

CONSENT TO ASSIGNMENT OF LEASE AND LEASEHOLD DEED OF TRUST
(Ballena Isle Marina – Alameda, California)

THIS **CONSENT TO ASSIGNMENT OF LEASE AND LEASEHOLD DEED OF TRUST** (this “**Consent**”) is delivered as of this ____ day of _____, 2015, by the **CITY OF ALAMEDA**, a municipal corporation (“**Lessor**”), the lessor under the Lease defined and described below, to **SHM BALLENA ISLE, LLC**, a Delaware limited liability company, as assignee (the “**Assignee**”) of **CLP BALLENA MARINA, LLC**, f/k/a CNL Income Ballena Marina, LLC, the current lessee under the Lease (“**Lessee**”). This Consent shall not take effect until the consummation of the assignment contemplated hereby, but will become automatically effective upon the occurrence of the Closing (defined below).

RECITALS:

WHEREAS, Lessor and Lessee are parties to that certain Ballena Isle Marina Lease with the City of Alameda, dated January 1, 1979 (the “**1979 Lease**”), as amended from time to time and more particularly described in Exhibit “A” attached hereto and made part hereof (collectively, as amended, the “**Lease**”), relating to the marina property known as “Ballena Isle Marina” and more particularly described in the Lease (the “**Marina**”); and

WHEREAS, Lessor and Lessee are parties to that certain Ballena Bay Lease Master Agreement dated July 18, 2007 (the “**Master Agreement**”) relating to a three way split of the Marina property (defined in the Master Lease as a “**Lease Trifurcation**”); and

WHEREAS, Lessee has entered into an asset purchase agreement to convey and assign all of its right, title and interest in, to and under the Lease to Assignee and sell, transfer and convey certain of Lessee's personal property located at the Marina to Assignee; and

WHEREAS, pursuant to the terms of such asset purchase agreement, at Closing (as defined in Section 1(b) below), Lessee and Assignee will enter into an assignment and assumption agreement pursuant to which all of Lessee's right, title and interest in, to and under the Lease will be assigned to Assignee, (the transaction described in the preceding clause is hereinafter referred to as the “**Subject Transaction**”); and

WHEREAS, Lessee has requested Lessor's consent to the Subject Transaction; and

WHEREAS, Safe Harbor Marinas, LLC, a Delaware limited liability company (“**Borrower**”), Assignee and certain other affiliates of Borrower, as co-borrowers or guarantors (collectively, “**Loan Parties**”) have entered a Credit Agreement among Borrower, the Loan Parties, Regions Bank, as Administrative Agent and Collateral Agent (together with its successors and assigns, in such capacities, the “**Administrative Agent**”), and the Lenders from time to time party thereto (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”); and

WHEREAS, as security for the Obligations (as defined in the Leasehold Mortgage), Assignee intends to execute a first leasehold deed of trust for the benefit of the Administrative Agent upon Assignee's interest as tenant under the Lease (the “**Leasehold Deed of Trust**”);

NOW, THEREFORE, in consideration of the covenants herein and for other good and valuable consideration, the receipt and sufficiency of which Lessor hereby acknowledges, the parties hereby agree as follows:

1. Consent.

(a) Lessor hereby consents to the Subject Transaction, and agrees that no terms or conditions of the Lease shall be altered, amended or changed as a result of such Subject Transaction.

(b) Lessor hereby confirms that all conditions to the effective assignment of the Lease, other than the closing of the transaction giving rise to the assignment (the “**Closing**”), have been satisfied or waived.

2. Estoppel Certificate. Lessor hereby certifies the following to Assignee, Administrative Agent and their respective successors and assigns:

(a) The Lease represents the entire agreement between Lessee and Lessor with respect to the Marina. The Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way, written or oral.

(b) The current annual rent payable under the Lease is \$40,400.00, payable in advance. The foregoing sums have been paid through _____. There is no security deposit under the Lease. No rent has been prepaid for more than one (1) month, except that annual rent has been paid through _____. Lessee has not been given any free rent, partial rent, rebates, rent abatements, or rent concessions of any kind, except as may be stated in the Lease. There are no unfunded allowances payable to Lessee under the Lease.

(c) Subject to Section 3(b) below, Lessee has fully performed all of its obligations under the Lease and is not in default under any term or provision of the Lease, including, without limitation, the payment of rent and other sums payable by Lessee to Lessor thereunder, and no event has occurred which, with notice or the passage of time or both, would constitute a default in any of Lessee's obligations under the Lease.

(d) Lessor has no current right to terminate the Lease based on any acts or omissions of Lessee as of the date hereof.

(e) Lessor has not received written notice of any pending eminent domain proceedings or other governmental actions or any judicial actions of any kind against Lessor's or Lessee's interest in the Lease or the Marina.

(f) The Subject Transaction will not cause the Lease Trifurcation (as such term is defined in Section 3.7 of the Master Agreement).

(g) Lessor has received no request to initiate the Commercial Parcel Transferee Approval Procedure (as defined in the Ballena Bay Lease Master Agreement).

(h) The address for notices to Lessor under the Lease shall be as set forth in the Lease (as restated in Section 4 hereof).

3. Agreement of Assignee.

(a) Assignee agrees and hereby confirms that the Assignment and any other documents delivered in connection with the Subject Transaction, shall not alter, modify or amend the terms or conditions of the Lease and, accordingly, the Lease shall prevail as between the Lessor and Assignee in the event of any conflict between the Lease and any of the Assignment or other documents executed and delivered in connection with the Subject Transaction. Nothing herein contained shall alter, modify or amend any of the Assignment or other documents with respect to any of the other parties thereto.

(b) Within ninety (90) days after the Closing, Assignee shall conduct a review and inspection of the Marina (the “**Marina Review**”) and develop a list of repairs required in order to keep the Marina in good and sanitary order and condition as required pursuant to Section 8 of the 1979 Lease (the “**Required Repairs**”). Assignee acknowledges and agrees that certain deferred repairs may have risen to the level of health and safety concerns which would require prioritized attention. Assignee shall deliver a copy of its list of Required Repairs and Assignee’s proposed schedule to undertake the Required Repairs (the “**Repair Schedule**”) to Lessor promptly following Assignee’s completion of the Marina Review. Assignee shall use its best commercially reasonable efforts to complete the Required Repairs within the time periods set forth in the Repair Schedule. Lessor shall reasonably cooperate with Assignee in its efforts to complete the Required Repairs. Notwithstanding anything to the contrary set forth in the Lease, Lessor acknowledges and agrees that Assignee shall not be deemed to be in default under the Lease by reason of the existing condition of the Marina so long as Assignee remains in compliance with its obligations under this Section 3(b) (it being understood that Lessor shall not have the right to terminate the Lease or exercise any other remedies with respect thereto unless Assignee fails to comply with its obligations under this Section 3(b) and such failure is not cured within thirty (30) days after Lessor’s written notice thereof, or such additional period of time as may be necessary if such cure cannot reasonably be completed within said 30-day period).

4. Notices. Lessor shall provide Assignee with copies of all notices which may be required to be provided to Lessee pursuant to the terms and provisions of the Lease. In the event of a default by either Lessor or Lessee or any other party under the Lease, Lessor shall give prompt written notice to Assignee. All notices, requests and other communications to the parties as required in this Consent shall be in writing and shall be given to such party at its address set forth below or such other address as such party may hereafter specify for the purpose of notice in accordance with the terms of the Lease.

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| Assignee: | SHM Ballena Isle, LLC c/o Safe Harbor Marinas, LLC 950 Tower Lane, Suite 800 Foster City, CA 94404 Attn: Ryan Barnes and Jon Contos |
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With a copy to: Duane Morris LLP
1540 Broadway
New York, NY 10036
Attn: Chester P. Lee, Esq.

Lessor: City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501-4477
Attn: City Manager

With a Copy to: City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501-4477
Attn: City Attorney

The addresses set forth above may be changed as to any party by such party delivering to the other parties at least thirty (30) calendar days written notice as to such change of address.

5. Leasehold Mortgage.

(a) Upon the recording of the Leasehold Deed of Trust, Lessor hereby recognizes Administrative Agent as the holder of a leasehold mortgage for the purposes of Section 12 of the 1979 Lease, and Lessor hereby consents to the granting by Tenant of the Leasehold Deed of Trust or other similar lien on Assignee's interest in the premises demised pursuant to the Lease to Administrative Agent.

(b) In the event the Leasehold Deed of Trust should at any time be in default and be foreclosed, Lessor will accept the Administrative Agent as its new tenant under the Lease with all of the rights, privileges and, subject to subsection (c)(ii)(3) below, obligations of the lessee under the Lease, and in the event the Administrative Agent desires to assign the Lease to its nominee, Lessor agrees that, upon filing of an application for Lessor's consent to such assignment, Lessor shall give its consent thereto.

(c) Anything in the Lease to the contrary notwithstanding, Lessor shall not exercise any remedy available to it for default thereof by Assignee under the Lease, or any subtenant of Assignee, unless and until Lessor, as a condition precedent to such exercise, shall have given notice to Administrative Agent in accordance with Section 5(g) below, which notice shall specify the nature and extent of the claimed default. Thereafter, Administrative Agent shall have the right and power to cure said default in the manner hereafter provided and thereby cause the Lease to remain in full force and effect.

(i) If said default be in the payment of rental, taxes, insurance premiums, amounts claimed under a mechanic's lien on the demised premises or any other sum of money required to be paid by Assignee under the Lease, Administrative Agent may pay the same to Lessor or the other proper payee within sixty (60) days after the mailing of notice of default by Lessor, as required above.

If so paid, the default shall be cured and the Lease shall remain in full force and effect. If, after any such payment to Lessor, Assignee pays the same to Lessor, then Lessor shall promptly refund such payment to Administrative Agent.

(ii) If said default be other than specified in Section 5(c)(i) hereof, Lessor shall not exercise any such remedy, if:

(1) Within sixty (60) days of the mailing of notice of default as required above, Administrative Agent commences foreclosure (by judicial action or trustee's sale) of the Leasehold Deed of Trust; and

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

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

(d) Assignee and Lessor shall not modify, amend, voluntarily terminate, surrender, accept a surrender, or otherwise change the terms of the Lease without the prior written consent of Administrative Agent, which consent shall not be unreasonably withheld so long as the proposed change does not materially and adversely impair the security interest under the Leasehold Deed of Trust.

(e) Lessor covenants and agrees that in the event that the Lease is terminated for any reason other than by exercise of Lessor's remedies as a result of an uncured default, including as a result of a rejection of the Lease in a bankruptcy proceeding of Assignee, upon Administrative Agent's request, Lessor shall enter into a new ground lease with Administrative Agent upon the same terms and conditions of the unexpired term of the Lease immediately prior to such termination.

(f) Assignee and Lessor agree that Lessor shall not approve the Transfer (as defined in the Master Agreement) of the Commercial Parcel (as defined in the Master Agreement) pursuant to Section 3 of the Master Agreement without the prior written approval of Administrative Agent. Assignee acknowledges and agrees that it will not be unreasonable for Lessor to withhold its approval of the Transfer if the Administrative Agent does not approve such Transfer.

(g) All notices, demands, requests or other communications to be sent by Administrative Agent to Lessor and vice versa pursuant to this Consent or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, in any event addressed to the intended addressee at its address set forth herein and, if addressed to Administrative Agent, to REGIONS BANK, 1717

McKinney Avenue, Suite 1100, Dallas, TX 75202, Attn: Dan Walker, Vice President, and if addressed to Lessor, at its address set forth in Section 4 hereof, or at such other address as may be designated by such party as herein provided. All notices, demands and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private courier service, or two (2) business days after being deposited in the United States mail as required above. By giving to the other party hereto at least thirty (30) calendar days' prior written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

6. Authority. No consent or approval of any third party is required in order for Lessor to deliver this Consent, and Lessor has all requisite power and authority to execute and deliver this Consent.

7. Captions. The captions herein are inserted only for convenience of reference and in no way define, limit or describe the scope of intent of this Consent or any particular paragraph or section herein.

8. Successors and Assigns. This Consent shall inure to the benefit of Assignee, Administrative Agent and their respective successors and assigns and shall be binding upon Lessor and its successors and assigns.

9. Counterparts. This Consent 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.

[Signatures being on the following page]

IN WITNESS WHEREOF, the undersigned Lessor has caused this Consent to be executed on its behalf by its duly authorized representative on the date first set forth hereinabove, to be effective upon the occurrence of the Closing.

LESSOR:

CITY OF ALAMEDA, a municipal corporation

By: _____

Name: Elizabeth Warmerdam

Title: Interim City Manager

Approved as to Form:

By: _____

Name: Janet C. Kern

Title: City Attorney

ASSIGNOR:

CLP BALLENA MARINA, LLC, a Delaware limited liability company
(f/k/a CNL Income Ballena Marina, LLC)

By: _____

Name: Tracey B. Bracco

Title: Vice President

ASSIGNEE:

SHM BALLENA ISLE, LLC, a Delaware limited liability company

By: Safe Harbor Marinas, LLC, its sole member

By: _____

Name: Ryan Barnes

Title: Manager

EXHIBIT A - Lease Documents

1. Ballena Bay Lease dated January 1, 1979, by and between City of Alameda, as lessor, and Marina Operators, Inc., a California corporation, as lessee.
2. Memorandum of Lease recorded on March 28, 1979, as Instrument Number 79-057010 in the Official Records of Alameda County, California
3. Consent and Agreement dated September 30, 1982, between the City of Alameda, as lessor, Marina Operators, Inc., as assignor, and Ballena Isle Marina, as assignee.
4. Assignment of Lease dated August 31, 1983, between Marina Operators, Inc., as assignor, and Ballena Isle Marina, as assignee, recorded October 18, 1983, as Instrument Number 83-195351.
5. Agreement dated September 20, 1983, between the City of Alameda and Ballena Isle Marina.
6. City of Alameda Ordinance No. 2238 dated May 8, 1985, Authorizing Execution of Amendment to Lease with Almar, Ltd. and Ballena Isle Marina.
7. Amendment to Lease dated May 8, 1985, by and between City of Alameda, Ballena Isle Marina and Almar Ltd., as general partner of Ballena Isle Marina.
8. Memorandum of Amendment to Lease recorded January 29, 1988, as Instrument Number 88-23323 in the Official Records of Alameda County, California.
9. Letter dated January 22, 1988, extending lease term to December 31, 2029.
10. Amendment to Lease dated October 29, 1993, among City of Alameda, as lessor, Ballena Isle Marina and Almar Ltd., as lessee, recorded October 28, 1994, as Instrument Number 94-346237 in the Official Records of Alameda County, California.
11. Assignment by Ballena Isle Marina, LP to Ballena Isle Marina, LLC, recorded June 8, 1998, as Series No. 98-189980
12. Corrective Assignment by Ballena Isle Marina, LP to Ballena Isle Marina, LLC recorded June 18, 1998 as Series No. 98-204440.
13. Conversion in which Ballena Isla Marina, LP took over all rights of Ballena Isle Marina, LLC.
14. Assignment and Assumption of Lease Agreement dated March 12, 2010, between Ballena Isle Marina, L.P., as assignor, and CNL Income Ballena Marina, LLC, as assignee.

15. Consent to Assignment of Lease and Estoppel Certificate (Ballena Isle Marina – Alameda, California) dated March 4, 2010, among City of Alameda, as lessor, Ballena Isle Marina, L.P., as lessee, CNL Income Ballena Marina, LLC, as assignee, and BIM, L.P., as sublessee.
16. Ballena Bay Lease Master Agreement dated July 18, 2007, by and between City of Alameda, as lessor, and Ballena Isle Marina, L.P., as lessee.