-five percent (25%) of the Minimum Annual Rent then payable under this Lease) in the manner provided for in Section 49.1 above.

49.3. Obligations of Lessor Regarding Security Deposit. Lessor 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 the Lessor solely for the purposes provided for herein. The Lessor shall not be required to keep the Security Deposit separate from its general funds, but the Lessor, at its option, may maintain the Security Deposit separate and apart from the Lessor's general and/or other funds, or may commingle the Security Deposit with the Lessor'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 the Lessor at the average rate earned by the Lessor 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 the Lessor 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 the Lessor to withdraw such interest, in which case such interest when paid by the depository shall be paid over to Lessee. The right of Lessee on termination of this Lease to the return by the Lessor of the Security Deposit not applied by the Lessor 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 the Lessor and any such act on the part of Lessee shall be without force and effect and shall not be binding upon the Lessor.

49.4. Application. If any rent or any other sum payable by Lessee to Lessor shall be overdue and unpaid or paid by Lessor on behalf of Lessee, or if Lessee shall fail to perform any of its obligations under this Lease, then the Lessor may, at its option and without prejudice to any other remedy which the Lessor 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 the Lessor for any rent or other sum in default, or for the payment of any amount which the Lessor may spend or become obligated to spend by reason of the Default or to compensate the Lessor for any other loss or damage which the Lessor 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 49.1 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 the Lessor for the earliest periods prior to the filing of such proceedings.

49.5. Transfer of Lessor's Interest. If Lessor transfers its interest in the Security Deposit, the Lessor may deliver the funds deposited by Lessee under this Article to the Lessor's transferee or assignee, and in such event, the Lessor shall be discharged from any further liability with respect to such Security Deposit.

ARTICLE 50

MISCELLANEOUS

50.1. Leased Premises Subject to CC&R's. Concurrently with the execution and delivery of this Lease, Lessor, Lessee, the lessee of the Waterside Parcel and the lessee of the

Residential Parcel have executed and delivered a Declaration of Easements, Covenants, Conditions and Restrictions of even date herewith, which shall be recorded in the Official Records of Alameda County (the "Declaration") and, in connection therewith, this Lease shall be subject to and subordinate to and each of the interests of the Lessor and Lessee hereunder shall be subject to and subordinate to the Declaration.

50.2. Memorandum of Lease. Lessor and Lessee, concurrently with the execution and delivery of this Lease, shall execute and acknowledge a Memorandum of Lease, in reasonably form and otherwise reasonably satisfactory to the parties hereto, for recording as soon as is practicable on or following the date first above written.

IN WITNESS WHEREOF. Lessor and Lessee have entered into this Lease as of the day, month and year first above written.

"Lessor"

"Lessee"

CITY OF ALAMEDA

By: _____
_____,
City Manager

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

_____,
Assistant City Attorney

(FOR USE BY CITY OF ALAMEDA)

STATE OF CALIFORNIA)
) SS.
COUNTY OF ALAMEDA)

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

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA) ss.

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

WITNESS my hand and official seal.

Notary Public

EXHIBIT "A"

Site Map

[To Be Provided]

EXHIBIT "B"

Legal Description

[To Be Provided]

EXHIBIT "C"

Renovation Work

[To Be Provided by Lessee]

EXHIBIT "B"

REMAINDER PARCEL LEASE

(See Attached)

BALLENA BAY LEASE
(REMAINDER PARCEL)

by and between

CITY OF ALAMEDA
("Lessor")

and

BALLENA ISLE MARINA, L.P.
("Lessee")

Dated as of _____, 2007

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**BALLENA BAY LEASE
(REMAINDER PARCEL)**

THIS BALLENA BAY LEASE (this "Lease") is made and entered into this ____ day of _____, 2007, by and between the CITY OF ALAMEDA, a municipal corporation ("Lessor"), and BALLENA ISLE MARINA, L.P., a California limited partnership ("Lessee").

RECITALS

A. Lessor is the owner of that certain real property that consists of approximately fifty-four (54) acres, including approximately twenty-seven (27) acres of land area and twenty-seven (27) acres of submerged lands, more commonly known as 1150 Ballena Bay and shown on the site map attached hereto as Exhibit "A" (the "Site Map") and incorporated herein by this reference.

B. Ballena Bay has been developed as a small recreational craft marina for approximately five-hundred (500) boats and shoreline facilities consisting of, among other things, office buildings, restaurants, storage facilities, parking lots, walks, streets and utility systems.

C. For the purpose of further developing the Ballena Bay, Lessor has divided the Ballena Bay into three (3) separate parcels pursuant to the terms and conditions of three (3) separate leases including this Lease.

D. One parcel and leasehold estate consists of the commercial buildings and related facilities (the "Commercial Parcel") and is shown on the Site Map. A second parcel and leasehold estate consists of the continuous linear public waterfront, marina slips and related facilities ("Waterside Parcel") and is shown on the Site Map. The third parcel and leasehold estate consists of the land that is presently to the south and east of the commercial development, consisting of approximately 12-16 acres and is shown on the Site Map and described with more particularity in Exhibit "B" attached hereto and by this reference made a part hereof (the "Leased Premises" or, sometimes, the "Remainder Parcel",).

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee, hereby agree as follows:

ARTICLE I

LEASED PREMISES

In consideration of Lessee's promise to pay the rents 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, Lessor hereby leases the Leased Premises to Lessee for the term of this Lease, and Lessee hereby leases the Leased Premises from Lessor for the term and promises to pay the rents and to perform the covenants and agreements of Lessee.

ARTICLE 2

TERM

The term of the Lease shall be for a period commencing on the date hereof (the "Commencement Date") and, unless sooner terminated as herein provided, shall expire without further notice at 11:59 p.m. on the 31st day of December, 2028 (the "Termination Date").

ARTICLE 3

USE

3.1. Lessee agrees that the Leased Premises may be used for such purposes and cases as may have heretofore or may hereafter be approved by Lessor under the Lessor's ordinances regulating land use, including the Lessor's zoning ordinances, as such ordinances may from time to time be amended or supplemented; subject, however, to the Lessor's rights to establish a perimeter trail on the Leased Premises as more particularly described in Section 3.3.

3.2. Except as expressly provided herein, Lessee shall not use or permit the Leased Premises to be used for any other uses or purposes whatsoever. No use of the Leased 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.

3.3. In the event, within five (5) years following the Commencement Date, this Lease is not terminated and no portion of the Leased Premises has been developed for commercial use with respect to which income subject to percentage rent under Article V of this Lease will be payable to the Lessor, Lessor shall have the right, at Lessor's sole cost and expense, to develop, construct and maintain a public walkway (not exceeding fifteen (15) feet in width) and park area on the perimeter of the Lease Premises extending a width of twenty-five (25) feet inward from the leasehold property line of the Leased Premises abutting the San Francisco Bay (excluding any portion thereof included within the Common Area, as defined in the Declaration of Easements, Covenants, Conditions and Restrictions of even date herewith described in Section 50.1 of this Lease) for the use and enjoyment of the public ("Park Area"). The Park Area shall be constructed, developed and maintained in a manner which will not interfere with the reasonable development or operation of any portion of the Commercial Parcel or Waterside Parcel and, accordingly, the design, development and construction of the Park Area shall be subject to the approval of each lessee of the Commercial Parcel and Waterside Parcel, respectively, which such approval shall not be unreasonably withheld, conditioned or delayed

ARTICLE 4

RENT

Lessee agrees to pay to Lessor rent in accordance with the following:

4.1. The minimum annual rent ("Minimum Annual Rent") during the term of this Lease shall be One and No/100 Dollars (\$1.00); provided, however, commencing on the first anniversary date that Lessee is required to pay percentage rent under Article 5, Minimum Annual Rent shall be equal to seventy-five percent (75%) of the percentage rent paid by Lessee for the immediately preceding fiscal year.

4.2. Within ten (10) days following Lessor's written notice to Lessee, Lessee shall pay Lessor the full amount of the Minimum Annual Rent; provided, however, commencing with the first day of the month following the date which is the final anniversary date that Lessee is required to pay percentage rent, and on the first day of each calendar month thereafter, Lessee shall pay Lessor one-twelfth (1/12) of the Minimum Annual Rent in effect for the fiscal year commencing with such first anniversary.

4.3. Percentage rents shall be calculated on a monthly basis and shall be based on the fair market percentage rent determined in accordance with the provisions of ARTICLE 5 herein and there shall be deducted from the monthly percentage rents the amount of Minimum Annual Rent paid or payable with respect to the calendar month for which the percentage rent is being calculated.

4.4. Beginning with the date Lessee shall first receive any income from any lawful business or operation on the Leases Premises, on or before the 20th day of each month thereafter, Lessee shall render to Lessor, in a form reasonably prescribed by Lessor, a detailed report of gross income for that portion of the accounting year which ends with and includes the last day of the previous calendar month. The accounting year shall be twelve (12) calendar months. The first accounting year shall begin on the first day of the first month during which the percentage rent described in this Lease becomes effective. Subsequent accounting years shall begin upon each anniversary of that date during the Lease term or any extension thereof. Each report shall be signed by Lessee or a responsible agent under penalty of perjury and shall include the following:

(a) The total gross income for said portion of the accounting year, itemized as to each of the business categories for which a separate percentage rent rate is established.

(b) The related itemized amounts of percentage rent computed, as herein provided, and the total thereof.

(c) The total rent previously paid by Lessee for the accounting year within which the preceding month falls.

4.5. Concurrently with the rendering of each monthly statement, Lessee shall pay Lessor the total percentage rent computed for that portion of the accounting year beginning on the first day of the accounting year and ending with and including the last day of the preceding

month [Section 4.5(b) above]. less total rent previously paid for the accounting year [Section 4.5(c) above].

4.6. All payments shall be delivered to and statements required under this ARTICLE 4 shall be filed with Lessor's Treasurer. Checks shall be made payable to the City of Alameda and mailed to _____, or delivered to _____

_____. Lessor may change the designated place of payment and filing at any time upon ten (10) days' written notice to Lessee. Lessee assumes all risk of loss and responsibility for late charges, as hereinafter described, if payments are made by mail.

4.7. Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease. Accordingly, in the event Lessee is delinquent in rendering to Lessor an accounting of rent due or in remitting the rent due in accordance with the rent provisions of this Lease, Lessee shall pay, in addition to the unpaid rent, five percent (5%) of the delinquent rent. If rent is still unpaid at the end of fifteen (15) days, Lessee shall pay an additional five percent (5%) for a total of ten percent (10%) of the delinquent rent. The parties hereby agree that said late charges are appropriate to compensate Lessor for loss resulting from rent delinquency including, without limitation, lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Acceptance of such late charges and any portion of the late payment by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of its other rights and remedies. The City Manager of Lessor shall have the right to waive for good cause, as determined in the sole discretion of the City Manager, any late charges upon written application of Lessee for any such delinquency period.

4.8. All payments by Lessee to Lessor shall be by a good and sufficient check. No payment made by Lessee or receipt or acceptance by Lessor of a lesser amount than the correct amount of rent due under this Lease shall be deemed to be other than a payment on account of the earliest rent due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance or pursue any other available remedy.

4.9. Lessee shall, at all times during the term of this Lease, keep or cause to be kept, accurate and complete records and double entry books of account of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted herein. The records must be supported by source documents of original entry such as sales invoices, cash register tapes, bank depository documentation, purchase invoice or other pertinent supporting documents. Financial statements (a balance sheet and income/expense statement), based upon the double entry books of account, shall be prepared not less than annually and copies thereof delivered to Lessor within one hundred and twenty (120) days following the end of each calendar year during the term of this Lease.

All retail sales shall be recorded by means of cash registers, except as expressly provided herein. All cash registers shall be equipped with sales totalizer counters for all sales categories,

as herein provided, which counters are locked in, constantly accumulating, and which cannot be reset. Said registers shall further contain tapes upon which sales details are imprinted. Beginning and ending sales totalizer counter readings shall be made a matter of daily record. Retail sales may be recorded by a system other than cash registers, provided such system is first approved in writing by the City Manager of Lessor.

4.10. All Lessee's books of account, records, financial statements, and documentation related to this Lease or to business operations conducted within or from the Leased Premises, shall be kept either at the Leased Premises or at such other locations as are acceptable to Lessor, which alternate locations shall include Lessee's principal place of business within the State of California so long as Lessee has provided Lessor with written notice thereof. Lessor shall have the right at any and all reasonable times upon fifteen (15) days prior written notice to examine and audit said books, records, financial statements, and documentation, without restriction, for the purpose of determining the accuracy thereof, the accuracy of the monthly statements of gross income submitted and the accuracy of rent paid to Lessor. In the event that the Lessee's business operations conducted within or from the Leased Premises are part of a larger business operation of the Lessee, and any part of the books, records, financial statements and documentation required herein is prepared only for the larger operation, and not solely for the business operations of the Leased Premises, then the Lessor shall also have the right to examine and audit that part of said books, records, financial statements, and documentation of the larger business operation.

Lessee's failure to keep such books of account, records, financial statements, and documentation and make them available for inspection by Lessor is a breach of this Lease. The Lessor shall have the discretion to require the installation of any additional, reasonable accounting methods or controls it may deem necessary, subject to prior written notice. In the event the Lessee does not make available the original records and books of account at the Leased Premises or within the limits of Alameda County, Lessee agrees to pay all additional and reasonable travel expenses incurred by Lessor in conducting an audit at the location where said records and books of account are maintained.

Additionally, if the audit reveals a discrepancy of more than five percent (5%) between the rent due as reported by Lessee and the rent due as determined by the audit, and/or Lessee has failed to maintain complete and accurate books of account, records, financial statements, and documentation in accordance with this Lease, then Lessee shall pay the cost of the audit, as determined by the Lessor, plus the rent determined to have been underpaid. In addition, should Lessee fail to pay said amounts within thirty (30) days after written notice from Lessor, then Lessee shall pay an additional fee of ten percent (10%) of said unpaid amounts as compensation to Lessor for administrative costs and loss of interest as previously described herein, along with the rent determined to have been underpaid.

Furthermore, if the audit reveals that rent due to Lessor is less than five percent (5%) between the rent due as reported by Lessee and the rent due as determined by the audit, and should Lessee fail to pay said unpaid rent within thirty (30) days after written notice from Lessor, then Lessee shall pay an additional fee of ten percent (10%) of said unpaid rent as compensation to Lessor for administrative costs and loss of interest as previously described herein, along with the rent determined to have been underpaid.

Lessee agrees to pay such amounts and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that Lessor will incur from Lessee's late payment. Acceptance of late charges and any portion of the late payment by Lessor shall in no event constitute a waiver of Lessee default with respect to late payment, nor prevent Lessor from exercising any of the other rights and remedies granted in this Lease. The City Manager of Lessor shall have the right to waive for good cause any late charges upon written application of Lessee for any such delinquency period.

4.11. Gross income upon which the percentage rent is to be based shall include all income resulting from occupancy or use of the Leased Premises in any manner, whether by Lessee, its sublessees or concessionaires, or parties operating through Lessee, its sublessees, or concessionaires, from whatever source derived and whether for cash or credit.

Gross income shall include any manufacturer's or importer's excise tax included in the prices of the goods sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge.

Gross income, however, shall not include any of the following: (1) sales of United States postage; (2) any sales or excise taxes payable by Lessee to any governmental agency as a direct result of operations under this Lease, provided that the amount of such taxes is shown on the books and records elsewhere herein required to be maintained; (3) gratuities, provided the customer voluntarily determines the amount of said gratuity to be paid, or the customer is aware that the Lessee has added a pre-established gratuity to the charge for the services rendered and said additional amount is segregated and identified as a gratuity on the billing to the customer. Further, refunds for goods returned shall be deducted from current gross income upon their return; (4) security deposits (provided, however, in the event any security deposit is applied by the Lessor towards any rent due the Lessor, such security deposit shall, upon any such application, be treated as gross income subject to percentage rent); (5) any income, earnings or receipts which, under the Internal Revenue Code of 1986, as amended, are derived from the sale or disposal of any capital assets; (6) any income, savings or receipts derived from Lessee's investments or any funds not invested in the Leased Premises; (7) proceeds of loans to the Lessee and (8) funds invested in the Lessee.

ARTICLE 5

PERCENTAGE RENT

5.1. Effective on the first day Lessee shall first receive any income from any lawful business or operation on the Leased Premises until the last day of the tenth (10th) anniversary of such date shall occur ("Adjustment Date") percentage rent shall be calculated based upon the percentages, as applied to each type of business conducted on the Leased Premises, as set forth in Exhibit "C" attached hereto and by this reference made a part hereof. Commencing on the Adjustment Date and every ten (10) years thereafter, percentage rent shall be adjusted based on the fair market percentage rent as of each such date as determined in accordance with the provisions of this ARTICLE 5.

5.2. Beginning six (6) months prior to the Adjustment Date, the percentage rent provided for in this Lease shall be mutually agreed upon by Lessor and Lessee.

5.3. In the event the parties cannot agree to the percentage rent for the first ten (10) year period beginning on the Adjustment Date (or any ten (10) year adjustment period thereafter) within three (3) months prior to the commencement of such rental period, the percentage rent for said rental period shall be determined by three (3) appraisers as hereinafter provided. All of the appraisers shall be qualified real estate appraisers and designated member of the Appraisal Institute (or, if the Appraisal Institute is not then in existence, an organization of substantially the same stature) with at least five (5) years experience in appraising commercial real estate, that are licensed to practice in the State of California.

(a) For purposes of this Lease, percentage rent shall mean, as of the commencement of any Adjustment Date, the fair market percentage rent for the categories of use described in Exhibit "C" then being charged by lessors of comparable facilities of comparable size and quality as the Leased Premises located within the northern California area, taking into consideration (i) the age and condition of the improvements to the Leased Premises, (ii) the then remaining term of this Lease and (iii) any other factors utilized by qualified appraisals based upon recognized real estate appraisal principles and methods.

(b) The parties agree that, after notice by either party to the other requesting an appraisal determination of percentage rent, each party shall appoint one appraiser within thirty (30) days. Notice of the appointment shall be given by each party to the other party when made. Should either party fail to appoint its appraiser within said time period, then the party that has appointed its appraiser may petition the Superior Court of the State of California, County of Alameda, to appoint the second appraiser. The party making the application shall give the other party notice of its application. All costs, including attorney fees associated with the court's appointment of the second appraiser, shall be borne by the party which failed to appoint its appraiser.

(c) The two appraisers shall immediately choose a third appraiser to act with them. If they fail to select a third appraiser within thirty (30) days following the appointment of the second appraiser, on application by either party, the third appraiser shall be promptly appointed by the then presiding judge of the Superior Court of the State of California, County of Alameda, acting in his/her individual capacity. The party making the application shall give the other party notice of its application.

(d) By no later than thirty (30) days following the appointment of the third appraiser, Lessor and Lessee shall each provide the other and each of the three appraisers with (i) its rent proposal which shall consist of the percentage rents (and/or gallonage and/or flat rents if applicable) as of the applicable Adjustment Date (the "Rent Proposal") and (ii) its appraisal report prepared by an appraiser with qualifications no less than the qualifications of appraisers appointed under Sections 5.3(a) and 5.3(b), if any. Neither Lessor nor Lessee shall be required to submit a separate appraisal report.

(e) Within thirty (30) days following the selection of the third appraiser, the three appraisers shall conduct a meeting in the City of Alameda, California. The three appraisers

shall hear and consider the presentations of the Lessor and Lessee and their appraisal witnesses and any additional written information furnished by Lessor or Lessee. The amount and kind of evidence allowed and the rules of discovery and testimony shall be decided solely by the third appraiser after consultation with the appraisers appointed by the Lessor and Lessee.

(f) The award determined by the appraisers shall be effective and retroactive to the applicable Adjustment Date. The award shall be in writing and shall be made no later than fifteen (15) days following the meeting provided for in Section 5.3(e). The award shall be either Lessor's Rent Proposal or Lessee's Rent Proposal. The appraisers shall not possess any right or authority to propose a compromise between Lessor's Rent Proposal and Lessee's Rent Proposal or the modification of either Rent Proposal. The appraisers shall select whichever of the two Rent Proposals sets forth the percentage rent that the majority of the appraisers believe is closest to the market percentage rent for the Leased Premises for the Fifth Rental Period. A unanimous decision of the three appraisers is not required. Within ten (10) days of the date the award is made, (a) the underpayment of the percentage rent, if any, shall be paid by Lessee to Lessor, or (b) the overpayment of the percentage rent, if any, may be credited by Lessee against percentage rent next coming due until any such overpayment has been credited in full.

ARTICLE 6

[INTENTIONALLY OMITTED]

ARTICLE 7

IMPROVEMENTS

7.1. In accordance with the procedures described herein, Lessee may, at its own expense, make alterations or changes, or cause to be made, built, installed, or removed any structures, machines, appliances, utilities, signs, or other improvements necessary or desirable for the authorized use of the Leased Premises; provided, however, said work shall be in accordance with plans and specifications, including but not limited to working drawings, hereinafter "Plans," previously submitted to and approved in writing by Lessor, which approval may not be unreasonably withheld, conditioned or delayed.

7.2. No construction, installation, or removal of any improvement upon the Leased Premises shall commence without Lessor's prior written approval, which approval may not be unreasonably withheld, conditioned or delayed. Any and all changes to such Plans must be approved by Lessor, which approval may not be unreasonably withheld. Further, all work shall be in accordance with all applicable laws, regulations, ordinances, and codes.

7.3. Notwithstanding the foregoing, within the interior of any enclosed building structure, and without Lessor's prior consent, Lessee shall have the right to install and/or remove machines, equipment, appliances, and trade fixtures that are necessary or desirable for the authorized use of the Leased Premises.

7.4. When reasonably required by Lessor, Lessee shall, at its sole cost and expense, pave and/or landscape the entire portion of the Leased Premises not covered by structures. All

paving and/or landscaping shall be in accordance with Plans which must be submitted to and approved in writing by Lessor, which approval may not be unreasonably withheld, conditioned or delayed, prior to the commencement of any such paving and/or landscaping.

7.5. Lessee shall notify Lessor prior to submitting application(s) to any governmental regulatory agency for any development or construction permit or license pertaining to the Leased Premises. Lessee shall also provide Lessor with a copy of all application(s) within five (5) days of making said application(s), along with copies of all Plans submitted as part of the application(s). Lessee shall also provide Lessor, within ten (10) days of Lessee's receipt, a copy of all permits, licenses, or other authorizations subsequently issued.

7.6. Lessee agrees that no banners, pennants, flags, spinners, or other advertising devices, nor any temporary signs, shall be flown, installed, placed, or erected on the Leased Premises without Lessor's prior written approval, which approval may not be unreasonably withheld, conditioned or delayed.

ARTICLE 8

[INTENTIONALLY OMITTED]

ARTICLE 9

TITLE TO IMPROVEMENTS

9.1. For the purpose of this ARTICLE 9, "improvements" shall include, but are not limited to, subsurface improvements. On the Commencement Date of this Lease, all existing structures, buildings, installations, and improvements located on the Leased Premises are owned by and title thereto is vested in Lessee. All said existing structures, buildings, installations, and improvements, as well as structures, buildings, installations, and improvements of any kind placed on the Leased Premises by Lessee subsequent to the Commencement Date of this Lease shall, at the option of Lessor, be removed by Lessee at Lessee's expense; provided, however, Lessor may only exercise said option effective as of the Termination Date or sooner termination of this Lease. If Lessor exercises such option, Lessee shall remove such structures, buildings, installations, and/or improvements within sixty (60) days after the Termination Date of this Lease or sooner termination thereof, whichever occurs earlier. Lessee agrees to repair any and all damage occasioned by any such removal. Title to any such structures, buildings, installations, and/or improvements not so removed within said sixty (60) days shall vest in Lessor, without cost to Lessor and without any payment to Lessee, except that Lessor shall have the right to have them removed and to repair any and all damage occasioned by their removal, all at the expense of Lessee.

9.2. On the Commencement Date of this Lease, all existing machines, appliances, equipment, and trade fixtures located on the Leased Premises are owned by and title thereto is vested in Lessee. Furthermore, all machines, appliances, equipment, and trade fixtures placed on the Leased Premises by Lessee subsequent to the Commencement Date of this Lease are also owned by and title thereto is vested in Lessee. All machines, appliances, equipment, and trade fixtures shall be removed by Lessee, at Lessee's expense, within sixty (60) days after the

Termination Date of this Lease or sooner termination thereof, whichever occurs earlier. Provided, however, Lessee agrees to repair any and all damage occasioned by their removal.

9.3. If machines, appliances, equipment, and trade fixtures required by Lessor to be removed are not removed by Lessee within sixty (60) days after the Termination Date of this Lease or sooner termination thereof, whichever occurs earlier, the same may be considered abandoned and shall thereupon become the property of Lessor without cost to Lessor and without any payment to Lessee, except that Lessor shall have the right to have them removed and to repair any and all damage occasioned by their removal, all at the expense of Lessee.

9.4. During any period of time employed by Lessee under this ARTICLE 9 to remove structures, buildings, installations, improvements, machines, appliances, equipment, and trade fixtures, Lessee shall pay no rent to Lessor.

ARTICLE 10

LIENS

10.1. Lessee shall defend, indemnify, and hold harmless Lessor against all claims and liens for labor, services, or materials in connection with improvements, repairs, or alterations made by Lessee or Lessee's sublessees, contractors, and agents on the Leased Premises, and the costs of defending against such claims and liens, including reasonable attorneys' fees.

10.2. In the event any such claim or lien, or any other claim(s), lien(s) or levy(ies) whatsoever of any nature caused by Lessee or Lessee's sublessees, contractors, and agents, is filed against the Leased Premises or the leasehold interests of Lessee therein, Lessee shall, upon written request of Lessor, deposit with Lessor a bond conditioned for the payment in full of all claims upon which said lien(s) or levy(ies) have been filed. Such bond shall be acknowledged by Lessee, as principal, and by an entity licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company, as surety. Lessor shall have the right to declare this Lease in default in accordance with the provisions of ARTICLE 13 hereof in the event the bond required by this Paragraph 10.2 has not been deposited with Lessor within ten (10) days after written request has been delivered to Lessee.

10.3. This provision shall not apply to a foreclosure of a trust deed or mortgage encumbering the leasehold if the encumbrance has previously received Lessor consent in accordance with ARTICLE 11 herein.

ARTICLE 11

LEASE ENCUMBRANCE

11.1. Lessor's Consent to Encumbrance. Lessee shall not encumber the Lease, leasehold interest, and the improvements thereon by a deed of trust, mortgage, or other security instrument to assure the payment of Lessee's promissory note, without Lessor's prior written consent, in each instance, which such consent shall not be unreasonably withheld, conditioned or delayed; provided, upon Lessor's request, Lessee shall provide Lessor with reasonably satisfactory evidence that the debt service coverage ratio (reasonably projected ratio of the net

operating income from the Leased Premises, i.e. all gross operating revenue anticipated to be received during the next twelve (12) month period, less all amounts reasonably projected for the operation and maintenance of the Leased Premises, including the amount of any rent payable to the Lessee hereunder, for the same twelve (12) month period) with respect to the indebtedness secured by the encumbrance in favor of a Consented-To-Lender is at least 1.25 to 1. If Lessee enters into any deed of trust, mortgage, or other security instrument that encumbers the Lease, leasehold interest, or the improvements thereon without Lessor's prior written consent, Lessor shall have the right to declare this Lease in default. In the event Lessee requests Lessor's consent to any Lease encumbrance, hereinafter referred to as a "transaction" in this ARTICLE 11, Lessee shall reimburse Lessor for all Lessor's reasonable costs and expenses associated with said transaction. Said costs shall include reasonable legal fees and disbursements relating to or arising out of any such transaction, regardless of whether such transaction is consummated. Notwithstanding any other provision of this Article 11, until such time as the Marina Project is completed as provided in Section 8.1, the net proceeds (i.e. the loan amount, less any and all fees and costs incurred in connection with obtaining the loan and the payoff of any loan secured by a pre-existing encumbrance on Lessee's leasehold interest) from any loan by a Consented-To-Lender shall be used exclusively for renovation and construction of the Marina Project to the extent necessary to complete the Marina Project.

11.2. Definition of "Consented-to-Lender". The term "Consented-to-Lender" as hereinafter used in this Lease means the lender holding an encumbrance consented to by Lessor. It may include one or more lenders holding obligations of the Lessee secured by a single deed of trust, mortgage, or other security instrument.

11.3. Voluntary Lease Surrender. Without the prior written consent of the Consented-To-Lender, should Lessee owe the Consented-to-Lender any amounts under any security instrument encumbering this Lease, leasehold interest, or the improvements thereon, Lessor will not accept the voluntary surrender, cancellation, or termination of this Lease before the expiration of the term thereof.

11.4. Loan Default. If a deed of trust mortgage, or other security instrument consented to by Lessor is in default at any time, the Consented-to-Lender or an affiliate of the Consented-to-Lender (provided the affiliate is an entity the majority of which is owned by the Consented-to-Lender) shall, as provided below, have the right, without Lessor's prior consent, to:

(a) Accept an assignment of the Lease in lieu of foreclosure; or

(b) Cause a foreclosure sale to be held pursuant to either judicial proceedings or power of sale as provided in its deed of trust, mortgage, or other security instrument; provided, however, no assignment to a successful bidder, other than the Consented-to-Lender, or its affiliate (provided the affiliate is an entity the majority of which is owned by the Consented-to-Lender) shall be effective without Lessor's prior written consent under Section 11.6.

(c) A new lease pursuant to Section 11.10(h) herein.

11.5. No Lease Obligations. Before said Consented-to-Lender or any other future consented-to assignee, acquires the leasehold interest, it shall, as an express condition precedent,

agree in writing to assume each and every obligation under the Lease. Furthermore, before any said Consented-to-Lender, or any other future consented-to assignee or purchaser may subsequently assign or sublease all or any portion of the leasehold interest shall, in each instance, obtain Lessor's prior written consent. Further, a Consented-to-Lender that has: (i) acquired the leasehold interest and assumed the Lessee's obligations, or (ii) entered into a new lease pursuant to ARTICLE 13 herein, concurrently with a termination of this Lease, shall be released from any further obligations under this Lease after it assigns the leasehold interest to an assignee consented to by Lessor, in accordance with this ARTICLE 11.

11.6. Lessor's Consent to Assignment. Whenever a Consented-to-Lender is required by the provisions of this ARTICLE 11 to obtain Lessor's prior consent to an assignment to the successful bidder upon a foreclosure by said Consented-to-Lender, then Lessor will grant such consent if:

(a) The principal(s) of such assignee, purchaser, or sublessee are reputable (meaning the absence of reputations for dishonesty, criminal conduct, or association with criminal elements -- "reputable" does not mean "prestigious," nor does the determination of whether one is reputable involve considerations of personal taste or preference);

(b) The principal(s) of such assignee, purchaser, or sublessee possess sufficient business experience and financial means to perform Lessee's obligations under this Lease--according to the then-current standards for business experience and financial means that Lessor generally requires of new or renewed lessees at the time of the request; and

(c) The assignee, purchaser, or sublessee agrees in writing to assume each and every obligation under this Lease.

(d) Further, Lessor will not unreasonably or arbitrarily withhold such consent. Provided, however, no such assignee, purchaser, or sublessee shall subsequently: (i) assign, transfer, or sublease any or all of the Leased Premises without Lessor's prior written consent, in accordance with ARTICLE 12 herein; or (ii) encumber the Lease, leasehold interest, and improvements thereon without Lessor's prior written consent, in accordance with this ARTICLE 11.

(e) Provided, further, if said Consented-to-Lender becomes the lessee by reason of: (i) being the successful bidder upon foreclosure, or (ii) an assignment in lieu of foreclosure, or (iii) being the lessee of a new lease entered into pursuant to Section 11.10(h) herein, then said Consented-to-Lender may, upon a subsequent assignment or subleasing of all or substantially all of the Leased Premises, take back from its assignee, purchaser, or sublessee, a purchase money deed of trust, mortgage, or security instrument. Provided, however, said Consented-to-Lender must execute and submit to Lessor documentation substantially in the same form and content as was originally submitted to Lessor when consent was granted to the earlier encumbrance. Only said Consented-to-Lender or the successful bidder upon said foreclosure may enforce the provisions of this ARTICLE 11. Further, no other third party shall have the rights or remedies, as third-party beneficiaries, or otherwise, hereunder.

(f) The burden of producing evidence and the burden of proof showing Lessor that a prospective assignee, purchaser, or sublessee meets each and all of the aforesaid qualifications and standards shall be on said Consented-to-Lender or successful bidder upon foreclosure. Lessor's decision shall be based upon Lessor's high duty of care in administering a valuable public resource, which it holds in trust for the people of the State of California. In the absence of fraud or arbitrary or unreasonable action in applying or failing to apply said standards, Lessor's decision shall be final.

11.7. Notice of Foreclosure Sale. Said Consented-to-Lender shall include a statement in any Notice of Foreclosure Sale covering the foregoing requirements for Lessor's consent to an assignment upon said foreclosure.

11.8. Subsequent Encumbrance. Except for subleases, utility easements, and other necessary rights-of-way, Lessor shall not expressly consent to a subsequent lien or encumbrance against the Leased Premises without said Consented-to-Lender's prior written consent.

11.9. Assignment of Security Interest. Said Consented-to-Lender shall not assign its security interest in the Leased Premises in whole or in part without Lessor's prior written consent, in each instance. Provided, however, Lessor's consent to such an assignment shall be deemed granted (and such assignee will for all purposes of this Lease be deemed to be a Consented-to-Lender) if the assignment is to:

(a) A financial institution in good legal standing under the laws of its jurisdiction of incorporation having assets exceeding Five Hundred Million Dollars (\$500,000,000); or

(b) The United States of America or any state thereof, or any agency thereof;
or

(c) An assignee by operation of law (e.g., a state insurance department engaged in supervising the liquidation or rehabilitation of an insurance company lender).

(d) Provided, however, for purposes of the foregoing provisions "financial institution" shall mean: (i) an insurance company qualified to do business in the State of California; or (ii) a federally- or state-chartered bank, savings bank, or savings and loan association; or (iii) a pension or retirement fund operated for the employees and former employees of, and regulated and controlled by, the United States of America or any state thereof, or any agency thereof; e.g., the California State Teachers' Retirement System.

(e) Provided, further, no subsequent assignment by such assignee will be permitted unless:

(i) The assignment conforms to all requirements of this ARTICLE 11;

(ii) A duplicate original(s) of such assignment is furnished Lessor; and

(iii) In case of an assignment where Lessor's consent is deemed granted: (i) assignee promptly furnishes Lessor reasonably satisfactory evidence that said

assignee complies with the foregoing requirements, and (ii) said assignee expressly agrees to take such assignment subject to all Lessor's rights under this Lease.

11.10. Rights of a Consented-to-Lender. Until such time as the lien of a Consented-to-Lender (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 11.10 are solely for the benefit of the Consented-to-Lender, and are not for the benefit of, nor may they be enforced by, Lessee):

(a) Lessor 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 11.10(e) this Lease), nor to any cancellation or surrender occurring without Lessor's consent pursuant to the provisions of the United States Bankruptcy Code, 11 U.S.C. 101, et seq.

(b) Intentionally Omitted.

(c) If, in connection with securing by Lessee of any Approved Mortgage, the Consented-to-Lender requests an amendment with respect to the lender protection rights set forth in this ARTICLE 11, Lessor agrees not to unreasonably withhold its consent to any such amendment; provided, that Lessor shall not be required to consent to such an amendment if it would, in Lessor's reasonable determination, materially impair any of Lessor's rights or materially increase any of Lessor's obligations under this Lease. Further, Lessor shall not enter into any amendment of this Lease without the Consented-to-Lender's, if any, prior written approval.

(d) Lessor, upon providing Lessee with any notice of default under this Lease, shall, at the same time, provide a copy of such notice to every Consented-to-Lender whose loan is secured by an Approved Mortgage and who has given written notice to Lessor of its interest in Lessee's estate. After such notice has been given to a Consent to Lender, such Consented-to-Lender 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 Consented-to-Lender as specified in Section 11.10(e) below. Lessor shall accept performance by or at the instigation of such Consented-to-Lender as if the same had been done by Lessee.

(e) Notwithstanding anything to the contrary contained in this Lease, Lessor shall have no right to terminate this Lease on account of an uncured monetary default or non-monetary default of Lessee unless, following expiration of the applicable cure period provided for in this Lease, Lessor first provides each Consented-to-Lender written notice of its intent to terminate the Lease and the Consented-to-Lender 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 60 day period (or is such that possession of the Leased Premises is necessary for the Consented-to-Lender 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 Consented-to-Lender shall have fully cured any monetary default within said 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 Consented-to-Lender commences curing such non-monetary default within said 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 Consented-to-Lender to continue any foreclosure proceeding it may have commenced against Lessee after all defaults have been cured by the Consented-to-Lender, and if such defaults shall be cured and the Consented-to-Lender 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 Consented-to-Lender 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 Consented-to-Lender, and such non-monetary default shall be deemed to be waived following the Consented-to-Lender's acquisition of Lessee's estate and such Consented-to-Lender's timely cure of all monetary defaults and all non-monetary defaults which are capable of cure by such Consented-to-Lender in accordance with the foregoing provisions.

(f) No Consented-to-Lender, acting in such capacity, shall be deemed to be a transferee of this Lease or of Lessee's estate so as to require such Consented-to-Lender, 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 Consented-to-Lender and any proposed assignee of such Consented-to-Lender shall deliver written notice to Lessor of the assignment of the Consented-to-Lender's promissory note and security therefor together with the assignee's address to which notices are to be sent, the Consented-to-Lender may, without Lessor's consent, assign Lessee's promissory note secured by the lien on Lessee's estate to any institution which would qualify as a Consented-to-Lender under Section 11.9. Upon acquiring Lessee's estate pursuant to a foreclosure or deed in lieu of foreclosure, the Consented-to-Lender shall immediately notify Lessor in writing of its name and address; and the method by which the Consented-to-Lender acquired Lessee's estate and the documentation to evidence such acquisition, together with the name, address and authorized person of the Consented-to-Lender to whom correspondence and notices may be delivered. Upon taking an assignment of Lessee's estate from a Consented-to-Lender under Section 11.10(b) of this Lease, the assignee shall deliver to Lessor written notice of (a) the effective date of the assignment, (b) the identity 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 Lessor, and executed by the assignee, in which such assignee shall agree in writing for the benefit of Lessor 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 Lessor has delivered a notice of such default (provided, however, that if Lessor has delivered an Estoppel Certificate to the Consented-to-Lender and/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 Consented-to-Lender), 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 11; 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.

(g) Notwithstanding any other provision of this Lease, but subject nevertheless to the provisions of Sections 11.10(b) and 11.10(h) 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.

(h) 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, any Consented-to-Lender of an Approved Mortgage who has requested notice from Lessor in writing and furnished its name and addresses to Lessor, may, within thirty (30) days after the date of such rejection or disaffirmance deliver a written offer to Lessor to enter into a new lease of the Leased Premises with such Consented-to-Lender as Lessee (the "New Lease"), prepared and executed by such Consented-to-Lender, which 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. Such offer shall be accompanied by two duplicate original forms of the New Lease, executed by Consented-to-Lender, and Consented-to-Lender shall, as a condition of the acceptance and execution by Lessor of the New Lease: (i) pay to Lessor at the time of the execution by Consented-to-Lender and delivery of said New Lease any and all sums for unpaid rent payable by Lessee pursuant to this Lease had this Lease not been so rejected and terminated, to and including the date of delivery of such written offer, less the net amount (i.e., net of all reasonable expenses) of all sums received by Lessor 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 Lessor resulting from the review 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 Consented-to-Lender 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 Consented-to-Lender. Within thirty (30) days of receipt by Lessor of such written offer from Consented-to-Lender and the satisfaction of the conditions set forth above, Lessor shall accept such New Lease by executing and delivering a duplicate original copy thereof to such Consented-to-Lender. Nothing herein contained shall be

deemed to impose any obligation on the part of Lessor to deliver physical possession of the Leased Premises to such Consented-to-Lender unless Lessor at the time of the execution and delivery of such New Lease shall have obtained physical possession thereof and Lessor has insurable fee simple title to the Leased Premises, free and clear of this Lease and the claims of all persons claiming thereunder.

(i) The Consented-to-Lender that becomes the Lessee under any such New Lease made pursuant to Section 11.10(h) shall be liable to perform the obligations imposed on the Lessee by such New Lease to the same extent as a Consented-to-Lender 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 11.10(b), above, the Consented-to-Lender shall be relieved of all obligations of the Lessee under the New Lease first arising after the date of such assignment.

(j) After the termination of this Lease and during the period thereafter during which any Consented-to-Lender is entitled to enter into a New Lease of the Leased Premises pursuant to Section 11.10(h), Lessor 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, Lessor shall receive all rent and other payments due from all sublessees (subject to Lessor'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 Consented-to-Lender and shall deposit such rents and payments in a separate and segregated account, but may withdraw and pay to Lessor such sums as are required or were required to be paid to Lessor 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, Lessor shall account to the Consented-to-Lender 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 Lessor acting as an agent pursuant to this Section 11.10(j) shall not be deemed an acceptance by Lessor for its own account of the attornment of any sublessee unless Lessor shall have agreed in writing with such Sublessee that its tenancy shall be continued following the expiration of any period during which a Consented-to-Lender 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 Lessor determines that it cannot accept rent payments from a sublessee without risk of being deemed to have accepted such sublease's attornment (and Lessor has not previously agreed to recognize such sublessee in the event of a default under this Lease by Lessee), Lessor shall have the right to direct such sublessee to pay such rents directly to Consented-to-Lender. If Consented-to-Lender shall fail to exercise its right to enter into a New Lease or fail to timely execute such New Lease pursuant to Section 11.10(h), all rents collected by Lessor on behalf of such Consented-to-Lenders pursuant to this Section 11.10(j) shall become Lessor's property free and clear of any claim by such Consented-to-Lenders and such Consented-to-Lenders shall have no further rights with respect thereto.

(k) Intentionally Omitted.

Notices from Lessor to any Consented-to-Lender shall be mailed to the address of the Consented-to-Lender set forth in the Approved Mortgage furnished to Lessor or at such other address as may have been furnished to Lessor by such Consented-to-Lender in writing. All notices from the Consented-to-Lender to Lessor shall be mailed to the address designated pursuant to the provisions of this Lease or such other address as Lessor 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 12

ASSIGNMENT - SUBLEASE

12.1. Lessee shall not, without the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed:

(a) Assign or transfer the whole or any part of this Lease or any interest therein;

(b) Sublease (which shall also include management and/or operating agreements covering the Leased Premises) the whole or any part of the Leased Premises except as permitted under Section 12.2;

(c) Permit transfer of the Lease or possession of the Leased Premises by merger, consolidation, or dissolution of Lessee;

(d) Except as otherwise provided in ARTICLE 11 herein, permit hypothecation, pledge, encumbrance, transfer or sale, voluntary or involuntary, in whole or in part, of this Lease or any interest therein; or

(e) Permit the occupancy of the whole or any part of the Leased Premises by any other person or entity.

12.2. Notwithstanding the foregoing, (a) Lessor's consent shall not be required with respect to any leasing or rental by the Lessee of office space, commercial space or retail space within the improvements at the Leased Premises, and (b) nothing herein contained shall be construed to prevent the occupancy of said Leased Premises by an employee or business invitee of Lessee in the ordinary course of Lessee's business.

12.3. Further, Lessee shall not, without the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed:

(a) Permit assignment, hypothecation, withdrawal, admittance, dissolution, change, pledge, encumbrance, transfer or sale, in whole or in part, including without limitation as a result of an election or action by the parties comprising Lessee, whether voluntary or involuntary, by operation of law or otherwise, of the Lessee or the general partner(s) of Lessee;

(b) Contract for the management or operation of the whole or any part of the Leased Premises; or

(c) Permit the transfer of the Lease or possession of the Leased Premises by any changes of a majority in interest of the shareholder(s), member(s) and/or general partner(s) of Lessee, including without limitation, any withdrawal, admittance or change, whether voluntary, involuntary, by operation of law, or otherwise.

12.4. It is mutually agreed that the personal qualifications of the parties controlling Lessee, specifically including, but not limited to, the general partner(s), are a part of the consideration for granting this Lease. Said parties do hereby specifically agree to, except as prohibited as a result of death or disability, maintain active control and supervision of the operations conducted on the Leased Premises.

12.5. In the event Lessee requests Lessor's consent to any Lease assignment and/or transfer, hereinafter referred to as a "transaction," Lessee shall reimburse Lessor for all Lessor's reasonable costs and expenses associated with said transaction. Said costs shall include reasonable legal fees and disbursements relating to or arising out of any such transaction, regardless of whether such transaction is consummated.

12.6. In the event Lessor consents to any Lease assignment or transfer, said consent shall be conditioned upon the following: (i) if, on the effective date of such proposed assignment, transfer, the rent being paid under this Lease is less than market rent, Lessor shall thereafter be paid additional rent to equal market rent; (ii) assignee shall agree and assume each and every obligation under the Lease; (iii) if deemed necessary by Lessor, a Lease amendment shall be executed which will include new or revised lease provisions; and (iv) assignee shall comply with other conditions and qualifications reasonably required by Lessor. Notwithstanding the foregoing, items (i), (iii), and (iv) shall not apply in the event of: (a) a Lease assignment or transfer to a third party from a Consented-to-Lender which acquired title to the Lease by foreclosure or deed in lieu of foreclosure or a new Lease pursuant to the provisions of ARTICLE 11 herein, or (b) assignment or transfer of the Lease to a Consented-to-Lender by deed in lieu of foreclosure, or to a Consented-to-Lender or a third party as the successful bidder at a foreclosure sale. Upon the effective date of any said consented-to Lease assignment or transfer, assignee shall thereafter pay to Lessor the market rent as referenced herein, subject to adjustments as provided in ARTICLE 5 herein.

12.7. In connection with the Lessor's consideration of any request for its consent to an assignment, transfer or sublease of the entirety of the Lease which requires Lessor's consent, Lessor may consider the financial condition of the proposed assignee ("Proposed Transferee"), the Proposed Transferee's experience in the operation and management of the property of the type subject to this Lease and the character and reputation of the Proposed Transferee. In connection with the foregoing, at such time as the Lessee shall request Lessor's consent to any proposed transfer, Lessee shall provide Lessor with appropriate financial statements, including balance sheets and profit and loss statements, demonstrating the Proposed Transferee's financial condition for the preceding three (3) years, or such shorter period that the proposed assignee has been in existence. In addition, the Lessee shall provide Lessor with such additional information as may be reasonably requested by Lessor to determine the character and reputation of the Proposed Transferee, as well as the Proposed Transferee's experience in the operation and maintenance of property similar to the Leased Premises.

The following standards are to apply to proposed transactions requiring Lessor's consent pursuant to Section 12.1 of the Lease. These standards and conditions are not to apply to (a) an assignment for the purpose of securing leasehold financing of the parcel by an encumbrance holder approved by Lessor, (b) the transfer of the leasehold in connection with a foreclosure or transfer in lieu of foreclosure by a Consented-To-Lender, or (c) the first transfer by that encumbrance holder if it has acquired the leasehold through a foreclosure or a transfer in lieu of foreclosure.

(a) The Proposed Transfers must have a net worth determined to be sufficient in relation to the financial obligations of the lessee under the Lease (equal to at least six (6) times the total Minimum Annual Rent due to Lessor for the most recent fiscal year). A letter of credit, cash deposit, guarantee from a parent entity or participating individual(s) having sufficient net worth or similar security satisfactory to the Lessor may be substituted for the net worth requirement. If the Proposed Transferee's net worth is materially less than the transferor's, Lessor may disapprove the assignment or require additional security such as that described in the previous sentence.

(b) The Proposed Transferee must have significant experience in the construction (if contemplated), operation and management of the type(s) of improvements existing on or to be constructed on the Leased Premises, or provide evidence of contractual arrangements for these services with providers of such services reasonably satisfactory to the Lessor. Changes in the providers of such services and changes to the contractual arrangements must be approved by the Lessor. All approvals of the Lessor will not be unreasonably withheld, conditioned or delayed.

(c) The individual or individuals who will acquire Lessee's interest in this Lease or the Leased Premises, or own the entity which will so acquire Lessee's interest, irrespective of the tier at which individual ownership is held, must be of good character and reputation and, in any event, shall have neither a history of, nor a reputation for: (1) discriminatory employment practices which violate any federal, state or local law; or (2) non-compliance with environmental laws, or any other legal requirements or formally adopted ordinances or policies of the Lessor.

(d) The price to be paid in connection with the transaction shall not result in a financing obligation which jeopardizes the Proposed Transferee's ability to meet its rental obligations under the Lease. Market debt service coverage ratios and leasehold financial performance, at the time of the proposed transfer, will be used by Lessor in making this analysis.

(e) If the Proposed Transferee is an entity, rather than an individual, the structure of the proposed transferee must be such that (or the assignee must agree that) the Lessor will have reasonable approval rights regarding any future direct or indirect transfers of interests in the entity or the Lease as required under the Lease (excluding any excluded transfer); provided however, that a transfer of ownership of a publicly held parent corporation of Lessee that is not done primarily as a transfer of this leasehold will not be subject to Lessor approval.

(f) The terms of the proposed assignment will not detrimentally affect the efficient operation or management of the leasehold, the Leased Premises or any improvements thereon.

ARTICLE 13

DEFAULTS AND REMEDIES

13.1. Defaults. The occurrence of any one (1) or more of the following events shall constitute a default:

(a) Abandonment of the Leased Premises. Abandonment is herein defined to include, but is not limited to, any absence by Lessee from the Leased Premises for ten (10) consecutive days or longer.

(b) Failure by Lessee to pay, when due, any Lease-required rent, other payment and/or charge herein, where such failure continues for a period of ten (10) days after written notice thereof. Provided, however, any such notice provided in this Paragraph 13.1(b) or in subsequent Paragraph 13.1(c) shall be in lieu of, and not in addition to, any notice required under Section 1161 of the California Code of Civil Procedure, as amended.

(c) Failure by Lessee to perform any other express or implied covenants or conditions in this Lease (other than any breach under ARTICLE 12, for which immediate notice of termination may be given), should such failure continue for ninety (90) days after written notice thereof.

(d) Subject to any restrictions or limitations placed on Lessor by applicable laws governing bankruptcy, Lessee's: (a) applying for, consenting to, or suffering the appointment of a receiver, trustee, or liquidation of all or a substantial portion of its assets; (b) making a general assignment for the benefit of creditors; (c) admitting in writing its inability to pay its debts or its willingness to be adjudged a bankrupt; (d) becoming unable to, or failing to, pay its debts as they mature; (e) being adjudged a bankrupt; (f) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization, or insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days of such filing); (g) convening a meeting of its creditors, or any class thereof, for purposes of effecting a moratorium, extension, or composition of its debts; or (h) suffering, or permitting to continue unstayed and in effect for ten (10) consecutive days, any attachment, levy, execution, or seizure of all or a substantial portion of Lessee's assets or of Lessee's interest in this Lease.

(e) Paragraph 13.1(e) herein shall not be applicable or binding on the beneficiary of any deed of trust, mortgage, or other security instrument on the Leased Premises which is of record with Lessor and has been consented to by resolution of Lessor, or to said beneficiary's successors in interest consented to by resolution of Lessor, as long as there remains any monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided that such beneficiary or its successors in interest, continuously and timely pays to Lessor all rent due or coming due under the provisions of this Lease and the Leased Premises are

continuously and actively used in accordance with the terms of this Lease, and provided that said beneficiary agrees in writing to assume and perform each and every obligation under the Lease.

13.2. Remedy in the event of any default, Lessor may exercise the following remedies:

(a) Termination: Terminate Lessee's right to possession of the Leased Premises whereupon this Lease shall terminate and Lessee shall immediately surrender possession of the Leased Premises to Lessor. In such event, Lessor shall be entitled to recover from Lessee:

(i) The "Worth at the Time of Award", as hereinafter defined, of the unpaid rent which had been earned at the time of termination;

(ii) The "Worth at the Time of Award" of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such loss that Lessee proves could have been reasonably avoided;

(iii) The "Worth at the Time of Award" of the amount by which the unpaid rent for the balance of the term of this Lease after the time of award exceeds the amount of such loss that Lessee proves could have been reasonably avoided; and

(iv) Any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease, or which would ordinarily be likely to result therefrom, including but not limited to the cost of recovering possession of the Leased Premises, expenses of reletting (including necessary repair, renovation and alteration of the Leased Premises), reasonable attorneys' fees, and any other reasonable costs.

(v) The "Worth at the Time of Award" of the amounts referred to in Paragraphs 13.2(a)(i) and 13.2(a)(ii) shall be computed by charging interest at ten percent (10%) per annum from the dates such amounts accrued to Lessor. The "Worth at the Time of Award" of the amount referred to in Paragraph 13.2(a)(iii) shall be computed by discounting such amount at one (1) percentage point above the Discount Rate of the Federal Reserve Bank of San Francisco at the time of the award.

(b) Reletting: Without terminating or effecting a forfeiture of the Lease, or otherwise relieving Lessee of any obligation herein, Lessor may, but need not, relet the Leased Premises or any portion thereof, at any time or from time to time, for such terms and upon such conditions and rent as Lessor, in its sole discretion, deems proper. Regardless of whether the Leased Premises are relet, Lessee shall continue to pay to Lessor all Lease-required amounts up to the date that Lessor terminates Lessee's right to possession of the Leased Premises; provided, however, following a default, Lessor shall not unreasonably withhold its consent to any Lessee-requested assignment of this Lease or subletting of the Leased Premises, unless Lessor shall also elect to terminate this Lease and Lessee's right to possession of the Leased Premises, as provided in Paragraph 13.2(a). Such payments shall be due at the times provided in this Lease and Lessor need not wait until the termination of the Lease to recover said amounts. If Lessor relets the Leased Premises, or any portion thereof, such reletting shall not relieve Lessee of any obligations herein, except that Lessor shall apply the rent or other proceeds actually collected for such

reletting against amounts due from Lessee herein, to the extent such proceeds compensate Lessor for Lessee's nonperformance of any obligation herein. Lessor may execute any new lease pursuant thereto in its own name. Further, Lessor shall be under no obligation to reveal to new lessee how these proceeds were applied, nor shall said new lessee have any right to collect any such proceeds. Lessor shall not, by any reentry or other act, be deemed to have accepted Lessee's surrender of the Leased Premises or Lessee's interest therein, nor be deemed to have terminated this Lease or to have relieved Lessee of any obligation herein, unless Lessor shall have furnished Lessee with express written notice of Lessor's election to do so, as set forth herein.

(c) Other: Any and/or all other rights or remedies of Lessor specified elsewhere in this Lease or provided by law.

13.3. In the event Lessor has consented to an encumbrance of this Lease for security purposes in accordance with ARTICLE 11 herein, it is understood and agreed that Lessor shall furnish copies of all notice(s) of default(s) to the beneficiary or mortgagee under said encumbrance by certified mail (provided Lessee has delivered to Lessor written request therefore, together with the name and address of any such beneficiary or mortgagee) contemporaneously with the furnishing of such notices to Lessee. Furthermore, in the event Lessee fails to cure such default(s) within the time permitted herein, said beneficiary or mortgagee shall be permitted to cure such default(s) at any time within fifteen (15) days following the expiration of the period within which Lessee may cure said default(s); provided, however, Lessor shall not be required to furnish any further notice(s) of default(s) to said beneficiary or mortgagee.

13.4. Notwithstanding the foregoing, should a default not be cured within the cure periods referred to above, said Lease shall not be terminated as to said beneficiary or mortgagee unless Lessor first legally offers to enter into a valid lease with said beneficiary or mortgagee, and said offer is not accepted in writing within thirty (30) days after said offer is made. Furthermore, such new lease must be entered into as a condition concurrent with such termination for the then-remaining term of this Lease. Furthermore, the new lease must contain the same terms, conditions, and priority as this Lease, provided the mortgagee or beneficiary promptly cures all then-existing defaults under this Lease when and to the extent it is able to cure them. Such new lease may be entered into even though possession of the Leased Premises has not been surrendered by the defaulting Lessee. In such event, unless legally restrained, Lessor shall promptly proceed to obtain possession of the Leased Premises and to deliver possession to said mortgagee or beneficiary as soon as the same is obtained. Should the mortgagee or beneficiary fail to accept said offer in writing within said thirty (30) day period, or, having so accepted said offer, should it fail promptly to cure all existing defaults under this Lease when and to the extent it is able to cure them, then such termination shall also be effective as to said mortgagee or beneficiary.

ARTICLE 14
BANKRUPTCY

14.1. Lessor shall have the right to declare this Lease in default if Lessee: (i) becomes insolvent; (ii) makes an assignment for the benefit of creditors; (iii) becomes the subject of a bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceeding; or in the event of any judicial sale of Lessee's leasehold interest.

14.2. The conditions of this ARTICLE 14 shall not be applicable or binding on: (1) Lessee; or (2) the beneficiary in any deed of trust, mortgage, or other security instrument encumbering the leasehold interest which Lessor has consented to in writing; or (3) the aforesaid beneficiary's successors in interest which Lessor has consented to in writing, as long as there remains any monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided Lessee, such beneficiary, or such beneficiary's successors in interest continuously pay to Lessor all rent due or coming due under the provisions of this Lease, and the Leased Premises are continuously and actively used in accordance with the terms of this Lease.

ARTICLE 15
EMINENT DOMAIN

If any public authority takes the whole or a substantial part of the Leased Premises under the power of eminent domain, then the term of this Lease shall cease as to the part so taken from the day the possession of that part is taken. Further, the rent shall be paid up to that day. Lessee shall then have the right either to: (i) cancel this Lease and declare the same null and void; or (ii) continue in possession of the remainder of the Leased Premises under the then-current Lease terms; provided, however, the rent and other amounts due hereunder shall be reduced in proportion to the value of the portion of the Leased Premises taken. All damages awarded for such taking shall belong to and be the property of Lessor, whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the Leased Premises. Provided, however, Lessor shall not be entitled to any award made for the taking of any of Lessee's installations or improvements on the Leased Premises.

ARTICLE 16
TERMINATION OF PRIOR AGREEMENT(S)

Any and all existing leases or rental agreements between Lessor and Lessee for the Leased Premises which have not already expired or terminated, are hereby terminated on the effective date of this Lease. Further, said statute(s) shall not be waived or extended because of this Lease. Nothing herein is intended nor shall be construed as a waiver of any such rights, or as a release of any such duties or obligations, whether known or unknown at this time or upon the effective date of this Lease.

ARTICLE 17

INTENTIONALLY OMITTED

ARTICLE 18

MAINTENANCE AND REPAIR

18.1. As part of the consideration for this Lease, Lessee shall assume full responsibility for operation and maintenance of the Leased Premises throughout the term and without expense to Lessor. Lessee shall perform all maintenance, which includes all painting, repairs, and replacements necessary to maintain and preserve the Leased Premises in a good, safe, healthy, and sanitary condition, satisfactory to Lessor and in compliance with all applicable laws. Provided, however, prior to Lessee performing any extraordinary repairs, plans and specifications must first be submitted to Lessor and receive Lessor approval, pursuant to the procedures provided in ARTICLE 7 herein. Further, Lessee shall provide approved containers for trash and garbage and keep the Leased Premises free and clear of rubbish, litter, and any other fire hazards. Lessee waives all rights to make repairs at the expense of Lessor, as provided in Section 1942 of the California Civil Code, and all rights provided by Section 1941 of said Code.

18.2. For the purpose of keeping the Leased Premises in a good, safe, healthy, and sanitary condition, Lessor always shall have the right but not the duty to enter, view, inspect, determine the condition of, and protect its interests in the Leased Premises. Provided, however, Lessor or its representatives shall: (a) conduct such entry in a manner that causes the least inconvenience and disruption to Lessee's operation as practicable; and (b) comply with all reasonable safety and security requirements of Lessee. It is not intended, however, that Lessee's safety and security requirements be used to bar Lessor's right of inspection. Further, Lessee shall provide Lessor reasonable access to the Leased Premises for such purpose.

18.3. If inspection discloses the Leased Premises are not in the condition required herein, Lessee immediately must commence the necessary maintenance work, and complete said work within ten (10) days after written notice from Lessor.

18.4. Notwithstanding, Lessor shall not be required to perform any maintenance, including painting, repairs, or replacements; or to make any improvements whatsoever on or for the benefit of the Leased Premises.

18.5. The rights reserved in this Article shall not create any obligations or increase any obligations for Lessor elsewhere in this Lease.

18.6. In the event Lessee fails to maintain, repair or make any replacements as required under the terms of this ARTICLE 18, Lessor may, but shall not be required, upon not less than thirty (30) days prior written notice (or in the case of an emergency, notice of not less than the time period which would be reasonable in light of the nature of the emergency) and Lessee's failure to timely remedy any maintenance item properly noticed, or make any repair or replacement properly noticed, undertake the maintenance, repair or replacement noticed and the actual out-of-pocket cost thereof (including, but not limited to, the cost of labor overhead,

materials and equipment) shall be charged to Lessee and payable by Lessee to Lessor as additional rent within thirty (30) days following delivery by Lessor to Lessee of a statement (with supporting invoices to the extent available) setting forth in reasonable detail the cost of such maintenance, repair or replacement.

ARTICLE 19

TAXES AND UTILITIES

This Lease may result in a taxable possessory interest and be subject to the payment of property taxes. Lessee shall pay before delinquency all taxes and assessments of any kind assessed or levied upon Lessee or the Leased Premises by reason of: (i) this Lease; (ii) any buildings, machines, or other improvements of any nature whatsoever erected, installed, or maintained by Lessee; or (iii) the business or other activities of Lessee upon or in connection with the Leased Premises. Lessee also shall pay any fees imposed by law for licenses or permits for any business or activities of Lessee upon the Leased Premises, or under this Lease, and shall pay before delinquency any and all charges for utilities at or on the Leased Premises.

ARTICLE 20

CONFORMANCE WITH LAWS AND REGULATIONS

Lessee agrees that, in all activities on or in connection with the Leased Premises, and in all uses thereof, including the making of any alterations, changes, installations, or other improvements, it will abide by and conform to all laws and regulations. Said laws and regulations shall include, but are not limited to, any ordinances of the city in which the Leased Premises are located, including the Building Code thereof; any ordinances and general rules of Lessor, including tariffs; and any applicable laws of the State of California and federal government, as any of the same now exist or may hereafter be adopted or amended.

ARTICLE 21

EQUAL EMPLOYMENT OPPORTUNITY AND NONDISCRIMINATION

21.1. Lessee shall comply with Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the California Constitution; the California Fair Employment and Housing Act; the Americans with Disabilities Act of 1990; and any other applicable federal, state, or local laws and regulations now existing or hereinafter enacted, requiring equal employment opportunities or prohibiting discrimination. This shall include without limitation, laws and regulations prohibiting discrimination because of race, color, religion, sex, national origin, ancestry, physical or mental disability, veteran status, medical condition, marital status, age, sexual orientation, pregnancy, or other non-job related criteria. In complying with all such laws, including without limitation the Americans with Disabilities Act of 1990, Lessee shall be solely responsible for such compliance and required programs, and there shall be no allocation of any such responsibility between Lessor and Lessee.

21.2. Annually, Lessee shall formulate and file with Lessor an approved: (i) "Equal Employment Opportunity and Nondiscrimination Program," and (ii) "Statement of Compliance" for the promotion of equal employment opportunities and nondiscrimination. Lessee shall make such progress reports as required by Lessor, and, upon Lessor's reasonable notice, Lessee shall make available for inspection and copying all of its records relevant to compliance with this ARTICLE 21. Provided, however, Lessee is only required to file the Program and Statement when the average annual employment level operating on the Leased Premises exceeds fifty (50) employees. Provided further, should Lessee be subject to a federally-mandated affirmative action program for employees, Lessee may, in lieu of filing the Program and Statement, annually certify in writing to Lessor that Lessee is subject to such a program, and, upon Lessor's request, Lessee shall furnish evidence thereof.

21.3. For the purposes and provisions of this Article, a sublessee shall be considered the Lessee should the sublessee become the prime operator of the Leased Premises.

21.4. Lessee's compliance with this Article is an express condition hereof, and any failure by Lessee to so comply and perform shall be a default as provided in this Lease, and Lessor may exercise any right as provided herein, and as otherwise provided by law.

ARTICLE 22

PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions herein shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated thereby.

ARTICLE 23

HOLD HARMLESS

Lessee shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless Lessor and its officers, employees, and agents for any and all liability, claims, judgments, damages, proceedings, orders, directives, costs, including reasonable attorneys' fees, or demands arising directly or indirectly out of the obligations undertaken in connection with this Lease, or Lessee's use, occupancy, possession or operation of the Leased Premises, except claims or litigation arising through the sole negligence or willful misconduct of Lessor. It is the intent of this ARTICLE 23 that Lessee indemnify and hold harmless Lessor for any actions of Lessee or Lessor, including duties that may be legally delegated to Lessee as to third parties, except for those arising out of the sole negligence or willful misconduct of Lessor. This indemnity obligation shall apply for the entire time that any third party can make a claim against or sue Lessor for liabilities arising out of Lessee's use, occupancy, possession or operation of the Leased Premises, or arising from any defect in any part of the Leased Premises.

ARTICLE 24

SUCCESSORS IN INTEREST

Unless otherwise provided in this Lease, the terms, covenants, conditions, and agreements herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

ARTICLE 25

EASEMENTS

This Lease and all rights granted hereunder are subject to all easements and rights-of-way granted or reserved by Lessee and Lessor in, upon, over and across the Leased Premises pursuant to that certain Declaration of Easements, Covenants, Conditions and Restrictions dated as of even date herewith (the "Declaration of Easements"). This Lease and all rights granted hereunder are subject to all easements and rights-of-way previously granted or reserved by Lessor in, upon, over, and across the Leased Premises for any purpose whatsoever. Said Lease and granted rights shall be subject to future easements and rights-of-way for access, gas, electricity, water, sewer, drainage, telephone, telegraph, television transmission, and such other Lessor or public facilities as Lessor may determine from time to time to be in the best interests of the development of the lands within Lessor's jurisdiction. Lessor agrees to make an effort to locate future easements and rights-of-way, and to install associated public facilities, so as to produce a minimum amount of interference with Lessee's business. Further, Lessee shall not be entitled to any monetary payment or other remuneration for any such future easements and rights-of-way.

ARTICLE 26

INTENTIONALLY OMITTED

ARTICLE 27

INSURANCE

27.1. Lessee shall maintain insurance acceptable to Lessor in full force and effect throughout the term of this Lease. The policies for said insurance shall, as a minimum, provide the following:

(a) Forms of Coverage

(i) "OCCURRENCE" for Commercial General Liability covering the Leased Premises, operations, and contractual liability assumed by Lessee in this Lease in the amount of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage. The general aggregate shall be Four Million Dollars (\$4,000,000) unless a Two Million Dollars (\$2,000,000) per location aggregate limit is provided separate by endorsement. If alcoholic beverages are served or sold on the Leased Premises, Liquor Liability coverage in the amount of not less than One Million Dollars

(\$1,000,000) shall be obtained. If no alcoholic beverages are served or sold on the Leased Premises, the proof of insurance shall so state.

(ii) Fire and Extended Coverage, including water damage and debris cleanup provisions, in an amount not less than ninety percent (90%) of full replacement value of all improvements located within the Leased Premises. The fire and extended coverage policies shall be endorsed with a Loss Payee endorsement in favor of Lessor. It is agreed that any insurance proceeds in excess of One Hundred Thousand Dollars (\$100,000) resulting from a loss under such policies shall be payable jointly to Lessor and Lessee to ensure that such proceeds will be reinvested in rebuilding and/or repairing the damaged portions of the Leased Premises and any damaged or destroyed improvements located thereon. Provided, however, if there is a Lessor-consented to mortgage or deed of trust encumbering the leasehold, then all fire and extended coverage policies shall be made payable jointly to the mortgagee or beneficiary and Lessee, to ensure that any proceeds shall be held by said mortgagee or beneficiary for the following purposes:

(A) As a trust fund to pay for the reconstruction, repair, or replacement of the damaged or destroyed improvements, in kind and scope, in progress payments as the work is performed. Any funds remaining after completion of said work shall be retained by said mortgagee or beneficiary and applied to reduce any debt secured by such mortgage or deed of trust. Furthermore, any funds remaining after full payment of said debt shall be paid to Lessee; or

(B) In the event that this Lease is terminated with consent of both Lessor and said mortgagee or beneficiary, and the improvements are not reconstructed, repaired, or replaced, the insurance proceeds shall be retained, without liability, by said mortgagee or beneficiary to the extent necessary to fully discharge the debt secured by said mortgage or deed of trust. Furthermore, said mortgagee or beneficiary shall hold the balance thereof to restore the Leased Premises to a neat and clean condition. Any remaining funds shall lastly be paid to Lessor and Lessee, as their interests may appear.

(iii) In the event underground storage tanks are located on the Leased Premises, Lessee is required to comply with Code of Federal Regulations, Title 40, Chapter 1, Subchapter H or Title 23, Division 3, Chapter 18 of California Code of Regulations, collectively, herein "UST Law." At the time Lessee is required to comply with any provisions of UST Law requiring financial assurance mechanisms, Lessee shall provide Lessor with a Certified copy of its Certification of Financial Responsibility. If Lessee's program for financial responsibility requires insurance, then Lessee's policy(ies) shall name Lessor and As officers, employees, and agents as additional insureds, and all other terms of Paragraph 27.1(b), below, shall apply. Should Lessee change its financial assurance mechanisms, Lessee shall immediately provide Lessor with a certified copy of its revised Certification of Financial Responsibility.

(b) General Requirements

(i) All required insurance shall be in force the first day of the term of this Lease, and shall be maintained continuously in force throughout the term of this Lease. In addition, the cost of all required insurance shall be borne by Lessee. During the entire term of

this Lease, Lessee shall provide Lessor with Certificates, in a form acceptable to Lessor, evincing the existence of the necessary insurance policies and original endorsements effecting coverage required by this ARTICLE 27. The Certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind insurance on As behalf. Notwithstanding the forgoing, Lessor reserves the right to require complete, certified copies of all required policies at any time.

(ii) All liability insurance policies shall name, or be endorsed to name Lessor and its officers, employees, and agents as additional insureds and protect Lessor and its offices, employees, and agents against any legal costs in defending claims. All liability policies shall provide cross-liability coverage. All insurance policies shall be endorsed to state that coverage may not be suspended, voided, cancelled, or reduced in coverage, except after Lessee has furnished Lessor with thirty (30) days' prior written notice by certified mail. All insurance policies shall be endorsed to state that Lessee's insurance is primary and not excess or contributory to any insurance issued in the name of Lessor. Further, all insurance companies must be satisfactory to Lessor.

(iii) Any deductibles or self-insured retentions must be declared and acceptable to Lessor. If the deductibles or self-insured retentions are unacceptable to Lessor, then Lessee shall have the option to either: (i) reduce or eliminate such deductibles or self-insured retentions as respects the Lessor and its officers, employees, and agents; or, (ii) procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

(iv) Lessor shall retain the right at any time to review the coverage, form, and amount of insurance required herein. If, in the opinion of Lessor, the insurance provisions in this Lease do not provide adequate protection for Lessor and/or members of the public using the Leased Premises or using services connected with Lessee's use or occupancy of the Leased Premises, Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. Lessor's requirements shall be reasonable, but shall be designed to ensure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

(v) Lessor shall notify Lessee in writing of changes in the insurance requirements. With respect to changes in insurance requirements that are available from Lessee's then-existing insurance carrier, Lessee shall deposit Certificates evidencing acceptable insurance policies with Lessor incorporating such changes within sixty (60) days of receipt of such notice. With respect to changes in insurance requirements that are not available from Lessee's then-existing insurance carrier, Lessee shall deposit Certificates evidencing acceptable insurance policies with Lessor, incorporating such changes, within one hundred twenty (120) days of receipt of such notice. In the event Lessee fails to deposit insurance Certificates as required herein, this Lease shall be in default without further notice to Lessee, and Lessor shall be entitled to exercise all legal remedies.

(vi) If Lessee fails or refuses to maintain insurance as required in this Lease, or fails to provide proof of insurance, Lessor has the right to declare this Lease in default without further notice to Lessee, and Lessor shall be entitled to exercise all legal remedies.

(vii) The procuring of such required policies of insurance shall not be construed to limit Lessee's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policies of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Lease, or with the use or occupancy of the Leased Premises.

(viii) Lessee agrees not to use the Leased Premises in any manner, even if use is for purposes stated herein, that will result in the cancellation of any insurance Lessor may have on the Leased Premises or on adjacent premises, or that will cause cancellation of any other insurance coverage for the Leased Premises or adjoining premises. Lessee further agrees not to keep on the Leased Premises or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the Leased Premises. Lessee shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the Leased Premises.

ARTICLE 28

POLICY OF LESSOR

It is Lessor's policy that prevailing wage rates shall be paid all persons employed on the lands within Lessor's jurisdiction.

ARTICLE 29

WARRANTIES-GUARANTEES-COVENANTS

Lessor makes no warranty, guarantee, covenant, including but not limited to covenants of title and quiet enjoyment, or averment of any nature whatsoever concerning the condition of the Leased Premises, including the physical condition thereof, or any condition which may affect the Leased Premises. It is agreed that Lessor will not be responsible for any loss, damage, and/or costs, which may be incurred by Lessee by reason of any such condition or conditions.

ARTICLE 30

DAMAGE TO OR DESTRUCTION OF LEASED PREMISES

30.1. Should Lessee-owned improvements be: (i) damaged or destroyed by fire, the elements, acts of God, or by any other cause; or (ii) declared unsafe or unfit for occupancy or use by a public entity with the appropriate authority, (i) and/or (ii) hereinafter "event," Lessee shall, within ninety (90) days of such event, commence and diligently pursue to completion the repair, replacement, or reconstruction of the improvements necessary to permit full occupancy and use of the Leased Premises for the uses required herein. Repair, replacement, or reconstruction of such improvements shall be accomplished in a manner and according to Plans approved by Lessor. Provided, however, Lessee shall not be obligated to repair, reconstruct, or replace the improvements following their destruction in whole or substantial part, except to the extent the loss is covered by insurance required pursuant to ARTICLE 27 herein (or would be covered regardless of whether such required insurance is actually in effect).

30.2. If Lessee elects not to restore, repair, or reconstruct as herein required, then this Lease shall terminate. Further, Lessor shall have any rights to which it would be entitled under the provisions of ARTICLE 9 and ARTICLE 27 herein.

30.3. No event described herein shall relieve Lessee of its obligations to pay all rent and other amounts otherwise due hereunder.

ARTICLE 31

QUITCLAIM OF LESSEE'S INTEREST UPON TERMINATION

Upon termination of this Lease for any reason, including but not limited to termination because of default by Lessee, Lessee shall execute, acknowledge, and deliver to Lessor within thirty (30) days after receipt of written demand therefor, a good and sufficient deed whereby all Lessee's right, title and interest in the Leased Premises is quitclaimed to Lessor. Should Lessee fail or refuse to deliver the required deed to Lessor, Lessor may prepare and record a notice regarding the failure of Lessee to execute, acknowledge, and deliver such deed. Said notice shall be conclusive evidence of the termination of this Lease and of all right of Lessee, or those claiming under Lessee, in and to the Leased Premises.

ARTICLE 32

PEACEABLE SURRENDER

32.1. Upon expiration of this Lease or earlier termination or cancellation thereof, as herein provided, Lessee shall peaceably surrender the Leased Premises to Lessor in as good condition as the Leased Premises were at the Commencement Date of this Lease, except as the Leased Premises were repaired, rebuilt, restored, altered, or added to as permitted or required by the provisions of this Lease, ordinary wear and tear excepted, and subject to ARTICLE 9 herein. Nothing contained herein shall be construed to deny or abrogate the right of Lessee, prior to the expiration of the term or termination of this Lease, to receive any and all proceeds which are attributable to the condemnation of improvements or personal property belonging to Lessee immediately prior to the taking of possession by the condemnor or to remove any furniture or equipment not intended to be permanently affixed to, or reasonably necessary for the operation of, the Leased Premises, any signage identifying Lessee (as opposed to other signage used in the operation of the Leased Premises and associated improvements), or any personal property, upon the expiration of the term or earlier termination of this Lease or at any time during the term, subject to Lessee's obligations under this Lease to use the Leased Premises for the permitted uses.

32.2. If Lessee fails to surrender the Leased Premises at the expiration of this Lease or the earlier termination or cancellation thereof Lessee shall defend and indemnify Lessor from all liability and expense resulting from the delay or failure to surrender, including without limitation any succeeding lessee claims based on Lessee's failure to surrender.

32.3. No earlier than eleven (11) years, and no later than ten (10) years prior to the expiration of the term, Lessee shall deliver to Lessor a report prepared by a construction and

demolition expert approved by Lessor, such approval not to be unreasonably withheld, conditioned or delayed, which report details and estimates the cost of removing all improvements on the Leased Premises at the expiration of the term. Lessor may give written notice (the "Lessor Removal Notice") at any time, no later than the later of (a) six (6) months following Lessee's delivery of the removal cost report described above, or (b) nine (9) years prior to the expiration of the term, or concurrently upon any earlier termination, of Lessor's election to require Lessee to remove, at the sole cost and expense of Lessee, not later than the expiration of the term or earlier termination of this Lease, all or any portion of the at grade, above grade and below grade improvements of any kind whatsoever placed or maintained on the Premises, whether placed thereon or maintained by Lessee or others, including, but not limited to, concrete foundations, pilings, structures and buildings. If pursuant to the Lessor Removal Notice Lessor elects to require the removal of all or any portion of the Improvements, then Lessee shall, upon the expiration or termination of this Lease, (a) demolish and remove the improvements required by Lessor to be removed, (b) restore those portions of the Leased Premises on which Improvements have been removed to a good, usable and buildable condition, consisting of a level, graded buildable pad with no excavations, hollows, hills or humps, and (c) surrender possession of the Leased Premises to Lessor.

If Lessor elects to require Lessee to remove all or a portion of the Improvements pursuant to the Lessor Removal Notice, then Lessee shall, no later than the date that is thirty (30) days after Lessee's receipt of the Lessor Removal Notice, provide Lessor with a written plan which sets forth Lessee's proposed method of securing the discharge of Lessee's removal and restoration obligations pursuant to this subsection. Such security plan shall detail (i) the form of security proposed by Lessee (the "Removal Security Fund"), which security shall be either a deposit of funds, or a letter of credit, bond or other form of security in form and amount, and from an issuer, reasonably satisfactory to Lessor, and (ii) a schedule satisfactory to Lessor for the delivery by Lessee of the Removal Security Fund on a periodic basis over the remaining Term of the Lease, which schedule shall in all events provide for a full funding of the Removal Security Fund not later than two (2) years prior to the expiration of the Term. The amount of the Removal Security Fund shall be no less than the estimated costs to remove the Improvements set forth in the report described above, adjusted annually to reflect the increase or decrease, if any, in the ENR Index over the ENR Index as of the date of the cost estimation set forth in such expert report; provided, however, that in no event shall such adjustment result in a Removal Security Fund of an amount less than that set forth in the expert report. Any uncured failure by Lessee to fund the Removal Security Fund as required under this Section 32.3 shall constitute an Event of Default.

If Lessor requires the Removal Security Fund, Lessee shall have the right to use all amounts remaining in the Capital Improvement Fund at the end of the term for the improvement removal purposes described in this Section 32.3, if and to the extent that such funds were not required for Capital Improvement Fund purposes. If a Removal Security Fund is required, but Lessor does not require the removal of the improvements at the end of the term, then the Removal Security Fund (including any Capital Improvement Funds that were transferred to the Removal Security Fund and were not required for Capital Improvement Fund purposes under Section 8.3) shall be returned to Lessee.

If Lessor decides not to require Lessee to remove all of the improvements on the Premises as provided above, then upon the expiration of the term, or earlier termination of the Lease, Lessee shall turn over to Lessor all improvements not required to be removed by Lessee in the condition described in Section 32.1 above.

32.4. If Lessee fails to perform demolition, removal and restoration obligations required to be performed by Lessee hereunder, then Lessor may, at its election, sell, remove or demolish the Improvements, and such event, Lessee shall reimburse Lessor for any cost or expense thereof in excess of any funds received by Lessor through the security above provided and any consideration received by Lessor as a result of such sale, removal or demolition.

32.5. If Lessee fails to surrender the Leased Premises at the expiration of this Lease or the earlier termination or cancellation thereof, Lessee shall defend and indemnify Lessor from all liability and expense resulting from the delay or failure to surrender, including without limitation any succeeding lessee claims based on Lessee's failure to surrender.

ARTICLE 33

WAIVER

Should either Lessor or Lessee waive any breach by the other of any Lease covenant condition, or agreement, such waiver shall not be, nor be construed to be, a waiver of any subsequent or other breach of the same or any other Lease covenant, condition, or agreement. Further, failure on the part of either party to require or exact the other's full and complete compliance with any of the Lease covenants, conditions, or agreements shall not be, nor be construed as in any manner Changing the terms, or preventing the enforcement in full, of the provisions hereof. In addition, Lessor's subsequent acceptance of rent hereunder shall not be deemed to be a waiver of any preceding Lessee breach of any Lease term, covenant, or condition, other than Lessee's failure to pay the particular rent so accepted, regardless of Lessor's knowledge of Lessee's preceding breach at the time rent is accepted.

ARTICLE 34

HOLDOVER

34.1. This Lease shall terminate without further notice at expiration of the term. Any holding over by Lessee after either expiration or termination shall not constitute a renewal or extension, or give Lessee any rights in or to the Leased Premises.

34.2. If Lessee, with Lessor's consent, remains in possession of the Leased Premises after Lease expiration or termination, such possession shall be deemed a month-to-month tenancy terminable upon thirty (30) days' notice furnished at any time by either party to the other. In addition, all provisions of this Lease, except those pertaining to term, shall apply to the month-to-month tenancy, and Lessee shall continue to pay all rent required by this Lease. Provided, however, if percentage rent is required by this Lease, it shall be paid monthly on or before the tenth (10th) day of each month, including the tenth (10th) day of the month following the expiration of any such holdover period.

ARTICLE 35

PARAGRAPH HEADINGS

The Table of Contents and Paragraph Headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

ARTICLE 36

ENTIRE UNDERSTANDING

This Lease contains the entire understanding and agreement of the parties. Lessee acknowledges there is no other written or oral understanding or agreement between the parties with respect to the Leased Premises, and that this Lease supersedes all prior negotiations, discussions, obligations, and rights of the parties hereto. No waiver, modification, amendment, or alteration of this Lease shall be valid unless it is expressly in writing and signed by authorized representatives of the parties hereto. Each of the parties to this Lease acknowledges that no other party, agent, or representative has made any promise, representation, waiver, or warranty whatsoever, expressed or implied, which is not expressly contained in writing in this Lease. Each party further acknowledges it has not executed this Lease in reliance upon any collateral promise, representation, waiver, or warranty, or in reliance upon any belief as to any fact not expressly recited in this Lease.

ARTICLE 37

TIME IS OF THE ESSENCE

Time is of the essence of each and all of the terms and provisions of this Lease. This Lease shall inure to the benefit of and be binding upon the parties hereto and any successors of Lessee as fully and to the same extent as though specifically mentioned in each instance. All covenants, conditions, and agreements in this Lease shall extend to and bind any assigns and sublessees of Lessee.

ARTICLE 38

NOTICES

38.1. All notices provided for by this Lease or by law to be given or served upon Lessor or Lessee shall be in writing and: (i) personally served upon any person authorized to receive service of process on behalf of Lessor or Lessee, or any person hereafter authorized by either party in writing to receive such notice, or (ii) served by certified letter addressed to the appropriate address hereinafter set forth, or to such other address designated in writing by the respective party.

To Lessor

City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Manager

With copy to:

City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Attorney

To Lessee

Ballena Isle Marina, L.P.
c/o Almar Ltd.
28441 Highridge Road, #110
Rolling Hills Estates, CA 90274
Attn: Randy Short or Joyce W. Nelson

With copy to:

Clark & Trevithick
800 Wilshire Boulevard, 12th Floor
Los Angeles, CA 90017
Attn: Kevin P. Fiore, Esq.

38.2. Should any consented-to assignee, consented-to purchaser, or Consented-to-Lender notify Lessor in writing of its desire to receive notices, such party shall also be served by certified letter at such appropriate address designated in writing by the respective party, or personally served as provided herein.

38.3. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served when personally served; or if served by certified mail, service will be considered completed and binding on the party served forty-eight (48) hours after deposit in the U.S. Mail.

ARTICLE 39

REMOVAL OF MATERIALS

39.1. Lessee shall, upon expiration of this Lease or sooner termination as herein provided, remove within sixty (60) days all materials, including without limitation all debris, and surplus and salvage items, hereinafter "Materials," from the Leased Premises and adjacent property, so as to leave the same in as good condition as when first occupied by Lessee, subject to reasonable wear and tear. Provided, however, if Lessee fails to remove all Materials within sixty (60) days, Lessor may remove, sell, or destroy said Materials at the expense of Lessee. Further, Lessee agrees to pay Lessor the reasonable cost of such removal, sale, or destruction; or, at the option of Lessor, said Materials not removed, sold, or destroyed by Lessee shall become the property of Lessor, without cost to Lessor, and without any payment to Lessee. "Materials" as used herein shall not mean or include "improvements" which are described in ARTICLE 9 hereof.

39.2. During any period of time required to remove said Materials, or to test for and/or remediate contaminants as required in ARTICLE 44 herein, Lessee shall continue to pay the full rent to Lessor in accordance with this Lease, which said rent shall be prorated daily.

ARTICLE 40
WASTE/NUISANCE

Lessee shall not use the Leased Premises in a manner that constitutes waste or nuisance.

ARTICLE 41
NUMBER AND GENDER

Words of any gender used in this Lease shall include any other gender and each word in the singular number shall include the plural whenever the tense requires.

ARTICLE 42
APPLICABLE LAW

This Lease will be governed by and construed and enforced in accordance with the laws of the State of California.

ARTICLE 43
ATTORNEY FEES

Should any suit be commenced to enforce, protect, or establish any right or remedy of any of the terms and conditions hereof, including without limitation a summary action commenced by Lessor under the laws of the State of California relating to the unlawful detention of property, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney fees and costs of suit.

ARTICLE 44
HAZARDOUS MATERIALS

44.1. Definition of "Hazardous Material." The term "Hazardous Material" shall mean any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, including oil and petroleum products, which now or in the future may be within the meaning of any applicable, federal, state, or local law, regulation, ordinance, or requirement at any concentration that is or has become regulated by the United States, the State of California, or any local government authority having jurisdiction over the Leased Premises.

44.2. Lessee Use of Hazardous Materials. Lessee shall not cause or permit any Hazardous Materials or products or materials which include any hazardous substance as a component, to be generated, brought onto, used, stored, emitted, released or disposed of in or about the Leased Premises by Lessee or its agents, employees, contractors, sublessees, or invitees unless expressly approved, at Lessor's sole discretion, in writing by Lessor after submittal by Lessee of information requested by Lessor. Equipment materials and supplies customarily used in connection with the construction of improvements; and/or standard office, food service and janitorial supplies customarily used in places of business which contain

chemicals categorized as Hazardous Material are excluded from this requirement. Lessee shall use, store, and dispose of all such Hazardous Materials in strict compliance with all applicable statutes, ordinances, regulations, and other requirements in effect during the Lease Term that relate to public health and safety and protection of the environment ("Environmental Laws"); and shall comply at all times with all Environmental Laws.

44.3. Notice of Release or Investigation. If during the term of this Lease (including any extensions), Lessee becomes aware of (i) any actual or threatened release of any Hazardous Material on, in, under, from, or about the Leased Premises; or (ii) any inquiry, investigation, proceeding, or claim (collectively "Inquiry") by any government agency or other person regarding the presence of any Hazardous Material on, in, under, from or about the Leased Premises, Lessee shall give Lessor written notice of the release or Inquiry within five (5) days after Lessee learns or first has reason to believe there has been a release or Inquiry and shall simultaneously furnish to Lessor copies of any claims, notices of violation, reports, warning or other writings received by Lessee that concern the release or Inquiry.

44.4. Lessor Right to Inspect. If Lessee has in the past or continues to use, dispose, generate, or store Hazardous Materials on the Leased Premises, Lessor or its designated representatives, at Lessor's sole discretion, may at any time during the term of this Lease, but is no way obligated to, enter upon the Leased Premises and make any inspections, tests or measurements Lessor deems necessary to determine if a release of Hazardous Materials has occurred. Lessor shall furnish Lessee a minimum of twenty-four (24) hours' notice in writing prior to conducting any inspections or tests, unless, in Lessor's sole judgment, circumstances require otherwise. Such tests shall be conducted in a manner so as to attempt to minimize any unreasonable inconvenience and disruption to Lessee's operation as is practicable. If such tests indicate a release of Hazardous Materials, then Lessor, at Lessor's sole discretion, may require Lessee, at Lessee's sole expense and at any time during the term of this Lease, to have such tests for such Hazardous Materials conducted by a qualified party or parties on the Leased Premises. If Lessor has reason to believe any Hazardous Materials originated from a release on the Leased Premises have contaminated any area outside the Leased Premises, including but not limited to surface and groundwater, then Lessor, at Lessor's sole discretion, may require Lessee, at Lessee's sole expense and at any time during the term of this Lease, to have tests for such Hazardous Materials conducted by a qualified party or parties on said area outside the Leased Premises. Lessor's failure to inspect, test or take other actions pursuant to this Paragraph 44.4 regarding the Leased Premises, shall in no way relieve Lessee of any responsibility for a release of a Hazardous Material.

44.5. Clean-up Obligations. If the presence of any Hazardous Material brought onto the Leased Premises by Lessee or Lessee's employees, agents, sublessees, contractors, (or invitees, or generated by same during the term of this Lease, results in contamination of the Leased Premises, adjacent properties or the Ballena Bay, Lessee shall promptly take all necessary actions, at Lessee's sole expense, to remove or remediate such Hazardous Materials. Lessee shall provide notice to Lessor prior to performing any removal or remedial action. Lessee shall not propose nor agree to any covenant of use restriction as part of any removal or remediation required as a result of this Paragraph 44.5. To the extent Lessor incurs any costs or expenses in performing Lessee's obligation to clean-up contamination resulting from Lessee's operations or use of the Leased Premises, Lessee shall promptly reimburse Lessor for all costs

and expenses incurred within thirty (30) days. Any amounts not so reimbursed within thirty (30) days after Lessee's receipt of an itemized statement therefore shall bear interest at the Prime Rate plus Five Percent (5%) per annum compounded monthly. This provision does not limit the indemnification obligation set forth in Paragraph 44.6 herein. The obligations set forth in this Paragraph 44.5 shall survive any expiration or other termination of this Lease.

(a) Clean-up Extending Beyond Lease Term. Should any clean-up of Hazardous Materials for which Lessee is responsible not be completed prior to the expiration or sooner termination of the Lease, including any extensions hereof, then: (a) Lessee shall deposit into an escrow account an amount of money equal to the balance of the estimated costs of the clean-up, together with instructions for the disbursement of such amount in payment of the costs of any remaining clean-up as it is completed, and (b) if the nature of the contamination or clean-up required of Lessee is of such a nature as to make the Leased Premises untenable or unleaseable, then Lessee shall be liable to Lessor as a holdover lessee until the clean-up has been sufficiently completed to make the Leased Premises suitable for lease to third parties. The estimated cost of the clean-up shall require approval of the Lessor.

(b) Financial Security. If Lessor determines, in its reasonable discretion, that Lessee does not have insurance or other financial resources sufficient to enable Lessee to fulfill its obligations under this Paragraph 44.5, whether or not accrued, liquidated, conditional, or contingent, then Lessee shall, at the request of Lessor, procure and thereafter maintain in full force and effect such environmental impairment liability and/or pollution liability insurance policies and endorsements, or shall otherwise provide such collateral or security reasonably acceptable to Lessor as is appropriate to assure that Lessee will be able to perform its duties and obligations hereunder.

44.6. Indemnification. Lessee shall, at Lessee's sole expense and with counsel reasonably acceptable to Lessor, indemnify, defend, and hold harmless Lessor and Lessor's directors, officers, employees, partners, affiliates, agents, successors, and assigns with respect to all losses, including reasonable attorneys' and environmental consultants' fees, arising out of or resulting from Lessee's occupancy or use of the Leased Premises, or the violation of any Environmental Law, by Lessee or Lessee's agents, assignees, sublessees, contractors, or invitees. This indemnification applies whether or not the concentrations of any such Hazardous Material is material, the concentrations exceed state or federal maximum contaminant or action levels, or any government agency has issued a clean-up or other order. This indemnification shall survive the expiration or termination of this Lease. This indemnification includes, but is not necessarily limited to:

- (a) Losses attributable to diminution in the value of the Leased Premises;
- (b) Loss or restriction of use of rentable space(s) in the Leased Premises;
- (c) Adverse effect on the marketing of any space in the Leased Premises;
- (d) All other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders,

or judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant, and expert fees and expenses) resulting from the release or violation; and,

(e) All costs (including reasonable attorneys' fees, consulting fees and subcontracted costs) incurred by Lessor in undertaking any assessment or remediation of the Leased Premises that might not have been fully resolved by Lessee by the time this Lease terminates or expires.

(f) Lessor shall have a direct right of action against Lessee even if no third party has asserted a claim. Furthermore, Lessor shall have the right to assign said indemnity.

44.7. Termination of Lease. Upon the expiration or earlier termination of the term of this Lease, Lessee shall: (i) cause all Hazardous Materials previously owned, stored, or used by Lessee to be removed from the Leased Premises and disposed of in accordance with all applicable provisions of law; (ii) remove any underground or aboveground storage tanks or other containers installed or used by Lessee, or its predecessors, to store any Hazardous Material on the Leased Premises, and repair any damage to the Leased Premises caused by such removal; (iii) cause any soil or other portion of the Leased Premises which has become contaminated by any Hazardous Material stored or used by Lessee, or its predecessors, to be decontaminated, detoxified, or otherwise cleaned-up in accordance with the applicable requirements of any relevant government authorities; and (iv) surrender possession of the Leased Premises to Lessor free of contamination attributable to Hazardous Materials generated or used by Lessee or stored or disposed of by any party other than Lessor in or on the Leased Premises during the term of this Lease.

ARTICLE 45

STORAGE TANKS

45.1. Underground Storage Tanks. No additional underground storage tanks ("USTs") shall be permitted to be installed on the Leased Premises during the term of this Lease without the prior written consent of Lessor in its sole and absolute discretion. In the event Lessee obtains such approval to install a UST on the Leased Premises, Lessee shall be responsible for complying with all laws and regulations pertaining to such UST, including tank monitoring of such UST as required by Lessor or the County of Alameda or any other responsible agency. Lessee further agrees to take responsibility for reporting unauthorized releases from USTs to Lessor within twenty-four (24) hours of such unauthorized release. Lessee will be responsible for all fees and costs related to the unauthorized release of any Hazardous Material including, but not limited to: investigative, surface and groundwater clean-up, and expert and agency fees. Lessee shall maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and/or property damage caused by a release from a UST. Lessee further agrees to be responsible for maintenance and repair of the USTs; obtaining tank permits; filing a business plan with Lessor or other responsible agency; and for paying UST fees, permit fees, and other regulatory agency fees relating to USTs. Lessee agrees to keep complete and accurate records on the Leased Premises for a period of not less than thirty-six (36) months from the applicable events including, but not limited to, permit applications, monitoring, testing, equipment installation, repairing and closure of the USTs, and any unauthorized releases

of Hazardous Materials. Lessee also agrees to make such records available for Lessor or responsible agency inspection. Lessee further agrees to include a copy of California Health & Safety Code, Chapter 6.7, Section 25299, as part of any agreement between Lessee and any operator of USTs. Furthermore, Lessee shall be responsible for compliance with all other laws and regulations presently existing, or hereinafter enacted, applicable to USTs, including without limitation any such laws and regulations which alter any of the above requirements.

45.2. Aboveground Storage Tanks. No aboveground storage tanks ("ASTs") shall be permitted to be installed on the Leased Premises during the term of this Lease without the prior written consent of Lessor in its sole and absolute discretion. In the event Lessee obtains such approval to install an AST, Lessee shall be responsible for complying with all laws and regulations pertaining to such AST. Lessee shall, in accordance with this Lease and applicable laws and regulations, secure and pay for all necessary permits and approvals, prepare a spill prevention control counter measure plan and conduct periodic inspections to ensure compliance therewith, including conformance with the latest version of said applicable laws and regulations. In addition, Lessee shall maintain and repair said tanks to conform and comply with all other applicable laws and regulations for ASTs, including without limitation all of the requirements of California Health & Safety Code, Chapter 6.67, Sections 25270 through 25270.13 as presently existing or as hereinafter amended, including without limitation conducting daily visual inspection of said tanks, allowing Lessor, and/or responsible agency, to conduct periodic inspections. Lessee also shall comply with valid orders of the Lessor and/or responsible agency, filing the required storage tank statement and payment of the fee therefor, establishing and maintaining the required monitoring program and systems, reporting spills as required, and payment of lawfully imposed penalties as provided therein and as otherwise provided by law. The Lessee shall be responsible for all costs associated with any unauthorized release from AST, including but not limited to, investigative, surface and groundwater clean-up, and expert and agency fees.

ARTICLE 46

ENVIRONMENTAL DISCLOSURES

46.1. Lessee understands and agrees that the Leased Premises are being leased in an "as is, with all faults" condition and that improvements, grading, filling, removal of existing improvements, and relocation of utility lines shall be made and performed by Lessee at the sole cost and expense of Lessee.

46.2. Lessee further understands and agrees that the "as-is, with all faults" condition of the Leased Premises includes any contamination of the Leased Premises, including structures, soils, groundwater, and adjacent Ballena Bay water and sediment, and that information received from Lessor regarding such matters may not be complete or accurate and should not be accepted as such.

46.3. Lessee hereby acknowledges that excavation of soils from the Leased Premises could result in exportation of a regulated waste requiring appropriate characterization, handling, transport and disposal (together "Regulated Waste Removal"). Lessor takes no responsibility and assumes no liability whatsoever for Regulated Waste Removal. Accordingly, Lessee hereby

waives any claim, or potential claim, it may have to recover costs or expenses arising out of or associated with Regulated Waste Removal and agrees to indemnify, defend and hold harmless Lessor from and against any and all claims, liabilities, losses, damages, costs, and expenses arising from, out of, or in any way related to Regulated Waste Removal.

46.4. Lessor accepts no liability or responsibility for ensuring that Lessee's workers, including without limitation those conducting testing, construction and maintenance activities on the Leased Premises, are satisfactorily protected from residual contaminants in 29 Code of Federal Regulations ("CFR"). Lessee shall assess all human health risks from vapor transport or direct contact with residual hazardous substances or contaminants and incorporate such engineering and institutional controls as may be required to sufficiently protect human health of onsite workers and transient visitors. Lessee hereby waives any claim, or potential claim, it may have to recover any damages, losses, costs and expenses related to worker exposure or alleged exposure to any residual onsite contamination and to indemnify, defend and hold harmless Lessor from and against any and all such claims, liabilities, losses, damages, costs, and expenses.

ARTICLE 47

"AS-IS" LEASE AND WAIVERS

47.1. Lessee's execution of this Lease shall fully and finally constitute:

(a) Lessee's Acknowledgment. Lessee's acknowledgment that Lessor has given to Lessee sufficient opportunity to consider, inspect and review, to Lessee's complete satisfaction: (i) any and all rights, appurtenances, entitlements, obligations, and liabilities concerning the Leased Premises; (ii) the physical condition of the Leased Premises, including, without limitation, the condition of the buildings (if any) and the soil, subsoil media, and groundwater at or under the Leased Premises; (iii) the effect upon the Leased Premises of any and all applicable federal, state or local statutes, ordinances, codes, regulations, decrees, orders, laws or other governmental requirements (collectively, "Applicable Laws"); (iv) the development potential of the Premises including without limitation on the preceding clause (3), the effect of all Applicable Laws concerning land use, environmental quality and maintenance, endangered species, and traffic regulation; (v) the financial prospects of the Leased Premises and local market conditions; (vi) Lessee's determination of the feasibility of Lessee's intended use and enjoyment of the Leased Premises; and (vii) all other facts, circumstances, and conditions affecting, concerning or relating to the Leased Premises. The land use; the environmental, biological, physical and legal condition of the Leased Premises; the feasibility of Lessee's intended use and enjoyment of the Leased Premises and such other facts, circumstances and conditions being collectively referred to herein as the "Condition of the Leased Premises"; and, without limitation on any other provision of this Lease, Lessee expressly assumes the risk that adverse conditions affecting the Leased Premises have not been revealed by Lessee's investigations.

(b) Only Lessor's Express Written Agreements Binding. Lessee acknowledges and agrees that no person acting on behalf of Lessor is authorized to make, and that except as expressly set forth in this Lease, neither Lessor nor anyone acting for or on behalf of Lessor has made, any representation, warranty, statement, guaranty or promise to Lessee, or to

anyone acting for or on behalf of Lessee, concerning the Condition of the Leased Premises or any other aspect of the Leased Premises. Lessee further acknowledges and agrees that no representation, warranty, agreement, statement, guaranty or promise, if any, made by any person acting on behalf of Lessor which is not expressly set forth in this Lease will be valid or binding on Lessor.

(c) As-Is Lease. Lessee further acknowledges and agrees that Lessee's execution of this Lease shall constitute Lessee's representation, warranty and agreement that the Condition of the Leased Premises has been independently verified by Lessee to its full satisfaction, and that, except to the extent of the express covenants of Lessor set forth in this Lease, Lessee will be leasing the Leased Premises based solely upon and in reliance on its own inspections, evaluations, analyses and conclusions, or those of Lessee's representatives; and that LESSEE IS LEASING THE LEASED PREMISES IN ITS "AS-IS, WITH ALL FAULTS" CONDITION AND STATE OF REPAIR INCLUSIVE OF ALL FAULTS AND DEFECTS, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF THE LESSEES EXECUTION OF THIS LEASE. Without limiting the scope or generality of the foregoing, Lessee expressly assumes the risk that the Leased Premises do not or will not comply with any Applicable Laws now or hereafter in effect.

(d) Waivers, Disclaimers and indemnity.

(i) Waiver and Disclaimer. Lessee hereby fully and forever waives, and Lessor hereby fully and forever disclaims, all warranties of whatever type or kind with respect to the Leased Premises, whether expressed, implied or otherwise including, without limitation, those of fitness for a particular purpose, tenantability, habitability or use.

(ii) Lessor's Materials. Lessee further acknowledges that any information and reports including, without limitation, any engineering reports, architectural reports, feasibility reports, marketing reports, soil reports, environmental reports, analyses or data, or other similar reports, analyses, data or information of whatever type or kind which Lessee has received or may hereafter receive from Lessor or its agents or consultants have been furnished without warranty of any kind and on the express condition that Lessee will make its own independent verification of the accuracy, reliability and completeness of such information and that Lessee will not rely thereon. Accordingly, subject to terms of Paragraph 47.1(e) below, Lessee agrees that under no circumstances will it make any claim against, bring any action, cause of action or proceeding against, or assert any liability upon, Lessor or any of the persons or entities who prepared or furnished any of the above information or materials as a result of the inaccuracy, unreliability or incompleteness of, or any defect or mistake in, any such information or materials and Lessee hereby fully and forever releases, acquits and discharges Lessor and each person furnishing such information or materials of and from, any such claims, actions, causes of action, proceedings or liability, whether known or unknown.

(e) Release and Waiver.

(i) Release. Except to the extent of Claims (as defined bellow) against Lessor arising from any breach by Lessor of its covenants and obligations expressly

provided in this Lease, Lessee, on behalf of Lessee, As successors and assigns, hereby fully and forever releases, acquits and discharges Lessor of and from, and hereby fully forever waives:

Any and all claims, actions, causes of action, suits, proceedings, demands, rights, damages, costs, expenses, losses, judgments, provisional relief, fines, penalties, and fees, including, without limitation, any and all claims for compensation, reimbursement, or contribution whatsoever (individually and collectively, "Claims"), whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, that Lessee or any of Lessee's successors or assigns now has or may have or which may arise or be asserted in the future arising out of, directly or indirectly, or in any way connected with: (A) any act or omission of Lessor (or any person acting for or on behalf of Lessor or for whose conduct Lessor may be liable), whether or not such act be the active, passive or sole negligence of Lessor, in connection with prior ownership, maintenance, operation or use of the Leased Premises; (B) any condition of environmental contamination or pollution at the Leased Premises (including, without limitation, the contamination or pollution of any soil, subsoil media, surface water or groundwater at the Leased Premises; (C) to the extent not already included in clause (B) above, the past, present or future existence, release or discharge, or threatened release, of any Hazardous Materials at the Leased Premises, (including, without limitation, the release or discharge, or threatened release, of any Hazardous Materials into the air at the Leased Premises or into any soil, Subsoil, Surface water or groundwater at the Leased Premises); (D) the violation of, or noncompliance with, any Environmental Requirement or other Applicable Law now or hereafter in effect, however and whenever occurring; (E) the condition of the soil at the Leased Premises; (F) the condition of any improvements located on the Leased Premises including, without limitation, the structural integrity and seismic compliance of such improvements; (G) any matters which would be shown on an accurate ALTA land survey of the Leased Premises (including, without limitation, all existing easements and encroachments, if any; (H) all Applicable Laws now or hereafter in effect; (I) matters which would be apparent from a visual inspection of the Leased Premises; or (J) to the extent not already covered by any of the foregoing clauses (A) through (I) above, the use, maintenance, development, construction, ownership or operation of the Leased Premises by Lessor or any predecessor(s)-in-interest in the Leased Premises of Lessor.

(ii) Waiver of Civil Code Section 1542. With respect to all releases made by Lessee under or pursuant to this ARTICLE 47, Lessee hereby waives the application and benefits of California Civil Code §1542 and hereby verifies that it has read and understands the following provision of California Civil Code §1542:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor Lessee:"

Lessee: _____

ARTICLE 48

[INTENTIONALLY OMITTED]

ARTICLE 49

[INTENTIONALLY OMITTED]

ARTICLE 50

MISCELLANEOUS

50.1. Leased Premises Subject to CC&R's. Concurrently with the execution and delivery of this Lease, Lessor, Lessee, the lessee of the Waterside Parcel and the lessee of the Commercial Parcel have executed and delivered a Declaration of Easements, Covenants, Conditions and Restrictions of even date herewith, which shall be recorded in the Official Records of Alameda County (the "Declaration") and, in connection therewith, this Lease shall be subject to and subordinate to and each of the interests of the Lessor and Lessee hereunder shall be subject to and subordinate to the Declaration.

50.2. Memorandum of Lease. Lessor and Lessee, concurrently with the execution and delivery of this Lease, shall execute and acknowledge a Memorandum of Lease, in reasonably form and otherwise reasonably satisfactory to the parties hereto, for recording as soon as is practicable on or following the date first above written.

IN WITNESS WHEREOF, Lessor and Lessee have entered into this Lease as of the day, month and year first above written.

"Lessor"

CITY OF ALAMEDA

By: _____

City Manager

APPROVED AS TO FORM:

Assistant City Attorney

"Lessee"

BALLENA ISLE MARINA, L.P.,
a California limited partnership

By: ALMAR, LTD., a California corporation
Its: General Partner

By: _____
Name: _____
Title: _____

WITNESS my hand and official seal.

STATE OF CALIFORNIA)

) SS.

COUNTY OF ALAMEDA)

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

WITNESS my hand and official seal.

Notary Public

EXHIBIT "A"

Site Map

[To Be Provided]

EXHIBIT "B"

Legal Description

[To Be Provided]

EXHIBIT "C"

Percentage Rent Schedule

Hotel/Motel Rooms	7.5%
Restaurant	3.5%
Retail	2.0%
Office	11.0%
Vending/Telephone Commissions	25.0%
Commissions/Service Enterprises	20.0%
Valet Parking Fees	7.5%
Parking Fees	20.0%
Miscellaneous	5.0%

EXHIBIT "C"

WATERSIDE PARCEL LEASE

(See Attached)

**BALLENA BAY LEASE
(WATERSIDE PARCEL)**

by and between

**CITY OF ALAMEDA
("Lessor")**

and

**BALLENA ISLE MARINA, L.P.
("Lessee")**

Dated as of _____, 2007

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**BALLENA BAY LEASE
(WATERSIDE PARCEL)**

THIS BALLENA BAY LEASE (this "Lease") is made and entered into this ____ day of _____, 2007, by and between the CITY OF ALAMEDA, a municipal corporation ("Lessor"), and BALLENA ISLE MARINA, L.P., a California limited partnership ("Lessee").

RECITALS

A. Lessor is the owner of that certain real property that consists of approximately fifty-four (54) acres, including approximately twenty-seven (27) acres of land area and twenty-seven (27) acres of submerged lands, more commonly known as 1150 Ballena Bay and shown on the site map attached hereto as Exhibit "A" (the "Site Map") and incorporated herein by this reference.

B. Ballena Bay has been developed as a small recreational craft marina for approximately five-hundred (500) boats and shoreline facilities consisting of, among other things, office buildings, restaurants, storage facilities, parking lots, walks, streets and utility systems.

C. For the purpose of further developing the Ballena Bay, Lessor has divided the Ballena Bay into three (3) separate parcels pursuant to the terms and conditions of three (3) separate leases including this Lease.

D. One parcel and leasehold estate consists of the commercial buildings and related facilities (the "Commercial Parcel") and is shown on the Site Map. A second parcel and leasehold estate consists of the continuous linear public waterfront, marina slips and related facilities (the "Waterside Parcel") and is shown on the Site Map and described with more particularity at Exhibit "B" attached hereto and incorporated herein by this reference (the "Leased Premises"). The third parcel and leasehold estate consists of the land that is presently to the south and east of the Commercial Parcel, consisting of approximately 12-16 acres (the "Remainder Parcel") and is shown on the Site Map.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

ARTICLE 1

LEASED PREMISES

In consideration of Lessee's promise 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, Lessor hereby leases the Leased Premises to Lessee for the term of this Lease, and Lessee hereby leases the Leased Premises from Lessor for the term and promises to pay the rents and to perform the covenants and agreements of Lessee.

ARTICLE 2

TERM

2.1 The term of the Lease shall be for a period commencing on the date hereof (the "Commencement Date") and, unless sooner terminated as herein provided or extended pursuant to Section 2.2 hereof, shall expire without further notice at 11:59 p.m. on the 31st day of May, 2033 (the "Termination Date").

2.2 During construction of the Marina Project (as described in Paragraph 8.1 herein), the Termination Date shall be extended in the following manner based on completion ("completion" of any phase of the Marina Project, or portion thereof in connection with the replacement/renovation of the slips means completion of a particular phase of the Marina Project in accordance with the plans and specifications approved by the City Manager for such phase in a workmanlike manner consistent with the highest quality industry standards) of each of the phases (or portions thereof in connection with the replacement/renovation of the slips) of the improvements to the Leased Premises as more particularly described in Exhibit "E" attached hereto and by this reference made a part hereof (the "Marina Project"):

(a) Upon completion of the new restrooms serving the Leased Premises, the term of the Lease shall be extended for one (1) year and three (3) months;

(b) Upon completion of the renovation or remodeling of the restroom presently serving the Leased Premises, the term of the Lease shall be extended for five (5) months;

(c) Upon completion of the new access ramps serving the Leased Premises, the term of the Lease shall be extended for five (5) months; and

(d) Upon completion of each portion of the new dock/slip systems, the term of the Lease shall be extended for (i) sixty-five one hundredths (.65) of a month for each slip completed with respect to the first one hundred, twenty-four (124) slips, (ii) eight tenths (.8) of a month for each slip completed for the next one hundred, twenty-four (124) slips, and (iii) one and three tenths (1.3) of a month for each additional slip completed in connection with the Marina Project; provided, however, the aggregate period of extensions under this Section 2.2(d) shall not exceed three hundred and forty-two (342) months.

2.3 At any time following Lessee's substantial completion of a phase of the Marina Project, the Lessee may deliver to the City Manager a statement setting forth in reasonable detail the phase or phases of the Marina Project completed ("Marina Project Phase(s) Completed"). Within thirty (30) days following the City Manager's receipt of the Lessee's detailed statement of Marina Project Phase(s) Completed, the City Manager shall give written notice to Lessee of either the City Manager's approval of the statement of Marina Project Phase(s) Completed, or

disapproval of such statement, which such disapproval shall set forth in reasonable detail the reasons therefor. In the event the City Manager fails to render a decision within the foregoing thirty (30) day period, Lessee shall deliver a second written notice (the "Second Request") to the City Manager requesting that a decision be rendered within thirty (30) days after the receipt of the Second Request and advising the City Manager that the failure to render a decision within such thirty (30) day period shall result in a deemed acceptance of Lessee's calculation of Marina Project Phase(s) Completed. Failure of the City Manager to render a decision within the thirty (30) days following receipt of the Second Request, shall be deemed an acceptance of Lessee's determination of Marina Project Phase(s) Completed. In the event the City Manager shall have given written notice of disapproval of the statement of Marina Project Phase(s) Completed, within thirty (30) days thereafter, City Manager's representatives and representatives of the Lessee shall meet and confer and attempt in good faith to resolve any disagreements with respect to the amount of the Marina Project Phase(s) Completed. In the event the City Manager and the Lessee are unable to agree on the Marina Project Phase(s) Completed within thirty (30) days from their initial meet and confer meeting, the matter of the Marina Project Phases(s) Completed shall be submitted to the Alameda City Council for its consideration and determination and, in the event Lessee does not agree with the City Council's decision, the determination of the Marina Project Phase(s) Completed for purposes of this Lease shall be determined by appropriate proceedings in the Superior Court of the County of Alameda.

2.4 Promptly following the final determination of the Marina Project Phase(s) Completed, the City Manager, on behalf of the Lessor and Lessee shall execute an amendment to this Lease which shall set forth the newly established Termination Date, as determined in accordance with the provisions of Section 2.2 above.

ARTICLE 3

USE

3.1 Lessee agrees that the Leased Premises shall be used only and exclusively for a marina and related operations, uses, activities and/or services to be conducted on or from the Waterside Parcel.

3.2 Except as expressly provided herein, Lessee shall not use or permit the Leased Premises to be used for any other uses or purposes whatsoever. No use of the Leased 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.

3.3 Lessee shall pay Lessor One Hundred Percent (100%) of the gross receipts for any service or use that is not permitted under this Lease. This payment is subject to the due date for rent and the provisions for delinquent rent provided in ARTICLE 4 herein. The existence of the One Hundred Percent (100%) charge in this Paragraph 3.3 and the payment of this charge or any part thereof, does not constitute an authorization for a particular service or use, and does not waive any Lessor rights to terminate a service or use or to default Lessee for participating in or allowing any unauthorized use of the Leased Premises.

ARTICLE 4

RENT

Lessee agrees to pay to Lessor rent in accordance with the following:

4.1 The term of this Lease shall be divided into the following rental periods, hereinafter "Rental Periods":

"First Rental Period" means _____, 200_ to _____, 200_ [five years from commencement].

"Second Rental Period" means the period commencing the day following the last day of the First Rental Period and ending the earlier of (i) the day before the fifteenth (15th) anniversary of the Commencement Date, and (ii) the last day of the month of the completion of all of the boat slips of the Marina Project.

"Third Rental Period" means the period commencing the day following the last day of the Second Rental Period and ending the day before the fifth (5th) anniversary of the Third Rental Period.

"Fourth Rental Period" means the period commencing the day following the last day of the Third Rental Period and ending the day before the fifth (5th) anniversary of the Fourth Rental Period.

"Fifth Rental Period" means the period commencing the day following the last day of the Fourth Rental Period and ending on the Expiration Date.

4.2 The minimum annual rent ("Minimum Annual Rent") during the term of this Lease shall be as follows:

(a) During the First Rental Period, \$34,214.00 for the first year of the First Rental Period and \$37,514.00 during the second (2nd) through fifth (5th) year of the First Rental Period;

(b) During the Second Rental Period, Minimum Annual Rent shall be \$60,000.00; provided, however, (i) in the event the Remainder Sale Proceeds, as defined in Section 6.2, to Lessee from the sale, and/or transfer of the leasehold estate in the Remainder Parcel equals or exceeds \$3,500,000.00, but is less than \$7,000,000.00, such Minimum Annual Rent during the Second Rental Period or the remainder of the Second Rental Period, as appropriate, shall be \$60,000.00, plus \$40,000.00 multiplied by a fraction the numerator of which is the actual Remainder Sale Proceeds (not to exceed \$7,000,000.00), less \$3,500,000.00 and the denominator of which is \$3,500,000.00 and (ii) in the event the Remainder Sale Proceeds equals or exceeds \$7,000,000.00, the Minimum Annual Rent during the Second Rental Period or the remainder of the Second Rental Period, as appropriate, shall be \$100,000.00 (in either case, the monthly installment for any partial calendar month shall be prorated, based upon the number of actual days in such partial month).

(c) During the Third Rental Period, seventy-five percent (75%) of seven and one-half percent (7 1/2%) of the average for the immediately preceding three (3) years of what would have been the percentage rent for the immediately preceding three (3) years, utilizing the percentage multipliers set forth in Exhibit "C".

(d) During the Fourth Rental Period and the Fifth Rental Period, seventy-five percent (75%) of the average annual percentage rent paid by the Lessee for the three years immediately preceding the first day of each of the Fourth Rental period or the Fifth Rental Period, as appropriate.

4.3 Percentage rents shall be calculated on a monthly basis and shall be based on the percentages of the gross income of the operations and business conducted on or from the Leased Premises set forth in Exhibit "C" for the Third Rental Period and the percentages of the gross income of the operations and business conducted on or from the Leased Premises set forth in Exhibit "D" for the Fourth Rental Period.

4.4 The rent during the Fifth Rental Period and any extension thereof shall be adjusted in accordance with Article 5 herein; provided, however, that rents set forth in Exhibit "D" shall not be revised or adjusted any earlier than the twenty-fifth (25th) anniversary of the Commencement Date.

4.5 Beginning with the Third Rental Period, on or before the 20th day of each month, Lessee shall render to Lessor, in a form reasonably prescribed by Lessor, a detailed report of gross income for that portion of the accounting year which ends with and includes the last day of the previous calendar month. The accounting year shall be twelve (12) calendar months. The first accounting year shall begin on the first day of the first month during which the percentage rent described in this Lease becomes effective. Subsequent accounting years shall begin upon each anniversary of that date during the Lease term or any extension thereof. Each report shall be signed by Lessee or As responsible agent under penalty of perjury and shall include the following:

(a) The total gross income for said portion of the accounting year, itemized as to each of the business categories for which a separate percentage rent rate is established.

(b) The related itemized amounts of percentage rent computed, as herein provided, and the total thereof.

(c) The total rent previously paid by Lessee for the accounting year within which the preceding month falls.

4.6 Concurrently with the rendering of each monthly statement, during the Third Rental Period and the Fourth Rental Period, Lessee shall pay the greater of the following two amounts:

(a) The total percentage rent computed for that portion of the accounting year beginning on the first day of the accounting year and ending with and including the last day of the preceding month [Section 4.5(b) above], less total rent previously paid for the accounting year [Section 4.5(c) above], or

(b) One-twelfth (1/12th) of the Minimum Annual Rent then in effect, multiplied by the number of months from the beginning of the accounting year to and including the preceding month, less total rent previously paid for the accounting year [Section 4.5(b) above].

4.7 All payments shall be delivered to and statements required in Section (e) above shall be filed with Lessor's Treasurer. Checks shall be made payable to the City of Alameda and mailed _____, or delivered to _____.

Lessor may change the designated place of payment and filing at any time upon ten (10) days' written notice to Lessee. Lessee assumes all risk of loss and responsibility for late charges, as hereinafter described, if payments are made by mail.

4.8 Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease. Accordingly, in the event Lessee is delinquent in rendering to Lessor an accounting of rent due or in remitting the rent due in accordance with the rent provisions of this Lease, Lessee shall pay, in addition to the unpaid rent, five percent (5%) of the delinquent rent. If rent is still unpaid at the end of fifteen (15) days, Lessee shall pay an additional five percent (5%) [being a total of ten percent (10%)]. The parties hereby agree that said late charges are appropriate to compensate Lessor for loss resulting from rent delinquency including, without limitation, lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Acceptance of such late charges and any portion of the late payment by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of its other rights and remedies. The City Manager of Lessor shall have the right to waive for good cause any late charges upon written application of Lessee for any such delinquency period.

4.9 All payments by Lessee to Lessor shall be by a good and sufficient check. No payment made by Lessee or receipt or acceptance by Lessor of a lesser amount than the correct amount of rent due under this Lease shall be deemed to be other than a payment on account of the earliest rent due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance or pursue any other available remedy.

4.10 Lessee shall, at all times during the term of this Lease, keep or cause to be kept, accurate and complete records and double entry books of account of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted herein. The records must be supported by source documents of original entry such as sales invoices, cash register tapes, bank depository documentation, purchase invoice or other pertinent supporting documents. Review financial statements (a balance sheet, income/expense statement, cash flow statement and, prior to completion of the Marina Project, statement of disbursement to partners and statement of Eligible Reconstruction Expenditures), based upon the double entry books of account, shall be prepared not less than annually and copies thereof delivered to Lessor within one hundred and twenty (120) days following the end of each calendar year during the term of this Lease.

All retail sales shall be recorded by means of cash registers, except as expressly provided for herein. All cash registers shall be equipped with sales totalizer counters for all sales categories, as herein provided, which counters are locked in, constantly accumulating, and which cannot be reset. Said registers shall further contain tapes upon which sales details are imprinted. Beginning and ending sales totalizer counter readings shall be made a matter of daily record. Retail sales may be recorded by a system other than cash registers, provided such system is first approved in writing by the City Manager of Lessor.

All Lessee's books of account, records, financial statements, and documentation related to this Lease or to business operations conducted within or from the Leased Premises, shall be kept either at the Leased Premises or at such other locations as are acceptable to Lessor, which alternate locations shall include Lessee's principal place of business within the State of California so long as Lessee has provided Lessor with written notice thereof. Lessor shall have the right at any and all reasonable times upon fifteen (15) days prior written notice to examine and audit said books, records, financial statements, and documentation, without restriction, for the purpose of determining the accuracy thereof, the accuracy of the monthly statements of gross income submitted, and the accuracy of the rent paid to the Lessor. In the event that the Lessee's business operations conducted within or from the Leased Premises are part of a larger business operation of the Lessee, and any part of the books, records, financial statements and documentation required herein is prepared only for the larger operation, and not solely for the business operations of the Leased Premises, then the Lessor shall also have the right to examine and audit that part of said books, records, financial statements, and documentation of the larger business operation.

Lessee's failure to keep such books of account, records, financial statements, and documentation and make them available for inspection by Lessor is a breach of this Lease. The City Manager of Lessor shall have the discretion to require the installation of any reasonable additional accounting methods or controls he or she may deem necessary, subject to prior written notice. In the event the Lessee does not make available the original records and books of account at the Leased Premises or within the limits of Alameda County, Lessee agrees to pay all necessary travel expenses incurred by Lessor in conducting an audit at the location where said records and books of account are maintained.

Additionally, if the audit reveals a discrepancy of more than five percent (5%) between the rent due as reported by Lessee and the rent due as determined by the audit, and/or Lessee has failed to maintain complete and accurate books of account, records, financial statements, and documentation in accordance with this Lease, then Lessee shall pay the cost of the audit, as reasonably determined by the City Manager of Lessor, plus the rent determined to have been underpaid. In addition, should Lessee fail to pay said amounts within thirty (30) days after written notice from Lessor, then Lessee shall pay an additional fee of ten percent (10%) of said unpaid amounts as compensation to Lessor for administrative costs and loss of interest as previously described herein, along with the rent determined to have been underpaid.

Furthermore, if the audit reveals that rent due to Lessor is less than five percent (5%) between the rent due as reported by Lessee and the rent due as determined by the audit, and should Lessee fail to pay said unpaid rent within thirty (30) days after written notice from Lessor, then Lessee shall pay an additional fee of ten percent (10%) of said unpaid rent as compensation to Lessor for

administrative costs and loss of interest as previously described herein, along with the rent determined to have been underpaid.

Lessee agrees to pay such amounts and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that Lessor will incur from Lessee's late payment. Acceptance of late charges and any portion of the late payment by Lessor shall in no event constitute a waiver of Lessee default with respect to late payment, nor prevent Lessor from exercising any of the other rights and remedies granted in this Lease. The City Manager of Lessor shall have the right to waive for good cause any late charges upon written application of Lessee for any such delinquency period.

4.11 Gross income upon which the percentage rent is to be based shall include all income resulting from occupancy or use of the Leased Premises in any manner, whether by Lessee, its sublessees or concessionaires, or parties operating through Lessee, its sublessees, or concessionaires, from whatever source derived, and whether for cash or credit.

Gross income shall include any manufacturer's or importer's excise tax included in the prices of the goods sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge.

Gross income, however, shall not include any of the following: (1) sales of United States postage; (2) any sales or excise taxes payable by Lessee to any governmental agency as a direct result of operations under this Lease, provided that the amount of such taxes is shown on the books and records elsewhere herein required to be maintained; (3) gratuities, provided the customer voluntarily determines the amount of said gratuity to be paid, or the customer is aware that the Lessee has added a pre-established gratuity to the charge for the services rendered and said additional amount is segregated and identified as a gratuity on the billing to the customer. Further, refunds for goods returned shall be deducted from current gross income upon their return; (4) security deposits (provided, however, in the event any security deposit is applied by the Lessor towards any rent due the Lessor, such security deposit shall, upon any such application, be treated as gross income subject to percentage rent); (5) any income, earnings or receipts which, under the Internal Revenue Code of 1986, as amended, are derived from the sale or disposal of any capital assets; (6) any income, savings or receipts derived from Lessee's investments or any funds not invested in the Leased Premises; (7) proceeds of loans to the Lessee; (8) funds invested in the Lessee and (9) any amounts paid by slip licensees or renters for utilities supplied to such licensee's boat slip or boat to the extent such amounts are "pass throughs" or reimbursements by the licensees or renters to the Lessee.

Further, refunds for goods returned shall be deducted from current gross income upon their return.

ARTICLE 5
PERCENTAGE RENT ADJUSTMENT

5.1 The percentage rent payable under this Lease shall be adjusted effective on the commencement of the Fifth Rental Period to the fair market percentage rent as determined in accordance with the provisions of this Article 5.

5.2 Beginning six (6) months prior to the commencement of the Fifth Rental Period the percentage rent provided for in this Lease shall be mutually agreed upon by Lessor and Lessee; provided, however, the Minimum Annual Rent shall be further adjusted in accordance with Section 4.2 herein.

5.3 In the event the parties cannot agree to the percentage rent for the Fifth Rental Period within three (3) months prior to the commencement of the Fifth Rental Period, the percentage rent for Fifth Rental Period shall be determined by three appraisers as hereinafter provided. All of the appraisers shall be qualified real estate appraisers and designated member of the Appraisal Institute (or, if the Appraisal Institute is not then in existence, an organization of substantially the same stature) with at least five (5) years experience in appraising commercial real estate, that are licensed to practice in the State of California.

(a) For purposes of this Lease, percentage rent for the Fifth Rental Period shall mean, as of the commencement of the Fifth Rental Period, the fair market percentage rent for the categories of use described in Exhibits "C" and "D" then being charged by lessors of comparable marina facilities of comparable size and quality as the Leased Premises located within the northern California area, taking into consideration (i) the age and condition of the improvements to the Leased Premises, (ii) the then remaining term of this Lease and (iii) any other factors utilized by qualified appraisals based upon recognized real estate appraisal principles and methods.

(b) The parties agree that, after notice by either party to the other requesting an appraisal determination of percentage rent, each party shall appoint one appraiser within thirty (30) days. Notice of the appointment shall be given by each party to the other party when made. Should either party fail to appoint its appraiser within said time period, then the party that has appointed its appraiser may petition the Superior Court of the State of California, County of Alameda, to appoint the second appraiser. The party making the application shall give the other party notice of its application. All costs, including attorney fees associated with the court's appointment of the second appraiser, shall be borne by the party which failed to appoint its appraiser.

(c) The two appraisers shall immediately choose a third appraiser to act with them. If they fail to select a third appraiser within thirty (30) days following the appointment of the second appraiser, on application by either party, the third appraiser shall be promptly appointed by the then presiding judge of the Superior Court of the State of California, County of Alameda, acting in his/her individual capacity. The party making the application shall give the other party notice of its application.

(d) By no later than thirty (30) days following the appointment of the third appraiser, Lessor and Lessee shall each provide the other and each of the three appraisers with (i) its rent proposal which shall consist of the percentage rents (and/or gallonage and/or flat rents if applicable) for the Fifth Rental Period (the "Rent Proposal") and (ii) its appraisal report prepared by an appraiser with qualifications no less than the qualifications of appraisers appointed under Sections 5.3(a) and 5.3(b), if any. Neither Lessor nor Lessee shall be required to submit a separate appraisal report.

(e) Within thirty (30) days following the selection of the third appraiser, the three appraisers shall conduct a meeting in the City of Alameda, California. The three appraisers shall hear and consider the presentations of the Lessor and Lessee and their appraisal witnesses and any additional written information furnished by Lessor or Lessee. The amount and kind of evidence allowed and the rules of discovery and testimony shall be decided solely by the third appraiser after consultation with the appraisers appointed by the Lessor and Lessee.

(f) The award determined by the appraisers shall be effective and retroactive to the first day of the Fifth Rental Period. The award shall be in writing and shall be made no later than fifteen (15) days following the meeting provided for in Section 5.3(e). The award shall be either Lessor's Rent Proposal or Lessee's Rent Proposal. The appraisers shall not possess any right or authority to propose a compromise between Lessor's Rent Proposal and Lessee's Rent Proposal or the modification of either Rent Proposal. The appraisers shall select whichever of the two Rent Proposals sets forth the percentage rent that the majority of the appraisers believe is closest to the market percentage rent for the Leased Premises for the Fifth Rental Period. A unanimous decision of the three appraisers is not required. Within ten (10) days of the date the award is made, (a) the underpayment of the percentage rent, if any, shall be paid by Lessee to Lessor, or (b) the overpayment of the percentage rent, if any, may be credited by Lessee against percentage rent next coming due until any such overpayment has been credited in full.

ARTICLE 6

SALE OR TRANSFER OF COMMERCIAL AND REMAINDER PARCELS

6.1 The net proceeds (i.e. the gross sales price for the sale of the Lessee's interest in the Commercial Parcel, less real estate sales commissions, title insurance costs, documentary transfer taxes, if any, escrow fees and costs and any other costs, fees or charges incurred in connection with the sale of the Lessee's interest in the Commercial Parcel) to Lessee in connection with the assignment or transfer of Lessee's leasehold interest in the Commercial Parcel shall be used by Lessee in the following manner:

(a) First, to pay down the principal amount of the current secured indebtedness of Lessee, as required by lender(s) in order to consent to such assignment or transfer and the release of the Commercial Parcel from the lien of the lender's security interest in the Commercial Parcel;

(b) Second, a percentage equal to the then applicable combined tax rates of tax imposed by the Internal Revenue Code of 1984, as amended ("Code") and the California Revenue and Taxation Code (R&T Code") (appropriately blended if more than one tax rate

applies to the transaction) on the sale of depreciable real property, multiplied by the net proceeds shall be disbursed to Lessee for distribution to its partners (or stockholders, members interest holders, as appropriate); and

(c) Third, to fund the Marina Project.

6.2 The net proceeds (i.e. the gross sales price for the sale of the Lessee's interest in the Remainder Parcel, less real estate sales commissions, title insurance costs, documentary transfer taxes, if any, escrow fees and costs and any other costs, fees or changes incurred in connection with the sale of the Remainder Parcel) from the sale and/or transfer, if any, of the leasehold estate and/or fee interest in the Remainder Parcel (the "Remainder Sale Proceeds") shall be deposited with a mutually acceptable escrow holder for disbursement as follows (and in the following order):

(a) So much of the Remainder Sale Proceeds shall be disbursed to Lessee as necessary to:

(i) First, to pay down the principal amount of the current secured indebtedness of Lessee, if and as required by lender(s) in order to consent to such assignment or transfer and the release of the Remainder Parcel from the lien of the lender's security interest in the Remainder Parcel; provided, however, Lessee shall use commercially reasonable efforts to avoid any requirement for a pay-down of secured debt on account of the sale of the Remainder Parcel;

(ii) Second, to reimburse Lessee for the amount paid by the Lessee for the Marina Project from funds borrowed by the Lessee after the date of this Lease;

(iii) Third, a percentage equal to the then applicable combined rates of tax imposed by the Code and the R&T Code (appropriately blended if more than one tax rate applies to the same transaction) on the sale of the non-depreciable real property, multiplied by the net proceeds shall be disbursed to Lessee for distribution to its partners (or stockholders, members interest holders, as appropriate); and

(iv) Fourth, to fund any portion of the Marina Project remaining to be completed as of the date of the deposit of the Remainder Sale Proceeds with the designated escrow holder.

(b) The Remainder Sale Proceeds remaining after the disbursements under subsection (a) above, if any, shall be disbursed to Lessor.

ARTICLE 7

IMPROVEMENTS

7.1 In accordance with the procedures described herein, Lessee may, at its own expense, make alterations or changes, or cause to be made, built, installed, or removed any structures, machines, appliances, utilities, signs, or other improvements necessary or desirable

for the authorized use of the Leased Premises including, but not limited to the Marina Project, as defined in Section 8.1: provided, however, said work shall be in accordance with plans and specifications, including but not limited to working drawings, hereinafter "Plans," previously submitted to and approved in writing by Lessor, which approval shall not be unreasonably withheld. Any dock systems to be constructed by Lessee shall be Bellingham Marine dock systems or systems of comparable quality as reasonably approved by the City Manager.

7.2 No construction, installation, or removal of any improvement upon the Leased Premises shall commence without Lessor's prior written approval, which approval shall not be unreasonably withheld. Any and all changes to such Plans must be approved by Lessor, which approval shall not be unreasonably withheld. Further, all work shall be in accordance with all applicable laws, regulations, ordinances, and codes.

7.3 Notwithstanding the foregoing, within the interior of any enclosed building structure, and without Lessor's prior consent, Lessee shall have the right to install and/or remove machines, equipment, appliances, and trade fixtures that are necessary or desirable for the authorized use of the Leased Premises.

7.4 When reasonably required by Lessor, Lessee shall, at its sole cost and expense, pave and/or landscape the entire portion of the Leased Premises not covered by structures. All paving and/or landscaping shall be in accordance with Plans which must be submitted to and approved in writing by Lessor, which approval shall not be unreasonably withheld, prior to the commencement of any such paving and/or landscaping.

7.5 Lessee shall notify Lessor prior to submitting application(s) to any governmental regulatory agency for any development or construction permit or license pertaining to the Leased Premises. Lessee shall also provide Lessor with a copy of all application(s) within five (5) days of making said application(s), along with copies of all Plans submitted as part of the application(s). Lessee shall also provide Lessor, within ten (10) days of Lessee's receipt, a copy of all permits, licenses, or other authorizations subsequently issued.

7.6 Lessee agrees that no banners, pennants, flags, spinners, or other advertising devices, nor any temporary signs, shall be flown, installed, placed, or erected on the Leased Premises without Lessor's prior written approval, which approval shall not be unreasonably withheld.

7.7 If the term of this Lease is extended to 2050 or later pursuant to Paragraph 2.2 herein, then between January 1, 2041 and December 31, 2046, Lessee shall correct any physical obsolescence of the Leased Premises to extend the life of all docks and boat slips to the revised Termination Date of this Revised Lease. Any such required improvements shall be based on an independent engineering report commissioned by Lessor, paid for by Lessor and prepared by an engineer mutually acceptable to Lessor and Lessee.

ARTICLE 8

CONSTRUCTION OF IMPROVEMENTS

8.1 In connection with the assignment of Lessee's leasehold interest in the Commercial Parcel pursuant to Paragraph 12.9 herein and the proposed sale of the Remainder Parcel pursuant to Paragraph 6.1 herein, to the extent funds are available from the foregoing assignment and sale, from operations of the Leased Premises and/or financing of the leasehold estate, Lessee shall commence the construction of and diligently proceed to completion of the Marina Project. The Marina Project shall be completed substantially in accordance with plans and specifications, including but not limited to working drawings (hereinafter "Marina Plans") approved in writing by the City Manager from time to time to the extent required hereunder, subject to changes thereto as may be approved by the City Manager, which approval may not be unreasonably delayed, conditioned or withheld.

(a) Except as otherwise provided herein, until the Marina Project is completed, all net proceeds received by Lessee from its operation of the marina and related facilities shall be used by Lessee in the following manner:

- (i) First, to retire loan indebtedness of Lessee;
- (ii) Second, One Hundred Seventy-Five Thousand Dollars (\$175,000) per year, in the aggregate, to the stockholders, members, partners and/or interest holders of Lessee; and
- (iii) Third, to fund the Marina Project.

(b) The net proceeds from any refinance of Lessee's existing loan indebtedness prior to the completion of the Marina Project shall be used exclusively to fund such project.

(c) Lessee may increase the number of boat slips if the water area of the Waterside Parcel is sufficiently expanded as part of the Marina Project.

8.2 Within sixty (60) days following completion of any substantial improvement within the Leased Premises, but at not less than quarterly intervals, Lessee shall furnish Lessor an itemized statement of the actual construction cost of such improvement as more particularly described in Section 2.3. Within sixty (60) days following completion of all improvements as part of the Marina Project, Lessee shall furnish Lessor with an itemized statement of the actual construction cost of the Marina Project (the "Completion Notice"). Upon written acceptance of the Completion Notice by Lessor, the Marina Project shall be deemed completed and the date of the Completion Notice shall be deemed the "Completion Date" of the Marina Project. Any statement delivered by Lessee hereunder shall be sworn to and signed, under penalty of perjury, by Lessee or its responsible agent.

8.3 Lessee shall maintain true, accurate, and complete records to support said statements. Such records shall include, but are not limited to a general ledger, vendor invoices, cancelled checks, construction loan documentation, agreements with third-party contractors, and

contractor progress payment billings. Additionally, should Lessee perform any construction in-house, Lessee shall substantiate the actual work performed by maintaining a payroll journal, copies of cancelled payroll checks, and timecards or other payroll documents which show dates worked, hours worked, and pay rates.

8.4 Books and records herein required shall be maintained and made available either at the Leased Premises or at such other location as is agreeable to Lessor. Further, Lessor shall have the right at any and all reasonable times to examine and audit said books and records without restriction for the purpose of determining the accuracy thereof, and the accuracy of the aforesaid statement. In the event Lessee does not make available the original books and records at the Leased Premises or within the limits of Alameda County, Lessee agrees to pay all additional and reasonable travel related expenses incurred by Lessor in conducting an audit at the location where said books and records are maintained.

ARTICLE 9

TITLE TO IMPROVEMENTS

9.1 For the purpose of this ARTICLE 9, "improvements" shall include, but are not limited to, subsurface improvements. On the Commencement Date of this Lease, all existing structures, buildings, installations, and improvements located on the Leased Premises are owned by and title thereto is vested in Lessee. All said existing structures, buildings, installations, and improvements, as well as structures, buildings, installations, and improvements of any kind placed on the Leased Premises by Lessee subsequent to the Commencement Date of this Lease shall, at the option of Lessor, be removed by Lessee at Lessee's expense; provided, however, Lessor may only exercise said option effective as of the Termination Date or sooner termination of this Lease. If Lessor exercises such option, Lessee shall remove such structures, buildings, installations, and/or improvements within sixty (60) days after the Termination Date of this Lease or sooner termination thereof, whichever occurs earlier. Lessee agrees to repair any and all damage occasioned by any such removal. Title to any such structures, buildings, installations, and/or improvements not so removed within said sixty (60) days shall vest in Lessor, without cost to Lessor and without any payment to Lessee, except that Lessor shall have the right to have them removed and to repair any and all damage occasioned by their removal, all at the expense of Lessee.

9.2 On the Commencement Date of this Lease, all existing machines, appliances, equipment, and trade fixtures located on the Leased Premises are owned by and title thereto is vested in Lessee. Furthermore, all machines, appliances, equipment, and trade fixtures placed on the Leased Premises by Lessee subsequent to the Commencement Date of this Lease are also owned by and title thereto is vested in Lessee. All machines, appliances, equipment, and trade fixtures shall be removed by Lessee, at Lessee's expense, within sixty (60) days after the Termination Date of this Lease or sooner termination thereof, whichever occurs earlier. Provided, however, Lessee agrees to repair any and all damage occasioned by their removal.

9.3 Provided, further, any machines, appliances, equipment, and trade fixtures placed on the Leased Premises by Lessee as qualification for the term of this Lease pursuant to ARTICLE 8 herein, may only be removed by Lessee, at Lessor's option. If machines,

appliances, equipment, and trade fixtures required by Lessor to be removed are not removed by Lessee within sixty (60) days after the Termination Date of this Lease or sooner termination thereof, whichever occurs earlier, the same may be considered abandoned and shall thereupon become the property of Lessor without cost to Lessor and without any payment to Lessee, except that Lessor shall have the right to have them removed and to repair any and all damage occasioned by their removal. all at the expense of Lessee.

9.4 During any period of time employed by Lessee under this ARTICLE 9 to remove structures, buildings, installations, improvements, machines, appliances, equipment, and trade fixtures, Lessee shall pay no rent to Lessor.

ARTICLE 10

LIENS

10.1 Lessee shall defend, indemnify, and hold harmless Lessor against all claims and liens for labor, services, or materials in connection with improvements, repairs, or alterations made by Lessee or Lessee's sublessees, contractors, and agents on the Leased Premises, and the costs of defending against such claims and liens, including reasonable attorneys' fees.

10.2 In the event any such claim or lien, or any other claim(s), lien(s) or levy(ies) whatsoever of any nature caused by Lessee or Lessee's sublessees, contractors, and agents, is filed against the Leased Premises or the leasehold interests of Lessee therein, Lessee shall, upon written request of Lessor, deposit with Lessor a bond conditioned for the payment in full of all claims upon which said lien(s) or levy(ies) have been filed. Such bond shall be acknowledged by Lessee, as principal, and by an entity licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company, as surety. Lessor shall have the right to declare this Lease in default in accordance with the provisions of ARTICLE 13 hereof in the event the bond required by this Paragraph 10.2 has not been deposited with Lessor within ten (10) days after written request has been delivered to Lessee.

10.3 This provision shall not apply to a foreclosure of a trust deed or mortgage encumbering the leasehold if the encumbrance has previously received Lessor consent in accordance with ARTICLE 11 herein.

ARTICLE 11

LEASE ENCUMBRANCE

11.1 Lessor's Consent to Encumbrance. Lessee shall not encumber the Lease, leasehold interest, and the improvements thereon by a deed of trust, mortgage, or other security instrument to assure the payment of Lessee's promissory note, without Lessor's prior written consent, in each instance, which such consent shall not be unreasonably withheld, conditioned or delayed; provided, upon Lessor's request, Lessee shall provide Lessor with reasonably satisfactory evidence that the debt service coverage ratio (reasonably projected ratio of the net operating income from the Leased Premises, i.e. all gross operating revenue anticipated to be received during the next twelve (12) month period, less all amounts reasonably projected for the

operation and maintenance of the Leased Premises, including the amount of any rent payable to the Lessee hereunder, for the same twelve (12) month period) with respect to the indebtedness secured by the encumbrance in favor of a Consented-To-Lender is at least 1.25 to 1. If Lessee enters into any deed of trust, mortgage, or other security instrument that encumbers the Lease, leasehold interest, or the improvements thereon without Lessor's prior written consent, Lessor shall have the right to declare this Lease in default. In the event Lessee requests Lessor's consent to any Lease encumbrance, hereinafter referred to as a "transaction" in this ARTICLE 11, Lessee shall reimburse Lessor for all Lessor's reasonable costs and expenses associated with said transaction. Said costs shall include reasonable legal fees and disbursements relating to or arising out of any such transaction, regardless of whether such transaction is consummated. Notwithstanding any other provision of this Article 11, until such time as the Marina Project is completed as provided in Section 8.1, the net proceeds (i.e. the loan amount, less any and all fees and costs incurred in connection with obtaining the loan and the payoff of any loan secured by a pre-existing encumbrance on Lessee's leasehold interest) from any loan by a Consented-To-Lender shall be used exclusively for renovation and construction of the Marina Project to the extent necessary to complete the Marina Project.

11.2 Definition of "Consented-to-Lender". The term "Consented-to-Lender" as hereinafter used in this Lease means the lender holding an encumbrance consented to by Lessor. It may include one or more lenders holding obligations of the Lessee secured by a single deed of trust, mortgage, or other security instrument.

11.3 Voluntary Lease Surrender. Without the prior written consent of the Consented-To-Lender, should Lessee owe the Consented-to-Lender any amounts under any security instrument encumbering this Lease, leasehold interest, or the improvements thereon, Lessor will not accept the voluntary surrender, cancellation, or termination of this Lease before the expiration of the term thereof.

11.4 Loan Default. If a deed of trust mortgage, or other security instrument consented to by Lessor is in default at any time, the Consented-to-Lender or an affiliate of the Consented-to-Lender (provided the affiliate is an entity the majority of which is owned by the Consented-to-Lender) shall, as provided below, have the right, without Lessor's prior consent, to:

- (a) Accept an assignment of the Lease in lieu of foreclosure; or
- (b) Cause a foreclosure sale to be held pursuant to either judicial proceedings or power of sale as provided in its deed of trust, mortgage, or other security instrument; provided, however, no assignment to a successful bidder, other than the Consented-to-Lender, or its affiliate (provided the affiliate is an entity the majority of which is owned by the Consented-to-Lender) shall be effective without Lessor's prior written consent under Section 11.6.

- (c) A new lease pursuant to Section 11.10(h) herein.

11.5 No Lease Obligations. Before said Consented-to-Lender or any other future consented-to assignee, acquires the leasehold interest, it shall, as an express condition precedent, agree in writing to assume each and every obligation under the Lease. Furthermore, before any said Consented-to-Lender, or any other future consented-to assignee or purchaser may

subsequently assign or sublease all or any portion of the leasehold interest shall, in each instance, obtain Lessor's prior written consent. Further, a Consented-to-Lender that has: (i) acquired the leasehold interest and assumed the Lessee's obligations, or (ii) entered into a new lease pursuant to ARTICLE 13 herein, concurrently with a termination of this Lease, shall be released from any further obligations under this Lease after it assigns the leasehold interest to an assignee consented to by Lessor, in accordance with this ARTICLE 11.

11.6 Lessor's Consent to Assignment. Whenever a Consented-to-Lender is required by the provisions of this ARTICLE 11 to obtain Lessor's prior consent to an assignment to the successful bidder upon a foreclosure by said Consented-to-Lender, then Lessor will grant such consent if:

(a) The principal(s) of such assignee, purchaser, or sublessee are reputable (meaning the absence of reputations for dishonesty, criminal conduct, or association with criminal elements -- "reputable" does not mean "prestigious," nor does the determination of whether one is reputable involve considerations of personal taste or preference);

(b) The principal(s) of such assignee, purchaser, or sublessee possess sufficient business experience and financial means to perform Lessee's obligations under this Lease--according to the then-current standards for business experience and financial means that Lessor generally requires of new or renewed lessees at the time of the request; and

(c) The assignee, purchaser, or sublessee agrees in writing to assume each and every obligation under this Lease.

(d) Further, Lessor will not unreasonably or arbitrarily withhold such consent. Provided, however, no such assignee, purchaser, or sublessee shall subsequently: (i) assign, transfer, or sublease any or all of the Leased Premises without Lessor's prior written consent, in accordance with ARTICLE 12 herein; or (ii) encumber the Lease, leasehold interest, and improvements thereon without Lessor's prior written consent, in accordance with this ARTICLE 11.

(e) Provided, further, if said Consented-to-Lender becomes the lessee by reason of: (i) being the successful bidder upon foreclosure, or (ii) an assignment in lieu of foreclosure, or (iii) being the lessee of a new lease entered into pursuant to Section 11.10(h) herein, then said Consented-to-Lender may, upon a subsequent assignment or subleasing of all or substantially all of the Leased Premises, take back from its assignee, purchaser, or sublessee, a purchase money deed of trust, mortgage, or security instrument. Provided, however, said Consented-to-Lender must execute and submit to Lessor documentation substantially in the same form and content as was originally submitted to Lessor when consent was granted to the earlier encumbrance. Only said Consented-to-Lender or the successful bidder upon said foreclosure may enforce the provisions of this ARTICLE 11. Further, no other third party shall have the rights or remedies, as third-party beneficiaries, or otherwise, hereunder.

(f) The burden of producing evidence and the burden of proof showing Lessor that a prospective assignee, purchaser, or sublessee meets each and all of the aforesaid qualifications and standards shall be on said Consented-to-Lender or successful bidder upon

foreclosure. Lessor's decision shall be based upon Lessor's high duty of care in administering a valuable public resource, which it holds in trust for the people of the State of California. In the absence of fraud or arbitrary or unreasonable action in applying or failing to apply said standards, Lessor's decision shall be final.

11.7 Notice of Foreclosure Sale. Said Consented-to-Lender shall include a statement in any Notice of Foreclosure Sale covering the foregoing requirements for Lessor's consent to an assignment upon said foreclosure.

11.8 Subsequent Encumbrance. Except for subleases, utility easements, and other necessary rights-of-way, Lessor shall not expressly consent to a subsequent lien or encumbrance against the Leased Premises without said Consented-to-Lender's prior written consent.

11.9 Assignment of Security Interest. Said Consented-to-Lender shall not assign its security interest in the Leased Premises in whole or in part without Lessor's prior written consent, in each instance. Provided, however, Lessor's consent to such an assignment shall be deemed granted (and such assignee will for all purposes of this Lease be deemed to be a Consented-to-Lender) if the assignment is to:

(a) A financial institution in good legal standing under the laws of its jurisdiction of incorporation having assets exceeding Five Hundred Million Dollars (\$500,000,000); or

(b) The United States of America or any state thereof, or any agency thereof;
or

(c) An assignee by operation of law (e.g., a state insurance department engaged in supervising the liquidation or rehabilitation of an insurance company lender).

(d) Provided, however, for purposes of the foregoing provisions "financial institution" shall mean: (i) an insurance company qualified to do business in the State of California; or (ii) a federally- or state-chartered bank, savings bank, or savings and loan association; or (iii) a pension or retirement fund operated for the employees and former employees of, and regulated and controlled by, the United States of America or any state thereof, or any agency thereof; e.g., the California State Teachers' Retirement System.

(e) Provided, further, no subsequent assignment by such assignee will be permitted unless:

(i) The assignment conforms to all requirements of this ARTICLE 11;

(ii) A duplicate original(s) of such assignment is furnished Lessor; and

(iii) In case of an assignment where Lessor's consent is deemed granted: (i) assignee promptly furnishes Lessor reasonably satisfactory evidence that said assignee complies with the foregoing requirements, and (ii) said assignee expressly agrees to take such assignment subject to all Lessor's rights under this Lease.

11.10 Rights of a Consented-to-Lender. Until such time as the lien of a Consented-to-Lender (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 11.10 are solely for the benefit of the Consented-to-Lender, and are not for the benefit of, nor may they be enforced by, Lessee):

(a) Lessor 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 11.10(e) this Lease), nor to any cancellation or surrender occurring without Lessor's consent pursuant to the provisions of the United States Bankruptcy Code, 11 U.S.C. 101, et seq.

(b) Intentionally Omitted.

(c) If, in connection with securing by Lessee of any Approved Mortgage, the Consented-to-Lender requests an amendment with respect to the lender protection rights set forth in this ARTICLE 11, Lessor agrees not to unreasonably withhold its consent to any such amendment; provided, that Lessor shall not be required to consent to such an amendment if it would, in Lessor's reasonable determination, materially impair any of Lessor's rights or materially increase any of Lessor's obligations under this Lease. Further, Lessor shall not enter into any amendment of this Lease without the Consented-to-Lender's, if any, prior written approval.

(d) Lessor, upon providing Lessee with any notice of default under this Lease, shall, at the same time, provide a copy of such notice to every Consented-to-Lender whose loan is secured by an Approved Mortgage and who has given written notice to Lessor of its interest in Lessee's estate. After such notice has been given to a Consent to Lender, such Consented-to-Lender 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 Consented-to-Lender as specified in Section 11.10(e) below. Lessor shall accept performance by or at the instigation of such Consented-to-Lender as if the same had been done by Lessee.

(e) Notwithstanding anything to the contrary contained in this Lease, Lessor shall have no right to terminate this Lease on account of an uncured monetary default or non-monetary default of Lessee unless, following expiration of the applicable cure period provided for in this Lease, Lessor first provides each Consented-to-Lender written notice of its intent to terminate the Lease and the Consented-to-Lender 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 60 day period (or is such that possession of the Leased Premises is necessary for the Consented-to-Lender 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 Consented-to-Lender shall have fully cured any monetary default within said 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 Consented-to-Lender

commences curing such non-monetary default within said 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 Consented-to-Lender to continue any foreclosure proceeding it may have commenced against Lessee after all defaults have been cured by the Consented-to-Lender, and if such defaults shall be cured and the Consented-to-Lender 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 Consented-to-Lender 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 Consented-to-Lender, and such non-monetary default shall be deemed to be waived following the Consented-to-Lender's acquisition of Lessee's estate and such Consented-to-Lender's timely cure of all monetary defaults and all non-monetary defaults which are capable of cure by such Consented-to-Lender in accordance with the foregoing provisions.

(f) No Consented-to-Lender, acting in such capacity, shall be deemed to be a transferee of this Lease or of Lessee's estate so as to require such Consented-to-Lender, 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 Consented-to-Lender and any proposed assignee of such Consented-to-Lender shall deliver written notice to Lessor of the assignment of the Consented-to-Lender's promissory note and security therefor together with the assignee's address to which notices are to be sent, the Consented-to-Lender may, without Lessor's consent, assign Lessee's promissory note secured by the lien on Lessee's estate to any institution which would qualify as a Consented-to-Lender under Section 11.9. Upon acquiring Lessee's estate pursuant to a foreclosure or deed in lieu of foreclosure, the Consented-to-Lender shall immediately notify Lessor in writing of its name and address; and the method by which the Consented-to-Lender acquired Lessee's estate and the documentation to evidence such acquisition, together with the name, address and authorized person of the Consented-to-Lender to whom correspondence and notices may be delivered. Upon taking an assignment of Lessee's estate from a Consented-to-Lender under Section 11.10(b) of this Lease, the assignee shall deliver to Lessor written notice of (a) the effective date of the assignment, (b) the identity 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 Lessor, and executed by the assignee, in which such assignee shall agree in writing for the benefit of Lessor 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 Lessor has delivered a notice of such default (provided, however, that if Lessor has delivered an Estoppel Certificate to the Consented-to-Lender and/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 Consented-to-Lender), 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 11; 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.

(g) Notwithstanding any other provision of this Lease, but subject nevertheless to the provisions of Sections 11.10(b) and 11.10(h) 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.

(h) 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, any Consented-to-Lender of an Approved Mortgage who has requested notice from Lessor in writing and furnished its name and addresses to Lessor, may, within thirty (30) days after the date of such rejection or disaffirmance deliver a written offer to Lessor to enter into a new lease of the Leased Premises with such Consented-to-Lender as Lessee (the "New Lease"), prepared and executed by such Consented-to-Lender, which 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. Such offer shall be accompanied by two duplicate original forms of the New Lease, executed by Consented-to-Lender, and Consented-to-Lender shall, as a condition of the acceptance and execution by Lessor of the New Lease: (i) pay to Lessor at the time of the execution by Consented-to-Lender and delivery of said New Lease any and all sums for unpaid rent payable by Lessee pursuant to this Lease had this Lease not been so rejected and terminated, to and including the date of delivery of such written offer, less the net amount (i.e., net of all reasonable expenses) of all sums received by Lessor 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 Lessor resulting from the review 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 Consented-to-Lender 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 Consented-to-Lender. Within thirty (30) days of receipt by Lessor of such written offer from Consented-to-Lender and the satisfaction of the conditions set forth above, Lessor shall accept such New Lease by executing and delivering a duplicate original copy thereof to such Consented-to-Lender. Nothing herein contained shall be deemed to impose any obligation on the part of Lessor to deliver physical possession of the Leased Premises to such Consented-to-Lender unless Lessor at the time of the execution and delivery of such New Lease shall have obtained physical possession thereof and Lessor has

insurable fee simple title to the Leased Premises, free and clear of this Lease and the claims of all persons claiming thereunder.

(i) The Consented-to-Lender that becomes the Lessee under any such New Lease made pursuant to Section 11.10(h) shall be liable to perform the obligations imposed on the Lessee by such New Lease to the same extent as a Consented-to-Lender 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 11.10(b), above, the Consented-to-Lender shall be relieved of all obligations of the Lessee under the New Lease first arising after the date of such assignment.

(j) After the termination of this Lease and during the period thereafter during which any Consented-to-Lender is entitled to enter into a New Lease of the Leased Premises pursuant to Section 11.10(h), Lessor 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, Lessor shall receive all rent and other payments due from all sublessees (subject to Lessor'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 Consented-to-Lender and shall deposit such rents and payments in a separate and segregated account, but may withdraw and pay to Lessor such sums as are required or were required to be paid to Lessor 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, Lessor shall account to the Consented-to-Lender 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 Lessor acting as an agent pursuant to this Section 11.10(j) shall not be deemed an acceptance by Lessor for its own account of the attornment of any sublessee unless Lessor shall have agreed in writing with such Sublessee that its tenancy shall be continued following the expiration of any period during which a Consented-to-Lender 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 Lessor determines that it cannot accept rent payments from a sublessee without risk of being deemed to have accepted such sublease's attornment (and Lessor has not previously agreed to recognize such sublessee in the event of a default under this Lease by Lessee), Lessor shall have the right to direct such sublessee to pay such rents directly to Consented-to-Lender. If Consented-to-Lender shall fail to exercise its right to enter into a New Lease or fail to timely execute such New Lease pursuant to Section 11.10(h), all rents collected by Lessor on behalf of such Consented-to-Lenders pursuant to this Section 11.10(j) shall become Lessor's property free and clear of any claim by such Consented-to-Lenders and such Consented-to-Lenders shall have no further rights with respect thereto.

(k) Intentionally Omitted.

(l) Notices from Lessor to any Consented-to-Lender shall be mailed to the address of the Consented-to-Lender set forth in the Approved Mortgage furnished to Lessor or at such other address as may have been furnished to Lessor by such Consented-to-Lender in

writing. All notices from the Consented-to-Lender to Lessor shall be mailed to the address designated pursuant to the provisions of this Lease or such other address as Lessor 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 12

ASSIGNMENT - SUBLEASE

12.1 Lessee shall not, without the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed:

(a) Assign or transfer the whole or any part of this Lease or any interest therein;

(b) Sublease (which shall also include management and/or operating agreements covering the Leased Premises) the whole or any part of the Leased Premises except as permitted under Section 12.2;

(c) Permit transfer of the Lease or possession of the Leased Premises by merger, consolidation, or dissolution of Lessee;

(d) Except as otherwise provided in ARTICLE 11 herein, permit hypothecation, pledge, encumbrance, transfer or sale, voluntary or involuntary, in whole or in part, of this Lease or any interest therein; or

(e) Permit the occupancy of the whole or any part of the Leased Premises by any other person or entity.

12.2 Notwithstanding the foregoing, (a) rental or licensing of boat slips, Lessor's consent shall not be required with respect to any leasing or rental by the Lessee of office space, commercial space or retail space within the improvements at the Leased Premises and (c) nothing herein contained shall be construed to prevent the occupancy of said Leased Premises by an employee or business invitee of Lessee in the ordinary course of Lessee's business.

12.3 Further, Lessee shall not, without the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed:

(a) Permit assignment, hypothecation, withdrawal, admittance, dissolution, change, pledge, encumbrance, transfer or sale, in whole or in part, including without limitation as a result of an election or action by the parties comprising Lessee, whether voluntary or involuntary, by operation of law or otherwise, of the Lessee or the general partner(s) of Lessee;

(b) Contract for the management or operation of the whole or any part of the Leased Premises; or

(c) Permit the transfer of the Lease or possession of the Leased Premises by any changes of a majority in interest of the shareholder(s), member(s) and/or general partner(s)

of Lessee, including without limitation, any withdrawal, admittance or change, whether voluntary, involuntary, by operation of law, or otherwise.

12.4 It is mutually agreed that the personal qualifications of the parties controlling Lessee, specifically including, but not limited to, the general partner(s), are a part of the consideration for granting this Lease. Said parties do hereby specifically agree to, except as prohibited as a result of death or disability, maintain active control and supervision of the operations conducted on the Leased Premises.

12.5 In the event Lessee requests Lessor's consent to any Lease assignment and/or transfer, hereinafter referred to as a "transaction," Lessee shall reimburse Lessor for all Lessor's reasonable costs and expenses associated with said transaction. Said costs shall include reasonable legal fees and disbursements relating to or arising out of any such transaction, regardless of whether such transaction is consummated.

12.6 In the event Lessor consents to any Lease assignment or transfer, said consent shall be conditioned upon the following: (i) if, on the effective date of such proposed assignment, transfer, the rent being paid under this Lease is less than market rent, Lessor shall thereafter be paid additional rent to equal market rent; (ii) assignee shall agree and assume each and every obligation under the Lease; (iii) if deemed necessary by Lessor, a Lease amendment shall be executed which will include new or revised lease provisions; and (iv) assignee shall comply with other conditions and qualifications reasonably required by Lessor. Notwithstanding the foregoing, items (i), (iii), and (iv) shall not apply in the event of: (a) a Lease assignment or transfer to a third party from a Consented-to-Lender which acquired title to the Lease by foreclosure or deed in lieu of foreclosure or a new Lease pursuant to the provisions of ARTICLE 11 herein, or (b) assignment or transfer of the Lease to a Consented-to-Lender by deed in lieu of foreclosure, or to a Consented-to-Lender or a third party as the successful bidder at a foreclosure sale. Upon the effective date of any said consented-to Lease assignment or transfer, assignee shall thereafter pay to Lessor the market rent as referenced herein, subject to adjustments as provided in ARTICLE 5 herein.

12.7 In connection with the Lessor's consideration of any request for its consent to an assignment, transfer or sublease of the entirety of the Lease which requires Lessor's consent, Lessor may consider the financial condition of the proposed assignee ("Proposed Transferee"), the Proposed Transferee's experience in the operation and management of the property of the type subject to this Lease and the character and reputation of the Proposed Transferee. In connection with the foregoing, at such time as the Lessee shall request Lessor's consent to any proposed transfer, Lessee shall provide Lessor with appropriate financial statements, including balance sheets and profit and loss statements, demonstrating the Proposed Transferee's financial condition for the preceding three (3) years, or such shorter period that the proposed assignee has been in existence. In addition, the Lessee shall provide Lessor with such additional information as may be reasonably requested by Lessor to determine the character and reputation of the Proposed Transferee, as well as the Proposed Transferee's experience in the operation and maintenance of property similar to the Leased Premises.

The following standards are to apply to proposed transactions requiring Lessor's consent pursuant to Section 12.1 of the Lease. These standards and conditions are not to apply to (a) an

assignment for the purpose of securing leasehold financing of the parcel by an encumbrance holder approved by Lessor. (b) the transfer of the leasehold in connection with a foreclosure or transfer in lieu of foreclosure by a Consented-To-Lender, or (c) the first transfer by that encumbrance holder if it has acquired the leasehold through a foreclosure or a transfer in lieu of foreclosure.

(a) The Proposed Transfers must have a net worth determined to be sufficient in relation to the financial obligations of the lessee under the Lease (equal to at least six (6) times the total Minimum Annual Rent due to Lessor for the most recent fiscal). A letter of credit, cash deposit, guarantee from a parent entity or participating individual(s) having sufficient net worth or similar security satisfactory to the Lessor may be substituted for the net worth requirement. If the Proposed Transferee's net worth is materially less than the transferor's, Lessor may disapprove the assignment or require additional security such as that described in the previous sentence.

(b) The Proposed Transferee must have significant experience in the construction (if contemplated), operation and management of the type(s) of improvements existing on or to be constructed on the Leased Premises, or provide evidence of contractual arrangements for these services with providers of such services reasonably satisfactory to the Lessor. Changes in the providers of such services and changes to the contractual arrangements must be approved by the Lessor. All approvals of the Lessor will not be unreasonably withheld, conditioned or delayed.

(c) The individual or individuals who will acquire Lessee's interest in this Lease or the Leased Premises, or own the entity which will so acquire Lessee's interest, irrespective of the tier at which individual ownership is held, must be of good character and reputation and, in any event, shall have neither a history of, nor a reputation for: (1) discriminatory employment practices which violate any federal, state or local law; or (2) non-compliance with environmental laws, or any other legal requirements or formally adopted ordinances or policies of the Lessor.

(d) The price to be paid in connection with the transaction shall not result in a financing obligation which jeopardizes the Proposed Transferee's ability to meet its rental obligations under the Lease. Market debt service coverage ratios and leasehold financial performance, at the time of the proposed transfer, will be used by Lessor in making this analysis.

(e) If the Proposed Transferee is an entity, rather than an individual, the structure of the proposed transferee must be such that (or the assignee must agree that) the Lessor will have reasonable approval rights regarding any future direct or indirect transfers of interests in the entity or the Lease as required under the Lease (excluding any excluded transfer); provided however, that a transfer of ownership of a publicly held parent corporation of Lessee that is not done primarily as a transfer of this leasehold will not be subject to Lessor approval.

(f) The terms of the proposed assignment will not detrimentally affect the efficient operation or management of the leasehold, the Leased Premises or any improvements thereon.

ARTICLE 13
DEFAULTS AND REMEDIES

13.1 Defaults. The occurrence of any one (1) or more of the following events shall constitute an event of default:

(a) Abandonment of the Leased Premises. Abandonment is herein defined to include, but is not limited to, any absence by Lessee from the Leased Premises for ten (10) consecutive days or longer.

(b) Failure by Lessee to pay, when due, any Lease-required rent, other payment and/or charge herein, where such failure continues for a period of ten (10) days after written notice thereof. Provided, however, any such notice provided in this Paragraph 13.1(b) or in subsequent Paragraph 13.1(c) shall be in lieu of, and not in addition to, any notice required under Section 1161 of the California Code of Civil Procedure, as amended.

(c) Failure by Lessee to perform any other express or implied covenants or conditions in this Lease (other than any breach under ARTICLE 12, for which immediate notice of termination may be given), should such failure continue for ninety (90) days after written notice thereof.

(d) Subject to any restrictions or limitations placed on Lessor by applicable laws governing bankruptcy, Lessee's: (a) applying for, consenting to, or suffering the appointment of a receiver, trustee, or liquidation of all or a substantial portion of its assets; (b) making a general assignment for the benefit of creditors; (c) admitting in writing its inability to pay its debts or its willingness to be adjudged a bankrupt; (d) becoming unable to, or failing to, pay its debts as they mature; (e) being adjudged a bankrupt; (f) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization, or insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days of such filing); (g) convening a meeting of its creditors, or any class thereof, for purposes of effecting a moratorium, extension, or composition of its debts; or (h) suffering, or permitting to continue unstayed and in effect for ten (10) consecutive days, any attachment, levy, execution, or seizure of all or a substantial portion of Lessee's assets or of Lessee's interest in this Lease.

(e) Paragraph 13.1(e) herein shall not be applicable or binding on the beneficiary of any deed of trust, mortgage, or other security instrument on the Leased Premises which is of record with Lessor and has been consented to by resolution of Lessor, or to said beneficiary's successors in interest consented to by resolution of Lessor, as long as there remains any monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided that such beneficiary or its successors in interest, continuously and timely pays to Lessor all rent due or coming due under the provisions of this Lease and the Leased Premises are continuously and actively used in accordance with ARTICLE 17 herein, and provided that said beneficiary agrees in writing to assume and perform each and every obligation under the Lease.

13.2 Remedy in the Event of Any Default. Lessor may exercise the following remedies upon the occurrence of an event of default:

(a) Terminate Lessee's right to possession of the Leased Premises whereupon this Lease shall terminate and Lessee shall immediately surrender possession of the Leased Premises to Lessor. In such event, Lessor shall be entitled to recover from Lessee:

(i) The "Worth at the Time of Award", as hereinafter defined, of the unpaid rent which had been earned at the time of termination;

(ii) The "Worth at the Time of Award" of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such loss that Lessee proves could have been reasonably avoided;

(iii) The "Worth at the Time of Award" of the amount by which the unpaid rent for the balance of the term of this Lease after the time of award exceeds the amount of such loss that Lessee proves could have been reasonably avoided; and

(iv) Any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease, or which would ordinarily be likely to result therefrom, including but not limited to the cost of recovering possession of the Leased Premises, expenses of reletting (including necessary repair, renovation and alteration of the Leased Premises), reasonable attorneys' fees, and any other reasonable costs.

(v) The "Worth at the Time of Award" of the amounts referred to in Paragraphs 13.2(a)(i) and 13.2(a)(ii) shall be computed by charging interest at ten percent (10%) per annum from the dates such amounts accrued to Lessor. The "Worth at the Time of Award" of the amount referred to in Paragraph 13.2(a)(iii) shall be computed by discounting such amount at one (1) percentage point above the Discount Rate of the Federal Reserve Bank of San Francisco at the time of the award.

(b) Without terminating or effecting a forfeiture of the Lease, or otherwise relieving Lessee of any obligation herein, Lessor may, but need not, relet the Leased Premises or any portion thereof, at any time or from time to time, for such terms and upon such conditions and rent as Lessor, in its sole discretion, deems proper. Regardless of whether the Leased Premises are relet, Lessee shall continue to pay to Lessor all Lease-required amounts up to the date that Lessor terminates Lessee's right to possession of the Leased Premises; provided, however, following a default, Lessor shall not unreasonably withhold its consent to any Lessee-requested assignment of this Lease or subletting of the Leased Premises, unless Lessor shall also elect to terminate this Lease and Lessee's right to possession of the Leased Premises, as provided in Paragraph 13.2(a). Such payments shall be due at the times provided in this Lease and Lessor need not wait until the termination of the Lease to recover said amounts. If Lessor relets the Leased Premises, or any portion thereof, such reletting shall not relieve Lessee of any obligations herein, except that Lessor shall apply the rent or other proceeds actually collected for such reletting against amounts due from Lessee herein, to the extent such proceeds compensate Lessor for Lessee's nonperformance of any obligation herein. Lessor may execute any new lease

pursuant thereto in its own name. Further, Lessor shall be under no obligation to reveal to new lessee how these proceeds were applied, nor shall said new lessee have any right to collect any such proceeds. Lessor shall not, by any reentry or other act, be deemed to have accepted Lessee's surrender of the Leased Premises or Lessee's interest therein, nor be deemed to have terminated this Lease or to have relieved Lessee of any obligation herein, unless Lessor shall have furnished Lessee with express written notice of Lessor's election to do so, as set forth herein.

(c) Any and/or all other rights or remedies of Lessor specified elsewhere in this Lease or provided by law.

13.3 In the event Lessor has consented to an encumbrance of this Lease for security purposes in accordance with ARTICLE 11 herein, it is understood and agreed that Lessor shall furnish copies of all notice(s) of default(s) to the beneficiary or mortgagee under said encumbrance by certified mail (provided Lessee has delivered to Lessor written request therefore, together with the name and address of any such beneficiary or mortgagee) contemporaneously with the furnishing of such notices to Lessee. Furthermore, in the event Lessee fails to cure such default(s) within the time permitted herein, said beneficiary or mortgagee shall be permitted to cure such default(s) at any time within fifteen (15) days following the expiration of the period within which Lessee may cure said default(s); provided, however, Lessor shall not be required to furnish any further notice(s) of default(s) to said beneficiary or mortgagee.

13.4 Notwithstanding the foregoing, should a default not be cured within the cure periods referred to above, said Lease shall not be terminated as to said beneficiary or mortgagee unless Lessor first legally offers to enter into a valid lease with said beneficiary or mortgagee, and said offer is not accepted in writing within thirty (30) days after said offer is made. Furthermore, such new lease must be entered into as a condition concurrent with such termination for the then-remaining term of this Lease. Furthermore, the new lease must contain the same terms, conditions, and priority as this Lease, provided the mortgagee or beneficiary promptly cures all then-existing defaults under this Lease when and to the extent it is able to cure them. Such new lease may be entered into even though possession of the Leased Premises has not been surrendered by the defaulting Lessee. In such event, unless legally restrained, Lessor shall promptly proceed to obtain possession of the Leased Premises and to deliver possession to said mortgagee or beneficiary as soon as the same is obtained. Should the mortgagee or beneficiary fail to accept said offer in writing within said thirty (30) day period, or, having so accepted said offer, should it fail promptly to cure all existing defaults under this Lease when and to the extent it is able to cure them, then such termination shall also be effective as to said mortgagee or beneficiary.

ARTICLE 14

BANKRUPTCY

14.1 Lessor shall have the right to declare this Lease in default if Lessee: (i) becomes insolvent; (ii) makes an assignment for the benefit of creditors; (iii) becomes the subject of a

bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceeding; or in the event of any -judicial sale of Lessee's leasehold interest.

14.2 The conditions of this ARTICLE 14 shall not be applicable or binding on: (1) Lessee; or (2) the beneficiary in any deed of trust, mortgage, or other security instrument encumbering the leasehold interest which Lessor has consented to in writing; or (3) the aforesaid beneficiary's successors in interest which Lessor has consented to in writing, as long as there remains any monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided Lessee, such beneficiary, or such beneficiary's successors in interest continuously pay to Lessor all rent due or coming due under the provisions of this Lease, and the Leased Premises are continuously and actively used in accordance with ARTICLE 17 herein.

ARTICLE 15

EMINENT DOMAIN

If any public authority takes the whole or a substantial part of the Leased Premises under the power of eminent domain, then the term of this Lease shall cease as to the part so taken from the day the possession of that part is taken. Further, the rent shall be paid up to that day. Lessee shall then have the right either to: (i) cancel this Lease and declare the same null and void; or (ii) continue in possession of the remainder of the Leased Premises under the then-current Lease terms; provided, however, the rent and other amounts due hereunder shall be reduced in proportion to the value of the portion of the Leased Premises taken. All damages awarded for such taking shall belong to and be the property of Lessor, whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the Leased Premises. Provided, however, Lessor shall not be entitled to any award made for the taking of any of Lessee's installations or improvements on the Leased Premises.

ARTICLE 16

TERMINATION OF PRIOR AGREEMENT(S)

Any and all existing leases or rental agreements between Lessor and Lessee for the Leased Premises which have not already expired or terminated, are hereby terminated on the effective date of this Lease. Any rights, duties, and obligations of the parties, if any, pursuant to the terms, covenants, and conditions in any such hereby terminated agreements shall remain enforceable and subject to all defenses, including without limitation any applicable statute of limitations. Further, said statute(s) shall not be waived or extended because of this Lease. Nothing herein is intended nor shall be construed as a waiver of any such rights, or as a release of any such duties or obligations, whether known or unknown at this time or upon the effective date of this Lease.

ARTICLE 17
USE OBLIGATION

Lessee shall actively and continuously use and operate the Leased Premises for the limited particular exclusive use expressly provided for in ARTICLE 3 herein, except for failure to so use caused by wars, strikes, riots, civil commotion, acts of public enemies, and acts of God. Said active and continuous use and operation enhances the value of the lands within Lessor's jurisdiction; provides needed public service; and provides additional employment, taxes, and other benefits to the general economy of the area. Lessee, however, shall not and is expressly prohibited from using the Leased Premises for any other purpose or use whatsoever, whether it is purported to be in addition to or in lieu of the particular exclusive use expressly provided in ARTICLE 3 herein.

ARTICLE 18
MAINTENANCE AND REPAIR

18.1 As part of the consideration for this Lease, Lessee shall assume full responsibility for operation and maintenance of the Leased Premises throughout the term and without expense to Lessor. Lessee shall perform all maintenance, which includes all painting, repairs, and replacements necessary to maintain and preserve the Leased Premises in a good, safe, healthy, and sanitary condition, satisfactory to Lessor and in compliance with all applicable laws. Provided, however, prior to Lessee performing any extraordinary repairs, plans and specifications must first be submitted to Lessor and receive Lessor approval, pursuant to the procedures provided in ARTICLE 7 herein. Further, Lessee shall provide approved containers for trash and garbage and keep the Leased Premises free and clear of rubbish, litter, and any other fire hazards. Lessee waives all rights to make repairs at the expense of Lessor, as provided in Section 1942 of the California Civil Code, and all rights provided by Section 1941 of said Code.

18.2 For the purpose of keeping the Leased Premises in a good, safe, healthy, and sanitary condition, Lessor always shall have the right but not the duty to enter, view, inspect, determine the condition of, and protect its interests in the Leased Premises. Provided, however, Lessor or its representatives shall: (a) conduct such entry in a manner that causes the least inconvenience and disruption to Lessee's operation as practicable; and (b) comply with all safety and security requirements of Lessee. It is not intended, however, that Lessee's safety and security requirements be used to bar Lessor's right of inspection. Further, Lessee shall provide Lessor reasonable access to the Leased Premises for such purpose.

18.3 If inspection discloses the Leased Premises are not in the condition required herein, Lessee immediately must commence the necessary maintenance work, and complete said work within ten (10) days after written notice from Lessor.

18.4 Notwithstanding, Lessor shall not be required to perform any maintenance, including painting, repairs, or replacements; or to make any improvements whatsoever on or for the benefit of the Leased Premises.

18.5 The rights reserved in this Article shall not create any obligations or increase any obligations for Lessor elsewhere in this Lease.

18.6 In the event Lessee fails to maintain, repair or make any replacements as required under the terms of this Article 18, Lessor may, but shall not be required, upon not less than thirty (30) days prior written notice (or in the case of an emergency, notice of not less than the time period which would be reasonable in light of the nature of the emergency) and Lessee's failure to timely remedy any maintenance item properly noticed, or make any repair or replacement properly noticed, undertake the maintenance, repair or replacement noticed and the actual out-of-pocket cost thereof (including, but not limited to, the cost of labor overhead, materials and equipment) shall be charged to Lessee and payable by Lessee to Lessor as additional rent within thirty (30) days following delivery by Lessor to Lessee of a statement (with supporting invoices to the extent available) setting forth in reasonable detail the cost of such maintenance, repair or replacement.

ARTICLE 19

TAXES AND UTILITIES

This Lease may result in a taxable possessory interest and be subject to the payment of property taxes. Lessee shall pay before delinquency all taxes and assessments of any kind assessed or levied upon Lessee or the Leased Premises by reason of: (i) this Lease; (ii) any buildings, machines, or other improvements of any nature whatsoever erected, installed, or maintained by Lessee; or (iii) the business or other activities of Lessee upon or in connection with the Leased Premises. Lessee also shall pay any fees imposed by law for licenses or permits for any business or activities of Lessee upon the Leased Premises, or under this Lease, and shall pay before delinquency any and all charges for utilities at or on the Leased Premises.

ARTICLE 20

CONFORMANCE WITH LAWS AND REGULATIONS

Lessee agrees that, in all activities on or in connection with the Leased Premises, and in all uses thereof, including the making of any alterations, changes, installations, or other improvements, it will abide by and conform to all laws and regulations. Said laws and regulations shall include, but are not limited to, any ordinances of the city in which the Leased Premises are located, including the Building Code thereof; any ordinances and general rules of Lessor, including tariffs; and any applicable laws of the State of California and federal government, as any of the same now exist or may hereafter be adopted or amended.

ARTICLE 21

EQUAL EMPLOYMENT OPPORTUNITY AND NONDISCRIMINATION

21.1 Lessee shall comply with Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the California Constitution; the California Fair Employment and

Housing Act; the Americans with Disabilities Act of 1990; and any other applicable federal, state, or local laws and regulations now existing or hereinafter enacted, requiring equal employment opportunities or prohibiting discrimination. This shall include without limitation, laws and regulations prohibiting discrimination because of race, color, religion, sex, national origin, ancestry, physical or mental disability, veteran status, medical condition, marital status, age, sexual orientation, pregnancy, or other non-job related criteria. In complying with all such laws, including without limitation the Americans with Disabilities Act of 1990, Lessee shall be solely responsible for such compliance and required programs, and there shall be no allocation of any such responsibility between Lessor and Lessee.

21.2 Annually, Lessee shall formulate and file with Lessor an approved: (i) "Equal Employment Opportunity and Nondiscrimination Program," and (ii) "Statement of Compliance" for the promotion of equal employment opportunities and nondiscrimination. Lessee shall make such progress reports as required by Lessor, and, upon Lessor's reasonable notice, Lessee shall make available for inspection and copying all of its records relevant to compliance with this ARTICLE 21. Provided, however, Lessee is only required to file the Program and Statement when the average annual employment level operating on the Leased Premises exceeds fifty (50) employees. Provided further, should Lessee be subject to a federally-mandated affirmative action program for employees, Lessee may, in lieu of filing the Program and Statement, annually certify in writing to Lessor that Lessee is subject to such a program, and, upon Lessor's request, Lessee shall furnish evidence thereof.

21.3 For the purposes and provisions of this Article, a sublessee shall be considered the Lessee should the sublessee become the prime operator of the Leased Premises.

21.4 Lessee's compliance with this Article is an express condition hereof, and any failure by Lessee to so comply and perform shall be a default as provided in this Lease, and Lessor may exercise any right as provided herein, and as otherwise provided by law.

ARTICLE 22

PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions herein shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated thereby.

ARTICLE 23

HOLD HARMLESS

Lessee shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless Lessor and its officers, employees, and agents for any and all liability, claims, judgments, damages, proceedings, orders, directives, costs, including reasonable attorneys' fees, or demands arising directly or indirectly out of the obligations undertaken in connection with this Lease, or Lessee's use, occupancy, possession or operation of the Leased Premises, except claims or

litigation arising through the sole negligence or willful misconduct of Lessor. It is the intent of this ARTICLE 23 that Lessee indemnify and hold harmless Lessor for any actions of Lessee or Lessor, including duties that may be legally delegated to Lessee as to third parties, except for those arising out of the sole negligence or willful misconduct of Lessor. This indemnity obligation shall apply for the entire time that any third party can make a claim against or sue Lessor for liabilities arising out of Lessee's use, occupancy, possession or operation of the Leased Premises, or arising from any defect in any part of the Leased Premises.

ARTICLE 24

SUCCESSORS IN INTEREST

Unless otherwise provided in this Lease, the terms, covenants, conditions, and agreements herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

ARTICLE 25

EASEMENTS

This Lease and all rights granted hereunder are subject to all easements and rights-of-way granted or reserved by Lessee and Lessor in, upon, over and across the Leased Premises pursuant to that certain Declaration of Easements, Covenants, Conditions and Restrictions dated as of even date herewith (the "Declaration of Easements"). This Lease and all rights granted hereunder are subject to all easements and rights-of-way previously granted or reserved by Lessor in, upon, over, and across the Leased Premises for any purpose whatsoever. Said Lease and granted rights shall be subject to future easements and rights-of-way for access, gas, electricity, water, sewer, drainage, telephone, telegraph, television transmission, and such other Lessor or public facilities as Lessor may determine from time to time to be in the best interests of the development of the lands within Lessor's jurisdiction. Lessor agrees to make an effort to locate future easements and rights-of-way, and to install associated public facilities, so as to produce a minimum amount of interference with Lessee's business. Further, Lessee shall not be entitled to any monetary payment or other remuneration for any such future easements and rights-of-way.

ARTICLE 26

INTENTIONALLY OMITTED

ARTICLE 27

INSURANCE

27.1 Lessee shall maintain insurance acceptable to Lessor in full force and effect throughout the term of this Lease. The policies for said insurance shall, as a minimum, provide the following:

(a) Forms of Coverage

(i) "OCCURRENCE" for Commercial General Liability covering the Leased Premises, operations, and contractual liability assumed by Lessee in this Lease in the amount of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage. The general aggregate shall be Four Million Dollars (\$4,000,000) unless a Two Million Dollars (\$2,000,000) per location aggregate limit is provided separate by endorsement. If alcoholic beverages are served or sold on the Leased Premises, Liquor Liability coverage in the amount of not less than One Million Dollars (\$1,000,000) shall be obtained. If no alcoholic beverages are served or sold on the Leased Premises, the proof of insurance shall so state.

(ii) Fire and Extended Coverage, including water damage and debris cleanup provisions, in an amount not less than ninety percent (90%) of full replacement value of all improvements located within the Leased Premises. The fire and extended coverage policies shall be endorsed with a Loss Payee endorsement in favor of Lessor. It is agreed that any insurance proceeds in excess of One Hundred Thousand Dollars (\$100,000) resulting from a loss under such policies shall be payable jointly to Lessor and Lessee to ensure that such proceeds will be reinvested in rebuilding and/or repairing the damaged portions of the Leased Premises and any damaged or destroyed improvements located thereon. Provided, however, if there is a Lessor-consented to mortgage or deed of trust encumbering the leasehold, then all fire and extended coverage policies shall be made payable jointly to the mortgagee or beneficiary and Lessee, to ensure that any proceeds shall be held by said mortgagee or beneficiary for the following purposes:

(A) As a trust fund to pay for the reconstruction, repair, or replacement of the damaged or destroyed improvements, in kind and scope, in progress payments as the work is performed. Any funds remaining after completion of said work shall be retained by said mortgagee or beneficiary and applied to reduce any debt secured by such mortgage or deed of trust. Furthermore, any funds remaining after full payment of said debt shall be paid to Lessee; or

(B) In the event that this Lease is terminated with consent of both Lessor and said mortgagee or beneficiary, and the improvements are not reconstructed, repaired, or replaced, the insurance proceeds shall be retained, without liability, by said mortgagee or beneficiary to the extent necessary to fully discharge the debt secured by said mortgage or deed of trust. Furthermore, said mortgagee or beneficiary shall hold the balance thereof to restore the Leased Premises to a neat and clean condition. Any remaining funds shall lastly be paid to Lessor and Lessee, as their interests may appear.

(iii) In the event underground storage tanks are located on the Leased Premises, Lessee is required to comply with Code of Federal Regulations, Title 40, Chapter 1, Subchapter H or Title 23, Division 3, Chapter 18 of California Code of Regulations, collectively, herein "UST Law." At the time Lessee is required to comply with any provisions of UST Law requiring financial assurance mechanisms, Lessee shall provide Lessor with a Certified copy of its Certification of Financial Responsibility. If Lessee's program for financial responsibility requires insurance, then Lessee's policy(ies) shall name Lessor and As officers, employees, and

agents as additional insureds, and all other terms of Subparagraph (b), below, shall apply. Should Lessee change its financial assurance mechanisms, Lessee shall immediately provide Lessor with a certified copy of its revised Certification of Financial Responsibility.

(b) General Requirements

(i) All required insurance shall be in force the first day of the term of this Lease, and shall be maintained continuously in force throughout the term of this Lease. In addition, the cost of all required insurance shall be borne by Lessee. During the entire term of this Lease, Lessee shall provide Lessor with Certificates, in a form acceptable to Lessor, evincing the existence of the necessary insurance policies and original endorsements effecting coverage required by this ARTICLE 27. The Certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind insurance on As behalf. Notwithstanding the forgoing, Lessor reserves the right to require complete, certified copies of all required policies at any time.

(ii) All liability insurance policies shall name, or be endorsed to name Lessor and its officers, employees, and agents as additional insureds and protect Lessor and its offices, employees, and agents against any legal costs in defending claims. All liability policies shall provide cross-liability coverage. All insurance policies shall be endorsed to state that coverage may not be suspended, voided, cancelled, or reduced in coverage, except after Lessee has furnished Lessor with thirty (30) days' prior written notice by certified mail. All insurance policies shall be endorsed to state that Lessee's insurance is primary and not excess or contributory to any insurance issued in the name of Lessor. Further, all insurance companies must be satisfactory to Lessor.

(iii) Any deductibles or self-insured retentions must be declared and acceptable to Lessor. If the deductibles or self-insured retentions are unacceptable to Lessor, then Lessee shall have the option to either: (i) reduce or eliminate such deductibles or self-insured retentions as respects the Lessor and its officers, employees, and agents; or, (ii) procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

(iv) Lessor shall retain the right at any time to review the coverage, form, and amount of insurance required herein. If, in the opinion of Lessor, the insurance provisions in this Lease do not provide adequate protection for Lessor and/or members of the public using the Leased Premises or using services connected with Lessee's use or occupancy of the Leased Premises, Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. Lessor's requirements shall be reasonable, but shall be designed to ensure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

(v) Lessor shall notify Lessee in writing of changes in the insurance requirements. With respect to changes in insurance requirements that are available from

Lessee's then-existing insurance carrier. Lessee shall deposit Certificates evidencing acceptable insurance policies with Lessor incorporating such changes within sixty (60) days of receipt of such notice. With respect to changes in insurance requirements that are not available from Lessee's then-existing insurance carrier, Lessee shall deposit Certificates evidencing acceptable insurance policies with Lessor, incorporating such changes, within one hundred twenty (120) days of receipt of such notice. In the event Lessee fails to deposit insurance Certificates as required herein, this Lease shall be in default without further notice to Lessee, and Lessor shall be entitled to exercise all legal remedies.

(vi) If Lessee fails or refuses to maintain insurance as required in this Lease, or fails to provide proof of insurance, Lessor has the right to declare this Lease in default without further notice to Lessee, and Lessor shall be entitled to exercise all legal remedies.

(vii) The procuring of such required policies of insurance shall not be construed to limit Lessee's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policies of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Lease, or with the use or occupancy of the Leased Premises.

(viii) Lessee agrees not to use the Leased Premises in any manner, even if use is for purposes stated herein, that will result in the cancellation of any insurance Lessor may have on the Leased Premises or on adjacent premises, or that will cause cancellation of any other insurance coverage for the Leased Premises or adjoining premises. Lessee further agrees not to keep on the Leased Premises or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the Leased Premises. Lessee shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the Leased Premises.

ARTICLE 28

POLICY OF LESSOR

It is Lessor's policy that prevailing wage rates shall be paid all persons employed on the lands within Lessor's jurisdiction.

ARTICLE 29

WARRANTIES-GUARANTEES-COVENANTS

Lessor makes no warranty, guarantee, covenant, including but not limited to covenants of title and quiet enjoyment, or averment of any nature whatsoever concerning the condition of the Leased Premises, including the physical condition thereof, or any condition which may affect the Leased Premises. It is agreed that Lessor will not be responsible for any loss, damage, and/or costs, which may be incurred by Lessee by reason of any such condition or conditions.

ARTICLE 30

DAMAGE TO OR DESTRUCTION OF LEASED PREMISES

30.1 Should Lessee-owned improvements be: (i) damaged or destroyed by fire, the elements, acts of God, or by any, other cause; or (ii) declared unsafe or unfit for occupancy or use by a public entity with the appropriate authority, (i) and/or (ii) hereinafter "event," Lessee shall, within ninety (90) days of such event, commence and diligently pursue to completion the repair, replacement, or reconstruction of the improvements necessary to permit full occupancy and use of the Leased Premises for the uses required herein. Repair, replacement, or reconstruction of such improvements shall be accomplished in a manner and according to Plans approved by Lessor. Provided, however, Lessee shall not be obligated to repair, reconstruct, or replace the improvements following their destruction in whole or substantial part, except to the extent the loss is covered by insurance required pursuant to ARTICLE 27 herein (or would be covered regardless of whether such required insurance is actually in effect).

30.2 If Lessee elects not to restore, repair, or reconstruct as herein required, then this Lease shall terminate. Further, Lessor shall have any rights to which it would be entitled under the provisions of ARTICLES 9 and 27 herein.

30.3 No event described herein shall relieve Lessee of its obligations to pay all rent and other amounts otherwise due hereunder.

ARTICLE 31

QUITCLAIM OF LESSEE'S INTEREST UPON TERMINATION

Upon termination of this Lease for any reason, including but not limited to termination because of default by Lessee, Lessee shall execute, acknowledge, and deliver to Lessor within thirty (30) days after receipt of written demand therefor, a good and sufficient deed whereby all Lessee's right, title and interest in the Leased Premises is quitclaimed to Lessor. Should Lessee fail or refuse to deliver the required deed to Lessor, Lessor may prepare and record a notice regarding the failure of Lessee to execute, acknowledge, and deliver such deed. Said notice shall be conclusive evidence of the termination of this Lease and of all right of Lessee, or those claiming under Lessee, in and to the Leased Premises.

ARTICLE 32

PEACEABLE SURRENDER

32.1 Upon expiration of this Lease or earlier termination or cancellation thereof, as herein provided, Lessee shall peaceably surrender the Leased Premises to Lessor in as good condition as the Leased Premises were at the Commencement Date of this Lease, except as the Leased Premises were repaired, rebuilt, restored, altered, or added to as permitted or required by the provisions of this Lease, ordinary wear and tear excepted, and subject to ARTICLE 9 herein. Nothing contained herein shall be construed to deny or abrogate the right of Lessee, prior to the expiration of the term or termination of this Lease, to receive any and all proceeds which are

attributable to the condemnation of improvements or personal property belonging to Lessee immediately prior to the taking of possession by the condemnor or to remove any furniture or equipment not intended to be permanently affixed to, or reasonably necessary for the operation of, the Leased Premises, any signage identifying Lessee (as opposed to other signage used in the operation of the Leased Premises and associated improvements), or any personal property, upon the expiration of the term or earlier termination of this Lease or at any time during the term, subject to Lessee's obligations under this Lease to use the Leased Premises for the permitted uses.

32.2 If Lessee fails to surrender the Leased Premises at the expiration of this Lease or the earlier termination or cancellation thereof Lessee shall defend and indemnify Lessor from all liability and expense resulting from the delay or failure to surrender, including without limitation any succeeding lessee claims based on Lessee's failure to surrender.

32.3 No earlier than eleven (11) years, and no later than ten (10) years prior to the expiration of the term, Lessee shall deliver to Lessor a report prepared by a construction and demolition expert approved by Lessor, such approval not to be unreasonably withheld, conditioned or delayed, which report details and estimates the cost of removing all improvements on the Leased Premises at the expiration of the term. Lessor may give written notice (the "Lessor Removal Notice") at any time, no later than the later of (a) six (6) months following Lessee's delivery of the removal cost report described above, or (b) nine (9) years prior to the expiration of the term, or concurrently upon any earlier termination, of Lessor's election to require Lessee to remove, at the sole cost and expense of Lessee, not later than the expiration of the term or earlier termination of this Lease, all or any portion of the at grade, above grade and below grade improvements of any kind whatsoever placed or maintained on the Premises, whether placed thereon or maintained by Lessee or others, including, but not limited to, concrete foundations, pilings, structures and buildings. If pursuant to the Lessor Removal Notice Lessor elects to require the removal of all or any portion of the Improvements, then Lessee shall, upon the expiration or termination of this Lease, (a) demolish and remove the improvements required by Lessor to be removed, (b) restore those portions of the Leased Premises on which Improvements have been removed to a good, usable and buildable condition, consisting of a level, graded buildable pad with no excavations, hollows, hills or humps, and (c) surrender possession of the Leased Premises to Lessor.

If Lessor elects to require Lessee to remove all or a portion of the Improvements pursuant to the Lessor Removal Notice, then Lessee shall, no later than the date that is thirty (30) days after Lessee's receipt of the Lessor Removal Notice, provide Lessor with a written plan which sets forth Lessee's proposed method of securing the discharge of Lessee's removal and restoration obligations pursuant to this subsection. Such security plan shall detail (i) the form of security proposed by Lessee (the "Removal Security Fund"), which security shall be either a deposit of funds, or a letter of credit, bond or other form of security in form and amount, and from an issuer, reasonably satisfactory to Lessor, and (ii) a schedule satisfactory to Lessor for the delivery by Lessee of the Removal Security Fund on a periodic basis over the remaining Term of the Lease, which schedule shall in all events provide for a full funding of the Removal Security Fund not later than two (2) years prior to the expiration of the Term. The amount of the Removal Security Fund shall be no less than the estimated costs to remove the Improvements set forth in the report described above, adjusted annually to reflect the increase or decrease, if any,

in the ENR Index over the ENR Index as of the date of the cost estimation set forth in such expert report; provided, however, that in no event shall such adjustment result in a Removal Security Fund of an amount less than that set forth in the expert report. Any uncured failure by Lessee to fund the Removal Security Fund as required under this Section 32.3 shall constitute an Event of Default.

If Lessor decides not to require Lessee to remove all of the improvements on the Premises as provided above, then upon the expiration of the term, or earlier termination of the Lease, Lessee shall turn over to Lessor all improvements not required to be removed by Lessee in the condition described in Section 32.1 above.

32.4 If Lessee fails to perform demolition, removal and restoration obligations required to be performed by Lessee hereunder, then Lessor may, at its election, sell, remove or demolish the Improvements, and such event, Lessee shall reimburse Lessor for any cost or expense thereof in excess of any funds received by Lessor through the security above provided and any consideration received by Lessor as a result of such sale, removal or demolition.

32.5 If Lessee fails to surrender the Leased Premises at the expiration of this Lease or the earlier termination or cancellation thereof, Lessee shall defend and indemnify Lessor from all liability and expense resulting from the delay or failure to surrender, including without limitation any succeeding lessee claims based on Lessee's failure to surrender.

ARTICLE 33

WAIVER

Should either Lessor or Lessee waive any breach by the other of any Lease covenant condition, or agreement, such waiver shall not be, nor be construed to be, a waiver of any subsequent or other breach of the same or any other Lease covenant, condition, or agreement. Further, failure on the part of either party to require or exact the other's full and complete compliance with any of the Lease covenants, conditions, or agreements shall not be, nor be construed as in any manner Changing the terms, or preventing the enforcement in full, of the provisions hereof. In addition, Lessor's subsequent acceptance of rent hereunder shall not be deemed to be a waiver of any preceding Lessee breach of any Lease term, covenant, or condition, other than Lessee's failure to pay the particular rent so accepted, regardless of Lessor's knowledge of Lessee's preceding breach at the time rent is accepted.

ARTICLE 34

HOLDOVER

34.1 This Lease shall terminate without further notice at expiration of the term. Any holding over by Lessee after either expiration or termination shall not constitute a renewal or extension, or give Lessee any rights in or to the Leased Premises.

34.2 If Lessee, with Lessor's consent, remains in possession of the Leased Premises after Lease expiration or termination, such possession shall be deemed a month-to-month

tenancy terminable upon thirty (30) days' notice furnished at any time by either party to the other. In addition, all provisions of this Lease, except those pertaining to term, shall apply to the month-to-month tenancy, and Lessee shall continue to pay all rent required by this Lease. Provided, however, if percentage rent is required by this Lease, it shall be paid monthly on or before the tenth (10th) day of each month, including the tenth (10th) day of the month following the expiration of any such holdover period.

ARTICLE 35

PARAGRAPH HEADINGS

The Table of Contents and Paragraph Headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

ARTICLE 36

ENTIRE UNDERSTANDING

This Lease contains the entire understanding and agreement of the parties. Lessee acknowledges there is no other written or oral understanding or agreement between the parties with respect to the Leased Premises, and that this Lease supersedes all prior negotiations, discussions, obligations, and rights of the parties hereto. No waiver, modification, amendment, or alteration of this Lease shall be valid unless it is expressly in writing and signed by authorized representatives of the parties hereto. Each of the parties to this Lease acknowledges that no other party, agent, or representative has made any promise, representation, waiver, or warranty whatsoever, expressed or implied, which is not expressly contained in writing in this Lease. Each party further acknowledges it has not executed this Lease in reliance upon any collateral promise, representation, waiver, or warranty, or in reliance upon any belief as to any fact not expressly recited in this Lease.

ARTICLE 37

TIME IS OF THE ESSENCE

Time is of the essence of each and all of the terms and provisions of this Lease. This Lease shall inure to the benefit of and be binding upon the parties hereto and any successors of Lessee as fully and to the same extent as though specifically mentioned in each instance. All covenants, conditions, and agreements in this Lease shall extend to and bind any assigns and sublessees of Lessee.

ARTICLE 38

NOTICES

38.1 All notices provided for by this Lease or by law to be given or served upon Lessor or Lessee shall be in writing and: (i) personally served upon any person authorized to receive

service of process on behalf of Lessor or Lessee, or any person hereafter authorized by either party in writing to receive such notice, or (ii) served by certified letter addressed to the appropriate address hereinafter set forth, or to such other address designated in writing by the respective party.

To Lessor

City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Manager

With copy to:

City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Attorney

To Lessee

Ballena Isle Marina, L.P.
c/o Almar Ltd.
28441 Highridge Road, #110
Rolling Hills Estates, CA 90274
Attn: Randy Short or Joyce W. Nelson

With copy to:

Clark & Trevithick
800 Wilshire Boulevard, 12th Floor
Los Angeles, CA 90017
Attn: Kevin P. Fiore, Esq.

38.2 Should any consented-to assignee, consented-to purchaser, or Consented-to-Lender notify Lessor in writing of its desire to receive notices, such party shall also be served by certified letter at such appropriate address designated in writing by the respective party, or personally served as provided herein.

38.3 Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served; provided, however, if served by certified mail, service will be considered completed and binding on the party served forty-eight (48) hours after deposit in the U.S. Mail.

ARTICLE 39

REMOVAL OF MATERIALS

39.1 Lessee shall, upon expiration of this Lease or sooner termination as herein provided, remove within sixty (60) days all materials, including without limitation all debris, and surplus and salvage items, hereinafter "Materials," from the Leased Premises and adjacent property, so as to leave the same in as good condition as when first occupied by Lessee, subject to reasonable wear and tear. Provided, however, if Lessee fails to remove all Materials within sixty (60) days, Lessor may remove, sell, or destroy said Materials at the expense of Lessee. Further, Lessee agrees to pay Lessor the reasonable cost of such removal, sale, or destruction; or, at the option of Lessor, said Materials not removed, sold, or destroyed by Lessee shall become the property of Lessor, without cost to Lessor, and without any payment to Lessee. "Materials" as used herein shall not mean or include "improvements" which are described in ARTICLE 9 hereof.

39.2 During any period of time required to remove said Materials, or to test for and/or remediate contaminants as required in ARTICLE 44 herein, Lessee shall continue to pay the full rent to Lessor in accordance with this Lease, which said rent shall be prorated daily.

ARTICLE 40
WASTE/NUISANCE

Lessee shall not use the Leased Premises in a manner that constitutes waste or nuisance.

ARTICLE 41
NUMBER AND GENDER

Words of any gender used in this Lease shall include any other gender and each word in the singular number shall include the plural whenever the tense requires.

ARTICLE 42
APPLICABLE LAW

This Lease will be governed by and construed and enforced in accordance with the laws of the State of California.

ARTICLE 43
ATTORNEY FEES

Should any suit be commenced to enforce, protect, or establish any right or remedy of any of the terms and conditions hereof, including without limitation a summary action commenced by Lessor under the laws of the State of California relating to the unlawful detention of property, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney fees and costs of suit.

ARTICLE 44
HAZARDOUS MATERIALS

44.1 Definition of "Hazardous Material." The term "Hazardous Material" shall mean any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, including oil and petroleum products, which now or in the future may be within the meaning of any applicable, federal, state, or local law, regulation, ordinance, or requirement at any concentration that is or has become regulated by the United States, the State of California, or any local government authority having jurisdiction over the Leased Premises.

44.2 Lessee Use of Hazardous Materials. Lessee shall not cause or permit any Hazardous Materials or products or materials which include any hazardous substance as a component, to be generated, brought onto, used, stored, emitted, released or disposed of in or about the Leased Premises by Lessee or its agents, employees, contractors, sublessees, or invitees unless expressly approved, at Lessor's sole discretion, in writing by Lessor after submittal by Lessee of information requested by Lessor. Limited quantities of gasoline, oils and other materials associated with the normal use of individual recreational boats and equipment materials and supplies customarily used in connection with the construction of improvements; and/or standard office, food service and janitorial supplies customarily used in places of business which contain chemicals categorized as Hazardous Material are excluded from this requirement. Lessee shall use, store, and dispose of all such Hazardous Materials in strict compliance with all applicable statutes, ordinances, regulations, and other requirements in effect during the Lease Term that relate to public health and safety and protection of the environment ("Environmental Laws"); and shall comply at all times with all Environmental Laws.

44.3 Notice of Release or Investigation. If during the term of this Lease (including any extensions), Lessee becomes aware of (i) any actual or threatened release of any Hazardous Material on, in, under, from, or about the Leased Premises; or (ii) any inquiry, investigation, proceeding, or claim (collectively "Inquiry") by any government agency or other person regarding the presence of any Hazardous Material on, in, under, from or about the Leased Premises, Lessee shall give Lessor written notice of the release or Inquiry within five (5) days after Lessee learns or first has reason to believe there has been a release or Inquiry and shall simultaneously furnish to Lessor copies of any claims, notices of violation, reports, warning or other writings received by Lessee that concern the release or Inquiry.

44.4 Lessor Right to Inspect. If Lessee has in the past or continues to use, dispose, generate, or store Hazardous Materials on the Leased Premises, Lessor or its designated representatives, at Lessor's sole discretion, may at any time during the term of this Lease, but is no way obligated to, enter upon the Leased Premises and make any inspections, tests or measurements Lessor deems necessary to determine if a release of Hazardous Materials has occurred. Lessor shall furnish Lessee a minimum of twenty-four (24) hours' notice in writing prior to conducting any inspections or tests, unless, in Lessor's sole judgment, circumstances require otherwise. Such tests shall be conducted in a manner so as to attempt to minimize any inconvenience and disruption to Lessee's operation as is practicable. If such tests indicate a release of Hazardous Materials, then Lessor, at Lessor's sole discretion, may require Lessee, at Lessee's sole expense and at any time during the term of this Lease, to have such tests for such Hazardous Materials conducted by a qualified party or parties on the Leased Premises. If Lessor has reason to believe any Hazardous Materials originated from a release on the Leased Premises have contaminated any area outside the Leased Premises, including but not limited to surface and groundwater, then Lessor, at Lessor's sole discretion, may require Lessee, at Lessee's sole expense and at any time during the term of this Lease, to have tests for such Hazardous Materials conducted by a qualified party or parties on said area outside the Leased Premises. Lessor's failure to inspect, test or take other actions pursuant to this Paragraph 44.4 regarding the Leased Premises, shall in no way relieve Lessee of any responsibility for a release of a Hazardous Material.

44.5 Clean-up Obligations. If the presence of any Hazardous Material brought onto the Leased Premises by Lessee or Lessee's employees, agents, sublessees, contractors, (or invitees, or generated by same during the term of this Lease, results in contamination of the Leased Premises, adjacent properties or the Ballena Bay, Lessee shall promptly take all necessary actions, at Lessee's sole expense, to remove or remediate such Hazardous Materials. Lessee shall provide notice to Lessor prior to performing any removal or remedial action. Lessee shall not propose nor agree to any covenant of use restriction as part of any removal or remediation required as a result of this Paragraph 44.5. To the extent Lessor incurs any costs or expenses in performing Lessee's obligation to clean-up contamination resulting from Lessee's operations or use of the Leased Premises, Lessee shall promptly reimburse Lessor for all costs and expenses incurred within thirty (30) days. Any amounts not so reimbursed within thirty (30) days after Lessee's receipt of an itemized statement therefore shall bear interest at the Prime Rate plus Five Percent (5%) per annum compounded monthly. This provision does not limit the indemnification obligation set forth in Paragraph 44.6 herein. The obligations set forth in this Paragraph 44.5 shall survive any expiration or other termination of this Lease.

(a) Clean-up Extending Beyond Lease Term. Should any clean-up of Hazardous Materials for which Lessee is responsible not be completed prior to the expiration or sooner termination of the Lease, including any extensions hereof, then: (a) Lessee shall deposit into an escrow account an amount of money equal to the balance of the estimated costs of the clean-up, together with instructions for the disbursement of such amount in payment of the costs of any remaining clean-up as it is completed, and (b) if the nature of the contamination or clean-up required of Lessee is of such a nature as to make the Leased Premises untenable or unleaseable, then Lessee shall be liable to Lessor as a holdover lessee until the clean-up has been sufficiently completed to make the Leased Premises suitable for lease to third parties. The estimated cost of the clean-up shall require approval of the Lessor.

(b) Financial Security. If Lessor determines, in its reasonable discretion, that Lessee does not have insurance or other financial resources sufficient to enable Lessee to fulfill its obligations under this Paragraph 44.5, whether or not accrued, liquidated, conditional, or contingent, then Lessee shall, at the request of Lessor, procure and thereafter maintain in full force and effect such environmental impairment liability and/or pollution liability insurance policies and endorsements, or shall otherwise provide such collateral or security reasonably acceptable to Lessor as is appropriate to assure that Lessee will be able to perform its duties and obligations hereunder.

44.6 Indemnification. Lessee shall, at Lessee's sole expense and with counsel reasonably acceptable to Lessor, indemnify, defend, and hold harmless Lessor and Lessor's directors, officers, employees, partners, affiliates, agents, successors, and assigns with respect to all losses, including reasonable attorneys' and environmental consultants' fees, arising out of or resulting from Lessee's occupancy or use of the Leased Premises, or the violation of any Environmental Law, by Lessee or Lessee's agents, assignees, sublessees, contractors, or invitees. This indemnification applies whether or not the concentrations of any such Hazardous Material is material, the concentrations exceed state or federal maximum contaminant or action levels, or any government agency has issued a clean-up or other order. This indemnification shall survive the expiration or termination of this Lease. This indemnification includes, but is not necessarily limited to:

- (a) Losses attributable to diminution in the value of the Leased Premises;
- (b) Loss or restriction of use of rentable space(s) in the Leased Premises;
- (c) Adverse effect on the marketing of any space in the Leased Premises;
- (d) All other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant, and expert fees and expenses) resulting from the release or violation; and,
- (e) All costs (including reasonable attorneys' fees, consulting fees and subcontracted costs) incurred by Lessor in undertaking any assessment or remediation of the Leased Premises that might not have been fully resolved by Lessee by the time this Lease terminates or expires.
- (f) Lessor shall have a direct right of action against Lessee even if no third party has asserted a claim. Furthermore, Lessor shall have the right to assign said indemnity.

44.7 Termination of Lease. Upon the expiration or earlier termination of the term of this Lease, Lessee shall: (i) cause all Hazardous Materials previously owned, stored, or used by Lessee to be removed from the Leased Premises and disposed of in accordance with all applicable provisions of law; (ii) remove any underground or aboveground storage tanks or other containers installed or used by Lessee, or its predecessors, to store any Hazardous Material on the Leased Premises, and repair any damage to the Leased Premises caused by such removal; (iii) cause any soil or other portion of the Leased Premises which has become contaminated by any Hazardous Material stored or used by Lessee, or its predecessors, to be decontaminated, detoxified, or otherwise cleaned-up in accordance with the applicable requirements of any relevant government authorities; and (iv) surrender possession of the Leased Premises to Lessor free of contamination attributable to Hazardous Materials generated or used by Lessee or stored or disposed of by any party other than Lessor in or on the Leased Premises during the term of this Lease.

ARTICLE 45

STORAGE TANKS

45.1 Underground Storage Tanks. No additional underground storage tanks ("USTs") shall be permitted to be installed on the Leased Premises during the term of this Lease without the prior written consent of Lessor in its sole and absolute discretion. In the event Lessee obtains such approval to install a UST on the Leased Premises, Lessee shall be responsible for complying with all laws and regulations pertaining to such UST, including tank monitoring of such UST as required by Lessor or the County of Alameda or any other responsible agency. Lessee further agrees to take responsibility for reporting unauthorized releases from USTs to Lessor within twenty-four (24) hours of such unauthorized release. Lessee will be responsible for all fees and costs related to the unauthorized release of any Hazardous Material including, but not limited to: investigative, surface and groundwater clean-up, and expert and agency fees.

Lessee shall maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and/or property damage caused by a release from a UST. Lessee further agrees to be responsible for maintenance and repair of the USTs; obtaining tank permits; filing a business plan with Lessor or other responsible agency; and for paying UST fees, permit fees, and other regulatory agency fees relating to USTs. Lessee agrees to keep complete and accurate records on the Leased Premises for a period of not less than thirty-six (36) months from the applicable events including, but not limited to, permit applications, monitoring, testing, equipment installation, repairing and closure of the USTs, and any unauthorized releases of Hazardous Materials. Lessee also agrees to make such records available for Lessor or responsible agency inspection. Lessee further agrees to include a copy of California Health & Safety Code, Chapter 6.7, Section 25299, as part of any agreement between Lessee and any operator of USTs. Furthermore, Lessee shall be responsible for compliance with all other laws and regulations presently existing, or hereinafter enacted, applicable to USTs, including without limitation any such laws and regulations which alter any of the above requirements.

45.2 Aboveground Storage Tanks. No aboveground storage tanks ("ASTs") shall be permitted to be installed on the Leased Premises during the term of this Lease without the prior written consent of Lessor in its sole and absolute discretion. In the event Lessee obtains such approval to install an AST, Lessee shall be responsible for complying with all laws and regulations pertaining to such AST. Lessee shall, in accordance with this Lease and applicable laws and regulations, secure and pay for all necessary permits and approvals, prepare a spill prevention control counter measure plan and conduct periodic inspections to ensure compliance therewith, including conformance with the latest version of said applicable laws and regulations. In addition, Lessee shall maintain and repair said tanks to conform and comply with all other applicable laws and regulations for ASTs, including without limitation all of the requirements of California Health & Safety Code, Chapter 6.67, Sections 25270 through 25270.13 as presently existing or as hereinafter amended, including without limitation conducting daily visual inspection of said tanks, allowing Lessor, and/or responsible agency, to conduct periodic inspections. Lessee also shall comply with valid orders of the Lessor and/or responsible agency, filing the required storage tank statement and payment of the fee therefor, establishing and maintaining the required monitoring program and systems, reporting spills as required, and payment of lawfully imposed penalties as provided therein and as otherwise provided by law. The Lessee shall be responsible for all costs associated with any unauthorized release from AST, including but not limited to, investigative, surface and groundwater clean-up, and expert and agency fees.

ARTICLE 46

ENVIRONMENTAL DISCLOSURES

46.1 Lessee understands and agrees that the Leased Premises are being leased in an "as is, with all faults" condition and that improvements, grading, filling, removal of existing improvements, and relocation of utility lines shall be made and performed by Lessee at the sole cost and expense of Lessee.

46.2 Lessee further understands and agrees that the "as-is, with all faults" condition of the Leased Premises includes any contamination of the Leased Premises, including structures,

soils, groundwater, and adjacent Ballena Bay water and sediment, and that information received from Lessor regarding such matters may not be complete or accurate and should not be accepted as such.

46.3 Lessee hereby acknowledges that excavation of soils from the Leased Premises could result in exportation of a regulated waste requiring appropriate characterization, handling, transport and disposal (together "Regulated Waste Removal"). Lessor takes no responsibility and assumes no liability whatsoever for Regulated Waste Removal. Accordingly, Lessee hereby waives any claim, or potential claim, it may have to recover costs or expenses arising out of or associated with Regulated Waste Removal and agrees to indemnify, defend and hold harmless Lessor from and against any and all claims, liabilities, losses, damages, costs, and expenses arising from, out of, or in any way related to Regulated Waste Removal.

46.4 Lessor accepts no liability or responsibility for ensuring that Lessee's workers, including without limitation those conducting testing, construction and maintenance activities on the Leased Premises, are satisfactorily protected from residual contaminants in 29 Code of Federal Regulations ("CFR"). Lessee shall assess all human health risks from vapor transport or direct contact with residual hazardous substances or contaminants and incorporate such engineering and institutional controls as may be required to sufficiently protect human health of onsite workers and transient visitors. Lessee hereby waives any claim, or potential claim, it may have to recover any damages, losses, costs and expenses related to worker exposure or alleged exposure to any residual onsite contamination and to indemnify, defend and hold harmless Lessor from and against any and all such claims, liabilities, losses, damages, costs, and expenses.

ARTICLE 47

"AS-IS" LEASE AND WAIVERS

47.1 Lessee's execution of this Lease shall fully and finally constitute:

(a) Lessee's Acknowledgment. Lessee's acknowledgment that Lessor has given to Lessee sufficient opportunity to consider, inspect and review, to Lessee's complete satisfaction: (i) any and all rights, appurtenances, entitlements, obligations, and liabilities concerning the Leased Premises; (ii) the physical condition of the Leased Premises, including, without limitation, the condition of the buildings (if any) and the soil, subsoil media, and groundwater at or under the Leased Premises; (iii) the effect upon the Leased Premises of any and all applicable federal, state or local statutes, ordinances, codes, regulations, decrees, orders, laws or other governmental requirements (collectively, "Applicable Laws"); (iv) the development potential of the Premises including without limitation on the preceding clause (3), the effect of all Applicable Laws concerning land use, environmental quality and maintenance, endangered species, and traffic regulation; (v) the financial prospects of the Leased Premises and local market conditions; (vi) Lessee's determination of the feasibility of Lessee's intended use and enjoyment of the Leased Premises; and (vii) all other facts, circumstances, and conditions affecting, concerning or relating to the Leased Premises. The land use; the environmental, biological, physical and legal condition of the Leased Premises; the feasibility of Lessee's intended use and enjoyment of the Leased Premises and such other facts, circumstances and conditions being collectively referred to herein as the "Condition of the Leased Premises": and,

without limitation on any other provision of this Lease, Lessee expressly assumes the risk that adverse conditions affecting the Leased Premises have not been revealed by Lessee's investigations.

(b) Only Lessor's Express Written Agreements Binding. Lessee acknowledges and agrees that no person acting on behalf of Lessor is authorized to make, and that except as expressly set forth in this Lease, neither Lessor nor anyone acting for or on behalf of Lessor has made, any representation, warranty, statement, guaranty or promise to Lessee, or to anyone acting for or on behalf of Lessee, concerning the Condition of the Leased Premises or any other aspect of the Leased Premises. Lessee further acknowledges and agrees that no representation, warranty, agreement, statement, guaranty or promise, if any, made by any person acting on behalf of Lessor which is not expressly set forth in this Lease will be valid or binding on Lessor.

(c) As-Is Lease. Lessee further acknowledges and agrees that Lessee's execution of this Lease shall constitute Lessee's representation, warranty and agreement that the Condition of the Leased Premises has been independently verified by Lessee to its full satisfaction, and that, except to the extent of the express covenants of Lessor set forth in this Lease, Lessee will be leasing the Leased Premises based solely upon and in reliance on its own inspections, evaluations, analyses and conclusions, or those of Lessee's representatives; and that LESSEE IS LEASING THE LEASED PREMISES IN ITS "AS-IS, WITH ALL FAULTS" CONDITION AND STATE OF REPAIR INCLUSIVE OF ALL FAULTS AND DEFECTS, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF THE LESSEES EXECUTION OF THIS LEASE. Without limiting the scope or generality of the foregoing, Lessee expressly assumes the risk that the Leased Premises do not or will not comply with any Applicable Laws now or hereafter in effect.

(d) Waivers, Disclaimers and indemnity.

(i) Waiver and Disclaimer. Lessee hereby fully and forever waives, and Lessor hereby fully and forever disclaims, all warranties of whatever type or kind with respect to the Leased Premises, whether expressed, implied or otherwise including, without limitation, those of fitness for a particular purpose, tenantability, habitability or use.

(ii) Lessor's Materials. Lessee further acknowledges that any information and reports including, without limitation, any engineering reports, architectural reports, feasibility reports, marketing reports, soil reports, environmental reports, analyses or data, or other similar reports, analyses, data or information of whatever type or kind which Lessee has received or may hereafter receive from Lessor or its agents or consultants have been furnished without warranty of any kind and on the express condition that Lessee will make its own independent verification of the accuracy, reliability and completeness of such information and that Lessee will not rely thereon. Accordingly, subject to terms of Paragraph 47.1(e) below, Lessee agrees that under no circumstances will it make any claim against, bring any action, cause of action or proceeding against, or assert any liability upon, Lessor or any of the persons or entities who prepared or furnished any of the above information or materials as a result of the inaccuracy, unreliability or incompleteness of, or any defect or mistake in, any such information or materials and Lessee hereby fully and forever releases, acquits and discharges Lessor and each

person furnishing such information or materials of and from, any such claims, actions, causes of action, proceedings or liability, whether known or unknown.

(e) Release and Waiver.

(i) Release. Except to the extent of Claims (as defined below) against Lessor arising from any breach by Lessor of its covenants and obligations expressly provided in this Lease, Lessee, on behalf of Lessee, As successors and assigns, hereby fully and forever releases, acquits and discharges Lessor of and from, and hereby fully forever waives:

Any and all claims, actions, causes of action, suits, proceedings, demands, rights, damages, costs, expenses, losses, judgments, provisional relief, fines, penalties, and fees, including, without limitation, any and all claims for compensation, reimbursement, or contribution whatsoever (individually and collectively, "Claims"), whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, that Lessee or any of Lessee's successors or assigns now has or may have or which may arise or be asserted in the future arising out of, directly or indirectly, or in any way connected with: (A) any act or omission of Lessor (or any person acting for or on behalf of Lessor or for whose conduct Lessor may be liable), whether or not such act be the active, passive or sole negligence of Lessor, in connection with prior ownership, maintenance, operation or use of the Leased Premises; (B) any condition of environmental contamination or pollution at the Leased Premises (including, without limitation, the contamination or pollution of any soil, subsoil media, surface water or groundwater at the Leased Premises; (C) to the extent not already included in clause (B) above, the past, present or future existence, release or discharge, or threatened release, of any Hazardous Materials at the Leased Premises, (including, without limitation, the release or discharge, or threatened release, of any Hazardous Materials into the air at the Leased Premises or into any soil, Subsoil, Surface water or groundwater at the Leased Premises); (D) the violation of, or noncompliance with, any Environmental Requirement or other Applicable Law now or hereafter in effect, however and whenever occurring; (E) the condition of the soil at the Leased Premises; (F) the condition of any improvements located on the Leased Premises including, without limitation, the structural integrity and seismic compliance of such improvements;

(G) any matters which would be shown on an accurate ALTA land survey of the Leased Premises (including, without limitation, all existing easements and encroachments, if any; (H) all Applicable Laws now or hereafter in effect; (I) matters which would be apparent from a visual inspection of the Leased Premises; or (J) to the extent not already covered by any of the foregoing clauses (A) through (I) above, the use, maintenance, development, construction, ownership or operation of the Leased Premises by Lessor or any predecessor(s)-in-interest in the Leased Premises of Lessor.

(ii) Waiver of Civil Code Section 1542. With respect to all releases made by Lessee under or pursuant to this ARTICLE 47, Lessee hereby waives the application and benefits of California Civil Code §1542 and hereby verifies that it has read and understands the following provision of California Civil Code §1542:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor Lessee."

Lessee: _____

ARTICLE 48

INTENTIONALLY OMITTED

ARTICLE 49

SECURITY DEPOSIT

49.1 Security Deposit. Concurrently with Lessee's execution of this Lease, Lessee shall deposit with the Lessor a security deposit (the "Security Deposit") in the initial amount of \$ _____. Notwithstanding the foregoing, the Security Deposit may be in the form of cash deposited with the Lessor, a Certificate or Certificates of Deposit in the name of the Lessor 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 the Lessor as the beneficiary meeting all of the requirements set forth herein and otherwise upon terms acceptable to the Lessor in its absolute discretion or such other form as the Lessor, in its absolute discretion, may allow. Said sum shall be held by the Lessor 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.

49.2 Return of Security Deposit. Provided no event of default under Section 13.1 of this Lease shall have occurred for the period of five (5) years following the Commencement Date, the Lessor shall release or return to the Lessee, as appropriate, the full amount of the Security Deposit; provided, however, in the event thereafter an event of default under Section

13.1 of this Lease shall occur, the Lessee shall, within thirty (30) days following Lessor's written notice to Lessee advising Lessee the Security Deposit must be reinstated, deposit with Lessor the Security Deposit (except that the amount thereof shall be equal to twenty-five percent (25%) of the Minimum Annual Rent then payable under this Lease) in the manner provided for in Section 49.1 above.

49.3 Obligations of Lessor Regarding Security Deposit. Lessor 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 the Lessor solely for the purposes provided for herein. The Lessor shall not be required to keep the Security Deposit separate from its general funds, but the Lessor, at its option, may maintain the Security Deposit separate and apart from the Lessor's general and/or other funds, or may commingle the Security Deposit with the Lessor'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 the Lessor at the average rate earned by the Lessor 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 the Lessor 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 the Lessor to withdraw such interest, in which case such interest when paid by the depository shall be paid over to Lessee. The right of Lessee on termination of this Lease to the return by the Lessor of the Security Deposit not applied by the Lessor 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 the Lessor and any such act on the part of Lessee shall be without force and effect and shall not be binding upon the Lessor.

49.4 Application. If any rent or any other sum payable by Lessee to Lessor shall be overdue and unpaid or paid by Lessor on behalf of Lessee, or if Lessee shall fail to perform any of its obligations under this Lease, then the Lessor may, at its option and without prejudice to any other remedy which the Lessor 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 the Lessor for any rent or other sum in default, or for the payment of any amount which the Lessor may spend or become obligated to spend by reason of the Default or to compensate the Lessor for any other loss or damage which the Lessor 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 49.1 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 the Lessor for the earliest periods prior to the filing of such proceedings.

49.5 Transfer of Lessor's Interest. If Lessor transfers its interest in the Security Deposit, the Lessor may deliver the funds deposited by Lessee under this Article to the Lessor's

transferee or assignee, and in such event, the Lessor shall be discharged from any further liability with respect to such Security Deposit.

ARTICLE 50

MEMORANDUM OF LEASE

Lessor and Lessee, concurrently with the execution and delivery of this Lease, shall execute and acknowledge a Memorandum of Lease, in reasonably form and otherwise reasonably satisfactory to the parties hereto, for recording as soon as is practicable on or following the date first above written.

IN WITNESS WHEREOF, Lessor and Lessee have entered into this Lease as of the day, month and year first above written.

"Lessor"

"Lessee"

CITY OF ALAMEDA

By: _____

By: _____

_____,
City Manager

Name: _____

Title: _____

APPROVED AS TO FORM:

_____,
Assistant City Attorney

(FOR USE BY CITY OF ALAMEDA)

STATE OF CALIFORNIA)
) SS.
COUNTY OF ALAMEDA)

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

WITNESS my hand and official seal.

Notary Public

STATE OF CALIFORNIA)
) SS.
COUNTY OF ALAMEDA)

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

WITNESS my hand and official seal.

Notary Public

EXHIBIT "A"

Site Map

[To Be Provided]

EXHIBIT "B"

Legal Description

[To Be Provided]

EXHIBIT "C"

Percentages of Gross Income – Third Adjustment

<u>Gross Income Source</u>	<u>Percentage Multiplier</u>
Rental of boat slips, dock lockers, dinghy racks, dry boat storage spaces, sale of related boat launching and retrieving services and parking fees	7.5%
Fuel dock sales	3.0%
Pass-through costs (e.g., utilities)	0.0%
All other sources permitted by this Lease	5.0%
Any other sources not permitted by this Lease	50.0%

EXHIBIT "D"

Percentages of Gross Income – Fourth Adjustment

<u>Gross Income Source</u>	<u>Percentage Multiplier</u>
Rental of boat slips, dock lockers, dinghy racks, dry boat storage spaces, sale of related boat launching and retrieving services and parking fees	10.0%
Fuel dock sales	3.0%
Pass-through costs (e.g., utilities)	0.0%
All other sources permitted by this Lease	5.0%
Any other sources not permitted by this Lease	50.0%

EXHIBIT "E"
MARINA PROJECT

Phases of Construction:

Construction of a new restroom

Renovation or remodeling of existing restroom

Construction of new access ramps

Construction of new dock systems for approximately 372 boat slips, but in no event less than 225 boat slips.

EXHIBIT "D"

CC&R'S

(See Attached)

Recording requested by and
when recorded return to:

CLARK & TREVITHICK
800 Wilshire Boulevard, Twelfth Floor
Los Angeles, CA 90017
Attn: Kevin P. Fiore, Esq.

DECLARATION OF EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS

This DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made this ____ day of _____, 2007 (the "Effective Date"), by and among BALLENA ISLE MARINA, L.P., a California limited partnership ("BIMLP"), [Commercial Parcel Lessee], a _____ ("_____"), and the CITY OF ALAMEDA, a municipal corporation ("Alameda"), with respect to the following recited facts.

RECITALS

A. Alameda is the owner of the fee interest in that certain real property located in the City of Alameda, State of California, commonly known as the Ballena Bay, which consists of approximately fifty-four (54) acres, including approximately twenty-seven (27) acres of dry land and approximately twenty-seven (27) acres of submerged land, as more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (the "Property"). The Property has been and continues to be held and operated by Alameda for the purposes, among others, of providing public recreational facilities, commercial developments, pleasure boat marinas and related amenities, to be continually available for the residents of and visitors to Alameda.

B. Alameda and Marina Operators, Inc. ("MOI"), a California corporation, as Lessee, entered into that certain Lease, dated January 1, 1979, a memorandum of which was recorded March 28, 1979, as Series No.: 79-57010 in the Official Records of the County of Alameda (the "Official Records"), as assigned by MOI to Ballena Isle Marina ("BIM"), a California limited partnership, by agreement recorded October 18, 1983, as Series No.: 83-195351 in the Official Records, as amended by an Amendment to Lease, dated May 8, 1985, a memorandum of which was recorded January 29, 1988, as Series No.: 88-23323 in the Official Records, as amended by letter dated January 22, 1988 from BIM to Alameda extending the term of the Lease to December 31, 2029, as amended by an Amendment to Lease, dated October 29, 1993, which was recorded October 28, 1994, as Series No.: 94-346237 in the Official Records, as assigned by BIM to Ballena Isle Marina, LLC ("LLC"), a California limited liability company, by agreements

recorded June 8, 1998 as Series No.: 98-189980 in the Official Records and recorded June 17, 1998 as Series No.: 98-204440 in the Official Records (collectively the "Lease").

C. BIMLP succeeded to all of LLC's right, title and interest in the Lease on or about July 11, 2001, as result of conversion under Section 17540.1, et seq. of the California Corporations Code.

D. Pursuant to the Lease, the Property is presently developed as a small recreational craft marina for approximately five-hundred (500) boats and storage facilities, office buildings, restaurants, parking lots, walks, streets and utility systems.

E. BIMLP proposes to divide its leasehold interest in the Property into three (3) separate parcels. One parcel shall consist of the office buildings, a restaurant and related facilities as more particularly described in Exhibit "B" attached hereto and by this reference made a part hereof (the "Commercial Parcel"). One parcel shall consist entirely of the submerged lands presently utilized for the operation of the small craft marina and related facilities as more particularly described in Exhibit "C" attached hereto and by this reference made a part hereof (the "Waterside Parcel"). The remainder of the Property shall consist of the presently vacant land for future development as more particularly described in Exhibit "D" attached hereto and by this reference made a part hereof (the "Remainder Parcel").

F. As of the Effective Date, the Lease shall be divided into each of the following respective separate and independent lease agreements for the Commercial Parcel, the Waterside Parcel, and the Remainder Parcel, respectively, as follows:

(i) Ballena Bay Lease (Commercial Parcel) of even date herewith, by and between Alameda, as Lessor, and _____, as Lessee (the "Commercial Parcel Lease");

(ii) Ballena Bay Lease (Waterside Parcel) of even date herewith, by and between Alameda, as Lessor, and BIMLP, as Lessee (the "Waterside Parcel Lease").

(iii) Ballena Bay Lease (Remainder Parcel) of even date herewith, by and between Alameda, as Lessor, and BIMLP, as Lessee (the "Remainder Parcel Lease"); and

G. The division of the Lease into each of the Commercial Parcel Lease, Waterside Parcel Lease and Remainder Parcel Lease is taking place for the accommodation of Alameda and each of the Lessees thereunder.

H. _____. BIMLP and Alameda, by this Declaration, desire to establish certain vehicular and pedestrian ingress, egress and other easements, including parking rights, together with various other covenants, conditions and restrictions, for the benefit of the Commercial Parcel Lessee, Remainder Parcel Lessee, Waterside Parcel Lessee and Alameda, and which shall burden and benefit each of the Commercial Parcel, Waterside Parcel and Remainder Parcel.

I. The parties desire to establish this Declaration providing for the orderly use and the efficient operation, maintenance and repair of the Common Areas and Easements (as defined below).

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessees and Alameda, on behalf of and with the intent to bind each of their respective successors in interest to each of the Commercial Parcel, the Waterside Parcel and the Remainder Parcel, and with the intent to encumber and impose the same on each of their respective estates and interests in the Commercial Parcel, Remainder Parcel, and the Waterside Parcel hereby declare, covenant and agree as follows:

ARTICLE I

GENERAL PROVISIONS

1.1 Definitions.

1.1.1 "Commercial Electrical Feeders" shall have the meaning set forth in Section 2.1.4 of this Declaration.

1.1.2 "Commercial Parcel" means the real property described in Exhibit "B".

1.1.3 "Commercial Parcel Access Easement" shall have the meaning set forth in Section 2.1.1 of this Declaration.

1.1.4 "Commercial Parcel Lease" shall have the meaning set forth in Recital F of this Declaration.

1.1.5 "Commercial Parcel Lessee" means the lessee from time to time under the terms of the Commercial Parcel Lease.

1.1.6 "Commercial Parking Easement" shall have the meaning set forth in Section 2.1.2 of this Declaration.

1.1.7 "Commercial Parking Facilities" shall have the meaning set forth in Section 2.1.2 of this Declaration.

1.1.8 "Commercial Temporary Construction Easement" shall have the meaning set forth in Section 2.1.3 of this Declaration.

1.1.9 "Commercial Temporary Construction Easement Area" shall have the meaning set forth in Section 2.1.3 of this Declaration.

1.1.10 "Commercial Utilities Easement" shall have the meaning set forth in Section 2.1.4 of this Declaration.

1.1.11 "Commercial Utilities Facilities" means the electrical power conduits, lines and wires, cable television and internet lines and wires, electric feeders, meter rooms and sewer and water pipes and systems currently used in connection with Commercial Parcel, if any, and any replacement thereof or additional thereto made expressly in accordance with the provisions of this Declaration.

1.1.12 "Committee" means a panel composed of one (1) representative appointed by each of the Commercial Parcel Lessee, Remainder Parcel Lessee and Waterside Parcel Lessee. Committee membership may be changed from time to time as hereinafter provided.

1.1.13 "Common Areas and Easements" shall mean and include all easements and related areas provided for in this Declaration.

1.1.14 "Encumbrance Holder" means and includes any entity having a secured interest in the Property or any part thereof and qualifying as an "institutional lender" as that term is defined in the applicable Commercial Parcel Lease, Waterside Parcel Lease or Remainder Parcel Lease.

1.1.15 "Laws" means all applicable laws, statutes, ordinances, regulations, rules, orders and requirements of all governmental and quasi-governmental authorities.

1.1.16 "Lessee" or "Lessees" means and includes the Commercial Parcel Lessee, Remainder Parcel Lessee and Waterside Parcel Lessee.

1.1.17 "Maintenance Budget" means the estimated schedule of costs and expenses, including a reasonable allowance for contingencies and capital improvements, necessary for the efficient operation and maintenance of the Common Area and Easements during each calendar year of this Declaration. The initial maintenance budget for all purposes of this Declaration shall be the amounts and cover the time period specified in Exhibit "___" attached hereto and made a part hereof by this reference (the "Initial Maintenance Budget"). Each subsequent Maintenance Budget shall be prepared by the Committee substantially in the form of the Initial Maintenance Budget at least thirty (30) days prior to the commencement of the calendar year to which such Maintenance Budget relates. Any increase or decrease of ten percent (10%) or more in a proposed Maintenance Budget when compared to the immediately preceding Maintenance Budget shall require the written consent of a majority of the Lessees.

1.1.18 "Maintenance Fund" shall mean the fund established and maintained by the Committee for the deposit of all sums or monies collected pursuant to this Declaration for the maintenance and operation of the Common Area and Easements.

1.1.19 "Parcel" means and includes the Commercial Parcel, Waterside Parcel and Remainder Parcel.

1.1.20 "Person" means a corporation, partnership, limited liability company or joint venture, as well as a natural person.

1.1.21 "Property" shall mean the real property described in Exhibit "A".

1.1.22 "Renovation" shall have the meaning set forth in Section 2.1.3 of this Declaration.

1.1.23 "Remainder Parcel" means the real property described in Exhibit "D".

1.1.24 "Remainder Parcel Access Easement" shall have the meaning set forth in Section 2.2.1 of this Declaration.

1.1.25 "Remainder Parcel Lease" shall have the meaning set forth in Recital F of this Declaration.

1.1.26 "Remainder Parcel Lessee" means the lessee from time to time under the terms of the Remainder Parcel Lease.

1.1.27 "Remainder Parking Easement" shall have the meaning set forth in Section 2.2.2 of this Declaration.

1.1.28 "Remainder Parking Facilities" shall have the meaning set forth in Section 2.2.2 of this Declaration.

1.1.29 "Remainder Temporary Construction Easement" shall have the meaning set forth in Section 2.2.3 of this Declaration.

1.1.30 "Remainder Temporary Construction Easement Area" shall have the meaning set forth in Section 2.2.3 of this Declaration.

1.1.31 "Tenants" means and collectively refers to the Lessees and their employees, lessees, sublessees, customers, contractors, agents, tenants, licensees, successors and invitees.

1.1.32 "Waterside Parcel" means the real property described in Exhibit "C".

1.1.33 "Waterside Parcel Lease" shall have the meaning set forth in Recital F of this Declaration.

1.1.34 "Waterside Parcel Lessee" means the lessee from time to time under the terms of the Waterside Parcel Lease.

1.1.35 "Waterside and Remainder Utilities Facilities" shall have the meaning set forth in Section 2.1.4 of this Declaration.

1.1.36 "Waterside Storage Tank Easement" shall have the meaning set forth in Section 2.1.5 of this Declaration.

1.1.37 "Waterside Storage Tanks" means the underground and/or aboveground storage tanks and related fuel lines, pipes and systems, if any, installed on the Commercial Parcel and currently used in connection with the Waterside Parcel, and any replacement thereof or additional thereto made expressly in accordance with the provisions of this Declaration.

ARTICLE II
EASEMENTS

2.1 Easements Over Commercial Parcel For The Benefit of Waterside Parcel and Remainder Parcel.

2.1.1 Access Easement Over Commercial Parcel. Commercial Parcel Lessee hereby grants to Waterside Parcel Lessee and Remainder Parcel Lessee easements over, across, upon, in, under and through the Commercial Parcel, but excluding any buildings or structures located thereon, for the purposes of pedestrian access and ingress to and egress from the Waterside Parcel and Remainder Parcel or in connection with any construction, repair, maintenance or replacement of the Waterside Parcel and the Remainder Parcel (the "Commercial Parcel Access Easement"); provided, however, that the Commercial Parcel Access Easement shall include any structure which extends access from the docks located within the Waterside Parcel and Remainder Parcel to land located within the Commercial Parcel for pedestrian access and ingress to and egress from the Waterside Parcel and the Remainder Parcel, and any reasonable appurtenances relating thereto. The Commercial Parcel Access Easement shall be (a) non-exclusive, (b) for the sole use of Waterside Parcel Lessee and Remainder Parcel Lessee and their employees, lessees, sublessees, customers, contractors, agents, tenants, licensees, successors and invitees, and (c) appurtenant only to the Waterside Parcel and Remainder Parcel, and shall not run with any other land. In no event shall the use of the Commercial Parcel Access Easement by Waterside Parcel Lessee, Remainder Parcel Lessee or their employees, lessees, sublessees, customers, contractors, agents, tenants, licensees, successors or invitees materially interfere with the use and operation of the Commercial Parcel by Commercial Parcel Lessee. Commercial Parcel Lessee shall have the right at any time to designate a specific portion of the Commercial Parcel to be used for the purposes of such pedestrian access and ingress to and egress from Waterside Parcel and Remainder Parcel, so long as such designated portion of the Commercial Parcel is not materially more inconvenient to Waterside Parcel Lessee and Remainder Parcel Lessee with respect to such pedestrian access, ingress and egress. Commercial Parcel Lessee shall have the right to approve any areas included in the Commercial Parcel Access Easement requested by Waterside Parcel Lessee and Remainder Parcel Lessee in connection with the Waterside Parcel Lessee's and Remainder Parcel Lessee's construction, repair, maintenance or replacement of the Waterside Parcel and Remainder Parcel; provided, however, that such approval shall not be unreasonably withheld or delayed. Upon request by Commercial Parcel Lessee, Waterside Parcel Lessee and Remainder Parcel Lessee shall execute an amendment to this Declaration replacing the Commercial Parcel Access Easement with specific portions of the Commercial Parcel reasonably designated by Commercial Parcel Lessee for such purpose.

2.1.2 Parking Easement Over Commercial Parcel. Commercial Parcel Lessee hereby grants to Waterside Parcel Lessee an easement over, across, upon, in, under and through the Commercial Parcel, as more particularly shown on Exhibit "___" attached hereto and by this reference made a part hereof, which is designed for use as parking areas for motor vehicles (the "Commercial Parking Facilities") for the purpose of parking of ___ motor vehicles (excluding recreational vehicles, trailers and similar vehicles) in non-designated parking spaces and for vehicular and pedestrian ingress to and egress from the Commercial Parking Facilities (the

"Commercial Parking Easement"). Commercial Parcel Lessee hereby acknowledges and agrees that the Commercial Parking Easement is provided on a first-come, first-served basis. The Commercial Parking Easement shall be (a) non-exclusive, (b) for the sole use of Waterside Parcel Lessee and its employees, lessees, sublessees, customers, contractors, agents, tenants, licensees, successors and invitees, and (c) appurtenant only to the Waterside Parcel and shall not run with any other land. Notwithstanding anything to the contrary in this Section 2.1.2, (x) use of the Commercial Parking Facilities described in this Section 2.1.2 shall be subject to the Rules and Regulations and may be further restricted by Commercial Parcel Lessee from time to time on a pro rata basis based on the number of parking spaces allocated for Waterside Parcel Lessee in relation to the total number of parking spaces contained in the Commercial Parking Facilities as a whole, in connection with any construction, expansion or renovation of the Commercial Parcel, and (y) the number of parking spaces made available to Waterside Parcel Lessee in this Section 2.1.2 shall at all times meet or exceed the parking spaces required to be provided by Waterside Parcel Lessee to comply with all applicable Laws.

2.1.3 Temporary Construction Easement Over Commercial Parcel.

a. Commercial Parcel Lessee hereby grants to Waterside Parcel Lessee and Remainder Parcel Lessee temporary easements over, across, upon, in, under and through that portion of the Commercial Parcel as more particularly shown on Exhibit "___" attached hereto and by this reference made a part hereof (the "Commercial Temporary Construction Easement Areas"), for pedestrian and vehicular ingress to and egress from the Waterside Parcel and Remainder Parcel for the purpose of renovating, replacing or developing (collectively, the "Renovation") the marina facilities currently located on the Waterside Parcel and the undeveloped Remainder Parcel (the "Commercial Temporary Construction Easement"); provided, however, that in no event shall any vehicles be permitted beyond the area of the Commercial Parking Facilities and the Commercial Parking Easement; and provided, further, that in no event shall Waterside Parcel Lessee or Remainder Parcel Lessee have the right to transport any large construction equipment or heavy trucks within the Commercial Parcel except in connection with any deliveries during the Renovation and only so long as such trucks leave the Commercial Parcel immediately after completing delivery. The Commercial Temporary Construction Easement shall be (a) non-exclusive, (b) for the sole use of Waterside Parcel Lessee and Remainder Parcel and their employees, lessees, sublessees, customers, contractors, agents, tenants, licensees, successors and invitees, and (c) appurtenant only to the Waterside Parcel and Remainder Parcel, and shall not run with any other land. The Commercial Temporary Construction Easement shall terminate upon Waterside Parcel Lessee's and Remainder Parcel Lessee's completion of the applicable Renovations. In addition, Waterside Parcel Lessee and Remainder Parcel Lessee shall have the right to place a temporary, mobile construction office or offices (the "Commercial Temporary Trailers") on a portion of the parking lot located on the Commercial Parcel as approximately shown on Exhibit "___" hereto and to store certain construction material in an area of approximately _____ square feet next to the Commercial Temporary Trailers during the applicable Renovations.

b. Commercial Parcel Lessee hereby acknowledges renovation and development plans for the Waterside Parcel and Remainder Parcel and acknowledges there will be some disruption to the business of Commercial Parcel Lessee in connection with the Renovation. Waterside Parcel Lessee and Remainder Parcel Lessee shall use commercially

reasonable means (including, without limitation, coordinating the hours of work as reasonably requested by Commercial Parcel Lessee) to see that the Renovation is constructed as expeditiously as possible with a minimum disruption of the operation of the Commercial Parcel and a minimum impact on Commercial Parcel Lessee and its employees, lessees, sublessees, customers, contractors, agents, tenants, licensees, successors and invitees and Commercial Parcel, including, without limitation, any renovation or other construction being conducted with respect to the Commercial Parcel.

c. Waterside Parcel Lessee and Commercial Parcel Lessee hereby acknowledge and agree that a critical aspect of the Renovation will be the delivery of replacement dock segments to, and removal of existing dock segments from, the Waterside Parcel and, furthermore, engaging in the dock staging over, on, across or through the Commercial Parcel.

2.1.4 Commercial Utilities Easement.

a. Subject to Sections 2.1.4b and 2.1.4c below, Waterside Parcel Lessee and Remainder Parcel Lessee shall have the non-exclusive right to use the Commercial Utilities Facilities to provide reasonable and customary amounts of electrical power and water to the Waterside Parcel and Remainder Parcel to the extent that the Commercial Utilities Facilities contain sufficient capacity and do not require any upgrades to provide all electrical power and water required by the Commercial Parcel in addition to any such amounts of electrical power and water required by the Waterside Parcel and Remainder Parcel, subject to Commercial Parcel Lessee's right to relocate the Commercial Utilities Facilities at its sole cost and expense. In the event that the Commercial Utilities Facilities do not contain sufficient capacity to provide all electrical power and water required by the Commercial Parcel, Waterside Parcel and Remainder Parcel or require any upgrades in order to provide any such electrical power and water, Waterside Parcel Lessee and/or Remainder Parcel Lessee shall have the right to require Commercial Parcel Lessee to upgrade or increase the capacity of the Commercial Utilities Facilities at the sole cost and expense of Waterside Parcel Lessee and Remainder Parcel Lessee, respectively, subject to the approval of Commercial Parcel Lessee, not to be unreasonably withheld or delayed.

b. Waterside Parcel Lessee and Remainder Parcel Lessee shall have the right to hook a sewer pump-out line from the Waterside Parcel and the Remainder Parcel, respectively, to the nearest sewer line located on the Commercial Parcel that is adequately sized to support such sewage flow, if any. If no sewer line located on the Commercial Parcel is adequately sized to support such additional sewage flow from the Waterside Parcel and Remainder Parcel, Waterside Parcel Lessee and Remainder Parcel Lessee shall have the right at their sole cost and expense to install and utilize a separate sewer line (the "Sewer Line") from the Waterside Parcel and Remainder Parcel, respectively, across the Commercial Parcel to the nearest public sewer facility, with the location and specifications of any such Sewer Line(s) to be subject to the approval of Commercial Parcel Lessee, not to be unreasonably withheld or delayed. The cost, if any, of such Sewer Line(s) that are shared by Waterside Parcel Lessee and Remainder Parcel Lessee shall be allocated on an equitable basis between Waterside Parcel Lessee and Remainder Parcel Lessee.

c. Waterside Parcel Lessee and Remainder Parcel Lessee shall have separate electrical and water/sewer meters. Waterside Parcel Lessee and Remainder Parcel Lessee shall have the right to locate new electric feeders, meter rooms and transformers on the Commercial Parcel (collectively, the "Commercial Electrical Feeders"), subject to Commercial Parcel Lessee's approval, not to be unreasonably withheld or delayed, and Commercial Parcel Lessee's right to relocate the Commercial Electrical Feeders at its sole cost and expense. Waterside Parcel Lessee and Remainder Parcel Lessee shall have installed and utilized separate water lines and separate electrical service, including, without limitation, fire water lines, to the docks located at the Waterside Parcel and Remainder Parcel and/or separate metering systems for all water provided to the Waterside Parcel and Remainder Parcel (the "Water System"; together with the Commercial Electrical Feeders and the Sewer Line, collectively, the "Waterside and Remainder Utilities Facilities"), subject to Commercial Parcel Lessee's approval, not to be unreasonably withheld or delayed, and Commercial Parcel Lessee's right to relocate the Water System at its sole cost and expense. Commercial Parcel Lessee hereby grants Waterside Parcel Lessee and Remainder Parcel Lessee easements over, across, upon, in under and through the Commercial Parcel for vehicular and pedestrian ingress to, egress from, and the construction, installation, operation, maintenance, repair, removal and replacement of the Waterside and Remainder Utilities Facilities (the "Commercial Utilities Easement"). The Commercial Utilities Easement shall be (a) non-exclusive, (b) for the sole use of Waterside Parcel Lessee and Remainder Parcel Lessee and their employees, lessees, sublessees, customers, contractors, agents, tenants, licensees, successors and invitees, and (c) appurtenant only to the Waterside Parcel and Remainder Parcel, and shall not run with any other land. Upon request of Waterside Parcel Lessee and/or Remainder Parcel Lessee or Alameda, Commercial Parcel Lessee shall execute an amendment to this Declaration replacing the general Commercial Utilities Easement provided herein with the specific portion of the Commercial Parcel reasonably designed by Commercial Parcel Lessee (and agreed to by Waterside Parcel Lessee and Remainder Parcel Lessee, respectively) for such purpose.

2.1.5 Waterside Storage Tank Easement.

a. Subject to Sections 2.1.5b and 2.1.5c below, Commercial Parcel Lessee hereby grants to Waterside Parcel Lessee an easement over, across, upon, in, under and through the Commercial Parcel, as more particularly shown on Exhibit "___" attached hereto and by this reference made a part hereof, for the construction, installation, operation, flow and passage, inspection, maintenance, repair, removal, reconstruction and replacement of the Waterside Storage Tanks that service the Waterside Parcel.

b. Waterside Parcel Lessee shall be responsible for any construction, installation, operation, flow and passage, inspection, maintenance, repair, removal, reconstruction and replacement of the Waterside Storage Tanks that service the Waterside Parcel, and any such construction, installation, operation, flow and passage, inspection, maintenance, repair, removal, reconstruction and replacement shall comply with all applicable Laws and the Waterside Parcel Lease.

c. The Waterside Storage Tank Easement shall be (a) exclusive, (b) for the sole use of Waterside Parcel Lessee and its employees, lessees, sublessees, customers, contractors, agents, tenants, licensees, successors and invitees, and (c) appurtenant only to the

Waterside Parcel, and shall not run with any other land. Commercial Parcel Lessee has the right to relocate the Waterside Storage Tanks at its sole cost and expense. Upon request of Waterside Parcel Lessee or Alameda, Commercial Parcel Lessee shall execute an amendment to this Declaration replacing the general Waterside Storage Tank Easement provided herein with the specific portion of the Commercial Parcel reasonably designed by Commercial Parcel Lessee (and agreed to by Waterside Parcel Lessee) for such purpose.

2.1.6 Waterside Parcel Signage. Waterside Parcel Lessee shall have the right to maintain a sign (the "Signage") identifying the Waterside Parcel on a portion of the Commercial Parcel visible from the Commercial Parcel site; provided, however, that Commercial Parcel Lessee shall have approval rights over the location, the size and content of such Signage, which approval shall not be unreasonably withheld or delayed. Signage shall at all times comply with all applicable Laws.

2.1.7 Commercial Trash and Recycling. Lessees may use a single central trash and recycling location on the Commercial Parcel (the "Trash Site") as designated by Commercial Parcel Lessee, from time to time, and reasonably approved by Waterside Parcel Lessee and Remainder Parcel Lessee, with separate dumpsters designated for use by each Lessee. All rubbish, trash, or garbage shall be removed by each Lessee from the parcel owned by such Lessee and placed in the Trash Site and shall not be allowed to accumulate on any parcel. Each Lessee shall maintain the Trash Site with respect to such Lessee's usage thereof and each Lessee shall pay its applicable trash pickup service fees.

2.1.8 Commercial Restrooms. Commercial Parcel Lessee hereby grants to Waterside Parcel Lessee and Remainder Parcel Lessee easements for the purpose of access to restrooms located on the Commercial Parcel as set forth in Exhibit "____" attached hereto and by this reference made a part hereof.

2.2 Easements Over Remainder Parcel For The Benefit of the Waterside Parcel.

2.2.1 Access Easement Over Remainder Parcel. Remainder Parcel Lessee hereby grants to Waterside Parcel Lessee an easement over, across, upon, in, under and through the Remainder Parcel, but excluding any buildings or structures located thereon for the purposes of pedestrian access and ingress to and egress from the Waterside Parcel or in connection with any construction, repair, maintenance or replacement of the Waterside Parcel (the "Remainder Parcel Access Easement"); provided, however, that the Remainder Parcel Access Easement shall include any structure which extends access from the docks located within the Waterside Parcel to land located within the Remainder Parcel for pedestrian access and ingress to and egress from the Remainder Parcel, and any reasonable appurtenances relating thereto. The Remainder Parcel Access Easement shall be (a) non-exclusive, (b) for the sole use of Waterside Parcel Lessee and its employees, lessees, sublessees, customers, contractors, agents, tenants, licensees, successors and invitees, and (c) appurtenant only to the Remainder Parcel, and shall not run with any other land. In no event shall the use of the Remainder Parcel Access Easement by the Waterside Parcel Lessee or its employees, lessees, sublessees, customers, contractors, agents, tenants, licensees, successors or invitees materially interfere with the use and operation of the Remainder Parcel by Waterside Parcel Lessee. In no event shall the use of the Remainder Parcel Access Easement by Waterside Parcel Lessee or its employees, lessees, sublessees, customers,

contractors, agents, tenants, licensees, successors or invitees materially interfere with the use and operation of the Remainder Parcel by Remainder Parcel Lessee. Remainder Parcel Lessee shall have the right at any time to designate a specific portion of the Remainder Parcel to be used for the purposes of such pedestrian access and ingress to and egress from Waterside Parcel, so long as such designated portion of the Remainder Parcel is not materially more inconvenient to Remainder Parcel Lessee with respect to such pedestrian access, ingress and egress. Remainder Parcel Lessee shall have the right to approve any Remainder Parcel Access Easement requested by Waterside Parcel Lessee in connection with the Waterside Parcel Lessee's construction, repair, maintenance or replacement of the Waterside Parcel; provided, however, that such approval shall not be unreasonably withheld or delayed. Upon request by Remainder Parcel Lessee, Waterside Parcel Lessee shall execute an amendment to this Declaration replacing the Remainder Parcel Access Easement with a specific portion of the Remainder Parcel reasonably designated by Remainder Parcel Lessee for such purpose.

2.2.2 Parking Easement Over Remainder Parcel. Remainder Parcel Lessee hereby grants to Waterside Parcel Lessee an easement over, across, upon, in, under and through that portion of the Remainder Parcel, as more particularly shown on Exhibit "____" attached hereto and by this reference made a part hereof, which is designed for use as parking areas for motor vehicles (the "Remainder Parking Facilities") for the purpose of parking of _____ motor vehicles (excluding recreational vehicles other than sport utility vehicles, trailers and similar vehicles) in non-designated parking spaces and for vehicular and pedestrian ingress to and egress from the Remainder Parking Facilities (the "Remainder Parking Easement"). Remainder Parcel Lessee hereby acknowledges and agrees that the Remainder Parking Easement is provided on a first-come, first-served basis. The Remainder Parking Easement shall be (a) non-exclusive, (b) for the sole use of the Waterside Parcel Lessee and its employees, lessees, sublessees, customers, contractors, agents, tenants, licensees, successors and invitees, (c) appurtenant only to the Remainder Parcel, not to run with any other land, and (d) subject to such reasonable restrictions as may be imposed by the Remainder Parcel Lessee as reasonably necessary to prevent any material interference with the use and operation of the Remainder Parking Facilities. Notwithstanding anything to the contrary in this Section 2.2.2, (x) use of the Remainder Parking Facilities described in this Section 2.2.2 shall be subject to the Rules and Regulations, and may temporarily be restricted by Remainder Parcel Lessee from time to time, on a pro rata basis based on the number of parking spaces allocated for Waterside Parcel Lessee in relation to the total number of parking spaces contained in the Remainder Parking Facilities as a whole, in connection with any construction, expansion or renovation of the Remainder Parcel, and (y) the number of parking spaces made available to Waterside Parcel Lessee in this Section 2.1.2 shall at all times meet or exceed the parking spaces required to be provided by Waterside Parcel Lessee to comply with all applicable Laws.

2.2.3 Temporary Construction Easement Over Remainder Parcel.

a. Remainder Parcel Lessee hereby grants to Waterside Parcel Lessee a temporary easement over, across, upon, in, under and through that portion of the Remainder Parcel, as more particularly shown on Exhibit "____" attached hereto and by this reference made a part hereof (the "Remainder Temporary Construction Easement Area"), for pedestrian and vehicular ingress to and egress from the Waterside Parcel for the purpose of the Renovation of the marina facilities currently located on the Waterside Parcel (the "Remainder Temporary

Construction Easement"); provided, however, that in no event shall any vehicles be permitted beyond the area of the Remainder Parking Facilities and the Remainder Parking Easement; and provided, further, that in no event shall Waterside Parcel Lessee have the right to transport any large construction equipment or heavy trucks within the Remainder Parcel except in connection with any deliveries during the Renovation and only so long as such trucks leave the Remainder Parcel immediately after completing delivery. The Remainder Temporary Construction Easement shall be (a) non-exclusive, (b) for the sole use of Waterside Parcel Lessee and its employees, lessees, sublessees, customers, contractors, agents, tenants, licensees, successors and invitees, and (c) appurtenant only to the Remainder Parcel, and shall not run with any other land. The Remainder Temporary Construction Easement shall terminate upon Waterside Parcel Lessee's completion of such Renovation. In addition, Waterside Parcel Lessee shall have the right to place a temporary, mobile construction office (the "Remainder Temporary Trailer") on a portion of the parking lot located on the Remainder Parcel as approximately shown on Exhibit "____" hereto and to store certain construction material in an area of approximately _____ square feet next to the Remainder Temporary Trailer during the Renovation.

b. Remainder Parcel Lessee hereby acknowledges renovation plans for the Waterside Parcel and acknowledges there will be some disruption to the business of Remainder Parcel Lessee in connection with the Renovation. Waterside Parcel Lessee shall use commercially reasonable means (including, without limitation, coordinating the hours of work as reasonably requested by Remainder Parcel Lessee) to see that the Renovation is constructed as expeditiously as possible with a minimum disruption of the operation of the Remainder Parcel and a minimum impact on Remainder Parcel Lessee and its employees, lessees, sublessees, customers, contractors, agents, tenants, licensees, successors and invitees and on the Remainder Parcel, including, without limitation, any renovation or other construction being conducted with respect to the Remainder Parcel.

c. Waterside Parcel Lessee and Remainder Parcel Lessee hereby acknowledge and agree that a critical aspect of the Renovation will be the delivery of replacement dock segments to, and removal of existing dock segments from, the Waterside Parcel and, furthermore, engaging in the dock staging over, on, across or through the Remainder Parcel.

ARTICLE III

GENERAL PROVISIONS REGARDING EASEMENTS

3.1 Indemnification and Insurance.

3.1.1 Each Lessee shall indemnify and hold harmless the other Lessees and their ground lessors, shareholders, employees, members, officers, directors, agents, guests, invitees, partners, tenants, licensees, successors and customers from and against any claim, damage, liability, cost or expense (including attorneys' fees and costs of suit) arising out of any activities conducted on or use of easements on the indemnified party's property by the indemnifying party and its employees, members, officers, directors, agents, guests, invitees, partners, tenants, licensees, contractors, licensees, successors or customers or out of any failure of the indemnifying party to perform its obligations hereunder. In this connection, each Lessee

covenants to maintain in full force and effect, throughout the term of this Declaration, at its own cost and expense, one or more policies of commercial general liability insurance and "all-risk" casualty insurance with a financially responsible insurance company or companies, with respect to the Common Areas and Easements granted hereunder on its Parcel as required under the applicable provisions of its lease with Alameda.

3.1.2 Each such policy shall name the other Lessees, the Committee and the Manager, if any, as additional insureds and shall contain a waiver of subrogation. Any such policy of insurance may be maintained under a "blanket" policy insuring other locations belonging to such Lessee.

3.1.3 Each Lessee shall deliver to the other Lessees certificates or other reasonable evidence of insurance required to be maintained by it with original endorsements for all coverages required to be carried by such Lessee pursuant to this Declaration. The certificate and endorsement of each insurance policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements shall be on Accord forms or such other forms acceptable to the other Lessees in their sole discretion. Each Lessee shall furnish the other Lessees with certificates of renewal or "binders" thereof at least ten (10) days prior to expiration of the policy, but in all events prior to expiration. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after thirty (30) days' prior written notice to the other Lessees, and name the other Lessees as additional insureds.

ARTICLE IV

RIGHT TO RELOCATION; EXPANSION; REPLACEMENT

4.1 Rights of Commercial Parcel Lessee and Remainder Parcel Lessee to Relocate Easements. Notwithstanding anything in this Declaration to the contrary, Commercial Parcel Lessee and Remainder Parcel Lessee shall have the right, from time to time, upon written notice to Waterside Parcel Lessee, to relocate the areas included in the Commercial Parcel Access Easement, the Remainder Parcel Access Easement, the Commercial Parking Easement, the Remainder Parking Easement, the Commercial Temporary Construction Easement, the Remainder Temporary Construction Easement, the Commercial Utilities Easement, the Waterside Storage Tank Easement and the to other areas within the applicable Commercial Parcel or Remainder Parcel, including, without limitation, in connection with any expansion or renovation of their facilities located on the Commercial Parcel and Remainder Parcel, at its sole cost and expense so long as Waterside Parcel Lessee and Remainder Parcel Lessee continue to have access to benefits substantially the same in convenience, quality and cost as those available to Waterside Parcel Lessee and Remainder Parcel Lessee prior to such relocation.

4.2 Rights of Commercial Parcel Lessee and Remainder Parcel Lessee to Renovate. Subject to the provisions of the Waterside Parcel Lease, but in addition to and not in limitation of the rights granted in Section 4.1 above, Commercial Parcel Lessee and Remainder Parcel Lessee shall have the right to expand, demolish, alter, remodel or replace the improvements now or hereafter existing on the Commercial Parcel Lessee and Remainder Parcel Lessee (each, an "Alteration") at any time and from time to time, subject to prior written consent

of Alameda as required by the provisions of the Commercial Parcel Lease and the Remainder Parcel Lease. Subject to Alameda's prior written consent as required by the provisions of the Commercial Parcel Lease and the Remainder Parcel Lease, Commercial Parcel Lessee and Remainder Parcel Lessee, respectively, shall have the right to demolish any parking facilities in connection with any Alteration of the Commercial Parcel or the Waterside Parcel; provided, however, that Commercial Parcel Lessee and Remainder Parcel Lessee shall, at their sole cost and expense, replace any parking facilities and relocate the Commercial Parking Easement and Remainder Parking Easement, if necessary, with improvements at least equivalent in scope and quality to the parking facilities.

ARTICLE V MANAGEMENT

5.1 The Committee.

5.1.1 Creation and Membership. Each Committee shall be appointed for a term of one (1) year. Commercial Parcel Lessee hereby appoints _____ as a member of the Committee, Waterside Parcel Lessee hereby appoints _____ as a member of the Committee, and Remainder Parcel Lessee hereby appoints _____ as a member of the Committee, each to serve for one (1) year following the Effective Date. Any of the Lessees may at any time, upon ten (10) days prior written notice to the other Lessees and the Committee, remove the appointee designated by such Lessee herein and replace such appointee with a new representative of such Lessee. In the event of death of an appointee of a Lessee, the Lessee whose appointee died may immediately upon written notice to the other Lessees and the Committee designate a new representative to the Committee. The term of each successor committee member shall extend concurrently with the term of the Committee to which such successor was appointed.

5.1.2 Rules and Regulations. The Committee may adopt reasonable rules and regulations to supplement or amend those rules and regulations established by the Lessees, a copy of which is attached hereto as Exhibit "____" and by this reference made a part hereof (the "Rules and Regulations"), to govern the use, operation and maintenance of the Common Areas and Easements and the duties and responsibilities of the Lessees and Tenants with respect thereto.

5.1.3 Power of the Committee. The Committee shall enforce this Declaration for the mutual benefit of the Lessees and the Tenants. The Committee shall have the exclusive right to contract for all services, goods, capital improvements, repairs, maintenance and insurance, and, except as otherwise provided herein, to make payments for such expenses from the Maintenance Fund: provided, however, that the Committee may delegate such responsibilities to the Manager as hereinafter provided in Section 5.1.5. The Committee shall levy assessments against each party in the manner provided for in Section 5.5 hereof; shall collect or sue for all monies becoming due or owing to the Committee; may compromise any claims made against or by the Committee; and may perform such other acts and incur such other obligations as are necessary and proper to carry out its duties and responsibilities hereunder.

Except as otherwise provided herein, any and all actions taken by the Committee shall require the approval of a majority of the members of the Committee.

5.1.4 Limitations on the Power of the Committee.

a. The Committee shall have no authority to purchase or incur liability for the cost of capital improvements or additions to the Common Areas and Easements (not otherwise the subject of the Reserve Fund established under Section 5.1.7 hereof) having an aggregate cost of more than ten percent (10%) of the Maintenance Budget applicable to the calendar year in which such improvements or additions are made or planned to be made, except as expressly provided herein or as approved by a majority of the Lessees. For purposes of this Section 5.1.4, repairs and maintenance shall not be deemed to be capital improvements or additions.

b. Notwithstanding any provision of this Section 5.1.4 to the contrary, any Lessee may provide funds for and thereafter authorize the Committee to perform such capital improvements as shall conform to the "Design Criteria for Construction and Maintenance by Lessees", as amended, a copy of which may be found in the public records of the County of Alameda (the "Design Criteria"), subject in all events to the reasonable objection of the other Lessee.

5.1.5 Delegation to Manager. The Committee may delegate any and all of its duties or responsibilities hereunder to any other entity qualified to perform such duties or responsibilities in a professional and competent manner consistent with the highest standards for managing properties such as the Common Areas and Easements (the "Manager"); provided, however, that any such delegation shall be revocable at any time upon notice by the Committee.

5.1.6 Committee Office. The Committee may maintain an office in the Commercial Parcel in which to conduct its affairs and may pay out of the Maintenance Fund all expenses incurred in connection with the operation of the Committee office including utilities, telephone service, stationery and salaries of the Committee or employees of the Committee.

5.1.7 Reserve Fund. The Committee shall establish and maintain in an interest bearing account a "Reserve Fund" for scheduled capital improvements and contingencies. All amounts allocated for these purposes in the Maintenance Budget and assessed according to Section 5.5.1 hereunder shall promptly be contributed to the Reserve Fund. The Committee shall draw upon the Reserve Fund for any scheduled capital improvements or contingencies.

5.1.8 Compensation. Unless the Lessees unanimously agree in writing otherwise, the Committee shall act for all purposes necessary to carry out its duties and obligations under this Declaration without compensation whatsoever from the Lessees.

5.1.9 Successor Committee Members. At least thirty (30) days prior to the expiration of the term of the Committee members, each Lessee shall by written notice to the other Lessees appoint a successor committee member. At least ten (10) days prior to such expiration, the three (3) Lessees shall jointly appoint the fourth committee member. The failure of the three (3) Lessees to so appoint a successor committee member shall constitute an extension of the term of the respective committee member(s) for an additional one (1) year

period. In the event of the resignation, withdrawal or disability of a committee member prior to the expiration of the term of such committee member, a successor committee member shall be appointed in accordance with the procedures established for the death of a committee member in Section 5.1.1 hereof.

5.2 Expenditures.

5.2.1 Disbursements.

a. Disbursement of Operating Expenses. The Committee shall cause to be disbursed punctually the regularly recurring operating expenses of the Common Areas and Easements as authorized by this Declaration.

b. Use of Maintenance Fund by Committee. Subject to the limitations of Section 5.1.4 hereof, the Committee may draw on the Maintenance Fund for any purpose whatsoever necessary to discharge its duties or responsibilities hereunder, including, but not limited to, the following:

(i) To contract for the services of a Manager, and for such other personnel, whether employed directly by the Committee or the Manager, as the Committee shall determine to be necessary and proper for the efficient operation and maintenance of the Common Areas and Easements;

(ii) To maintain the Common Areas and Easements, its appurtenances and grounds in substantially the same condition in which they appear following the completion of the initial capital improvements pursuant to the Leases, and in good repair and first class condition, including, but not limited to, interior and exterior cleaning, painting, decorating, plumbing, heating and ventilating systems, elevators, carpentry, and such other normal maintenance and repair work as may be necessary, subject at all times to conformance with the Design Criteria;

(iii) To obtain any other items or services, including, but not limited to, materials, supplies, equipment, furniture, labor, services, maintenance, repairs, renovations, restorations, gardening, landscaping and structural alterations which the Committee deems necessary and proper for the operation, maintenance, continuation or benefit of the Common Areas and Easements or any portion thereof;

(iv) To pay any taxes or regular installments of any special assessments which in the opinion of the Committee have or may become a lien upon the Common Areas and Easements;

(v) To discharge any lien or encumbrance levied against the Property or any portion thereof which in the opinion of the Committee may constitute a lien against the Common Areas and Easements.

(vi) To record or cause to be recorded such instruments, documents and other information as may be required or provided for hereby or which may further or assist in the enforcement of this Declaration;

(vii) To obtain and pay for such utility services for the Common Areas and Easements as the Committee may determine to be necessary or proper but only to the extent that such utility services are not separately metered or charged to each Parcel.

(viii) To maintain all policies of insurance required to be maintained under Section 5.3 hereof.

(ix) To take such action as may be necessary to comply promptly with any and all orders or requirements affecting the Common Areas and Easements placed thereon by federal, state, count or municipal authority having jurisdiction thereover; and

(x) To make such other expenditures as the Committee shall deem to be reasonable and proper to carry out the terms and conditions of this Declaration.

c. Disputes Over Maintenance of Common Areas and Easements. Any dispute regarding the maintenance of the Common Areas and Easements in the condition required to be maintained by this Declaration shall be subject to the mediation provisions of Section 14.11.1 hereof.

d. Separate Assessments. In the event that any expenditure is made solely for the benefit of a particular Lessee, such expenditure, including all costs incurred by the Committee in connection therewith, shall be specially assessed to that Lessee in the manner hereinafter provided.

5.2.2 Extraordinary Expenditures. Should a dispute arise among the Committee members or the Lessees with respect to an Extraordinary Expenditure which is not susceptible of resolution, such dispute shall be submitted to mediation in accordance with Section 14.11.1 hereunder. The term "Extraordinary Expenditure" as used in this Section 5.2.2 shall mean and include any expenditure which (a) is necessary to maintain the Common Areas and Easements, (b) is not included in the Maintenance Budget, (c) would require an increase in the Maintenance Budget subject to the approval of the Lessees pursuant to Section 1.1.17 hereof, and (d) is not within the purposes for which the Reserve Fund was established.

5.2.3 Extraordinary Capital Expenditure. Any capital expenditure which would expand or otherwise alter the use of the Common Areas and Easements beyond their present uses or condition shall require the unanimous written consent of the Lessees.

5.3 Insurance; Damage.

5.3.1 Policies. The Committee shall procure and maintain to the extent commercially feasible, the following policies of insurance for the Common Areas and Easements and such other insurance as the Committee shall deem proper:

(a) Worker's compensation insurance covering any and all employees of the Committee or the Manager during the term of this Declaration in the amount necessary to comply with all applicable Worker's Compensation Laws; and

(b) An insurance policy indemnifying the Committee and the committee members against any claim or claims which might be made against them by reason of any error or omission in connection with or arising from the performance of this Declaration by the Committee or a Committee member. Such policy of insurance shall be in an amount which the Committee shall determine to be necessary; shall be primary to and noncontributing with any other policy of insurance covering the Committee or a Committee member from any other source and shall contain certain endorsements under which the rights of any insured shall not be prejudiced by an action by or against another insured.

(c) The Committee shall annually review the policy limits and coverages of all insurance maintained pursuant to this Section 5.3.1 and make adjustments to such policy limits and coverages as necessary to protect the Lessees, the Committee, the Manager, and the full insurable value of the Common Areas and Easements, subject at all times to the minimum policy amounts provided for herein.

5.3.2 Damage or Destruction. In the event of the occurrence of any casualty or damage to the Common Areas and Easements or any improvements thereon, the Committee shall give prompt written notice thereof to the Lessees. All proceeds of insurance from such casualty or damage to the Common Areas or any improvements thereon shall be payable to the Committee and the Lessees hereby authorize and direct any effected insurance company to make payment of such proceeds directly to the Committee to the extent such proceeds would otherwise have been payable to the Lessees. The Committee shall deposit any such proceeds into an interest bearing account for the purpose of repairing or reconstructing any casualty or damage to the Common Area or improvements thereto. The Committee shall apply all of the insurance proceeds resulting from casualty or property damage and accrued interest thereon to the repair and restoration of the damaged Common Area or improvements thereon to their condition immediately prior to such casualty or property damage in a timely and commercially reasonable manner. In the event the insurance proceeds are insufficient to repair and restore the damaged Common Area or improvements thereon, the difference between the amount of such insurance proceeds and the amount necessary to effect such repair and restoration of the Common Area and the improvements thereon shall be specially assessed against the Lessees as provided in Article VI hereof unless otherwise unanimously agreed by Lessees.

5.4 Books and Records.

5.4.1 Accounting. The Committee shall keep accurate, complete and separate records in accordance with generally accepted accounting standards and procedures, showing assessments and expenditures in connection with the maintenance and operation of the Common Area, to the end that any accounts payable, other obligations, cash, accounts receivable and other assets pertaining thereto can be identified and the amount determined at all times. The Lessees and any Encumbrance Holder shall have the right at any reasonable time, through their representatives or in person, to inspect any record of the Committee which in their opinion may verify the financial reports prepared pursuant to this Section 5.4, including, but not limited to, all

checks, bills, vouchers, statements, cash receipts, correspondence, and all other records relating to the management or operation of the Common Areas and Easements. The Lessees shall further have the right to cause an audit to be made of all account books and records connected with the management or operation of the Common Areas and Easements.

5.4.2 Monthly and Annual Statements. The Committee shall prepare or cause to be prepared a monthly statement showing in detail all receipts and disbursements for the previous month, itemizing all delinquent accounts or assessments, and an annual statement summarizing receipts and disbursements for the preceding calendar year. The Committee shall remit to the Lessees monthly, along with the monthly statements, copies of all receipted bills.

5.4.3 Miscellaneous Forms. The Committee shall prepare or cause to be prepared on behalf of the Lessees:

- (a) All payroll forms and reports concerning Committee employees;
- (b) Workers compensation forms;
- (c) Business tax forms, if any;
- (d) Personal property declarations, if any;
- (e) Health and welfare forms connected with labor union employees, if any; and
- (f) Any other forms and reports necessary for the maintenance and operation of the Common Areas and Easements.

5.5 Assessments.

5.5.1 General Assessments. At least fifteen (15) days prior to the beginning of each calendar year during the term of this Declaration, the Committee shall assess against the Lessees equally the amount approved for the Maintenance Budget for the next succeeding calendar year, less any surplus from the preceding year not contributed to the Reserve Fund in accordance with Section 5.1.7. Said assessments shall be payable in twelve (12) equal monthly installments by each Lessee, which installments shall become due on the tenth (10th) day of each calendar month of such calendar year.

5.5.2 Special Assessments.

a. The Committee shall make special assessments upon the Lessees in the manner provided below upon its determination that:

- (i) The Maintenance Fund is insufficient to discharge the regular duties of the Committee in accordance with the terms of this Declaration; or

(ii) An unforeseen obligation, regardless of cause, was not included in the Maintenance Budget and the Maintenance Fund is insufficient to discharge such obligation; or

(iii) The balance of the Reserve Fund is insufficient to adequately provide for the purposes for which it was established.

b. Special assessments made pursuant to this Section 5.5.2, including an assessment for the amount of the difference between the insurance proceeds received from casualty or property damage insurance and the actual amount needed to repair and restore the damaged Common Areas and Easements or any improvements thereon to the condition required by Section 5.3.2 hereof, may be assessed against the Lessees without limitation on the amount of such assessment unless the Lessees unanimously agree otherwise.

c. The Committee shall give prompt written notice to each Lessee of all special assessments levied hereunder. Unless otherwise requested by the Committee in writing or by the Lessees' unanimous written agreement, the Lessees shall pay any such special assessment in equal monthly installment prorated over the remainder of the calendar year to which the special assessment relates. Such special assessment installments shall become due upon the date of payment of the general assessment installment next succeeding the tenth (10th) day following the date of the notice of special assessment.

5.5.3 Liability for Assessments. All assessments made by the Committee pursuant to this Section 5.5 shall be a continuing liability of the respective Lessee and any delinquent assessment shall become a lien upon the respective Lessee's property; provided, however, that a first mortgage lien of an Encumbrance Holder shall have priority over any assessment lien. In the event of foreclosure by an Encumbrance Holder, such Encumbrance Holder shall take title to the respective parcel without liability whatsoever for a delinquent assessment.

5.5.4 Late Charge. If any payment required pursuant to this Section 5.5 is not paid on or before the date on which it is due as set forth above, or the payment is returned to the Committee as a result of insufficient funds in the Lessee's account, Lessee shall pay a late or collection charge equal to five percent (5%) of the amount of such unpaid assessment. Lessees acknowledge that the Committee and/or other Lessees will incur additional expenses as a result of any late payments hereunder, which expenses would be impracticable to quantify, and that Lessees' payments pursuant to this Section 5.5.4 are a reasonable estimate of such expenses and do not constitute a penalty.

ARTICLE VI

DAMAGE OR DESTRUCTION TO PROPERTY

Each Lessee's responsibility to restore its Parcel in accordance with the provisions of its lease with Alameda shall include damage to Common Areas and Easement areas located within its Parcel.

ARTICLE VII
EMINENT DOMAIN

7.1 If any public authority takes the whole or a substantial part of the Property under the power of eminent domain, then the term of this Declaration shall cease as to the part so taken from the day the possession of that part is taken. Any award not accruing to the interest of Alameda pursuant to either the Commercial Parcel Lease, the Waterside Parcel Lease or the Remainder Parcel Lease and made for any Lessee's installations or improvements shall be paid to such Lessee, except that if the taking includes improvements belonging to more than one party, such as utility lines or signs, the portion of the award allocable thereto shall be used to relocate, replace or restore such jointly owned improvements to a useful condition.

7.2 In addition to the foregoing, if a separate claim can be filed for the taking of any such property interest existing pursuant to this Declaration which does not reduce or diminish the amount paid to the party owning the land or the improvement taken, then the lessee of such other property interest shall have the right to seek an award for the taking thereof.

ARTICLE VIII
ADDITIONAL COVENANTS

8.1 Commercial Parcel Lessee hereby agrees as follows:

8.1.1 Commercial Parcel Lessee hereby covenants and agrees to cause the facilities located within the Commercial Parcel to be operated in a first-class manner consistent with the quality of operation of other first-class office buildings within Alameda County.

8.1.2 No part of the Commercial Parcel shall be used or operated for: (i) any use which violates applicable zoning ordinance, or (ii) any unlawful, immoral or disreputable purposes or any activity which is inappropriate for a comparable mixed-use complex conducted in accordance with good and generally accepted standards of operations, or (iii) any noise, litter, odor or other activity which may constitute a public or private nuisance.

8.2 Remainder Parcel Lessee hereby agrees as follows:

8.2.1 No part of the Remainder Parcel shall be used or operated for: (i) any use which violates applicable zoning ordinance, or (ii) any unlawful, immoral or disreputable purposes or any activity which is inappropriate for a comparable mixed-use complex conducted in accordance with good and generally accepted standards of operations, or (iii) any noise, litter, odor or other activity which may constitute a public or private nuisance.

ARTICLE IX
DEFAULTS

9.1 If any Lessee defaults (a "Defaulting Lessee") in the performance or observance of any of the terms, covenants or conditions of this Declaration, then, in such event, the Lessee(s) affected by such default (the "Non-Defaulting Lessee") may give notice to the Defaulting Lessee of such default. If, within twenty (20) days after such notice is given the Defaulting Lessee fails to cure such default, then, in such event, in addition to any and all rights and remedies of the Non-Defaulting Lessee at law, in equity or otherwise (including, without limitation, the right of injunction or specific performance), the Non-Defaulting Lessee shall have the option, in its sole and absolute discretion, to cure such default at the cost and expense of the Defaulting Lessee. All amounts expended by the Non-Defaulting Lessee in connection with the foregoing including, without limitation, attorneys' fees and expenses of instituting, prosecuting or defending any action or proceeding in connection therewith, together with interest thereon (at a rate (the "Default Rate") equal to the lesser of (i) two (2) percentage points above the annual rate of interest publicly announced from time to time by Citibank, N.A., in New York, New York, or its successor, as its "base rate", or (ii) the maximum rate of interest permitted under applicable law, shall be paid by the Defaulting Lessee to the Non-Defaulting Lessee upon demand by the Non-Defaulting Lessee.

9.2 If any Lessee fails to pay any amounts due and payable to any Non-Defaulting Lessee pursuant to the terms of this Declaration within twenty (20) days following notice of such failure, then, in such event, in addition to any and all rights and remedies of such Non-Defaulting Lessee at law, the Non-Defaulting Lessee shall be entitled to interest on such amounts until such amounts are paid in full, at the Default Rate.

ARTICLE X
LIENS

Waterside Parcel Lessee shall provide and deliver to Commercial Parcel Lessee and Remainder Parcel Lessee releases and partial waivers of lien (and, as to final payment, final releases of lien) of the contractor and all subcontractors, sub-subcontractors and suppliers performing any portion of any work on the Commercial Parcel and Remainder Parcel performed by Waterside Parcel Lessee pursuant to the terms of this Declaration. Waterside Parcel Lessee shall use all reasonable efforts to protect the Commercial Parcel and Remainder Parcel from mechanic's liens arising from any construction performed by Waterside Parcel Lessee pursuant to the terms of this Declaration and if any mechanic's liens are filed for work which Waterside Parcel Lessee or its agent has contracted, Waterside Parcel Lessee shall within five days from receipt of notice of the claim of lien, remove such lien from the Commercial Parcel and Remainder Parcel. If Waterside Parcel Lessee fails to timely remove any such mechanic's lien from the Commercial Parcel and the Remainder Parcel, Commercial Parcel Lessee and Remainder Parcel Lessee may do so and charge the cost thereof to Waterside Parcel Lessee. Waterside Parcel Lessee shall provide Commercial Parcel Lessee with sufficient advance notice of any construction or work performed by Commercial Parcel Lessee and Remainder Parcel

Lessee on the Waterside Parcel pursuant to the terms of this Declaration so that Waterside Parcel Lessee is reasonably able to file the proper notices of non-responsibility.

ARTICLE XI
MORTGAGE PROTECTION

A breach of any of the terms, conditions, covenants or restrictions of this Declaration shall not defeat or render invalid the lien of any mortgage, deed of trust or other security interest made in good faith and for value, but such term, condition, covenant or restriction shall be binding and effective against any person or entity who becomes a lessee of the Property or any portion thereof.

ARTICLE XII
LIMITED USE

The Common Areas and Easements granted hereunder are for use in the connection with the Lessees' respective businesses and are not for general use by the public. Each of Lessees agree that it shall not encourage or allow general use of Common Areas and Easements granted hereunder by the general public except in connection with the operation of its business.

ARTICLE XIII
SUBJECT TO EXISTING CONDITIONS

The Common Areas and Easements granted hereunder are subject to all existing easements, covenants, conditions, encumbrances, liens, dedications, offers of dedication, restrictions, reservations, rights and rights of way of which either party hereto has actual or record notice.

ARTICLE XIV
MISCELLANEOUS PROVISIONS

14.1 Assignment. This Declaration shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, estates, personal representatives, successors and assigns; provided, however, that in no event shall the rights, powers and obligations conferred upon a Lessee pursuant to this Declaration be at any time transferred or assigned by any such Lessee except through a transfer of all or any portion of its interest in its Parcel. If only a portion of a Parcel is so transferred in such manner as to respectively vest ownership of a Parcel or interest therein in more than one Person, then all such Persons shall be jointly considered a single Lessee and such Persons shall designate one of their number by a written agreement executed by each such Person and delivered to the other Lessees to act on behalf of all such Persons in the performance of the provisions of this Declaration. All transfers and assignments require the prior written consent of Alameda.

14.2 Construction. This Declaration is made in, and shall be governed, enforced and construed under the laws of the State of California.

14.3 Interpretation. This Declaration constitutes the entire understanding and agreement of the parties with respect to the subject matter thereof, and shall supersede and replace the prior understandings and agreements, whether verbal or in writing. The parties confirm and acknowledge that there are no other promises, covenants, understandings, agreements, representations, or warranties with respect to the subject matter of this Declaration except as expressly set forth herein.

14.4 Attorneys' Fees. In the event that any party hereto shall bring any legal action or other proceeding with respect to the breach, interpretation, or enforcement of this Declaration, or with respect to any dispute relating to any transaction covered by this Declaration, the losing party or parties in such action or proceeding shall reimburse the prevailing party or parties therein for all reasonable costs of litigation, including reasonable attorneys' fees, in such amount as may be determined by the court or other tribunal having jurisdiction, including matters on appeal, it being understood and agreed that the "prevailing party" shall be determined as part of such action or proceeding.

14.5 No Third Party Benefit. This Declaration is made and entered into for the sole benefit and protection of the parties hereto, and the parties do not intend to create any rights or benefits under this Declaration for any person who is not a party to this Declaration.

14.6 Further Acts. Each party hereto agrees, at no cost to such party, to perform any further acts and execute and deliver any documents requested by the other party that may be reasonably necessary to carry out the provisions of this Declaration; provided, however, neither party shall be obligated to provide any further act or document that would increase the liabilities or obligations of such party hereunder or reduce the rights and benefits of such party hereunder.

14.7 Notices. All notices, requests, demands and other communications required to or permitted to be given under this Declaration shall be in writing and shall be conclusively deemed to have been duly given (a) when hand delivered to the other party; (b) when received when sent by telex or facsimile at the address and number set forth below, provided, however, that notices given by facsimile shall not be effective unless either (i) a duplicate copy of such facsimile notice is promptly given by depositing same in a United States post office with first-class postage prepaid and addressed to the parties as set forth below, or (ii) the receiving party delivers a written confirmation of receipt for such notice either by facsimile or any other method permitted under this Section 14.7 (additionally, any notice given by telex or facsimile shall be deemed received on the next business day if such notice is received after 5:00 p.m. recipient's time or on a non-business day); (c) three (3) business days after the same have been deposited in a United States post office with first-class or certified mail return receipt requested postage prepaid and addressed to the parties as set forth below; or (d) the next business day after same have been deposited with a national overnight delivery service reasonably approved by the parties (Federal Express and DHL WorldWide Express being deemed approved by the parties), postage prepaid, addressed to the parties as set forth below with next-business-day delivery guaranteed, provided that the sending party receives a confirmation of delivery from the delivery service provider.

To Waterside Parcel Lessee:

Ballena Isle Marina, L.P.
c/o Almar Ltd.
28441 Highridge Road, Suite 110
Rolling Hills Estates, CA 90274

With a copy to:

Kevin P. Fiore, Esq.
Clark & Trevithick
800 Wilshire Boulevard, Suite 1200
Los Angeles, California 90017

To Commercial Parcel Lessee:

NAME
ADDRESS

With a copy to:

NAME
ADDRESS

To Remainder Parcel Lessee:

Ballena Isle Marina, L.P.
c/o Almar Ltd.
28441 Highridge Road, Suite 110
Rolling Hills Estates, CA 90274

With a copy to:

Kevin P. Fiore, Esq.
Clark & Trevithick
800 Wilshire Boulevard, Suite 1200
Los Angeles, California 90017

To Alameda:

City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Manager

Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this Section 14.7, and that any person to be given notice actually receives such notice. A party may change or supplement the addresses given above, or designate additional addresses, for purposes of this Section 14.7 by giving the other party written notice of the new address in the manner set forth herein.

14.8 Time of the Essence. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Declaration.

14.9 Estoppel Certificate. Each Lessee hereby covenants that within ten (10) business days after a written request of any other Lessee it will issue to such other Lessee, or to any Encumbrance Holder, or to any prospective purchaser or prospective mortgagee specified by such requesting Lessee, an estoppel certificate stating: (i) whether the Lessee to whom the request has been directed knows of any default under this Declaration, and if there are known defaults specifying the nature thereof, (ii) whether this Declaration has been modified or amended in any way (or if it has, then stating the nature thereof); and (iii) that to the Lessee's knowledge this Declaration as of that date is in full force and effect. Such statement shall act as a waiver of any claim by the Lessee furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement.

14.10 Counterparts. This Declaration may be signed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument.

14.11 Remedies.

14.11.1 Except for a default in the payment of amounts due and payable under this Declaration, in the event of any dispute or disagreement between or among the parties arising out of or relating to the terms, conditions, interpretation, performance, default or any other aspect of this Declaration, such parties shall first attempt to resolve the dispute informally. In the event the dispute is not resolved informally, prior to and as a precondition to the initiation of any legal action or proceeding, the parties shall refer the dispute to mediation before a retired State or Federal judge mutually selected by the parties. The dispute shall be mediated through informal, nonbinding joint conferences or separate caucuses with an impartial third party mediator who will seek to guide the parties to a consensual resolution of the dispute. The mediation proceeding shall be conducted within thirty (30) days (or any mutually agreed-longer

period) after referral, and shall continue until any party involved concludes, in good faith, that there is no reasonable possibility of resolving the dispute without resort to a legal action or proceeding. All costs of the mediation shall be shared equally by the parties involved. Each party shall bear its own attorneys' fees and other costs incurred in connection with the mediation. In the event the parties are unable to resolve the dispute through mediation, in addition to any other rights or remedies, any party may institute a legal action.

14.11.2 The remedies permitted or available pursuant to the provisions of this Declaration, at law or in equity, shall be cumulative. In the event of any breach or threatened breach of any provision of this Declaration, any Lessee may prosecute any proceedings at law or in equity to enjoin such breach or threatened breach and to recover damages for any such breach. Any such action or proceeding authorized pursuant to this Section 14.11 may be maintained, and a judgment thereunder obtained, without foreclosing or waiving any lien provided for in this Declaration.

14.11.3 THE PARTIES HEREBY WAIVE TRIAL BY JURY, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY OF THE PARTIES IN CONNECTION WITH ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS DECLARATION, THE RELATIONSHIP OF THE PARTIES OF ANY CLAIM OF INJURY OR DAMAGE RELATING TO ANY OF THE FOREGOING, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY STATUTE WITH RESPECT THERETO.

14.12 Negation of Partnership and of Public Benefits. None of the terms or provisions of this Declaration shall be deemed to create a partnership between the Lessees in their respective businesses or otherwise, or to affect in any way any partnership which may exist between the Lessees, if any, nor shall it cause them to be considered joint venturers or members of any joint enterprise. This Declaration is not intended nor shall it be construed to create any third-party beneficiary rights in any party which or who is not a Lessee (including, without limitation, any rights to the general public) unless expressly otherwise provided. Without limiting the generality of the foregoing, nothing contained herein shall be deemed to be a dedication of any portion of the Parcels (or interest therein) to the general public, or for any public use whatsoever.

14.13 Severability. If any portion of this Declaration shall to any extent be invalid or unenforceable, the remainder of this Declaration (or the application of such provision to Persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby.

14.14 Non-waiver. No delay or failure by any Lessee to exercise any right under this Declaration, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

14.15 Headings Have No Meaning. Headings in this Declaration are for convenience only and shall not be used to interpret or construe its provisions.

14.16 "As Is". Each Lessee shall be deemed to have accepted the rights granted hereunder (collectively, the "Property Rights") "AS IS", "WHERE IS" and "WITH ALL FAULTS" (whether detectable or not) and subject to all matters of record affecting the Parcels. Each Lessee acknowledges that the rights granted hereunder are subject and subordinate to the terms, covenants and conditions of the Commercial Parcel Lease, Remainder Parcel Lease and the Waterside Parcel Lease. Except as otherwise expressly provided in this Declaration, no Lessee shall be deemed to have made any representation, warranty or covenant, expressly or implied, with respect to any Property Rights, the fitness, merchantability, suitability, continued use or adequacy of the Property Rights for any particular purpose, any environmental condition at or with respect to the Property Rights, the zoning regulations or other governmental requirements applicable to or with respect to the Property Rights, any other matters affecting the use, operation or condition of or with respect to the Property Rights, or the continuing use or benefit of the real property leased under the Commercial Parcel Lease, the Remainder Parcel Lease or the Waterside Parcel Lease, as applicable.

14.17 Term. The term of this Declaration shall commence on the date of its recordation in the Alameda County Recorder's Office and shall continue for as long as otherwise expressly provided in this Declaration, and shall continue until the terms of the Commercial Parcel Lease, Remainder Parcel Lease and the Waterside Parcel Lease have expired or otherwise terminated in accordance with their terms.

14.18 REA Subordinate. This Reciprocal Easement Declaration shall be, and remain, subject and subordinate to the terms covenants, and conditions of the Commercial Parcel Lease, the Remainder Parcel Lease and the Waterside Parcel Lease. Furthermore in the event of any conflict or inconsistency between this Reciprocal Easement Declaration and said Leases granted by Alameda to the Lessees, the provisions of said leases granted by Alameda to the Lessees shall govern and prevail.

[END OF DECLARATION]

Exhibit "A"

Property Description

[Insert legal description]

Exhibit "B"

Commercial Parcel

[Insert legal description]

Exhibit "C"

Waterside Parcel

[Insert legal description]

Exhibit "D"

Remainder Parcel

[Insert legal description]

