

# **San Diego Unified Port District**

## **Meeting Agenda Board of Port Commissioners**

**Friday, June 6, 2025, 1:00 p.m.**

**Don L. Nay Port Administration Boardroom**

**3165 Pacific Hwy.**

**San Diego, CA 92101**

The Board of Port Commissioners (Board) hereby provides notice that it will hold a regular meeting of the Board. It is possible that some of the Commissioners may attend the meeting and participate remotely to the same extent as if they were present in accordance with Assembly Bill 2449.

### **PUBLIC PARTICIPATION:**

The public is welcome to attend in person, or alternatively:

Members of the public may view this meeting via livestream at:

<https://www.portofsandiego.org/about-port-san-diego/board-meetings>

### **PROVIDING PUBLIC COMMENT:**

Public comment is limited to 3 minutes per speaker on both agenda, and non-agenda items. The time allotted for speakers may be adjusted by the Board Chair at his or her discretion. Items under the Consent Agenda section are considered to be routine, and will be acted upon with one vote. If you wish for an item to be removed from the Consent Agenda for further discussion, please submit your request to the District Clerk prior to the commencement of the meeting.

Public comment is available for this meeting by doing one of the following no later than the time the public comment portion for the agenda item is concluded, however the public is strongly encouraged to do so prior to the item being called:

**In-Person Participation:** Complete and submit a Speaker Slip and give to the District Clerk

### **Remote Participation:**

1. Call 619-736-2155 and leave a brief voicemail message that will be played during the meeting. A voicemail longer than the time allotted for public comment on that item will be stopped after that time has elapsed.
2. Email a request to provide live comment to [PublicRecords@portofsandiego.org](mailto:PublicRecords@portofsandiego.org) to receive a link to participate in the meeting to provide live comments. \*
3. Submit written comments to [PublicRecords@portofsandiego.org](mailto:PublicRecords@portofsandiego.org). Written comments received at least 2 hours prior to the commencement of the meeting will be distributed to the Board and posted online with the meeting materials. Written comments received after the time frame will be included in the agenda-related materials record for the meeting.

\* The Port of San Diego is not responsible for the member of the public's internet connections or technical ability to participate in the meeting. It is highly recommended that you use voicemail rather than provide live comment.

UNA TRANSMISIÓN EN INGLÉS Y EN ESPAÑOL DE LA REUNIÓN DE LA JUNTA ESTARÁ DISPONIBLE AL PÚBLICO A TRAVÉS DE UNA TRANSMISIÓN EN DIRECTO EN:

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NOTA ESPECIAL PARA PARTICIPANTES DE COMENTARIOS PÚBLICOS:

Servicios de interpretación estarán disponibles durante la reunión para traducir comentarios públicos del español al inglés.

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Any disclosable public records related to an open session item on a regular meeting agenda and distributed by the San Diego Unified Port District to all or a majority of the Board of Port Commissioners, including those records distributed less than 72 hours prior to that meeting, but received at least 2 hours prior to meeting, can be viewed online at <https://www.portofsandiego.org/about-port-san-diego/board-meetings>, or are available for inspection at the Office of the District Clerk, 3165 Pacific Highway, San Diego, California during normal business hours.

For the agenda online and more information about the Commissioners' names and city representation, and future Board meeting dates, please visit our website at [www.portofsandiego.org](http://www.portofsandiego.org).

As a courtesy to all who attend these public meetings, please turn all cell phones to off or vibrate before entering the Board Room.

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- A. **Roll Call**
- B. **Statement (just cause) and/or Consideration of a Request to Participate Remotely (emergency circumstances) by a Commissioner, if applicable**
- C. **Pledge of Allegiance**
- D. **Special Order of the Day**
- Anchors of Excellence
- E. **Closed Session Report Out**
- F. **Public Communications**
- Please limit comments to 3 minutes per speaker. No actions may be taken on these items.*
- G. **Board Committee Reports**
- Accessibility Advisory Committee
- H. **Commissioners' Reports**
- No actions may be taken on these items.*
- I. **Special Recognition**
- Pride Month
  - Juneteenth
- J. **President's Report**
- K. **District Clerk's Announcements**
- L. **Approval of Minutes**
- April 15, 2025 - Draft Closed Session Meeting Minutes  
April 15, 2025 - Draft BPC Meeting Minutes  
April 24, 2025 - Draft Budget Workshop Minutes  
April 24, 2025 - Draft Closed Session Minutes  
May 6, 2025 - Draft Closed Session Minutes  
May 6, 2025 - Draft BPC Meeting Minutes
- M. **Consent Agenda**

**1. Resolution Authorizing a Sole Source Agreement with Watts Marine LLC for ThePeriod of July 1, 2025, to June 30, 2028, To Provide Cruise Ship Shore PowerConnection, Commissioning, and Maintenance Services, 2025-142**

Resolution Authorizing a Sole Source Agreement with Watts Marine LLC for The Period of July 1, 2025, To June 30, 2028, To Provide Cruise Ship Shore Power Connection, Commissioning, And Maintenance Services Supporting the Proprietary Shore Power System at B Street and Broadway Piers, In Compliance with California Air Resources Board At-Berth Regulations, In an Amount Not to Exceed \$3,048,460. Funds For the First Year of This Expenditure Of \$712,264 Are Included in The Proposed FY 2026 Budget. Funds Required for Future Fiscal Years Will Be Budgeted for In the Appropriate Year Subject to Board Approval Upon Adoption of Each Fiscal Year's Budget.

**2. Agreement with Managed Solution, LLC for Tier One Help Desk Services and AsNeeded Tier Two Desktop Support, 2025-135**

Resolution Authorizing an Agreement with Managed Solution, LLC for Tier-one Help Desk Services and As Needed Tier-two Desktop Support Services for a Period of Five Years with a Total Cost of Ownership in the Amount not to Exceed \$850,000. Funds Required for Tier-One Help Desk Services and As Needed Tier-two Desktop Support Services Will be Included in Future Technology Management Program Expense Budgets, Subject to Board Approval Upon Adoption of Each Fiscal Year's Budget.

**3. Cisco SmartNet Services Agreement with NTT America Inc., and InstallmentPayment Agreement With Asset Finance Group, Inc., 2025-138**

Resolution (1) Authorizing a Purchase Order With NTT America, Inc. for the Purchase of Five-Year Cisco SmartNet Maintenance Not To Exceed a Five-Year Total Cost of Ownership of \$669,820.38, financed through Asset Finance Group, Inc.; and (2) Authorizing an Installment Payment Agreement With Asset Finance Group, Inc. to Finance the Purchase of Cisco SmartNet Support Services From NTT America in an Amount Not to Exceed \$669,820.38 Over Five Years at Zero-Percent Interest. FY2025 Expenditures are Included in the Technology Management Program Budget. All Funds Required for Future Fiscal Years will be Budgeted in the Appropriate Fiscal Year, Subject to Board Approval Upon Adoption of Each Fiscal Year's Budget.

**4. As-Needed Roofing Maintenance Services, 2025-119**

Resolution Authorizing Service Agreement With Chambers Inc. dba Roof Construction for As-Needed Roofing Maintenance Services from July 1, 2025, to June 30, 2030, in an Amount not to Exceed \$2,000,000. All Funds Required for Future Fiscal Years Will be Budgeted in the Appropriate Fiscal Year, Subject to Board Approval Upon Adoption of Each Fiscal Year's Budget

**5. Navy Pier Freedom Park Structural Pier Reinforcement, 2025-102**

Resolution Rejecting Bid For Contract No. 2024-24 for the Freedom Park at Navy Pier Structural Pier Reinforcement

**6. CST Staging Lot Improvements at 1550 W Palm St Project, 2025-155**

Resolution 1) Finding the Board Action Exempt Under the California Environmental Quality Act (CEQA) Guidelines Sections 15301, 15302, 15303 and 15304 , 2) Approving Plans and Specifications and Awarding Contract No. 2024-20 to Montano Pipeline in the Amount of \$229,000.00 for the CST Staging Lot Improvements at 1550 W Palm St Project, San Diego, CA Project, as Authorized by the Board in the FY 2025 Other Capital Projects Appropriation.

**7. Railroad Tie Repairs at Tenth Avenue Marine Terminal, Berths 10-7 and 10-8, 2025-112**

Resolution 1) Finding the Board Action Exempt under the California Environmental Quality Act (CEQA), Including but Not Limited to CEQA Guidelines Section 15301 and 15302, and 2) Approving Plans and Specifications and Awarding Contract No. 2019-43 to Granite Construction Company in the Amount of \$1,493,169 for the Railroad Tie Repairs at Tenth Avenue Marine Terminal, Berths 10-7 and 10-8, As Authorized by the Board in the FY 2025 Major Maintenance Program Appropriation

**8. Harbor Park Upland Improvements Project, 2025-124**

Harbor Park Uplands ImprovementA. Resolution Approving the addition of the Harbor Park Upland Improvements project into the Balanced Capital Program (BCP) and allocating \$6,000,000 from the City of Chula Vista Subaccount toward the project. B. Ordinance Amending the Fiscal Year 2026 Budget increasing the Balanced Capital Program appropriation by \$6,000,000 to be funded from the City of Chula Vista's Balanced Capital Program subaccount C. Resolution Selecting and Authorizing a Progressive Design-Build Agreement with BNB Builders for Progressive Design-Build Services for Harbor Park Upland Improvements and Authorizing Staff to Complete the Design Development and Early Work/Procurement Package (If Applicable) for a Total Amount Not-To-Exceed \$4,000,000.

**9. TAMT Post Indicator Valve Replacements at Warehouses B and C, San Diego, California, 2025-104**

A. Resolution Finding the Board Action Exempt Under the California Environmental Quality Act (CEQA), Including, But Not Limited to CEQA Guidelines Sections 15301, 15302, 15304, and 15311.

B. Resolution Approving the TAMT Post Indicator Valve Replacements at Warehouses B and C, San Diego, California Project and Approving Plans and Specifications and Awarding Contract No. 2025-01 to Granite Construction Company in the Amount of \$2,053,000, as Authorized By The Board In The FY 2025 Major Maintenance Program.

**10. As-Needed Natural Resources Agreements, 2025-143**

Resolution Selecting and Authorizing Agreements with AECOM Technical Services, Inc.; Dudek; GHD, Inc.; ICF Jones & Stokes, Inc.; Tierra Data, Inc.; and WSP USA, Inc. to Provide As-Needed Natural Resources Management Services for a Total Aggregate Amount not to Exceed \$1,500,000 for a Period of Five Years. Funds Required for Future Fiscal Years will be Budgeted in the Appropriate Fiscal Year, Subject to Board Approval Upon Adoption of Each Fiscal Year's Budget

**11. As-Needed Environmental Investigation Services, 2025-148**

Resolution Selecting and Authorizing Three-Year Agreements with WSP USA, Inc., Tetra Tech, Inc., Ninyo & Moore Geotechnical & Environmental Sciences Consultants, and Kleinfelder, Inc., for As-Needed Environmental Investigations Services for an Aggregate Amount not to Exceed \$5,000,000, Beginning July 1, 2025, and Ending June 30, 2028. FY 2026 Expenditures are Budgeted; All Funds for Future Fiscal Years will be Budgeted in the Appropriate Fiscal Year, Subject to Board Approval upon Adoption of each Fiscal Year's Budget.

**12. Resolution Initiating Clean-Up Annexations and Detachments Pursuant to the December 2024 Memorandum of Understanding (MOU) Between San Diego County Local Agency Formation Commission (LAFCO) and San Diego Unified Port District, 2025-158**

Resolution finding the Board of Port Commissioners' Action is not a project or is exempt under the California Environmental Quality Act (CEQA), including without limitation CEQA Guidelines Sections 15061(B)(3) AND 15320, and Resolution of Application to the Local Agency Formation Commission for San Diego County to initiate proceedings for the annexation of certain territory to and detachment of certain territory from the San Diego Unified Port District

**13. Continuance of a Local Emergency - Caulerpa Prolifera, 2025-064**

Adopt a Resolution Proclaiming the Continuance of a Local Emergency Due to the Presence of an Invasive Algae Caulerpa Prolifera

**14. Continuance of a Local Emergency – Tijuana River Valley Pollution Crisis, 2025-071**

Adopt a Resolution Proclaiming the Continuance of a Local Emergency Relating to the On-Going Tijuana River Valley Transboundary Pollution Crisis

**15. Seaport Village Operating Company, LLC dba The Headquarters, located at 789 West Harbor Drive, in the City of San Diego:, 2025-130**

A) Resolution Consenting to the Assignment and Assumption of the Leasehold Interest from Seaport Village Operating Company, LLC dba The Headquarters to LBX Headquarters at Seaport LLC; and B) Ordinance Granting an Amended and Restated Lease to LBX Headquarters at Seaport LLC to Update Lease to Current Terms.

**16. Passenger Boarding Bridge and Mobile Passenger Gangway Inspection and Maintenance Services, 2025-159**

Resolution to authorize Adelte Technologies, INC and FMT Sweden AB for Passenger Boarding Bridge and Mobile Passenger Gangway Inspection and Maintenance Services, July 1, 2025, to June 30, 2030, for an aggregate amount not to exceed \$2,000,000. All funds required for future fiscal years will be budgeted in the appropriate fiscal year, subject to Board approval upon adoption of each fiscal year's budget.

The Board will consider staff's request to continue this item to a future Board meeting.

**17. FY 2025 Accounts Receivable Write- Offs, 2025-160**

Resolution Authorizing the Write-Off of Uncollectable Accounts Receivable Totaling \$42,161.80 and the Removal of the Accounts Receivable from the District's Financial Accounting Records with an Effective Date of June 30, 2025

The Board will consider staff's request to continue this item to a future Board meeting.

**18. Coastal Development Permit Amendment No. 1; Consent to the Transfer of Ownership Interest of Marine Group Boatworks; and Amended and Restated Lease, 2025-111**

DESCRIPTION: A. Resolution finding the Board Actions Exempt Under the California Environmental Quality Act (CEQA), Including, but not limited to, CEQA Guidelines Section 15302 and Authorizing Issuance of Amendment No. 1 to Non-Appealable Coastal Development Permit 2005-04 to Marine Group Boat Works; B. Resolution Consenting to the Transfer of Ownership Interest in Marine Group Boat Works to Marine Group Global Holdings, LLC; and C. Ordinance Granting an Amended and Restated Lease to Marine Group Boat Works to Update Lease to Current Terms

**N. Public Hearing Agenda**

**1. Fiscal Year 2026 Final Budget, 2025-100**

Conduct a Public Hearing and Adopt an Ordinance Adopting the Fiscal Year 2026 Final Budget including a reduction in Personnel appropriation, an increase in Non-Personnel Expenses appropriation, and an increase in Equipment Outlay and Other Capital Projects appropriation from the Preliminary Budget, as recommended by staff.

**1.1 Directory of Classification Specifications for Fiscal Year 2026, 2025-145**

Resolution Establishing the San Diego Unified Port District (District)  
Directory of Classification Specifications for Fiscal Year 2026

**O. Information Item**

**1. Update on Harbor Police Department's Strategic Plan, 2025-122**

Informational Update on the Harbor Police Department's Strategic Plan

**2. Crowley eWolf One-Year Report, 2025-161**

Receive a Presentation From an Official From Crowley Maritime on Their Experience With the eWolf Assist Tug

The Board will consider staff's request to continue this item to a future Board meeting.

**P. Action Agenda**

**1. Review and Consideration of Draft Proposed Board Agenda for the July 15, 2025 Meeting, 2025-026**

**Q. Officer's Report**

**1. Officer's Report**

MONTHLY NOTIFICATION OF CHANGE ORDERS PURSUANT TO BPC POLICY NO. 110:

A) Change Order No. 1 to Contract No. 24-23 with TB High Performance Construction, Inc –Reconciliation – Decreases Contract Amount by \$2,500.00.

B) Change Order No. 5 to Contract No. 2022-03 with The Ryan Company, Inc. – Decreases Contract Amount by \$22,468.73 & 20 Calendar Day Time Extension thru 04-17-2025.

C) Change Order No. 3 to Contract No. 2022-24 with Granite Construction Company –Reconciliation – Decreases Contract Amount by \$26,201.05.

D) Change Order No. 4 to Contract No. 2023-09 with Schindler Elevator Corporation –Increases Contract Amount by \$20,199.00

MONTHLY NOTIFICATION OF COST RECOVERY USER FEE WAIVERS GRANTED BY THE EXECUTIVE DIRECTOR PURSUANT TO BPC POLICY NO. 106:

None to Report

MONTHLY NOTIFICATION OF RENT REVIEWS CONSENTED TO ADMINISTRATIVELY PURSUANT TO BPC POLICY NO. 355 AS AMENDED ON JANUARY 10, 2017:

A) Non-Exclusive Easement to Austal USA, LLC for Access to Sewer Line Facilities at National City Marine Terminal thru 04-19-2029

MONTHLY NOTIFICATION OF ENCUMBRANCES CONSENTED TO ADMINISTRATIVELY PURSUANT TO BPC POLICY NO. 355 AS AMENDED ON JANUARY 10, 2017:

None to Report

MONTHLY NOTIFICATION OF LEASE AMENDMENTS CONSENTED TO ADMINISTRATIVELY PURSUANT TO BPC POLICY NO. 355 AS AMENDED ON JANUARY 10, 2017:

None to Report

**FILE NUMBER: 2025-111**

**DATE:** Friday, June 6, 2025

**SUBJECT: Coastal Development Permit Amendment No. 1; Consent to the Transfer of Ownership Interest of Marine Group Boatworks; and Amended and Restated Lease**

**DESCRIPTION: A. Resolution finding the Board Actions Exempt Under the California Environmental Quality Act (CEQA), Including, but not limited to, CEQA Guidelines Section 15302 and Authorizing Issuance of Amendment No. 1 to Non-Appealable Coastal Development Permit 2005-04 to Marine Group Boat Works; B. Resolution Consenting to the Transfer of Ownership Interest in Marine Group Boat Works to Marine Group Global Holdings, LLC; and C. Ordinance Granting an Amended and Restated Lease to Marine Group Boat Works to Update Lease to Current Terms**

**EXECUTIVE SUMMARY:**

Marine Group Boat Works, LLC (MGBW or Existing Tenant) has a lease<sup>1</sup> with the District to operate a full-service boat and super-yacht facility that specializes in the repair and fabrication of personal, commercial and small craft government vessels, located at 997 G Street within the City of Chula Vista (Existing Lease). The Existing Lease commenced on February 1, 1985 and terminates on January 31, 2030. MGBW has an option to extend the term for an additional 11 years to January 31, 2041, provided certain condition precedents are satisfied prior to MGBW exercising the option. A location map is attached for reference (Attachment A – Location Map). MGBW is proposing to transfer a majority ownership interest to Marine Group Global Holdings, LLC (MGGH). MGGH is controlled by two owners, Byron “Chip” Besse and Skye Callantine (Buyers). It is the District’s understanding, that the Buyers intend to keep the key members of MGBW’s operational team in place, but all business decisions must be unanimously made by both Chip Besse and Skye Callantine. Chip Besse has a finance background and is a real estate investor and developer that has focused his career on residential and community development. Skye Callantine is the founder of Vigeo Investments, a private family office in Denver, Colorado. Vigeo Investments holds a diversified portfolio of operating companies, real estate and other private investments.

The Existing Lease requires the Board of Port Commissioners (Board) to consent to the proposed transfer of ownership interest in MGBW to MGGH (Transfer). As a condition of granting consent to the Transfer, the District may adjust rent to market and update the terms and provisions of the Existing Lease to the District’s current lease template. The Buyers have agreed to an Amended and Restated Lease in the form attached hereto as Attachment B (A&R Lease) with the District’s current standard lease terms. The A&R Lease includes, among other provisions, the following items not present in the Existing Lease: (i) a \$1.5 Million lump sum payment towards the future Harbor Park in the Chula Vista Bayfront (CVB) in exchange for the removal of Sections 49 and 50 of the Existing Lease and a \$5 Million payment, amortized over the first three lease years of the A&R Lease, towards the future Harbor Park; (ii) 3% annual adjustments commencing in year

three of the A&R Lease through the lease term; (iii) provisions that entitle the District to receive 2.5% of the proceeds from a future lease assignment and a financing transaction; (iv) a demolition and remediation fund for end of term obligations including environmental remediation; (v) use restrictions in order to limit impacts to the adjacent Resort Hotel and Convention Center and Wildlife Refuge; (vi) and an environmental insurance policy and guaranty with annual CPI increases capped at 4%; provided, however, the amount of the guaranty will increase if the environmental insurance policy cannot be obtained or renewed. The proposed A&R Lease would allow the District to retain a boatyard operator to meet the growing demand for boat repair in San Diego Bay.

In 2005, the District issued a non-appealable Coastal Development Permit (CDP) (CDP-2005-04) to MGBW to among other items place and operate a 660-ton travelift on site. In February 2025, it came to the attention of District staff that the Existing Tenant removed the 660-ton travelift and was replaced with an 820-ton travelift without the appropriate permits. The placement of the 820-ton travelift onsite is “development” under the California Coastal Act requiring an amendment to existing CDP for the facility or a new CDP. See Cal. Pub. Resources Code § 301606. It also is an event that could be a default under the Existing Lease’s requirement to comply with laws, including the Coastal Act, and to obtain District approval prior to installing or removing machines such as the travelift. In order to cure the Coastal Act violation, an amendment to the CDP is required to allow the placement and operation of the 820-ton travelift with conditions for certain use restrictions and that the travelift cannot be used for more than 660-ton displacements. The special conditions in the proposed CDP amendment require that the 820-ton travelift will be used for no more than a 660-ton vessel displacement and that no intensification of use will occur. A copy of the draft amendment to CDP-2005-04 is provided as Attachment D.

Therefore, staff recommends the Board, in the order listed, find the CDP amendment exempt under CEQA, adopt a resolution authorizing the issuance of Amendment No. 1 to non-appealable CDP-2005-04 to for the removal of the 660-ton travelift and placement of an 820-ton travelift and operation of the same, adopt a resolution consenting to the transfer of ownership interest in MGBW to MGGH and adopt an ordinance granting the A&R Lease to MGBW under the terms presented.

#### **RECOMMENDATION:**

(A) Adopt a Resolution finding the Board Action is exempt under CEQA, including, but not limited to, CEQA Guidelines Section 15302 and to Authorize the Issuance of Amendment No. 1 to Non-Appealable Coastal Development Permit 2005-04 to Marine Group Boat Works, LLC; (B) Adopt a Resolution Consenting to the Transfer of Ownership Interest in Marine Group Boat Works, LLC to Marine Group Global Holdings, LLC; and (C) Adopt an Ordinance Granting an Amended and Restated Lease for 997 G Street to Marine Group Boat Works, LLC to Update Lease to Current Terms.

#### **FISCAL IMPACT:**

The proposed Board action would result in increased revenue to the District. The net present value of the additional revenue to the District is approximately \$5.46 Million over the remaining 15 years of lease term.

### **COMPASS STRATEGIC GOALS:**

This agenda item supports the following Strategic Goal(s).

- A thriving and modern maritime seaport.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A financially sustainable Port that drives job creation and regional economic vitality.

### **DISCUSSION:**

#### **Background**

##### **Existing Lease**

MGBW manufactures, fabricates and repairs vessels of all makes and models on land and in water while servicing all sectors of the market ranging from private superyacht owners to commercial vessel owners and operators to small Navy craft vessels. MGBW's leasehold is comprised of 419,823 square feet of land and 358,756 square feet of water area located at 997 G Street in Chula Vista (Site or Premises). The Existing Lease terminates on January 31, 2030; however, MGBW has an option to extend the term for an additional 11 years to January 31, 2041, provided certain condition precedents are satisfied prior to MGBW exercising the option. MGBW has submitted a redevelopment of their leasehold and requested a term extension in exchange for a minimum investment of \$14.8 Million. The redevelopment project is currently being analyzed in accordance with CEQA and would be subject to future action.

MGBW entered into a Membership Interest Purchase and Contribution Agreement on February 28, 2025. On March 18, 2025, MGBW submitted a written request to the District for consent of the Transfer. Under the Existing Lease and in accordance with BPC 355, as a condition of consent to a proposed transfer, the District has the right to update the lease to include current standard language and to adjust rental rates to market. Staff's proposed action includes the granting of an A&R Lease pursuant to the terms detailed below.

#### **Assignment and Assumption**

Chip Besse and Skye Callantine are the principal investors in MGGH. Chip Besse is a seasoned executive with over 20 years' experience in leadership roles across diverse industries. Chip has a background in finance and a proven track record of building and scaling businesses, managing complex transactions, and creating value through strategic investments. As a Principal in MGGH, Chip plans to provide financing, leadership, and backing to the current management team led by Todd Roberts. Skye Callantine is the founder of Vigeo Investments, a private family office in Denver, Colorado. Vigeo Investments was established in 2017 through the merger of an existing portfolio of assets. They currently hold a diversified portfolio of operating companies, real estate and other

private investments. Skye Callantine has over two decades of experience creating, growing and managing businesses, with his primary focus being on the energy industry.

Staff has conducted due diligence on the proposed Buyers and have confirmed the buyers have the financial and operational wherewithal to operate a world-class boatyard on District tidelands.

### **Amended and Restated Lease**

The Existing Lease provides that in the event any consent of District is given for any lease assignment or transfer, the following shall apply in each instance: (i) the District shall be paid additional rent, which may be percentage rate or rates, to equal the full fair market rent, commencing on the effective date of such proposed assignment or transfer, unless on that date the rent being paid under this lease is equal to the full fair market rent; (ii) the Assignee hereby agrees and assumes each and every obligation under the lease, and (iii) other conditions and qualifications determined by the Board of Port Commissioners of District. Staff has negotiated annual 3% rent adjustments commencing in year three of the A&R Lease through the existing lease term. As consideration for forgoing a substantial market rent increase, the parties have agreed to a \$5 Million payment towards the future development of Harbor Park in the CVB, amortized over the first three years upon execution of the A&R Lease (\$500,000 in the first year, \$2 Million in the second year and \$2.5 Million in the third year), which together with the 3% annual rent adjustments is equivalent to market rent over the remaining term of the lease.

Over the last several years, MGBW has requested Sections 49 and 50 of the Existing Lease (Early Termination of Lease if Substitute Leased Premises Offered by Lessor to Lessee and Early Termination of Lease by Lessor if Substitute Leased Premises Offered by Lessor and Not Leased by Lessee), referred to as the "Relocation and Buyout Provisions" be removed from the Existing Lease because they impair their ability to obtain financing and secure long-term government contracts. In exchange for removal of these provisions staff negotiated compensation from MGBW since the addition of these provisions was part of the consideration for granting the 11-year option term in the 2012 amendment to the Existing Lease. The Resort Hotel and Convention Center opened on May 15, 2025 and MGBW has met or is in the process of meeting most other conditions of the amendment. Therefore, as consideration for the removal of the Relocation and Buyout Provisions, the Buyers have agreed to pay the District a lump sum payment of \$1.5 Million, which will be a condition precedent to the effectiveness of the District's consent to the transfer and the A&R Lease and be allocated towards the future development of Harbor Park. Staff has confirmed with JP Morgan that the lump sum payments referenced above will be excluded from the Districts CVB financing commitment so they can be allocated to Harbor Park with a future minor modification to the Resort Hotel and Convention Center support agreement and approval of the JEPA. The result of these lump sum payments and fixed annual increases, yield a net present value of approximately \$5.46 Million in increased revenue to the District over the remaining term.

Further, MGGH has agreed to a Financing Participation Fee and Assignment Participation fee of 2.5% to apply to future transactions under the A&R Lease. The Financing

Participation Fee is a percentage of the net proceeds for future financing of the leasehold, excluding funds applied towards reinvestment in this leasehold or other leaseholds on tidelands. The Assignment Participation Fee is a percentage of the gross proceeds of an assignment of the whole or part of the leasehold interest. The Existing Lease does not contain the District's most updated lease provisions, therefore, staff has negotiated the A&R Lease to update the language to include terms such as a demolition and remediation reserve fund, as well as updated indemnity provisions.

The A&R Lease includes specific restrictions on use, nighttime operations, light, and noise in order to limit impacts to the adjacent Resort Hotel and Convention Center and Wildlife Refuge. Lastly, the A&R Lease would include a guaranty by MGGH for all obligations of the A&R Lease with annual CPI increases capped at 4% and an environmental insurance policy; provided, however, the amount of the guaranty will increase if the environmental insurance policy cannot be obtained or renewed.

#### **Unpermitted 820-ton Travelift and Proposed Amendment to Coastal Development Permit CDP-2005-04**

On December 6, 2005, by Resolution No. 2005-223, the Board authorized the issuance of a non-appealable CDP for the placement and operation of the 660-ton travelift and associated boat basin improvements (South Bay Boatyard Improvements Project).

In or around February 2025, it has come to the District's attention that an 820-ton travelift was located at MGBW without Coastal Act authorization. The Existing Tenant claimed the 820-ton travelift was not in operation but photographic evidence, confirmed by witnesses, showed the contrary. The District also confirmed that the 660-ton travelift was no longer on the Site. The placement of the new 820-ton travelift – whether operational or not – is considered a “development” under the California Coastal Act, requiring a CDP amendment. The removal of the 660-ton travelift, as well as the placement and operation of the 820-ton travelift is also an action that could give rise to a default under the Existing Lease.

To cure the violations, an amendment to CDP-2005-04 is required. Conditions, such as the use restrictions and the condition requiring no more than 660-ton displacement, have been included in the CDP amendment to ensure that the operation of the 820-ton travelift will not disrupt surrounding uses and will not result in an intensification of use.

In particular, the travelift will be programmed and operated with a maximum capacity of 660-ton vessel displacement weight, as set forth by the 2005 CDP. Other than a second 100-ton capacity travelift (existing) and the 820-ton travelift, no other travelifts are authorized to be placed at MGBW. Furthermore, additional special conditions are incorporated into the CDP to: 1) allow for District staff to conduct site inspections and request logs with detailed accounting of vessels serviced by the 820-ton travelift; 2) ensure the operation is in compliance with the City of Chula Vista Noise Ordinance and the Chula Vista Bayfront Natural Resources Management Plan; 3) prohibit light spillage over the MGBW leasehold boundary; and 4) any violation of the 660-ton displacement requirement will be subject to a \$100,000 penalty and the District may require Permittee to cease operations pending enforcement of the Permit.

The 820-ton travelift measures approximately 13 feet taller in height when compared to the previously approved 660-ton travelift. The increased height is nearly negligible when viewed from a distance because the view of the travelift would be obscured by the existing buildings and vessels parked in the travel lift. In addition, the travelift is not a solid or stationary object that would permanently obstruct views from the surrounding areas. Therefore, no visual impacts will occur and with the conditions in the CDP, no environmental or coastal resource impacts will occur.

In accordance with Section 14.d of the District's CDP Regulations, the Development Services Director determined that an amendment to CDP-2005-04 is necessary and that the proposed amendment would be a material change due to the nature and extent of the proposed changes. The District's CDP Regulations require material amendments be considered by the Board, along with the consideration of consistency with the PMP.

The placement and operation of the new travelift would support the existing water-dependent use. The PMP designates MGBW's landside area for the following land uses: Commercial-Recreation, Habitat Replacement, and Promenade. The PMP recognizes that MGBW is a non-conforming use under the current designated land uses, and "*may continue to operate until the site is redeveloped to a conforming Commercial Recreation use. Prior to redevelopment, additional boat repair capacity will be identified*". The 820-ton travelift is limited to the previously approved maximum vessel carrying capacity of 660 tons. The placement of the 820-ton travelift is consistent with the certified PMP. Further, the placement of the new travelift is consistent with the California Coastal Act Sections 30604(c), 30251, 30253, and 30255.

### **Conclusion and Recommendation**

The proposed assignment is consistent with BPC Policy No. 355 and would enable the District to update the lease language, increase rent and receive lump sum payments towards the future development of Harbor Park in the CVB. Staff recommends that the Board adopt a resolution finding the board action is exempt under CEQA, including, but not limited to, CEQA Guidelines Section 15302; authorizing the issuance of Amendment No. 1 to Non-Appealable CDP-2005-04, consenting to the proposed transfer of ownership interest, and adopt an ordinance to authorize an A&R Lease.

### **General Counsel's Comments:**

The Office of the General Counsel has reviewed this agenda sheet and attachments, as presented to it, and approves the same as to form and legality.

### **Environmental Review:**

The proposed Board actions, including without limitation authorizing the issuance of Amendment No. 1 to CDP-2005-04, consenting to the assignment and assumption of the leasehold interest from MGBW to MGGH, and an ordinance granting an amended and restated lease to MGGH to update the lease to current terms, are Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines

Section 15302 (Replacement or Reconstruction) of and Section 3.b.(2) of the District's Guidelines for compliance with CEQA because the project would consist of the placement of a 820-ton travelift (with a maximum vessel carrying capacity of 660 tons and implementation of use restrictions) and removal of the existing 660-ton travelift. The 820-ton travelift would be programmed to adhere to the 660-ton carrying capacity, therefore, will not result in expansion of use beyond existing condition. Furthermore, the 820-ton travelift would not result in adverse visual impact to the surrounding areas as it is not a solid structure and or stationary object that would permanently obstruct views. Moreover, the view of the travelift will be obscured by the existing buildings and vessels onsite. The District has also determined none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2).

The proposed Board actions comply with Section 21,35, and 87 of the Port Act, which allow the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers and the construction, reconstruction, repair, maintenance and operation of buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board actions are consistent with the Public Trust Doctrine.

#### **Diversity, Equity, and Inclusion Program:**

This agenda sheet has no direct impact on District workforce or contract reporting at this time.

#### **PREPARED BY:**

James Hammel  
Department Manager, Real Estate

Michelle Chan  
Assistant Director, Development Services

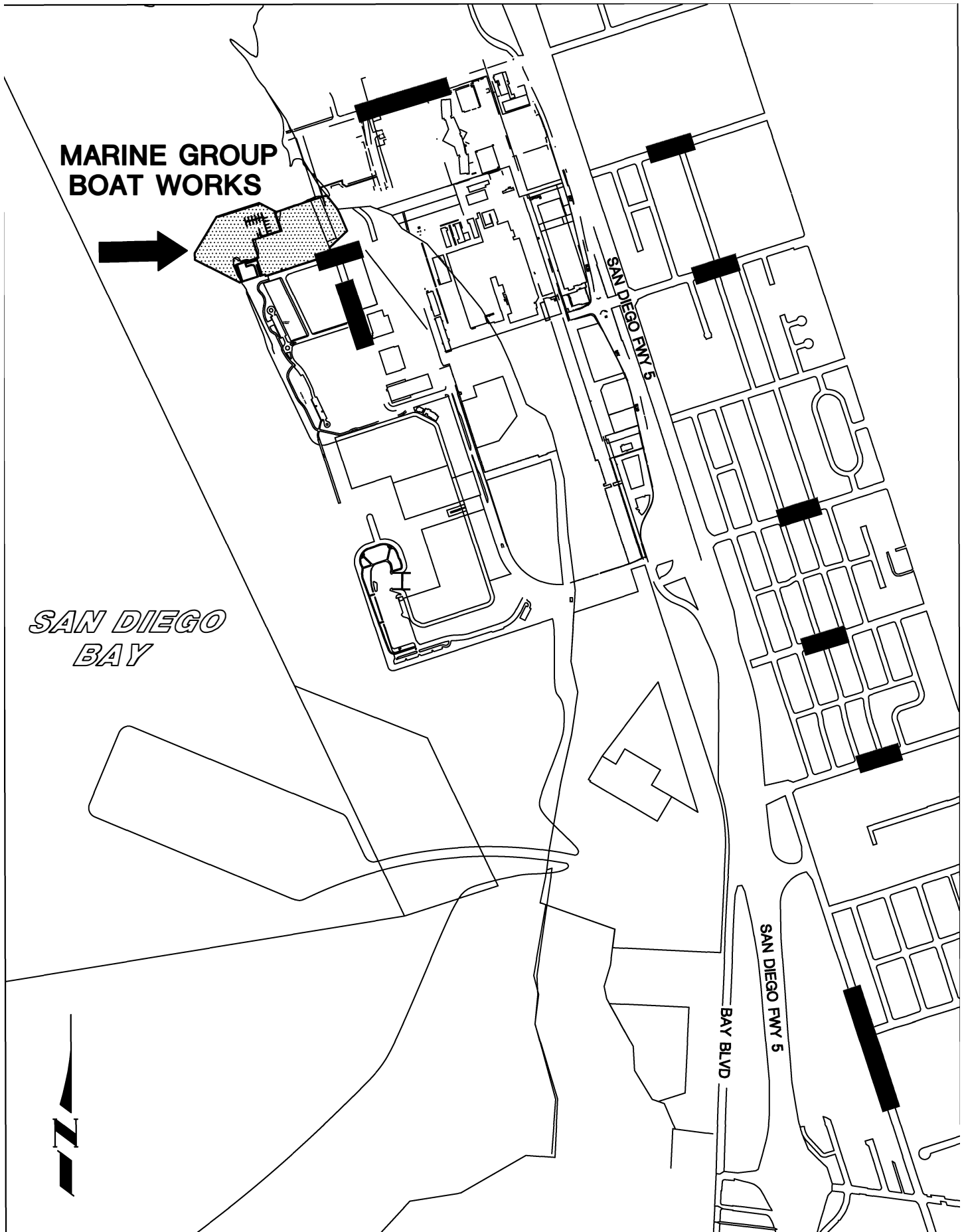
#### **Attachment(s):**

Attachment A: Location Map

Attachment B: Form of Amended and Restated Lease

Attachment C: Form of Assignment and Assumption of Lease

Attachment D: Draft Coastal Development Permit Amendment (CDP-2005-04)



Attachment A to Agenda File No. 2025-111

**SAN DIEGO UNIFIED PORT DISTRICT**  
Chula Vista, CA

**SAN DIEGO UNIFIED PORT DISTRICT  
AMENDED AND RESTATED LEASE TO  
MARINE GROUP BOAT WORKS, LLC  
OF PROPERTY LOCATED AT  
997 G Street  
Chula Vista, CALIFORNIA**

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### **EXHIBITS**

EXHIBIT A	DESCRIPTION OF PREMISES
EXHIBIT B	DEPICTION OF PREMISES
EXHIBIT C	<i>Intentionally Omitted</i>
EXHIBIT D	CONSTRUCTION REQUIREMENTS
EXHIBIT E	CONTINUING GUARANTY
EXHIBIT F	MEMORANDUM OF LEASE
EXHIBIT G	<i>Intentionally Omitted</i>
EXHIBIT H	<i>Intentionally Omitted</i>
EXHIBIT I	FORM OF LANDLORD'S ESTOPPEL STATEMENT
EXHIBIT J	<i>Intentionally Omitted</i>
EXHIBIT K	ENVIRONMENTAL DISCLOSURE FORM

## AMENDED AND RESTATED LEASE

THIS LEASE is entered into as of \_\_\_\_\_, 20\_\_\_\_ ("Effective Date") by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation ("**Landlord**") and MARINE GROUP BOAT WORKS, LLC, a California limited liability company ("**Tenant**").

### RECITALS

- A. On July 16, 1985, Landlord and Lessee's predecessor-in-interest, South Bay Boat Yard, Inc., entered into a Lease of certain tidelands located on the north side of "**G**" Street at the terminus of both Quay Avenue and Sandpiper Way, in the city of Chula Vista, California, which Lease is on file in the Office of the Clerk of Lessor bearing Document No. 18402 (as amended, the "**Original Lease**"); and
- B. On February 17, 1987, Landlord consented to the merger of South Bay Boat Yard, Inc. into Southwest Marine, Inc. dba South Bay Boat Yard and Southwest Marine, Inc. dba South Bay Boat Yard became Lessee under the Original Lease; and
- C. Landlord and Southwest Marine, Inc. dba South Bay Boat Yard amended the Original Lease with the following amendments: Amendment No. 1, dated March 31, 1987 and on file in the Office of the Clerk of Landlord bearing Document No. 20556; Amendment No. 2, dated September 20, 1988 and on file in the Office of the Clerk of Landlord bearing Document No. 22731; Amendment No. 3, dated September 3, 1991 and on file In the Office of the Clerk of Landlord bearing Document No. 27423; a Fourth Amendment of Lease dated December 28, 1994 and on file In the Office of the Clerk of Landlord bearing Document No. 32241; and Amendment No. 5 dated November 18, 1997 and on file In the Office of the Clerk of Landlord bearing Document No. 36731; and
- D. On November 25, 1997, Southwest Marine, Inc. dba South Bay Boat Yard assigned the Original Lease, as amended, to Tenant's predecessor in interest, The Marine Group, LLC, under that certain Assignment, Assumption and Lender's Consent to Assignment and Amendment of Lease on file in the Office of the Clerk of Landlord bearing Document No. 36732; and
- E. Landlord and The Marine Group, LLC further amended the Original Lease with the following amendments: Amendment No. 6 dated September 29, 1998 and on file in the Office of the Clerk of Landlord bearing Document No. 38083; Amendment No. 7 dated December 3, 2020 and on file in the Office of the Clerk of Landlord bearing Document No. 45186; and Amendment No. 8 dated June 21, 2005 and on file in the Office of the Clerk of Landlord bearing Document No. 51198; and
- F. On February 3, 2009, Landlord and The Marine Group, LLC, entered into an Amended, Restated and Combined Lease, which is on file in the Office of the Clerk of Landlord bearing Document No. 54509 (as amended, the "**AR Lease**"); and
- G. On April 6, 2010, The Marine Group, LLC assigned its interest in the AR Lease to Tenant under the assignment agreement on file in the Office of the Clerk of Landlord bearing Document No. 56564; and
- H. Landlord and Tenant amended the AR Lease with the following amendments: Amendment No. 1 dated July 10, 2012 and on file in the Office of the Clerk of Landlord bearing Document No.

59238; and Amendment No. 2 dated November 6, 2015 and on file in the Office of the Clerk of Landlord bearing Document No. 64198;

I. Landlord and Tenant acknowledge that the Tenant has pending development application with the Landlord and, subject to Section 8.3 of this Lease, upon construction of ten million, one hundred and fifteen thousand dollars (\$10,150,000) of **"Qualifying Capital Investment"** (as that term is specified in Board of Port Commissioners Policy No. 355 and incorporated herein by reference) for the development, this Lease shall be amended to add fifteen (15) years of Term, as defined below;

J. On or about the date of this Lease, Marine Group Global Holdings, LLC, a Delaware limited liability company, is acquiring all of the ownership interests in Tenant (the **"Interest Purchase"**) and the Interest Purchase was consented to by Landlord's Board of Port Commissioners on April 15, 2025 by Resolution No. \_\_\_\_\_, conditioned upon, among other things, the execution and effectiveness of this Lease, and the payment to District of one million five hundred thousand dollars (\$1,500,000) as consideration for exclusion of certain provisions from the AR Lease in this Lease as set forth in the above referenced Resolution; and

K. Contemporaneously with and as a condition to the effectiveness of the Interest Purchase, Landlord and Tenant now wish to enter this Lease.

For good and valuable consideration, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term and upon the terms and conditions hereinafter set forth, the Premises described in Section 1.2 below, and, subject to the terms of the Article 23 of this Lease, Landlord conveys to Tenant and Tenant accepts from Landlord, all of Landlord's right, title and interest in and to the Existing Improvements and Landlord and Tenant hereby agree as follows:

## **1. BASIC LEASE PROVISIONS**

The following basic lease terms are referred to in other provisions of this Lease and constitute a part of this Lease and are to be read together with and constitute a part of the terms of this Lease.

### **1.1 Term (See Article 1):**

\_\_\_\_\_ years and \_\_\_\_\_ months as follows; provided, however, if there are Options to Extend provided below, the **"Term"** includes the applicable Option Term following exercise of the Option to Extend in accordance with the terms of this Lease:

**1.1.1 Commencement Date: February 1, 1985**

**1.1.2 Expiration Date: January 31, 2030**

**1.1.3 Option to Extend: ONE (1) OPTION FOR ELEVEN (11) YEARS**

### **1.2 Premises:**

The Premises consist of the real property more particularly described in Exhibit **"A"** attached hereto and depicted in Exhibit **"B"** consisting of approximately 419,823 square feet of land area and approximately 358,756 square feet of water area, inclusive of all surface and subsurface areas, located at 997 G Street in the City of Chula Vista, California, attached hereto. The Existing

Improvements include, but are not limited to, a concrete breakwater, a sheet pile bulkhead wall, a launching ramp, mooring/berthing docks, multiple piers to support travel lift (mobile hoist crane) operations, underground utilities, a stormwater diversion system and several onshore buildings and workshops to support boat repair.

### 1.3 **Permitted Use (See Article 4):**

The Premises shall only be used as follows and for no other purpose (the "**Permitted Use**"): (i) the building and repair of vessels not to exceed a 660-ton displacement, telecommunication installations with the prior written approval of the Executive Director of Landlord in each instance, (ii) all uses which are normally and customarily ancillary or incidental to the use described in clause (i), and (iii) parking spaces serving the foregoing uses (the uses described in clauses (i), (ii) and (iii) are collectively called the "**Primary Use**"), and (iv) any other use of the Premises approved by the Landlord in writing provided such use is not restricted by a Coastal Development Permit ("**CDP**"), any Laws or the certified Port Master Plan ("**PMP**").

### 1.4 **Rent Commencement Date and Rental Periods (See Section 5.1):**

The Rent Commencement Date shall be the Commencement Date.

The Rental Periods under the Lease shall be the one-year periods commencing on the Effective Date, each with the Monthly Rent as set forth below, to be paid in accordance with Section 5.2:

Rental Period	Monthly rent
July 7, 2025 – June 30, 2026	\$74,532
July 1, 2026 - June 30, 2027	\$74,532
July 1, 2027 – June 30, 2028	\$76,768
July 1, 2028 – June 30, 2029	\$79,071
July 1, 2029 – June 30, 2030	\$81,443
July 1, 2030 – June 30, 2031	\$83,886
July 1, 2031 – June 30, 2032	\$86,403
July 1, 2032 – June 30, 2033	\$88,995
July 1, 2033 – June 30, 2034	\$91,665
July 1, 2034 – June 30, 2035	\$94,415
July 1, 2035 – June 30, 2036	\$97,247
July 1, 2036 – June 30, 2037	\$100,165
July 1, 2037 – June 30, 2038	\$103,170
July 1, 2038 – June 30, 2039	\$106,265
July 1, 2039 – June 30, 2040	\$109,453
July 1, 2040 – January 31, 2041	\$112,736

\*If the Effective Date is not the first day of a month, Monthly Rent for the partial month commencing as of the Commencement Date shall be prorated based upon the actual number of days in such month and shall be due and payable upon the Effective Date.

In addition to the above Monthly Rent, Tenant acknowledges and agrees to pay Landlord lump sum payments in accordance with the schedule below, to be paid on the first day of the first month of the referenced rental period along with the Monthly Rent for that month:

First Rental Period:	Five Hundred Thousand Dollars (\$500,000)
Second Rental Period:	Two Million Dollars (\$2,000,000)
Third Rental Period:	Two Million Five Hundred Thousand Dollars (\$2,500,000)

Additionally, effective on the Seventeenth Rental Period, the Monthly Rent shall be adjusted in accordance with Section 5.3 herein. Once the new Monthly Rent has been determined, the annual rent through the remaining term of this Lease will be increased by three percent (3%) annually.

## **1.5 Insurance (See Article 18):**

### **1.5.1 Commercial General Liability:**

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 not less than Four Million Dollars (\$4,000,000) unless a Two Million Dollars (\$2,000,000) per location aggregate limit is provided by separate endorsement.

### **1.5.2 Environmental Liability Insurance:**

In addition to all other insurance required under Article 18, Tenant shall use commercially reasonable efforts to obtain and maintain in full force and effect throughout the Term (including any holdover period or extension thereof), at its sole cost and expense, a leasehold environmental liability insurance policy (also known as pollution legal liability insurance) covering pollution conditions at, on, in, under, and emanating to or from (i.e., offsite of) the Premises (collectively, "Pollution Conditions") ("Environmental Liability Policy") consistent with the requirements of Section 18.3 and 18.4 and with a liability limit of twenty million dollars (\$20 million) naming Landlord Parties as additional insureds, which Environmental Liability Policy shall meet the following minimum coverage requirements or otherwise be reasonably acceptable to Landlord:

- (a) Cleanup cost coverage for existing and new Pollution Conditions pursuant to Tenant's obligations under Section 21;
- (b) Coverage for third party claims for bodily injury relating to or arising from Pollution Conditions;
- (c) Coverage for third party claims for property damage relating to or arising from Pollution Conditions;

- (d) Coverage for transportation of materials containing hazardous substances or wastes to or from the Premises; (v) coverage for business interruption with no more than a three day deductible period;
- (e) Scheduling this Lease and the Guaranty as Insured Contracts; and
- (f) Any proposed exceptions to or exclusions from coverage under (a) through (e) of this subsection to be acceptable to Landlord in its reasonable discretion.

Tenant shall timely renew such policy, without lapse, and provide evidence of such renewal to Landlord not less than thirty (30) days prior to the expiration date of the then-current policy. At each policy renewal, or at a minimum every five (5) years, whichever occurs sooner, the liability limits of the Environmental Liability Policy shall be increased by an amount equal to increases in the CPI since policy inception or the prior policy renewal as the case may be.

If, despite Tenant's commercially reasonable efforts, Tenant is unable to obtain the Environmental Liability Policy, or if at any point during the Term Tenant is unable to renew the Environmental Liability Policy despite its commercially reasonable efforts, the Guarantor's Minimum Net Worth Requirement under Exhibit E (Continuing Guaranty) shall increase by six million dollars (\$6,000,000) to twenty million dollars (\$20,000,000), in which case, the annual CPI increase otherwise applicable to the Minimum Net Worth Requirement amount under the Guaranty shall not start until the commencement of the third Rental Period.

Tenant is obtaining a Phase II Environmental Site Assessment ("Phase II") of the Premises in connection with the Environmental Liability Policy. In the event that such Phase II identifies any Recognized Environmental Conditions (as defined under ASTM E1527-21), Section 21.1.6, shall apply and if Landlord, in its reasonable discretion, determines that Tenant does not have insurance or other financial resources sufficient to enable Tenant to fulfill its obligations under this Article 21 whether or not accrued, liquidated, conditional, or contingent, then Tenant shall, at the request of Landlord, 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 Landlord as is appropriate to assure that Tenant will be able to perform its duties and obligations hereunder.

**1.6 Security Deposit (See Article 28):**

\$216,390

**1.7 Notice Addresses (See Article 27):**

To Tenant:  
Byron ("Chip") Besse, Manager  
997 G Street  
Chula Vista, CA 91910

To Landlord:  
Executive Director  
San Diego Unified Port District  
Post Office Box 120488

**1.8 Guaranty:**

Tenant's performance of all its obligations under this Lease shall be guaranteed by \_\_\_\_\_, and Tenant shall cause such guarantor(s) to execute and deliver to Landlord, concurrently with Tenant's execution and delivery of this Lease, a Guaranty of Lease in the form and substance of Exhibit E attached hereto.

**2. GENERAL DEFINITIONS**

Certain initially capitalized terms used in this Lease are more particularly defined or are cross-referenced in the Definitions Addendum attached to this Lease. The definitions set forth in the Definitions Addendum are incorporated herein by this reference.

**3. TERM**

**3.1 Term.**

The "**Term**" of this Lease shall be the period commencing on the Commencement Date and ending on the Expiration Date as described in Section 1.1, unless sooner terminated or extended as provided in this Lease. The Term is set forth in Section 1.1.

**3.2 Option to Extend.**

Tenant shall have the Option to Extend the Term described in Section 1.1 upon the express condition precedent that Tenant shall give written notice to Landlord of its satisfactory completion of the conditions in this Section and request to exercise the Option to Extend at least twenty four (24) months prior to the expiration of the immediately preceding Term however, in no event sooner than twenty seven (27) months prior to the expiration of the preceding Term. The additional Term for which this option is exercised shall commence at the expiration of the immediately preceding Term. If the Term is extended pursuant to the Option to Extend, the Expiration Date shall become the last day of the applicable Option Term. Landlord will grant the Option to Extend if all of the terms and conditions for the Option to Extend have been met. Upon exercise of said Option to Extend as provided herein, this Lease shall continue in full force and effect in accordance with the terms, covenants, and conditions thereof, including the adjustment of Monthly Rent as herein provided.

Notwithstanding anything to the contrary, the eleven (11) year option cannot be exercised unless the following requirement has been met: (i) Tenant qualifies as a "tenant in good standing" for the three (3) year period preceding the option exercise. To qualify as a "tenant in good standing," Tenant shall have (a) maintained the Leased Premises in good condition, free of deferred maintenance, (b) promptly paid Rent; (c) complied with all of the provisions of the Lease including, but not limited to, the use provisions (except for any violation of a use provision subject to a Operational Testing Period as provided in Section 4.4.2 below, which violation shall not affect Tenant's qualifications as a "tenant in good standing"), insurance requirements, and regulatory permitting processes, (d) complied with Sections 4.7 of this Lease; (e) complied with the Lessor's policies on public accommodation; (f) Tenant shall not be in default hereunder; and (g) fully paid to Landlord a total of Five Million Dollars (\$5,000,000) in the lump sum amounts and by the dates specified in Section 1.4.

Tenant shall only be considered to have failed to comply with any of the requirements in the preceding paragraph if Tenant has failed to cure any of the above provisions after all applicable notice and cure periods, in accordance with this Lease.

Without limitation of the foregoing, no action by Tenant, including without limitation, any investment, improvement, maintenance, repair or alteration in or to the Premises, shall create any right of Tenant, or any obligation of Landlord, to extend the Initial Term of this Lease beyond the Option to Extend expressly set forth in Section 1.1 and subject to the terms of this Section 3.2.

### **3.3 Demolition and Remediation Security Amount**

If a Demolition and Remediation Security Amount has been established pursuant to Section 7.4 prior to the expiration of the Initial Term and an Option to Extend exists and is exercised, then, Tenant shall pay monthly as Additional Rent, concurrent with the monthly payment of Monthly Rent, an amount required for the Demolition and Remediation Security Amount to grow by three percent (3%) per annum on a basis during the Option Term.

### **3.4 Prior Agreements.**

This Lease amends and restates the AR Lease such that in the event there is any conflict between the terms of the AR Lease and this Lease, the terms of this Lease shall control. Notwithstanding the foregoing, any obligations of Tenant and/or its predecessors in interest under the AR Lease or Original Lease accruing or arising on or prior to the Effective Date, or which are otherwise required to be performed in connection with termination or surrender of the Premises, or which by their terms survive such termination, shall remain enforceable by Landlord.

## **4. USE**

### **4.1 Permitted Use**

Tenant agrees that the Premises shall be used only and exclusively for the Permitted Use described in Section 1.3 and for no other purpose whatsoever. This restriction on use of the Premises absolutely prohibits a change in use. Tenant acknowledges and agrees that the only parking it has a right to utilize in connection with the Permitted Use is the parking located on the Premises. Tenant shall not utilize any public parking located adjacent or proximate to the Premises for employee parking

The Permitted Use is subject to the following restrictions (collectively, **"Use Restrictions"**): (a) any change to the Permitted Use, travel lift size, or tonnage limit, including the Maximum Displacement Requirement, Prohibited Nighttime Operations, Lighting Requirement and Noise Standards, as those terms are herein defined, shall require BPC approval, to be granted or withheld in the BPC's sole and absolute discretion, (b) no greater than 660-ton travel lift displacements shall occur and Tenant shall provide Landlord, within five (5) business days of written request from Landlord, a signed declaration from the travel lift's manufacture that the travel lift on the Premises has been and remains electronically limited to a maximum lifting capacity of 660 tons displacement (**"Maximum Displacement Requirement"**), (c) lighting on and from the Premises during night operations shall be directed away from the adjacent resort and convention center (the **"Hotel"**), wildlife refuge, and wildlife habitat (the **"Refuge"**) (collectively, the **"Lighting**

**Requirement**"); (d) operations on the Premises shall be subject to the Chula Vista exterior noise limits in accordance with Table III of Chapter 19.68.030 of the Chula Vista Municipal Code, and in particular (i) the limits from 10:00 p.m. to 7:00 a.m. shall be those standards for Multiple Dwelling Residential exterior noise limits in accordance with Table III of Chapter 19.68.030 of the Chula Vista Municipal Code (the "**Nighttime Noise Standards**"), and (ii) the limits from 7:00 a.m. to 10:00 p.m. shall be those standards for Commercial exterior noise limits in accordance with Table III of Chapter 19.68.030 of the Chula Vista Municipal Code except, at the boundaries of the Refuge, during the typical avian breeding season of January 15 to August 31 noise levels shall not exceed 60 dB(A) (decibel, A-weighted) Leq (equivalent continuous sound level) (the "**Daytime Noise Standards**") (collectively, the "**Noise Standards**"), and (e) Tenant shall not do any of the following between the hours of 10:00 p.m. and 7:00 a.m.:

- Sand blasting
- High pressure water jetting
- Travel lift operation\*
- Crane operation
- Hammering or other banging on metal
- Metal cutting, except for metal cutting that can be accomplished without any appreciable noise, such as cutting with an acetylene torch
- Metal grinding
- Any other activity that would exceed the Noise Standards and Lighting Requirement

\*There may be occasional urgent night-time requests from the U.S. Coast Guard to remove a vessel from the water that is in danger of sinking, in which case the travel lift may be used to remove the requested vessel.

The foregoing in this subsection (e) with the exception of "any other activity that would exceed the Noise Standards and Lighting Requirement" are collectively referred herein as "**Prohibited Nighttime Operations**".

#### **4.2 Monitoring and Logs**

Landlord shall place noise monitors, at Tenant's expense, at location(s) on the façade of the Hotel subject to the approval of the Hotel or a location that is mutually acceptable by both Parties that is similarly situated, and at the boundary of the Refuge to monitor noise levels during operations. The noise monitoring shall be implemented in a manner that automatically sends alerts of noise exceedance of the Noise Standards to at least two (2) designated personnel of the Tenant that are present on the Premises during operations and at least two (2) designated personnel of the Landlord ("**Designated Personnel**"). The Designated Personnel shall be identified by Landlord and Tenant upon the full execution of this Lease and may change from time to time with notice to the other Party that may be given by electronic mail. Within twenty-five (25) minutes of an alert to Tenant's Designated Personnel, Tenant shall promptly cease such operations causing the noise violation for the duration of the daytime or nighttime shift, as the case may be.

Upon receiving an automated alert that Tenant's operations have exceeded the Noise Standards, Tenant shall promptly, but in no event more than seven (7) days after the date of the violation, propose a plan to the Landlord to ensure that future operations will not violate the Noise Standards, which may include installation of noise buffering measures and/or relocation of offending operations to a different portion of the Premises. Tenant's plan shall be subject to the Landlord's reasonable approval. The Landlord may propose additional reasonable measures to ensure compliance with the Noise Standards, provided that Landlord and Tenant shall cooperate, in good faith, to ensure a solution that (i) mitigates the noise from operations to a level that complies with the Noise Standards and (ii) does not unreasonably interfere with Tenant's ability to operate the Premises for the Permitted Use. Landlord's approval of the plan shall not excuse any previous violations of the Noise Standards nor waive any remedies for future violations of the Noise Standards.

If Landlord reasonably believes Tenant is violating the Lighting Requirement, it may provide notice of such alleged violation to Tenant in accordance with the notice provisions in Section 4.5.2 below. Upon receiving such notice of an alleged violation of the Lighting Requirement, Tenant shall correct the alleged violation within twenty-five (25) minutes of receipt of the notification.

#### **4.3 820-Ton Travel Lift and CDP Amendment**

Landlord and Tenant agree and acknowledge that the 820-ton travel lift currently located and utilized on the Premises was not authorized by Landlord prior to installation and exceeds the current tonnage limitations under the AR Lease. Notwithstanding the foregoing, Landlord has agreed to allow continued use of the travel lift under this Lease subject to all of the restrictions set forth in this Section 4 and as specified in the amendment to the current Coastal Development Permit ("**CDP Amendment**"), as previously approved by Landlord. The CDP Amendment allows for a maximum lifting capacity of 660 tons displacement, subject to any additional conditions set forth in the CDP Amendment. Tenant shall not exceed the Maximum Displacement Requirement or otherwise in any way beyond what is explicitly authorized under this Lease and the CDP Amendment.

Within ten (10) business days of receipt of a written request from Landlord (that may be transmitted by electronic mail), Tenant shall provide to Landlord, operating logs for the previous six (6) months that consist of (i) the vessel's name, (ii) haul weight in tons, (iii) launch weight in tons, (iv) haul date and launch date. The operating log shall be submitted with a declaration under penalty of perjury that the information is accurate and that the vessels reported in the log are the only vessels serviced by the 820-ton travel lift.

#### **4.4 Inspections and Liquidated Damages**

##### **4.4.1 Maximum Displacement Requirements and Prohibited Nighttime Operations:**

Landlord may conduct inspections to verify Tenant's compliance with the Maximum Displacement Requirement, Prohibited Nighttime Operations and Lighting Requirements without prior notice to Tenant. Tenant's failure to comply with the Maximum Displacement Requirements and the Prohibited Nighttime Operations shall be a default under Section 12.1.5 and shall not be subject to the notice and cure provisions of Section 12.1.3. In addition to any and all remedies under this Lease, at law, and in equity, the following liquidated damages amounts shall apply to each violation of the Maximum Displacement Requirement and the Prohibited Nighttime Operations. A "violation" for purposes of this Section 4.4.1 shall mean any violation of either the Maximum Displacement Requirement or Prohibited Nighttime Operations, at any time, such that

violation of both use provisions within the same day shall constitute multiple violations each triggering liquidated damages hereunder, and such that continuation of any violation of shall constitute an additional violation subject to liquidated damages.

For the first violation of the Maximum Displacement Requirement of the travel lift during the Term, Tenant shall pay to District an amount equal to half of the current Monthly Rent applicable at the time of violation as liquidated damages, and for each violation of the Maximum Displacement Requirement thereafter, Tenant shall pay Landlord an amount equal to the current Monthly Rent applicable at the time of the violation as liquidated damages. .

For the first violation of the Prohibited Nighttime Operations during the Term, Tenant shall pay to District an amount equal to half of the current Monthly Rent applicable at the time of violation, and for each violation of the Prohibited Nighttime Operations thereafter, Tenant shall pay Landlord an amount equal to the current Monthly Rent applicable at the time of the violation as liquidated damages.

#### **4.4.2 Noise Standards and Lighting Requirement**

In addition to any and all remedies under this Lease, at law, and in equity, the liquidated damages amounts set forth below shall apply to each violation of the Noise Standards or Lighting Requirement.

A "violation" for purposes of this Section 4.4.2 shall mean any violation of either the Noise Standards or Lighting Requirement, at any time such that violation of multiple use provisions within the same day shall constitute multiple violations each triggering liquidated damages hereunder, and such that continuation of any violation of a Use Restriction after delivery of notice of violation (if applicable) of such Use Restriction shall constitute an additional violation subject to liquidated damages.

Any violation of the Noise Standards or Lighting Requirement shall be a violation triggering liquidated damages hereunder, regardless of the duration of the violation, and additionally, each continuation of any violation of the Noise Standards for twenty five (25) minutes shall be a separate additional violation subject to liquidated damages, such that a first violation occurs upon commencement of the violating activity, a second violation occurs if that activity continues beyond fifty (50) minutes, a third violation occurs if the activity continues beyond seventy five (75) minutes, and so on. Notwithstanding any other provision in this Lease, upon receipt of the automatic notice to Tenant's Designated Personnel of a violation of the Noise Standards or notice for violation of the Lighting Requirements, which may be by sent by electronic mail or telephone Tenant shall be required to modify operations within twenty five (25) minutes until compliant. Landlord and Tenant agree that noise over which Tenant has no control, such as a boat or car alarm set off unintentionally, shall not constitute a violation of the Noise Standards.

Upon receiving notice from Landlord of the assessment of liquidated damages, Tenant shall have a reasonable opportunity to respond to the notice to demonstrate that it did not violate the Noise Standards or Lighting Requirement and Landlord may, in its reasonable judgment, not assess the liquidated damages.

Liquidated Damages due to Landlord from Tenant from violations of the Noise Standards or Lighting Requirement shall be as follows:

<u>Noise or Lighting Violation</u>	<u>Liquidated Damages</u>
1 <sup>st</sup> violation in a calendar year	\$5,000
2 <sup>nd</sup> violation in a calendar year	\$10,000
3 <sup>rd</sup> violation in a calendar year	\$20,000
4 <sup>th</sup> violation in a calendar year	An amount equal to half of the current Monthly Rent applicable at the time of the violation
Each subsequent violation in a calendar year	An amount equal to the currently Monthly Rent applicable at the time of the violation

Notice to Tenant with respect to violations of Noise Standards and Lighting Requirements, shall be given to \_\_\_\_\_ at \_\_\_\_\_ and at \_\_\_\_\_, and to \_\_\_\_\_ at \_\_\_\_\_ and at \_\_\_\_\_.

Tenant's fourth violation of a Noise Standard and/or Lighting Requirement in any calendar year shall be a default under Section 12.1.5 and shall not be subject to the notice and cure provisions of Section 12.1.3, and shall be subject to any and all remedies available under this Lease, at law, and in equity and the Landlord and Tenant shall meet and confer to amend this Lease to increase the amount of liquidated damages.

Notwithstanding any other provisions in this Section 4 to the contrary, Tenant shall have a period at the start of the term commencing upon the Effective Date of this Lease to enable Tenant and Landlord to cooperatively work together to ensure that Tenant's operations remain compliant with the restrictions in this Section 4 ("Operational Testing Period"). Specifically, Tenant shall have a thirty- (30-) day Operational Testing Period for compliance with the Lighting Requirement and the Nighttime Noise Standards. Tenant shall have a forty-five- (45-) day Operational Testing Period for compliance with the Daytime Noise Standards. If during the Operational Testing Periods, Tenant violates the Prohibited Nighttime Operations, Tenant shall have forfeited the Operational Testing Periods and the Operational Testing Periods shall be of no force or effect.

On the Effective Date, Tenant shall submit to Landlord for its reasonable approval an operational testing plan specifying (i) a range of sites on the Premises where different equipment will be operated during the day and night and (ii) a range of daytime and nighttime operations. During the Operational Testing Period, Tenant shall implement the operational testing plan. Landlord and Tenant shall meet weekly, unless sooner needed, to (a) review the noise monitoring, (b) the corresponding daytime and nighttime operations, (c) if the Noise Standards have been exceeded, implement additional reasonable measures to ensure compliance with the Noise Standards throughout the Term and (d) address ambient noise levels for future operations.

During the Operational Testing Period, Tenant shall not be subject to any liquidated damages for violation of the applicable Noise Standard or the Lighting Requirement and any such violations during the applicable Operational Testing Period will not count toward any default under this

Lease. During the Operational Testing Period, Tenant shall modify operations any time a violation of the Noise Standards or Lighting Requirement is detected.

Tenant shall have no Operational Testing Period for compliance with the Prohibited Nighttime Operations or the Maximum Displacement Requirement.

THE PARTIES ACKNOWLEDGE AND AGREE THAT ANY BREACH OF THE USE RESTRICTIONS SET FORTH IN THIS LEASE MAY CAUSE IRREPARABLE HARM FOR WHICH MONETARY DAMAGES WOULD BE INADEQUATE COMPENSATION. THEREFORE, IN THE EVENT OF SUCH BREACH THE NON-BREACHING PARTY SHALL BE ENTITLED TO SEEK IMMEDIATE INJUNCTIVE RELIEF (TEMPORARY, PRELIMINARY, AND/OR PERMANENT) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR IN EQUITY, WITHOUT THE NECESSITY OF PROVING THE INADEQUACY OF MONETARY DAMAGES OR POSTING ANY BOND OR OTHER SECURITY.

THE PARTIES HAVE AGREED THAT LANDLORD'S ACTUAL DAMAGES IN THE EVENT TENANT VIOLATES THE USE PROVISIONS WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS LEASE, THE AMOUNTS OF THE LIQUIDATED DAMAGES SET FORTH ABOVE ARE REASONABLE ESTIMATES OF THE DAMAGES THAT LANDLORD WOULD INCUR IN SUCH AN EVENT. BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE INTENT AND CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

Tenant Initials: \_\_\_\_\_

#### **Within Premises.**

Vessel repair, maintenance, and/or building of vessels are not permitted beyond the Premises boundaries. Tenant further agrees that all vessels, including end and side ties, shall be berthed within the bounds of the Premises; vessels shall not be berthed partially or totally outside the Premises.

#### **Specific Prohibited Uses.**

Among the other prohibited uses under this Lease, the following prohibitions shall apply: boat storage as a stand-alone commercial service (including, without limitation, derelict boat storage), commercial sport fishing, and operations, activities, and/or services involving commercial passenger cruises and/or excursions, such as sightseeing on San Diego Bay or harbor excursions (whether or not said cruises are regularly-scheduled, advertised to the general public, or include "open party" ticket sales), are specifically prohibited uses, operations, activities, and/or services which shall not be conducted on and/or from the Premises.

### **No Use Other Than Permitted Use.**

Except as expressly described in Section 4.1, Tenant shall not use or permit the Premises to be used for any other uses or purposes whatsoever. These restrictions on use of the Premises absolutely prohibit a change in use.

### **Continuous Operations.**

From and after the Rent Commencement Date, Tenant shall actively and continuously use and operate the entire Premises and Improvements for the Permitted Use, except to the extent unable to do so by reason of a Force Majeure Event and except for temporary interruptions reasonably and directly related to Major Alterations permitted under Section 6.2 (provided an interruption in use and operation related to a Major Alteration shall not exceed one (1) year in the aggregate). Without limitation of the foregoing, at a minimum, the Premises shall be continuously open for business, appropriately staffed with personnel, on such days and for such hours as is customary for similar business operations in San Diego County, California. Tenant acknowledges and agrees that said active and continuous use and operation enhances the value of the lands within Landlord's jurisdiction; provides needed public service; and provides additional employment, taxes, and other benefits to the general economy of the area.

### **Compliance with Laws.**

Tenant agrees that, in all activities on or in connection with the Premises, and in all uses thereof, including without limitation the Permitted Use and any construction of Improvements or the making of any Alterations, it will abide by and comply with, and cause Tenant Parties to abide by and comply with, all applicable Laws at Tenant's sole cost and expense, and Landlord shall not have any obligations or responsibilities to comply with any applicable Laws as to the Premises or any use thereby by Tenant. In particular and without limitation, Tenant shall have the sole and exclusive obligation and responsibility, at Tenant's sole cost and expense, to comply with the requirements of: (i) the San Diego Unified Port District Code, including without limitation, Article 10 (Stormwater Management and Discharge Control), (ii) the ADA, including but not limited to regulations promulgated thereunder, (iii) applicable federal, state and local laws and regulations regarding employment and labor practices, including, without limitation, the provisions of Section 6.7 and Article 17 below, (iv) any CDP (including any conditions of approval or mitigation measures or project changes pursuant to the environmental review under the California Environmental Quality Act ("**CEQA**")) or any other California Coastal Commission ("**CCC**") regulations or local, state or Federal requirements now or hereafter affecting the Premises or the Improvements including the use or development thereof, and (v) any other development permits or approvals required by Landlord.

In addition, Tenant shall comply with and abide by such guidelines and requirements established by Landlord from time to time pursuant to the terms of the Lease upon written notice by Landlord to Tenant. Without limitation of the foregoing, any failure of Tenant to fully satisfy and fulfill the requirements and conditions under any CDP (including any conditions of approval or mitigation measures or project changes pursuant to the environmental review under CEQA) or any other CCC regulations or local, state or Federal requirements (collectively, "**Legal Requirements**") now or hereafter affecting the Premises or the Improvements including the use or development thereof shall constitute a default under this Lease; provided, an unknowing failure to comply with any Legal Requirements shall not be a default under this Lease should such failure be cured within thirty- (30) day period after written notice thereof is given to Tenant. If the nature of such unknowing failure is such that the same cannot reasonably be cured within such thirty- (30) day

period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure such failure, but in no event exceeding a period of time in excess of ninety (90) days after written notice thereof from Landlord to Tenant unless Tenant requests an extension of the ninety- (90) day period in writing and Landlord, in its reasonable discretion, grants Tenant the requested extension. Tenant acknowledges and agrees that this Section is separate and distinct from Landlord's ability to bring an enforcement action and levy fines under its regulatory authority

for failure to comply with any Legal Requirements.

#### **Green/Sustainable Leasing.**

Among other things, when Tenant is replacing equipment, Tenant shall replace it, if feasible, with the most energy efficient equipment that is California Energy Star rated or the environmental equivalent.

#### **Waste or Nuisance.**

Tenant shall not use, or fail to maintain, the Premises in a manner that constitutes waste or nuisance.

#### **Reservations.**

Landlord reserves the right and power to grant easements and licenses on, over, under and across the Premises to others, and the right and power for Landlord or the grantee to enter the Premises, for purposes such as constructing, installing, maintaining, repairing, replacing and removing utility systems and equipment and public improvements within the Premises. provided that such access shall be during normal business hours and upon at least two (2) days' prior notice to Tenant (except in the case of an emergency in which case no prior notice shall be required but each of Landlord and such grantee shall notify Tenant's on site manager thereof by phone prior to entering the Premises) and Landlord shall, and shall cause each of such grantee to: (a) comply with all applicable and reasonable security and safety procedures of Tenant of which Tenant informs Landlord in writing and with which Landlord and each such grantee can reasonably comply, and (b) use commercially reasonable efforts to minimize any interference with Tenant's operation and use of the Premises and the Improvements while on the Premises. Should Landlord so request, Tenant shall, at no cost to Tenant (other than de minimis expense) promptly join with Landlord in the execution of such documents as may be reasonably requested by Landlord to create or accommodate such grant of easement or license. Landlord agrees to use all reasonable efforts to require that grantees locate future easements, licenses, and rights-of-way, and to have such grantees install associated public facilities, so as to produce a minimum amount of interference with Tenant's business. Further, Tenant shall not be entitled to any monetary payment or other remuneration for any such future easements and rights-of-way; but nothing herein is a waiver of any rights or remedies that Tenant may have at law or in equity for Landlord's breach of this Section 4.6.

#### **4.10 Cooperation with Landlord's Chula Vista Bayfront Master Plan**

**4.10.1** Tenant shall keep all boats and equipment on the Premises organized in a uniform and orderly manner and use commercially reasonable efforts to keep unused equipment out of sight from the adjacent resort and convention center; provided, however, Tenant shall not offer or use the Premises for boat storage as

a stand-alone commercial service, including without limitation, derelict boat storage.

**4.10.2** Tenant shall complete installation of and maintain the perimeter fence around the Premises in accordance with the design approved in District Conditional Project Approval ("DCPA") dated May 21, 2024 on file in the Office of the District Clerk as Document No. 76748.

**4.10.3** Any changes to existing landscaping on the Premises shall be subject to the prior written approval of Landlord in its sole and absolute discretion.

**4.10.4** Tenant agrees to support the Chula Vista Bayfront Master Plan, Port Master Plan Amendment and Local Coastal Plan Amendment at the CCC, as well as implementation of future coastal development permits, tentative maps, final maps, and all elements of the Chula Vista Bayfront Master Plan at a project level.

## **5. RENT**

Tenant agrees to pay to Landlord the Monthly Rent and Additional Rent (collectively "**Rent**") in accordance with this Article 5. All payments of Rent and other sums due Landlord hereunder shall be paid in legal tender of the United States, without notice, invoice, setoff, deduction or demand, except as otherwise expressly provided herein. No payment by Tenant or receipt or acceptance by Landlord of a lesser amount than the Rent shall be deemed to be a waiver of any current or preceding breach by Tenant of any provision hereof. No endorsement or statement on any check or any letter accompanying any check or payment as Rent shall be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease, at law or in equity. Tenant waives all rights that it may have under present or future law to designate the items to which any payments made by Tenant are to be credited. Tenant agrees that Landlord may apply any payments made by Tenant to such items of Rent as Landlord designates, irrespective of any designation or request by Tenant as to the items to which such payments should be credited.

Payments can be made by either check or electronic transfer with remittance information emailed to [ARInvoices@portofsandiego.org](mailto:ARInvoices@portofsandiego.org). Checks must be made payable to the San Diego Unified Port District or Port of San Diego, and mailed to SDUPD General Account Lockbox, PO Box 841615, Los Angeles, CA 90084-1615. Wiring instructions are as follows:

Wells Fargo Bank  
420 Montgomery Street  
MAC: A0112-102  
San Francisco, CA 94104  
Account Title: Port of San Diego  
Account Number: 4944983881  
ACH/Wire Routing Number: 121000248

The designated place of payment and filing may be changed at any time by District upon ten (10) days' written notice to Tenant. Tenant assumes all risk of loss and responsibilities for late charges, as herein described, if payments are made by mail.

### **5.1 Rental Periods.**

The Term of this Lease shall be divided into the "**Rental Periods**" described in Section 1.4.

## **5.2 Monthly Rent.**

Commencing on the Commencement Date, and throughout the duration of the Term, Tenant shall pay Monthly Rent to Landlord in the amounts shown for each respective Rental Period in Section 1.4. The Monthly Rent shall be payable in advance on or before the 1st day of each month.

## **5.3 Monthly Rent Adjustment to Fair Market Rent.**

Commencing on the first month of the Seventeenth Rental Period, Tenant shall pay Monthly Rent as adjusted to fair market rent as determined in accordance with the provisions of this Section 5.3. The adjustment to the Monthly Rent ("**Fair Market Rent Adjustment**") shall be determined in accordance with the Rent Determination Factors and the provisions set forth below. The Monthly Rent as adjusted by the Fair Market Rent Adjustment ("**Adjusted Monthly Rent**") shall not be lower than the Monthly Rent Floor set forth in Section 5.3.3.

### **5.3.1 Outside Agreement Date.**

After commencement of the Sixteenth Rental Period, Landlord will propose a Fair Market Rent Adjustment amount to Tenant, and Landlord and Tenant will meet and confer with respect to Landlord's proposed Fair Market Rent Adjustment amount. If Landlord and Tenant reach agreement with respect to the Fair Market Rent Adjustment amount during this meet and confer period, then the Monthly Rent shall be adjusted in accordance with the agreed upon Fair Market Rent Adjustment amount. If Landlord and Tenant do not reach agreement on the Fair Market Rent Adjustment amount at least ninety (90) days after the commencement of the Sixteenth Rental Period ("**Outside Agreement Date**"), then the Adjusted Monthly Rent shall be determined by the appraisal process described in Section 5.3.2.

### **5.3.2 Appraisal Process.**

If Landlord and Tenant do not reach agreement on the Fair Market Rent Adjustment amount under Section 5.3.1, then each party shall prepare a separate, written proposal for the Adjusted Monthly Rent taking into consideration the Rent Determination Factors ("**Monthly Rent Proposal**"). The Monthly Rent Proposals shall not propose an Adjusted Monthly Rent less than the then Monthly Rent Floor set forth in Section 5.3.3. In addition to stating an Adjusted Monthly Rent, the Monthly Rent Proposal shall include analysis and data relied upon and an explanation of the basis for the proposed Adjusted Monthly Rent. No Monthly Rent Proposal shall include terms requiring Landlord to provide any improvements or services to Tenant or any economic concessions, incentives, abatements, allowances, subsidies, discounts or other similar benefits to Tenant. Each written Monthly Rent Proposal shall be concurrently submitted by each party to the other party and to the appraisers at least one hundred and eighty (180) days after the commencement of the Sixteenth Rental Period and the Adjusted Monthly Rent shall be determined in accordance with the following:

**5.3.2.1** Landlord and Tenant shall each appoint, at least one hundred and fifty (150) days after the commencement of the Sixteenth Rental Period, one appraiser who shall by profession be a current MAI real estate appraiser of commercial properties in the vicinity of the Premises, and who has been active in such field over the last five (5) years. Nothing herein prohibits a party from appointing an appraiser who has assisted such party in the preparation of such party's Monthly Rent Proposal. Notice of the appointment of an appraiser 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 shall provide written notice ("**Appraiser Appointment Notice**") to the other party expressly stating as follows: "PURSUANT TO SECTION 5.3.2.1 OF THE LEASE, UNLESS YOU APPOINT YOUR APPRAISER FOR THE DETERMINATION OF MONTHLY RENT AND PROVIDE WRITTEN NOTICE THEREOF TO THE UNDERSIGNED WITHIN TEN (10) DAYS FOLLOWING RECEIPT OF THIS NOTICE, THE MONTHLY RENT SHALL BE DEEMED TO BE THAT SET FORTH IN THE MONTHLY RENT PROPOSAL PREVIOUSLY SUBMITTED BY THE UNDERSIGNED." If the other party does not appoint its appraiser and fails to provide written notice thereof within ten (10) days following receipt of the Appraiser Appointment Notice, then the Adjusted Monthly Rent for purposes of Section 5.3 shall be deemed to be that set forth in the Monthly Rent Proposal submitted by the party that has appointed its appraiser.

**5.3.2.2** If both appraisers are appointed as provided above, then the two appraisers shall promptly choose an independent, third appraiser, who shall by profession be a current MAI real estate appraiser of commercial properties familiar with the valuation of ground leased waterfront properties within the state of California and active in such profession over the last five (5) years. The third appraiser shall not have assisted either party in the evaluation or preparation of its Monthly Rent Proposal or have been appointed by Landlord or Tenant or their Affiliates at any time within the prior ten (10) years as the appraiser or arbitrator for such party in a similar rental adjustment procedure. The fact that an appraiser may have, in the past, acted as an independent, third-party appraiser in an appraisal process similar to that provided in this Section involving Landlord or Tenant shall not, in itself, disqualify such appraiser from acting as the third-party appraiser under this Lease. If the two (2) appraisers fail to select a third appraiser within fifteen (15) days following the appointment of the second appraiser, on application by either party, the third appraiser shall be promptly appointed by the then-current president of the Appraisal Institute, San Diego Chapter, or if such person fails or refuses to make such appointment or there is no longer a San Diego Chapter of the Appraisal Institute, such third appraiser shall be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his/her individual capacity. The party making the application shall give the other party notice of its application.

**5.3.2.3** In determining the Adjusted Monthly Rent determined by the process under this Section 5.3, the parties and the appraisers shall consider the following (collectively, the "**Rent Determination Factors**"): (1) the Premises as if vacant and available for new construction, ignoring any Improvements (other than Existing Improvements) constructed or installed by Tenant, but with street access, utility services, and all other infrastructure serving the Premises including any shoreline protection (if the Premises are located on the waterfront) regardless of who paid for the installation of the street improvements, utility services and/or all other infrastructure serving the Premises including any shoreline protection; (2) the Premises as having all regulatory entitlements and development rights for the Permitted Use without regard to then current conditions; (3) the use of the Premises as if available for new leasing purposes under optimal development assumptions that are consistent with the then current Port Master Plan and the Permitted Use; (4) as if held by a private party in fee simple with all of the rights to sell, lease or transfer the owner's interest, and shall disregard any limitation resulting from public ownership or tidelands trust except as reflected in the Lease terms; (5) as if offered for lease in the open market; and (6) the parties and appraisers shall not reduce or discount the Adjusted Monthly Rent by reason of, or otherwise consider, any economic concessions, incentives, abatements, allowances, subsidies, discounts or other benefits granted by the Landlord or other governmental entity or agency to Tenant or any other tenant. No diminution in value shall be applied as a result

of any existing or potential Hazardous Materials including groundwater conditions or improvements, or lack of improvements, on the Premises. The parties and appraisers shall use and analyze only the market data that is found in the marketplace including but not limited to fee land values, gross revenues generated, and rents demanded and received by other landlords for the same or similar types of uses allowed on the Premises. In all cases, the appraisal decision shall be based upon recognized real estate appraisal principles and methods, unless otherwise specified in this Section 5.3.

**5.3.2.4** Promptly following their appointment, the third appraiser shall review the Monthly Rent Proposals and make its own determination of the Fair Market Rent Adjustment and Adjusted Monthly Rent. The determination of the third appraiser shall be limited solely to the issue of whether Landlord's or Tenant's submitted Monthly Rent Proposal is the closest to the actual fair market rent as determined by the third appraiser (i.e., the third appraiser may only select Landlord's or Tenant's determination of Adjusted Monthly Rent as closest to the actual fair market rent and shall not make a compromise determination). The Monthly Rent Proposal selected by the third appraiser shall be deemed the fair market rent for purposes of determining the Fair Market Rent Adjustment and Adjusted Monthly Rent. The third appraiser may request that each party and/or its selected appraiser provide to the third appraiser information relevant to such party's Monthly Rent Proposal in addition to that contained within its Monthly Rent Proposal and may discuss with each appraiser or both appraisers jointly, questions the third appraiser has relating to its determination. If the third appraiser believes that expert advice would materially assist them, the third appraiser may retain one or more qualified persons to provide expert advice. The determination of the third appraiser shall be in writing and shall be made no later than sixty (60) days following the selection of the third appraiser.

**5.3.2.5** Landlord and Tenant shall each pay for the cost of its appointed appraiser. Landlord and Tenant shall equally share the third appraiser's fee and expenses and the fee of any consultant(s) retained by the third appraiser to provide expert advice.

### **5.3.3 Monthly Rent Floor.**

The "Monthly Rent Floor" shall be the Monthly Rent payable during the Sixteenth Rental Period plus three percent (3%).

### **5.3.4 Retroactive Adjustment.**

If Adjusted Monthly Rent is not determined prior to the commencement of the Seventeenth Rental Period for any reason, then payments of Rent shall be calculated utilizing the Monthly Rent payable during the Sixteenth Rental Period plus and annual increase of three percent (3%) until completion of the adjustment to Monthly Rent under this Section 5.3, and the adjustment to Monthly Rent once completed shall apply retroactively to the commencement of the Seventeenth Rental Period. Within ten (10) days of the date the Adjusted Monthly Rent determination is made, any underpayment of the Rent based on retroactive application of the Adjusted Monthly Rent as determined under this Section 5.3 plus five percent (5%) annual interest on the underpayment amount shall be paid by Tenant to Landlord.

### **5.3.5 Subsequent Adjustments.**

The Adjusted Monthly Rent determined under this Section 5.3 shall be subject to annual increases of three percent (3%) on the commencement of each subsequent Rental Period through the remainder of the term of this Lease.

### **5.3.6 Lease Amendment Documenting Adjusted Monthly Rent.**

Upon determination of the Adjusted Monthly Rent under this Section 5.3, Landlord and Tenant shall execute an amendment to this Lease documenting the adjustment to Monthly Rent.

### **5.4 Late Charges.**

Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent will cause Landlord to incur costs not contemplated by this Lease. Accordingly, in the event Tenant is delinquent in rendering to Landlord an accounting of Rent due or in remitting the Rent due on the date due in accordance with the provisions of this Lease, Tenant shall pay, in addition to the unpaid Rent, five percent (5%) of the Rent due. If Rent is still unpaid at the end of ten (10) days after the date due, Tenant shall pay an additional five percent (5%) (collectively, "**Late Charges**"). The parties hereby agree that said Late Charges are Additional Rent and are not interest and that the Late Charges apply whether or not Tenant receives notice of its failure to pay Rent, and that said Late Charges are appropriate to compensate Landlord for loss resulting from rent delinquency including, without limitation, lost opportunities and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late submittal of an accounting of Rent due and/or late payment of Rent be less than One Hundred Dollars (\$100). Acceptance of such Late Charges and any portion of the late payment by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of its other rights and remedies. In addition to the application of a Late Charge, if Tenant fails to pay any Rent when due, the unpaid amount shall accrue interest at the Default Rate from the date due until paid and such interest shall itself be Additional Rent.

### **5.5 Net Lease.**

Tenant acknowledges that the Rent will be absolutely net of any costs or expenses to Landlord relating to Premises or any Improvements and acknowledges and agrees that Landlord shall not be responsible for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Premises or any Improvements during the Term, whether foreseen or unforeseen and whether or not within the contemplation of the parties at the commencement of the Term, except as shall be otherwise expressly provided in this Lease. Without limitation of the foregoing, Landlord shall not be required to construct, install, provide or arrange for any utilities, roadway, docks, tide walls, drainage or other improvements of any nature on, in, under or above the Premises or any other location.

### **5.6 Reimbursement.**

If under the terms of this Lease an amount expended by Landlord is to be reimbursed by Tenant pursuant to the "**Reimbursement Procedure**" then Tenant shall reimburse Landlord for the subject amount within fifteen (15) days of Tenant's receipt of an invoice or statement from Landlord for the subject amount and, if applicable, copies of any applicable third party invoices, work description and/or other reasonable evidence of the work performed for or by, and costs incurred by, Landlord. Any amounts owed to Landlord pursuant to the Reimbursement Procedure shall constitute Additional Rent and shall accrue interest at the Default Rate from the date due until paid if not paid within the time period permitted under the Reimbursement Procedure.

## 6. ALTERATIONS

### 6.1 [Intentionally Omitted]..

### 6.2 Alterations.Major Alterations.

The term "**Major Alterations**" means all Alterations other than Minor Alterations (as such term is defined in Section 6.2.2 below). Tenant shall comply with all Laws, at its sole cost and expense, including without limitation, obtaining any governmental permits and approvals required for the Major Alterations. Tenant may not make any Major Alterations without the prior written consent of Landlord in each instance, which consent may be granted or withheld in Landlord's sole discretion. Landlord may condition its approval of a Major Alteration on compliance with the Laws and Tenant obtaining insurance coverages in addition to those required under Article 18 if such additional coverage is customarily obtained in connection with work similar in scope to the Major Alteration. All Major Alterations shall be in accordance with plans and specifications, including but not limited to working drawings (collectively, "**Alteration Plans**") submitted to and approved in writing by Landlord prior to the commencement of the Major Alterations. Following approval by Landlord, any changes in the Alteration Plans are subject to Landlord's approval, in Landlord's sole discretion. Provided Landlord approves the Alteration Plans, if Tenant elects to proceed with the Major Alterations, Tenant must construct and complete all of the Major Alterations set forth in the Alteration Plans in one (1) integrated construction project with all due diligence.

#### 6.2.2 Minor Alterations.

The term "**Minor Alterations**" means Alterations that satisfy all of the following requirements: (i) they are made solely to the interior of the Improvements on the Premises; (ii) no discretionary permit or approval is required from any government agency to perform the Alteration and no CEQA review is needed in connection with the permits that are to be issued in connection with the Alteration; (iii) they do not require or involve structural modifications or affect in any material way the building systems within the Improvements or the portions of the Improvements generally accessible to the public such as the lobby area of a hotel (iv) they do not trigger any stormwater construction BMP permit or permanent structural BMP permit or alterations to existing permanent structural BMPs; (v) they are consistent with the Permitted Use; (vi) they do not impact the size or tonnage or displacement capacity of the travel lift following the Completion of the Alterations, the Premises and Improvements have a fair market value, quality and utility that is not less than the fair market value, quality and utility of the Premises and Improvements immediately prior to the commencement of the Alterations. Tenant may make Minor Alterations without Landlord's written consent provided that Tenant gives Landlord at least thirty (30) days' prior written notice of the Minor Alterations, which notice describes the Minor Alterations in sufficient detail in order for Landlord to confirm that such Minor Alterations satisfy the requirements of this Section 6.2.2 and within such thirty (30) day period Landlord does not object to Tenant's determination that the subject Alterations are Minor Alterations.

#### 6.2.3 Diligent Construction; Continuous Operations.

Once construction of any Alteration is commenced, Tenant shall diligently prosecute construction of the Alterations to Completion. Tenant shall continue to operate the Premises and Improvements for the Permitted Use during the course of construction of the Major Alterations to the greatest extent feasible.

#### **6.2.4 Construction Requirements.**

In constructing any Alterations or new Improvements, Tenant shall comply with all Construction Requirements and all Laws, including, without limitation, any PMP requirements, mitigation measures or conditions of approval under the terms of any of the governmental approvals, including any CDP applicable to the Premises or the use or development thereof and any conditions of approval or mitigation measures or project changes pursuant to any environmental review under CEQA.

#### **6.3 Cost Reporting.**

With respect to any Major Alterations, within sixty (60) days following Completion of the Major Alterations, as applicable, Tenant shall furnish Landlord with an itemized statement of the construction costs incurred and paid by Tenant. The statement shall be sworn to and signed, under penalty of perjury, by Tenant or its authorized representative. Tenant shall maintain true, accurate, and complete records to support said itemized statement. 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 Tenant perform any construction with its own personnel, Tenant shall substantiate the actual work performed by maintaining the following records: a payroll journal, copies of cancelled payroll checks, and timecards or other payroll documents which show dates worked, hours worked, and pay rates. Books and records herein required shall be maintained and made available either at the Premises or at such other location in San Diego County, California as is agreeable to Landlord. Further, Landlord 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 Tenant does not make available the original books and records at the Premises or within the limits of San Diego County, Tenant agrees to pay all expenses incurred by Landlord Parties in conducting an audit at the location where said books and records are maintained in accordance with this Section 6.3.

#### **6.4 Force Majeure Event.**

"**Force Majeure Event**" means actual delay in Tenant's construction or interference with Tenant's ability to operate actually caused by: (a) a strike or labor dispute other than a strike or dispute which would have been avoided had Tenant complied with Laws and any agreements it has entered into with the striking union or parties; (b) inclement weather (that causes a suspension of work) in excess of the ten (10) year average for the area within Landlord's jurisdiction during the month or months when work was suspended; (c) an earthquake or other natural disaster resulting in suspension of work; (d) inability to procure or general shortage of labor, equipment, materials, or supplies in the open market, or failure of transportation (but, in each case, not attributable to a mere increase in price or Tenant's acts or failure to act); (e) acts of a public enemy, insurrections, riots, mob violence, sabotage, acts of terrorism, and malicious mischief; (f) casualty or Condemnation causing material damage to previously constructed Improvements; or (g) delays in the issuance of any governmental approvals or authorizations from government agencies other than Landlord necessary to proceed with development or operation of the new Improvements (provided that Tenant has timely and properly filed all applications, submitted all required documents and fees and taken all other actions necessary to obtain such governmental approvals or authorizations and that Tenant is not responsible in any way for the delay in the issuance of such governmental approvals or authorizations). In order to extend the time for commencement or Completion of any new Improvements for Force Majeure Event or claim an excuse of failure to operate, Tenant must notify Landlord in writing within twenty (20) days of the commencement of

any Force Majeure Event and describe in such notice the Force Majeure Event creating delay or interference, why such delay or interference is occurring, the expected duration of such delay or interference and the best efforts Tenant is taking to minimize the period of delay or interference. Any period of applicable Force Majeure Event shall be added to the times for the commencement and Completion of construction established in Section 6.1 above; provided, however, in no event shall the period of excused delay exceed 365 days in the aggregate. Tenant covenants to make commercially reasonable efforts to minimize and otherwise overcome the impact on Tenant's construction schedule or operation caused by any Force Majeure Event and, in addition to Tenant's initial notice described above, on Landlord's request from time to time, shall provide Landlord with a report on the status of the Force Majeure Event, its expected duration, Tenant's construction schedule and Tenant's commercially reasonable efforts to minimize and otherwise overcome the impact on Tenant's construction schedule or operation caused by any Force Majeure Event.

#### **6.5 Signs and Flags.**

All signs visible from outside the Premises must be expressly approved by Landlord prior to installation. All signage in the Landlord's jurisdiction is subject to San Diego Unified Port District Code Section No. 8.30, BPC Policy No. 770 and Tenant Signage Guidelines. If Landlord hereafter adopts any other ordinance or policy governing signage, Tenant shall also comply with such ordinance or policy subject to any grandfathering terms thereof. Tenant agrees that no banners, balloons, inflatables, pennants, flags, signs, digital displays, spinners, or other advertising devices, nor any temporary signs, shall be flown, installed, placed, or erected on the Premises in a manner or location clearly visible from outside the Premises without Landlord's prior written consent. Landlord acknowledges that the comprehensive sign program depicted in Exhibit G attached hereto have been approved by landlord.

#### **6.6 Tenant Percent for Art.**

Tenant is subject to the requirements for Tenant Art Investment in accordance with Board of Port Commissioner Policy Nos. 608 and 609. Tenant's required Art Investment shall be based on the total Qualifying Capital Investment associated with the potential lease extension referenced in Recital I above.

#### **6.7 Prevailing Wage.**

Tenant acknowledges and agrees that:

(a) Landlord makes no representation concerning the applicability of any wage laws, including, but not limited to California Labor Code §§ 1720 through 1815, et seq. ("PWL"). To the extent Tenant intends to perform any construction, alteration, demolition, installation or repair work ("Construction") on the Premises, Tenant warrants and acknowledges that: (i) Landlord is not paying for or subsidizing, in whole or in part, any such Construction; and (ii) Tenant shall make its own determination regarding the applicability of any PWL to such Construction. Landlord is not responsible for Tenant's failure to comply with any applicable provisions of the PWL. Tenant assumes any and all risk in connection with the application of PWL to any Construction performed on the Premises on behalf of Tenant.

(b) Tenant's violations of PWL shall constitute a default under this Lease should such violations continue for thirty (30) days after written notice thereof is given to Tenant;

provided that if the nature of such violations is such that the same cannot reasonably be cured within such thirty (30) day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure such violation, but in no event exceeding a period of time in excess of ninety (90) days after written notice thereof from Landlord to Tenant.

#### **6.8 Historical Designation.**

Neither Tenant nor Landlord shall designate, cause anyone to designate, submit or support any application to designate, the Premises or any Improvements as a federal, state or local historical landmark or as a historical resource. The terms of this Section 6.8 shall survive the expiration or earlier termination of this Lease.

### **7. TITLE TO AND REMOVAL OF ALTERATIONS AND IMPROVEMENTS**

#### **7.1 Title.**

All Improvements which may be installed or placed in, on, over or under the Premises, from time to time by Tenant as permitted by the terms of this Lease or with Landlord's prior written consent, (i) shall be so installed or constructed at the sole cost of Tenant, (ii) shall remain Tenant's property during the Term, and (iii) at the expiration or earlier termination of the Term, those Improvements which are to remain pursuant to Section 7.2. shall automatically become the property of Landlord without additional compensation from Landlord; provided that, subject to Section 7.3 below, Tenant's trade fixtures (fixtures relating uniquely to Tenant and which are removable without non-repairable damage to the other Improvements), furnishings and moveable equipment (such as mobile 820-ton boat hoist, other boat hoists, cranes, buildings, forklifts and machinery) shall remain the property of Tenant and shall be removed by Tenant as provided in Section 7.3. Upon Landlord's request, following the Expiration Date or earlier termination of this Lease, Tenant covenants and agrees to execute and deliver (at no cost or expense to Landlord) a quitclaim deed as provided in Article 23 to confirm Landlord's ownership of the Improvements which are to remain pursuant to Section 7.2, which covenant shall survive the expiration or earlier termination of this Lease. Notwithstanding the foregoing, if title to artwork in fulfillment of the tenant percent for art requirement created in compliance with Section 6.6 is governed by a separate agreement between Tenant and the artist, such agreement shall govern over this Lease relative to the title to the artwork following the expiration or termination of this Lease.

#### **7.2 Removal of Improvements.**

At any time during the Term of this Lease, Landlord may notify Tenant in writing of what Improvements Landlord requires (in its sole discretion) to be removed from the Premises at the end of the Term (such election is referred to herein as the "**Landlord End of Term Election**"). If Landlord has not provided the Landlord End of Term Election by the end of the Term, then Landlord shall be deemed to have elected for all Improvements to remain and be surrendered with the Premises as part thereof, and title to such Improvements shall vest in Landlord as described in Section 7.1 and Article 23 (but Tenant shall remain responsible for any remedial work that may be required by Section 21.3); provided that notwithstanding the foregoing, at any time during the last twenty seven (27) months of the Term, Tenant may request in writing from Landlord a Landlord End of Term Election, and if Landlord does not provide a Landlord End of Term Election within a hundred and eighty (180) days of receiving such written request, then Landlord shall have been deemed to have elected for all Improvements to remain upon and be surrendered

with the Premises as part thereof in accordance with the terms of this Section 7.2. If Landlord shall elect to have Tenant remove any or all of the Improvements and/ or Tenant is required to perform remedial work pursuant to Section 21.3, (i) the Term of this Lease shall be extended as provided in Section 7.4, (ii) to the greatest extent possible, Tenant shall obtain all permits required to perform such work in advance of the end of the Term and, if not possible, as promptly as possible after the end of the Term (meaning prior to extension pursuant to Section 7.4), and (iii) subject to terms of Section 7.4 requiring such work to commence sooner, as promptly as possible after the end of the Term (meaning prior to extension of the Term pursuant to Section 7.4), remove such Improvements and perform and complete any remedial work that may be required by Section 21.3. Tenant acknowledges that demolition of Improvements and razing the Premises and/or the remediation work pursuant to Section 21.3 may require Tenant to obtain permits, certain of which may be discretionary. Tenant shall repair any damage to the Premises (and the Improvements which Landlord is not requiring Tenant to remove) caused by such removal, and, unless such requirement is waived by Landlord, Tenant shall surrender the portion of the Premises to be demolished to Landlord in a razed and buildable condition. For this purpose, a "buildable condition" means the removal of any subsurface Improvements (including foundations and pilings, pipelines and conduits, and public and private utilities unless otherwise agreed to by Landlord), any Hazardous Materials pursuant to Section 21.3, demolition of the relevant Improvements and removal of any debris resulting from demolition and leaving the areas affected by the demolition in a smooth graded condition with soils compacted pursuant to specifications and in compliance with a stormwater site stabilization plan acceptable to Landlord in its sole discretion so that such areas are suitable for subsequent construction of improvements thereon. In addition, and without limitation of Landlord's other remedies, if any Improvements are not in full compliance with Article 6 or Article 15, Landlord may require, at Tenant's sole cost and expense, that such Improvements be modified to a state and condition which complies with Article 6 and Article 15 as determined by Landlord. If Tenant fails to complete such removal and remediation and/or to repair any damage caused by the removal of any Improvements or to perform modifications required pursuant to the preceding sentence within the period allowed under Section 7.4, Landlord may do so and may charge the cost thereof to Tenant pursuant to the Reimbursement Procedure, together with Additional Rent for estimated administrative costs in the amount of twenty percent (20%) of such cost, and interest on all such sums at the Default Rate from the date incurred until paid. Nothing contained in this Section 7.2 shall be interpreted to limit Tenant's obligations under Section 21.3.

### **7.3 Removal of Personal Property.**

Except as provided below, all of Tenant's personal property including machines, appliances, boat hoists, cranes, forklifts, equipment and trade fixtures (even though not personal property), shall be removed from the Premises by Tenant by the Expiration Date or earlier termination of this Lease. Notwithstanding the foregoing, unless Landlord expressly elects at least ninety (90) days prior to the Expiration Date or, in the case of sooner termination of this Lease, within ten (10) days after the termination, to require Tenant to remove any artworks that constitute personal property that were provided to comply with Law or Landlord's own requirements but which are not governed by a separate agreement between Tenant and the artist relating to the removal of the artwork as the end of the Lease Term, shall not be removed and remain located on the Premises. If requested by Landlord, Tenant shall deliver to Landlord Tenant's signed bill of sale in a form reasonably acceptable to Landlord for such left in place personal property. Without limitation of the foregoing, Tenant hereby appoints Landlord as Tenant's attorney-in-fact to execute such bill of sale in the name and on behalf of Tenant if Tenant shall fail to do so after Landlord's request. Tenant shall repair any damage to the Premises (and the Improvements which Landlord is not requiring Tenant to remove) caused by the removal of such personal property. If such personal property required

to be removed is not removed by Tenant in accordance with this Section 7.3, the same may be considered abandoned and, at the option of Landlord, shall thereupon become the property of Landlord, without cost to Landlord and without any payment to Tenant, except that Landlord shall have the right to have such personal property removed and to repair any and all damage occasioned by their removal, all at the expense of Tenant pursuant to the Reimbursement Procedure.

#### **7.4     Security for Cost of Demolition and Remediation Work.**

##### **7.4.1   Demolition and Remediation Report.**

Within one hundred and eighty (180) days of the receipt of the Landlord End of Term Election, (and provided the Landlord End of Term Election is given to Tenant on or prior to the date that is twelve (12) months before the end of the Term), Tenant, at its own cost and expense, shall obtain and deliver to Landlord a report prepared by a contractor licensed in the State of California with expertise in demolition and remediation, which report details and estimates the current cost and time period for completion of (i) the removal and demolition work if then required to be completed by Tenant under Section 7.2 and (ii) any remedial work that may be required by Section 21.3 ("**Demolition and Remediation Report**"). Notwithstanding the foregoing, the following shall apply: (1) if Tenant has not yet exercised its Option to Extend under Section 3.2 and Landlord provides the Landlord End of Term Election more than two years before the end of the Term, then Tenant shall not be required to deliver the Demolition and Remediation Report until two years before the end of the then current Term unless Tenant does not qualify as a "tenant in good standing" as set forth in Section 3.2 at the time Landlord provides the Landlord End of Term Election, in which case Tenant shall be required to provide the Demolition and Remediation Report within one hundred and eighty (180) days of the receipt of the Landlord End of Term Election, and (2) if Tenant has exercised its Option to Extend and Landlord provides the Landlord End of Term Election more than six years before the end of the Term, then Tenant shall not be required to deliver the Demolition and Remediation Report until six years before the end of the Term. The contractor licensed in the State of California with expertise in demolition and remediation selected by Tenant is referred to herein as the "**Demolition and Remediation Contractor**" and the time period for completion of the removal and demolition work as if then required by Section 7.2 and any remedial work that may be required by Section 21.3 is referred to herein as the "**Removal Period**".

##### **7.4.2   Demolition and Remediation Security Funding.**

The terms of this Section 7.4.2 will have no application and may be disregarded if both of the following have occurred: (i) Landlord has either provided a Landlord End of Term Election requiring all of the Improvements to remain in place or Landlord has not provided a Landlord End of Term Election on or prior to the date that is twelve (12) months before the end of the Term (not taking into consideration the Option to Extend); and (ii) any required Demolition and Remediation Report and any reports required under the terms of Article 21 establishes that there is no known condition requiring remedial work. For the purpose of funding the cost of the demolition and remediation work that may be required under Section 7.2 and Section 21.3, then commencing in the month following the receipt of the Demolition and Remediation Report and continuing on the same day Rent for each month thereafter is due until such day of the last calendar month prior to the end of the Term (not taking into consideration the Option to Extend) (the "**Demolition and Remediation Security Funding Period**") Tenant shall deposit with Landlord, or at Landlord's

election, into an escrow account (with an escrow holder, and pursuant to escrow instructions, acceptable to Landlord in its sole discretion) a level sinking fund monthly dollar amount which will fully fund the Demolition and Remediation Security Amount by the end of the Demolition and Remediation Security Funding Period. The "**Demolition and Remediation Security Amount**" shall be the Estimated Demolition and Remediation Cost annually compounded at three percent (3%) over the Demolition and Remediation Security Funding Period. The "**Estimated Demolition and Remediation Cost**" shall be the total of (i) the demolition and remediation cost amount estimated by the Demolition and Remediation Report, and (ii) the product of (x) the number of months in the Removal Period and (y) the monthly Rent at the time the first monthly deposit is to be made. The determination of the monthly deposit amount shall be calculated by dividing the Estimated Demolition and Remediation Amount by the number of months in the Demolition and Remediation Security Funding Period. If the Demolition and Remediation Security Amount is held in escrow, any interest earned on the Demolition and Remediation Security Amount shall be added to the escrow fund, but shall not be treated as a credit against the Demolition and Remediation Security Amount deposits required to be made by Tenant pursuant to this Section 7.4.2. If Landlord holds the Demolition and Remediation Security Amount, Landlord shall not be required to keep the Demolition and Remediation Security Amount in trust, segregate it or keep it separate from Landlord's general funds, and Tenant shall not be entitled to payment of interest on the Demolition and Remediation Security Amount but such interest, if any, shall be applied toward the Demolition and Remediation Security Amount. In lieu of deposit of cash funds as required above, Tenant may propose a letter of credit, bond or other form of security in form and amount, and from an issuer, satisfactory to Landlord in Landlord's sole discretion. In no event shall Tenant's obligations under Section 7.2 or Section 21.3 or to pay Rent during the Removal Period be limited to the amount of the Demolition and Remediation Security Amount.

(a) *Update.* If a Landlord End of Term Election requiring Tenant to remove any or all of the Improvements is provided to Tenant on or prior to the date that is twenty-four (24) months before the end of the Term and/or Tenant is required to perform remedial work pursuant to Section 21.3, at least twelve (12) months prior to the expiration of the Term Tenant shall deliver to Landlord a report prepared by a Demolition and Remediation Contractor, which report updates any prior Demolition and Remediation Report for the purpose of providing a current estimate of the projected cost at the end of the Term of the demolition and remediation work required by Section 7.2 above ("**Demolition and Remediation Report Update**"). If the current balance of the Demolition and Remediation Security Amount is less than the cost projected in the Demolition and Remediation Report Update, then, within thirty (30) days after delivering the Demolition and Remediation Report Update to Landlord, Tenant shall deposit in the escrow account or with Landlord, as applicable, additional funds so that the total Demolition and Remediation Security Amount is no less than the estimated cost of the demolition and remediation work as set forth in the Demolition and Remediation Report Update. If the current balance of the Demolition and Remediation Security Amount is more than the cost projected in the Demolition and Remediation Report Update, then, within sixty (60) days after Landlord's receipt of the Demolition and Remediation Report Update, Landlord shall refund the Tenant, as applicable, funds so that the total Demolition and Remediation Security Amount is no more than the estimated cost of the demolition and remediation work as set forth in the Demolition and Remediation Report Update.

(b) *Disbursement To Tenant.* If the Landlord End of Term Election is for Tenant to remove any or all of the Improvements and/or Tenant is required to perform remedial work pursuant to Section 21.3, then Landlord will release (or authorize the escrow holder to release, as applicable) the Demolition and Remediation Security Amount to fund the cost of the demolition and remediation work pursuant to customary construction draw procedures, including a ten percent (10%) retainage which will be paid upon completion of such work as evidenced by a

certificate of completion from the Demolition and Remediation Contractor and a copy of final lien releases in statutory form from the Demolition and Remediation Contractor and all of its subcontractors. However, Tenant shall remain responsible for the actual costs of the demolition and remediation work in excess of the Demolition and Remediation Security Amount. If the Landlord End of Term Election is for Tenant to remove any or all of the Improvements and Landlord decides to keep any or all of the Improvements, Landlord will release to Tenant (or authorize the escrow holder to release, as applicable) the unused portion of the Demolition and Remediation Security Amount.

(c) *Disbursement to Landlord.* If Tenant fails to perform the demolition and remediation work as and when required by the terms of Section 7.2, if Landlord elects to enforce Tenant's obligation, then in addition to all other remedies Landlord may have as a result of such failure, without limitation of Tenant's cost responsibility for the same, Landlord shall have the right to apply the Demolition and Remediation Security Amount to pay for the cost of performing the demolition and remediation work on Tenant's behalf or, if Landlord determines not to perform the demolition and remediation work and not to enforce Tenant's obligation, and Tenant's failure has continued following the notice and cure period set forth in Section 12.1.3, then Landlord may retain the Demolition and Remediation Security Amount as liquidated damages for Tenant's failure to perform the demolition and remediation work.

(d) *Landlord Security Interest.* Tenant grants to Landlord a security interest in the Demolition and Remediation Security Amount, and shall execute such documents as Landlord may request in order to perfect such security interest.

#### **7.4.3 Effect of Funding on Removal and Remediation Obligations**

Notwithstanding anything to the contrary stated in this Lease, while Landlord is required to send an End of Term Election on or prior to the date that is twelve (12) months before the end of the Term in order to trigger Tenant's obligation to fund the Demolition and Remediation Security Amount in accordance with Section 7.4.2, Landlord's failure to send an End of Term Election on or prior to the date that is twelve (12) months before the end of the Term shall in no way affect any of the following: (a) Landlord's ability to send an End of Term Election within the last twelve (12) months of the Term pursuant to the terms of Section 7.2 that requires Tenant to remove any or all of the Improvements; (b) Tenant's obligation to remove any or all of the Improvements pursuant to an End of Term Election received in accordance with the terms of Section 7.2; and/or (c) any of Tenant's obligations under Section 21.3.

#### **7.5 Removal Extension.**

If the Landlord End of Term Election requires Tenant to remove any or all of the Improvements and/or Tenant is required to perform remedial work pursuant to Section 21.3, then subject to the terms of this Section 7.5, solely for the purpose of completing such work and during such extension, the Term of the Lease shall be extended until the earlier of (i) six (6) months, and (ii) the completion of such work as evidenced by a certificate of completion from the Demolition and Remediation Contractor and copy of final lien releases in statutory form from the Demolition and Remediation Contractor and all of its subcontractors. The period of such extension is referred to herein as the "**Removal Extension**". During the Removal Extension, the Premises and Improvements shall not be used by Tenant for any purpose other than the performance of the demolition and/or remediation work unless permitted by Landlord in writing in its sole discretion. During the Removal Extension, Tenant shall continue to pay the full Rent to Landlord in accordance with this Lease. If Tenant's removal and remediation work is not completed within the

Removal Extension, the terms of Article 26 regarding Rent payable during holdover shall apply. Without relieving Tenant from its obligations under this Lease respecting the condition of the Premises at the end of the Term, all of the Tenant's obligations under this Lease (including Tenant's indemnification and insurance obligations but excluding any obligation to be open or operate) and Tenant's right to enter onto the Premises and perform the demolition and remediation work shall continue in full force and effect during the Removal Extension. Notwithstanding the foregoing, if the Landlord End of Term Election requires Tenant to remove any or all of the Improvements and/or Tenant is required to perform remedial work pursuant to Section 21.3 and any Demolition and Remediation Report indicates that the Removal Period is estimated to be greater than six (6) months, then Tenant shall commence such work sufficiently prior to the end of the Term (prior to extension as provided in this Section) so that such work is anticipated to be completed no later than six (6) months after the end of the Term (prior to the Removal Extension) (e.g., if the estimated Removal Period is ten (10) months, Tenant shall commence such work at least four (4) months prior to the end of the Term (prior to extension pursuant to this Section 7.5).

#### **7.6 Survival.**

The terms of this Article 7 shall survive the expiration or termination of this Lease.

### **8. ENTITLEMENTS**

#### **8.1 Entitlement Costs.**

If any discretionary approval, including without limitation environmental analysis under CEQA, the PMP, a Port Master Plan Amendment ("**PMPA**"), a CDP and/or a Coastal Act exclusion, are necessary in Landlord's sole and absolute determination in connection with any new Improvements, Alterations, demolition or remediation work or other projects undertaken by Tenant on or at the Premises (collectively, the "**Discretionary Project**"), Tenant agrees to enter into agreements with the third party consultants preparing the reports and other materials required to process the Discretionary Project making Tenant directly responsible for the costs of such services and to pay the third party consultant in accordance with the third party agreement or reimburse Landlord pursuant to the Reimbursement Procedure for all costs and expenses incurred by Landlord in obtaining the necessary approval for the Discretionary Project, including but not limited to, the preparation and certification of any required CEQA document by the Landlord, the preparation and approval of the PMPA by the Landlord and the CCC, the preparation and approval or issuance of a CDP by the Landlord or, if appealed, the CCC, or the Coastal Act exclusion by the Landlord and any other costs and expenses arising out of the entitlement process in Landlord's sole and absolute determination. If Tenant fails to pay the third party consultant in accordance with the third party or reimburse Landlord for such costs pursuant to the Reimbursement Procedure, in addition to any other remedies Landlord may have, Landlord may thereafter discontinue the processing of the Discretionary Project and Tenant shall be responsible for any costs and expenses incurred by Landlord related to such discontinuance as Additional Rent and such failure shall be a default of Tenant should such failure continue for thirty (30) days after written notice thereof is given to Tenant.. Nothing herein shall obligate Landlord to seek, process or obtain any approvals or entitlements for the benefit of Tenant and Landlord makes no warranty or representation to Tenant that Tenant will obtain the entitlements and approvals required for Tenant's Discretionary Project.

#### **8.2 Entitlements Indemnity.**

Without limitation of Tenant's other obligations under this Lease, Tenant agrees at its sole cost and expense and with counsel approved by Landlord in Landlord's sole discretion to indemnify, defend and hold harmless the Landlord Parties from any claims, demands, actions, causes of action, suits and Related Costs, arising out of Landlord's approval(s) of the Discretionary Project including without limitation any third party challenges to the approval of the Discretionary Project and any CEQA review, CCC review for a PMPA or appealable CDP or Coastal Act exclusion. The Landlord may, in its sole and absolute discretion, participate in the defense of any claims, demands, actions and causes of action, suits and Tenant shall reimburse the Landlord for all reasonable costs of defense incurred by the Landlord, including, without limitation reimbursement for attorneys' fees, experts' fees and other costs. The Landlord's participation shall not relieve the Tenant of any of its obligations under this Section. The foregoing indemnity obligations of Tenant are in addition to, and not in limitation of, any other indemnity obligations of Tenant contained in this Lease.

### **8.3     Reservation of Discretion.**

Tenant acknowledges and agrees that, notwithstanding the terms and conditions of this Lease, Landlord reserves its discretion to approve or disapprove all actions, which require by Law the exercise of discretion, including without limitation all legislative and quasi-judicial actions and which Landlord cannot lawfully be committed to by contract (collectively, "**Discretionary Action**") and that nothing in this Lease will be construed as circumventing or limiting Landlord's discretion with respect to environmental review required by CEQA, approval of a PMPA, CDP, CDP exclusion, or other permits and entitlements, the exercise of eminent domain, code enforcement and the making of findings and determinations required by Law. Tenant acknowledges and agrees that any and all Discretionary Actions may be approved or denied by the Landlord, in its sole and absolute determination, and accepts the risk that the Landlord will deny any and all Discretionary Actions, and hereby waives any claims, demands, actions, causes of action, suits against the Landlord for said denial.

## **9. LIENS**

### **9.1     No Right to Bind Landlord.**

Neither Tenant, nor any Tenant Party, shall have any power or authority to do any act or thing, or to make any contract or agreement which will bind Landlord in any way whatsoever, and Landlord shall have no responsibility to Tenant, Tenant Party or other Person who performs, causes to perform, engages in or participates in any construction of any Improvements, Alterations or any other work on the Premises at the request of Tenant or Tenant Party or other Persons. Landlord shall not be required to take action to satisfy any such contract or agreement or to remove or satisfy any lien resulting therefrom.

### **9.2     Notice of Non-Responsibility.**

Tenant shall give written notice to all contractors, subcontractors and materialmen of Landlord's non-responsibility in connection with any Improvements or Alterations or other work on the Premises, and shall immediately provide Landlord with true copies of such notices not less than fifteen (15) days prior to the commencement of any work on the Premises.

### **9.3     Mechanic's Liens.**

Tenant shall timely pay or cause to be paid all costs for work, labor, services or materials supplied to or performed on the Premises. Tenant will keep the Premises free and clear of all mechanic's liens and other liens on account of work done for or at the Premises. Tenant shall indemnify, defend, release and save Landlord free and harmless from and against any and all claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for or at the Premises and all Related Costs.

#### **9.4 Contest of Lien.**

If Tenant in good faith wishes to contest any claim of lien, Tenant shall be entitled to do so, provided that Tenant first records a surety bond sufficient to release the lien.

#### **9.5 Landlord's Right to Pay.**

If Tenant shall be in default in paying any charge for which a lien claim has been filed, and if Tenant shall not have recorded a surety bond as required under Section 9.4 above, Landlord may, but shall not be so obliged to, pay said lien claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Tenant to Landlord, and Tenant shall pay the same to Landlord together with interest on the full amount thereof at the Default Rate from the dates of Landlord's payments until paid.

#### **9.6 Notice of Liens.**

Should any claims of lien be filed against the Premises or any action affecting the title to the Premises be commenced, the party receiving notice of such lien or action shall give the other party written notice thereof within five (5) business days of receipt.

#### **9.7 Right of Entry/ Notices of Non-Responsibility.**

Nothing herein shall imply any consent on the part of Landlord to subject Landlord's estate to liability under any mechanic's or other lien. Without limiting Tenant's responsibilities under Section 1.2 above, Landlord and the Landlord Parties shall have the right to enter upon and inspect the Premises at all times, upon not less than 24 hours prior written (which may be sent via email) or telephonic notice to Tenant (provided that no prior notice shall be required in the case of emergency entries), and shall have the right to post and keep posted thereon notices of non-responsibility, or such other notices which Landlord may deem to be proper for the protection of Landlord's interest in the Premises. Tenant shall, before the commencement of any work which might result in any such lien, give Landlord written notice of its intention to commence such work in sufficient time (which in no event shall be less than the statutory period for posting notices of non-responsibility prior to the commencement of work) to give Landlord adequate opportunity to post and record such notices.

### **10. LEASE ENCUMBRANCE**

#### **10.1 Restrictions on Encumbrance.**

##### **10.1.1 Landlord's Consent.**

Tenant shall not encumber or hypothecate this Lease, Tenant's leasehold interest, or the Improvements thereon, or any part thereof or interest therein, including without limitation a pledge

or hypothecation of Tenant's leasehold interest as personal property (such encumbrance or hypothecation being referred to herein as a "**Financing Transaction**"), without Landlord's prior written consent to the Financing Transaction in each instance, which consent, subject to the terms of Section 10.1.2, shall not be unreasonably withheld. Tenant shall submit its request for consent to the Financing Transaction in writing to Landlord, together with the required minimum documentation required pursuant to BPC Policy No. 355, or any other BPC policy then in effect governing Landlord's consent to a Financing Transaction. Within ten (10) days of receiving Tenant's request, Landlord may request from Tenant additional information regarding the lender and/or the proposed financing. Landlord shall provide its response to Tenant's request for approval of the Financing Transaction within forty-five (45) days following Landlord's receipt of Tenant's request and all information requested by Landlord from Tenant. As a condition of approval, Tenant shall provide to Landlord a copy of the final loan documents for the Financing Transaction which conform to the terms set forth in the loan application or commitment delivered pursuant to Section 10.1.2(e1(e) below, when such documents are available. Tenant shall reimburse Landlord pursuant to the Reimbursement Procedure for all Landlord's costs and expenses associated with its review of the Financing Transaction. Said costs shall include, without limitation, Landlord's legal fees (whether with in-house or outside counsel or both) and disbursements relating to or arising out of Landlord's review of any such Financing Transaction, regardless of whether such Financing Transaction is consummated or approved, and Landlord's transaction processing fees charged by Landlord for Landlord's analysis and processing of Tenant's request.

#### **10.1.2 Conditions.**

Landlord's consent to any Financing Transaction may be conditioned upon, among other things, the following conditions and/or requirements, all of which Tenant acknowledges are reasonable given the context and terms and conditions of this Lease:

- (a) the lender shall be a Financial Institution;
- (b) a Lease amendment shall be negotiated and executed to reflect updated or additional lease provisions for the purpose of conforming this Lease to Landlord's then standard leasing terms, practices, and policies, provided such terms have been and are included in substantially all similar leases or amendments entered into by Landlord at or around the time of the proposed modification or, in the case of a newly adopted term, practice or policy, such terms will be included in future similar leases or amendments entered into by Landlord. Notwithstanding the foregoing, such a Lease amendment shall not be required as a condition to a Financing Transaction that closes within the first two years following the Commencement Date.
- (c) the maximum loan proceeds secured by the encumbrance shall not be in excess of the greater of (i) seventy five percent (75%) of the then fair market value of the Improvements (or the as-completed value if the subject loan is being used to finance the cost of an Alteration) as determined by a third party appraisal approved by Landlord (which may be the Permitted Lender's appraisal if so approved by Landlord), or (ii) the amount required to repay the outstanding principal balance of the existing financing that encumbers the leasehold under a Permitted Encumbrance previously consented to by Landlord;
- (d) the loan secured by the encumbrance shall have a payment term that provides for the full repayment of the loan prior to the Expiration Date of the then current Term of this Lease; and

(e) Tenant shall have provided to Landlord: (i) the Financing Transaction term sheet, application or commitment, (ii) a recent appraisal supporting the Financing Transaction, (iii) financial statements of Tenant for not less than the past two (2) years, (iv) the draft and final loan documents and (v) such other documents, information and materials relating to the Financing Transaction as Landlord may request.

## **10.2 Definition of "Permitted Lender" and "Permitted Encumbrance".**

The term "**Permitted Lender**" as hereinafter used in this Lease means the lender under the Financing Transaction holding a mortgage, deed of trust or other similar security interest constituting a first lien on Tenant's interest in this Lease, including a pledge or hypothecation of Tenant's leasehold interest as personal property, which has been consented to in writing by Landlord as provided above ("**Permitted Encumbrance**").

## **10.3 Rights of Permitted Lender.**

### **10.3.1 Voluntary Lease Surrender.**

If Tenant owes the Permitted Lender any amounts under the Permitted Encumbrance, Landlord will not accept the voluntary surrender, cancellation, or termination of this Lease by Tenant before the Term expires unless the Permitted Lender provides prior written consent. Nothing in this Section 10.3.1 shall impair Landlord's right to terminate this Lease as a result of Tenant's default or by reason of Landlord's other rights to terminate as set forth in this Lease, subject to the Permitted Lender's notice and cure rights pursuant to Section 10.3.2 below, if applicable.

### **10.3.2 Right to Cure/New Lease.**

(a) *Notice of Default.* So long as the loan secured by the Permitted Encumbrance remains unsatisfied, Landlord hereby agrees to give the Permitted Lender a copy of any written notice of any default which Landlord has given to Tenant, whereupon the Permitted Lender shall have the right, but not the obligation, to prevent any termination of this Lease by Landlord as a result of such default by curing such default within (i) twenty (20) days of receipt of such notice for any default in the payment of Rent, or (ii) subject to the terms of this Section 10.3.2, within forty-five (45) days of receipt of such notice for any other default under this Lease.

(b) *Possession Required.* If such default as specified in part (ii) of Section 10.3.2(a) cannot be cured until the Permitted Lender has obtained possession of the Premises through foreclosure or otherwise, and if the Permitted Lender has delivered to Landlord within the forty-five (45) day cure period specified above Permitted Lender's written commitment (in form acceptable to Landlord in its sole discretion) to use commercially reasonable efforts to cure such default with due diligence upon obtaining possession of the Premises through foreclosure or otherwise, then the Permitted Lender shall have such additional time (but in no event to exceed 180 days from the date of obtaining possession of the Premises) as is reasonably necessary to cure such default; provided, however, that the Permitted Lender: (a) unless judicially stayed, commences the judicial or other foreclosure of the Permitted Encumbrance within forty-five (45) days from receipt of written notice of the occurrence of any event which constitutes, or which would constitute, upon the expiration of an applicable cure period, a default under this Lease; (b) prosecutes said foreclosure with due diligence; and (c) cures, during said period, all monetary events of default and, during the period of said stay and/or foreclosure, continues to pay and perform during said period of stay and/or foreclosure all other monetary obligations of Tenant in

a timely manner, including, without limitation, payment of all Rent, taxes, assessments, utility charges, insurance premiums and all other amounts required to be paid by Tenant under this Lease. Notwithstanding anything herein to the contrary, nothing herein shall require a Permitted Lender who has taken possession of the Premises to cure any non-monetary default that, by its nature, is not capable of being cured by the Permitted Lender, such as a Bankruptcy Event (an "**Incurable Default**"), and such Incurable Default shall be deemed to be waived following the Permitted Lender's taking possession of the Premises and provided that Permitted Lender has timely cured all monetary defaults and, following taking possession all other non-monetary defaults that are of a continuing nature. In no event shall Tenant's waste or failure to maintain be an Incurable Default.

(c) *No Termination by Landlord.* Landlord will not terminate this Lease by reason of a default by Tenant provided that the Permitted Lender (i) has cured and continues to cure all defaults under the Lease in the payment of Rent in a timely manner as provided in Section 10.3.2(a)(i) above, and (ii) has cured all other defaults in a timely manner as provided in Sections 10.3.2(a) ii) and 10.3.2(b) above, other than any Incurable Default.

(d) *New Lease.* In the event of a termination of this Lease by reason of a surrender, cancellation, or termination by Tenant (subject to and in accordance with Section 10.3.1), or as a result of the rejection or disaffirmance of this Lease pursuant to bankruptcy law or other Law affecting creditors rights, or as a result of a termination of this Lease by Landlord in violation of Section 10.3.2(c) above, then Landlord shall deliver notice to Permitted Lender that the Lease has been terminated. The notice shall include a statement of all amounts that would be due under this Lease but for the termination, and all other defaults then known to Landlord. The Permitted Lender shall then have the option, to be exercised within thirty (30) days following receipt of such notice of termination to enter into a new lease ("**New Lease**") with Landlord, on the following terms and conditions:

(i) The New Lease shall commence as of the date of the termination of this Lease and shall be for the remainder of the Term, and at the Rent, terms, covenants and conditions as this Lease (but excluding any right to extend the Term).

(ii) Upon execution of the New Lease, the Permitted Lender as tenant shall pay any and all sums that would at the time of execution thereof be due under this Lease, but for termination, and shall pay all expenses, costs, attorneys' fees, court costs, and disbursements incurred by Landlord in connection with any default and termination, recovery of possession of the Premises, and the execution, preparation and delivery of the New Lease.

(iii) Upon execution of the New Lease, the Permitted Lender as tenant shall cure all other defaults under this Lease, which have not yet been cured (other than any Incurable Default), with due diligence in a timely manner in accordance with the cure periods under the Lease assuming such cure periods commence with the execution of the New Lease and without additional notice

(iv) Nothing herein shall be construed to require Landlord to deliver possession of the Premises to Permitted Lender. Upon execution and delivery of the New Lease, Permitted Lender may take any and all appropriate action as may be necessary to remove parties in possession from the Premises.

Should the Permitted Lender fail to accept said offer for such New Lease in writing within said thirty (30) day period, or, having so accepted said offer, should it fail promptly to

execute the New Lease or satisfy the requirements of (ii) and (iii) above in a timely manner, then the termination of this Lease shall be effective as to the Permitted Lender and the Permitted Lender shall have no further rights hereunder.

### **10.3.3 Loan Default.**

If a Permitted Encumbrance is in default at any time, and the Permitted Lender is complying with the cure requirements described in Section 10.3.2 above, the Permitted Lender shall, as provided by law, have the right, without Landlord's prior consent, to:

(a) Accept an Assignment of this 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 Permitted Encumbrance. Provided, however, no Assignment to the successful bidder (a "**Foreclosure Purchaser**") other than the Permitted Lender or a designee of the Permitted Lender who is Controlled by or is under common Control with the Permitted Lender shall be effective without Landlord's prior written consent in accordance with Section 10.4 below.

### **10.3.4 Assume Lease Obligations.**

Before the Permitted Lender, or any Foreclosure Purchaser, acquires the leasehold interest, it shall, as an express condition precedent, agree in writing to be bound by all provisions of, and assume each and every obligation of Tenant, under this Lease. A Permitted Lender that has: (i) acquired the leasehold interest and assumed the Tenant's obligations, or (ii) entered into a New Lease pursuant to Section 10.3.2(d) above, shall be released from all obligations under this Lease first arising after it assigns the leasehold interest to an assignee consented to by Landlord, in accordance with Section 10.4.

## **10.4 Landlord's Consent to Assignment or Transfer.**

### **10.4.1 Landlord's Consent to Assignment.**

Landlord's prior written consent pursuant to Article 11 shall be required for the following: (i) an Assignment of this Lease to a Foreclosure Purchaser other than the Permitted Lender or a designee of the Permitted Lender who is Controlled by or is under common Control with the Permitted Lender, or (ii) an Assignment of this Lease or Sublease of all or substantially all of the Premises by the Permitted Lender or a designee of the Permitted Lender who is Controlled by or is under common Control with the Permitted Lender should the Permitted Lender or such designee become the tenant by reason of: (a) being the successful bidder upon said foreclosure, or (b) an Assignment in lieu of foreclosure, or (c) a New Lease entered into pursuant to Section 10.3.2(d) above.

Following any such transfer, no assignee, Foreclosure Purchaser, or Subtenant shall subsequently: (a) assign this Lease or sublease any or all of the Premises without Landlord's prior written consent in accordance with Article 11, or (b) encumber this Lease, the leasehold interest, or any Improvements without the Landlord's prior written consent in accordance with this Article 10.

### **10.4.2 Notice of Foreclosure Sale.**

Permitted Lender shall include a statement in any notice of foreclosure sale covering the requirements under Section 10.4.1 for Landlord's consent to an Assignment upon said foreclosure.

#### **10.4.3 Assignment of Security Interest.**

*Consent.* Neither Permitted Lender nor assignees or any subsequent holder of Permitted Lender's security interest in the Premises shall assign or transfer its security interest in the Premises in whole or in part without Landlord's prior written consent, in each instance. Such consent shall not be unreasonably withheld. Although such holder shall be required to obtain Landlord's express written consent, Landlord shall not withhold such consent (and such assignee or holder will for all purposes of this Lease be deemed to be a Permitted Lender) if the Assignment is to one of the following entities and a copy of the Assignment, in a form acceptable to Landlord, is furnished to Landlord:

- (i) A Financial Institution in good legal standing under the laws of the its jurisdiction of incorporation having a tangible net worth exceeding One Billion Dollars (\$1,000,000,000) (which sum shall be adjusted to Constant Dollars at the beginning of each Rental Period); or
- (ii) The United States of America or any state thereof, or any agency thereof; or
- (iii) An assignee by operation of law; e.g., a state insurance department engaged in supervising the liquidation or rehabilitation of an insurance company lender.

#### **10.5 Landlord's Participation in Refinance Proceeds.**

Upon each Financing Transaction other than the construction financing of the initial development of the Improvements Tenant shall pay to Landlord a fee (the "**Financing Participation Fee**") concurrent with the closing of such Financing Transaction in an amount equal to Two and One-half percent (2.5%) of the Net Proceeds of such transaction Prior to Landlord's consent to any Financing Transaction, Tenant shall deliver to Landlord a written statement showing the calculation of the Financing Participation Fee owed to Landlord from Tenant based on the terms of the Financing Transaction. The statement of the calculation of the Financing Participation Fee shall contain such detail as may be reasonably requested by Landlord to verify the calculation of the Financing Participation Fee. The Financing Participation Fee due Landlord shall be payable in full to Landlord concurrent with the completion of the Financing Transaction. When owed, the Financing Participation Fee shall constitute Additional Rent.

For the purposes of this Section 10.5, the term "**Net Proceeds**" shall mean with respect to a Financing Transaction, the difference between (a) the loan amount and (b) the total of (i) the outstanding indebtedness paid off by the Financing Transaction (ii) proceeds (if any) that reimburse the Tenant for documented equity investment, or (iii) any portion of the debt under the Financing Transaction to be expended on improving the Premises or any District-owned land or water and equipment, or on any trade fixtures, mechanical and utility systems that Tenant uses as Qualified Capital Investment to be used by Tenant on the Premises, less any reasonable costs or fees of the Financing Transaction payable by Tenant to Permitted Lender.

## 11. ASSIGNMENT/SUBLEASE

### 11.1 Consent Required.

Subject to the terms of Section 11.8, no Assignment, Sublease or Change in Entity (collectively, "Transfer") shall be made or permitted without in each instance the prior written consent of Landlord, which consent shall not be unreasonably withheld. It is mutually agreed that Landlord is a government agency holding title to the Premises in trust for the citizens of California and acting as a prudent steward of the Premises and that the personal qualifications of the parties Controlling Tenant are a part of the consideration for granting this Lease. As such, a Change in Entity is as relevant to Landlord as an Assignment of this Lease. For purposes of this Article 11, the term Sublease shall not include the rental of boat slips and dock lockers to tenants not operating a business on or from the Premises.

### 11.2 Request for Consent

If a Transfer is proposed, Tenant shall notify Landlord in writing, which notice (the "**Transfer Notice**") shall include (i) the proposed effective date of the Transfer, which shall not be less than ninety (90) days nor more than one hundred eighty (180) days after the date of delivery of the Transfer Notice, (ii) with respect to a Sublease, a completed Sublease Questionnaire form [Form 317 or 320 depending on the term of the Sublease] including, among other information, a description of the portion of the Premises which is proposed to be Subleased, (iii) all of the terms of the proposed Transfer, the name and address of the proposed transferee with respect to an Assignment or Sublease ("**Transferee**"), if the Transfer is a result of a Change in Entity, a complete description of the direct and indirect ownership and Control of Tenant just before and just after the Transfer and a copy of all existing and/or proposed documentation pertaining to the proposed Transfer, including all existing operative documents to be executed to evidence such Transfer and the agreements incidental or related to such Transfer, (iv) a statement of any current litigation or litigation which was resolved within the prior five (5) years affecting the proposed Transferee or persons or entities acquiring an interest resulting in a Change in Entity of Tenant or a Tenant Parent, (v) current financial statements of the proposed Transferee certified by a reputable, certified public accountant (which shall be audited if that is the customary practice of the Transferee), and (vi) such other information as Landlord may require. Any Transfer made without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect, and shall, at Landlord's option, constitute a default by Tenant under this Lease upon written notice thereof to Tenant. Whether or not Landlord shall grant consent, Tenant shall pay Landlord's legal and other fees incurred by Landlord pursuant to the Reimbursement Procedure, regardless of whether such transaction is consummated. Any Transfer shall be subject to the terms and provisions of this Lease. Notwithstanding anything to the contrary in this Lease, if Tenant claims that Landlord has unreasonably withheld or delayed its consent under this Article 11 or otherwise has breached or acted unreasonably under this Article 11, Tenant's sole remedies shall be a declaratory judgment and an injunction for the relief sought without any monetary damages, and Tenant hereby waives the provisions of Section 1995.310 of the California Civil Code, or any successor statute, and all other remedies. The burden of producing evidence and the burden of proof showing Landlord that a prospective Transferee meets each and all of the aforesaid qualifications and standards shall be on the Tenant.

### 11.3 Consent Factors.

If Landlord consents to any Transfer, Tenant may within one hundred eighty (180) days after the date of delivery of the Transfer Notice, enter into such Transfer of Tenant's interest in the

Premises or portion thereof, upon the same terms and conditions as are set forth in the Transfer Notice furnished by Tenant to Landlord, provided that if there are any material changes to the financial condition of the Transferee or any other material changes to any proposed Transfer terms specified in the Transfer Notice, Tenant shall again submit the Transfer to Landlord for its approval and other action under this Article 11.

Without limitation of Landlord's right to withhold its consent for other reasonable reasons, the parties hereby agree that it shall be reasonable under this Lease and under any applicable Law for Landlord to withhold consent to any proposed Transfer where Landlord determines in its reasonable discretion that one or more of the following apply (it being understood that for the purposes of this Section 11.3.0 and Section 11.5.1 in the case of a Change in Entity, references to "**Transferee**" shall mean Tenant following the Change in Entity):

#### **11.3.1 Insufficient Experience.**

The Transferee is not experienced in the ownership or management of similar projects or the proposed Transferee lacks sufficient business reputation and experience to operate a successful business of the type and quality contemplated under this Lease;

#### **11.3.2 Inconsistent Use.**

The Transferee's proposed use of the Premises following the proposed Transfer will not be for the Permitted Use or the quality of the use is not of the quality contemplated under this Lease;

#### **11.3.4 Reputation.**

The Transferee (i) is not reputable (a reputation for dishonesty, criminal conduct or association with criminal elements), (ii) is of a character or reputation or engaged in a business which is not consistent with the quality or reputation of the business conducted from the Premises, or may reflect adversely on the quality or reputation of the business conducted from the Premises or (iii) has a history of, or a reputation for, either discriminatory employment practices which violate any Laws or non-compliance with Environmental Laws;

#### **11.3.5 Financial Stability.**

The Transferee is not a party of sufficient financial worth and financial stability in light of the Tenant obligations under this Lease;

#### **11.3.6 Default.**

At the time of request or Transfer, Tenant is in default under this Lease or any other lease between Landlord and Tenant or an entity that is Controlled by or under common Control with Tenant or which Controls Tenant is in default (after applicable notice and cure periods) of its lease with Landlord.

#### **11.3.7 Other Grounds.**

Any other reasonable grounds considering the unique nature and interests of the Landlord including the fact that Landlord holds the Premises in trust for the people of the State of California and Landlord's duty of care in administering a valuable public resource.

Tenant acknowledges and agrees that each of the grounds set forth in Section 0 above in the event of proposed Transfer is a reasonable restriction on Transfer for purposes of California Civil Code Section 1951.4. The burden of producing evidence and the burden of proof showing Landlord that a prospective Transferee meets each and all of the aforesaid qualifications and standards shall be on the Tenant.

#### **11.4 Effect of Transfer.**

If Landlord consents to a Transfer, (i) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, (iii) Tenant shall deliver to Landlord, within ten (10) days after execution, an original executed copy of all documentation pertaining to the Transfer, and any document evidencing a Transfer shall be in form acceptable to Landlord, and (iv) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of the Lease from liability under Articles 19, 21, and/or 22.

#### **11.5 Conditions.**

##### **11.5.1 Transfer.**

In the event Landlord consents to any Transfer (other than for a Sublease for less than twenty-five percent (25%) of the floor area of the Improvements computed in the aggregate for one or a series of transactions), then at Landlord's election said consent shall be conditioned upon the following: (i) the Transferee (other than a Subtenant under a Sublease of less than all or substantially all of the Premises) shall agree to be bound by all provisions, and assume each and every obligation, under this Lease (including those obligations arising or pertaining to periods prior to the effective date of the Transfer), or in the case of a Subtenant under a Sublease of less than all or substantially all of the Premises, such Subtenant shall execute a document acceptable to Landlord acknowledging that all rights of the Subtenant are subject to all terms and conditions of this Lease as the same relate to the space subject to the Sublease; (ii) a Lease amendment of the type described in Section 10.1.2(b) shall be negotiated and executed; provided, however, that this Lease amendment requirement shall apply regardless of when the Transfer occurs and this requirement shall not be subject to the exception applicable to Financing Transactions closing within the first two years following the Commencement Date under Section 10.1.2(b); (iii) if as of the proposed effective date of the Transfer is on or after January 31, 2041, the Rent being paid under this Lease is less than market rent (as reasonably determined by Landlord), the Rent payable hereunder as of the effective date of the Transfer shall be increased to the then applicable market rent; (iv) Transferee shall comply with other conditions and qualifications determined by the BPC; and (iv) in the case of a Sublease, the Subtenant shall execute an attornment agreement as provided in Section 11.6 below. Without limiting the generality of clause (i) above, the Transferee shall be obligated for the payment to Landlord of any underpayment of Rent determined to be due under Section 5.6 above, together with the cost of the audit if applicable, notwithstanding that such underpayment of Rent, and related audit, pertains to a period of time prior to the effective date of the Transfer.

#### **11.6 Subtenant Attornment.**

Every Sublease hereunder is subject to the express condition, and by accepting a Sublease hereunder each Subtenant shall be conclusively deemed to have agreed, that if this Lease terminates or if Landlord succeeds to Tenant's estate in the Premises, the Subtenant shall, at the

option of Landlord, attorn to and recognize Landlord as the Subtenant's landlord under the Sublease, provided that Landlord shall not (i) be liable for any act or omission or negligence of Tenant, (ii) be subject to any counterclaim, offset or defense which theretofore accrued to such Subtenant against Tenant, (iii) be bound by any payment of Rent or other sums of money for more than one (1) month in advance or any security deposit (unless actually received by Landlord), (iv) be obligated to perform any work in the sublet space, (v) in the event of a casualty, be obligated to repair or restore Improvements, (vi) in the event of a partial Taking, be obligated to repair or restore Improvements, (vii) be obligated to make any payment to such Subtenant, or (viii) be bound by any obligations that Landlord lacks the capacity to perform. Any Subtenant shall promptly execute and deliver any instrument Landlord may reasonably request to evidence such attornment. Upon early termination of this Lease, Tenant shall pay over to Landlord all sums held by Tenant for the benefit of Subtenants or as security under the provisions of the existing Subleases.

#### **11.7 Sublease Rent Requirements.**

Subject to the terms of any Permitted Encumbrance, each Sublease shall require the Subtenant thereunder to make all payments of Rent and other sums of money to Landlord during the existence of a default hereunder and following written notice of the same from Landlord, and Landlord shall apply said payments made to all Rent that is due and payable to Landlord pursuant to this Lease, and any remaining amounts will be held and applied to future Rent payable under this Lease.

#### **11.8 Reporting of Sublease Information.**

If Tenant has entered into any Subleases, then within thirty (30) days of request from Landlord and within sixty (60) days after the end of each calendar year, Tenant shall submit to Landlord a rent roll in the form of Exhibit H attached hereto containing the information described therein for each Sublease then in effect, along with a site plan showing locations of any Subleases.

#### **11.9 Permitted Lender and Foreclosure Purchasers.**

The foregoing provisions of this Article 11 shall not apply to the following Transfers, which are governed by Sections 10.3 and 10.4: (i) a Transfer to a Permitted Lender or a designee of the Permitted Lender who is Controlled by or is who is under common Control with the Permitted Lender pursuant to the foreclosure of the Permitted Encumbrance or an Assignment in lieu of foreclosure or (ii) a Transfer to a Foreclosure Purchaser.

#### **11.10 Landlord Participation Fee.**

Upon each (a) Assignment pursuant to this Article 11 to a Third Party (as defined below), (b) sale of substantially all of the assets of Tenant (whether through one transaction or a series of transactions) to a Third Party, (c) Change in Entity of Tenant, and (d) Sublease of all or substantially all of the Premises to a Third Party (any of the transactions in clauses (a), (b), (c), or (d) of this Section 11.10, a "**Fee Generating Transfer**"), Tenant shall pay to Landlord a fee (the "**Assignment Participation Fee**") in an amount equal to Two and One-half percent (2.5%) of the Gross Proceeds of such transaction. Prior to Landlord's consent to any transaction subject to an Assignment Participation Fee, Tenant shall deliver to Landlord a written statement showing the calculation of the Assignment Participation Fee owed to Landlord from Tenant based on the terms of the transaction. The statement of the calculation of the Assignment Participation Fee shall contain such detail as may be reasonably requested by Landlord to verify the calculation of

the Assignment Participation Fee. The Assignment Participation Fee due to the Landlord shall be payable in full to Landlord concurrent with the completion of the transaction and shall be a joint and several obligation of the transferee and transferor. When owed, the Assignment Participation Fee shall constitute Additional Rent.

For the purposes of this Section 11.10, the term "**Third Party**" shall mean any Person other than (i) Marine Group Global Holdings, LLC, a Delaware limited liability company (the "**Approved Parent**") or an entity who is directly or indirectly Controlled by the Approved Parent, (ii) a Permitted Lender, or (iii) an assignee of a Permitted Lender (whether the Permitted Lender acquires the leasehold interest under this Lease by foreclosure or deed-in-lieu of foreclosure or pursuant to a new lease), or provided, however, that if the Gross Proceeds paid by the assignee exceed the Aggregate Debt Amount (as defined below), then such assignee of the Permitted Lender shall be a Third Party and the Assignment Participation Fee shall be payable solely with respect to the portion of the Gross Proceeds that exceed the Aggregate Debt Amount. The term "**Aggregate Debt Amount**" shall mean the aggregate amount of the outstanding principal, interest and other amounts secured by the applicable Permitted Encumbrance at the time of acquisition by the Permitted Lender of the leasehold interest in the Premises.

For the purposes of this Section 11.10, with respect to a Fee Generating Transfer, the term "**Gross Proceeds**" shall mean the purchase price or other consideration paid (either in cash or by an assumption of debt or other consideration and, if paid over time, the present value of the total consideration using the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%)) to the Tenant and/or holders of direct or indirect interests in Tenant in connection with the subject transaction less the sum of (x) any prorations, brokerage fees, closing costs or other customary deductions to the purchase price for which the seller is responsible and (y) if the Third Party is the assignee of a Permitted Lender, the Aggregate Debt Amount.

Upon the request of Landlord from time to time (which request shall be no more frequent than once per year), Tenant shall provide Landlord with a schedule listing the names and mailing address of all holders of direct or indirect (at all levels) interests in Tenant other than holders of interests traded on a recognized public exchange. In the event that such shareholder, partner, member or other interest holder is a trust, Tenant shall include in such schedule the name and mailing address of each trustee of said trust, together with the names and mailing addresses of each beneficiary of said trust.

## **12. DEFAULTS AND REMEDIES**

### **12.1 Defaults.**

In addition to any terms hereof expressly providing for a default hereunder, the occurrence of any one (1) or more of the following events shall constitute a default by Tenant hereunder:

#### **12.1.1 Abandonment of the Premises.**

"Abandonment" is herein defined to include, but is not limited to, any absence by Tenant from the Premises for ten (10) consecutive days or longer (except to the extent caused by Force Majeure Event).

#### **12.1.2 Failure to Pay.**

Failure by Tenant to pay, when due, any Rent, other payment, and/or charge herein, where such failure continues for a period of five (5) days after written notice from Landlord; provided that such notice period shall be lieu of, and not in addition to, any notice periods required by Law.

#### **12.1.3 Failure to Perform.**

Failure by Tenant to perform any express or implied covenants or conditions in this Lease (other than as provided in the other subsections in this Section 12.1), should such failure continue for thirty (30) days after written notice thereof is given to Tenant; provided that if the nature of such failure is such that the same cannot reasonably be cured within such thirty (30) day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure such failure, but in no event exceeding a period of time in excess of ninety (90) days after written notice thereof from Landlord to Tenant.

#### **12.1.4 Bankruptcy Event.**

The occurrence of a Bankruptcy Event.

#### **12.1.5 Specified Defaults.**

The occurrence of any event expressly stated to constitute a default under the Lease.

#### **12.1.6 [Intentionally Omitted].**

#### **12.1.7 [Intentionally Omitted].**

### **12.2 Remedies.**

Upon any default, Landlord may, in addition to all other rights and remedies afforded Landlord hereunder or by law or equity, take any one or more of the following actions:

#### **12.2.1 Termination of Lease.**

Terminate this Lease by giving Tenant written notice thereof, in which event Tenant shall immediately surrender the Premises to Landlord. In the event that Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant:

The worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

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 Rent loss Tenant proves reasonably could have been avoided; plus

The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss that Tenant proves reasonably could be avoided; plus

Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, the cost of recovering possession of the Premises, expenses of reletting (including necessary repair, renovation and alteration of the Premises), reasonable attorneys' fees, and any other reasonable costs; plus

At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

AS USED IN SUBPARAGRAPHS (A) AND (B) ABOVE, THE "**WORTH AT THE TIME OF AWARD**" IS COMPUTED BY ALLOWING INTEREST AT THE DEFAULT RATE. AS USED IN SUBPARAGRAPH (C) ABOVE, THE "**WORTH AT THE TIME OF AWARD**" IS COMPUTED BY DISCOUNTING SUCH AMOUNT AT THE DISCOUNT RATE OF THE FEDERAL RESERVE BANK OF SAN FRANCISCO AT THE TIME OF AWARD PLUS ONE PERCENT (1%).

Failure by Landlord to enforce one or more of the remedies herein provided upon a default shall not be deemed or construed to constitute a waiver of such default. Tenant hereby waives for Tenant and for all those claiming under Tenant all rights now or hereafter existing to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

#### **12.2.2 Continue Lease in Effect.**

Landlord shall have the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due if Tenant has the right to sublet or assign this Lease, subject only to reasonable limitations).

#### **12.2.3 Perform Acts on Behalf of Tenant.**

Perform any act Tenant is obligated to perform under the terms of this Lease (and enter upon the Premises in connection therewith if necessary) in Tenant's name and on Tenant's behalf, without being liable for any claim for damages therefor, and Tenant shall reimburse Landlord on demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease (including, but not limited to, collection costs and legal expenses), plus interest thereon at the Default Rate.

#### **12.2.4 Increased Security Deposit.**

Require Tenant to increase the Security Deposit with an additional amount equal to three (3) months of the Monthly Rent, determined based on the Monthly Rent applicable at the time this remedy is imposed, which remedy may be exercised on more than one occasion with further increases in the Security Deposit on any subsequent default or any failure of Tenant to cure the default at issue within the time period set forth in Section 12.1.3.

#### **12.2.5 Payment by Tenant.**

Upon any default, Tenant shall pay to Landlord all costs incurred by Landlord (including court costs and reasonable attorneys' fees and expenses and staff time) in: (1) obtaining possession of the Premises; (2) removing and storing Tenant's or any other occupant's property;

(3) repairing, restoring, altering, remodeling, or otherwise putting the Premises into condition acceptable to a new tenant; (4) performing Tenant's obligations which Tenant failed to perform; and (5) enforcing, or advising Landlord of, its rights, remedies, and recourses arising out of the default.

#### **12.2.6 Assignment of Plans and Other Matters.**

If this Lease is terminated or Landlord otherwise takes possession of the Premises by reason of Tenant's default, Tenant hereby agrees that, if Landlord so requests, (i) Tenant, at Tenant's sole cost and expense, shall assign and transfer to Landlord all of Tenant's right, title and interest in and to all plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises, free and clear of liens and claims by third parties, in connection with and (ii) Tenant shall execute and deliver to Landlord, within five (5) business days of Landlord's request, in a form provided by and acceptable to Landlord, an instrument confirming the Assignment and transfer of such property and interests to Landlord and shall, within such five (5) business day period, deliver the originals of such plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises to Landlord. Tenant agrees to reasonably cooperate with Landlord at no cost or expense to Landlord in seeking any consent from the preparer of any plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises, to the extent assignable, to this Assignment which may be required for Landlord to rely on such plans, drawings, specifications, permits, approvals, warranties, entitlements, and other similar property and instruments relating to the Premises.

### **13. BANKRUPTCY**

#### **13.1 Bankruptcy Event.**

Upon occurrence of a Bankruptcy Event, Landlord shall have all rights and remedies available pursuant to Article 12. After the commencement of a Bankruptcy case: (i) the Tenant shall perform all post-petition obligations of Tenant under this Lease; and (ii) if Landlord is entitled to damages (including unpaid Rent) from and after any order for relief pursuant to the terms of this Lease, then all such damages shall be entitled to administrative expense priority pursuant to the Bankruptcy Code. Tenant acknowledges that this Lease is a lease of nonresidential real property and therefore Tenant, as the debtor in possession, or the trustee shall not seek or request any extension of time to assume or reject this Lease or to perform any obligations of this Lease which arise from or after the order of relief.

#### **13.2 Assignment/Assumption.**

Any Person to which this Lease is assigned pursuant to the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of Assignment, and any such assignee shall upon request by Landlord execute and deliver to Landlord an instrument confirming such assumption in a form acceptable to Landlord. If the Tenant desires to assume and assign this Lease under the Bankruptcy Code to any Person who shall have made a bona fide offer, then the Tenant shall give Landlord written notice of such proposed Assignment (which notice shall set forth the name and address of such Person, all of the terms and conditions of such offer, and the adequate assurance to be provided Landlord to assure such Person's future performance under this Lease) prior to the date Tenant shall make application to the appropriate court for authority and approval to enter into such Assignment and assumption. Landlord shall thereupon have the prior right and option, to be exercised by notice

to the Tenant given at any time prior to the effective date of such proposed Assignment, to accept an Assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person, less any brokerage commissions which may be payable out of the consideration to be paid by such Person for the Assignment of this Lease. If the Tenant fails to assume or assume and assign this Lease in accordance with the requirements of the Bankruptcy Code within the period provided by the Bankruptcy Code or allowed by the Bankruptcy Court, then the Lease shall be deemed rejected and the Landlord shall have all rights and remedies available to it pursuant to Section 12.2. At any time during the Term, upon not less than five (5) days' prior written notice, Tenant shall provide Landlord with audited financial statements for Tenant for not less than the past two (2) years. Such statements are to be certified by an authorized representative of Tenant to be true, correct and complete, prepared in accordance with generally accepted accounting principles and audited by any independent certified public accountant.

### **13.3 Adequate Assurances.**

In the event Tenant or proposed assignee under Section 13.2 proposes under the Bankruptcy Code to cure any default under this Lease or to assume or assign this Lease and is obliged to provide adequate assurance to Landlord that (a) a default shall be cured, (b) Landlord shall be compensated for its damages arising from any breach of this Lease and (c) future performance of Tenant's obligations under this Lease shall occur, then such adequate assurances shall include all of the following, as designated by Landlord in its sole and absolute discretion:

- (a) Those acts specified in the Bankruptcy Code or other applicable laws as included within the meaning of "adequate assurance";
- (b) A prompt cash payment to compensate Landlord for any monetary defaults or actual damages arising directly from a breach of this Lease;
- (c) A cash deposit in an amount at least equal to the then-current amount of the Security Deposit; and
- (d) The assumption or Assignment of all of Tenant's interest and obligations under this Lease.

## **14. EMINENT DOMAIN**

### **14.1 Eminent Domain.**

If all or any portion of the Premises shall be condemned pursuant to exercise of the power of eminent domain, or acquired under an actual threat of the exercise of such power (collectively, "**Condemnation**") the rights and obligations of Landlord and Tenant with respect thereto shall be as set forth in this Article 14 Nothing in this Article 14 shall be interpreted to prevent Landlord from exercising its power of eminent domain as to Tenant's leasehold interest and/or Premises.

### **14.2 Notice of Condemnation.**

If either party hereto receives notice of any Condemnation or intended Condemnation (including, without limitation, service of process), within five (5) business days of receipt, the party in receipt thereof shall deliver to the other party an exact copy of such notice of or relating to any intended Condemnation and the date such notice was received.

#### **14.3 Representation of Interest.**

Landlord and Tenant shall each have the right to represent its respective interests in such proceeding or negotiation with respect to a Condemnation or intended Condemnation and to make full proof of its claims. Landlord and Tenant each agrees to execute and deliver to the other any instrument which may be required to effectuate or facilitate the provisions of this Article 14.

#### **14.4 Early Termination.**

In the event of a Condemnation of all of the Premises or such portion of the Premises so that Tenant cannot reasonably and economically use the remainder of the Premises for the purposes permitted under this Lease (as reasonably determined by Tenant and approved by Landlord in its sole discretion), this Lease shall terminate as of the date of such Condemnation. A termination of this Lease pursuant to this section shall act to relieve Tenant from any further liability under this Lease except as to obligations accruing or arising on or prior to termination or which are otherwise required to be performed in connection with such termination or surrender of the Premises or which otherwise expressly survive termination. Tenant shall deliver the Premises to Landlord in the condition required for the surrender of the Premises under this Lease.

#### **14.5 Partial Condemnation.**

If only a portion of the Premises is subject to Condemnation and this Lease is not terminated pursuant to Section 14.4 above, then this Lease shall continue in full force and effect upon the same terms and conditions as set forth herein, and the Minimum Annual Rent shall be reduced in proportion to the reduction in the value of the Premises after the Condemnation as compared to the value of the Premises immediately prior to the Condemnation (as reasonably determined by Landlord and approved by Tenant in its reasonable discretion).

#### **14.6 Temporary Condemnation.**

If any portion of the Premises, including the entirety thereof, is subject to a temporary Condemnation, then this Lease shall continue in full force and effect and there shall be no adjustment or abatement in Rent during the term of such temporary Condemnation. Any portion of an award, settlement or other compensation or damages which may be given for such temporary Condemnation attributable to the Term shall be the property of Tenant and any portion attributable to any period following the expiration of the Term shall be the property of Landlord. As used herein, a "temporary Condemnation" shall mean any taking which is not intended by the condemning authority to be permanent at the time such Condemnation initially occurs.

#### **14.7 Award.**

##### **14.7.1 Leasehold Award.**

In the event of any Condemnation of all or any portion of the Premises (other than a temporary Condemnation), Landlord shall be entitled to any and all awards and/or settlements or other compensation or damages which may be given for (a) any "bonus value" respecting this Lease (i.e., the excess value of the leasehold arising from the fact that the scheduled rent is less than the market rent for the Premises), and (b) the land (and water, if applicable) comprising the Premises and any Existing Improvements. Any and all other awards and/or settlements or other compensation or damages (collectively, "**Leasehold Award**") for Improvements constructed by

Tenant and the leasehold estate created by this Lease (excluding any bonus value thereof) shall be paid as follows:

(a) Provided this Lease is not terminated pursuant to Section 14.4 above, the Leasehold Award shall be payable in trust to any Permitted Lender that is a Financial Institution, if any, and shall be disbursed for the payment of the costs of repairing and restoring the remaining portion of the Premises to substantially its value, condition and character prior to such Condemnation to the extent the same may be feasible. If there is no Permitted Lender that is a Financial Institution or if there is but the Permitted Lender declines to act as a trustee for the disbursement of funds as provided above, then such Leasehold Award shall be payable in trust to a bank or trust company doing business in the County of San Diego agreed upon by the parties, or if the parties fail to agree, to Bank of America, N.A., or its successor, and shall be disbursed by such trustee as provided above. If the Permitted Lender is the trustee, the Permitted Lender may disburse the progress payments in accordance with its normal loan disbursement procedures (e.g. upon receipt of appropriate mechanics lien releases, invoices, etc.) so long as such disbursement procedures are reasonably acceptable to Landlord and ensure that the Leasehold Award is applied to the costs of repairing and restoring the Premises.

(b) If this Lease is terminated pursuant to Section 14.4, or if there are excess proceeds available after completion of the repair and restoration of the Premises as provided above, then any portion of the Leasehold Award not used for the repair and restoration of the remaining portion of the Premises pursuant to subparagraph (a) above, or used to place the Premises in the condition required for the surrender of same to Landlord, shall be divided between Landlord and Tenant, with Landlord to receive a sum computed by multiplying such excess funds awarded with respect to such Improvement by a fraction, the numerator of which shall be the number of years (or portion thereof) of the Term that have, at the time of such Condemnation, expired, and the denominator of which shall be the total number of years in the full Term. The remaining amount shall be paid to Tenant, subject to the Permitted Lender's rights under subparagraph (c) below.

(c) Any portion of the Leasehold Award relating to Improvements and not used as described in subparagraph (a) and (b) and which is payable to Tenant pursuant to subparagraph (b) shall be paid to the Permitted Lender to be applied against its Permitted Encumbrance to the extent such payment is required to be made by Tenant pursuant to the terms of the Permitted Encumbrance held by the Permitted Lender.

(d) Any remaining portion of the Leasehold Award after payment as described above shall be paid to Tenant. Notwithstanding the foregoing sentence, with respect to any Leasehold Award received in connection with any Condemnation for street widening or the installation of utilities, public sidewalks or walkways which occurs at any time following the Commencement Date, and provided such Condemnation does not result in material physical damage to then existing buildings or driveways, parkway access or access ways serving the Improvements, Landlord instead of Tenant, shall be entitled to receive, in addition to any award otherwise payable to Landlord pursuant to this Article, all of that portion of the Leasehold Award distributed to Tenant pursuant to this subparagraph (d).

(e) In addition to any other amounts to which Tenant is entitled as set forth above, Tenant shall be entitled to pursue any rights and remedies it may have against such condemning authority for: (i) any of Tenant's personal property; (ii) compensation pursuant to the provisions of California Government Code Section 7262 et seq.; (iii) compensation for loss of good will pursuant to California Code of Civil Procedure Section 1263.510 et seq.; and (iv) any

other personal rights and remedies to which the occupant and user of the condemned portion of the Leased Premises may be entitled under law. Said amounts shall not be deemed a part of an "award" as provided above.

Nothing in this Article 14 shall be construed to allow the Tenant to prosecute any claim against the condemning authority or Landlord which would diminish or otherwise adversely affect the Leasehold Award or Landlord's rights herein.

#### **14.7.2 Total Number of Years.**

If at the time Tenant receives notice of a Condemnation of all or any portion of the Premises, Tenant has not exercised its option, pursuant to Section 3.2, to extend the Initial Term of this Lease, then for the purposes of this Section the term "total number of years in the full Term" shall not include any portion of such option period.

#### **14.7.3 [Intentionally Omitted].**

#### **14.7.4 Default.**

Anything in this Article to the contrary notwithstanding, Tenant shall not be entitled to any funds, awards, rights, benefits or entitlement of any kind arising from or out of a Condemnation, except so far as is designated for damage to Tenant's personal property, if the same occurs during the period Tenant is in default under this Lease or after Landlord has exercised any remedy referred to in Section 12.2 above by reason of Tenant's default. Tenant shall be entitled to any award allocated by a court of competent jurisdiction to Tenant's personal property.

### **15. MAINTENANCE AND REPAIR**

#### **15.1 Maintenance and Repair.**

The Premises and all Improvements, both inside and outside, shall be put and kept free of deferred maintenance and in good operating condition by Tenant at Tenant's sole cost and expense. Tenant, at its sole cost and expense, shall be fully responsible for all care, maintenance, and repair of the Premises and all Improvements as necessary to keep the Improvements free of deferred maintenance and in good operating condition except for (i) reasonable wear and tear and damage from casualty or (ii) Condemnation which results in termination of this Lease. Tenant acknowledges that over the Term of this Lease, that in order to adhere to these maintenance and repair standards, certain repairs and replacements will be required and that regular reinvestment should be anticipated. Without limitation of the foregoing, Tenant shall perform all maintenance and make all repairs and replacements, ordinary as well as extraordinary, structural or otherwise, which may be necessary or required so that all times the Premises and the Improvements (together with all equipment, trade fixtures, mechanical and utility systems, paving, landscaping, installations and appurtenances) shall be free of deferred maintenance and in good operating condition, satisfactory to Landlord in its sole discretion except for reasonable wear and tear which does not adversely affect the appearance and condition of the Premises or Improvements. Further, Tenant shall provide containers for the collection of trash and garbage outside the Improvements, which may require Landlord's approval, and keep the Premises in a clean, safe, healthy and sanitary condition, free and clear of rubbish, litter, and any fire hazards. Tenant's maintenance shall include, without limitation, all preventive maintenance, painting and replacements necessary to maintain and preserve the Premises and Improvements, and compliance with the Best Management Practices ("**BMPs**") set forth in the Jurisdictional Runoff

Management Program incorporated by reference in Article 10 of the San Diego Unified Port District Code.

Prior to Tenant performing any non-routine repairs or replacements (i.e., those not occurring with an expected or known frequency in the normal course of business) to the exterior, the structure or building systems or which will substantially interfere with the typical operation of the Improvements, or affect the portions of the Improvements generally accessible to the public such as the lobby area of a hotel, plans and specifications must first be submitted to Landlord and receive Landlord's written approval, pursuant to the procedures provided in Article 6 herein as if such repairs or replacements were Alterations.

Tenant waives all rights to make repairs at the expense of Landlord, as provided in Section 1942 of the California Civil Code, and all rights provided by Section 1941 of the California Civil Code.

## **15.2 Condition in Compliance with Laws.**

Tenant, at its sole cost and expense, shall keep the Premises and Improvements (together with all equipment, trade fixtures, mechanical and utility systems, paving, installations and appurtenances) in full compliance with all applicable Laws and the requirements of any insurer providing insurance for the Premises or any part thereof.

### **15.2.1 [Intentionally Omitted].**

## **15.3 Performance by Landlord.**

### **15.3.1 Inspection and Correction.**

Landlord always shall have the right but not the duty or obligation to enter, view, inspect, determine the condition of, and protect its interests in the Premises and Improvements. If Landlord determines that the Premises or Improvements are not in the condition required pursuant to the terms of this Lease, Landlord shall deliver written notice to Tenant detailing the items to be corrected and Tenant shall commence the necessary maintenance, alteration, repair and replacement work necessary to remedy the issues set forth in Landlord's notice within ten (10) days after written notice from Landlord and diligently pursue such work to completion. Further, if at any time Landlord determines the Premises or Improvements are not in the condition required pursuant to the terms of this Lease, upon ten (10) days prior written notice thereof Landlord may require Tenant to file and pay for a performance bond. The amount of said bond shall be adequate, in Landlord's opinion, to correct all unsatisfactory conditions.

### **15.3.2 Landlord Repair Rights.**

At Landlord's option, if Tenant fails to commence to perform the necessary maintenance, alteration, repair and replacement work within ten (10) days of Landlord's written demand therefor and thereafter diligently prosecute such work to completion (except in the event of an emergency in which case no such notice shall be required), Landlord may, but need not, perform such maintenance, alteration, repair or replacement work, and Tenant shall pay Landlord the actual cost thereof, together with interest thereon at the Default Rate from the date incurred until paid and an administrative fee in the amount of fifteen percent (15%) of the cost of such work, pursuant to the Reimbursement Procedure. Such payments shall constitute Additional Rent under this Lease and shall be paid monthly as billed by Landlord or in a lump sum payment, as directed by Landlord. If requested by Landlord, Tenant shall pay to Landlord the entire estimated cost of such

work in advance, but such payment shall not relieve Tenant from the obligation to pay any excess costs that may be actually incurred by Landlord. For all maintenance, alteration, repair and replacement work undertaken by Landlord, Tenant hereby indemnifies and shall defend, at Tenant's sole expense and with counsel reasonably acceptable to Landlord, and hold the Landlord Parties harmless from any and all liability, Related Costs, demands, damages, expenses (including, without limitation, attorneys', consultants' and experts' fees, court costs and amounts paid in settlement of any claims or actions), arising directly or indirectly out of such work or the performance thereof, unless the same is the result of the gross negligence or willful misconduct of Landlord. Landlord shall have no obligation to repair or maintain any portion of the Premises. The rights of Landlord under this Section shall not create any obligations or increase any obligations of Landlord elsewhere in this Lease, nor shall the exercise of such rights, or the failure to exercise same, limit any other rights or remedies of Landlord. Tenant shall provide Landlord Parties access to the Premises for the purposes set forth in this Section 15.3.

#### **15.4 Records.**

Tenant shall, at all time during the Term, keep or cause to be kept, accurate and complete records of maintenance conducted at the Premises. The records must be supported by source documents of original entry such as invoices, receipts, work orders, construction contracts, service contracts or other pertinent supporting documents. All of Tenant's maintenance records relating to the Premises shall be kept either at the Premises or at such other locations in San Diego County, California as are acceptable to Landlord. Landlord shall have the right at any time to examine such maintenance records without restriction and, at Landlord's request, Tenant shall provide Landlord with copies thereof at Tenant's expense for the purpose of determining the accuracy thereof.

### **16. TAXES AND PROPERTY EXPENSES**

#### **16.1 Taxes.**

This Lease may result in a taxable possessory interest and be subject to the payment of property and other taxes. Tenant shall pay, prior to delinquency, all Tax Expenses attributable to any time period during the Term now or hereafter assessed against, or relating in any way to the Tenant, this Lease, the Premises, the Improvements, or the use or occupancy thereof by Tenant and Tenant Parties. Tenant shall promptly following written request therefor from Landlord, provide Landlord with evidence of the payment of Tax Expenses. "**Tax Expenses**" shall include, without limitation, all federal, state, county, or local governmental or municipal taxes, fees, assessments, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary, (including, without limitation, real estate taxes, possessory interest taxes, use taxes, general and special assessments, leasehold taxes or taxes based upon Tenant's receipt of rent, including gross receipts or sales taxes applicable to Tenant's receipt of rent, personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and equipment, appurtenances, furniture and other personal property used by Tenant in connection with the Premises) and any taxes and assessments relating to the business or other activities of Tenant upon or in connection with the Premises. Tax Expenses also shall include, without limitation:

Any tax on Landlord's receipt of Rent, right to Rent or other income from the Premises;

Any assessment, tax, fee, levy or charge in addition to, or in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax,

possessory interest tax or use tax or other Tax Expenses, and any assessments, taxes, fees, levies and charges that may be imposed by government agencies for services such as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants. It is the intention of Tenant and Landlord that all such new and increased assessments, taxes, fees, levies, and charges and all similar assessments, taxes, fees, levies and charges be included within the definition of Tax Expenses for purposes of this Lease; and

Any assessment, tax, fee, levy, or charge, which is levied or assessed based upon the area of the Premises or the Improvements or the Rent payable hereunder, including, without limitation, any gross income tax upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof.

## **16.2 Property Expenses.**

Without limitation of Tenant's other obligations under this Lease, Tenant agrees to pay all Property Expenses. As used herein, "**Property Expenses**" include, without limitation, all costs and expenses of any nature incurred or payable, or arising in connection with, the ownership, management, maintenance, construction, repair, replacement, restoration or operation of the Premises and/or the Improvements, including, without limitation, any amounts paid for: (i) the cost of supplying any utilities, the cost of operating, maintaining, repairing, renovating and managing any utility systems, mechanical systems, communications systems, sanitary and storm drainage systems, and the cost of supplies and equipment and maintenance and service contracts in connection therewith; (ii) the cost of licenses, certificates, permits and inspections; (iii) the cost of any insurance carried or required to be carried by Tenant with respect to the Premises and/or the Improvements including without limitation any premiums and deductibles; (iv) the cost of landscaping, supplies, tools, equipment and materials, and all fees, charges and other costs incurred in connection with the management, operation, repair and maintenance of the Premises and/or the Improvements; (v) payments under any easement, license, permit, operating agreement, declaration, or covenant or instrument pertaining to the Premises; and (vi) the cost of any Improvements, capital repairs, capital alterations, or capital equipment, required by any government agency or otherwise required under this Lease.

## **17. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION AND OFAC**

### **17.1 Nondiscrimination.**

Tenant 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 ADA; and any other applicable Laws 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 ADA, Tenant shall be solely responsible for such compliance and required programs, and there shall be no allocation of any such responsibility between Landlord and Tenant. Each Subtenant shall comply with the requirements of this Article 17.

### **17.2 Compliance with Employment and Labor Requirements.**

Tenant shall comply with the Federal Fair Labor Standards Act of 1938; the Federal Labor-Management Reporting and Disclosure Act of 1959; the Occupational Safety and Health Act of 1970; the California Constitution; and any other Laws now existing or hereinafter enacted, regarding employment and labor practices. Tenant shall also comply with the National Labor Relations Act, including the provisions with respect to the rights of employees to organize.

### **17.3 OFAC Compliance.**

Tenant represents and warrants that (i) Tenant and each Person owning an interest in Tenant is not now, and shall not during the term of this Lease become, a Person with whom Landlord or any citizen of the United States is restricted from doing business with under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the "**USA Patriot Act**") and regulations promulgated pursuant thereto, or under any successor statutes or regulations, including, without limitation, persons and entities ("**Prohibited Persons**") named on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("**OFAC**") and/or on any other similar list pursuant to any authorizing statute, executive order or regulation, nor a Person (also, a "**Prohibited Person**") with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (ii) none of the funds or other assets of Tenant constitute property of, or are beneficially owned, directly or indirectly, by any Prohibited Person, (iii) no Prohibited Person has any interest of any nature whatsoever in Tenant (whether directly or indirectly), (iv) none of the funds of Tenant have been derived from any unlawful activity with the result that the investment in Tenant is prohibited by law or that the Lease is in violation of law, and (v) Tenant has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times.

#### **17.3.1 [Intentionally Omitted]**

## **18. INSURANCE**

### **18.1 Insurance.**

Tenant shall maintain insurance acceptable to Landlord in full force and effect throughout the Term.

### **18.2 Forms of Coverage.**

The policies for said insurance shall, as a minimum, provide the following:

#### **18.2.1 Commercial General Liability.**

"**Occurrence**" form Commercial General Liability covering the Premises, operations, and contractual liability assumed by Tenant in this Lease in the amount of not less than as set forth in Section 1.5. Tenant's indemnification obligations under this Lease shall in no event be limited by the terms or qualifications to the contractual liability coverage under such insurance.

#### **18.2.2 Liquor Liability.**

If alcoholic beverages are served or sold on the Premises, Liquor Liability coverage in the amount of not less than as set forth in Section 1.5 shall be obtained. If no alcoholic beverages are served or sold on the Premises, the proof of insurance shall so state.

### **18.2.3 All Risk and Builder's Risk Property Coverage.**

All Risk Property Coverage, including flood and debris cleanup provisions, in an amount not less than the full 100% replacement value of all Improvements, together with business interruption and extra expense coverage, including a provision for the continuation of Rent payments for 24 months, a vandalism and malicious mischief endorsement, earthquake sprinkler leakage coverage, boiler and machinery coverage and, if so required by Landlord, earthquake coverage. The coverage policies shall be endorsed with a Loss Payee endorsement in favor of Landlord. It is agreed that any insurance proceeds in excess of Twenty-Five Thousand Dollars (\$25,000) resulting from a loss under said policies shall be payable jointly to Landlord and Tenant to ensure that said proceeds will be reinvested in rebuilding and/or repairing the damaged Improvements and applied to Tenant's Rent obligations hereunder, as applicable. However, if there is a Permitted Lender that is a Financial Institution, then all proceeds from such policies of insurance (other than from the business interruption and extra expense coverage) shall be payable in trust, with safeguards reasonably acceptable to Landlord, to such Permitted Lender to be disbursed for the repair and restoration of the Improvements (or, if there is no Permitted Lender that is a Financial Institution, or if there is, but the Permitted Lender declines to hold and disburse such proceeds, to a bank or trust company doing business in the County of San Diego agreed upon by the parties, or if the parties fail to agree, to Bank of America, N.A., or its successor, which proceeds shall be deposited in interest bearing accounts or deposits agreed upon by the parties, or if the parties fail to agree, then in the bank's regular passbook savings account). All interest shall be added to the trust funds to be disbursed with the principal. All such proceeds shall be disbursed in progress payments for the payment of the cost of repairing or restoring the property so damaged or destroyed. The specific manner of holding such proceeds and the method and conditions of disbursement shall be subject to the prior written approval of Landlord so as to ensure the application of such proceeds in compliance with this Lease.

During the construction of new Improvements or any Alterations or restoration work, builder's risk completed value form insurance covering the perils insured under the ISO special causes of loss form, including collapse, water damage, transit and flood and earthquake coverage, covering the total value of work performed and equipment, supplies and materials furnished (with an appropriate limit for soft costs in the case of construction) and covering the full insurable value (exclusive of the cost of noninsurable items) of all equipment, supplies and materials at any off-site storage location used with respect to new Improvements or Alterations or in transit. The coverage shall be endorsed with a Loss Payee endorsement in favor of Landlord. The insurance proceeds shall be paid and disbursed in the same manner as set forth in this Section 18.2.3 above.

### **18.2.4 Worker's Compensation.**

Workers' compensation insurance covering all persons employed by Tenant at the Premises and with respect to whom death or bodily injury claims could be asserted against Tenant, Landlord or the Premises, with statutorily required limits, and employer's liability insurance with minimum limits of not less than One Million Dollars (\$1,000,000) for each accident/employee/disease. Workers' compensation insurance shall include a waiver of subrogation in favor of Landlord Parties.

#### **18.2.5 Automobile Liability.**

Business automobile liability insurance covering liability arising out of vehicles used on or about the Premises by Tenant or its employees (including owned, non-owned, leased, rented and/or hired vehicles) insuring against liability for bodily injury, death and property damage in an amount not less than One Million Dollars (\$1,000,000) each accident limit.

#### **18.2.6 UST Insurance Obligations.**

In the event underground storage tanks are located on the Premises, Tenant is required to comply with all Laws applicable to underground storage tanks, including, without limitation, United States Code, Title 42, Chapter 82, Subchapter IX, 40 CFR Part 280, 40 CFR Part 281 and 40 CFR Parts 282.50 – 282.105, and Title 23, Division 3, Chapter 18 of California Code of Regulations, collectively, herein "**UST Law**." At the time Tenant is required to comply with any provisions of UST Law requiring financial assurance mechanisms, Tenant shall provide Landlord with a certified copy of its Certification of Financial Responsibility. If Tenant's program for financial responsibility requires insurance, then Tenant's policy(ies) shall name the Landlord Parties as additional insureds, and all other terms of Section 18.3 below, shall apply. Should Tenant change its financial assurance mechanisms, Tenant shall immediately provide Landlord with a certified copy of its revised Certification of Financial Responsibility.

#### **18.2.7 Marine General Liability Coverage.**

Marine General Liability Insurance in an amount of not less than as set forth in Section 1.5.1. Evidence of coverage in accordance with United States Longshore & Harbor Workers' Compensation Act, if applicable, either as part of Marine General Liability Insurance required herein, or an extension of a worker's compensation policy, or a separate stand-alone worker's compensation policy.

Protection and indemnity insurance for Tenant owned or leased vessels utilized at or near the Premises (including coverage for collision, towers' liability, and bodily injury and property damage.)

#### **18.2.8 Contractor's Pollution Liability Coverage.**

In addition to the Environmental Liability Policy required under Section 1.5.2, if the Landlord determines, in its reasonable discretion, that Tenant performs or contracts for any work which involves a Hazardous Materials Activity or which has the potential to disturb or result in the release of any Hazardous Material, for which there is potential exposure to pollution or Hazardous Materials to Persons or the environment, Tenant shall obtain or cause its contractor to obtain Contractor's Pollution Liability, Pollution Legal Liability and/or Asbestos Pollution Liability and/or Errors & Omissions applicable to the work being performed or the potential release of any Hazardous Material, with limits of \$5,000,000 per claim or occurrence and \$10,000,000 aggregate per policy period of one year or the limits maintained by or available to the contractor, whichever is higher. The Landlord Parties shall also be named as an additional insured on any such policy. Immediately upon learning of or reasonably suspecting that a release of Hazardous Materials has occurred on, in, under or about the Premises, Tenant shall provide notice of the same to Landlord.

### **18.3 General Requirements.**

#### **18.3.1 Certificates and Other Requirements.**

All required insurance shall be in force the first day of the Term, and shall be maintained continuously in force throughout the Term. In addition, the cost of all required insurance shall be borne by Tenant. During the entire Term, Tenant shall provide Landlord with insurance certificates, in a form acceptable to Landlord, issued by the insurer evidencing the existence of the necessary insurance policies and original endorsements effecting coverage required by this Article ("**Certificates**"). The Certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind insurance on its behalf. Notwithstanding the forgoing, Landlord reserves the right to require complete, certified copies of all required policies at any time.

#### **18.3.2 Additional Insureds and Other Requirements.**

All liability insurance policies shall name, or be endorsed to name the Landlord Parties as additional insureds and protect the Landlord Parties 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 will not be suspended or voided, except after Landlord has been furnished with thirty (30) days' prior written notice. To the extent the policy is blanket endorsed or is specifically endorsed to provide the same, all insurance policies shall also provide that the subject policy shall not be cancelled without thirty (30) days' prior written notice to Landlord. All insurance policies shall be endorsed to state that Tenant's insurance is primary and not excess or contributory to any insurance issued in the name of Landlord. Further, all insurance companies must be satisfactory to Landlord.

#### **18.3.3 Deductibles.**

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

#### **18.3.4 Updates.**

Landlord shall retain the right at any time to review the coverage, form, amount and type of insurance required herein. If, in the opinion of Landlord, the insurance provisions in this Lease do not provide adequate protection for the Landlord Parties and/or members of the public using the Premises or using services connected with Tenant's use or occupancy of the Premises, Landlord may require Tenant to obtain insurance sufficient in coverage, form, amount and type to provide adequate protection. Landlord's requirements 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.

#### **18.3.5 New Certificates.**

If Landlord changes the insurance requirements as provided in Section 18.3.4 above, Landlord shall notify Tenant in writing of such changes. With respect to changes in insurance requirements that are available from Tenant's then-existing insurance carrier, Tenant shall deposit new Certificates with Landlord issued by the insurer evidencing acceptable insurance policies incorporating such changes within thirty (30) days of receipt of such notice. With respect to changes in insurance requirements that are not available from Tenant's then-existing insurance carrier, Tenant shall deposit new Certificates evidencing acceptable insurance policies with Landlord, incorporating such changes, within ninety (90) days of receipt of such notice. In the

event Tenant fails to deposit insurance Certificates as required herein, and such failure is not cured within ten (10) days following written notice thereof to Tenant, this Lease shall be in default without further notice to or cure right by Tenant, and Landlord shall be entitled to exercise all legal remedies. Without limitation of the foregoing, Tenant agrees that if Tenant does not take out and maintain such insurance or furnish Landlord with renewals or binders in a timely manner, Landlord may (but shall not be required to), procure said insurance on Tenant's behalf and charge Tenant the cost thereof, which amount shall be payable by Tenant to Landlord pursuant to the Reimbursement Procedure.

#### **18.3.6 Default.**

If Tenant fails or refuses to maintain insurance as required in this Lease, or fails to provide proof of insurance, and such failure is not cured within ten (10) days following written notice thereof to Tenant, Landlord has the right to declare this Lease in default without further notice to Tenant, and Landlord shall be entitled to exercise all legal remedies.

#### **18.3.7 No Limit on Liability.**

The procuring of such required policies of insurance shall not be construed to limit Tenant's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Lease.

#### **18.3.8 Compliance with Insurance Requirements.**

Tenant agrees not to use the Premises in any manner that will result in the cancellation of any insurance Landlord may have on the Premises or on adjacent premises, or that will cause cancellation of any other insurance coverage for the Premises or adjacent premises, notwithstanding that such use may be included within the Permitted Use. Tenant further agrees not to keep on the Premises or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the Premises. Tenant shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the Premises and represents to Landlord that Tenant will confirm that it is in compliance with such requirements at all times.

#### **18.4 Waiver of Subrogation.**

Tenant hereby releases the Landlord Parties from any and all liability or responsibility to Tenant or anyone claiming through or under Tenant by way of subrogation or otherwise for any loss or damage to the Premises, any Improvements, or any of Tenant's personal property or business caused by or arising from a fire or any other event that is covered by the insurance required to be carried pursuant to this Lease or is actually carried, even if such fire or other event shall have been caused by the fault or negligence of any of the Landlord Parties. Each Subtenant similarly releases the Landlord Parties. Tenant, and any Subtenant, shall also obtain an endorsement waiving the insurance company's subrogation rights against the Landlord Parties for any insurance policies required by the terms of this Lease. Tenant and Subtenant shall also defend and indemnify the Landlord Parties in the manner specified in Section 19.1 in the event any Person asserts such a claim.

## **18.5 Subtenants to Maintain Insurance.**

All Subtenants shall maintain insurance in the amounts required under Section 18.2, which shall comply with the requirements of Section 18.3. In addition, all Subleases shall provide that the Subtenant releases the Landlord Parties pursuant to the requirements of Section 18.4.

## **19. INDEMNITY**

### **19.1 Indemnity.**

Tenant hereby indemnifies and shall defend the Landlord Parties, at Tenant's sole cost and expense and with counsel selected by Landlord and reasonably acceptable to Tenant, and hold the Landlord Parties harmless from any and all claims (including claims under negligence and strict liability), demands, liability, losses, causes of actions and suits of any kind, administrative or judicial proceedings, orders, judgments, and all Related Costs arising directly or indirectly out of (i) the performance by Tenant of its obligations under this Lease, (ii) the construction of any Improvements or Alterations, (iii) any breach by Tenant of its obligations under this Lease, (iv) any accident, injury or damage whatsoever caused to any Person or the property of any Person on or about the Premises, (v) the use, occupancy, possession or operation of the Premises by any Tenant Party, or any acts or omissions of any Tenant Party, except only claims or litigation arising through the gross negligence or sole willful misconduct of Landlord (but subject to Section 18.4). Landlord, at its election, may conduct its own defense with its own counsel independent from Tenant's counsel (and in that event Tenant will select its own counsel) and the costs incurred by Landlord in such defense shall be covered by the foregoing indemnification, hold harmless and defense obligations and be subject to immediate payment once incurred. The terms of this Article 19 shall survive the expiration or earlier termination of this Lease. The foregoing indemnity obligations of Tenant are in addition to, and not in limitation of, any other indemnity obligations of Tenant contained in this Lease or otherwise.

## **20. DAMAGE OR DESTRUCTION**

### **20.1 Casualty.**

In the event of any damage to or destruction of any Improvements, whether or not from a risk coverable by the insurance described in Article 18. Tenant shall promptly repair and restore such Improvements, in a manner approved in writing by Landlord, so that after such restoration and repair, the Improvements are at least as valuable and usable as immediately prior to such damage or destruction. Tenant shall be entitled to have any insurance policy proceeds held in trust with the Permitted Lender or other trustee selected pursuant to Section 18.2.3 disbursed as progress payments as the work of repair, restoration or replacement progresses, to be used solely for paying for such work; and upon completion of such work free and clear of liens, if required by the terms of the Permitted Encumbrance any remaining balance of any insurance proceeds shall be paid first to the Permitted Lender to the Permitted Encumbrance, and thereafter, if the Permitted Lender permits or requires by the terms of the Permitted Encumbrance, to Tenant. If the Permitted Lender is the trustee, the Permitted Lender may disburse the progress payments in accordance with its normal disbursement procedures (e.g. upon receipt of appropriate mechanic's lien releases, invoices, etc.) so long as such disbursement procedures are reasonably satisfactory to Landlord and ensure that the proceeds of insurance are applied to the costs of repairing or replacing the Improvements. To the extent that the insurance proceeds are insufficient to pay for the costs of repairing the damaged Improvements, Tenant shall pay such deficiency to the trustee for application to the restoration costs on or before the earlier to occur of (i) sixty (60) days from

the date of such damage or destruction, or (ii) the date the insurer first makes available such insurance proceeds for repair, restoration or replacement. In the event Tenant or the Permitted Lender fails to commence to repair, restore or replace the damaged Improvements (including without limitation, engaging architects and engineers to prepare plans and specifications for the restoration), or pursue any permits necessary to repair, restore or replace the damaged Improvements, within ninety (90) days of such damage or destruction or to diligently prosecute such work to completion, Tenant shall be deemed to be in default hereunder upon written notice thereof from Landlord to Tenant and, in addition to any other remedies, Landlord shall be entitled to receive and retain such insurance proceeds to apply them to the repair, restoration and replacement of the Improvements. The provisions of Articles 6 and 7 shall apply to all work performed pursuant to this Article. Notwithstanding the foregoing, if Tenant and the Permitted Lender are not able to obtain sufficient insurance proceeds (in the case of an insured casualty) or construction funds (in the case of an uninsured casualty) to commence repair, restoration or replacement of the damaged Improvements within ninety (90) days of such damage or destruction, and in the case of an insured casualty, Tenant and the Permitted Lender have used their best efforts to so obtain such insurance proceeds, or in the case of an uninsured casualty, Tenant and the Permitted Lender have used their best efforts to obtain sufficient construction funds, then Tenant and the Permitted Lender shall have such additional time as is necessary to obtain such insurance proceeds or construction funds (but in no event to exceed one hundred eighty (180) days from the date of such damage or destruction) in which to commence to repair, restore or replace the damaged Improvements.

## **20.2 Casualty During the Last Part of Term.**

Notwithstanding Section 20.1 to the contrary, if there is damage or destruction to the Improvements during the last five (5) years of the Term (including all exercised options) and the cost of repairing said damage or destruction exceeds the cost of demolishing and removing the remaining Improvements as determined by the Demolition and Remediation Report, then Tenant shall have the option to terminate this Lease, subject to Tenant's satisfaction of all of the following requirements: (a) Tenant shall, within ninety (90) days after the date of the casualty, give Landlord written notice of its election to terminate ("**Notice of Election to Terminate**"); and (b) Tenant shall, at the election of Landlord (which election shall be communicated in writing to Tenant ("**Demolition Notice**") within thirty (30) days of Landlord's receipt of the Notice of Election to Terminate), raze and remove the damaged or destroyed Improvements and any other Improvements that Landlord may designate in the Demolition Notice and, if applicable, remediate the Premises, and shall complete said demolition, removal and remediation and shall vacate the Premises within ninety (90) days of Landlord's delivery of the Demolition Notice (which vacation date shall fix the termination date of this Lease). Any and all property damage insurance proceeds (exclusive of any proceeds applicable to Tenant's personal property that would be retained by Tenant at the end of the Term) paid as a result of the damage or destruction giving rise to the termination, shall be distributed in accordance with the following order of priority: first, to the payment of the costs to raze and remove the Improvements as required above, second, to repayment of any outstanding Permitted Encumbrance, if required by the terms thereof; and third, to Landlord all remaining insurance proceeds.

## **20.3 No Rental Abatement.**

Tenant shall not be entitled to any abatement or reduction in the Rent during any period of time that any Improvements are in need of repair, restoration or replacement or are under construction for such repairs, restoration or replacements or any other period of time during the Term of this Lease.

## **20.4 Waiver of Statutory Provisions.**

The provisions of this Lease, including this Article 20, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises or Improvements, or any other portion thereof, and any California statute or regulation, now or hereafter in effect, regarding the rights or obligations of a tenant concerning damage or destruction following a casualty event are waived and shall have no application to this Lease or any damage or destruction to all or any part of the Premises or Improvements as a result of a casualty event.

## **21. HAZARDOUS MATERIALS**

### **21.1 Hazardous Materials.**

#### **21.1.1 Tenant Use of Hazardous Materials.**

Tenant shall not cause or permit any Hazardous Material, 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 Premises or Improvements (collectively and individually, a "**Hazardous Materials Activity**") by Tenant or its agents, whether by a Tenant Party or any other Person unless expressly approved, at Landlord's sole discretion, in writing by Landlord after submittal by Tenant of Material Safety Data Sheets ("**MSDS**") or other information requested by Landlord regarding the Hazardous Material. Approval by Landlord of any Hazardous Materials Activity shall not create or impose any liability or obligation on Landlord with respect to such Hazardous Material or Hazardous Materials Activity and Tenant assumes all liability and obligations related thereto. All Hazardous Materials Activity shall be in strict compliance with all applicable Laws and other requirements in effect during the Term, including, without limitation, Laws and requirements that regulate Hazardous Materials or otherwise relate to public health and safety or the protection of the environment ("**Environmental Laws**") and shall comply at all times with all Environmental Laws.

#### **21.1.2 Notice of Release or Investigation.**

If Tenant becomes aware of (i) any actual or threatened release of any Hazardous Material on, in, under, from, or about the Premises or (ii) any notice, inquiry, investigation, proceeding, or claim by any government agency or other Person regarding the presence of any Hazardous Material on, in, under, from or about the Premises (collectively "**Inquiry**"), Tenant shall immediately upon learning of or reasonably suspecting that a release of Hazardous Materials has occurred on, in, under or about the Premises, provide verbal notice of the same to Landlord, and give Landlord written notice of the release or Inquiry within twenty-four (24) hours after Tenant learns or first has reason to believe there has been a release or Inquiry and shall simultaneously furnish to Landlord copies of any notices of inquiry or investigation, claims, notices of violation, reports, warning or other writings received by Tenant that concern the release or Inquiry. Tenant shall provide Landlord with advance written notice of meetings scheduled with any federal, state or local government agency (such as, but not limited to, the United States Environmental Protection Agency, the Regional Water Quality Control Board, Department of Toxic Substances Control or Air Resources Board) ("government agency") that may be relevant to or potentially impact the Premises at least ten (10) full business days prior to such meeting or as soon as reasonably possible if the government agency schedules the meeting for less than ten (10) business days from the date the meeting is proposed. Landlord shall be entitled to have its representatives attend and participate in any and all such meetings. If the government agency

brings up the Premises in any other scheduled meeting, Tenant shall suggest that a separate meeting should be scheduled so that Landlord can participate.

#### **21.1.3 Landlord Right to Inspect and Data.**

If Hazardous Materials Activity has occurred during the Term or is ongoing, Landlord or its designated representatives, at Landlord's sole discretion, may, but is no way obligated to, enter upon the Premises and make any inspections, tests or measurements Landlord deems necessary or desirable to determine if a release or discharge of Hazardous Materials has occurred. Landlord shall furnish Tenant a minimum of twenty-four (24) hours' notice prior to conducting any inspections or tests, except in Landlord's sole judgment, the case of an emergency or similar situation, in which case no prior notice shall be required but each of Landlord and such representative(s) shall attempt to notify Tenant's on site manager thereof by phone and electronic mail prior to entering upon the Premises. Landlord shall use commercially reasonable efforts to conduct such tests in a manner so as to minimize any inconvenience and disruption to Tenant's operations as is practicable. If Landlord reasonably suspects a possible release of Hazardous Materials or a use of Hazardous Materials in violation of Environmental Law, then Landlord, at Landlord's sole discretion, may require Tenant, at Tenant's sole expense, to have additional investigation for such Hazardous Materials conducted by an environmental consultant or engineering firm designated by Landlord. Such tests may include, without limitation, the Premises and any area outside the Premises that Landlord reasonably believes may have been contaminated by a release or discharge at or from the Premises, including but not limited to soil, subsoil media, surface water, sediments, and groundwater. Tenant shall provide Landlord, as soon as reasonable after they become available to Tenant, access to all information reports and data obtained, generated or learned as a result of sampling or testing activities on the Premises, including raw and verified lab data and consultant reports. Landlord shall be permitted to have representatives present during any sampling or testing on or at the Premises or outside of the Premises, and may obtain split samples, if requested, copies of the results of on-site testing and visual inspections, and complete access to all samples and tests taken or conducted as a result of any investigations of the Premises. Access to any consultant reports issued by or on behalf of Tenant concerning the Premises shall be furnished to Landlord as soon as reasonable after the reports are finalized. Any environmental reports issued by or on behalf of Tenant regarding the Premises or Hazardous Material Activities related thereto shall first be generated in draft form and furnished to Landlord for review and comment. No such report will be made final until Landlord has had reasonable opportunity to review the draft and to identify any factual inaccuracies therein. Landlord's failure to inspect, test or take other actions pursuant to this Section 21.1.3 shall in no way relieve Tenant of any responsibility for a release of a Hazardous Material.

#### **21.1.4 Clean-up Obligations.**

If Hazardous Materials Activity, Tenant Hazardous Material, or Pre-Existing Hazardous Material has resulted or does result in contamination of the Premises and/or the Improvements, any adjacent or nearby property, the San Diego Bay or any soil, subsoil media, surface water, sediments, or groundwater, Tenant shall promptly take all necessary actions, at Tenant's sole expense, to investigate, remove or remediate such Hazardous Materials in compliance with all Environmental Laws and in a manner and with results satisfactory to Landlord in Landlord's good faith discretion ("**Environmental Cleanup**"). Tenant shall provide notice to Landlord prior to performing any removal or remedial action. In the event that an Environmental Cleanup conducted by or required of Tenant interferes with the current or future use of the Premises or other property of Landlord, Tenant shall promptly alter or amend the Environmental Cleanup (whether such is completed or not and regardless of the time period elapsed between the clean-up activities and

Landlord's request to alter the Environmental Cleanup because of the interference), upon notice from Landlord, as necessary to prevent and/or eliminate such interference. Tenant shall not propose, and Landlord is under no obligation to agree to, any covenant or use restriction or other institutional controls as part of any removal or remediation required as a result of this Section 21.1.4. Unless otherwise agreed in writing by Landlord, an Environmental Cleanup required under this Section shall avoid and not include the use of restrictive covenants or other institutional controls. To the extent Landlord incurs any costs or expenses in performing Tenant's obligation to conduct an Environmental Cleanup which is Tenant's obligation under this Lease or under Environmental Law, Tenant shall reimburse Landlord for all such costs and expenses in accordance with the Reimbursement Procedure. This provision does not limit the indemnification obligation set forth in Section 21.2 and 19.1.

#### **21.1.5 Clean-up Extending Beyond Lease Term.**

Should any Environmental Cleanup of Hazardous Materials for which Tenant is responsible not be completed prior to the expiration or sooner termination of this Lease, then: (i) Tenant shall deposit with Landlord (or if the parties agree in their sole discretion, into a third-party escrow) an amount of money equal to the balance of the estimated costs of the Environmental Cleanup required for such Hazardous Materials under Section 7.4.2 for disbursement for such Environmental Cleanup costs, and (ii) if the nature of the contamination or Environmental Cleanup required of Tenant is of such a nature as to make any portion of the Premises untenable or unleaseable, then Tenant shall be liable to Landlord as a holdover Tenant until the Environmental Cleanup has been sufficiently completed to render the Premises in full compliance with all Environmental Laws and to make the Premises suitable, in Landlord's good faith determination, for lease to third parties. The estimated cost of the Environmental Cleanup shall require the reasonable approval of the Landlord. Landlord shall release funds from such deposit from time to time to pay for such Environmental Cleanup costs incurred with Landlord's approval. To the extent Landlord estimates, at any time, that the funds remaining on deposit may not be sufficient to cover all remaining anticipated Environmental Cleanup costs, then Tenant shall deposit, within thirty (30) days of Landlord's written demand therefor, such additional funds with Landlord as Landlord may estimate at such time may be required to complete the Environmental Cleanup.

#### **21.1.6 Financial Security.**

If Landlord determines, in its reasonable discretion, that Tenant does not have insurance or other financial resources sufficient to enable Tenant to fulfill its obligations under this Article 21 whether or not accrued, liquidated, conditional, or contingent, then Tenant shall, at the request of Landlord, 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 Landlord as is appropriate to assure that Tenant will be able to perform its duties and obligations hereunder.

#### **21.2 Hazardous Materials Indemnification.**

Tenant hereby assumes for itself and shall indemnify and defend Landlord Parties, at Tenant's sole cost and expense and with counsel selected by Landlord, and hold the Landlord Parties harmless from any and all claims, demands, liability, losses, causes of actions and suits of any kind, administrative or judicial proceedings, orders, (judicial or administrative), judgments, and all Related Costs (whether or not based upon personal injury, negligence, strict liability, property damage, or contamination of, or adverse effects upon, the environment (including waters, sediment, and/or natural resources), including any loss of or damage to Landlord's real or

personal property, and claims for cost recovery and contribution), which occur or arise during or after the Term relating to, or resulting from, any Hazardous Materials Activity, Tenant Hazardous Material or any Pre-Existing Hazardous Material or any breach by Tenant under this Article 21. Tenant's obligations under Article 21 (including the indemnification of Landlord by Tenant under this section) include, without limitation, any Environmental Cleanup required by this Lease, costs incurred in connection with any investigation of site conditions or any cleanup, treatment, remedial, removal, or restoration work required by this Lease or any federal, state or local governmental agency because of Hazardous Materials present in the air, soil, subsoil media, surface water, sediments or ground water above, on, or under the Premises consistent with Tenant's obligations set forth in this Lease. The obligations apply 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. Landlord shall have a direct right of action against Tenant even if no third party has asserted a claim. Furthermore, Landlord shall have the right to assign said indemnity and Environmental Cleanup requirements under Article 21. This indemnification and Environmental Cleanup requirements under Article 21 includes, but is not necessarily limited to:

- (a) Losses attributable to diminution in the value of the Premises;
- (b) Losses of rental or other income from the Premises;
- (c) Loss of or damage to natural resources;
- (d) Loss or restriction of use of rentable space(s) in the Premises;
- (e) Adverse effect on the marketing of any space(s) in the Premises;
- (f) All other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement or cost recovery or contribution 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 violation of any Environmental Law, or any Hazardous Materials Activity, Tenant Hazardous Material, or Pre-Existing Hazardous Material or any breach by Tenant of this Article 21; and
- (g) All Related Costs (including, without limitation, reasonable attorneys' fees, consulting fees and subcontracted costs) incurred by Landlord in undertaking any assessment or remediation of the Premises that is not fully resolved by Tenant by the time this Lease terminates or expires.

### **21.3 Termination of Lease.**

Upon the expiration or earlier termination of the Term, Tenant shall: (i) cause all Tenant Hazardous Material and Pre-Existing Hazardous Material to be removed from the Premises and disposed of in accordance with all applicable provisions of Environmental Law; (ii) remove any underground or aboveground storage tanks or other containers installed or used by Tenant, or its predecessors, to store any Hazardous Material on the Premises, and repair any damage to the Premises caused by such removal; (iii) cause any soil, subsoil media, surface waters, sediments, groundwater or other portion of the Premises which has become contaminated by any Hazardous Material 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 Premises to Landlord free of any Tenant Hazardous Material and Pre-Existing Hazardous Material.

## **21.4 Storage Tanks.**

### **21.4.1 Storage Tanks.**

No underground storage tanks ("**USTs**") or aboveground storage tanks ("**ASTs**") shall be permitted to be installed on or under the Premises without the prior written consent of Landlord in its sole and absolute discretion. In the event Tenant obtains such approval to install a UST or a AST on or under the Premises, Tenant shall be responsible for complying with all Laws pertaining to such UST or AST, including tank monitoring of such UST or AST as required by the County of San Diego Hazardous Material Management Division (HMMD) or any other responsible agency. Tenant further agrees to take sole responsibility for reporting unauthorized releases from UST to HMMD and Landlord within twenty-four (24) hours of such unauthorized release. Tenant will be responsible for all fees and costs related to the unauthorized release of any Hazardous Material or any required Environmental Cleanup including, but not limited to: investigative, surface and groundwater clean-up, and expert and agency fees. Tenant 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 or an AST. Tenant further agrees to be responsible for maintenance and repair of the USTs and ASTs; obtaining tank permits; filing a business plan with HMMD or other responsible agency; and for paying for all regulatory agency fees relating to USTs and ASTs.

### **21.4.2 Records.**

Tenant agrees to keep complete and accurate records regarding USTs and ASTs on the Premises for at least the prior three (3) years period including, but not limited to, records relating to permit applications, monitoring, testing, equipment installation, repairing and closure of the USTs and ASTs, and any unauthorized releases of Hazardous Materials. Tenant also agrees to make such records available for Landlord or responsible agency inspection. Tenant further agrees to include a copy of Health and Safety Code, Chapter 6.7, Section 25299, as part of any agreement between Tenant and any operator of USTs or ASTs.

### **21.4.3 Aboveground Storage Tanks.**

In the event Tenant obtains such approval to install an AST, Tenant shall be responsible for complying with all Laws pertaining to such AST. Tenant shall, in accordance with this Lease and applicable Laws, 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. In addition, Tenant shall maintain and repair said tanks to conform and comply with all other applicable Laws for ASTs, including without limitation all of the requirements of 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 the San Diego Regional Water Quality Control Board ("**SDRWQCB**"), Landlord, and/or responsible agency, to conduct periodic inspections. Tenant also shall comply with valid orders of the SDRWQCB, 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.

## **21.5 Environmental Covenants.**

### **21.5.1 Regulated Waste Removal.**

Tenant hereby acknowledges that excavation of soils, including sediment, from the Premises could result in exportation of a regulated waste requiring appropriate characterization, handling, transport and disposal (together "**Regulated Waste Removal**"). Landlord takes no responsibility and assumes no liability whatsoever for Regulated Waste Removal. Accordingly, Tenant 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 the Landlord Parties from and against any and all claims (including under negligence or strict liability), liabilities, losses, damages, costs, and expenses arising from, out of, or in any way related to Regulated Waste Removal, except only claims or litigation arising through the sole gross negligence or sole willful misconduct of Landlord.

### **21.5.2 Residual Hazardous Materials.**

Landlord shall have no liability or responsibility for ensuring that Tenant's workers, including without limitation those conducting testing, construction and maintenance activities on the Premises, are protected from residual contaminants in 29 Code of Federal Regulations ("**CFR**"). Tenant 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. Tenant hereby waives any claim, or potential claim, it may have to recover any damages, losses, Related Costs related to worker exposure or alleged exposure to any residual onsite contamination and to indemnify, defend and hold harmless the Landlord Parties from and against any and all such Related Costs, claims (including under negligence or strict liability), liabilities, losses and damages, except only claims or litigation arising through the sole gross negligence or sole willful misconduct of Landlord.

### **21.5.3 Covenant Not To Sue and Release of Landlord.**

Tenant hereby RELEASES the Landlord Parties from, COVENANTS NOT TO SUE the Landlord Parties for, and agrees not to seek to have any regulatory agency or third party impose liability upon or seek damages or costs from Landlord for or related to, any contamination or violation of Environmental Laws existing at or arising from the Premises and ASSUMES FOR ITSELF (as between Tenant and Landlord Parties) all obligations, requirements and liabilities of Tenant under Article 21, including for claims for contribution, equitable indemnity or otherwise seeking to transfer or limit the obligations, requirements and liabilities of Tenant under Article 21, With respect to all releases made by Tenant under or pursuant to this Article 21, Tenant hereby waives the application and benefits of California Civil Code § 1542 and hereby verifies that it has read and understands the provision of California Civil Code § 1542 set forth in Article 22 below.

## **21.6 Survival.**

The terms of this Article 21 shall survive the expiration or earlier termination of this Lease.

## **22. "AS-IS" LEASE AND WAIVERS**

### **22.1 Tenant's Acknowledgment.**

Tenant acknowledges that prior to entering into this Lease, Landlord has provided the disclosure required under California Health and Safety Code § 25359.7, as set forth in the Environmental Disclosure Addendum attached to this Lease as Exhibit K, which is incorporated herein by reference, and has given Tenant sufficient opportunity to consider, inspect and review, to Tenant's complete satisfaction: (1) any and all rights, appurtenances, entitlements, obligations, and liabilities concerning the Premises; (2) the physical condition of the Premises, including, without limitation, the condition and value of any Improvements and the soils, subsoil media, sediments, surface waters and groundwaters at or under the Premises; (3) the risk of climate change and the possible adverse consequences thereof, including, without limitation, rises in sea level and possible damage to and destruction of the Premises; (4) the development potential of the Premises including without limitation on the preceding clause (3), the effect of all Laws, including, without limitation, those concerning land use, environmental quality and maintenance, endangered species, and traffic regulation; (5) the financial prospects of the Premises and local market conditions; (6) Tenant's determination of the feasibility of Tenant's intended use and enjoyment of the Premises; (7) the presence of any Pre-Existing Hazardous Material and any other contamination of the Premises, including the contamination of any Improvements, soils, subsoil media, groundwater and San Diego Bay water and sediment; and (8) all other facts, circumstances, and conditions affecting, concerning or relating to the Premises. The land use; the environmental, biological, physical and legal condition of the Premises; the risks associated with possible climate change; the feasibility of Tenant's intended use and enjoyment of the Premises; and such other facts, circumstances and conditions being collectively referred to herein as the "**Condition of the Premises**"; and, without limitation on any other provision of this Lease, Tenant expressly assumes the risk that adverse conditions affecting the Premises have not been revealed by Tenant's investigations.

#### **22.2 Only Landlord's Express Written Agreements Binding.**

Tenant acknowledges and agrees that no Person acting on behalf of Landlord is authorized to make, and that except as expressly set forth in this Lease, neither Landlord nor anyone acting for or on behalf of Landlord has made, any representation, warranty, statement, guaranty or promise to Tenant, or to anyone acting for or on behalf of Tenant, concerning the Condition of the Premises or any other aspect of the Premises. Tenant further acknowledges and agrees that no representation, warranty, agreement, statement, guaranty or promise, if any, made by any Person for or acting on behalf of Landlord which is not expressly set forth in this Lease will be valid or binding on Landlord.

#### **22.3 As-Is Lease.**

Tenant further acknowledges and agrees that Tenant's execution of this Lease shall constitute Tenant's representation, warranty and agreement that the Condition of the Premises has been independently verified by Tenant to its full satisfaction, and that, except to the extent of the express covenants of Landlord set forth in this Lease, Tenant will be leasing the Premises based solely upon and in reliance on its own inspections, evaluations, analyses and conclusions, or those of Tenant's representatives; and that TENANT IS LEASING THE 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 TENANT'S EXECUTION OF THIS LEASE. Without limiting the scope or generality of the foregoing, Tenant expressly assumes the risk that the Premises do not or will not comply with any Laws now or hereafter in effect.

#### **22.4 Waivers, Disclaimers and Indemnity.**

#### **22.4.1 Waiver and Disclaimer.**

Tenant hereby fully and forever waives, and Landlord hereby fully and forever disclaims, all warranties of whatever type or kind with respect to the Premises, whether expressed, implied or otherwise including, without limitation, those of fitness for a particular purpose, tenantability, habitability or use.

#### **22.4.2 Landlord's Materials.**

Tenant further acknowledges that any information and reports including, without limitation, any engineering reports, architectural reports, feasibility reports, marketing reports, soils reports, environmental reports, analyses or data, or other similar reports, analyses, data or information of whatever type or kind which Tenant has received or may hereafter receive from Landlord Parties or its agents or consultants (collectively the "**Landlord's Materials**") have been furnished without warranty of any kind and on the express condition that Tenant will make its own independent verification of the accuracy, reliability and completeness of such Landlord's Materials and that Tenant will not rely thereon. Accordingly, subject to terms of Section 22.4.3 below, Tenant 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, Landlord Parties or any of the persons or entities who prepared or furnished any of the Landlord's Materials as a result of the inaccuracy, unreliability or incompleteness of, or any defect or mistake in, any such Landlord's Materials and Tenant hereby fully and forever releases, acquits and discharges Landlord Parties and each Person furnishing such Landlord's Materials of and from, any such claims, actions, causes of action, proceedings or liability, whether known or unknown.

#### **22.4.3 Release and Waiver.**

(a) *Release.* Except to the extent of Claims (as defined below) against Landlord arising from any breach by Landlord of its covenants and obligations expressly provided in this Lease, Tenant, on behalf of Tenant, each Tenant Party and their respective successors and assigns, hereby fully and forever releases, acquits and discharges Landlord of and from, and hereby fully, and forever waives and agrees not to assert or seek to have any third party or regulatory agency assert, any and all claims, actions, causes of action, suits, proceedings, demands, rights, damages, Related Costs, 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 any Tenant Party or any of Tenant'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: (i) any act or omission of Landlord (or any Person acting for or on behalf of Landlord or for whose conduct Landlord may be liable), whether or not such act be the active, passive or sole negligence of Landlord, in connection with prior ownership, maintenance, operation or use of the Premises; (ii) any condition of environmental contamination or pollution at the Premises (including, without limitation, any Pre-Existing Hazardous Material or other contamination or pollution of any soils, subsoil media, sediments, surface waters or ground waters at the Premises and any cleanup or abatement order effecting the Premises); (iii) to the extent not already included in clause (ii) above, the prior, present or future existence, release or discharge, or threatened release, of any Hazardous Materials at the Premises, (including, without limitation, the release or discharge, or threatened release, of any Hazardous Materials into the air at the Premises or into any soils, subsoil media, sediments, surface waters or groundwaters at or under the Premises); (iv) the violation of, or noncompliance with, any Environmental Law or other applicable Law now or

hereafter in effect, however and whenever occurring; (v) the condition of the soil at the Premises; (vi) the Condition of the Premises, including, without limitation, the condition of any Improvements including, without limitation, the structural integrity and seismic compliance of such Improvements; (vii) any matters which would be shown on an accurate ALTA land survey of the Premises (including, without limitation, all existing easements and encroachments, if any); (viii) all applicable Laws now or hereafter in effect; (ix) matters which would be apparent from a visual inspection of the Premises; or (x) to the extent not already covered by any of the foregoing clauses (i) through (ix) above, the use, maintenance, development, construction, ownership or operation of the Premises by Landlord or any predecessor(s)-in-interest in the Premises of Landlord.

(b) *Waiver of Civil Code Section 1542.* With respect to all releases made by Tenant under or pursuant to Article 21 and this Article 22, Tenant 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN THEIR FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY THEM WOULD HAVE MATERIALLY AFFECTED THEIR SETTLEMENT WITH THE DEBTOR OR THE RELEASED PARTY."**

**TENANT:** \_\_\_\_\_

#### **22.4.4 Survival.**

The terms of this Article 22 shall survive the expiration or earlier termination of this Lease.

### **23. QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION**

Subject to the terms of this Article 23 and Article 7, upon the expiration or earlier termination of the Lease, all Improvements, excluding trade fixtures, shall become the property of Landlord and a part of the realty and shall be surrendered to Landlord. In order to confirm such transfer of ownership, at Landlord's request following the expiration or earlier termination of the Lease, Tenant shall deliver to Landlord a Tenant-executed quitclaim deed in recordable form conveying the Improvements to Landlord free and clear of any mechanic's or materialmen's liens and other encumbrances. Without limitation of the foregoing, Tenant hereby appoints Landlord as Tenant's attorney-in-fact to execute such deed in the name and on behalf of Tenant and to record same in the official records of San Diego County, California. This power of attorney is irrevocable and coupled with an interest.

### **24. PEACEABLE SURRENDER**

Upon expiration of this Lease or earlier termination thereof, Tenant shall peaceably surrender the Premises to Landlord in a broom clean condition with all refuse removed and in as good condition and repair except for reasonable wear and tear and except for as the Premises may have been rebuilt, restored, altered, or added to as permitted or required by the provisions of this Lease. Notwithstanding the foregoing, Tenant shall leave or remove such Improvements as directed by Landlord pursuant to Section 7.2, and surrender the Premises in the condition required under Section 0. If Tenant fails to surrender the Premises at the expiration of this Lease or the earlier termination or cancellation thereof in the condition required under this Lease, in addition to

Landlord's other remedies, Tenant shall defend and indemnify Landlord from all liability and expense resulting from the delay or failure to surrender, including without limitation any succeeding tenant claims based on Tenant's failure to surrender or Landlord's failure to deliver the Premises.

## **25. WAIVER**

No waiver of any provision of this Lease shall be implied by any failure of a party to enforce any remedy on account of the violation of such provision, even if such violation shall continue or be repeated subsequently. Any waiver by a party of any provision of this Lease may only be in writing, and no express waiver shall affect any provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated. No receipt of monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Term or of Tenant's right of possession hereunder or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit or after final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, suit or judgment. The Landlord shall have the power and authority to waive any requirement of Tenant under this Lease except as such authority may be limited by the Port Act or BPC from time to time; provided, however, Landlord may elect to obtain approval of the BPC as a condition to exercising this authority.

## **26. HOLDOVER**

This Lease shall terminate without further notice at expiration of the Term. Any holding over by Tenant after either expiration or termination without Landlord's written consent shall be a tenancy at-sufferance upon all of the provisions of this Lease, except those pertaining to the Term, and except that Rent shall be 150% of the Rent in effect prior to the expiration or termination. If Tenant, with Landlord's consent, remains in possession of the 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. All provisions of this Lease, except those pertaining to the Term, shall apply to the month-to-month tenancy, and Tenant shall continue to pay all Rent required by this Lease. Notwithstanding anything herein to the contrary, in no event may the Term of this Lease, together with any holdover period, exceed sixty-six (66) years.

## **27. NOTICES**

All notices provided for by this Lease or by Law to be given or served upon Landlord or Tenant shall be addressed as provided in Section 1.7 (as such address may have been changed by subsequent notice given to the other party) and shall be in writing and: (i) personally served upon Landlord or Tenant, or any Person hereafter authorized by either party in writing to receive such notice, (ii) delivered via reputable over-night courier service, or (iii) delivered by U.S. postal service certified letter.

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.

## **28. SECURITY DEPOSIT**

### **28.1 Amount of Security Deposit.**

A security deposit in the amount set forth in Section 1.6 shall be provided to Landlord by Tenant, on or before Tenant's execution of this Lease. The security deposit shall be held by Landlord and used for the purpose of remedying Tenant's defaults under this Lease. If there shall be any default (or such other event) under this Lease, then Landlord shall have the right, but shall not be obligated, to use, apply or retain all or any portion of the security deposit for the payment of any (a) rent or any other sum applicable to such event, or (b) amount Landlord may spend or become obligated to spend, or for the compensation of Landlord for any losses incurred, by reason of such event (including any damage or deficiency arising in connection with the reletting of the Premises). If any portion of the security deposit (in whatever form) is so used or applied, then within three (3) business days after Landlord gives written notice to Tenant of such use or application, Tenant shall increase the Letter of Credit (as defined below) (or deliver to Landlord additional funds, in the case of a cash security deposit) in an amount sufficient to restore the security deposit to the original security deposit amount, and Tenant's failure to do so shall constitute a default under this Lease if such failure is not cured within the notice and cure period set forth in Section 12.1.2 above. Tenant waives any and all rights, Tenant may have under Section 1950.7 of the California Civil Code, any successor statute, and all similar provisions of Law, now or hereafter in effect. Tenant agrees that (i) any statutory time frames for the return of a security deposit are superseded by the express period identified in this Article 28, and (ii) Landlord may claim from the security deposit any and all sums expressly identified in this Article 28, and any additional sums reasonably necessary to compensate Landlord for any and all losses or damages caused by Tenant's default of this Lease, including, but not limited to, all damages or Rent due upon termination of this Lease pursuant to Section 1951.2 of the California Civil Code. Landlord shall not be required to keep the security deposit in trust, segregate it or keep it separate from Landlord's general funds, and Tenant shall not be entitled to interest on the security deposit.

### **28.2 Letter of Credit.**

Except as provided below, the security deposit shall be in the form of an Irrevocable Stand-By Letter of Credit ("**Letter of Credit**") drawn on a bank having a branch located in San Diego County and having a Moody's Long Term Letter of Credit rating of single A or higher and a Moody's Long Term Deposit rating of single A or higher. The principal sum shall be made payable to Landlord or order. Each Letter of Credit provided during the Term shall be valid for a minimum of twelve (12) months from date of issuance. Provided, however, when the remaining Term is one (1) year or less, the Letter of Credit shall be valid for a minimum of three (3) months beyond the Expiration Date of this Lease. If a Letter of Credit is not valid for the entire remaining Term plus three (3) months beyond, then such Letter of Credit shall be extended or renewed at least ninety (90) days prior to its expiration.

All or any portion of the principal sum of the Letter of Credit shall be available unconditionally to Landlord for the purposes and uses provided herein. The bank, and the form and provisions of the Letter of Credit shall be acceptable to the Landlord, in its sole discretion, and if not so acceptable, may be rejected. The Letter of Credit and Drawing Certificate shall not be acceptable if it requires Landlord to send written notice of default or request or demand payment from Tenant after default, prior to Landlord drawing on any funds under the Letter of Credit.

### **28.3 Cash Alternative.**

Notwithstanding the above, if said security deposit or the cumulative total amount of security deposits required by Landlord under this Lease does not exceed Twenty-Five Thousand Dollars (\$25,000), Tenant may elect to provide said security deposit in the form of cash.

#### **28.4 Adjustments.**

The amount of the security deposit may be increased from time to time at the discretion of the Landlord. Following any such adjustment, the amount of the security deposit may not exceed three (3) times the average of the monthly Rent payments during the year preceding the adjustment. In the event the amount of the security deposit is increased, Tenant shall submit the additional security deposit within thirty (30) days of notification of the increase.

#### **28.5 Maintain Through Term.**

Tenant shall maintain the required security deposit continuously throughout the Term. The security deposit or the remaining portion thereof not used or applied by Landlord, shall be rebated, released, assigned, surrendered, or endorsed to Tenant or order, as applicable, within ninety (90) days following the expiration or earlier termination of this Lease.

### **29. GENERAL PROVISIONS**

#### **29.1 Terms; Captions.**

The necessary grammatical changes required to make the provisions hereof apply either to corporations, limited liability companies or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed. The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.

#### **29.2 Binding Effect.**

Each of the provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of their respective heirs, successors or assigns, provided this clause shall not permit any Assignment by Tenant contrary to the provisions of Article 11 of this Lease.

#### **29.3 No Merger.**

If both Landlord's and Tenant's estates in the Premises become vested in the same owner (other than by termination of this Lease following a default hereunder, subject to the rights of a Permitted Lender pursuant to Section 10.3 above), this Lease shall not be terminated by application of the doctrine of merger except at the express election of Landlord and with the consent of any Permitted Lender.

#### **29.4 Recording.**

Unless the parties agree otherwise in writing in advance, on or before the date of this Lease, Landlord and Tenant shall execute a Memorandum of Lease in the form of Exhibit F attached hereto (the "**Memorandum of Lease**"). At Tenant's option, Tenant shall cause the Memorandum

of Lease to be recorded at Tenant's sole cost and Tenant shall be solely responsible for any transfer taxes or fees required to be paid in connection with the recording of the Memorandum of Lease.

#### **29.5 Transfer of Landlord's Interest.**

Tenant acknowledges that, subject to the Port Act and the oversight of the California State Lands Commission, Landlord has the right to transfer all or any portion of its interest in the Premises and in this Lease, and Tenant agrees that in the event of any such transfer, Landlord shall automatically be released from all liability under this Lease and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder after the date of transfer. Each landlord hereunder shall be liable only for those obligations arising during its period of ownership and shall be released from further obligations upon any transfer. The liability of Landlord and any transferee of Landlord shall be limited to their respective interests in the Premises, as the case may be, and Landlord and such transferee shall be without personal liability under this Lease, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant.

#### **29.6 Time of Essence.**

Time is of the essence with respect to this Lease and each of its provisions.

#### **29.7 Partial Invalidity.**

If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by Law.

#### **29.8 Entire Agreement.**

It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease and this Lease supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto with respect to the subject matter hereof. This Lease contains all of the terms, covenants, conditions, warranties and agreements of the parties relating in any manner to the rental, use and occupancy of the Premises, shall be considered to be the only agreement between the parties hereto and their representatives and agents, and none of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added to except in writing signed by the parties hereto. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are no other representations or warranties between the parties, and all reliance with respect to representations is based totally upon the representations and agreements contained in this Lease. However, Tenant acknowledges and agrees that other documents may restrict Tenant's use of the Premises or impose other obligations not specifically referenced in this Lease including, but not limited to, conditions of approval of a CDP or mitigation measures under CEQA.

#### **29.9 Joint and Several.**

If there is more than one Person constituting Tenant (i) the obligations imposed upon such persons or entities under this Lease shall be joint and several and (ii) the act or signature of, or notice from or to, any one or more of them with respect to this Lease shall be binding upon each and all of such persons and entities with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.

#### **29.10 Tenant's Authority.**

If Tenant is a corporation, partnership or limited liability company, each individual executing this Lease on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in the state in which the Premises is located and that Tenant has full right and authority to execute and deliver this Lease and that each Person signing on behalf of Tenant is authorized to do so.

#### **29.11 Financial and Other Information Supplied by Tenant.**

Tenant represents and warrants that any financial or other information supplied by Tenant to Landlord regarding Tenant or any Guarantor prior to entering into the Lease or during the Term or regarding any Transfer, or to Tenant's actual knowledge, regarding any Transferee, is true and accurate and not misleading in any material respect. The breach of this warranty shall be a default of this Lease by Tenant.

#### **29.12 Attorneys' Fees.**

Should any suit or action 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 Landlord 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 attorneys' fees and costs of suit, including, without limitation, any and all costs incurred in enforcing, perfecting and executing such judgment.

#### **29.13 Transaction Costs.**

To the extent Tenant requests any approval, consent or other action by Landlord (including, without limitation, in connection with any proposed Alterations, Financing Transaction or Transfer), Tenant shall pay or reimburse Landlord, upon written demand therefor, all of Landlord's attorneys' fees and other third party costs incurred by Landlord relating to Landlord's review, together with Landlord's then current processing or cost recovery fee for similar transactions consistent with any schedule of such fees then utilized by Landlord. Landlord will provide Tenant with a copy of any such fee schedule following written request therefor from Tenant. Such costs and fees shall be payable to Landlord whether or not Landlord grants such approval or consent, or undertakes the action requested by Tenant.

#### **29.14 Governing Law.**

Venue for any legal proceeding shall be in San Diego County, California. This Lease shall be construed and enforced in accordance with the Laws of the State of California.

#### **29.15 Brokers.**

Landlord and Tenant each hereby warrant to each other that neither has retained or employed any real estate broker or agent in connection with the negotiation of this Lease. Tenant shall be solely responsible for the payment of any fee or commission due to any broker and agrees to indemnify and defend and hold Landlord harmless from any and all claims, demands, losses, liabilities, lawsuits and costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing by Landlord.

#### **29.16 Counterparts.**

This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.

#### **29.17 Drafting Presumption; Review Standard.**

The parties acknowledge that this Lease has been agreed to by both the parties, that both Landlord and Tenant have consulted with attorneys with respect to the terms of this Lease and that no presumption shall be created against the drafting party. Any deletion of language from this Lease prior to its execution by Landlord and Tenant shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse of the deleted language. Unless otherwise specified in this Lease, any approval or consent to be given by Landlord may be given or withheld in Landlord's sole discretion.

#### **29.18 Estoppel Statement.**

At any time and from time to time upon not less than fifteen (15) business days' notice by Landlord, Tenant shall execute, acknowledge and deliver to Landlord or any other party specified by Landlord an estoppel statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications) and the date to which each obligation constituting Rent has been paid, and stating whether or not Landlord is in default in performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying such default of which Tenant may have knowledge, and any other information regarding the Lease or Tenant's performance requested by Landlord. At any time and from time to time upon not less than fifteen (15) business days' notice by Tenant or a Permitted Lender, Landlord shall execute, acknowledge and deliver to such Permitted Lender or other third party specified by Tenant an estoppel statement in the Form of Landlord's Estoppel Statement attached hereto as Exhibit I.

#### **29.19 Certified Access Specialist.**

For purposes of Section 1938 of the California Civil Code, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that the Premises have not undergone inspection by a Certified Access Specialist ("**CASp**"). (defined in California Civil Code Section 55.52(a)(3)). Pursuant to Section 1938 of the California Civil Code, Landlord hereby provides the following notification to Tenant: "**A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or**

lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction related accessibility standards within the premises." If Tenant requests to perform a CASp inspection of the Premises, Tenant shall, at its sole cost, retain a CASp approved by Landlord (provided that Landlord may designate the CASp, at Landlord's option) to perform the inspection of the Premises at a time agreed upon by the parties. Tenant shall provide Landlord with a copy of any report or certificate issued by the CASp (the "**CASp Report**") and Tenant shall, at its sole cost, promptly complete any modifications necessary to correct violations of construction related accessibility standards identified in the CASp Report, which modifications will be completed in accordance with terms of this Lease, including, but not limited to, Article 6 hereof. Tenant agrees to keep the information in the CASp Report confidential except as necessary for the Tenant to complete such modifications.

Signature page follows.

IN WITNESS WHEREOF, LANDLORD AND TENANT HAVE EXECUTED THIS LEASE AS OF THE DATE FIRST SET FORTH ABOVE.

APPROVED AS TO FORM AND LEGALITY

GENERAL COUNSEL

SAN DIEGO UNIFIED PORT DISTRICT

By: \_\_\_\_\_  
Assistant/Deputy

By: \_\_\_\_\_  
Adam Meyer  
Acting Director, Real Estate

**MARINE GROUP BOAT WORKS, LLC,**  
**a California limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

## DEFINITIONS

This Definitions Addendum constitutes a part of that certain Lease (the "**Lease**") entered into as of \_\_\_\_\_, 20\_\_\_\_ by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation ("**Landlord**") and MARINE GROUP BOAT WORKS, LLC, a California limited liability company ("**Tenant**") and by reference to the same in the Lease, the following definitions are incorporated into and constitute a part of the Lease.

### DEFINITIONS ADDENDUM

<b>ADA:</b>	the Americans with Disabilities Act, 42 U.S.C. §12101 (et seq.) and the regulations promulgated thereunder, as the same may be amended from time to time.
<b>ADDITIONAL RENT:</b>	all sums of money other than Monthly Rent required to be paid by Tenant to Landlord under this Lease.
<b>AFFILIATE:</b>	any managing member or general partner of the subject Person (as the case may be), or any Person that Controls, is directly or indirectly Controlled by, or is under common ownership or Control with the subject Person.
<b>AGGREGATE DEBT AMOUNT:</b>	defined in Section 11.10.
<b>ALTERATIONS:</b>	any alterations, additions, installations, removals, demolitions, improvements or other physical changes to the Premises or any Improvements thereon, including the alteration, addition, installation or removal of machines, equipment, appliances or fixtures.
<b>ALTERATION PLANS:</b>	defined in Section 6.3.1.
<b>APPROVED PARENT:</b>	defined in Section 11.10.
<b>AR LEASE:</b>	defined in Recital F.
<b>ASSIGNMENT:</b>	any disposition, assignment, sale, conveyance, exchange or other transfer of all or any portion of Tenant's interest in this Lease (including without limitation any easements), the leasehold estate created hereby, or the Premises, whether by operation of law or otherwise.
<b>ASSIGNMENT PARTICIPATION FEE:</b>	defined in Section 11.10.

## DEFINITIONS ADDENDUM

<b>ASTS:</b>	defined in Section 21.4.1.
<b>BANKRUPTCY CODE:</b>	Title 11 of the United States Code, as amended.
<b>BANKRUPTCY EVENT:</b>	the occurrence with respect to Tenant, any Guarantor or any other Person liable for Tenant's obligations hereunder (including without limitation any general partner of Tenant) of any of the following: (a) such Person becoming insolvent, as that term is defined in the Bankruptcy Code; (b) appointment of a receiver or custodian for any property of such Person, or the institution of a foreclosure or attachment action upon any property of such Person; (c) filing by such Person of a voluntary petition under the provisions of the Bankruptcy Code or any insolvency laws; (d) filing of an involuntary petition against such Person as the subject debtor under the Bankruptcy Code or any insolvency laws, which either (1) is not dismissed within sixty (60) days after filing, or (2) results in the issuance of an order for relief against the debtor; (e) such Person making or consenting to an assignment for the benefit of creditors or a composition of creditors; or (f) an admission by Tenant or Guarantor of its inability to pay debts as they become due.
<b>BMP:</b>	defined in Section 15.1.
<b>BPC:</b>	Board of Port Commissioners of the San Diego Unified Port District.
<b>BUILDABLE CONDITION:</b>	defined in Section 7.2.
<b>CASP:</b>	defined in Section 29.19.
<b>CCC:</b>	defined in Section 0.
<b>CDP:</b>	defined in Section 1.3.
<b>CEQA:</b>	defined in Section 0.
<b>CERTIFICATES:</b>	defined in Section 18.3.1.
<b>CFR:</b>	defined in Section 21.5.2.

## DEFINITIONS ADDENDUM

- CHANGE IN ENTITY:** includes, whether through one transaction or a series of transactions:
- (i) with respect to a corporation whose stock is not publicly traded through a nationally recognized exchange, partnership, association, limited liability company, or other entity (other than a corporation whose stock is traded through a nationally recognized exchange) any one or more of the following resulting in a change in Control of the subject entity: (A) the withdrawal, admittance or change, voluntary, involuntary or by operation of law or otherwise, of one or more of the partners, members or other principals or participants unless due to death or disability of the shareholders, partners and/or members, or (B) the assignment, hypothecation, pledge, encumbrance, transfer or sale, whether voluntary or involuntary or by operation of law or otherwise, of any stock, partnership, membership or equity interests (other than (i) to immediate family members by reason of gift or death, or (ii) to a family trust for the benefit of immediate family members), or (C) the dissolution, merger, consolidation or other reorganization of such corporation, partnership, association, limited liability company or other entity;
  - (ii) with respect to a corporation whose stock is publicly held and traded through a nationally recognized exchange, the transfer or sale, voluntary or involuntary, of the all or substantially all of the assets or stock of the corporation to a third party.
- CLAIMS:** defined in Section 22.4.3(a).
- COMMENCEMENT DATE:** defined in Section 1.1.1.
- COMPLETION:** shall mean that Tenant has obtained and delivered to Landlord (i) a final certificate of occupancy, if such certificate of occupancy can be issued, for substantially all of new Improvements or Alterations , as applicable, from the appropriate governing authority, (ii) a certificate from Tenant's architect and general contractor in favor of Landlord stating that, to the best knowledge of such certifying party, new Improvements or Alterations, as applicable, have been completed in accordance, in all material respects, with the Plans, and (iii) a copy of final

## DEFINITIONS ADDENDUM

lien releases in statutory form from all of Tenant's contractors and all subcontractors.

**CONDEMNATION:** defined in Section 14.1.

**CONDITION OF THE PREMISES:** defined in Section 22.1.

**CONSTANT DOLLARS:** shall mean that the referenced dollar amount shall be adjusted on each anniversary of the Rent Commencement Date by an amount equal to the percentage increase in the CPI from the Rent Commencement Date to the most recent anniversary of the Rent Commencement Date preceding the date the Constant Dollar equivalent is to be calculated.

**CONSTRUCTION REQUIREMENTS:** those requirements, conditions and procedures regulating the installation, construction, modification and repair of Improvements and Alterations as described in Exhibit D attached to this Lease.

**CONTROL, CONTROLLED AND CONTROLLING:** shall be deemed to be either or both (i) the ownership of more than fifty percent (50%) of the stock or other voting interest of the subject entity or the ownership of beneficial interests in the subject entity, or (ii) the power to direct the management of the subject entity with respect to major decisions of the subject entity, whether through voting interests or by way of agreement.

**CPI:** (a) Consumer Price Index for All Urban Consumers for all items in Los Angeles, Long Beach, and Anaheim, CA. Items based on the period 1982 - 84 = 100 as published by the United States Department of Labor's Bureau of Labor Statistics. In the event this is no longer published, the shall be the one reported in the U. S. Department of Labor's comprehensive official index determined by Landlord to be the one most nearly corresponding to the CPI. If the Department of Labor indices are no longer published, another index generally recognized as authoritative shall be substituted by Landlord in the exercise of Landlord's good faith discretion.

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## DEFINITIONS ADDENDUM

<b>DEFAULT RATE:</b>	an annual rate equal to the lesser of (i) the annual " <b>Bank Prime Loan</b> " rate cited in the Federal Reserve Statistical Release Publication H.15(519), published weekly (or such other comparable index as Landlord and Tenant shall reasonably agree upon if such rate ceases to be published), plus four (4) percentage points, and (ii) the highest rate permitted by applicable law.
<b>DEMOLITION AND REMEDIATION CONTRACTOR:</b>	defined in Section 7.4.1.
<b>DEMOLITION AND REMEDIATION REPORT:</b>	defined in Section 7.4.1.
<b>DEMOLITION AND REMEDIATION REPORT UPDATE:</b>	defined in Section 7.4.2(a).
<b>DEMOLITION AND REMEDIATION SECURITY AMOUNT:</b>	defined in Section 7.4.2.
<b>DEMOLITION AND REMEDIATION SECURITY FUNDING PERIOD:</b>	defined in Section 7.4.2.
<b>DEMOLITION NOTICE:</b>	defined in Section 20.2.
<b>DISCRETIONARY ACTION:</b>	defined in Section 8.3.
<b>DISCRETIONARY PROJECT:</b>	defined in Section 8.1.
<b>EFFECTIVE DATE</b>	is the date first set forth in the introductory paragraph to this Lease.
<b>ENVIRONMENTAL CLEANUP:</b>	defined in Section 21.1.4.
<b>ENVIRONMENTAL LAWS:</b>	defined in Section 21.1.1.
<b>ESTIMATED DEMOLITION AND REMEDIATION COST:</b>	defined in Section 7.4.2.

## DEFINITIONS ADDENDUM

<b>EXISTING IMPROVEMENTS:</b>	shall mean any improvements (including utilities, storm drains and park ways) located upon the land (and water, if applicable) described in Section 1.2 that are in existence and located on, in, over or under the Premises as of the date of this Lease, whether constructed by Landlord, a prior tenant or another third party. Landlord and Tenant acknowledge that the Existing Improvements (if any) are identified in the Basic Lease Provisions.
<b>EXPIRATION DATE:</b>	defined in Section 1.1.2 but if this Lease has been validly extended pursuant to an Option to Extend, the Expiration Date shall be the last day of the applicable Option Term.
<b>FEE GENERATING TRANSFER:</b>	defined in Section 11.10.
<b>FINANCIAL INSTITUTION:</b>	shall mean (i) an insurance company qualified to do business in the state of California; or (ii) a U.S. 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); or (iv) a real estate investment trust; or (v) any lender or investment fund whose regular on-going business includes real property secured financing for commercial or industrial properties, or (vi) a combination of two or more of the preceding entities.
<b>FINANCING PARTICIPATION FEE:</b>	defined in Section 10.5.
<b>FINANCING TRANSACTION:</b>	defined in Section 10.1.1.
<b>FORCE MAJEURE EVENT:</b>	defined in Section 6.4.
<b>FORECLOSURE PURCHASER:</b>	defined in Section 10.3.3.
<b>GOVERNMENT AGENCY:</b>	defined in Section 21.1.2.
<b>GROSS PROCEEDS:</b>	defined in Section 11.10.

## DEFINITIONS ADDENDUM

<b>HAZARDOUS MATERIAL:</b>	shall mean any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, including, without limitation, asbestos and oil and petroleum products, which is a " <b>Hazardous Material</b> " or " <b>Hazardous Substance</b> " within the meaning of any applicable Law (including, but not limited to, hazardous substances as defined by Cal. Health & Safety Code § 25316 and anything that may result in contamination or pollution as defined by Cal. Water Code § 13050), and at any concentration that is subject to regulation under any Law relating to such Hazardous Material or Hazardous Substance. Notwithstanding any exclusion from the definition of hazardous substance or hazardous material in any applicable Law, Hazardous Material as defined herein includes any hydrocarbons, petroleum, petroleum products or waste and any other chemical, substance or waste, that is regulated by, or may form the basis of liability under, any Environmental Laws.
<b>HAZARDOUS MATERIALS ACTIVITY:</b>	defined in Section 21.1.1.
<b>IMPROVEMENTS:</b>	those buildings, structures and other improvements (including vaults, utilities and other underground improvements) now (including any Existing Improvements, if applicable) or hereafter (including Alterations) located on, in, over or under the Premises.
<b>INCURABLE DEFAULT:</b>	defined in Section 10.3.2(b).
<b>INITIAL TERM:</b>	means the Term prior to any term extensions or exercise of the Option to Extend.
<b>INTEREST PURCHASE:</b>	defined in Recital J.
<b>INQUIRY:</b>	defined in Section 21.1.2.
<b>LANDLORD:</b>	The San Diego Unified Port District, and where applicable the Landlord acting through the BPC.
<b>LANDLORD END OF TERM ELECTION:</b>	defined in Section 7.2.

## DEFINITIONS ADDENDUM

<b>LANDLORD PARTIES:</b>	Landlord, its officers, directors, members of the BPC, employees, partners, affiliates, agents, contractors, successors and assigns.
<b>LATE CHARGES:</b>	defined in Section 5.4.
<b>LAWS:</b>	All present and future California state, federal and local laws, rules, orders, ordinances, regulations, statutes, requirements, codes and executive orders, including, without limitation, the ADA, and any law of like import, and all rules, regulations and government orders with respect thereto, including without limitation any of the foregoing relating to Hazardous Materials, environmental matters (including, but not limited to, Comprehensive Environmental Response, Compensation and Liability Act (“ <b>CERCLA</b> ”), the Resource Conservation and Recovery Act (“ <b>RCRA</b> ”), the Clean Air Act, the Clean Water Act, Oil Pollution Act, the Toxic Substances Control Act and comparable and supplemental California laws), public health and safety matters and landmarks protection, as any of the same now exist or may hereafter be adopted or amended. Said Laws shall include, but are not limited to the Laws enacted by the San Diego Unified Port District Act, such as Article 10 of the San Diego Unified Port District Code; any applicable ordinances of the city in which the Premises are located, including the building code thereof, and any governmental permits and approvals, including, without limitation, any California Coastal Development Permit, applicable to the Premises or the use or development thereof.
<b>LEASE YEAR:</b>	a period of twelve (12) consecutive months commencing on the Rent Commencement Date, and each successive twelve (12) month period thereafter during the Term; provided, however, that if the Rent Commencement Date is not the first day of a month, then the first Lease Year shall be from the Rent Commencement Date until the last day of the month in which the first anniversary of the Lease Commencement Date occurs and the second Lease Year shall commence on the first day of the month immediately following the first anniversary of the Rent Commencement Date.
<b>LEASEHOLD AWARD:</b>	defined in Section 14.7.1.

## DEFINITIONS ADDENDUM

<b>LEGAL REQUIRMENTS:</b>	defined in Section 4.3.
<b>LETTER OF CREDIT:</b>	defined in Section 28.2.
<b>MAJOR ALTERATIONS:</b>	defined in Section 6.2.2
<b>MEMORANDUM OF LEASE:</b>	defined in <u>Exhibit F</u> .
<b>MINIMUM NET WORTH REQUIREMENT:</b>	defined in Section 1.8.
<b>MINOR ALTERATIONS:</b>	defined in Section 6.2.2.
<b>MONTHLY RENT:</b>	defined in Section 5.2.
<b>MSDS:</b>	defined in Section 21.1.1.
<b>NET PROCEEDS:</b>	defined in Section 10.5.
<b>NEW LEASE:</b>	defined in Section 10.3.2(d).
<b>NOISE STANDARDS:</b>	defined in Section 4.1
<b>NOTICE OF ELECTION TO TERMINATE:</b>	defined in Section 20.2.
<b>OFAC:</b>	defined in Section 17.3.
<b>OPTION TERM:</b>	each extension of the Term pursuant to a properly exercised Option to Extend.
<b>OPTION TO EXTEND:</b>	the extension period or periods described in Section 1.1.3.
<b>ORIGINAL LEASE</b>	defined in Recital A.
<b>PERMITTED ENCUMBRANCE:</b>	defined in Section 10.2.
<b>PERMITTED LENDER:</b>	defined in Section 10.2.

## DEFINITIONS ADDENDUM

<b>PERMITTED USE:</b>	defined in Section 1.3.
<b>PERSON:</b>	any individual, partnership, firm, joint venture, association, corporation, limited liability company, government agency or any other form of business entity.
<b>PMP:</b>	defined in Section 1.3.
<b>PMPA:</b>	defined in Section 8.1.
<b>PRE-EXISTING HAZARDOUS MATERIAL:</b>	<p>any Hazardous Material located on or under the Premises as of February 1, 1985, whether known or unknown, to the extent such Hazardous Material was re-suspended, released, redeposited, discharged, emitted, exacerbated by, requires investigation or remediation as a result of, or otherwise arises out of or results from, the use, occupancy, possession, or operation of the Premises subsequent to July 16, 1985, including to the extent such Hazardous Material has come to be located on any other property.</p> <p>It shall be Tenant's obligation to prove that any Hazardous Material located the Premises as of February 1, 1985 has not been suspended, released, deposited, discharged, emitted, exacerbated by, does not require investigation or remediation as a result of, and/or does not otherwise arise out of or result from, the use, occupancy, possession, or operation of the Premises subsequent to February 1, 1985.</p>
<b>PREMISES:</b>	defined in Section 1.2.
<b>PRIMARY USE:</b>	defined in Section 1.3.
<b>PROHIBITED PERSON:</b>	defined in Section 17.3.
<b>PROHIBITED PERSONS:</b>	defined in Section 17.3.
<b>PROPERTY EXPENSES:</b>	defined in Section 16.2.
<b>PWL:</b>	defined in Section 6.7.

## DEFINITIONS ADDENDUM

<b>QUALIFYING CAPITAL INVESTMENT:</b>	defined in Recital K.
<b>REGULATED WASTE REMOVAL:</b>	defined in Section 21.5.1.
<b>REIMBURSEMENT PROCEDURE:</b>	defined in Section 5.6.
<b>REMOVAL EXTENSION:</b>	defined in Section 7.5.
<b>REMOVAL PERIOD:</b>	defined in Section 7.4.1.
<b>RENT:</b>	defined in Article 5.
<b>RENT COMMENCEMENT DATE:</b>	defined in Section 1.4.
<b>RENTAL PERIODS:</b>	defined in Section 1.4.
<b>REVENUE:</b>	shall mean all income, receipts, proceeds, amounts, money, cash, assets, property or other things of value, whether collected, uncollected, received, payable or accrued.
<b>SUBLEASE:</b>	any sublease (or sub-sublease or other level of sublease), and any occupancy, franchise, license, operating agreement, concession agreement or management agreement or other right to use applicable to this Lease or the Premises or any part thereof.
<b>SUBTENANT:</b>	any subtenant (or sub-subtenant or other level of subtenant), occupant, franchisee, licensee, operator, concessionaire or manager under any Sublease.
<b>TAX EXPENSES:</b>	shall have the meaning as defined in Section 16.1.
<b>TENANT:</b>	defined in the Preamble of this Lease.
<b>TENANT ART INVESTMENT:</b>	defined in Section 6.6.
<b>TENANT HAZARDOUS MATERIAL:</b>	any Hazardous Material (i) brought onto the Premises during the Term of this Lease by any Person, (ii) brought onto the Premises or any other property by Tenant or

## DEFINITIONS ADDENDUM

Tenant Party, or (iii) generated, re-suspended, released, deposited, discharged, emitted, or exacerbated by (i) or (ii) hereof, including to the extent such Hazardous Material has come to be located on any other property.

<b>TENANT PARENT:</b>	a Person which Controls, directly or indirectly, Tenant.
<b>TENANT PARTY:</b>	Tenant, its agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, workmen, licensees, concessionaires, Affiliates, predecessors in interest, successors and assigns and its Subtenants, and the agents, employees, representatives, contractors, subcontractors, suppliers, materialmen, workmen, concessionaires, licensees, Affiliates and successors and assigns of those Subtenants.
<b>TENANT RELATED PARTY:</b>	(i) a corporation or other business entity into or with which Tenant shall be merged or consolidated (such as a "successor corporation"), or to which substantially all of the assets of Tenant may be transferred or sold; or (ii) a corporation or other business entity (a "related corporation") which shall Control, be Controlled by or be under common Control with Tenant.
<b>TERM:</b>	defined in Section 1.1.
<b>THIRD PARTY:</b>	defined in Section 11.10.
<b>TRANSFER:</b>	defined in Section 11.1.
<b>TRANSFER NOTICE:</b>	defined in Section 11.2Error! Reference source not found..
<b>TRANSFeree:</b>	defined in Section 11.2 and 11.3.
<b>USA PATRIOT ACT:</b>	defined in Section 17.3.
<b>USTs:</b>	defined in Section 21.4.1.

**EXHIBIT A**

**LEGAL DESCRIPTION OF PREMISES**

**EXHIBIT B**

**DEPICTION OF PREMISES**



## EXHIBIT D

### CONSTRUCTION REQUIREMENTS

1. GENERALLY. TENANT SHALL COMPLY WITH THE PROVISIONS OF THIS EXHIBIT D AND SUCH OTHER GENERAL CONSTRUCTION RELATED RULES AND REQUIREMENTS AS LANDLORD MAY ADOPT OR REQUIRE FROM TIME TO TIME FOR CONSTRUCTION BY TENANTS, AND THE PROVISIONS OF THE LEASE IN CONNECTION WITH ALL CONSTRUCTION OR DEMOLITION WORK AT THE PREMISES ("**CONSTRUCTION WORK**").

2. Contractors. Landlord shall have the right to approve the general contractor for Construction Work (other than Minor Alterations). All contractors and subcontractors performing any Construction Work must be licensed in the State of California.

3. Architects and Engineers. All architects and engineers must have an active license to practice in the State of California.

4. Contractors, Architects and Engineers Agreements. Landlord shall have the right to approve the architectural, engineering and construction contracts for all the Improvements (other than Minor Alterations). All such contracts shall provide, in form and content reasonably satisfactory to Landlord, (i) for the assignment thereof to Landlord as security to Landlord for Tenant's performance hereunder (ii) that if this Lease is terminated Landlord may, at its election, use any plans and specifications created by such architect, engineer or contractor for the contemplated Improvements at the Premises.

5. Construction Barricades. Tenant shall install a construction barricade around the area of Construction Work (other than Minor Alterations), and erect such other protective measures as may be reasonably required by Landlord.

6. Dust and Trash Control. Tenant shall take commercially reasonable steps to minimize dust resulting from any Construction Work, and shall promptly dispose of all trash generated from the Construction Work.

7. Performance and Payment Bonds. Tenant shall furnish Landlord with the following separate corporate surety bonds not less than ten (10) days prior to the commencement of any Construction Work with a hard cost reasonably estimated by Tenant to be greater than \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (as such amount is increased on each anniversary of the Rent Commencement Date by the percentage increase in the CPI from the Rent Commencement Date):

7.1 [ISSUES: RATING OF ISSUER AND FORM OF BOND] A corporate surety performance bond ("**Performance Bond**") issued by a surety company licensed to transact business as such in the State of California, in an amount not less than one hundred percent (100%) of the projected cost of such Construction Work. The Performance Bond and its issuer shall be in all material respects satisfactory to Landlord. The Performance Bond shall name Tenant as principal and Landlord as obligee, assuring full completion by Tenant of such Construction Work.

7.2 A corporate surety Payment Bond, issued by a surety company licensed to transact business as such in the State of California, with Tenant as principal and Landlord as obligee, in a sum equal to one hundred percent (100%) of the total construction cost anticipated to be incurred in connection with such Construction Work, guaranteeing payment for all materials, provisions,

supplies and equipment used in, upon, for or about the performance of the Construction Work or for labor done thereon and protecting Landlord from any and all liability, loss or damages arising out of or in connection with any failure to make any such payments ("**Payment Bond**").

7.3 The Payment Bond and Performance Bond shall be in form and content satisfactory to Landlord.

8. Financial Assurances. At least ten (10) days prior to commencing any Construction Work (other than Minor Alterations), Tenant shall deliver to Landlord evidence reasonably demonstrating to Landlord that Tenant has obtained or retains financial resources and capabilities in an amount sufficient to complete the Construction Work.

9. Construction Schedule. Tenant shall, at least ten (10) days prior to date on which Tenant intends to commence construction of any Construction Work (other than Minor Alterations), deliver to Landlord a construction schedule. Tenant shall use commercially reasonable efforts, subject to Force Majeure Events, to perform the Construction Work in accordance with the construction schedule.

10. Contractor Insurance. All contractors and subcontractors performing Construction Work shall obtain and thereafter maintain so long as such Construction Work is occurring, at least the minimum insurance coverages set forth below, which insurance coverages may be modified by Landlord from time to time in its sole and absolute discretion:

- (i) Workers' compensation and employer's liability insurance:
  - (a) Workers' compensation insurance as required by any applicable law or regulation.
  - (b) Employer's liability insurance in the amount of \$1,000,000 each accident/employee/disease.
- (ii) General liability insurance: Commercial General Liability insurance covering all operations by or on behalf of the contractor, which shall include the following minimum limits of liability and coverages:
  - (a) Required coverages:
    - (1) Premises and Operation;
    - (2) Products and Completed Operations;
    - (3) Contractual Liability;
    - (4) Broad Form Property Damage (including Completed Operations);
    - (5) Explosion, Collapse and Underground Hazards; and
    - (6) Personal Injury Liability.
  - (b) Minimum limits of liability:

- (1) \$2,000,000 each occurrence (for bodily injury and property damage);
- (2) \$2,000,000 for Personal Injury Liability;
- (3) \$5,000,000 aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the Work); and
- (4) \$5,000,000 general aggregate applying separately to this Project.

(iii) Automobile Liability Insurance: Automobile liability insurance including coverage for owned, leased, rented, hired, and/or non-owned automobiles. The limits of liability shall not be less than \$1,000,000 for each accident limit for bodily injury, death and property damage.

(iv) Umbrella/Excess Liability Insurance: The general contractor shall also carry umbrella/excess liability insurance in the amount of \$5,000,000. If there is no per project aggregate under the Commercial General Liability policy, the limit shall be \$10,000,000.

(v) Contractor's Pollution Liability Coverage: If Landlord determines, in its sole and absolute discretion, that Tenant performs or contracts for any work which involves a Hazardous Materials Activity or which has the potential to disturb or result in the release of any Hazardous Material, for which there is potential exposure to pollution or Hazardous Materials to Persons or the environment, Tenant shall obtain or cause its contractor to obtain Contractor's Pollution Liability, Pollution Legal Liability and/or Asbestos Pollution Liability and/or Errors & Omissions applicable to the work being performed or the potential release of any Hazardous Material, with limits of \$5,000,000 per claim or occurrence and \$10,000,000 aggregate per policy period of one year or the limits maintained by or available to the contractor, whichever is higher.

Landlord Parties shall be named as an additional insured on the forgoing insurance, and such insurance shall provide that the same shall not be canceled, or reduced in amount or coverage below the requirements of this Lease, nor shall it be allowed to expire, without at least thirty (30) days prior written notice to Landlord. The foregoing insurance shall include a waiver of subrogation in favor of Landlord Parties.

11. Notice of Completion. Within ten (10) days after Completion of any Construction Work (other than Minor Alterations), Tenant shall record a Notice of Completion in the office of the San Diego County Recorder and furnish a copy thereof to Landlord upon such recordation.

12. Lien Releases. Within sixty (60) days after Completion, Tenant shall deliver to Landlord unconditional final lien waivers from all contractors and materialmen.

13. Copy of Record Set of Plans and Certificate of Completion. At the conclusion of any Construction Work (other than Minor Alterations), deliver to Landlord (i) a set of "as-built drawings", (ii) a certificate from Tenant's architect and general contractor in favor of Landlord stating that, to the best knowledge of such certifying party, the Construction Work has been Completed in accordance, in all material respects, with the approved plans therefor, and (iii) a copy of the certificate of completion issued by the applicable government agency.

14. Conflict. In the event of conflict between the terms of these Construction Requirements and terms of the Lease, the terms of the Lease shall control.



## EXHIBIT E

### CONTINUING GUARANTY

This Continuing Guaranty ("**Guaranty**") dated \_\_\_\_\_, 20\_\_\_\_, is made by \_\_\_\_\_, hereinafter individually, "**Guarantor**," whose business address is \_\_\_\_\_, in favor of the San Diego Unified Port District, a public corporation ("**District**").

WHEREAS, District, as landlord, and Marine Group Boat Works, LLC, a California limited liability company, as tenant ("**Tenant**") entered into that certain Lease dated as of the same date as this Guaranty (the "**Lease**"); and

WHEREAS, Guarantor has agreed to guaranty all of Tenant's obligations under the Lease pursuant to the terms of this Guaranty.

### AGREEMENT

For value received, and in consideration of, and in order to induce the District to enter into the Lease, Guarantor, hereby agrees as follows:

1. The foregoing recitals are hereby incorporated by reference.
2. Guarantor unconditionally and absolutely guarantee to District the full and prompt payment and performance of all obligations of Tenant which Tenant presently or hereafter may have under the Lease (collectively, the "**Obligations**").
3. Guarantor represents and warrants that Guarantor is an Affiliate of Tenant and will derive benefit from Tenant's entering into this Lease.
4. The obligations of Guarantor hereunder are joint and several and are independent of the Obligations. A separate action may be brought or prosecuted against any Guarantor, whether the action is brought or prosecuted against any other Guarantor, Tenant, or both.
5. To the extent permitted by law, Guarantor waives the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.
6. The provisions of the Lease may be changed by written agreement between District and Tenant at any time, without the consent of or without notice to Guarantor. Guarantor shall guaranty the Obligations as changed from time to time. Assignment of the Lease (as permitted by the Lease) shall not affect this Guaranty; provided, however, that in the event of a Transfer pursuant to Article 11 of the Lease, Guarantor shall be released from its obligation under this Guaranty to guaranty Obligations of the Tenant that (a) arise after the effective date of such Transfer, (b) arise solely from acts or omissions of the Transferee occurring after such effective date, and (c) do not relate to or arise from any facts, circumstances, conditions, acts, or omissions occurring prior to such effective date, if all of the following conditions are satisfied: (i) a replacement Guarantor acceptable to Landlord is provided, (ii) such replacement Guarantor executes and delivers a guaranty agreement in form and substance satisfactory to Landlord, unconditionally and absolutely guaranteeing the obligations under the Lease, with Landlord protections and requirements equal to or better than this Guaranty, (iii) Tenant or Transferee

delivers a current Phase II environmental report (or other investigation acceptable to Landlord) confirming compliance with Environmental Laws and absence of any new Recognized Environmental Conditions (as defined under ASTM E1527-21) since the Effective Date of the Lease, (iv) all Obligations accruing on or before the proposed effective date of the Transfer have been fully performed and satisfied, and (v) Guarantor shall remain liable for all Obligations of any kind arising from or relating to facts, circumstances, conditions, acts, or omissions occurring prior to the effective date of the proposed transfer, whether or not such Obligations are known, asserted, or accrued as of the effective date. In the event all of the above stated conditions are satisfied, Landlord and Guarantor will document the release in writing signed by both parties consistent with these requirements. Notwithstanding the foregoing, nothing herein shall be construed as in any way limiting Landlord's discretion with respect to consent to any transfer, or conditioning of such consent, under Article 11 of the Lease. District's failure or delay in the enforcement of any of its rights also shall not affect this Guaranty. If some or all of the Obligations are discharged or modified pursuant to any bankruptcy or similar proceedings (including, without limitation, by reason of the disaffirmance or rejection of the Lease), each of Guarantor's obligations hereunder will continue in full force and effect as if some or all of the Obligations had not been so discharged or modified. The liability of each Guarantor hereunder shall in no way be affected by the release or discharge of Tenant or any other guarantor of the Lease or any disability or other defense of Tenant. If Tenant defaults under the Lease, District can proceed immediately against the Guarantor, Tenant, or both, or District can enforce against Guarantor, Tenant, or both, any rights that District has under the Lease or pursuant to applicable laws. If the Lease terminates and District has any rights it can enforce against Tenant after termination, District can enforce those rights against Guarantor without giving prior notice to Tenant, Guarantor, or both, or without making any demand on either of them.

7. Guarantor waives the right to require District to: (1) proceed against Tenant; (2) proceed against or exhaust any security that District holds from Tenant; or (3) pursue any other remedy in District's power. Guarantor waives any defense by reason of any disability of Tenant, and waive any other defense based on the termination of Tenant's ability from any cause. Guarantor further waives all rights and defenses that are or may become available to Guarantor, including without limitation any rights and defenses set forth in Sections 2787 through 2856, inclusive, of the California Civil Code.

8. Until all Obligations under the Lease have been discharged in full, Guarantor has no right of subrogation against Tenant. Guarantor waives: (i) its rights to enforce any remedies that District now has, or later may have, against Tenant; (ii) any right to participate in any security now or later held by District; (iii) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty; and (iv) all notices of the existence, creation, or incurrence of new or additional Obligations.

9. The obligations of Guarantor under this Guaranty are absolute and unconditional and shall not be subordinated in right of payment, priority, or otherwise to any obligations of Tenant or Guarantor to any third party, including without limitation any lender or mortgagee of the Premises or any portion thereof. Guarantor acknowledges and agrees that its hereunder are for the direct benefit of Landlord and shall not be affected by any intercreditor or subordination agreement to which Landlord is not a party.

10. If District is required to enforce Guarantor's obligations by legal proceedings, Guarantor shall pay District all costs incurred, including but not limited to reasonable attorneys' fees. District has the right to prosecute Guarantor for the full amount for said costs.

11. Guarantor's obligations under this Guaranty shall be binding, jointly and severally, on any successor of Guarantor. As used herein, a successor of Guarantor shall mean any assignee, transferee, personal representative, heir, or other Person succeeding lawfully, and pursuant to the provisions of said Lease, to the rights or obligations of Guarantors. Also as used herein, District shall mean District's successors and assigns, if any.

12. Venue for any legal proceeding shall be in San Diego County, California. This Guaranty shall be construed and enforced in accordance with the laws of the State of California.

13. For purposes of this Guaranty, "**Tangible Net Worth**" means the excess of Guarantor's total tangible assets over Guarantor's total liabilities, calculated in accordance with generally accepted accounting principles ("**GAAP**") consistently applied, and specifically excluding the following: goodwill; intellectual property, including patents, trademarks, copyrights, trade names, and trade secrets; software, software licenses, and other technology-related assets; customer lists, leasehold interests, and contract rights; deferred financing costs, deferred taxes, and unamortized loan costs; any write-up in the value of assets resulting from a revaluation thereof; and any other item that would be classified as intangible under GAAP.

Throughout the term of the Lease, including any renewal or extension thereof, Guarantor shall maintain a Tangible Net Worth of no less than fourteen million dollars (\$14,000,000, which amount shall be increased by any increase in the CPI for the prior year, with a maximum increase in any year of four percent (4%), on a compounding basis (the "**Minimum Net Worth Requirement**") beginning on the commencement of the third year following the date first set forth above. If Tenant fails to provide an Environmental Insurance Policy as set forth in section 1.5.2 of the Lease, Guarantor's Minimum Net Worth Requirement shall automatically increase by six million dollars (\$6,000,000) to twenty million dollars (\$20,000,000), in which case the annual CPI increase otherwise applicable to the Minimum Net Worth Requirement amount shall not start until the commencement of the third Rental Period under the Lease. Guarantor's failure to satisfy this Minimum Net Worth Requirement at any time, after notice and an opportunity to cure as described below, shall constitute a material default under this Guaranty.

Guarantor shall furnish to Landlord, within 120 days after the end of each of Guarantor's fiscal years, audited financial statements (or, if audited statements are unavailable, internally prepared but certified by Guarantor's chief financial officer), which shall include a balance sheet, a statement of income and expenses, a statement of cash flows, and a detailed calculation demonstrating compliance with the Minimum Net Worth Requirement. Upon Landlord's request, but not more than once per quarter, Guarantor shall also provide unaudited financial statements for the most recent quarter, certified by its chief financial officer or Manager as having been prepared in accordance with GAAP. If reasonably required by Landlord, Guarantor shall promptly provide additional documentation or clarifications regarding its Tangible Net Worth, including evidence supporting the classification of assets as tangible or intangible.

Guarantor represents and warrants that it currently satisfies the Minimum Net Worth Requirement and that all financial statements or other financial information provided to Landlord are true, correct, and complete in all material respects. If at any time Guarantor's Tangible Net Worth falls below the Minimum Net Worth Requirement, Guarantor shall cure such violation within 45 days of initial occurrence, and if Guarantor fails to cure such violation within this specified time, in addition to any and all other remedies available at law or in equity, Landlord may require Guarantor to post additional security in the form of a letter of credit or cash security deposit within 30 days following Landlord's demand, in an amount Landlord deems reasonably necessary to protect its interests under the Lease and this Guaranty. Guarantor's failure to maintain the

Minimum Net Worth Requirement or otherwise comply with its obligations under this Guaranty, after notice and an opportunity to cure as described above shall constitute a material default under both this Guaranty and the Lease, entitling Landlord to exercise all rights and remedies available under this Guaranty, the Lease, and at law or in equity. If Guarantor breaches the Minimum Tangible Net Worth Requirement more than three times during the term of this Guaranty, including any extensions or renewals thereof, then notwithstanding any prior cure or remedies exercised by Landlord, such repeated breach shall immediately constitute a material default under both this Guaranty and the Lease. In such event, Landlord may exercise any or all remedies available under this Guaranty, the Lease, and law and equity without further notice or opportunity to cure.

To verify compliance, Landlord may, at its own expense and upon reasonable notice to Guarantor, engage an independent certified public accountant to review Guarantor's books and records during normal business hours, solely for the purpose of confirming compliance with the Minimum Net Worth Requirement. Guarantor agrees to reasonably cooperate in providing access and documentation, subject to its reasonable confidentiality requirements.

Landlord shall maintain the confidentiality of all financial information provided by Guarantor, except as required by law, including but not limited to the California Public Records Act and the Ralph M. Brown Act, court order, or in connection with the enforcement of Landlord's rights under this Guaranty. If permitted by applicable law and/or court order, before Landlord discloses any financial information provided by Guarantor to any person or entity other than Landlord's employees, commissioners, or representatives, it shall provide Guarantor 14 day's notice of its intent to make such disclosure.

At any time during the term of this Guaranty, Guarantor shall have the right to substitute Marine Group Global Holdings, LLC, a Delaware limited liability company ("**Tenant Parent**") as the Guarantor provided that Tenant Parent meets the Minimum Net Worth Requirement set forth above and all other requirements of this Guaranty by providing written notice of such substitution to Landlord; provided, further, that (i) such substitution shall not become effective unless and until Tenant Parent executes and delivers an equivalent replacement guaranty in form and substance reasonably satisfactory to Landlord, and Landlord has delivered written confirmation of acceptance of such substitution, and (ii) the original Guarantor shall remain liable under this Guaranty for all Guaranteed Obligations until such time as the substitution becomes effective pursuant to clause (i), and shall automatically be reinstated if the substitution is not completed within 30 days after notice; and (iii) Guarantor shall not be entitled to exercise its right to substitute more than once during the term of this Guaranty.

In witness thereof, each Guarantor has entered into this Guaranty as of the date written below.

**APPROVED AS TO FORM AND LEGALITY**

**GENERAL COUNSEL**

By:  
Assistant/Deputy

**SAN DIEGO UNIFIED PORT DISTRICT**

By:  
Adam Meyer  
Acting Director, Real Estate

**GUARANTOR:**

Marine Group Global Holdings, LLC  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT F**

**MEMORANDUM OF LEASE**

RECORDING REQUESTED BY:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Above Space for Recorder's Use Only)

**MEMORANDUM OF AMENDED AND RESTATED LEASE**

This Memorandum of Lease, hereinafter "**Memorandum**," is dated \_\_\_\_\_, 20\_\_\_\_, between SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, Landlord, and \_\_\_\_\_, Tenant, concerning that certain real property described in Exhibit "**A**" and depicted in Exhibit "**B**", attached hereto and by this reference made a part hereof (the "**Leased Premises**").

For good and adequate consideration, Landlord leases the Leased Premises to Tenant, and Tenant hires them from Landlord, for the term and on the provisions contained in that certain Lease of even date herewith by and between Landlord and Tenant (the "**Lease**"), including without limitation provisions prohibiting assignment, subleasing, and encumbering said leasehold without the express written consent of Landlord in each instance, all as more specifically set forth in said Lease, and subject to the terms of the Article 23 of the Lease, Landlord conveys to Tenant and Tenant accepts from Landlord, all of Landlord's right, title and interest in and to the Existing Improvements, which said Lease is incorporated in this Memorandum by this reference.

The term of the Lease is \_\_\_\_\_ (\_\_) years, beginning \_\_\_\_\_, 20\_\_\_\_, and ending \_\_\_\_\_, 20\_\_\_\_, including one (1) eleven (11) year option to extend.

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

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease as of the date first set forth above.

**APPROVED AS TO FORM AND LEGALITY**

**GENERAL COUNSEL**

By: \_\_\_\_\_  
Assistant/Deputy

**SAN DIEGO UNIFIED PORT DISTRICT**

By: \_\_\_\_\_  
Adam Meyer  
Acting Director, Real Estate

**LEGAL TENANT NAME,**  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A TO MEMORANDUM OF LEASE**

**LEGAL DESCRIPTION OF PREMISES**

**EXHIBIT B TO MEMORANDUM OF LEASE**

**DEPICTION OF PREMISES**

**(FOR USE BY SAN DIEGO UNIFIED PORT DISTRICT)**

STATE OF CALIFORNIA)  
COUNTY OF SAN DIEGO)

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

On \_\_\_\_\_ before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person whose name is  
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.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to person relying on the document  
and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name \_\_\_\_\_  
☐ Individual  
☐ Corporate Officer -- Title(s): \_\_\_\_\_  
☐ Partner -- ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

Signer's Name \_\_\_\_\_  
☐ Individual  
☐ Corporate Officer -- Title(s): \_\_\_\_\_  
☐ Partner -- ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

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**(FOR USE BY \_\_\_\_\_)**

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

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

On \_\_\_\_\_ before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person whose name is  
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.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to person relying on the document  
and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name \_\_\_\_\_  
☐ Individual  
☐ Corporate Officer --Title(s): \_\_\_\_\_  
☐ Partner -- ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

\_\_\_\_\_  
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\_\_\_\_\_  
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RIGHT THUMBPRINT  
OF SIGNER

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Signer's Name \_\_\_\_\_  
☐ Individual  
☐ Corporate Officer --Title(s): \_\_\_\_\_  
☐ Partner -- ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

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## EXHIBIT I

### FORM OF LANDLORD'S ESTOPPEL STATEMENT

\*Name  
Address

Ladies and Gentlemen:

This Landlord Estoppel Statement ("**Statement**") is issued by the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (hereinafter referred to as "**Landlord**"), as landlord under that certain lease dated \_\_\_\_\_, covering a portion of those lands conveyed to Landlord by that certain act of the Legislature of the State of California entitled "**San Diego Unified Port District Act**", Stats. 1962, 1st Ex. Sess., c. 67, as amended, between Landlord and \_\_\_\_\_ (hereinafter referred to as "**Tenant**"), as tenant, a copy of which lease is on file in the Office of the Clerk of Landlord bearing Document No. \_\_\_\_\_ (the "**Lease**").

To the actual knowledge of Landlord (without any duty of investigation or inquiry), Landlord hereby acknowledges and confirms to Recipient (as defined below) the following:

1. The Lease is currently in full force and effect and has not been modified in whole or in part [\*, except as provided by that \*(those) certain amendment(s)\* described and dated as follows: \* copies of which amendment(s)\* is/are\* on file in the Office of the Clerk of Landlord bearing Document No.(s)]\*.
2. The Lease is for a term of \* (\*) years, commencing \* and ending \*.
3. As of the date of this Statement, Tenant is not, to the actual knowledge of Landlord (without any duty of investigation or inquiry), in default or in breach under the provisions of the Lease. While Tenant was previously in breach of Sections 5 and 18 of the Lease for installation of the 820-ton capacity Travelift without obtaining Landlord approval or a Coastal Development Permit ("CDP") amendment, Tenant's continued use of the Travelift shall not constitute and breach, and its previous breach shall be deemed cured, as long as Tenant's use of the Travelift complies with the Use Restrictions in Section 4 of the Lease, all other applicable provisions of the Lease, and the amended CDP approved on \_\_\_\_\_\*; provided, however, that in accordance with Section 4.1 of the Lease, Landlord reserves its full discretion in accordance with Section 8.3 of the Lease with respect to its consideration of Tenant's pending development application, and neither Landlord entering into the Lease nor any provision of the Lease shall be construed as a waiver or limitation of that discretion or relied upon as creating any entitlement to or expectation of any future expansion of use beyond what is explicitly authorized under the Lease.
4. Landlord has no actual knowledge (without any duty of investigation or inquiry) of any other assignment or hypothecation of said leasehold estate, or any pledge or assignment of rents with respect to said premises \*[except any security interest therein created in favor of \* for a loan in the amount of \* Dollars (\$\*) as consented to by Landlord in an Administrative Approval or Resolution No. \*, a copy of which is attached hereto and by reference incorporated herein]\*. [NOTE TO DRAFTER: Modify language if encumbrance has not yet been approved.]

5. All rent, and any other charges payable by Tenant pursuant to the lease (referred to collectively hereinafter as "**Rent**") has been paid through and including \*; provided, however, there may be Rent still due and owing which will be discovered at the time of audit by Landlord and, to that extent, Landlord cannot represent that all Rent has been paid.

6. This Statement is given by Landlord with the understanding that the statements herein made may be relied upon only by \* (the "**Recipient**") and only for the purpose of estopping Landlord from asserting contrary facts against Tenant which Tenant also has no knowledge of.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**APPROVED AS TO FORM AND LEGALITY**

**GENERAL COUNSEL**

**SAN DIEGO UNIFIED PORT DISTRICT**

By: \_\_\_\_\_  
Assistant/Deputy

By: \_\_\_\_\_  
Adam Meyer  
Acting Director, Real Estate

## EXHIBIT J

## EXHIBIT K

### ENVIRONMENTAL DISCLOSURE ADDENDUM [INSERT ADDRESS] (THE "**PREMISES**")

CALIFORNIA HEALTH AND SAFETY CODE SECTION 25359.7 REQUIRES ANY OWNER OF NONRESIDENTIAL REAL PROPERTY WHO KNOWS, OR HAS REASONABLE CAUSE TO BELIEVE, THAT ANY RELEASE OF HAZARDOUS SUBSTANCE HAS COME TO BE LOCATED ON OR BENEATH THAT REAL PROPERTY TO GIVE WRITTEN NOTICE OF THAT CONDITION TO THE LESSEE OF THE REAL PROPERTY. LANDLORD IS PROVIDING THE FOLLOWING INFORMATION CONCERNING THE PRESENCE OF HAZARDOUS SUBSTANCES ON AND UNDER THE PREMISES TO PROSPECTIVE TENANT ("**TENANT**"). THIS IS A SUMMARY OF INFORMATION ONLY, IS NOT INTENDED, NOR SHALL IT BE DEEMED OR CONSTRUED, AS A REPRESENTATION OR WARRANTY OF ANY KIND BY LANDLORD AND HAS BEEN PREPARED FOR TENANT'S CONVENIENCE TO FACILITATE TENANT'S INDEPENDENT DUE DILIGENCE EVALUATION WITH RESPECT TO THE RELEASES OF HAZARDOUS SUBSTANCES AT AND BENEATH THE PREMISES.

WHILE LANDLORD HAS NO SPECIFIC INFORMATION CONFIRMING THE PRESENCE OR ABSENCE OF HAZARDOUS SUBSTANCES ON OR BENEATH THE PREMISES, THE CURRENT AND HISTORICAL USE OF THE PREMISES AS A BOAT REPAIR FACILITY IS GENERALLY ASSOCIATED WITH A HIGH RISK OF RELEASES OF SUCH SUBSTANCES, BOTH TO LAND AND TO THE BAY, INCLUDING METALS, PETROLEUM HYDROCARBONS, VOLATILE AND SEMI-VOLATILE ORGANIC COMPOUNDS, AND POLYCHLORINATED BIPHENYLS. THE SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD ("SDRWQCB") HAS AN OPEN RELEASE CASE ASSOCIATED WITH THE PREMISES (CASE ID T10000008876). IN ADDITION, THERE ARE KNOWN AND/OR SUSPECTED RELEASES OF HAZARDOUS SUBSTANCES IN THE VICINITY OF THE PREMISES WITH THE POTENTIAL TO HAVE IMPACTED THE PREMISES. ENVIRONMENTAL REPORTS DESCRIBING WITH MORE SPECIFICS THE ENVIRONMENTAL CONDITIONS IN THE VICINITY OF THE PREMISES CAN BE PROVIDED BY LANDLORD UPON REQUEST OR MAY BE ACCESSED AT THE SDRWQCB GEOTRACKER WEBSITE IDENTIFIED AS <https://geotracker.waterboards.ca.gov/>]

LESSEE ACKNOWLEDGEMENT AND CONSENT: BY EXECUTION OF THIS LEASE, LESSEE (A) ACKNOWLEDGES ITS RECEIPT OF THE FOREGOING NOTICE GIVEN PURSUANT TO SECTION 25359.7 OF THE CALIFORNIA HEALTH AND SAFETY CODE; (B) ACKNOWLEDGES AND AGREES THAT LANDLORD SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR THE ACCURACY OF ANY OF THE INFORMATION CONTAINED IN THE REPORTS PREPARED BY AND FOR THIRD PARTIES; AND (C) ACKNOWLEDGES THAT LANDLORD HAS COMPLIED WITH ITS OBLIGATIONS UNDER SECTION 25359.7 OF THE HEALTH AND SAFETY CODE.

**Attachment C - Agenda File No. 2025-111**

**SAN DIEGO UNIFIED PORT DISTRICT FORM 317**

**LESSEE'S AND SUBLESSEE'S QUESTIONNAIRE  
FOR ALL LEASES (AND SUBLEASES OF MORE THAN FIVE YEARS)**

(Use UPD Form No. 320 for Subleases of Five Years or Less)

Before the San Diego Unified Port District will process requests to (Sub)Lease, all information requested in this Questionnaire must be completed by the proposed (Sub)Lessee. Even though a proposed Sublessee may complete the Questionnaire, the Questionnaire must be delivered or mailed to the District with a cover letter signed by the District's Lessee or proposed Lessee. **THE DISTRICT WILL NOT ACCEPT THE QUESTIONNAIRE, DOCUMENTS, OR OTHER INFORMATION DIRECTLY FROM A SUBLESSEE.**

All information furnished in this Questionnaire must be complete and accurate. Omissions, inaccuracies, or misstatements may cause the rejection and/or subsequent revocation of the District's Lease, consent to Sublease, or consent to Assignment of (Sub)Lease.

In submitting this Questionnaire, the proposed (Sub)Lessee completing the Questionnaire authorizes the District to make any inquiry or investigation it believes necessary to substantiate or supplement the information furnished in the Questionnaire, and authorizes others to release such information to the District.

Exact name of existing Lessee (always complete):

Marine Group Boat Works, LLC, a California limited liability company

Exact name of proposed Lessee (complete only if applicable):

N/A

Exact name of existing Sublessee (complete only if applicable):

N/A

Exact name of proposed Sublessee (complete only if applicable):

N/A

Date this Questionnaire completed: March 18, 2025.

The information furnished in and with this Questionnaire is true, complete, and correct to the best of my knowledge.

Signed by:

Signature:

Byron Besse

2BA0000000F2401...

Title:

Byron Besse, Manager of Marinus Group GP, LLC

Thank you for taking the time to complete the Questionnaire. Lessees may contact District Real Estate if they have any questions. Please return the completed Questionnaire, with any additional information or documents to:

REAL ESTATE  
SAN DIEGO UNIFIED PORT DISTRICT  
POST OFFICE BOX 120488  
SAN DIEGO, CA 92112-0488  
TEL.: (619) 686-6291 FAX: (619) 686-6297

**This Questionnaire contains 15 pages.**

**PROPOSED (SUB)LESSEE**

1. Name of proposed (Sub)Lessee exactly as it will appear on the actual tenancy document: Marine Group Boat Works, LLC, a California limited liability company D/B/A Marine Group Boat Works

2. Mailing Address of proposed (Sub)Lessee for purposes of notice or other communication relating to the proposed tenancy: 997 G Street Chula Vista, CA 91910-3414

Telephone No.: 619-427-6767 ext 123 Fax. No.: 619-427-0234

E-mail Address: todd@marinegroupbw.com

3. Billing Address (***only if different from Mailing Address***);

Telephone No.: \_\_\_\_\_

Fax. No.: \_\_\_\_\_

4. Proposed (Sub)Lessee intends to operate as a:

Sole Proprietorship ( ☐ ); Partnership ( ☐ ); Corporation ( ☐ );

Limited Liability Company (X); Other \_\_\_\_\_

Explain if necessary:

5. Effective date of assignment (complete only if applicable): Acquisition of 100% of the ownership interests in existing Lessee and existing Lessee's parent (MGBW, LLC, a Delaware limited liability company) by Marine Group Global Holdings, LLC, a Delaware limited liability company ("MGGH") pursuant to that certain Membership Interest Purchase Agreement ("MIPA") signed on February 28, 2025, and subject to approval of San Diego Port Authority for closing (a copy of the redacted MIPA is attached to this Form 317 as Addendum A). Closing on the transaction is expected to occur on or before April 30, 2025.

### **LIMITED LIABILITY COMPANY STATEMENT**

If the proposed (Sub)Lessee is an LLC, please answer the following:

1. Date of Organization: 12/30/2008
2. Where Organized: California
3. Is the Company authorized to do business in California?
  - a. Yes (X) No ( )
  - b. If so, as of what date? 12/30/2008
4. Has the Company conducted business in San Diego County?
  - a. Yes (X) No ( )
  - b. If so, when? Company assumed the existing Lease from its predecessor-in-interest, The Marine Group, LLC, a California limited liability company on April 6, 2010, pursuant to that certain Assignment of Lease on file in the Office of the Clerk of Lessor bearing Document No. 56564.
  - c. If so, where? At its existing location at 997 G Street Chula Vista, CA 91910-3414
5. Please furnish the name, address, and membership share held by each manager and officer, and each member owning more than a 10% membership interest. If a member is a partnership, corporation, or another LLC, please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity.

**Note: See Entity Structure Chart attached hereto as Addendum B to this Form 317. As noted above, Lessee is not changing but the upstream ownership will change upon Closing on the MIPA and approval of the proposed assignment.**

Manager/Officer/ Member	Name	Address	Share %
MGBW, LLC	MGBW, LLC	997 G Street Chula Vista, CA 91910-3414	100

6. Attach a complete copy of the Operating Agreement. If an Operating Agreement has been previously submitted, a new Operating Agreement need be submitted only if the

Operating Agreement on file with the District is no longer current.

## **FINANCIAL AND OTHER BACKGROUND INFORMATION OF BYRON BESSE**

### **FINANCIAL STATEMENT**

(Sub)Lessee, general partners of (Sub)Lessee, owner-corporations of (Sub)Lessee, members of (Sub)Lessee owning more than a 10% membership interest, and any person or business entity guaranteeing the performance of (Sub)Lessee **must attach a complete report, prepared in accordance with good accounting practice, reflecting current financial condition.** The report **must** include a balance sheet **and** annual income statement. The person or entity covered by the report must be prepared to substantiate all information provided.

### **OTHER INFORMATION**

Each (Sub)Lessee, each general partner of (Sub)Lessee, each owner-corporation of (Sub)Lessee, each member of (Sub)Lessee owning more than a 10% membership interest, any person or business entity guaranteeing the performance of (Sub)Lessee, any person or entity owning more than a 10% interest of (Sub)Lessee, and any guarantor of (Sub)Lessee must answer the following questions:

1. **Surety Information** - Has a surety or bonding company ever been required to perform on the default of any of the individuals or entities?
  - a. Yes ( ) No (X)
  - b. If yes, please attach a statement naming the surety or bonding company, date, amount of bond, and the circumstances surrounding said default and performance.
2. **Bankruptcy Information** - Have any of the individuals or entities ever been adjudicated bankrupt or are any presently a debtor in a pending bankruptcy action?
  - a. Yes ( ) No (X)
  - b. If yes, please give dates, court jurisdiction, and amount of liabilities and assets.
3. **Pending Litigation** - Are any of the individuals or entities presently a party to ANY pending litigation?
  - a. Yes ( ) No (X)
  - b. If yes, please provide detailed information for each action.
4. **Claims, Liens, or Judgments** - Are any of the individuals or entities now subject to any outstanding claims, liens, or judgments?
  - a. Yes ( ) No (X)
  - b. If yes, please provide detailed information for each claim, lien, or judgment.

## **REFERENCES FOR BYRON BESSE**

Please list four persons or firms with whom you have conducted business transactions during the past three years. Two of the references must have knowledge of your debt payment history, with at least one being a financial institution. Two of the references must have knowledge of your business experience.

### **REFERENCE NO. 1**

Name: Blake Chipman

Firm: First Fidelity Bank

Title: VP Commercial Lending

Address: 5613 DTC Parkway, Suite 810

Telephone: 785-550-3229

Nature and magnitude of purchase, sale, loan, business, association, etc.: Multiple loans in aggregate greater than \$30m for development and personal activities in Colorado.

### **REFERENCE NO. 2**

Name: Saxon Knauss

Firm: American Business Bank

Title: Senior Vice President

Address: 21800 Oxnard Street Suite 1140, Woodland Hills, CA 91367

Telephone: 818-884-0000

Nature and magnitude of purchase, sale, loan, business, association, etc.: \$4M term loan and revolving credit facility for Fasthouse Inc.

**REFERENCE NO. 3**

Name: J Jones

Firm: Co Biz Bank now Bank of Oklahoma

Title: Senior Vice President

Address: 1099 18<sup>th</sup> Street Suite 3050 Denver, CO 8020

Telephone: 303-648-1700

Nature and magnitude of purchase, sale, loan, business, association, etc.: Lender for a number of real estate related projects in Winter Park, CO. More than \$50m borrowed and repaid.

**REFERENCE NO. 4**

Name: Josh Peebles / Brooke Sauer

Firm: Collegiate Peaks Bank

Title: Senior Vice President/ Senior Loan Admin Officer

Address: 885 S Colorado Blvd Denver, CO 80246

Telephone: 303-481-1306

Nature and magnitude of purchase, sale, loan, business, association, etc.: Multiple business and personal loans between \$5m-10m borrowed and all fully repaid.

## **SAN DIEGO UNIFIED PORT DISTRICT PERSONAL DESCRIPTION AND RELEASE**

PLEASE NOTE: All partners, both general and limited; all stockholders owning more than 10% of any class of stock of corporations; all members of a limited liability company; and sole proprietors requesting to (sub)lease, must each complete this page before the tenancy request can be processed. (You may reproduce and use copies of this page, if necessary.)

The following personal information is required to initiate a credit investigation. The business and personal reputation of principals, partners, and members will be considered in qualifying Lessees or in consenting to Sublessees.

First, Middle, & Last Name	<u>Byron (Chip) Locke Besse Jr</u>
Date of Birth	<u>01/23/1981</u>
Place of Birth	<u>Philadelphia, PA</u>
Driver's License Number/State	<u>09-008-0563/Colorado</u>
Home Address	<u>7076 Indian Peaks Trl Boulder, CO 80301</u>
Previous Address	<u>2015 Orchard Ave, Boulder Co 80304</u>
Home Telephone No.	<u>970-531-3174</u>
Employer	<u>Self-employed</u>
Occupation	<u>Investor/Entrepreneur</u>
Business Address	<u>7076 Indian Peaks Trl Boulder, CO 80301</u>
Business Telephone No.	<u>970-531-3174</u>
Business Fax No.	<u>chipbesse1@gmail.com</u>

The District is hereby authorized to request a credit report and other information covering my financial and business history.

Date 3/11/2025 Signed  Signed by: Byron Besse  
2BA69639C3F2491

**Print or type exact name of proposed (Sub)Lessee from page 2 of Questionnaire:**

Marine Group Boat Works, LLC, a California limited liability company

## **FINANCIAL AND OTHER BACKGROUND INFORMATION OF SKYE CALLANTINE**

### **FINANCIAL STATEMENT**

(Sub)Lessee, general partners of (Sub)Lessee, owner-corporations of (Sub)Lessee, members of (Sub)Lessee owning more than a 10% membership interest, and any person or business entity guaranteeing the performance of (Sub)Lessee **must attach a complete report, prepared in accordance with good accounting practice, reflecting current financial condition.** The report **must** include a balance sheet **and** annual income statement. The person or entity covered by the report must be prepared to substantiate all information provided.

### **OTHER INFORMATION**

Each (Sub)Lessee, each general partner of (Sub)Lessee, each owner-corporation of (Sub)Lessee, each member of (Sub)Lessee owning more than a 10% membership interest, any person or business entity guaranteeing the performance of (Sub)Lessee, any person or entity owning more than a 10% interest of (Sub)Lessee, and any guarantor of (Sub)Lessee must answer the following questions:

1. **Surety Information** - Has a surety or bonding company ever been required to perform on the default of any of the individuals or entities?
  - a. Yes ( ) No ( X )
  - b. If yes, please attach a statement naming the surety or bonding company, date, amount of bond, and the circumstances surrounding said default and performance.
2. **Bankruptcy Information** - Have any of the individuals or entities ever been adjudicated bankrupt or are any presently a debtor in a pending bankruptcy action?
  - a. Yes ( ) No ( X )
  - b. If yes, please give dates, court jurisdiction, and amount of liabilities and assets.
3. **Pending Litigation** - Are any of the individuals or entities presently a party to ANY pending litigation?
  - a. Yes ( ) No ( X )
  - b. If yes, please provide detailed information for each action.
5. **Claims, Liens, or Judgments** - Are any of the individuals or entities now subject to any outstanding claims, liens, or judgments?
  - a. Yes ( ) No ( X )
  - b. If yes, please provide detailed information for each claim, lien, or judgment.

## **REFERENCES FOR SKYE CALLANTINE**

Please list four persons or firms with whom you have conducted business transactions during the past three years. Two of the references must have knowledge of your debt payment history, with at least one being a financial institution. Two of the references must have knowledge of your business experience.

### **REFERENCE NO. 1**

Name: Frederick Fischer

Firm: Bank of America Private Bank

Title: VP Commercial Lending

Address: 370 17<sup>th</sup> Street, Suite 5100 Denver, CO 80202

Telephone: 303-575-5806

Nature and magnitude of purchase, sale, loan, business, association, etc.:

Multiple loans in aggregate greater than \$90m for multifamily real estate developments in Pensacola, FL. Majority owner acts / acted as a personal guarantor on these loans.

### **REFERENCE NO. 2**

Name: Katie Hallen

Firm: J.P. Morgan Private Bank

Title: Executive Director

Address: 1455 16<sup>th</sup> St. Suite 407, Denver, CO 80202

Telephone: 303-607-7743

Nature and magnitude of purchase, sale, loan, business, association, etc.:

Private banker for Vigeo Investments' majority owner. Working knowledge of owner's financial background, payment history, liquidity, and current holder of \$36M of debt related to owner's ranch (original balance of \$43.0M).

**REFERENCE NO. 3**

Name: Kevin Cook

Firm: Cook Development, LLC

Title: President

Address: 1276 North 15<sup>th</sup> Ave, Bozeman, MT 59715

Telephone: 406-586-0302

Nature and magnitude of purchase, sale, loan, business, association, etc.:

Business partner for multiple successful commercial real estate developments in the Bozeman MT area, including office, medical facilities, etc. totaling more than \$20M invested.

**REFERENCE NO. 4**

Name: Henry Berling

Firm: Turning Basin Capital

Title: Partner

Address: 1405 W Main St, Richmond, VA 23220

Telephone: (804) 357-8215

Nature and magnitude of purchase, sale, loan, business, association, etc.:

Multiple business investment made together as partners. Have deployed over \$25M of capital.

## **SAN DIEGO UNIFIED PORT DISTRICT PERSONAL DESCRIPTION AND RELEASE**

PLEASE NOTE: All partners, both general and limited; all stockholders owning more than 10% of any class of stock of corporations; all members of a limited liability company; and sole proprietors requesting to (sub)lease, must each complete this page before the tenancy request can be processed. (You may reproduce and use copies of this page, if necessary.)

The following personal information is required to initiate a credit investigation. The business and personal reputation of principals, partners, and members will be considered in qualifying Lessees or in consenting to Sublessees.

First, Middle, & Last Name    Skye Arthur Callantine  
Date of Birth    08/17/1973  
Place of Birth    Bozeman, MT  
Driver's License Number/State    06-163-0245  
Home Address    158 Stillson Place Terrace Breckridge, CO 80424

Previous Address    333 Milwaukee Street, Denver, CO 80206

Home Telephone No.    405-420-3495  
Employer    Validus Energy Holdings II, LLC  
Occupation    Executive Chairman  
Business Address    1530 16<sup>th</sup> Mall, Denver, CO 80206  
Business Telephone No.    N/A  
Business Fax No.

The District is hereby authorized to request a credit report and other information covering my financial and business history.

Date 3/11/2025    Signed 

**Print or type exact name of proposed (Sub)Lessee from page 2 of Questionnaire:**

Marine Group Boat Works, LLC \_\_\_\_\_

## **METHOD OF OPERATION**

Please describe your proposed business operation on the property to be (Sub)Leased. Discuss any optional services and uses which you propose to provide.

Marine Group Boat Works is a full-service superyacht repair and refit facility located along the San Diego Bay. The facility works on private, commercial and government vessels up to 220 feet long with specialized services including retrofits, conversions, hull extensions, carpentry, mechanical and electrical work and custom painting. The facility has been operating at this location since July 1985.

[www.marinegroupbw.com](http://www.marinegroupbw.com)

**PROPOSED METHOD OF FINANCING  
DEVELOPMENT OR LEASEHOLD PURCHASE**

Describe the method of financing for the Leasehold purchase or any new or additional development on District tidelands in excess of \$100,000. Include a schedule of approximate dates when construction of each significant improvement is expected to be commenced and completed.

All operations of Marine Group Boat Works LLC and its affiliates are being purchased. This purchase is being financed through the company's incumbent lender CB&T and Calitus Capital. The buyer is financing approx. 49.4% of the purchase price through the above lenders and the remaining proceeds are funded by investors. In addition to funding the purchase price, there is approx. \$10M in excess cash being invested into the business for transaction fees, operational improvements, working capital improvements post-acquisition, and payments to the Port of San Diego for lease modifications.

Following the closing of the MIPA, all control and management decisions over Marine Group Boat Works LLC and its affiliates will be held equally by Skye Callantine and Chip Besse, through their interests in Marinus Group GP, LLC, with any action requiring the consent of both Skye Callantine and Chip Besse.

## **ESTIMATE OF GROSS RECEIPTS**

If this Questionnaire is being completed by a prospective Lessee, please show the best estimate of the average annual gross sales for each significant use or service, and for each significant optional use or service which the Lessee and its Sublessees (if any) plan to conduct on or from the property. (If the Questionnaire is being completed by a Sublessee, only the estimate of the Sublessee's gross sales is required.) This data will be used by the District to analyze the proposed Lease or Sublease Consent application. The time periods shown should not be assumed to necessarily represent the term of a (Sub)Lease that may be granted or consented to by the District.






Average annual gross sales for each proposed significant use during each of the first five operating years:

Revenue		2023	2024	2025	2026	2027	2028	2029	2030
Commercial - Revenue		16,012	13,470	27,435	14,143	14,850	15,593	16,372	17,191
Construction - Revenue		14,585	11,599	(2,370)	12,179	12,788	13,428	14,099	14,804
Yacht - Revenue		16,996	13,641	12,965	14,323	13,613	15,039	14,294	15,791
Government - Revenue		12,722	12,105	9,946	10,443	10,965	11,513	12,089	12,694
MSR - Revenue		29,532	6,546	2,658	6,873	7,216	7,577	7,956	8,354
Rental & Storage - Revenue		481	4,416	8,681	4,637	4,869	5,112	5,368	5,636
<b>Total Revenue</b>		<b>90,328</b>	<b>61,777</b>	<b>59,314</b>	<b>62,598</b>	<b>64,302</b>	<b>68,263</b>	<b>70,179</b>	<b>74,470</b>
YoY Growth %	n/a	(1.09)%	(31.61)%	(3.99)%	5.54%	2.72%	6.16%	2.81%	6.12%
*all numbers in thousands									

## EXPERIENCE STATEMENT

Please describe in detail the duration and extent of your business experience, with special emphasis upon experience with the type of business which you propose to conduct on District property. Also state in detail the pertinent experience of the persons who will be directly involved in development and management of the business.

Chip Besse and Skye Callantine (the “Principals”) are the principal investors in MGGH. MGGH has entered into the MIPA for the purpose of purchasing, among other things, the businesses of Lessee and Lessee’s parent entity and, in doing so, are backing the existing operational team to continue managing the day-to-day business of Lessee. A great deal of time and effort has been spent working on the business plan for the Company going forward. At this time, the Principals intend to keep the key members of the operational team in place. Furthermore, the existing President, Todd Roberts, is making a material personal investment in the new business and will be a stakeholder in the Company, as well as continuing on as its President. The senior management team and their qualifications are listed below. This senior management team will report to the Principals whose bios are also included beneath the management section.

Leadership Team Overview	
 <b>Todd Roberts</b> <i>President</i>	<ul style="list-style-type: none"> <li>Todd serves as the Company’s current President and visionary and will serve as the CEO in the new entity. Having joined in 2000 and serving as the Director of Operations when he was tasked with the shutdown of the San Diego facility after originally being planned for shutdown in 2001 to make way for a hotel lot. It was after visiting the site that Roberts had produced the idea of a “Quickie Lube” for yachts, after noticing a ‘mega yacht vibe’ proliferating in SoCal. Todd relayed his vision to the Engels and got the go-ahead to revive the yard. After proving the concept over the next 5 years, Roberts received additional financing from ownership to continue to build upon Roberts’ vision to create the premier shipyard of the West Coast.</li> <li>Todd has over 21 years of maritime experience and has been a licensed USCG captain for over 34 years. He graduated with a B.S. in Maritime Transportation and Business from California Maritime Academy.</li> </ul>
 <b>Laura Machado</b> <i>CFO</i>	<ul style="list-style-type: none"> <li>Laura serves as the Company’s current CFO, and she will be remaining with the Company post-close. Laura has been with the Company since 1997 (predecessor to MGBW). Laura’s responsibilities range from financial reporting, procuring new construction contracts, implementing ERP systems, and implementing weekly reports to Project Managers.</li> <li>Laura has over 30 years of maritime and accounting experience. She graduated from the University of Iowa with a B.B.A in accounting.</li> </ul>
 <b>Eric Lundeen</b> <i>Operations Director</i>	<ul style="list-style-type: none"> <li>Eric serves as the Company’s Operations Director and works out of the San Diego facility. Eric has over 15 years of shipyard experience and 8+ years of yacht crew experience.</li> <li>Peter received his B.A. from University of Denver.</li> </ul>
 <b>Peter Horner</b> <i>GM - Cabo</i>	<ul style="list-style-type: none"> <li>Peter serves as the General Manager of the Cabo facility. Peter brings with him 10 years of boatyard experience and has been a USCG licensed captain for over 15 years.</li> <li>Peter received his B.A. from Lynchburg College, VA.</li> </ul>
 <b>Leah Yam</b> <i>Communications Director</i>	<ul style="list-style-type: none"> <li>Leah serves as the Company’s Communications Director. Leah brings with her 15 years of maritime experience and 18+ years of Marketing and PR experience.</li> <li>Leah received her B.S. from the USC Marshall School of Business.</li> </ul>

## **Board of Directors**

### **Chip Besse - Background**

Chip Besse is a seasoned executive with over 20 years' experience in leadership roles across diverse industries including marine related businesses. With a proven track record of building and scaling businesses, managing complex transactions, and creating value through strategic investments, Chip is currently an investor and board member of five entities across Colorado, Utah, California, and Mexico. Following successful exits from two (2) major ventures, Chip is now focused on successfully acquiring, financing and operating Marine Group Boat Works ("MGBW") in San Diego and San Jose del Cabo, Mexico.

MGBW interests Chip for several reasons. As a boating enthusiast who grew up in Florida and currently spends a significant portion of the year in Mexico with a boat at the MGBW facility in San Jose, he has a personal connection to the industry. He sees potential for expansion in the U.S. through the Navy and other opportunities given MGBW's reputation, solid business history and experienced management team. Additionally, Chip's existing business in Mexico, his conversational Spanish skills, and his local connections will support managing and potentially expanding the facility to better complement the Company's San Diego operations. Chip's years' long experience in navigating municipal and federal organizations also aligns with the complexities of this investment.

As a Principal in MGGH, Chip plans to provide financing, leadership, and backing to the current management team led by Todd Roberts.

### **Current and Recent Personal Investments**

- **Roam (Winter Park, Colorado):** In 2015, Chip co-purchased 171 acres in Winter Park, Colorado, with another Colorado based owner/developer. Chip led the land acquisition, planning, annexation, and initial development phases of a large-scale community project, including 87 residential condominiums, 75 single-family lots, and all related infrastructure. In partnership with the Town of Winter Park, Chip's efforts led to the creation of a public/private partnership to support employee housing and development through transfer tax contributions on the sale of real estate.

Chip and his partner invested over \$125 million before Chip exited the investment after almost 10 years to focus on other projects in Mexico and California.

- **Hideaway Station (Winter Park, Colorado):** Chip purchased, developed, and sold a mixed-use real estate project in downtown Winter Park known as "Hideaway Station." The entire project was a public-private partnership with the Town of Winter Park, Colorado that created numerous jobs and the town's first employee housing project in over two decades. The \$70 million development received the Governor's Award for Best New Addition to Downtown Colorado in 2017. Chip managed all aspects of the project and held a 50% ownership stake. He recently exited this business when he sold his interest in Roam.
- **Fasthouse (Valencia, California):** Chip is the majority owner of Fasthouse, a clothing and lifestyle business based in Valencia, California with operations in 14 countries and sales throughout the United States.

- **Alliance Building Solutions (San Diego, California):** Chip is an investor and board member of Alliance Building Solutions, a San Diego-based energy savings company focused on bringing Energy Savings to municipal markets throughout California. The business currently has active projects with the cities of Fresno, San Bernadino and others throughout the State.
- **Prospere M&A:** Chip is a minority investor and board advisor at Prospere, a boutique investment bank and owner of five Transworld Business Advisors franchises. Prospere operates across five states with over 100 active brokers.
- **Besse Aventuras (Todos Santos, Mexico):** Chip is the sole owner of Besse Aventuras, a hotel development project in its early stages in Todos Santos, Mexico.

## Previous Business Investments

- **Grand Adventures (Colorado):** Chip purchased and operated three (3) outdoor recreational businesses under the name “Grand Adventures,” which he sold to his employees in 2016. The employees grew the business by more than 40%, and it is now under contract for sale to a private equity firm.
- **Marine manufacturing and distribution owner:** Chip was the lead investor in consolidating manufacturing and distribution businesses in the marine and furniture industries. He oversaw six acquisitions, five ERP migrations, three warehouse integrations, and the relocation of 400,000 square feet of warehouse space. The consolidated entity generated over \$100 million in revenue with EBITDA exceeding \$8 million when he left. Chip sold the business to a private equity firm in 2017 and was later asked to return to help restructure and sell it again during COVID in 2020.
- **Harbourmaster Capital:** Chip was involved as a CLO manager with more than €7 billion in assets under management, which was sold to Blackstone Capital for €450 million in 2012.

## Professional Background

Before starting his entrepreneurial ventures, Chip spent six years in London in finance as a Partner at Clearbrook Capital and WestLB. He was involved in acquiring and restructuring businesses across financial services, business services, and greenfield startups. Notable achievements include a roll-up of 11 food testing operations and their sale to private equity for over \$125 million. Chip also assembled a €400 million German property portfolio, created a European small business financing platform called Hawk Finance, and helped establish mortgage finance businesses in Romania and Turkey. Earlier in his career, Chip was part of the WestLB Principal Finance Group, contributing to significant transactions such as the \$800 million acquisition of Odeon Cinemas, the \$1.2 billion Pubmaster portfolio, and the \$380 million purchase and sale of Whyte and Mackay, a Scotch whisky business. In all, Chip has borrowed more than \$300m personally in his US ventures and successfully repaid all outstanding financing. Throughout his career, Chip has been involved in more than \$1bn in transactions through a myriad of industries.

## Educational Background & Personal Life

Chip holds a Bachelor of Science degree in Finance from Florida State University. In addition to his professional endeavors, Chip is dedicated to his family and community. He is a father of two, a husband, and actively participates in various philanthropic activities. He

currently serves on the board of directors for Al Padrino, a new children's hospital in Todos Santos, Mexico. Chip and his family split their time between Mexico, Colorado, and California. Chip recently went back to school to become fluent in Spanish.

### **Skye Callantine-**

Skye Callantine is founder of Vigeo Investments, his Family Office. He has approval rights over all investments made by Vigeo and serves as a valuable resource to company executives pulling from his extensive and extremely successful track record of building multi-billion-dollar energy companies.

Skye is currently the Chairman of the board of Validus Energy, an upstream energy producer in Denver, Colorado with operations in Oklahoma, which recently completed the acquisition of Citizen Energy in a \$2Billion transaction.

Prior to Validus, Skye most recently served as Felix Energy's Founder and CEO. Under his leadership, the Denver based Felix platform built and sold approximately \$7 billion of assets consisting of upstream projects, midstream assets, and mineral interests over an 8-year period. Skye is also the Founder and Chairman of Fortis Minerals.

Prior to Felix and Fortis, Skye worked for Chesapeake Energy, where he led the building of large-scale projects in numerous basins. Skye began his career with ConocoPhillips and served in numerous roles in exploration and production in North America, South America, and Asia.

Prior to entering the energy business, Skye served in the U.S. Air Force, received a B.S. in Geophysical Engineering from Montana Tech and an M.B.A. from Oklahoma State. Skye is on the board of Montana Tech and is one of the Universities' largest benefactors.

In addition to starting Vigeo, he started a foundation in his name which supports numerous health care and animal-based companies including the Dumb Friends League. Skye is an avid traveler and outdoorsman and enjoys spending time away from work on his working ranch in Montana, The LF ranch. The ranching operations in Montana support a large local based staff is also one of four ranches in the state part of the Old Salt Co-Op a fully integrated processing and meat distribution company based in Helena.

### **Steven Folse -**

Steven Folse runs the Private Investment division of Vigeo Investments. He has over 15 years of experience in finance driven roles, including serving as a Senior Associate at Denver-based private equity firm, Bow River Capital, and 6 years as an associate analyst in Equity Research at Stifel, where he covered a number of sectors including Infrastructure and Industrial.

Steven holds a Masters in Finance, with an Energy Specialization from Tulane University, and a BS in Finance from Colorado State University. He is also a CFA Charter holder.

At Vigeo, Steven continues to lead all sourcing, structuring and execution aspects of investing in Real Estate and Operating Companies having completed over \$200m+ of transactions across various industries. Vigeo is focused on investing in lower middle market companies across "Old World Economy Businesses" and enters each transaction with a plan and vision for a 5+ year partnership vs a quick flip. The company places a focus on alignment of vision,

hold flexibility (long term solution), and being good stewards of the community, which allows it to succeed where more traditional Private Equity cannot.

Steven currently serves on the Board of five Vigeo Invested companies including:

**Aquafinity-** a commercial pool distribution and service company headquartered in Jupiter, Florida, with a large office in Santa Ana, California and satellite offices in Texas, Arizona and South Carolina. Aquafinity has successfully grown from ~\$20M in sales to over ~\$85M during the 3.5 years of Vigeo partnership. The company succeeds by taking a cradle to grave approach to water quality management as opposed to the more specialized approach of its competitors.

**NGS-** is a window film and window distribution and service company based in Atlanta Georgia. The company “makes buildings better” either through enhanced security solutions, increasing energy efficiency (solar based films) or improving aesthetics (graphics based options). The company is the largest Window Film partner of 3M in the country and has grown from ~\$30M in Sales to \$80M in the four years during its Partnership with Vigeo.

**Pinnacle Manufacturing-** Pinnacle is an industrial tank manufacturing company based in Northern Alabama with a secondary facility in Ogden, Utah. The company specializes in manufacturing a wide variety of tanks and containers for the Environmental, Industrial and Energy Industries. Large customers include United Rentals and Mobil Mini. The Company has grown from \$25M to \$45M under Vigeo’s 6 year partner ship with the company.

**Alliance Building Solutions-** is an Energy Service Company (ESCO) based in San Diego California. Vigeo and Chip have been partners on this transaction since June of this year. The company is focused on making buildings in the Municipality and K-12 industries more efficient through a variety of solutions including: Solar installation, lighting retrofit, HVAC replacement and other building envelope options.

Away from work, Steven is focused on bettering the Denver community and has served on young professional boards of several organizations including Junior Achievement and Strive Preparatory schools. Steven met his wife Amy through a leadership program in Denver titled “Impact Denver” which was sponsored through the Chamber of Commerce. Steven and Amy now share two children- Landon (Age 4) and Olivia (age 6 months) and enjoy showing them all the things they love about the Colorado outdoors including skiing, hiking, and camping.

## **Kelly Grindle**

Kelly has a 25+ year track record of successfully growing, acquiring and turning around consumer branded, manufacturing based business, including Hatteras/Cabo Yachts LLC. Kelly currently is CEO of Velocity Outdoor which, before selling off its airgun division earlier this year, was a \$200+ million business made up of iconic outdoors brands such as Crosman and Benjamin airguns, and premium performance archery brands like Ravin and Centerpoint crossbows. Prior to Velocity, Kelly was CEO of Hatteras/Cabo Yachts LLC, where he turned around a highly distressed business operation by significantly improving the operations, repositioning the brands and driving sales efforts while dramatically elevating the overall customer experience. Hatteras builds 60-105' motor yachts and 45-70' sportfishing yachts. Before Hatteras, Kelly was President of the \$1.3 billion outdoor products business of Vista Outdoor where he was responsible for more than 40 brands and managed a global organization of over 4500 people. While at Vista, Kelly acquired two businesses which added more than

\$400 million in revenue. Kelly began his management experience with Johnson Outdoors where he spent 15 years and was responsible for \$425+ million of business including the Fishing, Diving and Watercraft groups. Prior to Johnson Outdoors, he spent 6 years leading M&A and venture investment deals for the family office of Samuel C. Johnson and the professional cleaning chemical business of S.C. Johnson & Son. Over his career, Kelly has acquired 14 businesses and turned around three. Kelly holds an MBA from Marquette University and a BS in Finance from The Kelley School of Business at Indiana University.

**TERMS AND CONDITIONS OF PURCHASE, SALE,  
OR TRANSFER OF (SUB)LEASEHOLD INTEREST**

(NOTE: Complete this page only if the transaction involves a Lease transfer, or the transfer of a Sublease having a remaining term of more than five years.)

Please summarize the terms and conditions of the purchase, sale, or transfer of (Sub)Leasehold interest(s) which requires District consent, as specified in the Assignment-Sublease provisions of the District Lease. Please attach copies of the applicable sales agreement(s), escrow instructions, assignment agreement(s), or other documents in conjunction with the sale, purchase, or transfer of the (Sub)Leasehold interest(s).

Attached is the executed copy of the MIPA executed on February 28, 2025. The closing of this purchase is dependent on, among other things, the transfer and approval of the current Lease and an amended or new lease by the San Diego Port Authority. Note that the transaction value and other economic terms are redacted from the attached purchase agreement.

## ADDENDUM A

MIPA

(attached)

**MEMBERSHIP INTEREST PURCHASE AND CONTRIBUTION AGREEMENT**

**BY AND AMONG**

**MARINE GROUP GLOBAL HOLDINGS, LLC,**

**MGBW, LLC,**

**MARINE GROUP LOS CABOS LLC,**

**MS SD, LLC,**

**ARTHUR E. ENGEL (IN THE CAPACITY OF SELLERS' REPRESENTATIVE),**

**AND**

**THE MEMBERS OF THE COMPANIES AS SET FORTH ON EXHIBIT A**

Dated as of February 28, 2025

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## MEMBERSHIP INTEREST PURCHASE AND CONTRIBUTION AGREEMENT

**THIS MEMBERSHIP INTEREST PURCHASE AND CONTRIBUTION AGREEMENT** (this “**Agreement**”) is dated as of February 28, 2025 (the “**Effective Date**”), and entered into by and among Marine Group Global Holdings, LLC, a Delaware limited liability company (“**Buyer**”), MGBW, LLC, a Delaware limited liability company (“**MGBW**”), Marine Group Los Cabos LLC, a Delaware limited liability company (“**MG Cabo**”), MS SD, LLC, a Delaware limited liability company (“**MS SD**” and together with MGBW and MG Cabo, each a “**Company**” and, collectively the “**Companies**”), the Persons identified on Exhibit A hereto (each, a “**Seller**” and, collectively, the “**Sellers**”), and Arthur E. Engel, an individual, in the capacity as the Sellers’ Representative under this Agreement (the “**Sellers’ Representative**”).

**WHEREAS**, Sellers collectively own all of the issued and outstanding membership interests of the Companies (the “**Interests**”);

**WHEREAS**, Buyer desires to purchase and acquire from Sellers, and each Seller desires to sell to Buyer, all of its right, title, and interest in and to the Purchased Interests (as hereafter defined), subject to the terms and conditions set forth herein;

**WHEREAS**, Fidelity Charitable owns a membership interest in MGBW which is managed as a donor-advised fund; and

**WHEREAS**, Roberts Trust, a Seller, desires to contribute to Buyer, and Buyer desires to accept from Roberts Trust, all of Roberts Trust’s right, title and interest in and to the Contributed Interests (as hereafter defined) in exchange for the Rollover Securities (as hereafter defined), subject to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the foregoing recitals (which are incorporated herein by this reference), the representations, warranties, covenants and agreements contained herein, and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS

1.01 Definitions. The following terms have the meanings specified or referred to in this Section 1.01:

“**A. Engel**” means Arthur E. Engel, an individual.

“**Accrued Employee Obligations**” means, as of the Closing Date, with respect to the employees and service providers of the Target Companies, all accrued and unpaid (i) bonuses and other related obligations (including Taxes), (ii) severance obligations owed under Laws, (iii) vacation or other paid time off, and (iv) payments required to be made by the Target Companies under any Benefit Plans.

“**Acquisition Proposal**” has the meaning set forth in Section 6.01(e).

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

**“Affiliate”** and **“Affiliated”** means, with respect to any Person, any other Person that directly or indirectly Controls, is Controlled by, or is under common Control with, such Person. In addition to the foregoing, if the specified Person is an individual, the term **“Affiliate”** also includes (a) the individual’s spouse, (b) the parents and children of the individual or the individual’s spouse and (c) any corporation, limited liability company, general or limited partnership, trust, association or other business or investment entity that directly or indirectly, through one or more intermediaries, is Controlled by any of the foregoing individuals. The term **“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms **“Controlled”** and **“Controlling”** have meanings correlative thereto. For purposes of this Agreement, the Target Companies shall not be Affiliates of Buyer on or prior to the Closing Date.

**“Agreement”** has the meaning set forth in the preamble.

**“Anti-Corruption Laws”** means any applicable law, regulation, or rule related to combating corruption or bribery, including, but not limited to, the United States Foreign Corrupt Practices Act of 1977 as amended.

**“Anti-Money Laundering Laws”** means any applicable law, regulation, or rule related to combating money laundering, suspicious transactions, trade embargos, economic sanctions, or terrorist financing, including, but not limited to, the US Bank Secrecy Act of 1986, the USA Patriot Act of 2001 (in each case to the extent applicable to the Parties and to this Agreement) and any Governmental List.

**“Benefit Plan”** means each and every pension, benefit, compensation, retirement, profit-sharing, savings, deferred compensation, health and welfare, social, disability, life, severance, retention, change in control, equity or equity-based, equity option, profits interest, phantom equity, paid leave, or fringe-benefit agreement, plan, policy, fund and program, including each “employee benefit plan” within the meaning of Section 3(3) of ERISA (whether or not subject to ERISA), which is maintained, sponsored, contributed to, or required to be contributed to by any Target Company or any ERISA Affiliate for the benefit of any current or former employee of a Target Company or any spouse or dependent of such individual.

**“Business Day”** means any day except Saturday, Sunday, or any other day on which commercial banks located in Denver, Colorado are authorized or required by Law to be closed for business.

**“Buyer”** has the meaning set forth in the preamble.

**“Buyer’s Knowledge”** means the knowledge of Steven Folse and Chip Besse. For purposes of this Agreement, Steven Folse and Chip Besse shall be deemed to have knowledge of a particular fact or other matter if such individual is actually aware of such fact or other matter. For the avoidance of doubt, nothing in this Agreement shall subject Steven Folse and Chip Besse to any personal liability hereunder.

**“Buyer Indemnified Parties”** has the meaning set forth in Section 9.03(a).

**“Buyer Released Claims”** has the meaning set forth in Section 6.04.

**“Buyer Released Parties”** has the meaning set forth in Section 6.03.

**“Buyer Releasers”** has the meaning set forth in Section 6.04.

**“Cabo Concession”** means the Concession granted to the lessor under the Cabo Lease by the applicable Governmental Authority(ies) and pursuant to which such lessor has the authority to use, occupy and lease the Cabo Property.

**“Cabo Lease”** means that certain Lease Agreement, by and between Banco Invex, Sociedad Anonima, Multiple Banking Institution, Invex Financial Group, acting as Trustee of the Trust identified as “Fideicomiso Puerto Los Cabos Fonatur 192”, as Lessor, and Marine Group Boat Works de Los Cabos, SDRL C.V., as Lessee, entered into as of July 10, 2008, recorded in the Public Registry of Property and Commerce of Los Cabos, Baja California Sur, under entry number 129, Page 129, Volume V, and as amended by that certain Amendment to Lease, dated July 2, 2009. For the avoidance of doubt, the Cabo Lease is a Real Property Lease.

**“Cabo Property”** means that certain real property which is more particularly described in and leased by the applicable Target Company pursuant to the Cabo Lease. For the avoidance of doubt, the Cabo Property is Leased Real Property.

**“Cap”** has the meaning set forth in Section 9.02(c).

**“CARES Act”** means the Coronavirus Aid, Relief, and Economic Security Act (H.R. 748), as amended or restated, including all other acts, regulations and guidance related thereto, including the Coronavirus Preparedness and Response Supplemental Appropriations Act (H.R. 6074), the Families First Coronavirus Response Act (H.R. 6201), the Paycheck Protection Program and Health Care Enhancement Act (H.R. 266), and the Paycheck Protection Program Flexibility Act of 2020 (H.R. 7010).

**“Cash Consideration”** has the meaning set forth in Section 2.02(a).

**“CERCLA”** means the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, et seq.), as amended, and all rules, regulations and standards issued thereunder.

**“Closing”** has the meaning set forth in Section 7.03.

**“Closing Date”** has the meaning set forth in Section 7.03.

**“Closing Date Balance Sheet”** has the meaning set forth in Section 2.03.

**“Closing Date Certificate”** has the meaning set forth in Section 2.03.

**“Closing Indebtedness”** has the meaning set forth in Section 2.02(a).

**“Closing Seller Expenses”** has the meaning set forth in Section 2.02(a).

**“COBRA”** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and the regulations and other guidance promulgated thereunder.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Company”** has the meaning set forth in the preamble.

**“Company Environmental Permits”** has the meaning set forth in Section 4.19(d).

**“Company Intellectual Property”** means all Intellectual Property that is owned by the Target Companies.

**“Company IP Agreements”** means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, waivers, releases, permissions and other Contracts, whether written or oral, relating to Intellectual Property to which a Target Company is a party, beneficiary or otherwise bound.

**“Company IT Systems”** means all software, computer hardware, servers, networks, platforms, peripherals, and similar or related items of automated, computerized or other information technology networks and owned, leased, licensed, or used (including through cloud-based or other third-party service providers) by the Target Companies.

**“Condition”** means any condition that results in or otherwise relates to an Environmental Claim.

**“Confidential Information”** means any information concerning the business and affairs of the Target Companies not already generally available to the public.

**“Contracts”** has the meaning set forth in Section 4.16(a).

**“Contributed Interests”** means a pro rata share of the Interests held by Roberts Trust equal to the following ratio: (i) the Rollover Securities Consideration Value, as the numerator, and (ii) Roberts Trust’s Overall Share of the Purchase Price, as the denominator.

**“Coronavirus Pandemic”** means as declared by the World Health Organization on March 11, 2020, the 2020 Coronavirus Pandemic caused by COVID-19.

**“Coronavirus Relief Programs”** means any federal, state, provincial and local Governmental Authority relief programs established in response to the Coronavirus Pandemic, including any relief established or authorized under the CARES Act, and applicable rules, regulations and guidance, in each case, as amended.

**“COVID-19”** means SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2), coronavirus disease or COVID-19.

**“COVID-19 Measures”** means any quarantine, “shelter in place”, “stay at home”, workforce reduction, social distancing, shut down, closure, sequester or any other Law, Order, directive, guidelines or recommendations by any Governmental Authority in connection with or in response to COVID-19, including, but not limited to, the CARES Act.

**“Deductible”** has the meaning set forth in Section 9.02(c).

**“Designated Accounting Firm”** means RSM US.

**“Direct Claim”** has the meaning set forth in Section 9.05(c).

**“Due Diligence Materials”** has the meaning set forth in Section 4.25.

**“Effective Date”** has the meaning set forth in the preamble.

**“Encumbrance”** means any security interest, lien, pledge, bailment, mortgage, hypothecation, deed of trust, conditional sales and title retention agreement, charge, covenant, encumbrance, condition, voting trust arrangement, restriction, claim or right of a third party of whatever kind or nature, or other similar arrangement or interest in real or personal property.

**“Environmental Claims”** means any Action by any Person alleging Liability that is (a) based upon any Environmental Law, or (b) associated with the presence or Release of any Hazardous Material. The term “Environmental Claims” includes (without limitation): (i) fines, penalties, Orders, awards, settlements, losses, damages (including foreseeable and unforeseeable consequential damages), costs, fees (including attorneys’ and consultants’ fees), expenses and disbursements; (ii) defense and other response to an administrative or judicial action (including notices, claims, complaints, Orders, suits and other assertions of liability); and (iii) financial responsibility or liability for (A) cleanup costs and/or injunctive relief, including any Removal, Remedial or Response actions, and natural resource damages, and (B) any other compliance or remedial measures.

**“Environmental Laws”** means, as enacted and in effect on or prior to the Closing Date, any Laws which address, are related to, or are otherwise concerned with environmental, health or safety issues (including occupational safety and health but only to the extent relating to exposure to Hazardous Materials), pollution, natural resources (including natural resource damages) or the environment (including ambient air, surface water, ground water, land surface or subsurface strata), including, but not limited to, laws relating to Releases or threatened Releases of Hazardous Materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, transport or handling of any Hazardous Material.

**“Environmental Notice”** means any written directive, written notice of violation or infraction, or written notice respecting any Environmental Claim relating to actual or alleged non-compliance with (a) any Environmental Law applicable to the Leased Real Property or any other property formerly owned or operated by any of the Target Companies, or (b) any term or condition of any Environmental Permit issued to a Target Company and related to the Leased Real Property or any other property formerly owned or operated by any of the Target Companies.

**“Environmental Permit”** means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to an Environmental Law.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

**“ERISA Affiliate”** means, with respect to any Person, any member of a controlled group of entities under Section 414(b) of the Code of which such Person is a member, and any trade or business (whether or not incorporated) under common control with such Person under Section 414(c) of the Code, and all other entities which together with such Person are or were within any of last three (3) years treated as a single employer under Section 414(m) or 414(o) of the Code.

**“Escrow Agent”** shall mean Argent Institutional Trust Company, a trust company organized and existing under the laws of the State of Florida.

**“Escrow Agreement”** shall mean an Escrow Agreement entered into as of the Closing Date by and among Buyer, Sellers and/or Sellers’ Representative, and the Escrow Agent, substantially in the form attached hereto as Exhibit I.

**“Escrow Amount”** means an amount equal to one-half of the retention amount listed under the R&W Insurance Policy.

**“Escrow Fund”** means the Escrow Amount, as the same may be adjusted from time to time pursuant to the terms of the Escrow Agreement.

**“Excluded Assets”** means the items listed in Schedule 6.01(c)(vi).

**“Excluded Entity”** means each of Star & Crescent Boat Company, Ferry Landing Associates, LLC, FLA Holdings, LLC, Port Coronado Associates, LLC, PCA Holdings, LLC, San Diego California Properties, LLC, SDCP, LLC, The Marine Group, LLC, TM Group Holdings, LLC, Fifth Avenue Landing, LLC, and 14754 Ceres Avenue LLC.

**“Fidelity Charitable”** means Fidelity Investments Charitable Gift Fund, a Massachusetts charitable trust.

**“Fraud”** means, with respect to a party, an actual and intentional misrepresentation of a material existing fact with respect to the making of any representation or warranty in ARTICLE III, ARTICLE IV or ARTICLE V, made by such party, to such party’s actual knowledge of its falsity and made for the purpose of inducing the other party to act, and upon which the other party reasonably relies, with resulting Indemnifiable Losses.

**“Fundamental Representations”** means the representations set forth in Section 3.01 (Organization and Good Standing), Section 3.02 (Authority), Section 3.03 (Enforceability), Section 3.04 (No Conflict), Section 3.05 (Ownership of Interests), Section 3.06 (No Brokers or Finders), Section 3.07 (Investment Representations), Section 4.01 (Organization and Good Standing), Section 4.02 (Authority; Enforceability), Section 4.03 (No Conflicts), Section 4.06 (Capitalization and Subsidiaries), Section 4.12 (Taxes), Section 4.13 (Benefits Plans; ERISA); Section 4.14(a) (Title to Assets), Section 4.18(c) (Union Activity); Section 4.23 (Transactions with Related Parties), Section 4.24 (No Brokers or Finders), Section 5.01 (Organization; Standing and Power), Section 5.02 (Authority; Enforceability), Section 5.03 (No Conflict) and Section 5.04 (No Brokers or Finders).

**“GAAP”** means the United States Generally Accepted Accounting Principles as modified by the Financial Accounting Standards Board of the United States from time to time.

**“Governing Documents”** means, with respect to any particular entity: (a) if a corporation, the articles, statutes, or certificate of incorporation and the rules of operation of specific corporate bodies thereof (including bylaws of such entity); (b) if a general partnership, the partnership agreement and any statement of partnership of such entity; (c) if a limited partnership or limited liability partnership, the limited partnership agreement or limited liability partnership agreement and the certificate of limited partnership or limited liability partnership of such entity; (d) if a limited liability company, the articles or certificate of organization or formation and the operating agreement or limited liability company agreement of such entity; (e) if another type of Person, any other charter or similar document adopted or filed in connection with the creation, formation or organization of the Person; (f) if a trust, any trust agreements; (g) all equity holders’ agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements, subscription agreements, restricted share grant agreements, share purchase agreements, share grant plans, or other agreements, plans or documents relating to the organization, management or operation of such entity or relating to the rights, duties and obligations of the equity holders of such entity with respect thereto; and (h) any amendment, modification or supplement to any of the foregoing.

**“Governmental Authority”** means any: (a) federal, state, provincial, national, supranational, local, municipal, foreign, administrative, regulatory, supervisory or other government or political subdivision thereof; (b) governmental authority of such government or political subdivision (including any agency, branch, department, board, commission or other similar governmental entity exercising governmental powers); or (c) court, arbitrator, or tribunal of competent jurisdiction, in each case, to extent that the rules, regulations or orders of the authorities set forth in clauses (a) – (c) have the force of Law in that jurisdiction.

**“Governmental List”** means any list of any Governmental Authority of denied or restricted parties, including the Office of Foreign Assets Control of the U.S. Treasury Department Specially Designated Nationals and Blocked Persons List, the U.S. Department of Commerce Denied Persons List, the U.S. Department of Commerce Entity List, and the U.S. Department of State Debarred List.

**“Governmental Official”** means any official, employee or Representative of any Governmental Authority (or agency, instrumentality, or entity owned or controlled by any Governmental Authority) or public international organization, any political party or employee thereof or any candidate for political office.

**“Gradilla Action”** means that certain Action filed by Enrique Gradilla against Marine Group Boat Works, LLC in the San Diego Superior Court, Case No. 24CU019911C and any all Actions related to such causes of action brought thereunder, including, without limitation, any claims brought under the Private Attorney General Act of 2004 (as amended).

**“Hazardous Activity”** means any distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, Release, storage, transfer, transportation, treatment or use of any Hazardous Material.

**“Hazardous Material”** means any substance, material or waste which is currently regulated by any applicable Governmental Authority or applicable Environmental Law or any other applicable Law, including any material, substance or waste defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “restricted hazardous waste,” “contaminant,” “toxic waste,” “toxic substance,” “dangerous goods” or words of similar import, under any provision of Environmental Law, including petroleum, petroleum products, asbestos, asbestos-containing material, lead paint, and formaldehyde, polychlorinated biphenyls.

**“Income Tax”** (and, with the correlative meaning, **“Income Taxes”**) means any Tax that is based on, or computed with respect to, net income or earnings, gross income or earnings, capital or, net worth (and any franchise Tax or other Tax in connection with doing business imposed in lieu thereof) and any related penalties, interest and additions to Tax; provided, however, for the avoidance of doubt, the term **“Income Tax”** shall not include any sales or use tax.

**“Indebtedness”** of any Person at any date means, without duplication, (a) all indebtedness of such Person for borrowed money whether short-term or long-term, including any PPP Loan, (b) any Liability evidenced by bonds, debentures, notes or similar instruments, including any PPP Loan, (c) any Liability to pay the deferred purchase price of property or services, (d) any capitalized lease obligations or other obligations arising under conditional sales contracts and other similar title retention instruments, (e) all Liability in respect of letters of credit, bankers’ acceptances or similar facilities, (f) all unpaid Taxes of the Target Companies to the extent accruing or arising prior to the Closing Date, (g) any deferred payments of the employer’s share of the Social security employment Tax and other Tax deferrals, (h) outstanding or unsatisfied obligations under any interest rate swap, interest rate cap, interest rate collar, currency swap agreement, cap agreement, collar agreement or other hedging or derivative agreement or arrangement (whether entered into for hedging or speculative purposes), (i) all interest, penalties, fees (including any prepayment premiums) and other expenses owed with respect to indebtedness in the foregoing clauses (a) through (h), and (j) all indebtedness referred to in the foregoing clauses (a) through (g) that is directly or indirectly guaranteed by such Person.

**“Indemnifiable Losses”** means any and all damages, losses, Liabilities, obligations, diminution in value, costs and expenses, and any and all claims, demands or suits (by any Person, including without limitation any Governmental Authority), including without limitation the costs and expenses of any and all

actions, suits, proceedings, demands, assessments, judgments, settlements and compromises relating thereto and including reasonable out-of-pocket attorneys' fees and expenses in connection therewith.

**"Indemnifying Party"** means any Person required to provide indemnification under this Agreement.

**"Indemnitee"** means any Person entitled to indemnification under this Agreement.

**"Indemnity Payment"** means any amount of Indemnifiable Losses required to be paid by a party pursuant to this Agreement.

**"Insurance Policies"** has the meaning set forth in Section 4.22.

**"Insurer"** means the insurer under the R&W Insurance Policy.

**"Intellectual Property"** means all domestic and foreign intellectual property and proprietary rights, including all (a) patents, patent applications and statutory invention registrations, (b) trademarks, service marks, domain names, social media identifiers, handles, passwords, logins, tags, trade dress, design rights, logos, trade names, corporate names and other identifiers of source or goodwill, including registrations and applications for registration thereof and including the goodwill of the business symbolized thereby or associated therewith, (c) copyrights, and copyrightable works and works of authorship, including copyrights in computer software, promotional materials and any websites, and registrations and applications for registration thereof, (d) confidential and proprietary information, including trade secrets, know-how and invention rights (whether or not patentable), research and development, financial, marketing and business data, pricing and cost information, business and marketing plans, methods, processes, techniques, technical data, designs, drawings, specifications, data, databases and documentation thereof, and customer and supplier lists, ideas, trade secrets, computer software, including source code, know-how, works-in-progress, concepts, methods, processes, inventions, product engineering, invention disclosures, formulae, reports, data, customer and supplier lists, business plans or other proprietary information, and (e) the right to sue and collect damages for past infringement or dilution with respect to any of the foregoing.

**"Intended Tax Treatment"** has the meaning set forth in Section 8.01.

**"Interests"** has the meaning set forth in the recitals.

**"IRS"** means the Internal Revenue Service.

**"Laws"** means all United States and non-U.S. (including Mexican) federal, state and local laws, statutes, rules, regulations, standards, requirements, rules and principles of common law, ordinances and codes, now or hereafter in effect, including any judicial and administrative interpretations thereof, and all Orders, including, but not limited to, any Anti-Corruption Laws and any Anti-Money Laundering Laws.

**"Leased Real Property"** has the meaning set forth in Section 4.15(b).

**"Leasehold Title Policy"** means, with respect to the SD Lease and the SD Property, a standard ALTA owner's policy of title insurance, insuring leasehold title to the SD Property in the applicable Target Company in the amount of \$35,000,000, subject only to the Permitted Exceptions, and with such endorsements as may be reasonably required by Buyer.

**"Liability"** and **"Liabilities"** means any liability, loss or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether

accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due), including any liability for Taxes.

**“Listed Persons”** means the Persons with names listed on Governmental Lists.

**“Lookback Date”** means the date that is five (5) years prior to the Closing Date.

**“Management”** means generation, production, handling, distribution, processing, use, storage, treatment, operation, transportation, recycling, reuse and/or disposal, as those terms are defined, construed or otherwise used in Environmental Laws.

**“Material Adverse Effect”** means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise) or assets of the Target Companies, or (b) the ability of Sellers to consummate the transactions contemplated hereby on a timely basis; provided, however, that “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) any action required or permitted by this Agreement, except pursuant to failure to obtain the Required Consents; or (ii) the public announcement, pendency or completion of the transactions contemplated by this Agreement.

**“Material Contracts”** has the meaning set forth in Section 4.16(a).

**“Material Customer”** has the meaning set forth in Section 4.20.

**“Material Lease Term(s)”** has the meaning set forth in Section 7.01(f).

**“MG Cabo”** has the meaning set forth in the preamble.

**“MGBW”** has the meaning set forth in the preamble.

**“Order”** means any order, injunction, judgment, decree, ruling, writ, arbitration decision or award, Permit or assessment of a Governmental Authority.

**“Outside Date”** has the meaning set forth in Section 7.04(a)(ii).

**“Overall Share”** means each Seller’s overall share of the Interests, as set forth opposite such Seller’s name on the Overall Share Table set forth on Exhibit A hereto.

**“Permit”** means any permit, license, review, certification, approval, registration, consent, order, franchise, accreditation or other authorization issued pursuant to any Law.

**“Permitted Encumbrances”** means: (a) with respect to any real property (i) zoning, building code and similar restrictions and land use Laws affecting such real property, and (ii) easements, covenants, conditions and restrictions of record affecting such real property (but excluding, for purposes of the SD Property, any such matters that are not disclosed in the applicable Title Commitment); (b) Encumbrances for Taxes and assessments not yet due and payable or being contested in good faith by appropriate procedures and for which adequate reserves (as determined in accordance with GAAP) have been established on the Closing Date Balance Sheet with respect thereto; and (c) worker’s, carrier’s, mechanic’s, materialman’s and similar Encumbrances for amounts that are not yet past due and owing and which were incurred in the ordinary course of business of the Target Companies.

**“Person”** means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a Governmental Authority.

**“Post-Closing Tax Period”** means any taxable period beginning after the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period beginning after the Closing Date.

**“PPP Loan”** means any and all Paycheck Protection Program loans under the Small Business Administration 7(a) loan program received by a Target Company in connection with the CARES Act, as supplemented by the Paycheck Protection Program and Health Care Enhancement (PPHCE) Act.

**“Pre-Closing Straddle Period”** has the meaning set forth in Section 8.04.

**“Pre-Closing Tax Period”** means any taxable period ending on or before the Closing Date.

**“Pro Rata Share”** means each Seller’s percentage of the issued and outstanding membership interests of each Company set forth opposite such Seller’s name with respect to each Company (as applicable) as set forth on Exhibit A hereto.

**“Prohibited Transaction”** has the meaning set forth in section 406 of ERISA and section 4975 of the Code.

**“Purchase Price”** has the meaning set forth in Section 2.02(a).

**“Purchased Interests”** means the Interests *less* the Contributed Interests.

**“R&W Insurance Policy”** has the meaning set forth in Section 6.06.

**“RCRA”** means the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), as amended, and all rules, regulations and standards issued thereunder.

**“Real Property Leases”** has the meaning set forth in Section 4.15(b).

**“Registered Intellectual Property”** means all Intellectual Property registered to or filed in the name of the Target Companies.

**“Related Party”** means (a) A. Engel, (b) any Affiliate of A. Engel, (c) any Excluded Entity, (d) any Seller, and (e) any manager or officer of the Target Companies.

**“Related Party Agreements”** means any Contract between a Related Party and the Target Companies.

**“Release”** and **“Released”** means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, placing, discarding, abandonment, presence requiring removal or abatement, or disposing into the environment (including the placing, discarding or abandonment of any barrel, container or other receptacle containing any Hazardous Material).

**“Removal,” “Remedial”** and **“Response”** actions include the types of activities covered by CERCLA, RCRA, and other comparable Environmental Laws, including those adopted by the State of Texas, and whether the activities are (a) those that might be taken by a Governmental Authority or (b) those

that a Governmental Authority or any other Person might seek to be taken by a third party who is or has been engaged in the Management of Hazardous Materials.

**“Representative”** means, with respect to any particular Person, any and all directors, managers, officers, employees, consultants, advisors, counsel, accountants and other agents of such Person, including legal counsel, accountants, investment bankers and financial advisors.

**“Required Consents”** has the meaning set forth in Section 4.03.

**“Restricted Country”** means any Person that is the subject or target of a comprehensive embargo under Law, including Cuba, Iran, North Korea, Syria, Venezuela, the Crimea region of Ukraine, the so-called “Donetsk People’s Republic,” and the so-called “Luhansk People’s Republic”.

**“Restrictive Covenant Agreement”** means a Restrictive Covenant Agreement in the form attached hereto as Exhibit E.

**“Roberts”** means Todd Roberts, an individual.

**“Roberts Trust”** means the Todd and Andrea Roberts Family Trust dated August 1, 2006.

**“Rollover Securities”** means equity interests in Buyer (or in a direct or indirect owner of Buyer) equivalent in value to the Rollover Securities Consideration Value.

**“Rollover Securities Consideration Value”** means \$ [REDACTED]

**“SD Lease”** means that certain Amended, Restated and Combined Lease, dated as of February 3, 2009, by and between San Diego Unified Port District, as Lessor, and (as successor by assignment) Marine Group Boat Works, LLC, as Lessee, as amended by that certain Amendment No. 1, dated July 10, 2012, and that certain Amendment No. 2, dated November 6, 2015. For the avoidance of doubt, the SD Lease is a Real Property Lease.

**“SD Property”** means that certain real property which is more particularly described in and leased by the applicable Target Company pursuant to the SD Lease. For the avoidance of doubt, the SD Property is Leased Real Property.

**“Securities Act”** has the meaning set forth in Section 3.07.

**“Sellers”** has the meaning set forth in the preamble.

**“Seller CapEx Obligations”** means the remaining amounts required to be paid by any of the Target Companies, as of the Closing Date, to complete the construction and installation of the fence on the SD Property in accordance with San Diego Unified Port District Document No. 76748.

**“Seller Expenses”** means the Transaction Expenses incurred on or prior to the Closing Date by the Sellers or any Target Company in connection with this Agreement and the transactions contemplated hereby, to the extent and only to the extent such fees, costs, and expenses are unpaid as of the Closing, including (a) amounts owed to attorneys, accountants and investment banks, (b) any transaction bonuses, retention payments, incentive amounts, change of control payments or other similar payments (including the employer portion of employment Taxes in connection therewith) payable in connection with the consummation of the transactions contemplated by this Agreement or any Transaction Document, (c) all costs, fees of all Representatives of the Sellers or the Target Companies, including attorneys, accountants

and financial advisors, (d) fifty percent (50%) of the costs and expenses associated with obtaining the R&W Insurance Policy (provided, that such Seller Expense amount related to the R&W Insurance Policy shall not exceed \$150,000), and (e) fifty percent (50%) of the fees, costs, and expenses of the Escrow Agent pursuant to the Escrow Agreement.

“**Seller Indemnified Parties**” has the meaning set forth in Section 9.03(c).

“**Seller Released Claims**” has the meaning set forth in Section 6.03.

“**Seller Released Parties**” has the meaning set forth in Section 6.04.

“**Seller Releasors**” has the meaning set forth in Section 6.03.

“**Seller Tax Returns**” has the meaning set forth in Section 8.02(a).

“**Seller’s Knowledge**” means the knowledge of each of Arthur E. Engel and Todd Roberts. For purposes of this Agreement, any individual shall be deemed to have knowledge of a particular fact or other matter if, on the date on which the representation or warranty with respect to such knowledge is made or required by the terms of this Agreement to be true and correct, (a) such individual is actually aware of such fact or other matter or (b) would reasonably be expected to discover or become aware of such fact or other matter after due inquiry.

“**Sellers’ Representative**” has the meaning set forth in the preamble.

“**Several Claim**” has the meaning set forth in Section 10.14(c).

“**Straddle Period**” has the meaning set forth in Section 8.04.

“**Subsidiaries**” means the direct and indirect subsidiaries of the Companies, including, Marine Group Boat Works, LLC, Marine Group Los Cabos II LLC, Marine Group Boat Works de Los Cabos S. de R.L. de C.V., Marine Group Boat Works de Mexico S. de R.L. de C.V., and Marine Group Global Services, LLC.

“**Tail Policy**” has the meaning set forth in Section 6.07.

“**Target Companies**” means, collectively, the Companies and the Subsidiaries, and each of them individually, is a “**Target Company**.” For the avoidance of doubt, the Target Companies shall not include the Excluded Entities.

“**Tax**” or “**Taxes**” means (a) any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code Section 59A), customs, duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, and including obligations under applicable escheat or unclaimed property Laws, in each instance including any interest, penalty, or addition thereto, whether disputed or not, and (b) any obligations to indemnify or otherwise assume or succeed to the Liability for Taxes described in clause (a) with respect to any other Person, including any obligations under any Tax sharing, Tax allocation, or Tax indemnity agreements and any obligations by Contract, as successor or otherwise.

“**Tax Authority**” means any Governmental Authority responsible for the imposition or collection of any Tax.

“**Tax Proceeding**” has the meaning set forth in Section 8.05.

“**Tax Return**” means any return, declaration, report, claim for refund, or information return or statement (including any related or supporting schedules, statements or information) relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“**Termination Fee**” means \$ [REDACTED]

“**Third-Party Claim**” means notice of the assertion, threat or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing.

“**Title Commitment(s)**” means, with respect to the SD Property, that certain ALTA Commitment for Title Insurance issued by Stewart Title Guaranty Company, Commitment No. 24000310553-CA with an effective date of December 27, 2024.

“**Total Consideration**” has the meaning set forth in Section 2.02(b).

“**Transaction Documents**” means this Agreement, the Restrictive Covenant Agreements, and each other agreement, certificate, instrument or other document to be executed and delivered by the parties pursuant to Section 7.03 in connection with the Closing.

“**Transaction Expense**” means, with respect to any Person, all fees, costs and expenses (including all legal fees and expenses, all fees and expenses payable to any broker, advisor or finder, and all fees and expenses of any audit firm or accountants) that have been incurred in connection with the transactions contemplated by this Agreement.

“**Transfer Taxes**” has the meaning set forth in Section 8.07.

“**WARN Act**” means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign Laws related to plant closings, relocations, mass layoffs and employment losses.

“**Working Capital Allowance**” means \$ [REDACTED].

## ARTICLE II PURCHASE, SALE AND CONTRIBUTION; CLOSING

2.01 Purchase, Sale and Contribution. Subject to the terms and conditions set forth herein, at the Closing, each Seller shall (a) sell to Buyer, and Buyer shall purchase from Seller, the Purchased Interests, free and clear of all Encumbrances, in exchange for the Purchase Price, and (b) Roberts Trust shall contribute the Contributed Interests, free and clear of all Encumbrances, and Buyer shall accept as a contribution from Roberts Trust, all of Robert Trusts’ right, title and interest in and to the Contributed Interests, in exchange for the Rollover Securities.

2.02 Purchase Price. Subject to the adjustments in this Section 2.02 and in Section 2.03 and Section 2.04 below:

(a) the aggregate consideration for the Purchased Interests shall consist of the following (the “**Purchase Price**”):

(i) an amount payable in cash equal to \$[REDACTED], minus the amount of Indebtedness of the Target Companies paid by Buyer on behalf of the Target Companies pursuant to Section 7.03(b)(iii) (“**Closing Indebtedness**”), minus the Seller Expenses that are paid pursuant to Section 7.03(b)(iv) on or prior to the Closing (“**Closing Seller Expenses**”), minus the Rollover Securities Consideration Value, minus the Accrued Employee Obligations, and minus the Seller CapEx Obligations (the resulting total cash amount, the “**Cash Consideration**”);

(ii) the aggregate amount of Closing Indebtedness paid by Buyer on behalf of Seller pursuant to Section 7.03(b)(iii); and

(iii) the aggregate amount of Closing Seller Expenses paid by Buyer pursuant to Section 7.03(b)(iv).

(b) the aggregate consideration for the Contributed Interests shall consist of the issuance of the Rollover Securities (together with the Purchase Price, the “**Total Consideration**”).

2.03 Closing Date Certificate. At least five (5) Business Days prior to the Closing Date, Sellers’ Representative shall deliver to Buyer a certificate (the “**Closing Date Certificate**”), certified and executed by Sellers’ Representative, setting forth the good faith estimates of (i) the Closing Indebtedness, (ii) the Closing Seller Expenses, (iii) the Accrued Employee Obligations, (iv) the Seller CapEx Obligations, and (v) the Cash Consideration to be paid to Sellers at Closing, along with a copy of Sellers’ Representative’s good faith estimated unaudited balance sheets of the Target Companies as of the Closing Date (the “**Closing Date Balance Sheet**”) upon which such calculations are based. The Cash Consideration payable at Closing shall be the amount set forth in such Closing Date Certificate.

2.04 Withholding. Buyer shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement all amounts required under applicable Law to be deducted and withheld. Any amounts so deducted or withheld by Buyer shall be treated for all purposes of this Agreement as having been paid to the Person from whom such amount was deducted and withheld.

### ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE SELLERS

Except as provided below, each Seller and Fidelity Charitable (where applicable), severally and not jointly, represents and warrants to Buyer that the statements set forth in this ARTICLE III about such Seller are true and correct as of the Effective Date and will be true and correct as of the Closing Date (except to the extent such representations and warranties expressly relate to a specific date, in which case the representations and warranties shall be true as of such specific date); provided that the representations and warranties made in Section 3.07 are made solely by Roberts Trust. For the purposes of this ARTICLE III, the terms “Seller” and “Sellers” shall not include Fidelity Charitable unless expressly stated otherwise.

3.01 Organization and Good Standing. Each Seller (other than Fidelity Charitable) is a trust established and validly existing under the Laws of the jurisdiction of its organization. Fidelity Charitable was duly formed, established and/or organized (as applicable), validly existing and in good standing under the Laws of the jurisdiction of its organization.

3.02 Authority. Each Seller (including Fidelity Charitable) has full power, authority and capacity to execute and deliver this Agreement and each other Transaction Document to which such Seller is a party

and to perform its respective obligations hereunder and thereunder. The execution, delivery and performance of this Agreement and the other Transaction Documents to which such Seller is a party and the consummation of the transactions contemplated by this Agreement and the other Transaction Documents have been duly authorized by all necessary action on the part of such Seller.

**3.03 Enforceability.** This Agreement and each other Transaction Document to which each Seller (including Fidelity Charitable) is a party has been duly and validly executed and delivered by such Seller and constitutes a valid and legally binding obligation of such Seller, enforceable against such Seller in accordance with their terms, except as such enforcement may be limited by: (a) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, receivership or other Laws of general application relating to or affecting the enforcement of creditors' rights and remedies, as from time to time in effect; (b) the application of equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law); and (c) the terms of this Agreement.

**3.04 No Conflict.** The execution, delivery and performance of this Agreement and the other Transaction Documents by each Seller (including Fidelity Charitable) do not, and such Seller's consummation of the transactions contemplated by this Agreement will not: (a) result in a breach of or conflict with (i) any of the provisions of such Seller's Governing Documents, or (ii) any resolution adopted by the board of directors or shareholders (or equivalent Persons) of such Seller; (b) give any Governmental Authority or other Person the right to challenge the transactions contemplated by this Agreement or any Transaction Document; (c) result in (with or without notice or lapse of time or both) a material breach of, constitute a material default under or result in the termination, modification or acceleration under any Material Contract or Permits that are material to the business of the Target Companies; (d) violate any Law or Order applicable to the any Seller or any of their respective material properties or assets; or (e) require such Seller to obtain the approval, consent or authorization of, or to make any declaration, filing or registration with, any Governmental Authority or other Person.

**3.05 Ownership of the Interests.** Each Seller (including Fidelity Charitable): (a) owns (legally, beneficially and of record) the equity securities of such Company (including the Interests) listed adjacent to their respective names on Exhibit A, free and clear of any and all Encumbrances (other than restrictions imposed by applicable securities Laws); and (b) has the right, power and authority to sell, transfer and assign such equity securities to Buyer as contemplated by this Agreement. No Person, other than Buyer, has any right or obligation to purchase or acquire any of the Interests listed adjacent to such Seller's name on Exhibit A; and such Seller has no right or obligation to purchase or acquire any equity securities of the Target Companies or any securities of the Target Companies convertible or exercisable into or for equity securities of the Target Companies.

**3.06 No Brokers or Finders.** No Seller (including Fidelity Charitable) has incurred and will not incur, directly or indirectly, as a result of any action taken or permitted to be taken by or on behalf of such Seller, any liability for brokerage or finders' fees or agents' commissions or similar charges in connection with the execution and performance of the transactions contemplated by this Agreement or the Transaction Documents.

**3.07 Investment Representations.**

(a) Roberts Trust (i) is an "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, as amended (the "**Securities Act**"), and (ii) has, by itself or through a "purchaser representative" within the meaning of Rule 501(h) under Regulation D of the Securities Act, sufficient knowledge and experience in financial and business matters that Roberts Trust is capable of evaluating the merits and risks of its investment in the Rollover Securities, and Roberts Trust understands and is able to

bear any economic risks associated with such investment (including the inherent risk of losing all or part of Roberts Trust's investment in the Rollover Securities).

(b) Roberts Trust has been provided with the opportunity to ask questions of and receive answers from Buyer concerning (i) the terms and conditions of the issuance of the Rollover Securities in connection with the transactions contemplated in connection with this Agreement, and (ii) the financial condition, operation and prospects of Buyer both before and after giving effect to the transactions contemplated hereby.

(c) Roberts Trust represents and warrants that it is acquiring or purchasing the Rollover Securities pursuant to this Agreement in good faith solely for Roberts Trust's own account, for investment and not with a view toward resale or other distribution in violation of the Securities Act. Roberts Trust acknowledges that it is able to bear the economic risk of investment in the Rollover Securities.

(d) Roberts Trust's investment in Rollover Securities is speculative and risky. There is no public or other market for the Rollover Securities nor is any likely to develop. Roberts Trust may and can afford to lose its entire investment in the Rollover Securities and such Roberts Trust understands that it may have to hold such investment indefinitely. Roberts Trust, in consummating the transactions contemplated hereby, if relying on any advice, is relying solely on the advice of its personal Tax advisor, personal legal advisor or other personal Representative with respect to Tax, including the intended Tax-deferred contribution contemplated by this Agreement and other aspects of Roberts Trust's investment in Buyer and the consummation of the transactions contemplated hereby.

(e) Roberts Trust acknowledges that Buyer will be relying on the representations and warranties of such Roberts Trust made above for purposes of compliance with the Securities Act, any applicable state securities Laws and all other applicable securities Laws and any applicable exemption from registration requirements thereunder and otherwise, and consents to Buyer's reliance on such representations and warranties.

## **ARTICLE IV REPRESENTATIONS AND WARRANTIES REGARDING THE COMPANIES**

The Sellers, jointly and severally, hereby represent and warrant to Buyer that the statements set forth in this ARTICLE IV are true and correct as of the Effective Date and will be true and correct as of the Closing Date (except to the extent such representations and warranties expressly relate to a specific date, in which case the representations and warranties shall be true as of such specific date). For the purposes of this ARTICLE IV, the terms "Seller" and "Sellers" shall not include Fidelity Charitable unless expressly stated otherwise.

### **4.01 Organization and Good Standing.**

(a) Each Target Company (i) is duly organized, validly existing and (where such concept is meaningful) in good standing under the Laws of the jurisdiction of its organization, (ii) has all requisite power and authority to own, lease and operate its properties and assets and to conduct its business as presently conducted and previously conducted, and (iii) is not subject to any legal challenge regarding its incorporation or continued existence.

(b) Schedule 4.01(b) lists each state or other jurisdiction in which each Target Company is qualified to conduct business as a foreign entity. Each Target Company is duly qualified to do business as a foreign entity in each jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification, except where its failure to

be so qualified could not reasonably be expected to have a material adverse impact on such Target Company.

(c) Correct and complete copies of the organizational documents (including Governing Documents) of each Target Company as in effect as of the date of this Agreement have been made available to Buyer.

(d) Any name or names under which any Target Company or any of its respective predecessors have invoiced account debtors, maintained records concerning its assets or otherwise conducted business in the last three (3) years are set forth on Schedule 4.01(d).

4.02 Authority; Enforceability. The Companies have full power and authority to execute and deliver this Agreement and each other Transaction Document to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery and performance of this Agreement and each other Transaction Document to which such Company is a party and the consummation of the transactions contemplated by this Agreement and each other Transaction Document have been duly authorized by all necessary corporate action on the part of such Company. This Agreement and each other Transaction Document to which a Company is a party have been duly and validly executed and delivered by such Company and constitutes a valid and legally binding obligation of such Company, enforceable against such Company in accordance with their terms, except as such enforcement may be limited by: (a) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, receivership or other Laws of general application relating to or affecting the enforcement of creditors' rights and remedies, as from time to time in effect; or (b) application of equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law.

4.03 No Conflicts. Except as set forth on Schedule 4.03, the execution, delivery and performance by each Target Company of this Agreement and each of the Transaction Documents to which it is a party does not, and the performance and consummation of the transactions contemplated hereby or thereby do not and will not: (a) result in a breach of or conflict with (i) any of the provisions of a Target Company's Governing Documents, or (ii) any resolution adopted by the managers or members (or equivalent Persons) of a Target Company; (b) give any Governmental Authority or other Person the right to challenge the transactions contemplated by this Agreement; (c) result in (with or without notice or lapse of time or both) a material breach of, constitute a material default under or result in the termination, modification or acceleration under any Material Contract or Permits that are material to the business of the Target Companies; (d) violate any Law or Order applicable to the any Target Company or any of their respective material properties or assets; or (e) require a Target Company to obtain the approval, consent or authorization of, or to make any declaration, filing or registration with, any Governmental Authority or other Person. Schedule 4.03 sets forth each notice, consent, approval, waiver, filing or similar requirement that is required by any applicable Law, Order, Governmental Authority or Contract in order to consummate the transactions contemplated by this Agreement and the Transaction Documents (the "**Required Consents**").

4.04 Compliance with Laws.

(a) Each Target Company is now, and at all times during the last five (5) years, has been, in material compliance with each Law that is applicable to it. No event has occurred or circumstance exists that could reasonably be expected to constitute or result in a material violation by any Target Company of any applicable Law. No Target Company has received any written or, to Seller's Knowledge, oral notice from any Governmental Authority regarding any material failure to comply with any applicable Law that remains uncured.

(b) Other than normal and customary contributions in compliance with the California Political Reform Act, no Target Company, nor any Seller acting on the direction of the Target Companies, nor, to Seller's Knowledge, any of the Target Companies' Representatives, has offered or given, money or anything of value to (i) any Governmental Official, any political party or official thereof or any candidate for political office or (ii) any other Person, in any such case while knowing or having reason to know that all or a portion of such money or thing of value may be offered, given or promised, directly or indirectly, for the purpose of the following: (A) influencing any action or decision of such Person, in such Person's official capacity, including a decision to fail to perform such Person's official function; (B) inducing such Person to use such Person's influence with any Governmental Authority to affect or influence any act or decision of such Governmental Authority to assist any Target Company in obtaining or retaining business for, with, or directing business to, any Person; or (C) where such payment would constitute a bribe, kickback or illegal or improper payment to assist any Target Company in obtaining or retaining business for, with, or directing business to, any Person, in each case in material contravention of any applicable Laws.

(c) No Target Company nor to the Seller's Knowledge, any of their respective Representatives (i) has been or is designated on any Governmental List, (ii) has participated in any transaction involving the Listed Persons or any country that is subject to U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department, (iii) is located, organized or resident in, or directly or indirectly fifty percent (50%) or more owned by, or otherwise controlled by or acting for any Listed Person or any Restricted Country, (iv) has directly or indirectly provided any financing to or for the benefit of any Listed Person or any Restricted Country or has directly or indirectly conducted any transaction or engaged in any dealings with or for the benefit of any Listed Person or any Restricted Country, (v) has imported, exported (including deemed exportation) or re-exported, directly or indirectly, any goods, technology or services from Russia or in violation of any applicable Laws or (vi) has participated in any export, re-export or transaction connected with any purpose prohibited by Law with respect to export control and economic sanctions, including support for international terrorism and nuclear, chemical or biological weapons proliferation.

4.05 Licenses, Authorizations and Permits. Schedule 4.05 lists each Permit that is held by each Target Company (other than Environmental Permits). Each Permit listed on Schedule 4.05 is valid and in full force and effect, in all material respects and all fees and charges which have become due and payable relating to each such Permit have been paid in full. With respect to each Permit listed on Schedule 4.05: (a) the applicable Target Company is in material compliance with all of the terms and requirements thereof; (b) to Seller's Knowledge, no event has occurred or circumstance exists that could reasonably be expected to constitute or result in a material violation of or a material failure of the applicable Target Company to comply with any term or requirement thereof; and (c) the applicable Target Company has not received any written or, to the Seller's Knowledge, oral notice from any Governmental Authority regarding any failure to comply with any term or requirement thereof that remains uncured. Each Target Company has, where applicable, timely applied for renewal of all the Permits required for the Target Companies to conduct their business. To Seller's Knowledge, no Target Company is aware of any event or circumstance that would cause a material expense or delay for any Target Company to renew any Permits required for the Target Companies to conduct their business as currently operated. The Permits listed on Schedule 4.05, along with the Company Environmental Permits, collectively constitute all of the Permits necessary for the Target Companies to lawfully conduct their business in the manner currently conducted, except where non-compliance could not reasonably be expected to have a material adverse impact on any Target Company. Subject to obtaining the applicable Required Consents, the Permits identified in Schedule 4.05 shall remain in full force and effect, and shall be free and clear of all Encumbrances, other than the Permitted Encumbrances, in all cases, following the consummation of the transactions contemplated by this Agreement and the Transaction Documents.

#### 4.06 Capitalization and Subsidiaries.

(a) *Capitalization of the Target Companies.* All of the equity securities of each Target Company that are authorized and issued as of the date hereof are described on Schedule 4.06(a). All of the issued and outstanding equity securities of each Target Company: (i) were duly issued in accordance with all applicable Laws and the Governing Documents of such Target Company and represent the entire equity capital of such Target Company; (ii) where such concept is applicable, are fully paid and non-assessable; and (iii) are free and clear of all Encumbrances.

(b) *No Other Purchase Rights.* No Person, other than Buyer pursuant to this Agreement, has any right or privilege, whether in the form of a written or oral Contract, option, warrant or otherwise, for the purchase, redemption or acquisition of any of the equity securities of any Target Company or any securities convertible into or exercisable or exchangeable for equity securities of any Target Company.

(c) *Other Contractual Rights.* No Target Company has authorized, granted or issued (or agreed to authorize, grant or issue) any equity appreciation rights, phantom equity rights or similar rights to any Person and no such rights are currently outstanding. There are no voting trusts, proxies or any other agreements or understandings (written or oral) with respect to the voting of the capital stock or other equity securities of any Target Company. There are no Contracts respecting, preventing or limiting the issuance, redemption, sale, transfer, pledge or redemption of any of the equity securities of any Target Company or any securities convertible into or exercisable or exchangeable for equity securities of any Target Company. No Person has any pre-emptive, option, or similar rights with respect to any of the equity securities of any Target Company.

(d) *Ownership of Subsidiaries.* No Target Company owns (directly or indirectly), and no Target Company has any right or obligation to acquire (directly or indirectly), any equity securities of any Person or any direct or indirect equity ownership interest in any other business, in each case other than another Target Company.

4.07 Litigation; Orders. Except as set forth on Schedule 4.07, there are no Actions pending or threatened in writing against or by the Target Companies or, to Seller's Knowledge, any officer, manager, director, or employee of a Target Company in their respective capacities. Schedule 4.07 sets forth a true and complete list of all Actions involving the Target Companies, or their respective properties or asset, or, to Seller's Knowledge, any officer, manager, director, key employee or key consultant of a Target Company in their respective capacities as such occurring, arising or existing since the Lookback Date. The Target Companies are not subject to any Order (a) that is unsatisfied, (b) that affects the business, operations, assets, liabilities, condition (financial or other) or results of operation of the Target Companies, or (c) that could prevent, delay, or otherwise interfere with the consummation of the transactions contemplated by this Agreement or any Transaction Document.

#### 4.08 Intellectual Property Rights.

(a) To Seller's Knowledge, Schedule 4.08(a) sets forth a correct and complete list of (i) all Registered Intellectual Property; (ii) all licenses or other agreements pursuant to which any Person has the right to use any Company Intellectual Property (other than licenses that arise as a matter of law by implication as a result of sales of products and services by the Target Companies); and (iii) all licenses or other agreements pursuant to which a Target Company has the right to use any material Intellectual Property owned by others (excluding "off-the-shelf" software applications that are generally available to the public). No Target Company is infringing or misappropriating the Intellectual Property of any other Person in any material respect. To Seller's Knowledge, no Person is using any Company Intellectual Property in a manner which infringes upon the lawful rights of the Target Companies. All registrations and filings, and all

payments of annuities, maintenance fees, or other costs, necessary to preserve the rights of the Target Companies to the Registered Intellectual Property and all formal legal requirements necessary to record and perfect the applicable Target Company's interest therein and the chain of title thereof have been made.

(b) The Target Companies own all right, title and interest in and to the Company Intellectual Property and is licensed or otherwise has the valid right to use the Company Intellectual Property and all other Intellectual Property used in or necessary for the conduct of the Target Companies' business, in each case, free and clear of all Encumbrances. The Company Intellectual Property constitutes all of the Intellectual Property used in and necessary for the conduct and operation of the Target Companies' business.

(c) To Seller's Knowledge, the Target Companies have taken all necessary and appropriate steps to maintain the secrecy of all trade secrets and other confidential information of the Target Companies and all confidential information obtained for third parties, including by entering into written non-disclosure agreements with all third parties to whom disclosure of confidential information and trade secrets is made, prior to that disclosure. All such non-disclosure agreements are in full force and effect and in good standing and to Seller's Knowledge, no breach of any such non-disclosure agreement has occurred.

(d) All Company IT Systems are in good working condition and are sufficient for the operation of the Target Companies' business as currently conducted. In the past three (3) years, there has been no malfunction, failure, continued substandard performance, denial-of-service, or other cyber incident, including any cyberattack, or other impairment of the Company IT Systems that resulted or is reasonably likely to result in disruption or damage to the business of the Target Companies and that has not been remedied. The Target Companies have taken all commercially reasonable steps to safeguard the confidentiality, availability, security, and integrity of the Company IT Systems, including implementing and maintaining appropriate backup, disaster recovery, and software and hardware support arrangements.

(e) There are no Actions by the Target Companies pending or which a Target Company intends to initiate involving the prior employment of any of a Target Company's employees or officers, their services provided in connection with the Target Companies' business, any information or techniques allegedly proprietary to any of their former employers or their obligations under any agreements with prior employers.

(f) Except as set forth in Schedule 4.08(f), the Target Companies have complied with all applicable Laws and all publicly posted policies, notices, and statements concerning the collection, use, processing, storage, transfer, and security of personal information in the conduct of the Target Companies' business. In the past three (3) years, no Target Company has (i) experienced any actual, alleged, or suspected data breach or other security incident involving personal information in its possession or control or (ii) been subject to or received any written notice of any audit, investigation, complaint, or other Action by any Governmental Authority or other Person concerning its collection, use, processing, storage, transfer, or protection of personal information or actual, alleged, or suspected violation of any applicable Law concerning privacy, data security, or data breach notification, and to Seller's Knowledge, there are no facts or circumstances that could reasonably be expected to give rise to any such Action.

#### 4.09 Financial Statements; Accounts Receivable/Payable; Indebtedness.

(a) Attached to Schedule 4.09(a) are copies of: (i) the audited balance sheets of the Marine Group Boat Works, LLC and the unaudited Balance Sheets of Marine Group Los Cabos LLC and Marine Group Global Services, LLC (if applicable) as of December 31, 2021, December 31, 2022, and December 31, 2023 (the "**Year-End Balance Sheets**") and the related statements of operations and income, equity, and cash flow for the fiscal years then ended (collectively, the "**Year-End Financial Statements**"); and

(ii) the unaudited balance sheets of Marine Group Boat Works, LLC, Marine Group Los Cabos LLC and Marine Group Global Services, LLC as of September 30, 2024 (the “**Interim Balance Sheet**”) and the related statements of operations and income, equity, and cash flow for the nine (9) months then ended (collectively, the “**Interim Financial Statements**”) (the Year-End Financial Statements and the Interim Financial Statements, collectively, the “**Financial Statements**”). The Financial Statements fairly present, in all material respects, the operating results and the financial condition of the Target Companies on the dates and for the periods indicated, subject, in the case of the Interim Financial Statements, to normal year-end adjustments that are not material to the Target Companies and the absence of notes and other presentation items. To Seller's Knowledge, the Financial Statements were prepared in accordance with GAAP.

(b) As of the dates of the Year-End Balance Sheets and the date of the Interim Balance Sheet, (i) all revenue and expenses, as well as billings in excess of costs, costs in excess of billings, and related vendor payables and accruals of each Target Company were (A) calculated based on management’s reasonable estimate of work actually completed and costs incurred in the ordinary course of business and (B) properly accounted for in the Year- End Balance Sheets or Interim Balance Sheet and (ii) except as set forth on Schedule 4.09(b)(ii), no revenues are subject to any refund, warranty claim, guaranty reserve, discount, or offset that has not been reflected in the recorded amounts and all billings are fully collectible. To Seller's Knowledge, the Year-End Balance Sheets and the Interim Balance Sheet were prepared in accordance with GAAP.

(c) Schedule 4.09(c) contains a true and correct list of all accounts receivable of each Target Company as of the date hereof, which list sets forth the aging of such accounts receivable. All accounts receivable of the Target Companies that are reflected on the Year-End Balance Sheets or the Interim Balance Sheet, to the extent still remaining unpaid, represent valid obligations arising from sales actually made or services actually performed in the ordinary course of business. To Seller's Knowledge, all reserves for the collection of such accounts receivable shown on the Year-End Balance Sheets or the Interim Balance Sheet were calculated in accordance with GAAP. There is no contest, claim or right of set-off, other than returns in the ordinary course of business, relating to the amount or validity of any such account receivable.

(d) Schedule 4.09(d)(i) contains a true and correct list of all accounts payable of each Target Company as of the date hereof, which list sets forth the aging of such accounts payable. The accounts payable of the Target Companies represent valid obligations of the respective account debtors arising from services actually performed for any Target Company and, except as set forth on Schedule 4.09(d)(ii), no such account payable or note payable is delinquent in its payment.

(e) Since the date of the 2023 Year-End Balance Sheets, each Target Company has continued all pricing, sales, receivables and payables production practices in accordance with the ordinary course of business and have not engaged in (i) any trade loading practices or any other promotional sales or discount activity with any customers with the intent to accelerate to pre- Closing periods sales or trades that would otherwise be expected (based on past practice) to occur in post-Closing periods, (ii) any practice intended to have the effect of accelerating to pre-Closing periods collections of receivables that would otherwise be expected (based on past practice) to be made in post-Closing periods or (iii) any practice intended to have the effect of postponing to post-Closing periods payments by any Target Company that would otherwise be expected (based on past practice) to be made in pre-Closing periods.

(f) Except as set forth on Schedule 4.09(f), no Target Company has any Indebtedness outstanding.

4.10 Absence of Changes. Since the date of the Interim Balance Sheet, except as described on Schedule 4.10:

(a) the Target Companies have conducted their businesses only in the ordinary course of business;

(b) the Target Companies have not engaged in any trade loading practices or any other promotional sales or discount activity with any customers with the intent to accelerate to pre- Closing periods sales or trades that would otherwise be expected (based on past practice) to occur in post-Closing periods; and

(c) there has not been any:

(i) amendment to the Governing Documents of any Target Company;

(ii) split, combination or reclassification of any of a Target Company's membership interests or other equity securities;

(iii) issuance, sale or other disposition of any of a Target Company's membership interests or other equity securities, or grant of any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any of a Target Company's membership interests or other equity securities;

(iv) except as disclosed to Buyer in writing, any declaration or payment of any dividends or distributions on or in respect of any of a Target Company's membership interests or other equity securities or redemption, purchase or acquisition of a Target Company's membership interests or other equity securities;

(v) change in any method of accounting or accounting practice of the Target Companies, except as required by GAAP or applicable Law or as disclosed in the notes to the Financial Statements;

(vi) action by a Target Company to make, change or rescind any Tax election, amend any Tax Return or take any position on any Tax Return, take any action, omit to take any action or enter into any other transaction that would have the effect of increasing the Tax Liability or reducing any Tax asset of Buyer in respect of any Post-Closing Tax period;

(vii) transfer, assignment, sale or other disposition of any of the assets shown or reflected in the Interim Balance Sheet or cancellation by a Target Company of any debts or entitlements, other than in the ordinary course of business;

(viii) incurrence, assumption or guarantee by a Target Company of any Indebtedness for borrowed money in an aggregate amount exceeding \$250,000, except unsecured current obligations and liabilities incurred in the ordinary course of business of such Target Company;

(ix) damage, destruction or loss (whether or not covered by insurance) to a Target Company's property or assets in amount in excess of \$100,000, individually or \$250,000 in the aggregate;

(x) capital investment in, or any loan to, any other Person by a Target Company;

(xi) acceleration, termination, material modification to or cancellation of any Material Contract to which a Target Company is a party or by which a Target Company is bound;

(xii) material capital expenditures by a Target Company in excess of \$100,000, individually or \$250,000 in the aggregate, excluding budgeted capital expenditures incurred by a Target Company pursuant to a pre-existing capital improvements plan as disclosed in Schedule 4.15(b);

(xiii) imposition of any Encumbrance upon any of the properties, membership interests or other equity securities or assets, tangible or intangible, of a Target Company;

(xiv) (A) grant of any bonuses, whether monetary or otherwise, or increase in any wages, salary, severance, pension or other compensation or benefits in respect of a Target Company's current or former employees, officers, directors, independent contractors or consultants, other than as provided for in any written agreements, in the ordinary course of business of the Target Companies, or required by applicable Law or (B) action by a Target Company to accelerate the vesting or payment of any compensation or benefit for any current or former employee, officer, director, independent contractor or consultant;

(xv) adoption, amendment, modification or termination by a Target Company of any (A) employment, severance, retention or other agreement with any current or former employee, officer, director, independent contractor or consultant or (B) Benefit Plan, the effect of which in the aggregate would increase the obligations of a Target Company by more than five percent (5%) of its existing annual obligations to such plans;

(xvi) except as disclosed to Buyer in writing, entry into a new line of business by a Target Company or abandonment or discontinuance of existing lines of business of the Target Companies;

(xvii) acquisition by a Target Company by merger or consolidation with, or by purchase of a substantial portion of the assets or equity securities of, or by any other manner, any business or any Person or any division thereof;

(xviii) purchase, lease or other acquisition by a Target Company of the right to own, use or lease any property or assets for an amount in excess of \$100,000, individually (in the case of a lease, per annum) or \$250,000 in the aggregate (in the case of a lease, for the entire term of the lease, not including any option term), except for purchases of inventory or supplies in the ordinary course of business of the Target Companies, and excluding budgeted amounts incurred by a Target Company pursuant to a pre-existing capital improvements plan as disclosed in Schedule 4.15(b);

(xix) transfer or assignment of or grant of any license or sublicense by a Target Company under or with respect to any material Company Intellectual Property or Company IP Agreements except non-exclusive licenses or sublicenses granted in the ordinary course of business of the Target Companies consistent with past practice;

(xx) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy by a Target Company under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against a Target Company under any similar Law;

(xxi) transfers of any property or assets between a Target Company and a Related Party (excluding payments made to or by a Related Party from or to a Target Company for services performed in the ordinary course);

(xxii) changes to the Target Companies' historical practice, with respect to the payment of accounts payable or accrued expenses or the collection of the accounts receivable or other receivables,

including any acceleration of the collection of any accounts receivable or deferral of the payment of accounts payable; or

(xxiii) any agreement to do any of the foregoing by a Target Company, or any action or omission by a Target Company that would result in any of the foregoing.

4.11 No Undisclosed Liabilities. Except (a) as specifically and expressly disclosed on the Year-End Balance Sheets or the Interim Balance Sheet (b) as incurred since the dates thereof in the ordinary course of business and in amounts that are immaterial to the Target Companies, or (c) as set forth on Schedule 4.11, the Target Companies do not have any Liabilities that would be required to be disclosed on a balance sheet prepared in accordance with GAAP.

4.12 Taxes.

(a) Each Target Company has timely filed all required Tax Returns. All such Tax Returns were correct and complete in all respects and were prepared in compliance with all applicable Laws. All Taxes due and owing by or with respect to the Target Companies (whether or not shown on any Tax Return) have been timely paid in full. No Tax dispute, inquiry or investigation is pending with respect to a Target Company, and to Seller's Knowledge, there is no threatened Tax matter, dispute, inquiry or investigation that could result in any Liability of a Target Company or Buyer after the Closing. The Target Companies have withheld and timely paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, member, stockholder, or other third party. All Forms W-2 and Forms 1099 required with respect to such withholding and payment have been properly and timely filed, and the Target Companies have maintained all documentation, as required by Law, relating to the withholding and remittance of such Taxes.

(b) Except as disclosed to Buyer in writing, the Target Companies have not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency. The Target Companies are not a party to or bound by any Tax allocation or Tax sharing agreement. The Target Companies have no Liability for the Taxes of any other Person (i) as a transferee or successor, or (ii) by Contract, applicable Law (including pursuant to Treasury Regulations Section 1.1502-6) or otherwise. There are no Encumbrances for Taxes upon the assets of the Target Companies other than Permitted Encumbrances.

(c) No claim has ever been made by a Tax Authority in a jurisdiction where the Target Companies do not file Tax Returns that the Target Companies are or may be subject to taxation by that jurisdiction, and to Seller's Knowledge, there is no basis for any such claim to be made. There is no Action concerning any Tax Liability of the Target Companies pending, or to Seller's Knowledge, threatened in writing by any Tax Authority. The Target Companies have not executed any power of attorney with respect to any Tax, other than powers of attorney that are no longer in force.

(d) The Target Companies have not distributed the stock of any corporation or had its stock or equity interests distributed by another Person in a transaction satisfying or intending to satisfy the requirements of Section 355 or Section 361 of the Code.

(e) The Target Companies will not be required to include any item of income or gain in taxable income or exclude any item of deduction or loss from taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of: (i) any "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign Tax Law) executed on or prior to the Closing Date, (ii) the long-term contract method of accounting, (iii) any installment sale or the open transaction method of accounting or the cash method of accounting, in each case, with respect

to a transaction that occurred on or prior to the Closing Date, (iv) application of Section 108(i) of the Code, (v) any intercompany transactions or any excess loss account described in Section 1.1502-19 of the Treasury Regulations (or any similar provision of state, local or foreign Law), (vi) use of an improper method of accounting for a taxable period ending on or prior to the Closing Date, (vii) any change in method of accounting (including adjustments pursuant to Section 481 of the Code) for a taxable period ending on or before the Closing Date, (viii) any deferred revenue or prepaid amount received or accrued on or prior to the Closing Date, (ix) any debt instrument held prior to the Closing that was acquired with “**original issue discount**” as defined in Section 1273(a) of the Code or subject to the rules set forth in Section 1276 of the Code, or (x) any inclusion under Section 951 or Section 951A of the Code to the extent attributable to any Pre-Closing Tax Period or Pre-Closing Straddle Period.

(f) The Target Companies are not a party to any understanding or arrangement described as a “**reportable transaction**” for purposes of Section 6707A of the Code and Treasury Regulations Section 1.6011-4. No closing agreements, private letter rulings, technical advice memoranda or similar agreements or rulings relating to Taxes have been entered into or issued by any Governmental Authority with or with respect to the Target Companies.

(g) No activity of the Target Companies gives rise, or may give rise, to the creation of a permanent establishment in any foreign country for Tax purposes (other than in Mexico). None of the assets of the Target Companies constitute Tax-exempt bond financed property or Tax-exempt use property within the meaning of Section 168 of the Code, and none of the assets of the Target Companies are subject to a lease, safe harbor lease or other arrangement as a result of which a Target Company is not treated as the owner of such assets for federal Income Tax purposes. The Target Companies are not the beneficiary of any Tax holiday, Tax abatement or other similar Tax benefit. The Target Companies have disclosed on their federal Tax Returns all positions taken therein that would give rise to a substantial understatement of federal Income Tax within the meaning of Section 6662 of the Code.

(h) None of the assets of the Target Companies are subject to the limitations on “amortizable section 197 intangibles” described in Section 197(f)(9) of the Code or any similar or comparable limitation under state, local, or foreign Law. Commencing with the taxable periods or portions thereof immediately following the Closing Date, none of the assets of the Target Companies will be subject to (and the depreciation and amortization deductions otherwise available to Buyer or its Affiliates (as applicable) with respect to such assets will not be limited by) the “anti-churning” restrictions or limitations set forth in Section 197(f)(9) of the Code.

(i) The Target Companies have complied in all material respects with all Laws with respect to escheat and unclaimed property and has no Liability to pay over any material amount to any Governmental Authority any cash or other property under escheat or unclaimed property Laws.

(j) For all periods from the date of its formation, each Company has been, for federal and applicable state and local Income Tax purposes, properly treated as a “partnership” within the meaning of Sections 7701 of the Code and Treasury Regulations Section 301.7701-3(b)(1)(i). Each of the other Target Companies have each been properly treated as “disregarded as an entity separate from its owner” within the meaning of Treasury Regulation Section 301.7701-3(b)(1)(ii) since the Lookback Date through and including the Closing Date for US federal and applicable state and local Income Tax purposes.

(k) All Taxes required to have been paid on the sale of products or taxable services by the Target Companies (whether or not denominated as sales or use Taxes) have been properly and timely paid, or all sales Tax exemption certificates or other proof of the exempt nature of sales of all products or services have been, if required, submitted to the appropriate Governmental Authority.

(l) The Target Companies have not deferred the payment of any payroll Taxes pursuant to Section 2302 of the CARES Act or IRS Notice 2020-65. Any “**employment retention credit**” within the meaning of Section 2301 of the CARES Act or any other Tax credit applicable to employment Taxes under the Families First Coronavirus Response Act of 2020 (Pub. L. No. 116-127) claimed by any of the Target Companies were claimed properly and in accordance with applicable Laws.

(m) All Related Party transactions involving any Target Company have been conducted in compliance with Code Section 482 and the Treasury Regulations promulgated thereunder and any comparable provisions of any other state, local and non-U.S. Tax Law. Each Target Company has maintained any documentation (including any applicable transfer pricing studies) in connection with such Related Party transactions that is required by Code Sections 482 and 6662 and the Treasury Regulations promulgated thereunder and any comparable provisions of any other state, local and non-U.S. Tax Law.

#### 4.13 Benefit Plans; ERISA.

(a) Schedule 4.13(a) sets forth a complete and accurate list of all Benefit Plans. Sellers have made available to Buyer or to Buyer’s counsel true and complete copies of the following documents, including all amendments thereto, relating to each Benefit Plan, to the extent applicable: (i) the plan document or for any unwritten Benefit Plan, a summary of the material terms thereof; (ii) copies of the most recent IRS determination letter or advisory or opinion letter with respect to each such Benefit Plan intended to qualify under Section 401(a) of the Code; (iii) copies of the most recent summary plan descriptions and any summaries of material modifications thereto; (iv) all trust agreements, insurance Contracts, administrative services agreements, and other documents relating to the funding or payment of benefits under any Benefit Plan including agreements concluded on behalf of those covered by the Benefit Plan with any financial institution managing the Benefit Plan; (v) copies of the three (3) most recent Form 5500 annual reports and accompanying schedules, as well as the actuarial report, (vi) the non-discrimination testing results for the past three (3) plan years; (vii) any material correspondence with any Governmental Authority with respect to any Benefit Plan; and (viii) the Forms 1094 and 1095 for the past three (3) years.

(b) Except as set forth on Schedule 4.13(b), and as applicable:

(i) *Multiemployer Plans.* Neither any Target Company nor any current or former ERISA Affiliate of such Target Company has ever made or had an obligation to make any contributions to or had any current or contingent liability or obligation under or with respect to (i) any multiemployer plan (as defined in ERISA Section 3(37) or 4001(a)(3)), (ii) to any pension plan subject to the minimum funding standards of ERISA or Title IV of ERISA, (iii) any “multiple employer plan” (as defined in Section 210 of ERISA or Section 413(c) of the Code), (iv) any “multiple employer welfare arrangement” (as defined in Section 3(40) of ERISA), (v) any “voluntary employees’ beneficiary association” (as defined in Section 501(c)(9) of the Code), or (vi) a “defined benefit plan” (as defined in Section 3(35) of ERISA).

(ii) *Terminated Plans.* Neither any Target Company nor any current or former ERISA Affiliate of such Target Company has terminated or taken action to terminate (in part or in whole) any “employee benefit plan” as defined in ERISA Section 3(3).

(iii) *Administration of Plans.* Each Benefit Plan has been established, administered, operated and maintained in material compliance with its terms and any Laws applicable to such Benefit Plan, including (to the extent applicable) ERISA, COBRA, the Health Insurance Portability and Accountability Act of 1996, and the Code. With respect to each Benefit Plan that is intended to qualify under Section 401(a) or Section 501(c)(9) of the Code: (A) such Benefit Plan has received a favorable determination letter from the IRS or, with respect to a prototype or volume submitter plan, can rely on an opinion letter from the IRS to the prototype or volume submitter plan sponsor, to the effect that such plan

is so qualified; (B) any related trusts have been determined to be exempt from taxation; and (C) nothing has occurred since the date of such opinion or determination letter that would reasonably be expected to adversely affect such qualification or exemption. No “prohibited transactions” within the meaning of Section 406 or 407 of ERISA or Section 4975 of the Code for which a statutory or administrative exemption does not exist have occurred with respect to any Benefit Plan. No Target Company or, to Seller’s Knowledge, any third party has breached any of the duties imposed on “fiduciaries” (within the meaning of Section 3(21) of ERISA) by ERISA with respect to any Benefit Plan.

(iv) *Section 409A Compliance.* Each plan, agreement, or arrangement currently or previously sponsored by any Target Company for the benefit of its employees that provides for the deferral of compensation subject to Code Section 409A is, and has been since January 1, 2009, administered in accordance with its terms and in compliance in all material respects with the operational and documentary requirements of Section 409A of the Code and all applicable regulatory guidance (including notices, rulings, and proposed and final regulations) thereunder; and Sellers and the Target Companies do not have any obligation to “gross up” any Person for any Taxes under Section 409A of the Code.

(v) *Benefit Plan Contributions.* With respect to the Benefit Plans, (A) all required contributions to, and premiums or other payments on account of, each Benefit Plan have been made in all material respects in full on a timely basis, or properly accrued, and (B) all reports, returns and similar documents required to be filed with any Governmental Authority or distributed to any Benefit Plan participant have been timely filed or distributed in all material respects.

(vi) *Actions or Claims.* There do not exist any pending or, to Seller’s Knowledge, threatened Actions (other than routine claims for benefits), audits, or investigations with respect to any of the Benefit Plans or any fiduciary or assets thereof. No Target Company has participated in any voluntary compliance or self-correction program established by the IRS under the Employee Plans Compliance Resolution System, or entered into a closing agreement with the IRS with respect to the form or operation of any Benefit Plan.

(vii) *Post-Termination Benefits.* No Target Company has any obligation to provide health, welfare, or death benefits to any employee following termination of employment, except to the extent that such obligation arises from applicable Laws, including continuation coverage required under Section 4980B of the Code (or equivalent state Law) with costs for such coverage paid solely by such employee.

(viii) *Group Health Plans.* Each Benefit Plan that is a “group health plan” within the meaning of Section 5000(b)(1) of the Code and Section 607(l) of ERISA has been administered in material compliance with, and the Target Companies have otherwise materially complied with the requirements of (A) the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder; (B) the Consolidated Omnibus Budget Reconciliation Act and the regulations promulgated thereunder; (C) the Patient Protection and Affordable Care Act of 2010 and the regulations promulgated thereunder; and (D) the Medicare Secondary Payor Provisions of Section 1862 of the Social Security Act and the regulations promulgated thereunder. The Target Companies have (x) offered minimum essential health coverage, satisfying affordability and minimum value requirements, to its full-time employees sufficient to avoid liability for assessable payments under Sections 4980H(a) and 4980H(b) of the Code and (y) complied in all material respects with the applicable reporting requirements under Sections 6055 and 6056 of the Code.

(ix) *Change in Control Benefits.* Neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement will, either alone or upon the occurrence of any other event: (A) entitle any current or former employee, officer, manager, director, consultant or

contractor of any Target Company to any bonus, change in control or similar payment, severance pay, unemployment compensation or any other payment or benefit; (B) accelerate the time, payment, funding or vesting of any benefit or right (including equity-based compensation), or increase the amount of compensation due to any such individual; (C) give rise to the payment of any amount that could subject any Person to liability for Tax under Section 4999 of the Code; (D) limit or restrict the right of any Target Company to merge, amend, or terminate any Benefit Plan; (E) increase the amount payable under or result in any other material obligation pursuant to any Benefit Plan; or (F) directly or indirectly result in any payment made to or on behalf of any Person constituting a “parachute payment” within the meaning of Section 280G(b) of the Code. Sellers and the Target Companies do not have any obligation to “gross up” any Person for any Taxes under Section 4999 of the Code.

#### 4.14 Assets.

(a) Each Target Company has good and valid title (or valid leasehold or licensed interest with respect to leased or licensed assets and properties) to the properties and assets that it purports to own, except for properties and assets sold since the date of the Interim Balance Sheet in the ordinary course of business, free and clear of any and all Encumbrances, other than Permitted Encumbrances and any Encumbrances listed on Schedule 4.14(a).

(b) The buildings, plants, structures, fixtures, equipment and other tangible personal property of each Target Company are in good operating condition and repair, ordinary wear and tear excepted. The properties and assets owned and leased by the Target Companies are sufficient, in all material respects, for the continued conduct of their business immediately after the Closing in substantially the same manner as conducted immediately prior to the Effective Date.

(c) Schedule 4.14(c) sets forth all properties and assets that have been sold or transferred to a Related Party by the Target Companies since the Lookback Date, including, the value of such properties or assets at the time of such sale or transfer.

(d) Seller has provided Buyer with a copy of a fixed asset list of the Company, a copy of which is attached as Schedule 4.14(d), and which lists all of the material tangible personal property owned by the Target Companies as of the Interim Balance Sheet Date. Since the Interim Balance Sheet Date, the Company has not disposed of any of the assets listed thereon, except for tangible personal property disposed of in the ordinary course of business that has been replaced as required for the conduct of the Business in the ordinary course consistent with past practices.

#### 4.15 Real Property.

(a) *Owned Real Property.* No Target Company has any fee simple ownership or perpetual interest in any parcel of real property.

(b) *Leased Real Property.* Schedule 4.15(b) lists all parcels of real property leased, subleased or licensed to any Target Company, or that any Target Company otherwise uses, operates or occupies and which is not owned by a Target Company (the “**Leased Real Property**”) and lists the following: (i) the street address of each parcel of Leased Real Property; (ii) the landlord under the lease, the rental amount currently being paid, and the expiration of the term of such lease or sublease for each leased or subleased property; (iii) the current general use of such property, and (iv) the identity of the lessee, and the current occupant (if different from lessee) (collectively, the “**Real Property Leases**” and each a “**Real Property Lease**”). Each Target Company has a valid and subsisting easement, leasehold, subleasehold, license or other occupancy interest in the Leased Real Property. With respect to each Real Property Lease: (i) other than previously exercised or expired options, no Target Company has exercised or given any notice of

exercise by such party of, nor has any lessor or landlord exercised or given any notice of exercise by such party of, any option, right of first offer or right of first refusal contained in any such Real Property Lease; (ii) each Real Property Lease is binding and in full force and effect; (iii) there exists no default of a Target Company under any Real Property Lease, or any event, occurrence, condition or act which, with the giving of notice or the lapse of time, has or would become a default of such Target Company under any Real Property Lease; (iv) to Seller's Knowledge, all of the covenants to be performed by any other party under each such Real Property Lease have been performed in all material respects; and (v) no Target Company is in financial arrears under any Real Property Lease. After Closing, no brokerage commissions or finder's fees will be due with respect to any Leased Real Property. Except as set forth on Schedule 4.15(b), no material capital expenditures for the maintenance and/or repair of the Leased Real Property are required to be performed by a Target Company or, to Seller's Knowledge, reasonably likely to be required within twelve (12) months after Closing, except with respect to any capital expenditures made necessary by the actions or omissions of Buyer after the Closing. All commenced or ongoing material capital expenditures for the maintenance and/or repair of the Leased Real Property are listed on Schedule 4.15(b), such projects are on budget, in all material respects, as set forth on Schedule 4.15(b), and to Seller's Knowledge, the Target Companies are not aware of any material cost overruns. The Leased Real Property constitutes all such property used in or necessary to conduct the business of the Target Companies as presently conducted.

(c) *Matters Affecting Real Property.*

(i) The Target Companies' use of all Leased Real Property for the various purposes for which it is presently being used is permitted as of right under all applicable zoning Laws and is not subject to "permitted nonconforming" use or structure classifications. All Leased Real Property is, to Seller's Knowledge, adequately maintained and suitable for the purpose of conducting the business of the Target Companies as currently conducted.

(ii) To Seller's Knowledge, all buildings, structures, fixtures and other improvements including the roof, foundation, floors, and heating, ventilation, air conditioning, mechanical, electrical and other building systems, on all Leased Real Property are in all material respects in good operating condition and repair, ordinary wear and tear excepted; provided, however, Seller makes no representation or warranty regarding the condition and repair of the bulkhead protecting the SD Property or the potential cost of its restoration or repair pursuant to this Section 4.15(c)(ii).

(iii) To Seller's Knowledge, except for matters disclosed on the Title Commitments, (A) no part of any building, structure, fixture or other improvement set forth on any Leased Real Property encroaches on, or otherwise conflicts with the property rights of, any other real property; and (B) there are no buildings, structures, fixtures primarily situated on any adjoining property which encroach on any Leased Real Property or otherwise conflict with the property rights of any Target Company.

(iv) To Seller's Knowledge, except for matters disclosed on the Title Commitments, there is no existing or proposed plan to modify or realign any street or highway or any existing or proposed eminent domain proceeding that could reasonably be expected to result in the taking of all or any material part of any Leased Real Property.

(v) Each Target Company is in peaceful and undisturbed possession of the Leased Real Property, and, except for matters disclosed on the Title Commitments, there are no contractual or legal restrictions that preclude or restrict the ability of the applicable Target Company to use such Leased Real Property for the purposes for which it is currently being used.

(vi) Except as set forth in Schedule 4.15(c)(vi) and except for matters disclosed on the Title Commitments, no Target Company has leased, subleased, licensed or otherwise granted to any Person

the right to use or occupy any portion of the Leased Real Property, and to Seller's Knowledge there is no claim of any Person to the contrary, other than boat or ship storage licenses granted by Target Companies in the ordinary course of their business.

(vii) There are no Contracts outstanding for the sale, exchange, encumbrance, lease or transfer of any Target Company's interest in the Leased Real Property.

(viii) There is no Action pending or, to Seller's Knowledge, threatened against or affecting the Leased Real Property or any portion thereof or interest therein in the nature of or in lieu of condemnation or eminent domain proceedings.

(ix) The Cabo Concession is in full force and effect. There exists no default under the Cabo Concession, or any event, occurrence, condition or act which, with the giving of notice or the lapse of time, has or would become a default of under the Cabo Concession. To Seller's Knowledge, all of the covenants to be performed by any party under the Cabo Concession (including any obligations of the Target Companies required to be performed with respect to the Cabo Concession pursuant to the Cabo Lease) have been performed in all material respects. No party is in financial arrears under the Cabo Concession.

#### 4.16 Contracts.

(a) Schedule 4.16(a) sets forth all of the Material Contracts (as hereafter defined) as of the date of this Agreement, arranged in accordance with the applicable subsections set forth in the following sentence. "**Material Contracts**" shall mean each of the following agreements, leases, licenses, grants, contracts or other commitments of any nature, whether written or oral ("**Contracts**") to which a Target Company is a party or by which the Target Companies or their business is bound:

(i) that (A) expressly limits or restricts the ability of a Target Company to compete or otherwise to conduct its business as formerly or presently conducted or engage in any line of business in the future, in any material manner or geographic place world, or providing for exclusivity in any business line, geographic area, or otherwise or (B) that provides any third parties with "most favored nation", "most favored pricing" or rights of first offer or rights of first refusal with respect to any products or services provided or received by a Target Company under such Contract;

(ii) under which a Target Company has created in favor of a third-party, incurred, assumed or guaranteed any Indebtedness or granted an Encumbrance (other than a Permitted Encumbrance) on any asset owned or used by a Target Company or its business;

(iii) that creates a joint venture, strategic partnership or other similar agreement;

(iv) that involve (A) payments on the part of a Target Company to third parties in excess of \$150,000 in any twelve (12)-month period or (B) obligations of a Target Company to purchase goods or services in excess of \$150,000 in any twelve (12)-month period, and, in each case, is not terminable by such Target Company on forty-five (45) days' notice or less without premium or penalty (excluding sales orders and purchase orders issued in the ordinary course of business);

(v) that relates to (A) the disposition or acquisition by a Target Company of any Person or other business enterprise (whether by merger, sale of stock, sale of assets or otherwise) occurring during the Lookback Period, or (B) any Contract that provides for the sale of any asset owned or used by a Target Company or the grant of any preferential rights to purchase any asset owned or used by a Target Company other than those entered into in the ordinary course of business;

(vi) that provides for warranty terms or the indemnification or guarantee of obligations of any other Person that would be material to a Target Company, taken as a whole, other than Contracts entered into in the ordinary course of business;

(vii) that contains a put, call or similar right pursuant to which a Target Company could be required to purchase or sell, as applicable, any equity interests of any Person or assets;

(viii) that provides for the employment or engagement, with an annual compensation in excess of \$100,000, of any officer or individual employee or other natural person on a full-time, part-time, seasonal, temporary or consulting basis;

(ix) under which a Target Company licenses any Intellectual Property to any Person or receives any license or sublicense of, or right to use, Intellectual Property from any Person (excluding any license or services agreement for commercially-available, off-the-shelf software licensed or procured for aggregate license, maintenance, and service fees of less than \$50,000 per year);

(x) with any broker, distributor or dealer;

(xi) with any Governmental Authority, including any settlement, conciliation, or similar agreement with any Governmental Authority;

(xii) that is a lease, sublease, license or similar agreement entered into in connection with the Leased Real Property, other than matters disclosed on the Title Commitments and boat or ship storage licenses granted by Target Companies in the ordinary course of their business;

(xiii) any Contract under which a Target Company has made advances or loans to any other Person;

(xiv) any Related Party Agreement;

(xv) any sales, service, or distribution contract with a Material Customer and any contract with a Material Customer relating to the promotion, advertising, and marketing of the services provided by a Target Company;

(xvi) all personal property leases that should be categorized as capital leases under GAAP;

(xvii) any pension, profit sharing, retirement, bonus, incentive, unit option, phantom unit, employee unit purchase, or other plan or arrangement providing for deferred or other compensation to employees or any other Benefit Plan, whether formal or informal;

(xviii) any collective bargaining agreement or any other contract with any labor union or other labor organization or any severance agreements, programs, policies, or arrangements;

(xix) any non-disclosure or non-compete agreements or agreements regarding ownership and rights with regard to work produced by employees, contractors, or consultants; and/or

(xx) any power of attorney or other similar agreement or grant of agency.

(b) Each of the Material Contracts is a legal, valid, binding and enforceable obligation of the applicable Target Company and is in full force and effect, unamended, and there exists no default or event

of default or event, occurrence, condition or act, with respect to such Target Company or with respect to the other contracting party or otherwise, that, with or without the giving of notice, the lapse of time or the happening of any other event or condition, constitutes a default or breach by such Person thereunder or would reasonably be expected to (i) become a default or event of default under or breach or violation of any of the Material Contracts or (ii) result in the loss or expiration of any right or option by such Target Company (or the gain thereof by any third party) under any Material Contract. Since the date of the Interim Balance Sheet: (A) there has been no termination of a Target Company's business relationship under any Material Contract; (B) there has been no material adverse change in the business relationship of a Target Company's business relationship under any Material Contract outside of the ordinary course of business; and (C) no Material Contract is currently subject to, or is expected to be subject to, cancellation, termination or any other material modification by the other party thereto, including stopping or decreasing the rate of its transactions or otherwise adversely changing its business relationship with the applicable Target Company, or is subject to or is expected to be subject to any penalty, right of set off, or other charge by the other party thereto for late performance or delivery. No Target Company is involved in any dispute or Action concerning a Material Contract. True, correct and complete copies of all of the Material Contracts (including any amendments thereto) have been delivered to Buyer.

4.17 No Material Adverse Effect. Since the date of the Interim Balance Sheet, there has not been any Material Adverse Effect and, to Seller's Knowledge, no event has occurred or circumstance exists that would reasonably be expected to result in a Material Adverse Effect, excluding, for purposes of this Section 4.17 only, any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to (i) general economic or political conditions; (ii) conditions generally affecting the industries in which a Target Company operates; (iii) any changes in financial or securities markets in general; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; and (v) any changes in applicable Laws or accounting rules, including GAAP, except to the extent any such event, occurrence, fact, condition or change described in the foregoing clauses (i) through (iv) impacts the business of a Target Company disproportionately to the rest of the industry in which it operates.

4.18 Labor Matters.

(a) Each Target Company is in material compliance with, and since the Lookback Date has complied in all material respects with, all Laws relating to labor, employment, employment practices, and terms and conditions of employment, including all Laws relating to equal employment opportunity, nondiscrimination, immigration, wages, hours, benefits, occupational safety and health, collective bargaining, required trainings, and labor relations.

(b) Schedule 4.18(b)(i) sets forth a correct and complete list of all employees of each Target Company as of the date of this Agreement, including any employee who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized, and sets forth for each such individual the following: (i) name; (ii) employer of record; (iii) title or position (including whether full- or part-time or temporary); (iv) hire date; (v) whether paid hourly, salary, or another compensation method; (vi) current annual base salary or hourly rate; (vii) commission, bonus or other incentive-based compensation; (viii) classification as exempt or non-exempt under applicable wage and hour Laws; (ix) a description of the fringe benefits provided to each such individual; (x) work location (by city, county, and state); and (xi) furlough, layoff or leave status (and anticipated return to work date if known). Schedule 4.18(b)(ii) sets forth a correct and complete list of all independent contractors and consultants of each Target Company as of the date of this Agreement, along with each such Person's name, description of services provided, date of engagement, work location, and compensation arrangement. All employees of each Target Company are employed on an "at will" basis, and no Target Company employs or retains the services of any employee, independent contractor or consultant who cannot be dismissed immediately, whether currently or immediately after the transactions contemplated hereby, without notice and without further liability to any Target Company. To

Seller's Knowledge, no employee, group of employees, independent contractor or consultant of any Target Company has given notice of termination of employment or engagement or otherwise intends to terminate his or her employment or service relationship with any Target Company.

(c) No Target Company is a party to, bound by or currently negotiating any neutrality agreement, card-check agreement, or collective bargaining agreement or other labor Contract with any labor union, trade union, works council, labor organization or other employee representative body. There is no, and since the Lookback Date there has not been, any labor organizational activity or labor dispute affecting any Target Company.

(d) There is not presently pending or existing, and to Seller's Knowledge there is not threatened, any strike, slowdown, picketing, walkout, lockout, work stoppage, unfair labor practice charge or employee grievance process involving any Target Company, nor have there been any strikes, slowdowns, pickets, walkouts, lockouts, work stoppages, unfair labor practice charges or employee grievance processes since the Lookback Date. To Seller's Knowledge, no event has occurred or circumstance exists that could reasonably be expected to provide the basis for any strike, slowdown, picketing, walkout, lockout work stoppage, unfair labor practice charge, employee grievance process or other labor dispute involving any Target Company. There is not pending or, to Seller's Knowledge, threatened against or affecting any Target Company any Action relating to the alleged violation of (i) any employment, consulting, independent contractor or other similar agreement, or (ii) any Law pertaining to labor relations or employment matters, including any charge or complaint filed with the National Labor Relations Board, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, the Department of Labor or any comparable Governmental Authority. No application or petition for an election of or for certification of a collective bargaining agent is pending with respect to any Target Company. There is no lockout of any employees by any Target Company, and no such action is contemplated by any Target Company.

(e) All compensation, including wages, salary, commissions, overtime, premium payments, waiting time penalties, bonuses, accrued paid time off, and other compensation, payable to all employees, or independent contractors of the Target Companies for work or services performed on or prior to the Effective Date or Closing Date (as applicable) have been paid in full, and no Target Company is liable for any amounts, fines, taxes, interest or other penalties for any failure to pay or delinquency in paying such compensation.

(f) The Target Companies have (i) properly classified and treated all of their respective workers or other Persons performing services for any Target Company as independent contractors or employees, (ii) no independent contractor or individual that is not an employee of a Target Company is treated or provides work in the manner characteristic for an employee and, in particular, the degree of control of any Target Company over the work performed (as to how, where and when that work was performed) was not in the manner characteristic of an employment relationship, and (iii) properly classified and treated all of their respective employees as "exempt" or "non-exempt" from overtime or other wage and hour requirements under all Laws. Except as set forth in Schedule 4.18(f), no Target Company is a joint employer, single employer or co- employer with or an alter ego of any other Person, and no Target Company has liability as a joint employer with respect to any temporary employees leased or staffed through a third-party entity.

(g) Since the Lookback Date, each Target Company has promptly, thoroughly and impartially investigated all discrimination and harassment allegations which have been reported in accordance with such Target Company's reporting policies or to which the Target Company was made aware. With respect to each such allegation with potential merit, the Target Company has taken prompt corrective action that is reasonably calculated to prevent further improper action. To Seller's Knowledge, since the Lookback Date, no allegations of sexual or other harassment, discrimination, assault or material misconduct have been made

against any Seller or any officer, director, manager, executive or management-level employee of any Target Company.

(h) Each Target Company has verified the employment eligibility of all of such Target Company's employees in compliance with the Immigration Reform and Control Act and the Illegal Immigration Reform and Immigrant Responsibility Act and has retained a completed and executed Form I-9 for each of its employees. To Seller's Knowledge, each employee is legally entitled to work in the jurisdiction in which he or she is employed and in the position in which he or she is employed. Since the Lookback Date, no Target Company has received any written correspondence from any Person, including any Governmental Authority, questioning the validity of the social security number or work authorization status of any employee of any Target Company.

(i) To Seller's Knowledge, no employee or any independent contractor of the Target Companies is, or since the Lookback Date has been, in violation of any term, provision or covenant of any employment agreement, consulting agreement, independent contractor agreement, non-disclosure agreement, common law non-disclosure obligation, fiduciary duty, non-competition agreement, non-solicitation agreement, non-disparagement obligation, or other material restrictive covenant obligation (i) with or owed to any Target Company or any former employer or other Person or (ii) relating to (x) the right of any such employee or independent contractor to be employed or engaged by any Target Company or to perform his or her duties or services to any Target Company; or (y) misappropriation or use of trade secrets or confidential or proprietary information of any Target Company or any former employer or other Person.

(j) Since the Lookback Date, there has been no employee layoffs, plant closings, employee relocations, or other employment actions involving any Target Company that would have implicated, or otherwise triggered notice requirements or liability under, the WARN Act or any similar state or local Law. No Target Company is currently contemplating any employee layoffs, plant closings, employee relocations, or other employment actions that would implicate, or otherwise trigger notice requirements or liability under, the WARN Act or any similar state or local Law.

#### 4.19 Environmental Matters.

(a) Each Target Company is currently, and since the Lookback Date has been, in material compliance with all Environmental Laws and have not, and no Target Company has, received from any Person any: (i) Environmental Notice or Environmental Claims; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Effective Date or Closing Date (as applicable).

(b) To Seller's Knowledge, there are no Hazardous Materials present on any Leased Real Property, except for Hazardous Materials (i) stored thereon in material compliance with applicable Environmental Laws, or (ii) the presence of which does not violate any applicable Environmental Law in any material respect. To Seller's Knowledge, Schedule 4.19(b) lists: (y) all active or abandoned current or former aboveground or underground storage tanks owned, used or operated by any Target Company within the last three (3) years; and (z) all off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by any Target Company the last three (3) years.

(c) To Seller's Knowledge and except as disclosed to Buyer in writing, there has been no Release of any Hazardous Materials on, at, under or from any real property currently or formerly owned or leased by any of the Target Companies in contravention of applicable Environmental Laws.

(d) Each Target Company has obtained and currently maintains the Environmental Permits listed on Schedule 4.19(d) adjacent to its name (collectively, the “**Company Environmental Permits**”). The Company Environmental Permits: (i) constitute all the Environmental Permits necessary for the ownership, lease, operation and use of the business and assets of the Target Companies as currently conducted; and (ii) are in full force and effect in accordance with their respective terms and all applicable Environmental Laws. The Target Companies are, and at all times have been, in material compliance with all their respective Company Environmental Permits. To Seller’s Knowledge and except as set forth in the Due Diligence Materials, there is no form of soil or groundwater contamination with Hazardous Materials or waste deposited or abandoned waste on any Leased Real Property. Marine Group Boat Works, LLC has applied for one or more Environmental Permits (including pursuant to the California Environmental Quality Act) in connection with the planned capital improvement project on the SD Property as more particularly described in Schedule 4.15(b) and, to Seller’s Knowledge and except as to any matters related to the exercise of discretion by the lessor under the SD Lease as required by Law, there are no material impediments to the grant or issuance of such Environmental Permits.

(e) To Seller’s Knowledge and except in the ordinary course of the Target Companies’ business and in compliance with Laws, no Target Company has permitted nor conducted any Hazardous Activity at or from any Leased Real Property, or any property formerly owned, leased, operated, or used by the Target Companies, during the ownership, lease, operation, or use of such property by the Target Companies, except in material compliance with, or to the extent the same does not materially violate, applicable Environmental Laws.

(f) To Seller’s Knowledge and except as disclosed to Buyer in writing, no Target Company has given any warranties or indemnities, or entered into any other agreement, with respect to any material liabilities, duties, or obligations under applicable Environmental Law.

(g) The Target Companies have made available to Buyer: (i) all material environmental reports related to the Leased Real Property, including but not limited to any Phase I and Phase II environmental site assessments, final environmental regulatory compliance audits, investigation reports, and corrective action reports that are in their possession, custody, or under their reasonable control; and (ii) all material correspondence and documents relating to communications to or from any Governmental Authority or any third party regarding actual or alleged violations of any Environmental Laws occurring on or about the Leased Real Property or any other property formerly owned or operated by any of the Target Companies.

4.20 Customers and Suppliers. Schedule 4.20 lists the names and addresses of each Target Company’s fifteen (15) largest customers (each, a “**Material Customer**”) and fifteen (15) largest suppliers of such Target Company (measured in each case by dollar volume of purchases or sales during the three (3) preceding calendar years ended December 31, 2021, December 31, 2022, December 31, 2023, and the nine (9) months ended September 30, 2024, respectively), and the dollar amount of purchases or sales which each listed customer or supplier represented during such fiscal year or portion thereof. No customer or supplier so listed has terminated or decreased, or otherwise materially adversely changed its business or activity with a Target Company and no such customer or supplier has provided written, or to Seller’s Knowledge oral, notice to a Target Company within the past twelve (12) months of that it will do so, and, to Seller’s Knowledge, no such customer or supplier intends to do so. No Target Company has received written notice that a Material Supplier is delaying deliveries, declaring any force majeure, declaring a default, renegotiating the pricing or other material terms of its Contract.

4.21 Paycheck Protection Program. Except as set forth on Schedule 4.21, no Target Company has (a) received any loan or grant under the CARES Act and Coronavirus Relief Programs, (b) deferred any payroll Taxes or (c) availed itself of any of the Tax deferral, credits or benefits pursuant to the CARES Act and Coronavirus Relief Programs. Each Target Company has complied, and is in compliance in all respects

with, the CARES Act and Coronavirus Relief Programs and any documentation related thereto. All applications and certifications made by any Target Company pursuant to the CARES Act are true and accurate (and were true and accurate when made or submitted). Sellers have made available to Buyer true, complete and correct copies of all documentation related to (A) the eligibility of any Target Company for relief pursuant to the CARES Act and Coronavirus Relief Programs and (B) any funds or grants committed or disbursed to any Target Company under the CARES Act and Coronavirus Relief Programs. All amounts received by any Target Company under the CARES Act and Coronavirus Relief Programs have been used in compliance with the CARES Act and Coronavirus Relief Programs and expended in such a way that all amounts received are eligible for forgiveness. Each loan or grant under the CARES Act or any other Coronavirus Relief Program received by any Target Company has been forgiven in full in accordance with all applicable Laws.

4.22 Insurance. Schedule 4.22 lists all policies of insurance providing coverage to each Target Company. All such policies of insurance are valid and enforceable, and are, in all material respects, commercially reasonable, of the type and in the amounts customarily carried by Persons conducting a business similar to the business of the Target Companies, and sufficient in all material respects for compliance with all applicable Laws and Contracts to which the Target Companies are a party. All premiums due and payable under such policies have been paid. No Target Company has received (and no insurer of any Target Company has threatened in writing or, to Seller's Knowledge, orally) any refusal of coverage or any notice that a defense will be afforded with reservation of rights or any notice of termination, cancellation, exclusion, premium increase (other than notices of annual premium increases), or alteration of coverage or any other indication that any policy of insurance listed on Schedule 4.22 is no longer in full force or effect or that the issuer of any policy of insurance listed on Schedule 4.22 is not willing or able to perform its obligations thereunder. No Target Company is in default under such insurance policies. No Target Company has any self-insurance or co-insurance programs. All such insurance policies will continue in full force and effect for the sole benefit of the Target Companies immediately following the consummation of the transactions contemplated hereby.

4.23 Transactions with Related Parties. Except as set forth on Schedule 4.23, (a) no supplier or customer of the Target Companies is a Related Party, (b) none of the Target Companies' assets are owned, used by, or leased to, directly or indirectly, any Related Party, (c) no Related Party is a party to any Material Contract, (d) no Related Party has any claim against or owes any amount to, or is owed any amount by, any Target Company, and (e) no Related Party is engaged in competition with any Target Company.

4.24 No Brokers or Finders. No Target Company has incurred or will incur, directly or indirectly, as a result of any action taken or permitted to be taken by or on behalf of any Target Party, any liability for brokerage or finders' fees or agents' commissions or similar charges in connection with the execution and performance of the transactions contemplated by this Agreement or the Transaction Documents.

4.25 Due Diligence Materials. To Sellers' knowledge, the documents listed on Schedule 4.25 (collectively, "**Due Diligence Materials**") include all of the material documents within Target Companies' or Sellers' possession or control that affect the operations, Liability or any other aspect of the Target Companies. To Sellers' knowledge, the Due Diligence Materials are true and complete copies thereof. Buyer acknowledges receipt of the Due Diligence Materials and further acknowledges and agrees that the Due Diligence Materials were obtained from a variety of sources, and that Seller makes no representations as to the accuracy or completeness of the information therein except as may otherwise be provided in this Agreement or in the instruments delivered to Buyer at Closing.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to each Seller that the statements contained in this ARTICLE V are true and correct as of the date of this Agreement and will be true and correct as of the Closing Date (except to the extent such representations and warranties expressly relate to a specific date, in which case the representations and warranties shall be true as of such specific date).

5.01 Organization; Standing and Power. Buyer is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to own, operate and lease its properties and to carry on its business as now being conducted.

5.02 Authority; Enforceability. Buyer has all requisite power and authority to execute and deliver this Agreement and the Transaction Documents to which it is a party and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby, and all action required on the part of Buyer for such execution, delivery and performance of this Agreement and the Transaction Documents to which it is a party have been duly and validly taken. This Agreement and the Transaction Documents to which Buyer is a party have been or will be, as applicable, duly and validly executed and delivered by Buyer and, assuming due execution and delivery by the Companies, Sellers and Sellers' Representative, as applicable, this Agreement and each of the Transaction Documents to which Buyer is a party constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms, except as enforceability thereof may be limited by bankruptcy, insolvency, moratorium and other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

5.03 No Conflicts. The execution and delivery by Buyer of this Agreement and each of the Transaction Documents to which it is a party does not, the performance and consummation by Buyer of the transactions contemplated hereby or thereby do not and will not (a) conflict with or result in a violation or breach of any Laws or Orders applicable to Buyer or any of Buyer's assets and properties or require any consent or approval of or any notice or filing with any Governmental Authority, regulatory body or other third party; or (b) conflict with or result in a violation or breach of, or default under, or give rise to any right of acceleration or termination of, any of the terms, conditions or provisions of any Contract to which Buyer is a party or by which Buyer's assets or properties are bound, which would adversely affect its ability to consummate the transactions contemplated hereby.

5.04 Legal Proceedings. There is no action, suit, claim, proceeding or investigation pending against or involving Buyer or its assets or properties in a matter that would adversely affect its ability to perform its obligations under this Agreement or any Transaction Documents to which it is a party.

5.05 No Brokers or Finders. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer.

## **ARTICLE VI COVENANTS**

For the purposes of this ARTICLE VI, the terms "Seller" and "Sellers" shall not include Fidelity Charitable unless expressly stated otherwise.

## 6.01 Pre-Closing Covenants.

(a) *General.* Between the Effective Date and the Closing Date, each party (including Fidelity Charitable) shall use commercially reasonable efforts to cause the conditions applicable to it as set forth in ARTICLE VII to be satisfied and the transactions contemplated by this Agreement to be consummated in accordance with their terms. Without limiting the foregoing, Sellers, the Target Companies and Buyer shall each use diligent and commercially reasonable efforts to satisfy the conditions precedent in Sections 7.01(e), 7.01(f) and 7.01(h) prior to the Outside Date, including by promptly providing any information reasonably requested by the applicable Persons providing the Required Consents or the lessors under the SD Lease and the Cabo Lease.

(b) *Access to Buyer.* From the Effective Date until the Closing, Sellers shall cause each Target Company to, (a) afford Buyer and its Representatives full and free access to and the right to inspect all of the Leased Real Property, properties, assets, premises, books and records, Contracts and other documents and data related to a Target Company during normal business hours upon forty eight (48) hours' advance written notice to Roberts; (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to a Target Company as Buyer or any of its Representatives may reasonably request, including, without limitation, documents referenced in the disclosure schedules but not provided to Buyer prior to the Effective Date; and (c) instruct the Representatives of the Target Companies to cooperate with Buyer with respect to the foregoing, provided that any such access shall be granted during normal business hours upon forty eight (48) hours' advance notice to Roberts and in such a manner as not to interfere with the normal operations of the Target Companies. Buyer and any of its Representatives shall exercise due care and ordinary prudence in performing any investigations hereunder and shall not cause or permit any damage or injury to be done to the Leased Real Property and shall promptly restore the Leased Real Property to such condition as existed prior to such investigations (to the extent Buyer's investigations caused damage or injury to the Leased Real Property). Buyer shall indemnify, defend and hold Sellers and the Target Companies harmless from and against any and all third-party Liabilities (exclusive of consequential, special, indirect or punitive damages except to the extent incurred by Sellers or the Target Companies as a result of claims by third parties), arising out of or resulting from any entry by Buyer and its Representative upon the Leased Real Property; provided, however, that Buyer shall not have any liability pursuant to this Section for (i) the mere discovery of any pre-existing conditions on, in or at the Leased Real Property (including any diminution in the Leased Real Property's market value on account thereof) except to the extent such pre-existing condition is exacerbated by such entry, discovery or inspection, or (ii) any liability due to the negligence or misconduct of Sellers or the Target Companies. The indemnity provisions of this Section shall survive the termination of this Agreement.

(c) *Operation of Business.* Except (i) as required by applicable Law or any Governmental Authority, (ii) as consented to in advance by Buyer in writing (which consent shall not be unreasonably conditioned, withheld, delayed or denied) or (iii) as otherwise expressly required by this Agreement or the Transaction Documents, from the Effective to the earlier of the Closing Date and the termination of this Agreement in accordance with Section 7.04, the Companies shall not, and shall cause any Target Company not to, undertake any of the following actions (other than transactions solely between the Target Companies):

(i) issue, sell, transfer, grant, encumber or pledge, or authorize or propose the issuance, sale, transfer, grant, pledge of or subject to any Encumbrance (in each case, other than Permitted Encumbrances) (A) equity securities of the Target Companies, or debt or equity securities convertible into or exchangeable for any such equity securities, or any subscriptions, rights, calls, phantom interests, warrants or options to acquire any such equity securities or other convertible securities of the Target Companies or (B) any other securities in respect of, in lieu of, or in substitution for equity securities of the Target Securities outstanding on the date hereof;

(ii) redeem, purchase, restructure or otherwise acquire or cancel any outstanding equity securities of the Target Companies;

(iii) (A) adopt any material amendment to the Governing Documents of the Target Companies or (B) split, reclassify or combine any of the equity securities of the Target Companies;

(iv) incur or assume any Liabilities or Indebtedness for borrowed money or guarantee any such Liabilities or Indebtedness in excess of \$100,000 for each occurrence or \$250,000 in the aggregate;

(v) except as required under the terms in existence as of the date hereof of any Benefit Plan in effect as of the Effective Date or as required by applicable Law, (A) increase or decrease, grant, or take any action to accelerate the payment, vesting or funding of, any compensation or benefits of any employee of a Target Company (except for immaterial annual base salary increases in the ordinary course of business for employees with annual compensation below \$100,000 both before and after any such increase), (B) pay or agree to pay any severance or termination pay, or change of control payment or benefit to any director, officer or employee of the Target Companies or (C) enter into, establish, adopt, terminate, amend, or modify any Benefit Plan (including any plan, program, agreement, policy or other arrangement that would be a Benefit Plan if it were in existence as of the date hereof), in each case of the foregoing clauses (A) through (C), other than ordinary course amendments or modifications to any Benefit Plan that is a health or welfare plan in connection with annual renewals;

(vi) except in the ordinary course of business, sell, lease, transfer, license, allow to lapse (other than upon the expiration of the term thereof, if applicable), assign, mortgage, pledge, subject to any Encumbrance (other than Permitted Encumbrances) or otherwise dispose of, any of its tangible property (including inventory), Leased Real Property, rights or assets that are material to a Target Company's business other than (A) inventory that is not material to the operation of a Target Company's business, (B) sales of obsolete assets or assets with de minimis value, and (C) distribution or transfer of the Excluded Assets to the Sellers or their Affiliates;

(vii) fail to maintain any Leased Real Property, including all of the improvements, in substantially the same condition as of the Effective Date, other than ordinary wear and tear, casualty and condemnations;

(viii) (other than among Target Companies) make any loans, advances or capital contributions or make any investment in or capital contribution to any other Person in excess of \$50,000 in the aggregate, except advances for travel and other reasonable business expenses to officers and employees in the ordinary course of business consistent with past practice;

(ix) (A) materially amend or terminate any Material Contract or any Real Property Leases or (B) enter into any new Contract which would have been a Material Contract or Real Property Lease had it been entered into prior to the Effective Date (in each case of clauses (A) and (B), other than bidding for, entering into or renewing Contracts with customers, distributors or suppliers in the ordinary course of business, (y) terminations of Contracts and Real Property Leases as a result of the expiration of the term of such Contracts or Real Property Leases and (z) renewals of Real Property Leases in the ordinary course of business);

(x) (A) acquire any business or Person or all or substantially all of the assets of any Person, by merger or consolidation, purchase of substantial assets or equity securities, or by any other manner, in a single transaction or a series of related transactions, or (B) enter into any joint venture;

(xi) (A) make any new capital commitments or capital expenditures greater than \$100,000 individually or \$200,000 in the aggregate; (B) acquire any ownership interest in any real property with an aggregate value that is greater than \$250,000 or (C) fail to make capital expenditures contemplated by a Target Company's current capital expenditure plan;

(xii) make any material change in any method of accounting or auditing practice other than those required by GAAP;

(xiii) make any changes to the Target Companies' historical practice, with respect to the payment of accounts payable or accrued expenses or the collection of the accounts receivable or other receivables, including any acceleration of the collection of any accounts receivable or deferral of the payment of accounts payable;

(xiv) engage in any trade loading practices or any other promotional sales or discount activity with any customers with the intent to accelerate to pre-Closing periods sales or trades that would otherwise be expected (based on past practice) to occur in post-Closing periods;

(xv) enter into, modify or amend any transaction or Contract with any Related Party or Affiliates of the Target Companies, other than terminating such arrangements at no cost to the Target Companies;

(xvi) make or change any material Tax election, file any material amended Tax Return, change any Tax accounting period, or settle any material Tax claim relating to the Target Companies, in each case, outside of the ordinary course of business;

(xvii) compromise or settle any claim or Action (including any settlement or consent to settlement of any material Tax claim) with an aggregate value that is greater than \$100,000, other than the payment or satisfaction of such claims or obligations disclosed in the Financial Statements in amounts no greater than the amount reserved with respect to the relevant Liability therein, or where the full amount of such claim (other than a commercially reasonable deductible no greater than \$100,000) is covered by insurance;

(xviii) adopt or effect a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization, exchange or readjustment of stock or units, stock or unit dividend or distribution or like change in the capitalization of the Target Companies (excluding distributions of the Excluded Assets, dividends or distributions of cash to the Sellers in the ordinary course of the business of the Target Companies, and/or dividends or distributions of cash in advance of Closing made for the purpose of reducing cash balances in the bank accounts of the Target Companies prior to Closing, subject to Sellers' compliance with the requirements of Section 6.01(g), in each case with written notice thereof provided to Buyer);

(xix) cancel or terminate any of its current material insurance policies;

(xx) recognize or certify any labor union, works council, labor organization, or other employee representative body as the representative of any employee of the any Target Company;

(xxi) implement or announce any employment site or facility closing, furlough, temporary layoff, or reductions in work force that would require delivery of notices under the WARN Act or state equivalent;

(xxii) hire, engage, or terminate (without cause), any employee whose annual compensation exceeds \$150,000;

(xxiii) waive or release any noncompetition, nonsolicitation, nondisclosure, noninterference, nondisparagement, or other restrictive covenant obligation of any current or former employee or independent contractor;

(xxiv) sell, assign, transfer, lease, license, abandon, permit to lapse, or otherwise encumber any Company Intellectual Property, except for non-exclusive licenses granted in the ordinary course of business; or

(xxv) authorize, commit or agree to take any of the foregoing actions.

(d) *Notice of Developments.* If Sellers, Sellers' Representative or a Company becomes aware prior to Closing of any event, fact or condition or nonoccurrence of any event, fact or condition that may constitute a breach of any representation, warranty, covenant or agreement contained in ARTICLE III or ARTICLE IV or may constitute a breach of any representation or warranty contained in ARTICLE III or ARTICLE IV if such representation or warranty were made on the date of the occurrence or discovery of such event, fact or condition or on the Closing Date, then Sellers' Representative shall promptly provide Buyer with a written description of such fact or condition. From the Effective Date until the Closing, Sellers, Sellers' Representative and each Company shall have the continuing obligation to promptly supplement the information contained in the Schedules with respect to any matter hereafter arising or discovered, which, if in existence on the date hereof and known at the Effective Date, would have been required to be set forth or described in the Schedules. Neither the supplementation of the Schedules pursuant to the obligation in this Section 6.01(d) nor any disclosure after the date hereof of the untruth of any representation or warranty made in this Agreement shall operate as a cure of the failure to disclose the information, or a cure of the breach of any representation or warranty made herein; and determination of any liability for breach of representations or warranties either at signing or at Closing shall be made without reference to any supplements and with reference only to the Schedules as it stands on the date of this Agreement. If any such event, condition, fact, or circumstance that is disclosed pursuant to this Section 6.01(d) (either individually or collectively with all other matters, events, conditions, facts, circumstances, or developments disclosed by such party after the Effective Date pursuant to this Section 6.01(d)) would result in a Material Adverse Effect, then within twenty (20) Business Days of the receipt of such written disclosure notice, this Agreement may be terminated by Buyer pursuant to Section 7.04(a)(v).

(e) *Exclusivity.* The Companies and Sellers agree that they will not, and will cause each of their respective directors, officers, managers, members, partners, employees, agents, consultants, lenders, financing sources, advisors or other Affiliates (including Subsidiaries) or Representatives, including legal counsel, accountants and financial advisors, not to, directly or indirectly (i) solicit, initiate or encourage any inquiry, proposal, offer or contact from any Person (other than Buyer and its Affiliates and Representatives) relating to any transaction involving (A) the sale of any equity or other ownership interest or any assets (other than the sale of goods and services in the ordinary course of business) or Indebtedness of any Target Company, (B) any acquisition, divestiture, merger, share or unit exchange, consolidation, redemption, financing or similar transaction involving a Target Company, (C) any sale or divestiture of any portion of the assets of a Target Company (other than sales of goods and services in the ordinary course of business consistent with past practice), or (D) any similar transaction or business combination involving a Target Company (in each case, an "**Acquisition Proposal**"), or (ii) participate in any discussion or negotiation regarding, or furnish any information with respect to, or assist or facilitate in any manner, any Acquisition Proposal or any attempt to make an Acquisition Proposal. The Companies and Sellers shall immediately cease, and cause to be terminated, any and all contacts, discussions and negotiations with third parties

regarding any of the foregoing, and the Target Companies and Sellers will notify Buyer immediately if any Person makes any proposal, offer, inquiry or contact related to an Acquisition Proposal and provide Buyer with the details thereof (including the Person making such offer, inquiry or contact and a copy of all written communication in connection therewith) and their response thereto.

(f) *Confidentiality.* Prior to the Closing, Buyer agrees not to, and shall cause its Affiliates not to, disclose or use any Confidential Information other than as required to close the transactions contemplated in this Agreement. In the event that Buyer or any Affiliate of Buyer is requested or required pursuant to written or oral question or request for information or documents in any legal Proceeding, interrogatory, subpoena, civil investigation demand, compliance with regulatory rules of a stock exchange or similar process to disclose any Confidential Information, Buyer will notify Sellers' Representative promptly of the request or requirement so that Sellers' Representative may seek an appropriate protective order or waive compliance with the provisions of this Section 6.01(f). If, in the absence of a protective order or the receipt of a waiver hereunder, Buyer is compelled to disclose any Confidential Information to any tribunal or else stand liable for contempt, Buyer may disclose the Confidential Information to the tribunal; provided, however, that Buyer shall use its commercially reasonable efforts to obtain, at the request of Sellers' Representative, an order or other assurance that confidential treatment will be accorded to such portion of the Confidential Information required to be disclosed as Sellers' Representative shall designate. The foregoing provisions shall not apply to any Confidential Information that is generally available to the public immediately prior to the time of disclosure unless such Confidential Information is so available due to the breach of this Agreement by Buyer or any Affiliate or Representative of Buyer.

(g) *Working Capital Allowance.* Sellers shall cause Marine Group Boat Works, LLC to ensure that the operating bank account of Marine Group Boat Works, LLC has cash in an amount equal to the Working Capital Allowance on deposit at the time of Closing. Conditioned upon and subject Sellers' compliance with the preceding sentence, Sellers shall have the right to cause the Target Companies and their respective Subsidiaries to distribute cash or pay dividends to the Sellers at any time prior to the Closing.

6.02 Expenses. Whether or not the Closing takes place, except as otherwise specifically provided herein, all Transaction Expenses shall be paid by the party incurring such expense.

6.03 Release by Sellers. If and only if the Closing occurs, Sellers, for each of themselves, and any of their respective Affiliates or subsidiaries, and each of their respective predecessors, successors, assigns, and past and present stockholders, members, partners, managers, directors, officers, employees, agents, and other Representatives (collectively, the "**Seller Releasors**"), hereby forever fully and irrevocably release and discharge Buyer, each Target Company, and each of their respective predecessors, successors, direct or indirect subsidiaries and past and present stockholders, members, partners, managers, directors, officers, employees, agents, Affiliates and other Representatives (collectively, the "**Buyer Released Parties**") from any and all actions, suits, claims, demands, Indebtedness, agreements, obligations, promises, judgments, or Liabilities of any kind whatsoever in law or equity and causes of action of every kind and nature, or otherwise (including, claims for damages, costs, expense, and attorneys', brokers' and accountants fees and expenses) arising out of or related to events, facts, conditions or circumstances existing or arising prior to the Closing Date, which the Seller Releasors can, shall or may have against the Buyer Released Parties, whether known or unknown, suspected or unsuspected, unanticipated as well as anticipated (collectively, the "**Seller Released Claims**"), and hereby irrevocably agree to refrain from directly or indirectly asserting any claim or demand or commencing (or causing to be commenced) any suit, action, or Action of any kind, in any court or before any tribunal, against any Released Party based upon any Seller Released Claim. Notwithstanding the preceding sentence of this Section 6.03, "**Seller Released Claims**" does not include, and the provisions of this Section 6.03 shall not release or otherwise diminish, the obligations of any party set forth in or arising under any provisions of this Agreement or the Transaction Documents (including for

the avoidance of ambiguity, any claim for indemnity under ARTICLE IX), or for any claims arising out of or related to any Buyer Released Party's Fraud.

6.04 Release by Buyer. and only if the Closing occurs, Buyer, for itself, and any of its respective Affiliates or subsidiaries, and each of their respective predecessors, successors, assigns, and past and present stockholders, members, partners, managers, directors, officers, employees, agents, the Target Companies and other Representatives (collectively, the "**Buyer Releasors**"), hereby forever fully and irrevocably release and discharge Sellers, and each of their respective predecessors, successors, direct or indirect subsidiaries and past and present stockholders, members, partners, managers, directors, officers, employees, agents, Affiliates and other Representatives (collectively, the "**Seller Released Parties**") from any and all actions, suits, claims, demands, Indebtedness, agreements, obligations, promises, judgments, or Liabilities of any kind whatsoever in law or equity and causes of action of every kind and nature, or otherwise (including, claims for damages, costs, expense, and attorneys', brokers' and accountants fees and expenses) arising out of or related to events, facts, conditions or circumstances existing or arising prior to the Closing Date, which the Buyer Releasors can, shall or may have against the Seller Released Parties, whether known or unknown, suspected or unsuspected, unanticipated as well as anticipated (collectively, the "**Buyer Released Claims**"), and hereby irrevocably agree to refrain from directly or indirectly asserting any claim or demand or commencing (or causing to be commenced) any suit, action, or Action of any kind, in any court or before any tribunal, against any Seller Released Party based upon any Buyer Released Claim. Notwithstanding the preceding sentence of this Section 6.04, "Buyer Released Claims" does not include, and the provisions of this Section 6.04 shall not release or otherwise diminish, the obligations of any party set forth in or arising under any provisions of this Agreement or the Transaction Documents (including for the avoidance of ambiguity, any claim for indemnity under ARTICLE IX), or arising out of or related to any Seller Released Party's Fraud.

6.05 Press Releases and Public Announcements. No party shall issue any press release or make any public announcement relating to the subject matter of this Agreement without the prior written approval of Buyer and Sellers' Representative, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, without the consent or participation of any Seller or Sellers' Representative, after the Closing, Buyer shall be permitted to issue press releases, make public announcements and communicate with employees, customers and suppliers and engage in capital raising efforts.

#### 6.06 R&W Insurance Policy.

(a) Concurrently herewith, Buyer has conditionally bound coverage under a representation and warranty insurance policy in respect of the representations and warranties contained in this Agreement or any certificate delivered in connection with this Agreement (an "**R&W Insurance Policy**"), as set forth on Exhibit D. Subject to Section 6.06(c) and clause (d) of the definition of Seller Expenses, Buyer will use commercially reasonable efforts, at its sole cost and expense, to fully bind the R&W Insurance Policy on or before the Closing. Sellers agree to reasonably cooperate with Buyer's efforts to obtain the R&W Insurance Policy. Buyer shall provide Seller with a reasonable opportunity to review and provide reasonable comments to the proposed R&W Insurance Policy prior to binding coverage.

(b) Subject to Section 6.06(c) and clause (d) of the definition of Seller Expenses, (i) Buyer shall timely pay all premiums and other amounts required to cause the R&W Insurance Policy to become effective in accordance with its terms, and (ii) Buyer shall not (and shall not permit any of its Affiliates (including, after the Closing, the Target Companies) to) take any action with the intention of causing the R&W Insurance Policy or the rights of any party thereunder to be terminated, cancelled or waived in a manner that would have an adverse impact on the Sellers or any of their Affiliates. If issued, the R&W Insurance Policy shall include a provision whereby the Insurer expressly irrevocably waives, and agrees not to pursue, directly or indirectly, any subrogation rights against any Seller or any of their respective

Affiliates with respect to any claim made by any insured thereunder, other than in connection with breach of Fundamental Representations or Fraud by such Seller or its Affiliate. Further, following its issuance, the Buyer shall not amend the subrogation or third-party beneficiary provisions (if any) contained in the R&W Insurance Policy benefiting the Sellers or their Affiliates or otherwise amend or modify the R&W Insurance Policy in a manner adverse to the Sellers or any of their Affiliates.

(c) In the event the aggregate cost to obtain the R&W Insurance (including any deposits and other costs previously paid by Buyer) exceeds \$[REDACTED], the retention or deductible under the R&W Insurance Policy increases, or the R&W Insurance Policy cannot be obtained despite Buyer's commercially reasonable efforts, or the R&W Insurance Policy cannot be obtained absent material requirements or limitations unacceptable to Buyer (acting reasonably), Buyer shall have the right (in its sole discretion) to elect by written notice to Sellers' Representative delivered on or before the Closing, not to proceed with obtaining the R&W Insurance Policy and, in such event, the Escrow Amount shall increase to [REDACTED], and the Buyer Indemnified Parties will have no obligation to seek Indemnifiable Losses from the R&W Insurance Policy.

(d) Notwithstanding anything to the contrary contained in this Agreement, no limitations (including any survival limitations and other limitations set forth in this ARTICLE IX), qualifications or procedures in this Agreement shall be deemed to limit or modify the ability of Buyer to make claims under or recover under the R&W Insurance Policy; it being understood that any matter for which there is coverage available under the R&W Insurance Policy shall be subject to the terms, conditions and limitations, if any, set forth in the R&W Insurance Policy.

6.07 Tail Insurance Policies. Effective immediately prior to the Closing, Sellers, at their own expense, shall cause the Target Companies to purchase tail policies (collectively, the "**Tail Policy**") for directors' and officers', employment practices, and fiduciary liability insurance. The Tail Policy will: (i) be effective for a period of six (6) years from and after the Closing with respect to claims arising from any facts, events, or wrongful act that occurred on or before the Closing; (ii) be in an amount and cover against such risks as is prudent and commercially standard to the transactions contemplated hereby, as mutually agreed by the parties; and (iii) provide coverage for each Target Company.

6.08 Benefit Plans and Insurance. Effective immediately prior to the Closing, Sellers, at their own expense, shall cause the Excluded Companies and the Target Companies to terminate any and all Benefit Plans and insurance policies (of any kind or nature) that are interrelated or otherwise jointly held or administered as between one or more Excluded Company, on the one hand, and one or more Target Companies, on the other hand, or in which their respective employees participate, or which constitute a "multiemployer plan", "multiple employer plan", "multiple employer welfare arrangement" or a "voluntary employees' beneficiary association". Sellers shall cooperate (and shall cause the Target Companies to cooperate) with Buyer's efforts to ensure that adequate replacement Benefit Plans and insurance policies are put into place for the Target Companies immediately following the Closing.

6.09 Employees. Effective immediately prior to the Closing, Sellers, at their own expense, shall cause the Excluded Companies to terminate the employment of the individuals listed on Schedule 6.09 and shall cause one of the Subsidiaries to immediately hire and employ such individuals on substantially the same monetary terms and benefits.

6.10 Free Trade Zone Agreement Site Removal. Effective immediately prior to Closing, Sellers, at their own expense, shall cause 600 Convention Way, San Diego, CA 92101 (Fifth Avenue Landings) to be removed as a FTZ area site under that certain San Diego Foreign-Trade Zone Operating Agreement, dated effective as of October 21, 2024, between the City of San Diego, a California municipal corporation, and Marine Group Boat Works, LLC, a California limited liability company.

6.11 Marine Group Boat Works los Cabos S de RL de CV Restructuring. Prior to Closing, Sellers, at their own expense, shall cause Marine Group Boat Works los Cabos S de RL de CV to be owned ninety-nine percent (99%) by Marine Group Los Cabos LLC and one percent (1%) by Marine Group Los Cabos II LLC. Sellers shall provide such documentation as reasonably requested by Buyer to evidence the restructuring and ownership of Marine Group Boat Works los Cabos S de RL de CV prior to Closing.

6.12 Further Assurances. If before or after the Closing any further action is necessary to carry out the purposes of this Agreement, each of the parties will take such further action (including the execution and delivery of such further instruments and documents) as any other party reasonably may request, all at the sole cost and expense of the requesting party (unless the requesting party is entitled to indemnification therefor under ARTICLE IX), including promptly executing and delivering all instruments and documents that may be necessary to remove or add signatories on any Target Company bank accounts or other accounts with financial institutions. Additionally, without limiting the foregoing, following Closing, Sellers agree to promptly deliver or pay over to Buyer (or the applicable Target Companies) (a) any monies or payments Sellers or their Affiliates receive from customers of the Target Companies, and (b) any other monies or payments received by Sellers or their Affiliates after the Closing in respect of the Interests or the Target Companies. Sellers acknowledge and agree that from and after the Closing, Buyer will be entitled to possession of all documents, books, records (including Tax records), agreements, and financial data of any sort relating to the Target Companies and the other assets of the Target Companies used in the operation of their respective businesses.

## **ARTICLE VII CONDITIONS TO OBLIGATION TO CLOSE; CLOSING; TERMINATION**

7.01 Conditions to Obligation of Buyer. The obligation of Buyer to consummate the transactions that are to be consummated at the Closing is subject to the satisfaction, as of the Closing Date, of the following further conditions (any of which may be waived by Buyer in whole or in part):

(a) All of the representations and warranties (other than the Fundamental Representations) set forth in ARTICLE III and ARTICLE IV or in any other Transaction Document must have been accurate in all material respects as of the Effective Date and must be accurate in all material respects as if made on the Closing Date, and all of the Fundamental Representations must have been accurate in all respects as of the date hereof and must be accurate in all respects as if made on the Closing Date (except to the extent in either case that such representations and warranties speak as of another date);

(b) The Sellers and the Target Companies, as applicable, shall, and shall have caused the Target Companies to, have performed or complied in all material respects with all covenants required by this Agreement to be performed or complied with by such parties at or prior to the Closing Date;

(c) Since the Effective Date, no Material Adverse Effect shall have occurred;

(d) There shall not be any Order in effect or Law enacted preventing consummation of any of the transactions contemplated by this Agreement or any Action seeking to restrain, prevent, change or delay the consummation of any of the transactions contemplated by this Agreement or the Transaction Documents;

(e) All of the Required Consents shall have been obtained and no such Required Consent shall have been revoked, expired or otherwise be ineffective or invalid;

(f) The Board of Port Commissioners of the lessor under the SD Lease shall have approved in open session entering into an amended and restated lease for the SD Property incorporating the material

terms set forth in Exhibit F attached hereto (“**Material Lease Term(s)**”) (and no additional terms that could reasonably be interpreted to be inconsistent with any Material Lease Term) which shall replace and supersede the SD Lease in all respects at or shortly following the Closing;

(g) The title company is unconditionally committed to issue the Leasehold Title Policy;

(h) (i) The lessor under the SD Lease shall have delivered a duly executed estoppel certificate duly in substantially the form attached hereto as Exhibit G, and (ii) the lessor under the Cabo Lease shall have delivered a duly executed estoppel certificate duly in substantially the form attached hereto as Exhibit H, each dated within thirty (30) days of Closing;

(i) The Companies shall have delivered to Buyer a Certificado de Situacion Fiscal from the Mexican Tax Authority (Certificate of Good Tax Standing) for each applicable Target Company (i.e., each Target Company domiciled in Mexico or for which such certificate may be issued) stating in each instance that there are no outstanding Tax liabilities of such Target Company.

**7.02 Conditions to Obligations Sellers.** The obligation of Sellers to consummate the transactions that are to be consummated at the Closing is subject to the satisfaction, as of the Closing Date, of the following further conditions (any of which may be waived by Sellers’ Representative in whole or in part):

(a) All of the representations and warranties (other than the Fundamental Representations) set forth in ARTICLE V or in any other Transaction Document must have been accurate in all material respects as of the Effective Date and must be accurate in all material respects as if made on the Closing Date, and all of the Fundamental Representations must have been accurate in all respects as of the date hereof and must be accurate in all respects as if made on the Closing Date (except to the extent in either case that such representations and warranties speak as of another date);

(b) Buyer shall have performed or complied in all material respects with all covenants required by this Agreement to be performed or complied with by it at or prior to the Closing Date; and

(c) There shall not be any Order in effect or Law enacted preventing consummation of any of the transactions contemplated by this Agreement or any Action seeking to restrain, prevent, change or delay the consummation of any of the transactions contemplated by this Agreement or the Transaction Documents.

**7.03 Closing.** Subject to the terms and conditions of this Agreement, including those set forth set forth in Sections 7.01 and 7.02, the closing (the “**Closing**”) shall take place remotely by means of facsimile, email or other electronic transmission on the Outside Date or on such other date or at such other location as the Buyer and Sellers’ Representative shall mutually agree (such date and time being herein referred to as the “**Closing Date**”). The Closing shall be deemed to occur at 11:59 p.m. Mountain Time on the Closing Date.

(a) At the Closing, Sellers shall deliver or cause to be delivered to Buyer the following:

(i) the Escrow Agreement, duly executed by Sellers and/or Seller’s Representative and the Escrow Agent; and

(ii) a certificate, in form and substance reasonably satisfactory to Buyer, confirming that each of the conditions specified above in Sections 7.01(a) through 7.01(f) are satisfied;

(iii) evidence reasonably acceptable to Buyer of each Seller's authority to enter into this Agreement and the Transaction Documents and to consummate the transactions contemplated pursuant hereto;

(iv) payoff letters relating to all Closing Indebtedness;

(v) one or more Restrictive Covenant Agreements executed by each of the Persons listed on Schedule 7.03(a)(v);

(vi) the resignations of each of the Persons listed on Schedule 7.03(a)(vi) as an employee, officer, director, management board member, and/or manager of all of the Target Companies, in such form as required by applicable Laws,

(vii) one or more assignments of the Interests, substantially in the form attached hereto as Exhibit J, duly endorsed for transfer by each Seller;

(viii) for each Seller, a non-foreign affidavit in form and substance required under Section 1.1445-2(b) of the IRS Treasury Regulations stating that such Seller is not a "foreign person" as defined in Section 1445 of the Code;

(ix) an IRS Form W-9 completed and duly executed by each Seller;

(x) evidence reasonably satisfactory to Buyer that all Related Party Agreements have been terminated as of the Closing Date or have been entered into on arms-length terms reasonably satisfactory to Buyer;

(xi) such documents as Buyer may reasonably request with respect to Roberts Trust admittance as a member of Buyer and the contribution of the Contributed Interests to Buyer (including an assignment of the Contributed Interests and the execution of the Buyer Operating Agreement), duly executed by Roberts Trust; and

(xii) such other customary instruments of transfer or assumption, filings or documents, as may be required to give effect to the transactions contemplated by this Agreement.

(b) At the Closing, Buyer shall:

(i) Cash in an amount equal to the Cash Consideration and allocated among the Sellers in accordance with each Seller's Overall Share (provided that Robert Trust's Overall Share of the Cash Consideration shall be calculated to exclude the portion of Robert Trust's Overall Share allocable to the Contributed Interest) minus the Escrow Amount;

(ii) pay to the Escrow Agent, in cash, an amount equal to the Escrow Amount;

(iii) pay to the holders of the Closing Indebtedness, the Closing Indebtedness set forth in the pay-off letters delivered pursuant to Section 7.03(a)(iv);

(iv) pay the Closing Seller Expenses in accordance with the instructions received from such Persons prior to the Closing; and

(v) issue to the Roberts Trust the Rollover Securities;

(vi) deliver a counterpart to the Escrow Agreement, duly executed by Buyer;

(vii) deliver such other customary instruments of transfer or assumption, filings or documents, as may be required to give effect to the transactions contemplated by this Agreement.

#### 7.04 Termination.

(a) *Termination.* This Agreement may be terminated at any time prior to the Closing Date:

(i) by mutual written consent of Sellers' Representative and Buyer;

(ii) by either Buyer or Sellers' Representative (on behalf of Sellers) if the conditions to closing of such party or parties as set forth in Sections 7.01 and 7.02, respectively, shall not have been satisfied or waived by it prior to April 30, 2025 (the "**Outside Date**"). The right to terminate this Agreement under this Section 7.04(a)(ii) shall not be available to any party if its breach under this Agreement has been the principal cause of or resulted in the failure of the Closing to occur on or before the Outside Date.

(iii) by Buyer, if Sellers or any Target Company, as applicable, shall have breached or failed to perform any of its representations, warranties, covenants, or other agreements contained in this Agreement, which breach or failure to perform would cause the conditions set forth in Section 7.01 at the Closing to not be satisfied by the Outside Date and which breach or failure, if capable of being cured, shall not have been cured prior to the earlier of (A) the Outside Date and (B) ten (10) calendar days following receipt by the Sellers' Representative of written notice of such breach or failure from Buyer, with specific reference to the alleged facts underlying such breach or failure and the conclusion it would lead to such conditions not being met;

(iv) by Sellers' Representative, if Buyer shall have breached or failed to perform any of its representations, warranties, covenants, or other agreements contained in this Agreement, which breach or failure to perform would cause the conditions set forth in Section 7.02 at the Closing to not be satisfied by the Outside Date and which breach or failure, if capable of being cured, shall not have been cured prior to the earlier of (i) the Outside Date or (ii) 10 calendar days following receipt by Buyer of written notice of such breach or failure from the Sellers' Representative, with specific reference to the alleged facts underlying such breach or failure and the conclusion it would lead to such conditions not being met; or

(v) by Buyer, if there is a Material Adverse Effect or as set forth in Section 6.01(d).

(b) *Termination Procedures.* If Sellers' Representative or Buyer exercise their right to terminate this Agreement pursuant to Section 7.04(a), it shall deliver to the other party a written notice specifying a reasonably detailed basis for termination.

(c) *Effect of Termination.*

(i) If this Agreement is terminated and the transactions contemplated hereunder are abandoned as described in Section 7.04(a), this Agreement shall become null and void and of no further force and effect and there shall be no liability on the part of any party or any of its Affiliates, directors, officers, shareholders, partners, members or Representatives, except (i) that the provisions of Section 3.06 (Brokers), Section 4.24 (No Brokers or Finders), Section 5.05 (No Brokers or Finders), Section 6.01(b) (Pre-Closing Indemnity), Section 6.01(f) (Confidentiality), Section 6.02 (Expenses), Section 6.05 (Press Releases and Public Announcements), this Section 7.04(c) (Effect of Termination) and Section 10.14 (Sellers' Representative) shall survive termination, and (ii) following the termination of this Agreement, nothing herein shall relieve any party from liability for any Fraud or intentional and material breach of this Agreement.

(ii) In the event of a termination of this Agreement by Buyer pursuant to Section 7.04(a)(iii); as Buyer's sole and exclusive remedy for such termination, the Sellers and the Target Companies, jointly and severally, shall pay to Buyer the Termination Fee within ten (10) Business Days of such termination.

(iii) In the event of termination of this Agreement by Sellers' Representative pursuant to Section 7.04(a)(iv), as Seller's sole and exclusive remedy for such termination, Buyer shall pay to Sellers the Termination Fee within ten (10) Business Days of such termination. For the avoidance of doubt, if a Termination Fee is paid to the Sellers, the Termination Fee shall be paid to each Seller in proportion to such Seller's Overall Share.

(iv) In the event of termination of this Agreement for any reason other than pursuant to Section 7.04(a)(iii) or Section 7.04(a)(iv), this Agreement shall become null and void and of no further force and effect and there shall be no liability on the part of any party or any of its Affiliates, directors, officers, shareholders, partners, members or Representatives.

## ARTICLE VIII TAX MATTERS

8.01 Intended Tax Treatment; Allocation of Purchase Price Among Companies. The parties hereto agree and acknowledge that, for U.S. federal (and applicable state and local) Income Tax purposes, Sellers' sale of the Purchased Interests to Buyer in exchange for the Purchase Price (together with any adjustments to the Cash Consideration in accordance with this Agreement and any assumed Liabilities and any other amounts treated as taxable consideration for Income Tax purposes) is intended to be treated from the Seller's perspective as a sale of membership interests in the Companies (collectively, the "**Intended Tax Treatment**"). The parties hereto agree and acknowledge that the Purchase Price shall be allocated among the Companies as set forth on Exhibit B.

### 8.02 Tax Returns.

(a) Sellers' Representative shall, at its own expense, prepare or cause to be prepared all Tax Returns required to be filed by the Target Companies for all Pre-Closing Tax Periods ("**Seller Tax Returns**"). Sellers' Representative shall timely file or cause to be timely filed (taking into consideration applicable extensions) all Tax Returns required to be filed by the Target Companies prior to the Closing Date and, with respect to "flow-through" income Tax Returns, all Seller Tax Returns for all Pre-Closing Tax Periods. Seller Tax Returns shall be prepared in a manner consistent with the past practices of the Target Companies except to the extent necessary to reflect the transactions described in this Agreement and as required by applicable Law. Buyer shall provide Sellers' Representative with access to the books and records of the Target Companies as reasonably necessary to allow Sellers' Representative to prepare or cause to be prepared Seller Tax Returns. Sellers' Representative shall deliver or cause to be delivered a copy of each Seller Tax Return to Buyer at least thirty (30) days prior to the date on which such Tax Return is required to be filed (taking into consideration applicable extensions) for Buyer's review, comment and approval provided, however, if such thirty (30) day period is not practical for such Tax Return, Sellers' Representative shall provide a copy of such Tax Return to Buyer as soon as commercially reasonable. Buyer shall review such Tax Returns within fifteen (15) days after the delivery of such Tax Returns. In connection with Buyer's review, Sellers' Representative shall provide or cause to be provided promptly to Buyer information reasonably requested by Buyer, its Affiliates or its Representatives. If Buyer submits comments to Sellers' Representative within such review period, Buyer and Sellers' Representative shall negotiate in good faith to resolve any such items disputed in such comments. If Buyer and Sellers' Representative are unable to resolve any such dispute within ten (10) days after Buyer provides its comments, the parties shall resolve the dispute in accordance with Section 8.02(c). Buyer shall timely file

or cause to be timely filed all Seller Tax Returns (as finalized pursuant to this Section 8.02(a)) required to be filed by a Target Company and due after the Closing Date.

(b) Buyer, at Buyer's expense, shall prepare or cause to be prepared and timely file or cause to be timely filed any and all Tax Returns required to be filed for the Target Companies for a Straddle Period. Buyer shall deliver a copy of such Tax Returns to Sellers' Representative at least thirty (30) days prior to the date on which such Tax Return is required to be filed (taking into consideration applicable extensions) for Sellers' Representative's review and comment; provided, however, if such thirty (30) day period is not practical for such Tax Return, Buyer shall provide a copy of such Tax Return to Seller as soon as commercially reasonable. Sellers' Representative shall review such Tax Returns within fifteen (15) days after the delivery of such Tax Returns. In connection with the Sellers' Representative's review, Buyer shall provide or cause to be provided promptly to Sellers' Representative information reasonably requested by Sellers' Representative or its Representatives. If Sellers' Representative does not submit comments within such review period, Sellers' Representative (and Sellers) will be deemed to have approved such Tax Returns as prepared by Buyer. If Sellers' Representative submits comments to Buyer within such review period, Buyer and Sellers' Representative shall negotiate in good faith to resolve any such items disputed in such comments. If Buyer and Sellers' Representative are unable to resolve any such dispute within ten (10) days after Seller provides its comments, the parties shall resolve the dispute in accordance with Section 8.02(c). Sellers shall bear and pay (A) the amount of Taxes due and owing on the Tax Returns for any Pre-Closing Tax Period, and (B) the amount of Taxes attributable to any Pre-Closing Straddle Period (as hereafter defined) due and owing on the Tax Returns for a Straddle Period of the Target Companies as determined in accordance with Section 8.04.

(c) In the event that Buyer and Sellers' Representative are unable to agree on any timely-raised issue raised by the other party pursuant to Section 8.02 or Section 8.02(b), Buyer and Sellers' Representative shall engage the Designated Accounting Firm to resolve the matter, and the Designated Accounting Firm's determination shall be final and binding on the parties. The Designated Accounting Firm shall resolve the dispute within twenty (20) days after the item has been referred to it. Notwithstanding anything to the contrary in this Section 8.02, the party responsible pursuant to Section 8.02 or Section 8.02(b) for preparing the disputed Tax Return shall be entitled to file on behalf of the Target Companies, or cause to be filed, the applicable Tax Return without having incorporated the disagreed upon changes to avoid a late filing of such Tax Return. If the Designated Accounting Firm's resolution of the dispute necessitates that a Tax Return filed in accordance with the previous sentence be amended, then the party responsible pursuant to Section 8.02 or Section 8.02(b) for preparing the disputed Tax Return shall cause an amended Tax Return to be filed that reflects such resolution (or, in the case of a federal income Tax Return with respect to an entity taxed as a partnership where an amended return is not allowed, an Administrative Adjustment Request, with a corresponding push-out election pursuant to Section 6226(a) of the Code). The fees and expenses of the Designated Accounting Firm shall be borne by each party in the percentage inversely proportionate to the percentage of the total amount submitted for dispute resolution that is resolved in such party's favor.

**8.03 Cooperation.** The parties shall cooperate, as and to the extent reasonably requested by any other party, in connection with any matter with respect to Taxes. Sellers' Representative agrees to retain all material books and records with respect to Tax matters pertinent to the Target Companies relating to any Pre-Closing Tax Period or Pre-Closing Straddle Period until the expiration of the statute of limitations (and, to the extent notified by Buyer, any extensions thereof) applicable thereto and to abide by all record retention agreements entered into with any Governmental Authority. Further, Sellers' Representative agrees to (i) provide to Buyer such records and information in Sellers' Representatives' possession or control that are reasonably relevant to any Tax Return required to be filed by Buyer with respect to the Target Companies, and (ii) give Buyer reasonable written notice prior to transferring, destroying, or discarding any such books and records and, upon the reasonable request of Buyer, shall allow Buyer to

make copies of such books and records. Straddle Period. To the extent permitted or required by Law or administrative practice, the taxable year of each Target Company shall be treated as closing on (and including) the Closing Date. In the case of any taxable period that includes (but does not end on) the Closing Date (a “**Straddle Period**”), the amount of any Tax based on or measured by income, profits, payroll, or receipts imposed upon or payable by or with respect to a Target Company for the portion of a Straddle Period that ends on the Closing Date (“**Pre-Closing Straddle Period**”) shall be determined based on an interim closing of the books as of the end of the Closing Date, and the amount of any other Taxes for a Pre-Closing Straddle Period shall be deemed to be the amount of such Tax for the entire taxable period multiplied by a fraction, the numerator of which is the number of days in the taxable period ending on and including the Closing Date and the denominator of which is the number of days in the Straddle Period. Tax Proceeding. Each of Buyer, on one hand, and Sellers’ Representative, on the other hand, shall promptly notify the other in writing upon receipt (including receipt by Affiliates of Buyer or Sellers’ Representative,) of any written notice of any pending or threatened federal, state, local or foreign Proceeding that might reasonably be expected to affect the Tax Liabilities of the Target Companies, Sellers, or Buyer (a “**Tax Proceeding**”) with respect to any Pre-Closing Tax Period or any Straddle Period. With respect to a Tax Proceeding that pertains to a Tax Return other than a federal income Tax Return for a Target Company for a Pre-Closing Tax Period, Sellers’ Representative shall have the right to control any such Tax Proceeding and to employ counsel of its choice at its expense; provided, however, Buyer and its representatives shall be permitted, at Buyer’s expense, to be present at, and participate in, any such Tax Proceeding. With respect to any Tax Proceeding that pertains to a federal income Tax Return for a Target Company for a Pre-Closing Tax Period, (i) Sellers’ Representative shall make (or cause to be made by the Partnership Representative of the applicable Target Company) an election for the Target Company under Section 6226(a) of the Code and Treasury Regulation Section 301.6227-2(c) (or any similar provisions of U.S. federal, state, local or non-U.S. Laws) or, at the determination of Buyer, an election under Section 6225(c), in each case with respect to the alternative to payment of any “imputed underpayment” (within the meaning of Section 6225 of the Code and any similar provisions of U.S. federal, state or local or non-U.S. Laws) for such Pass-Through Tax Return; provided that if such an election is not made, Buyer shall control such Tax Proceeding at Sellers’ cost and expense; (ii) Buyer (or its advisors) may fully participate at Buyer’s sole expense in any Tax Proceeding; and (iii) Sellers’ Representative shall not settle any Tax Proceeding in a manner that would adversely affect Buyer or a Target Company without the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed). Buyer shall, and shall cause the applicable Target Company to, provide duly completed powers of attorney to permit the foregoing. If Sellers’ Representative does not timely elect to control a Tax Proceeding that pertains to a Pre-Closing Tax Period, Buyer shall have the right to assume control of such Tax Proceeding and Sellers’ Representative shall cooperate to provide Buyer with all applicable rights to enable such control. With respect to any other Tax Proceeding that pertains to a Pre-Closing Tax Period or Straddle Period, Buyer shall have the sole right to control any such Tax Proceeding, and to employ counsel of its choice; provided, however, Sellers’ Representative and its Representatives shall be permitted, at Sellers’ expense, to be present at, and participate in, any such Tax Proceeding. Neither Sellers’ Representative nor any of its Affiliates (with respect to a Tax Proceeding involving a Tax Return for a Pre-Closing Tax Period), and neither Buyer nor any of its Affiliates (with respect to any other Tax Proceeding involving a Pre-Closing Tax Period or Straddle Period) shall be entitled to settle, either administratively or after the commencement of litigation, any claim for Taxes that could reasonably be expected to adversely affect the Liability for Taxes for which the other party may be liable under this Agreement without the prior written consent of the other party (which shall not be unreasonably delayed, conditioned or withheld). Notwithstanding any provision of this Agreement to the contrary, to the extent that a provision of this Section 8.05 directly conflicts with any provision of Section 9.05, this Section 8.05 shall govern.

8.06 Tax Sharing Agreements. Any Tax-sharing agreements or similar agreements (whether written or not) with respect to or involving any Target Company shall be terminated as of the Closing Date. After the Closing Date, no Target Company shall be bound thereby or have any Liability thereunder.

8.07 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration and other such Taxes and fees (including any penalties and interest) (collectively, “**Transfer Taxes**”) incurred in connection with this Agreement shall be paid by the Sellers when due. The Sellers will, at their own expense, file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes, and, if required by applicable Law, Buyer will join in the execution of any such Tax Returns and other documentation.

8.08 Tax Refunds. Any refund of Taxes of the Target Companies for any Pre-Closing Tax Period shall be for the account of Sellers, less any cost or expense reasonably incurred by the Target Companies in obtaining such return or credit including, without limitation, the filing of amended returns, costs of contest, interest or penalties (as allocated to the period on or prior to the Closing Date), and shall be paid by the applicable Target Company to Sellers within thirty (30) days after Buyer or a Target Company receives such refund. Sellers agree to repay to Buyer any amount paid pursuant to this Section 8.08 (plus any interest, penalties or other charges imposed by the relevant Governmental Authority) in the event that Buyer or its Affiliates (including the Target Companies) is required to repay such refund to such Governmental Authority.

8.09 Amendments. Without the prior written consent of Buyer (not to be unreasonably withheld), Sellers shall not, to the extent it may affect, or relate to, a Target Company, make, change or rescind any Tax election, amend any Tax Return or take any position on any Tax Return, take any action, omit to take any action or enter into any other transaction that would have the effect of increasing the Tax Liability or reducing any Tax asset of Buyer or a Target Company in respect of any Post-Closing Tax Period.

## **ARTICLE IX INDEMNIFICATION**

9.01 Survival of Representations, Warranties and Covenants. Except as to (a) the Fundamental Representations which shall survive the Closing and remain in effect for six (6) years, and (b) claims for indemnification related to Fraud, which shall survive the Closing and remain in effect for the applicable statute of limitations, the representations and warranties contained in ARTICLE III, ARTICLE IV, and ARTICLE V shall survive the Closing until the date that is one (1) year following the Closing Date. All covenants and agreements that contemplate performance after the Closing Date will survive the Closing for the period contemplated in accordance with their express terms, and if no time periods are specified therein, then such covenants and agreements shall survive indefinitely or until the latest date permitted by Law. Notwithstanding anything in this Section 9.01 to the contrary, (i) if written notice of a claim for indemnification shall have been given in accordance with the terms of this Agreement on or prior to the expiration of the applicable survival period specified herein, then the representations, warranties, covenants, and agreements that are the subject of such claim will survive (with respect to such claim) until such time as such claim has been fully and finally resolved; and (ii) any claim for indemnification based on Fraud will survive the Closing indefinitely.

9.02 Limitations on Liability.

(a) Subject to the limitations and procedures of this Agreement, any indemnification claim under Section 9.03(a) shall be payable by the applicable Seller.

(b) No Seller will have any liability under Section 9.03(a)(ii) with respect to any breach of any covenant or agreement made by any other Seller.

(c) Except with respect to a claim based on Fraud or a breach of a Fundamental Representation, the Buyer Indemnified Parties shall be entitled to indemnification under Section 9.03(b)(i) only if the aggregate amount of all Indemnifiable Losses incurred exceeds an amount equal to one-half of the retention

amount listed under the R&W Insurance Policy (the “**Deductible**”), in which case the Buyer Indemnified Parties shall be entitled to indemnification for the aggregate amount of all such Indemnifiable Losses in excess of the Deductible up to an aggregate amount equal to \$ [REDACTED] (the “**Cap**”), provided that Indemnifiable Losses satisfied by the R&W Insurance Policy shall not count toward the Cap (i.e., only amounts paid from the Deductible, from the Escrow Amount or which are otherwise paid by Sellers shall count toward the Cap), subject to the other limitations in this ARTICLE IX.

(d) Notwithstanding anything in this Agreement to the contrary and for the avoidance of doubt, none of the limitations on indemnification set forth in this Section 9.02 shall apply to any indemnification claims arising out of, relating to, or resulting from Fraud.

(e) Sellers shall not be liable under this ARTICLE IX for any Indemnifiable Losses based upon or arising out of any inaccuracy in or breach of any of the representations or warranties of Seller or the Target Companies contained in this Agreement (including without limitation, Sellers’ failure to disclose any matter required to be disclosed pursuant to this Agreement), if the Buyer Indemnified Party is deemed to have actual knowledge of the inaccuracy or breach prior to the Closing. For the purpose of determining actual knowledge in accordance with the preceding sentence, a party shall be deemed to have actual knowledge of an inaccuracy or breach of a representation or warranty if such breach or inaccuracy is reasonably apparent from the Due Diligence Materials provided to Buyer with respect to the transactions contemplated by this Agreement.

(f) From and after the Closing, the Sellers shall not and shall cause their Affiliates not to seek indemnification or contribution from the Buyer or any of the Target Companies (including by reason of the fact that such Seller or Affiliate thereof was a director, manager, member, officer, employee, or agent of any of the Target Companies) for any breaches or in respect of any other payments required to be made by the Sellers pursuant to this Agreement or any other transaction document contemplated hereby.

(g) All Indemnity Payments made under this Agreement shall be treated by the parties as an adjustment to the Cash Consideration for Tax purposes, unless otherwise required by Law.

(h) Notwithstanding Seller’s limited and qualified representations and warranties set forth in Section 4.19, Buyer understands and acknowledges that Buyer shall have sole and exclusive liability for all Environmental Claims that arise in whole or in part, directly or indirectly, from or in connection with, the presence or Release of Hazardous Material in, on, under or about the Leased Real Property from and after the Closing Date, except that Seller acknowledges and agrees that this Section does not absolve Seller from any claim of fraud or intentional misrepresentation, or from its breach of the representations and warranties set forth in Section 4.19 as Buyer is materially relying on Seller’s representations and warranties therein.

(i) Notwithstanding anything to the contrary in this Agreement or any Transaction Document, each party hereto acknowledges that Fidelity Charitable is a public charity and agrees that the Fidelity Charitable is not (a) making any of the representations and warranties set forth in this Agreement other than those set forth in Sections 3.01, 3.02, 3.03, 3.04, 3.05 and 3.06, and, in each such case, solely as to Fidelity Charitable and not as to any of the other Sellers, (b) agreeing to any covenants other than its covenant to convey to Buyer at Closing the Interests held by Fidelity Charitable and such other covenants expressly set forth as being an obligation of Fidelity Charitable in this Agreement, or (c) agreeing to any indemnification obligations, including, without limitation, those set forth in ARTICLE IX of this Agreement, except to the extent relating to a breach of Fidelity Charitable’s representations and warranties set forth in this Agreement in Sections 3.01, 3.02, 3.03, 3.04, 3.05 and 3.06. The aggregate amount of all obligations of Fidelity Charitable hereunder shall not exceed Fidelity Charitable’s Overall Share of the Purchase Price and such obligations shall be satisfied solely and exclusively from the Purchase Price or the Escrow Amount. Except as expressly set forth herein, in no event shall Buyer or any Buyer Indemnified Party be entitled to bring

any claims for indemnification or pursue any other recourse, at law or in equity, from or against the Fidelity Charitable arising from or relating to the Agreement or any Transaction Document or through state, federal or local laws. Notwithstanding the foregoing, all Sellers (other than Fidelity Charitable) shall remain jointly and severally liable for any breaches by Fidelity Charitable of its representations, warranties, covenants or other obligations under this Agreement.

### 9.03 Indemnification.

(a) *Sellers' Several Indemnification.* From and after the Closing and subject to the limitations set forth herein, each Seller, severally and not jointly, shall indemnify the Buyer Indemnified Parties for all Indemnifiable Losses resulting from, arising out of, or in connection with: any inaccuracy in or breach of any representation or warranty made by such Seller in ARTICLE III.

(b) *Sellers' Joint and Several Indemnification.* Each Seller agrees to jointly and severally indemnify, defend and hold harmless Buyer, its Affiliates, members, stockholders, Representatives and each person who controls any of them (collectively, the “**Buyer Indemnified Parties**”) from and against any and all Indemnifiable Losses to the extent relating to, resulting from or arising out of:

(i) any inaccuracy in or breach of a representation or warranty under ARTICLE IV, the Transaction Documents or under any schedule, certificate or exhibit related hereto or thereto;

(ii) any breach or nonfulfillment of any agreement, obligation or covenant made (x) by a Target Company in this Agreement that is to be performed prior to the Closing or (y) the Sellers that is to be performed at or following the Closing;

(iii) any Third-Party Claim or Liability (but only to the extent such Liability was not fully accrued as a current liability in the calculation of Working Capital) based upon, resulting from or arising out of the business, operations, properties, assets, or obligations of Sellers, the Target Companies, or any of their respective Affiliates conducted, existing or arising prior to the Closing (regardless of whether or not such Third-Party Claim or Liability relates to or results from the breach of any representation or warranty under ARTICLE III or ARTICLE IV);

(iv) any Transaction Expenses (including, without limitation, Seller Expenses) arising out of or related to this Agreement or the Transaction Documents that are an obligation of any Seller;

(v) any claim with respect to Fraud;

(vi) any matters specified on Schedule 9.03(b)(vi);

(vii) any Indebtedness of the Target Companies existing or arising out of or associated with any period prior to the Closing, solely to the extent such Indebtedness was not paid at or prior to the Closing, or otherwise included in the calculation of Closing Indebtedness; and

(viii) any and all (A) Taxes of (1) any Target Company for any Pre-Closing Tax Period, including for the avoidance of doubt, state and local gross receipts Taxes of any Target Company for any Pre-Closing Tax Period; (2) any Seller, regardless of the taxable period to which such Taxes relate, including the portion of any Transfer Taxes that is payable by any Seller pursuant to Section 8.07; (3) any member of an affiliated, consolidated, combined or unitary group of which a Target Company (or any of its predecessors, whether by merger, amalgamation, conversion or otherwise) is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulations Section 1.1502-6 or any analogous or similar Law, and (4) any Person (other than the Target Companies) imposed on or payable by a Target

Company as a transferee or successor, by Contract or pursuant to any Law which Taxes relate to an event or transaction occurring before the Closing Date, but only if such transferee or successor relationship, contract or other condition imposing liability existed prior to the Closing Date; (B) Taxes imposed upon the Buyer or its Affiliates pursuant to Section 951 or Section 951A of the Code with respect to any interest held in any Target Company treated as a “controlled foreign corporation” (as that term is defined in Section 957 of the Code) with respect to earnings and profits from a Pre-Closing Tax Period; and (C) reasonable out-of-pocket costs or expenses incurred in defending any proceeding with respect to any Tax or Tax Return of any Target Company relating to any Pre-Closing Tax Period or any other Tax that if paid would be referenced in clauses (A) (whether or not such proceeding results in any indemnification obligation for Taxes pursuant to this Section 9.03(b)(viii)).

(c) *Buyer’s Indemnification.* Buyer agrees to indemnify, defend and hold harmless the Sellers and their respective Representatives (collectively, the “**Seller Indemnified Parties**”) from and against any and all Indemnifiable Losses to the extent relating to, resulting from or arising out of:

(i) any inaccuracy in or breach of by Buyer of a representation or warranty in ARTICLE V, the Transaction Documents or under any schedule, certificate or exhibit related hereto or thereto;

(ii) any Transaction Expenses arising out of or related to this Agreement or the Transaction Documents that are an obligation of Buyer;

(iii) any breach or nonfulfillment of any agreement, obligation or covenant to be performed by of Buyer under the terms of this Agreement, the Transaction Documents or any schedule, certificate, or exhibit related hereto or thereto; and

(iv) other than Indemnifiable Losses described in Section 9.03(a) or Section 9.03(b), the executory obligations of the Target Companies accruing or arising after the Closing under the Real Property Leases or under other Contracts transferred to Buyer at Closing, or arising from or related to the operations of the Target Companies after the Closing including, without limitation any Environmental Claim arising from or related to the Target Companies’ or their predecessor’s possession or control of the premises described in the Real Property Leases and, with respect to Environmental Claims only, without regard to whether the facts and circumstances giving rise to such Environmental Claim occurred before or after the Closing. For the avoidance of doubt, in the absence of Sellers’ obligation to indemnify Buyer Indemnified Parties pursuant to Section 9.03(a) or Section 9.03(b), all Liabilities arising from or related to the operations of the Target Companies after Closing (and, with respect to Environmental Claims only, without regard to whether the facts and circumstances giving rise to such Environmental Claim occurred before or after the Closing) shall be borne by Buyer.

**9.04 Payment of Indemnifiable Losses.** Subject to the applicable limitations set forth in this ARTICLE IX, any amounts due by Sellers pursuant to Sections 9.03(a) or 9.03(b) will be paid as follows:

(a) if any amounts are payable in connection with Indemnifiable Losses under Section 9.03(a) or Section 9.03(b) (other than claims with respect to any breach of a Fundamental Representation, claims involving Fraud, or in connection with Indemnifiable Losses under Section 9.03(b)(vi)), (A) first, such amounts shall be applied by Buyer toward the Deductible until Indemnifiable Losses have been incurred in the amount of the Deductible, (B) second, to the extent any such amounts remain unsatisfied after application of the Deductible, such amounts shall be satisfied by Seller from the Escrow Fund, until such Indemnifiable Losses have been paid in full or the Escrow Fund then available and not subject to any prior claim for Indemnifiable Losses has been reduced to zero, (C) third, to the extent Indemnifiable Losses are covered by the R&W Insurance Policy, by making and pursuing a claim against the R&W Insurance Policy

until denied by the Insurer (it being understood that to the extent there is any remaining deductible or retention amount under the R&W Insurance Policy, such amount shall be satisfied by Buyer, in immediately available cash), and (D) fourth, from the Sellers, jointly and severally, in immediately available cash;

(b) if any amounts are payable in connection with Indemnifiable Losses (i) under Section 9.03(b)(vi), or (ii) under Section 9.03(b)(i) with respect to any breach of a Fundamental Representation, or (iii) which involve Fraud, at Buyer's election, such amounts may be satisfied in any one or more of following ways (A) from the Escrow Fund, (B) to the extent any such Indemnifiable Losses are covered by the R&W Insurance Policy, by making and pursuing a claim against the R&W Insurance Policy until denied by the Insurer (it being understood that to the extent there is any remaining deductible or retention amount under the R&W Insurance Policy, such amount shall be satisfied by Sellers, jointly and severally, in immediately available cash); and/or (C) from the Sellers, jointly and severally, in immediately available cash; and

(c) If any amounts claimed by Buyer Indemnified Parties to be Indemnifiable Losses under this ARTICLE IX are not covered by the R&W Insurance Policy as a direct result of Buyer's failure to comply in all material respects with Section 6.06(b), including without limitation, Buyer's obligation to pay all premiums and other amounts required to be paid to cause the R&W Insurance Policy to remain in effect for a period of 6 years from the Closing Date, that portion of such claimed Indemnifiable Losses that would have otherwise been satisfied by the R&W Insurance Policy shall be deemed satisfied for all purposes under this ARTICLE IX.

Any amounts remaining in the Escrow Fund as of the twelve (12) month anniversary of the Closing Date that are not subject to any prior claim for Indemnifiable Losses, shall be returned to Sellers in accordance with the Escrow Agreement. Notwithstanding anything to the contrary in this Agreement, Seller expressly agrees that the denial of any claim made by any Buyer Indemnified Party under the R&W Insurance Policy shall not be construed as, used as evidence that, or be res judicata that, such Buyer Indemnified Party is not entitled to indemnification from Sellers under ARTICLE IX.

#### 9.05 Indemnification Procedures.

(a) If any Indemnitee receives notice of a Third-Party Claim against such Indemnitee with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnitee shall give the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnitee shall describe the Third-Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Indemnifiable Loss that has been or may be sustained by the Indemnitee. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnitee, to assume the defense of any Third-Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel, and the Indemnitee shall cooperate in good faith in such defense; provided, that if the Indemnifying Party is a Seller, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third-Party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier, customer, current or former employee, or independent contractor of a Target Company (other than the Gradilla Action, the defense of which shall be assumed by Sellers subject to the provisions of this Section 9.05) or (y) seeks an injunction or other equitable relief against the Indemnitee. In the event that the Indemnifying Party assumes the defense of any Third-Party Claim, subject to Section 9.05(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third-Party Claim in the name and on behalf of the Indemnitee. The Indemnitee shall have the right, at its own cost and expense, to participate in the defense of any Third-Party Claim with counsel selected by it subject

to the Indemnifying Party's right to control the defense thereof. If the Indemnifying Party elects not to compromise or defend such Third-Party Claim or does not have the right to do so or fails to promptly notify the Indemnitee in writing of its election to defend as provided in this Agreement, the Indemnitee may, subject to Section 9.05(b), pay, compromise, defend such Third-Party Claim and seek indemnification for any and all Indemnifiable Losses based upon, arising from or relating to such Third-Party Claim. Seller's Representative and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third-Party Claim, including making available records relating to such Third-Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third-Party Claim.

(b) Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third-Party Claim without the prior written consent of the Indemnitee (which consent shall not be unreasonably withheld, conditioned or delayed), except as provided in this Section 9.05(b). If a firm offer is made to settle a Third-Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnitee and provides, in customary form, for the unconditional release of each Indemnitee from all liabilities and obligations in connection with such Third-Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnitee. If the Indemnitee fails to consent to such firm offer within ten (10) days after its receipt of such notice, the Indemnitee may continue to contest or defend such Third-Party Claim and, in such event, the maximum liability of the Indemnifying Party as to such Third-Party Claim shall not exceed the amount of such settlement offer. If the Indemnitee fails to consent to such firm offer and also fails to assume defense of such Third-Party Claim, the Indemnifying Party may settle the Third-Party Claim upon the terms set forth in such firm offer to settle such Third-Party Claim. If the Indemnitee has assumed the defense pursuant to Section 9.05(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed).

(c) Any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third-Party Claim (a "**Direct Claim**") shall be asserted by the Indemnitee giving the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnitee shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Indemnifiable Loss that has been or may be sustained by the Indemnitee. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. During such thirty (30) day period, the Indemnitee shall allow the Indemnifying Party and its Representatives to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnitee shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to the Company's premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such thirty (30) day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnitee shall be free to pursue such remedies as may be available to the Indemnitee on the terms and subject to the provisions of this Agreement.

(d) Notwithstanding anything to the contrary in this Section 9.05, the Indemnifying Person's rights to defend any Third-Party Claim, and any notice, consent and approval rights with respect to a Third-Party Claim, shall in all respects be subject to the terms of the R&W Insurance Policy, including the Insurer's right under the R&W Insurance Policy to control the defense of such Third-Party Claim.

(e) Notwithstanding any other provision of this Agreement, the control of any Tax Proceeding shall be governed exclusively by Section 8.05.

9.06 No Duplication of Recovery. Any liability for indemnification under this Agreement shall be determined without duplication of recovery by reason of the state of facts giving rise to such liability constituting a breach of more than one representation, warranty, covenant or agreement; provided, however, that the foregoing limitation shall not prevent an Indemnified Person from recovering all Losses to which it is entitled hereunder arising out of the same set of facts, events, conditions or circumstances (but not more than once) notwithstanding the fact that an indemnification claim for such Losses is based upon more than one representation or warranty or covenant. Additionally, in no event may a Buyer Indemnified Party recover amounts from the Sellers and pursuant to the R&W Insurance Policy, aggregating an amount in excess of its Losses with respect to such claim, and any such excess amounts received by any such Buyer Indemnified Party shall promptly be paid over to the applicable Sellers.

## ARTICLE X GENERAL PROVISIONS

10.01 Expenses. Except as otherwise provided herein, all costs and expenses incurred in connection with this Agreement, the Transaction Documents and the transactions contemplated hereby and thereby shall be paid by the party incurring such expenses.

10.02 Amendment; Waiver. Subject to Section 10.14(c), this Agreement may be amended or modified in whole or in part at any time by an agreement in writing among Buyer, Companies and Seller's Representative. Any term or provision of this Agreement may be waived in writing at any time by Buyer or Sellers' Representative, as applicable, as such waiver relates to a benefit of such party under this Agreement. Any waiver effected pursuant to this Section 10.02 shall be binding on the parties. No failure to exercise and no delay in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude the exercise of any other right, power or privilege. No waiver of any breach of any covenant or agreement hereunder shall be deemed a waiver of a preceding or subsequent breach of the same or any other covenant or agreement.

10.03 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third (3<sup>rd</sup>) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10.03):

If to Buyer:

c/o 1111 Companies LLC  
7076 Indian Peaks Trail  
Boulder, CO 80301  
Attention: Chip Besse  
E-mail: Chipbesse1@gmail.com

and

c/o Vigeo Investments

P.O. Box 80206  
Denver, CO 80206  
Attention: Steven Folse  
E-mail: stevenf@vigeoinvestments.com

with a copy to (which shall not constitute notice):

Otten, Johnson, Robinson, Neff & Ragonetti, P.C.  
950 17th Street, Suite 1600  
Denver, CO 80202  
Attention: Howard Pollack & Dimitri Adloff  
E-mail: hpollack@ottenjohnson.com & dadloff@ottenjohnson.com

If to Sellers or Sellers' Representative:

Arthur E. Engel  
1311 First Street  
Coronado, CA 92118  
Email: aeengel8@gmail.com

with a copy to (which shall not constitute notice):

Charles E. Black, Esq.  
4556 NW Paddock Lane  
Camas, WA 98607  
E-mail: cblack@cburbandevelopment.com

10.04 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, email (including .pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered is deemed to have been duly and validly delivered and is valid and effective for all purposes.

10.05 Governing Law. This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the Laws of the State of Colorado, without regard to conflicts of law principles.

10.06 Entire Agreement. The terms of this Agreement (including the Exhibits and Schedules hereto) and other documents and instruments referenced herein or executed by the parties concurrently herewith are intended by the parties as a final expression of their agreement with respect to the subject matter hereof and thereof and may not be contradicted by evidence of any prior agreement, and the same constitute the complete and exclusive statement of terms, and the parties agree that no extrinsic evidence whatsoever may be introduced in any judicial proceeding, if any, involving the same.

10.07 No Third-Party Rights. Except as provided in ARTICLE IX, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

10.08 Titles and Headings. Titles and headings of sections of this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement.

10.09 Assignment. This Agreement and the rights, duties and obligations hereunder may not be assigned by any of the parties without the prior written consent of the other parties, and any attempted assignment without consent shall be void. Notwithstanding the foregoing, Buyer may assign any or all of its rights and obligations under this Agreement to (a) any Person acquiring a material portion of the assets, business or securities of Buyer, its Affiliates or the Company, whether by merger, consolidation, sale of assets or securities or otherwise, (b) any lender to Buyer or any of its Affiliates as security for indebtedness to any such lender, and (c) any Affiliate of Buyer.

10.10 Successors and Assigns. Subject to Section 10.09, this Agreement and the provisions hereof shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and permitted assigns.

10.11 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable Law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

10.12 Binding Arbitration. The parties agree to submit to binding arbitration, in accordance with, and subject to, the provisions of Exhibit C attached hereto and incorporated herein by this reference, to resolve any dispute relating to or arising out of this Agreement or the Transaction Documents.

10.13 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity; provided, however, nothing in this Agreement shall permit Seller to seek specific performance against Buyer for a pre-Closing breach of this Agreement (except as necessary to enforce Buyer's obligations under Section 6.01(f) and Seller's sole remedy in such event is to terminate the Agreement in accordance with Section 7.04(a)(iv) and seek the Termination Fee in accordance with Section 7.04(c)(iii).

10.14 Sellers' Representative.

(a) *Appointment of the Sellers' Representative*. The Sellers hereby designate A. Engel to serve as the Sellers' Representative of all the Sellers for all purposes in connection with this Agreement and any agreement ancillary hereto. By signing this Agreement in the capacity of Sellers' Representative, A. Engel hereby accepts the appointment as the Sellers' Representative for purposes of this Agreement and any agreement ancillary hereto.

(b) *Authority*. Each Seller hereby appoints the Sellers' Representative as such Seller's true and lawful attorney-in-fact and agent (with full power of substitution) with full and exclusive power and authority to represent and bind such Seller with respect to all matters related to, arising under or pursuant to the express duties of the Sellers' Representative under this Agreement and any agreements ancillary hereto (including the taking by the Sellers' Representative of any and all actions and the making of any decisions required or permitted to be taken on such Seller's behalf), including: (i) to act on behalf of such Member in connection with the matters contemplated by Sections 2.03 and 8.05; (ii) to use reasonable efforts to enforce and protect the rights and interests of the Sellers arising out of or under or in any manner relating to this Agreement and the transactions contemplated hereunder; (iii) to employ and obtain the advice of legal counsel, accountants and other professional advisors as the Sellers' Representative, in its sole discretion, deems necessary or advisable in the performance of its duties as the Sellers' Representative and to rely on their advice and counsel; and (iv) to take all actions necessary in the judgment of the Sellers' Representative for the accomplishment of the foregoing. A decision, act, consent or instruction of the

Sellers' Representative as to any of the foregoing matters shall constitute a decision of all the Sellers and shall be final, binding and conclusive on each Seller. Buyer may rely upon such decision, act, consent or instruction of the Sellers' Representative as being the decision, act, consent or instruction of every Seller. EACH SELLER AGREES THAT SUCH AGENCY AND PROXY ARE COUPLED WITH AN INTEREST, ARE THEREFORE IRREVOCABLE WITHOUT THE CONSENT OF THE SELLERS' REPRESENTATIVE AND SHALL SURVIVE THE DEATH, INCAPACITY, BANKRUPTCY, DISSOLUTION OR LIQUIDATION OF ANY SELLER.

(c) *Limitations on Authority.* Notwithstanding anything to the contrary in this Agreement, the Sellers' Representative shall have no authority to act as attorney-in-fact or otherwise for any Seller: (i) with respect to any indemnity claim solely against such Seller arising under Section 9.03(a) (a "**Several Claim**"), and each such Seller shall be entitled to resolve any and all Several Claims; or (b) without the consent of the applicable Seller, in connection with an amendment or modification of this Agreement that (A) results in any increase in liability to such Seller from the liabilities described in this Agreement, (B) results in any reduction in compensation to be provided to such Seller, (C) adversely and disproportionately affects such Seller as compared to any other Seller, or (D) subjects such Seller to any restrictive covenants (e.g., covenants regarding non-competition, non-solicitation, non-disparagement or confidentiality) beyond those restrictive covenants agreed to by such Seller in connection with the Closing, other than (in the case of clauses (A) and (B)) as contemplated by the authority expressly granted to the Sellers' Representative.

(d) *Limitations on Liability.*

(i) The Sellers' Representative is acting solely in an agency capacity in connection with this Agreement and will have no personal liability to any Person for any action taken, or inaction, in its capacity of the Sellers' Representative, except to the extent it is determined by a court of competent jurisdiction, in a final Order, to have resulted directly and solely from the gross negligence or willful misconduct of the Sellers' Representative. In no event shall the Sellers' Representative be deemed to have any fiduciary duty or obligation to any Person. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IN NO EVENT SHALL THE SELLERS' REPRESENTATIVE, SOLELY IN ITS CAPACITY AS SUCH, BE LIABLE TO ANY SELLER FOR ANY SPECIAL, SPECULATIVE, REMOTE, EXEMPLARY, INDIRECT, INCIDENTAL, TREBLE, CONSEQUENTIAL OR PUNITIVE DAMAGES.

(ii) In connection with the exercise of its duties, the Sellers' Representative will be entitled to consult with and rely upon legal counsel (including Sellers' Counsel) and other professional advisors, with the costs thereof (and all other out-of-pocket costs reasonably incurred by the Sellers' Representative incident to discharging its duties under this Agreement) to be allocated among the Sellers (the amount of which may be withheld from any payment due to such Seller hereunder).

(iii) The Sellers' Representative shall be protected in acting upon any written notice, consent, receipt or other paper or document furnished to it, not only as to its due execution, validity and effectiveness, but also as to the truth and accuracy of any information therein contained, without inquiry. The Sellers' Representative shall not be liable, in its capacity as such, to any Seller for any error of judgment or for any act done or step taken or omitted by it in good faith, or for any mistake of fact or Law.

(iv) The Sellers' Representative shall have no duties except those which are expressly set forth herein.

(v) Each Seller shall indemnify, defend and hold the Sellers' Representative harmless from and against any and all claims, losses, Liabilities, damages and expenses (including reasonable

attorneys' fees and costs) which the Sellers' Representative may suffer or sustain as a result of any action taken, or not taken, in good faith hereunder.

(vi) Buyer agrees that: (A) the Sellers' Representative is serving in such capacity solely for purposes of administrative convenience; (B) the Sellers' Representative shall not be liable solely in such capacity for any of the obligations of any Seller hereunder; and (C) Buyer shall not look to the assets of the Sellers' Representative, in its capacity as such, for the satisfaction of any obligations to be performed (or payment to be made) by any Seller hereunder. Notwithstanding anything to the contrary, nothing in this Section 10.14 shall limit any recourse otherwise available by Buyer or any Buyer Indemnified Parties against any Seller in its capacity as such (even if a Seller is serving as the Sellers' Representative).

10.15 Certain Interpretive Matters and Definitions. Unless the context otherwise requires, (a) all references to Sections, Articles, Exhibits or Schedules are to Sections, Articles, Exhibits or Schedules of or to this Agreement, (b) each term defined in this Agreement has the meaning assigned to it, (iii) "or" is disjunctive but not necessarily exclusive, (c) words in the singular include the plural and vice versa, and (v) the word "including" and similar terms following any statement will not be construed to limit the statement to matters listed after such word or term, whether or not a phrase of nonlimitation such as "without limitation" is used. All references to "\$" or dollar amounts will be to lawful currency of the United States of America. No provision of this Agreement will be interpreted in favor of, or against, any of the parties hereto by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof. Each representation, warranty, covenant and agreement contained herein shall have independent significance. Accordingly, if any representation, warranty, covenant or agreement contained herein is breached, the fact that there exists another representation, warranty, covenant or agreement relating to the same subject matter (regardless of the relative levels of specificity) shall not detract from or mitigate the breach of the first representation, warranty, covenant or agreement; provided, that in no event shall there be any duplicative recovery for a particular breach.

[SIGNATURE PAGES FOLLOW]

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed and delivered as of the Closing Date.

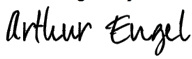
**BUYER:**

MARINE GROUP GLOBAL HOLDINGS, LLC,  
a Delaware limited liability company

DocuSigned by:  
  
By: 6D8B5C5CE15A450...  
Name: Steven Folse  
Title: Manager

*Signatures continue on the next page.*

**SELLERS' REPRESENTATIVE:**

DocuSigned by:  
  
0BA8BDC884C0472...  
ARTHUR E. ENGEL, an individual

**COMPANIES:**

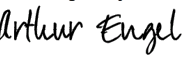
**MGBW, LLC,**  
a Delaware limited liability company

DocuSigned by:  
  
By: 0BA8BDC884C0472...  
Name: Arthur E. Engel  
Title: Authorized Signatory

**MARINE GROUP LOS CABOS LLC,**  
a Delaware limited liability company

DocuSigned by:  
  
By: 0BA8BDC884C0472...  
Name: Arthur E. Engel  
Title: Authorized Signatory

**MS SD, LLC,**  
a Delaware limited liability company

DocuSigned by:  
  
By: 0BA8BDC884C0472...  
Name: Arthur E. Engel  
Title: Authorized Signatory

**SELLERS:**

DocuSigned by:

Arthur Engel

0BA8BDC884C0472...

ARTHUR E. ENGEL, as Trustee under The Arthur E.  
Engel Trust of 1988

*Signatures continue on the next page.*

**SELLERS (cont'd):**

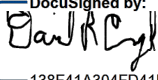
DocuSigned by:



68F20B4478D342B...  
HERBERT G. ENGEL, as Trustee under the Herbert G.  
Engel Trust dated May 28, 1996

*Signatures continue on the next page.*

**SELLERS (cont'd):**

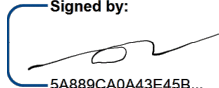
DocuSigned by:  
  
138E41A304ED41B

DAVID R. ENGEL, as Trustee under the David R. Engel  
Trust of 1990

*Signatures continue on the next page.*

**SELLERS (cont'd):**

Signed by:

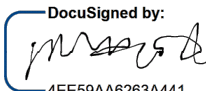


5A889CA0A43E45B...

TODD ROBERTS, as Trustee under the Todd and Andrea  
Roberts Family Trust dated August 1, 2006

*Signatures continue on the next page.*

**SELLERS (cont'd):**

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4EE59AA6263A441

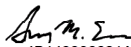
MATTHEW P. ENGEL, as Trustee of the Matthew P.  
Engel Irrevocable Trust dated December 20, 2011

*Signatures continue on the next page.*

**SELLERS (cont'd):**

**FIDELITY INVESTMENTS CHARITABLE GIFT  
FUND**

DocuSigned by:

  
4B149906681A49A...

Amy Grossman, Vice President, Complex Assets Group

*Signatures continue on the next page.*

**SELLERS (cont'd):**

DocuSigned by:

*Brad Engel*

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BRAD C. ENGEL, as Trustee of the Brad Engel 2016  
Trust

*Signatures continue on the next page.*

**SELLERS (cont'd):**

DocuSigned by:

*Brian Engel*

B7686EDEE18E4ED

BRIAN THOMAS ENGEL, an individual

*Signatures continue on the next page.*

**SELLERS (cont'd):**

Signed by:

A blue ink signature of Ryan J. Rahm is written over a blue bracket-shaped line.

28943B46C39A441...  
RYAN J. RAHM, an individual

*Signatures continue on the next page.*

**SELLERS (cont'd):**

Signed by:

  
84526C46F691491...

JASON ENGEL, as Trustee of the Jason Engel Living  
Trust, executed June 30, 2020

**Exhibit A**

<b>MGBW, LLC, a Delaware limited liability company</b>	
<b>Seller</b>	<b>Pro Rata Share of above listed Company</b>
Arthur E. Engel Trust of 1988	38.425%
Herbert G. Engel Trust dated May 28, 1996	23.744%
David R. Engel Trust of 1990	14.831%
Matthew P. Engel Irrevocable Trust dated December 20, 2011	15%
Todd and Andrea Roberts Family Trust dated August 1, 2006	5%
Fidelity Charitable	3%

<b>MS SD, LLC, a Delaware limited liability company</b>	
<b>Seller</b>	<b>Pro Rata Share of above listed Company</b>
Arthur E. Engel Trust of 1988	34.042%
Herbert G. Engel Trust dated May 28, 1996	10.837%
David R. Engel Trust of 1990	6.489%
Matthew P. Engel Irrevocable Trust dated December 20, 2011	12.632%
Todd and Andrea Roberts Family Trust dated August 1, 2006	20%
Brad Engel 2016 Trust	3%
Brian Thomas Engel	3%
Ryan J. Rahm	5%
Jason Engel Living Trust, executed June 30, 2020	5%

<b>Marine Group Los Cabos LLC, a Delaware limited liability company</b>	
<b>Seller</b>	<b>Pro Rata Share of above listed Company</b>
Arthur E. Engel Trust of 1988	40.425%
Herbert G. Engel Trust dated May 28, 1996	24.744%
David R. Engel Trust of 1990	14.831%
Matthew P. Engel Irrevocable Trust dated December 20, 2011	15%
Todd and Andrea Roberts Family Trust dated August 1, 2006	5%

<b>OVERALL SHARE TABLE</b>	
<b>Seller</b>	<b>Overall Share</b>
Arthur E. Engel Trust of 1988	39.923%
Herbert G. Engel Trust dated May 28, 1996	24.271%
David R. Engel Trust of 1990	14.919%
Matthew P. Engel Irrevocable Trust dated December 20, 2011	13.105%
Todd and Andrea Roberts Family Trust dated August 1, 2006	5.038%
Fidelity Charitable	2.562%
Brad Engel 2016 Trust	0.034%
Brian Thomas Engel	0.034%
Ryan J. Rahm	0.057%
Jason Engel Living Trust, executed June 30, 2020	0.057%

**Exhibit B**

**Allocation of Purchase Price Among Companies**

<b>Company</b>	<b>Purchase Price</b>	<b>Percentage of Aggregate Purchase Price</b>
MGBW	\$ [REDACTED]	89.40%
MG Cabo	\$ [REDACTED]	9.49%
MS SD	\$ [REDACTED]	1.11%
<b><u>Total</u></b>	[REDACTED]	<b><u>100%</u></b>

## **Exhibit C**

### **Binding Arbitration**

1) **Waiver of Court Action; Jury Waiver.** EXCEPT AS NECESSARY TO ENFORCE THE PROVISIONS OF THE AGREEMENT TO ARBITRATE, TO COLLECT ON OR TO ENFORCE AN ARBITRATION AWARD, AND/OR TO OBTAIN INJUNCTIVE RELIEF, EACH OF THE PARTIES SUBJECT HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES THE RIGHT TO COMMENCE ANY LEGAL OR EQUITABLE ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT RELATING TO, OR ARISING UNDER, THE AGREEMENT TO WHICH THIS EXHIBIT IS ATTACHED (INCLUDING THE ANCILLARY AGREEMENTS) AND/OR ANY OTHER RELATED DISPUTE BETWEEN OR AMONG THE PARTIES SUBJECT HERETO OR THEIR RESPECTIVE AFFILIATES, AND SHALL PROCEED AS SET FORTH HEREIN. WITHOUT IN ANY WAY LIMITING THE FOREGOING WAIVERS, THE PARTIES SUBJECT HERETO HEREBY FURTHER IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE AGREEMENT TO WHICH THIS EXHIBIT IS ATTACHED AND/OR ANY OTHER RELATED DISPUTE BETWEEN OR AMONG THE PARTIES SUBJECT HERETO OR THEIR RESPECTIVE AFFILIATES, WHETHER ARISING IN CONTRACT, IN TORT OR OTHERWISE.

2) **Consent to Arbitration.** All disputes or claims between or among the parties subject hereto related to or arising under the agreement to which this Exhibit is attached (including the Transaction Documents), or any other related dispute between or among such parties or their affiliates (all of which may be joined in a single arbitration action), shall be submitted to binding arbitration as set forth herein. Such binding arbitration shall proceed in the metropolitan area of Denver, Colorado or such other location as may be agreed to by the applicable parties, through an arbitration administered by the American Arbitration Association ("AAA"), JAMS ("JAMS") or any other arbitration provider agreed to by the applicable parties. The arbitration shall be governed by the Commercial Arbitration Rules of the AAA or the Arbitration Rules and Procedures of JAMS, as selected by the arbitration provider or arbitrator conducting the arbitration (as applicable, the "Rules"). The party initiating the arbitration may choose to initiate the arbitration with either the AAA or JAMS or any other provider or arbitrator agreed to by the other party(ies) to the dispute.

3) **Arbitrator Appointment; Qualifications.** Notwithstanding anything to the contrary in the Rules, arbitration hereunder shall be before a single neutral arbitrator who is an attorney or retired judge who has practiced in the area of business litigation for at least ten (10) years and who has substantial experience with merger and acquisition matters. The applicable arbitration provider shall submit a list of persons meeting the criteria outlined above, and the parties shall select one (1) individual in the manner established by such arbitration provider.

4) **Hearing.** The hearing on any arbitration to be conducted hereunder shall be commenced within ninety (90) consecutive, calendar days of the filing of any demand initiating the arbitration with the applicable arbitration provider and shall be completed within two hundred ten (210) consecutive, calendar days of such filing. The parties shall be entitled to reasonable discovery prior to the arbitration (not to exceed the discovery that would be permitted in a court proceeding in the State of Colorado), but such discovery shall not extend the time period for the arbitration unless the parties otherwise agree or manifest injustice would result.

5) **Efficiency.** The arbitrator shall use the Rules but is encouraged to adopt such rules as the arbitrator deems appropriate to accomplish the arbitration in the quickest and least expensive manner

possible, while preserving fairness in the process of the procedures, including adopting any streamlined or expedited procedures available under such Rules. Accordingly, the arbitrator may where the arbitrator judges reasonable and appropriate to achieving an efficient and fair administration of the dispute: (a) dispense with any formal rules of evidence and allow hearsay testimony so as to limit the number of witnesses required; (b) establish procedures for discovery as the arbitrator deems appropriate; (c) limit the time for presentation of any party's case as well as the amount of information or number of witnesses to be presented in connection with any hearing; and (d) impose any other rules which the arbitrator believes appropriate to effect a resolution of the dispute as fairly, quickly and inexpensively as possible.

6) Joinder of Related Disputes. In the event that any subsequent or further controversy, claim or dispute arising out of, or relating in any way to, the agreement to which this Exhibit is attached (including the Transaction Documents), or any other related dispute between or among such parties or their affiliates, arises while any arbitration demand hereunder is pending, but before the arbitrator appointed as a result thereof has rendered their final decision, such arbitrator shall have exclusive jurisdiction over the resolution of such subsequent or further controversies, claims or disputes and shall consolidate all such matters and, upon a good faith request of a party, may extend the time frames for the arbitration hearing of the initial as reasonably appropriate to accommodate such consolidation to the extent such new dispute could affect the outcome of the prior dispute.

7) Award. The arbitrator shall issue a reasoned award and may grant any remedy or relief that is just and equitable and within the scope of, and is subject to and consistent with any express provisions, limitations or exclusions contained within, the agreement to which this Exhibit is attached, including, but not limited to, specific performance of a contract or any other equitable or legal remedy. Notwithstanding anything to the contrary in the foregoing, the party substantially prevailing in the arbitration shall receive an award of the fees, costs and expenses incurred by the substantially prevailing party in connection with the dispute, including reasonable attorneys', expert fees and the fees of the arbitrator; provided, however, in making any award of attorneys' fees, the arbitrator shall have the discretion to determine that in fact neither party substantially prevailed relative to the other, or that one party prevailed but should recover only a portion of its attorneys' fees due to any one or a combination of relevant factors, including but not necessarily limited to the following: the reasonableness of the fees in terms of the hours expended and the hourly rates; the extent to which the damages included in the judgment or award may have been less than the amount sought; and the extent to which only a portion of the requested relief was adjudged or awarded.

8) Severability. If any provision of this Exhibit shall be deemed invalid or unenforceable as written, it shall be deemed reformed and construed, to the greatest extent possible, in a manner which shall render it valid and enforceable, and any limitations on the scope or duration of any such provision necessary to make it valid and enforceable shall be deemed to be part thereof, and no invalidity or unenforceability of any provision shall affect any other portion of this Exhibit.

**Exhibit D**

**R&W Insurance Policy**

(attached)

**Exhibit E**

**Restrictive Covenant Agreement**

(attached)

## RESTRICTIVE COVENANT AGREEMENT

**THIS RESTRICTIVE COVENANT AGREEMENT** (this “Agreement”) is entered into as of [•], 2025 (“Effective Date”), by and among [•] (“Restricted Party”), MGBW, LLC, a Delaware limited liability company (“MGBW”), Marine Group Los Cabos LLC, a Delaware limited liability company (“MG Cabo”), MS SD, LLC, a Delaware limited liability company (“MS SD” and together with MGBW and MG Cabo, each a “Company” and, collectively the “Companies”), and [\_\_\_\_\_], a Delaware limited liability company (“Buyer”). Restricted Party and Buyer are sometimes referred to in this Agreement as a “Party” and collectively as the “Parties”.

A. Buyer, the Companies, and the other parties thereto have entered into that certain Membership Interest Purchase and Contribution Agreement, dated as of [•], 2025 (the “Purchase Agreement”).

B. Restricted Party acknowledges that this Agreement is an essential element of the transactions contemplated by the Purchase Agreement (the “Transactions”) and that, but for Restricted Party’s agreement to enter into this Agreement and comply with the covenants and agreements contained herein, Buyer would not have entered into the Purchase Agreement.

C. Capitalized terms not herein defined shall have the meanings ascribed to such terms in the Purchase Agreement.

### AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing, the mutual promises and covenants contained herein (including the Recitals above which are incorporated herein by this reference) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

1. Acknowledgments. Restricted Party acknowledges and agrees that as a result and as a part of his, her or its direct or indirect equity ownership in the Companies, whether held individually, through a trust, or otherwise, Restricted Party was afforded access to Confidential Information (as defined below) that would have an adverse effect on Buyer and the Target Companies if it is disclosed and/or used, and that, as a condition to Closing, it is reasonable and necessary for Restricted Party to covenant and agree, subject to the terms and conditions herein, not to disclose or use such Confidential Information. Restricted Party further acknowledges and agrees that (a) the consideration provided, directly or indirectly, to Restricted Party under the Purchase Agreement constitutes good and sufficient consideration for Restricted Party’s agreements and covenants contained herein, (b) the terms contained herein are reasonable in all respects, including, without limitation, the time period and the scope of restricted activities, (c) Buyer would not have consummated the Transactions had Restricted Party not agreed to the covenants contained herein, (d) the restrictions contained herein are designed to protect Buyer’s right to exploit the business activities conducted by the Target Companies, (e) Restricted Party’s services have been of special, unique, and extraordinary value to the Target Companies, that Restricted Party has made substantial contributions to the growth and development of the Target Companies and creation and preservation of the Target Companies’ goodwill, and that Restricted Party is familiar with the Target Companies’ trade secrets and other Confidential Information, which, if disclosed, would unfairly and inappropriately assist in competition against the Target Companies, and (f) neither Buyer nor the Target Companies would obtain the benefit of the bargain set forth in the Purchase Agreement as specifically negotiated by the parties thereto unless this Agreement was specifically performed and enforced.

2. Non-Disclosure. Restricted Party will, and will cause his, her or its Affiliates to, maintain the confidentiality of the Confidential Information and not disclose to any Person any portion of any Confidential Information and refrain from using any Confidential Information from and after the Closing until the fifth (5<sup>th</sup>) anniversary of the Closing Date (the “Restricted Period”)[, except as required in Restricted Party’s employment with or ownership of any of the Target Companies];<sup>1</sup> provided, however, the foregoing shall not prohibit any disclosure or use of Confidential Information: (a) generally available to the public or that becomes generally available to the public through no fault of Restricted Party; (b) that becomes available to Restricted Party on a non-confidential basis from a source other than the Companies (or any of their respective Affiliates) or any third party having business dealings with the Target Companies (or any of their respective Affiliates); (c) that was independently developed by Restricted Party without the use of or reference to any Confidential Information; (d) to Restricted Party’s attorney or tax adviser for the purpose of securing legal or tax advice or enforcing Restricted Party’s rights under this Agreement or otherwise; or (e) if Restricted Party is required by Law, any Governmental Authority or any recognized subpoena power, to disclose such Confidential Information, so long as Restricted Party agrees to use Restricted Party’s commercially reasonable efforts to (i) provide Buyer reasonable prior written notice in order to provide Buyer a reasonable opportunity to object to such disclosure, and (ii) if requested by Buyer, to reasonably cooperate with Buyer and the Target Companies, as applicable, at their sole expense, to seek protective treatment of the Confidential Information prior to its disclosure by Restricted Party. For purposes of this Agreement, “Confidential Information” means any non-public information with respect to the Target Companies, or the business activities conducted by the Target Companies, including, without limitation, methods of operation, suppliers, clients, customers, strategic alliances, commercial or private payors, prospects, client, customer, payor or prospect lists, products and services, proposed products and services, former products and services, proposed, pending or completed acquisitions of any company, division, product line or other business unit, prices, fees, costs, plans, designs, technology, inventions, trade secrets, know-how, software, marketing methods, policies, plans, personnel, suppliers, markets, or other specialized information or proprietary matters in any form or medium (whether merely remembered or embodied in a tangible or intangible form or medium and whether or not specifically labeled or identified as “confidential”).

(a) Defend Trade Secrets Act Notice. An individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made in confidence to a federal, state, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law. An individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document containing the trade secret under seal; and does not disclose the trade secret, except pursuant to court order. Nothing in this Agreement shall be construed to prohibit Restricted Party from exercising Restricted Party’s rights under this Section 2(a).

(b) Confidentiality Notice. Restricted Party understands and acknowledges that Restricted Party’s duty of confidentiality, non-disclosure and non-disparagement (as set forth below) pursuant to this Agreement does not limit or restrict Restricted Party’s ability to communicate directly with the U.S. Securities and Exchange Commission about a possible securities law violation, nor limit nor restrict Restricted Party’s Section 7 rights under the National Labor Relations Act, nor limit nor restrict Restricted Party’s right to communicate with the Equal Opportunity Employment Commission or any other federal, state, or local government agency, office, or official.

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<sup>1</sup> Note to Draft: Bracketed section only applicable to Todd.

3. Non-Competition. In further consideration of the consummation of the Transactions, Restricted Party agrees that during the Restricted Period, Restricted Party will not, and will cause his, her or its Affiliates not to, either directly or indirectly, whether or not for consideration, within the Territory (as defined below), become employed by, engage in, affiliate with, own, manage, operate or control, or participate in the ownership, management, operation or control of, or lend Restricted Party's reputation to, any Person that engages in the Business. As used herein, the "Business" shall mean marine service, repair, boat construction, and boat storage work in the following categories (regardless of size): (a) U.S. Government owned or controlled vessels; (b) autonomous and unmanned surface vessels; (c) landing craft air cushions; (d) yachts; (e) commercial vessels; and (f) decommissioning of mine counter measures class vessels; provided, however, Restricted Party may (x) purchase or otherwise acquire up to (but not more than) two percent (2%) of any class of securities of any enterprise (but without otherwise participating in the activities of such enterprise) if such securities are listed on any national or regional securities exchange or have been registered under Section 12(g) of the Securities Exchange Act of 1934, (y) acquire an equity interest in any entity or business that is not engaged in the Business, or (z) [provide dock-side services at the Fifth Avenue Marina]. For purposes of this Agreement, the term "Territory" shall mean the geographic area encompassing all coastal regions, harbors, marinas, navigable waters, and offshore areas up to twelve (12) nautical miles from the shoreline, along the western coastline of the United States and Mexico. This Territory extends from the northernmost point of Washington State southward through the coasts of Oregon, California, and Baja California, terminating at the point located at 23°06'29.3"N, 109°32'17.8"W. Additionally, the Territory includes all ports, docks, marine facilities, and any inland areas within 25 miles of the coastline that are reasonably associated with the repair, maintenance, or servicing of boats and yachts.. For purposes of this Agreement, "engage in" and similar variations shall include, without limitation, directly or indirectly having any interest in or managing or controlling any corporation, partnership, joint venture, or other entity, whether as a sole proprietor, owner, equity holder, partner, joint venturer, creditor, or otherwise, or rendering any direct or indirect service or assistance to any Person (whether as a director, officer, manager, supervisor, employee, partner, agent, representative, consultant, or otherwise).

4. Non-Solicitation. In further consideration of the consummation of the Transactions, Restricted Party covenants and agree that during the Restricted Period he, she or it will not, directly or indirectly (including without limitation through subsidiaries, Affiliates or by contract), as a partner, joint venturer, employer, employee, consultant, independent contractor, equity holder, principal, manager, agent or otherwise, (a) induce or attempt to induce any officer, manager, director or employee of the Business to leave the employ of the Target Companies or the Buyer or their respective Affiliates, or in any way interfere with the relationship between such Person, on the one hand, and any such officer, manager, director or employee, on the other hand; or (b) induce, or attempt to induce, any customer, salesperson, supplier, vendor, independent contractor, representative, agent, licensee or other Person transacting business with the Target Companies or their Affiliates related to the Business to reduce or cease doing business with such Person, or in any way to interfere with the relationship between any such customer, salesperson, supplier, vendor, independent contractor, representative, agent, licensee or business relation, on the one hand, and the Target Companies or their Affiliates, on the other hand; provided that neither clause (a) nor clause (b) shall prohibit any general solicitation by Restricted Party that is not directed specifically to any employee or independent contractor of the Target Companies (so long as such employee or independent contractor is not actually employed, engaged or hired).

5. Use of Name. Without the prior written consent of Buyer, from and after the Closing, Restricted Party will not, and will cause its Affiliates not to, directly or indirectly, use any name bearing any resemblance to the registered and unregistered trademarks, trade names, assumed names, and domain names of any of the Target Companies as of the Closing.

6. Equitable Relief. The Parties each acknowledge and agree that a breach of the provisions of this Agreement may cause irreparable harm for which monetary damages may be difficult to calculate. Consequently, each Party will have the right, in addition to any other rights it may have, to seek to obtain injunctive relief to restrain any breach or threatened breach or otherwise to specifically enforce any provision of this Agreement and the Parties will not be required to prove actual damages or obligated to post bond or other security in seeking such relief.

7. Reformation of Agreement. If any of the covenants contained in this Agreement, or any portion thereof, is found by a court of competent jurisdiction to be invalid or unenforceable as against public policy or for any other reason, such court shall exercise its discretion to reform such covenant to the end that such non-disclosure, non-solicitation, non-hire, or other covenant shall be reasonable under the circumstances and be enforceable by the Parties. In any event, if any provision of this Agreement is found unenforceable for any reason, such provision shall remain in force and effect to the maximum extent allowable and all non-affected provisions shall remain fully valid and enforceable. In the event of any violation of the provisions of this Agreement by Restricted Party, the covenants contained in this Agreement will be extended by a period of time equal to the period of such violation, it being the intention of the Parties that the running of the applicable restricted period shall be tolled during any period of such violation.

8. Assignment of Qui Tam Proceeds. In further consideration of the consummation of the Transactions:

(a) Except as otherwise disclosed in the Purchase Agreement or any Transaction Documents, Restricted Party represents and warrants that Restricted Party is not aware of any facts that would establish, tend to establish, or in any way support an allegation that Buyer and the Companies and their respective Subsidiaries and Affiliates (collectively, “Buyer Related Parties”) has engaged in conduct that Restricted Party believes could violate the federal False Claims Act and/or any state or local or municipal qui tam counterpart (which prohibit the presentation by any Company or any Affiliate of any Company of false claims and statements or the create of false records or statements in order to obtain payment of federal, state, county or municipal funds, or to avoid refunds of such government funds) or any other Law.

(b) In order to ensure that Restricted Party has complied with Restricted Party’s obligations under this Agreement and to the fullest extent permitted by Law, Restricted Party irrevocably assigns to the federal government, or relevant state or local government, any right Restricted Party may have to any proceeds, bounties, or awards in connection with any claims filed by or on behalf of the government under any Laws, including, without limitation, the False Claims Act (and/or any state or local counterparts of these federal statutes or any other federal, state, or local qui tam or “bounty” statute) against the Buyer Related Parties. Restricted Party also represents and promises that Restricted party will deliver any such proceeds, bounties, or awards to the United States government (or other government unit entitled by reason of the assignment to have them).

9. General Provisions.

(a) Incorporation by Reference. The terms and provisions (including the exhibits referenced therein) of Sections 10.05 (Governing Law) and 10.12 (Binding Arbitration) of the Purchase Agreement are hereby incorporated herein by this reference, *mutatis mutandis*, with the same force and effect as if fully set forth herein, and the Parties hereto agree to such terms.

(b) Entire Agreement. This Agreement, the Purchase Agreement, the Transaction Documents, and any other written agreement(s) of even date herewith between the Parties concerning the subject matter hereof contain the complete agreement between the Parties and supersede any prior

understandings or agreements by or between the Parties, written or oral, which may have related to the subject matter hereof in any way.

(c) Amendments and Waivers. This Agreement can be amended, supplemented, or changed, and any provision hereof can be waived, only by a writing signed by the Parties to be bound. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power, or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power, or remedy.

(d) Counterparts. This Agreement may be executed in one or more counterparts, including by facsimile or other electronic transmission (including e-mail), each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement. Such delivery of counterparts shall be conclusive evidence of the intent to be bound hereby and to the extent applicable, the foregoing constitutes the election of the Parties to invoke any Law authorizing electronic signatures.

(e) Binding Effect. Restricted Party may not assign this Agreement or any of Restricted Party's rights hereunder without the express written consent of Buyer. Buyer may assign all or any portion of its rights hereunder to: (i) any of its Affiliates; (ii) any acquirer of substantially all of its or any of its or its Affiliates' assets or equity interests; and (iii) for collateral security purposes to any lenders of Buyer or any of its Affiliates. This Agreement and the agreements, undertakings, and representations herein contained shall inure to the benefit of and bind the Parties and their respective successors and assigns.

(f) Joint Negotiation and Drafting. The Parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

(g) Headings. The headings used in this Agreement are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement.

(h) Other Obligations. Without implication that the contrary would otherwise be true, Restricted Party's obligations, and Buyer's obligations under this Agreement are in addition to, and not in limitation of, any obligations that Restricted Party, or Buyer may have under any other written agreement of even date herewith to which Restricted Party and Buyer, are a party, including, without limitation, any non-compete, non-solicit, confidentiality, inventions, or non-disparagement provisions or other restrictive covenants therein.

[Signature Page Follows]

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

RESTRICTED PARTY

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name: [\_\_\_\_\_]   
Title: [\_\_\_\_\_]

COMPANIES

**MGBW, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: [\_\_\_\_\_]   
Title: [\_\_\_\_\_]

**MARINE GROUP LOS CABOS LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: [\_\_\_\_\_]   
Title: [\_\_\_\_\_]

**MS SD, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: [\_\_\_\_\_]   
Title: [\_\_\_\_\_]

BUYER

[\_\_\_\_\_] ,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: [\_\_\_\_\_]   
Title: [\_\_\_\_\_]

**Exhibit F**

**Material Terms for Amended and Restated SD Lease**

(attached)

Exhibit G



January 15, 2025

**Non-Binding Draft Term Sheet for Amended and Restated Lease**

1. **Land Area:** A parcel of land consisting of approximately 419,823 square feet.
2. **Water Area:** A parcel of water consisting of approximately 358,756 square feet.
3. **Lease Term:** February 1, 1985 – January 31, 2041 plus the following:
  - a. An additional 15-year lease term extension, contingent on the Board of Port Commissioners (Board) approving environmental review for the modernization project in accordance with the California Environmental Quality Act (CEQA). Lessor and Lessee have entered into a 3 party agreement with Accent to conduct an environmental process with a defined scope of work requiring a minimum \$15M capital investment.
4. **Use:** Permitted use provisions to be revised to accommodate up to 820-ton displacement with a prohibition against intensification of use beyond a reasonable baseline number of vessels serviced annually, which baseline shall be based on historical use with a percentage growth factor to mutually agreed upon by the parties.
5. **Monthly Rent:** In exchange for a \$5 Million payment for offsite improvements at Harbor Park to be paid in annual installments of \$1 Million per year over the first 5 years of the Lease Term with the first installment paid concurrent with execution of the Amended and Restated Lease (A&R Lease), the monthly rent shall be \$72,130.00 upon execution of the A&R Lease with annual 3.5% increases commencing on the anniversary of the second year of the A&R Lease and every year thereafter through the remainder of the lease term.
6. **Compensation for Removal of Section 49 (Early Termination of Lease if Substitute Leased Premises Offered by Lessor to Lessee) and Section 50 (Early Termination of Lease by Lessor Purchase if Substitute Leased Premises Offered by Lessor and Not Leased by Lessee):** One-time, lump sum payment of \$1,500,000 to be paid concurrent with the execution of the A&R Lease.
7. **Participation in Refinancing and Sales:** Lessor shall be entitled to a participation fee in any future refinancing transaction equal to 2.5% of the net proceeds from the refinancing transaction (ie. gross loan proceeds less any repaid indebtedness, reimbursement of Lessee's equity investment, proceeds reinvested in the premises or Lessee's business and reasonable costs associated with the refinance). Lessor shall also be entitled to a participation fee in any future assignment/sale/change in control transactions with an unrelated third party (a Transfer) equal to a lump sum payment



of \$400,000.

**8. Section 54 – Cooperation with Lessor’s Chula Vista Bayfront Master Plan:**

Section 54 shall be revised to include the following requirements:

- a. MGBW shall organize the boats and equipment in a uniform and orderly manner, and, as feasible, keep unused equipment out of sight from above at the adjacent Resort Hotel and Convention Center;
- b. Lessee shall complete the construction and installation of and maintain the perimeter fence in accordance with the design approved by District under the District Conditional Project Approval letter on file with the Office of the District Clerk dated May 21, 2024, bearing Document No. 76748; and
- c. The requirement in the existing Section 54 that MGBW will continue to support the Chula Vista Bayfront Master Plan, Port Master Plan Amendment and Local Coastal Plan Amendment including any future coastal development permits, tentative maps, final maps, and all elements of the CVBMP at a project level.

**9. Nighttime Operations:** Nighttime Operations to be permitted subject to commercially reasonable noise and lighting restrictions based on a noise study and a lighting analysis to ensure compatibility between the Marine Group Boat Works operation and the Resort Hotel and Convention Center and the adjacent wildlife preserve, and pending residential uses.

**10. Lease Form:** Lessor and Lessee agree to use District’s current standard lease form, subject to the terms set forth in this Term Sheet and such other revisions as mutually agreed to by the parties.

**This DRAFT Term Sheet remains subject to the District’s continuing review and comment and the parties understand and agree that this DRAFT Term Sheet is nonbinding and is not intended to be and does not constitute a legally binding obligation, and that the terms herein are for discussion purposes only. No legally binding obligations between the Parties will be created, implied, or inferred unless and until they are embodied in a final written agreement or agreements independent of this DRAFT Term Sheet and executed by the parties, subject to approval by the Board of Port Commissioners, with any such approval to be granted or denied in the Board’s sole and absolute discretion.**

**In addition to the foregoing, the District notes the following: no approval of a project under CEQA has occurred with respect to anything set forth in this DRAFT**



**Term Sheet. As noted herein, and in addition to the non-binding nature of this DRAFT Term Sheet, the District reserves its sole and absolute discretion to approve, disapprove, or condition all actions, which require the exercise of discretion, including without limitation all legislative and quasi-judicial actions that District cannot lawfully be committed to by contract (collectively, "Discretionary Action") and that nothing in the DRAFT Term Sheet will be construed as circumventing or limiting District's discretion to approve anything in this DRAFT Term Sheet or with respect to environmental review required by CEQA, an amendment to the existing Port Master Plan, Coastal Development Permit, Coastal Development Permit exclusion, or other permits and entitlements, the exercise of eminent domain, code enforcement and the making of findings and determinations. Any and all Discretionary Actions may be approved, denied or conditioned by the District, in its sole and absolute determination. Additionally, the District may approve all feasible mitigation measures and adopt or deny the adoption of a Statement of Overriding Considerations, if applicable.**

**Exhibit G**

**Form of SD Property Estoppel Certificate**

(attached)

**FORM OF ESTOPPEL STATEMENT**

\_\_\_\_\_, 2025

Marine Group Global Holdings, LLC  
c/o Vigeo Investments  
P.O. Box 80206  
Denver, CO 80206  
Attention: Steven Folse

California Bank & Trust  
9775 Clairemont Mesa Blvd  
San Diego, CA 92124  
Attention: Business Lending Services  
Reference: Marine Group Boat Works, LLC

Gentlemen:

This Estoppel Statement ("Statement") is issued for the benefit of Marine Group Global Holdings, LLC ("MGGH") and California Bank & Trust ("CBT") by the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (hereinafter referred to as "Lessor"), as Lessor under that certain Amended, Restated, and Combined Lease dated February 3, 2009, covering a portion of those lands conveyed to Lessor by that certain act of the Legislature of the State of California entitled "San Diego Unified Port District Act", Stats. 1962, 1st Ex. Sess., c. 67, between Lessor and Marine Group Boat Works, LLC, a California limited liability company (hereinafter referred to as "Lessee"), as Lessee, a copy of which lease is on file in the Office of the Clerk of Lessor bearing Document No. 54509 (the "Original Lease"), as amended by Agreement for Amendment No. 1 of Amended, Restated, and Combined Lease, dated July 10, 2012 on file in the Office of the Clerk of Lessor bearing Document No. 59238 ("Amendment No. 1") and Agreement for Amendment No. 2 of Amended, Restated and Combined Lease dated November 6, 2015 on file in the Office of the Clerk of Lessor bearing Document No. 64198 ("Amendment No. 2" and, collectively with the Original Lease and Amendment No.1, the "Lease").

Lessee, as a seller, currently anticipates entering into a Membership Interest Purchase and Contribution Agreement (the "**Purchase Agreement**"), by and among Lessee, MGGH and the other parties thereto, pursuant to which MGGH will purchase all of the membership interests in Lessee which will include, without limitation, all of Lessee's interest in and to the Lease. The transaction subject to the Purchase Agreement is referred to herein as the "**Interest Purchase**" and is expected to close on or about [\_\_\_\_\_, 2025]. The date on which the Interest Purchase actually closes is referred to herein as the "**Closing Date**."

In connection with the closing of the Interest Purchase contemplated in the Purchase Agreement, effective as of the Closing Date, MGGH will acquire all of the ownership interests in Lessee and assume all of Lessee's right, title and interest in, to and under the Lease; and Lessor has agreed to

provide its consent to the transfer of the membership interests in Lessee and MGGH's acquisition of Lessee's interest in and to the Lease.

To the actual knowledge of Lessor (without any duty of investigation or inquiry), Lessor hereby acknowledges and confirms to Recipient (as defined below) the following:

1. The Lease is currently in full force and effect and has not been modified, supplemented or amended in whole or in part. The Lease constitutes the entire understanding between Lessor and Lessee with respect to the Premises.
2. The Lease is for a term of forty-five (45) years, commencing February 1, 1985, and ending January 31, 2030. Pursuant to Section 1 of the Lease and subject to the terms and conditions set forth therein including, without limitation, the requirement that Lessee has been a "tenant in good standing" for the five (5) years preceding the option exercise, Lessee has an option to extend the lease term for an additional 11 years.
3. As of the date of this Statement, Lessee is not, to the actual knowledge of Lessor (without any duty of investigation or inquiry), in default or in breach under the provisions of the Lease, neither party to the Lease has delivered any written notice of default to the other; and, to the knowledge of Lessor and Lessee, no event has occurred that, with the giving of notice or the passage of time or both, would constitute a default under the Lease.
4. The current fixed rent payable under the Lease is \$\_\_\_\_\_ U.S. Dollars per year year, payable in equal monthly installments of \$\_\_\_\_\_ due on the first (1<sup>st</sup>) day of each month during the lease term.
5. All improvements to the Premises including, without limitation, all capital improvements required to be made by the parties under the Lease have been made.
6. Lessor has no option to terminate or otherwise modify the terms and conditions of the Lease other than as specifically provided in the Lease.
7. Lessor has no actual knowledge (without any duty of investigation or inquiry) of any other assignment or hypothecation of said leasehold estate, or any pledge or assignment of rents with respect to said premises except: \_\_\_\_\_.
8. The loan term will not extend beyond the lease expiration date of January 31, 2030.
9. It is understood that the Lessor has not reviewed or approved the terms and conditions of the proposed encumbrance documents, such as the leasehold deed of trust or note secured thereby and is not agreeing to be a party to the leasehold deed of trust, note or other documents.
10. Nothing contained in the conditions to consent or this Statement shall be construed to modify, amend or waive any provisions of the Lease.
11. Lessor's consent to this encumbrance shall be null and void and of no further force and effect if Lessee does not obtain financing from CBT, as confirmed by receipt of final loan documents signed by both Lessee and CBT, within ninety (90) days of Lessor's consent.

12. Lessee acknowledges that it will not seek rent relief as a result of not being able to meet its debt service or debt repayment obligations.

13. This Statement is given by Lessor with the understanding that the statements herein made may be relied upon by MGGH and CBT.

14. To the actual knowledge of Lessor, all rent, and any other charges payable by Lessee pursuant to the Lease (referred to collectively hereinafter as "Rent") has been paid through and including the date of this Statement first set forth above; provided, however, there may be Rent still due and owing which will be discovered at the time of audit by Lessor and, to that extent, Lessor cannot represent that all Rent has been paid.

15. This Statement is given by Lessor with the understanding that the statements herein made may be relied upon only by MGGH and CBT (collectively the "Recipient") and only for the purpose of estopping Lessor from asserting contrary facts against Lessee and Recipient which Lessee also has no knowledge of.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

APPROVED AS TO FORM AND LEGALITY      SAN DIEGO UNIFIED PORT DISTRICT

GENERAL COUNSEL

By: \_\_\_\_\_  
Assistant/Deputy

By: \_\_\_\_\_  
Name  
Director, Real Estate

SDUPD Docs No. \_\_\_\_\_

**Exhibit H**

**Form of Cabo Property Estoppel Certificate**

(attached)

## CONSENT TO TRANSFER OF LESSEE'S INTEREST AND LEASE ESTOPPEL

This CONSENT TO TRANSFER OF LESSEE'S INTEREST AND LEASE ESTOPPEL (this "**Consent**") is made as of \_\_\_\_\_, 202\_ (the "**Effective Date**"), by and among (i) Marine group Boat Works De Los Cabos S. DE R.L. DE C.V. ("**Lessee**"), (ii) \_\_\_\_\_, a Delaware limited liability company ("**Purchaser**"), and (iii) Banco Invex, Sociedad Anonima, Institucion De Banco Multiple, Grupo Financiero Invex, En Su Caracter De Fiducario Del Fideicomiso Puerto Los Cabos "Fonatur 192" ("**Lessor**").

### RECITALS

1. Lessee leases that certain real property and related infrastructure known as [\_\_\_\_\_] Marina Center] in San Jose Del Cabo, Baja California Sur, Mexico (the "**Premises**"), pursuant to that certain Lease Agreement by and between the Lessee and Lessor dated July 10, 2008, recorded in the Public Registry of Property and Commerce of Los Cabos, Baja California Sur, under entry number 129, Page 129 Volume V, as amended by that certain Amendment to Lease dated July 2, 2009 (as amended, the "**Lease**").
2. Lessee, as a seller, currently anticipates entering into a Membership Interest Purchase and Contribution Agreement (the "**Purchase Agreement**"), by and among Marine Group Los Cabo, LLC, a Delaware limited liability company ("**MGLC**"), which is the parent entity of Lessee, Purchaser and the other parties thereto, pursuant to which Purchaser will purchase all of the membership interests in MGLC which will include, without limitation, all of MGLC's membership interests in Lessee and, consequently, all of Lessee's interest in and to the Lease. The transaction subject to the Purchase Agreement is referred to herein as the "**Interest Purchase**" and is expected to close on or about [\_\_\_\_\_, 2025]. The date on which the Interest Purchase actually closes is referred to herein as the "**Closing Date**."
3. In connection with the closing of the Interest Purchase contemplated in the Purchase Agreement, effective as of the Closing Date, Purchaser will acquire all of the ownership interests in Lessee and assume all of Lessee's right, title and interest in, to and under the Lease; and Lessor agrees to provide its consent to the transfer of the membership interests in Lessee and Purchaser's acquisition of Lessee's interest in and to the Lease.

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, Lessee, Lessor and Purchaser hereby agree, as follows:

**1. Recitals Incorporated; Definitions.** The Recitals set forth above are hereby incorporated by this reference and shall be deemed terms and provisions hereof. Capitalized terms used and not otherwise defined in this Consent shall have the respective meanings ascribed to such terms in the Lease.

**2. Consent to Transfer of Membership Interests.** Effective as of the Closing Date, Purchaser will acquire all of the membership interests in MGLC including, without limitation, all of MGLC's membership interests in Lessee and Lessee's interest in and to the Lease. Lessor consents to the Interest Purchase and Purchaser's acquisition of the membership interests and Lessor acknowledges that the Interest Purchase as consented to by Lessor will not constitute a default under the Lease and that the Lease shall remain in full force and effect in all respects. **Estoppel.** In connection with the Interest Purchase, Lessor and Lessee hereby certify to Purchaser, as of the Effective Date hereof and again as of the Closing Date, as follows:

(a) A true, correct, and complete copy of the Lease (including all amendments) is attached hereto as **Exhibit A**.

(b) The Lease:

(i) is in full force and effect and Lessee has the sole right of possession of the Premises;

(ii) has not otherwise been further modified, supplemented or amended;

(iii) constitutes the entire understanding between Lessor and Lessee with respect to the Premises; and

(iv) has been duly executed and delivered on behalf of Lessor and Lessee, respectively, pursuant to the proper authority therefor and is binding and enforceable against Lessor in accordance with its terms.

(c) The initial term of the Lease is twenty (20) years and is scheduled to expire on [July 10, 2028]. The Lease also grants Lessee an option to renew the Lease for an additional twenty (20) years upon the terms and conditions set forth in the Lease.

(d) The Premises contain approximately 16,752.833 square meters.

(e) To the knowledge of Lessor and Lessee, there are no existing defaults on the part of Lessor or Lessee under the Lease; neither party to the Lease has delivered any written notice of default to the other; and, to the knowledge of Lessor and Lessee, no event has occurred that, with the giving of notice or the passage of time or both, would constitute a default under the Lease.

(f) The current fixed rent payable under the Lease is \$500.00 U.S. Dollars per month, plus variable rent in an amount equal to 5% of Lessee's gross revenues from Services and 35% of all gross Drystack Revenues. Lessee is also responsible for the payment of all Value Added Taxes due and payable. All Rent due and payable under the Lease has been paid and Lessee is current in all of its monetary obligations under the Lease.

(g) All improvements to the Premises including, without limitation, the Improvements and all other capital improvements required to be made by the parties under the Lease have been made.

(h) Lessor has no option to terminate or otherwise modify the terms and conditions of the Lease other than as specifically provided in the Lease.

(i) To the knowledge of Lessor and Lessee, there has been no casualty with respect to the Premises.

(j) There does not exist any pending, or to the knowledge of Lessor and Lessee, contemplated, condemnation or eminent domain proceedings that affect the Premises or any part thereof, and neither Lessor nor Lessee has received no notice, oral or written, of the intention of any governmental body or other entity to take or use all or any part thereof.

**4. Notices to Purchaser.** From and after the Closing Date, any notice to be given hereunder or under the Lease to Purchaser shall be given in the manner provided in the Lease and addressed as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

**5. No Release.** This Consent shall not release the obligations and liabilities of Lessee to Lessor under the Lease prior to the Closing Date and shall not be deemed or construed to modify, waive, impair or affect any of the covenants, agreements, terms, provisions or conditions contained in the Lease.

**6. Counterparts.** This Consent may be executed and delivered (including by facsimile, "pdf" or other electronic transmission) in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**7. Headings.** The headings contained in this Consent are for reference purposes only and shall not affect in any way the meaning or interpretation of this Assignment.

**8. Continued Effectiveness of Lease.** As of the Closing Date, the Lease shall remain in full force and effect. All covenants, obligations, conditions and terms of the Lease not specifically altered by this Consent are hereby ratified and confirmed.

**9. Binding Effect.** This Consent shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**10. Representations and Warranties.** Lessee represents and warrants to Purchaser that: (a) the Lease is in full force and effect; (b) the Lease has not been assigned, encumbered, modified, extended, or supplemented except as disclosed, in writing, to Purchaser; (c) Lessee knows of no defense or counterclaim to the enforcement of the Lease; (d) Lessee is not entitled to any reduction, offset or abatement of the rent payable under the Lease; and (e) Lessee has not received any notice, and has no knowledge, of any default by Lessee under the Lease.

**11. Choice of Law.** This Consent shall be governed by and construed in accordance with the laws of the State of Delaware and the Civil Code of the State of Baja California Sur, as applicable, without giving effect to any choice or conflict of law provision or rule.

**12. Conflicts.** If any terms, provisions or conditions contained in this Consent shall, to any extent, be invalid or unenforceable, the remainder of this Consent or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby and each and every other term, provision and conditions of this Consent shall be valid and enforceable to the fullest extent permitted by law.

*\*\*\*Signature Page Follows\*\*\**

**IN WITNESS WHEREOF**, Lessor, Lessee and Purchaser have executed and delivered this Consent as of the date first above written.

**PURCHASER:**

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LESSEE:**

By: \_\_\_\_\_  
Name: [●]  
Title: [●]

**LESSOR:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\*\*\**Signature Page to Consent*\*\*\*

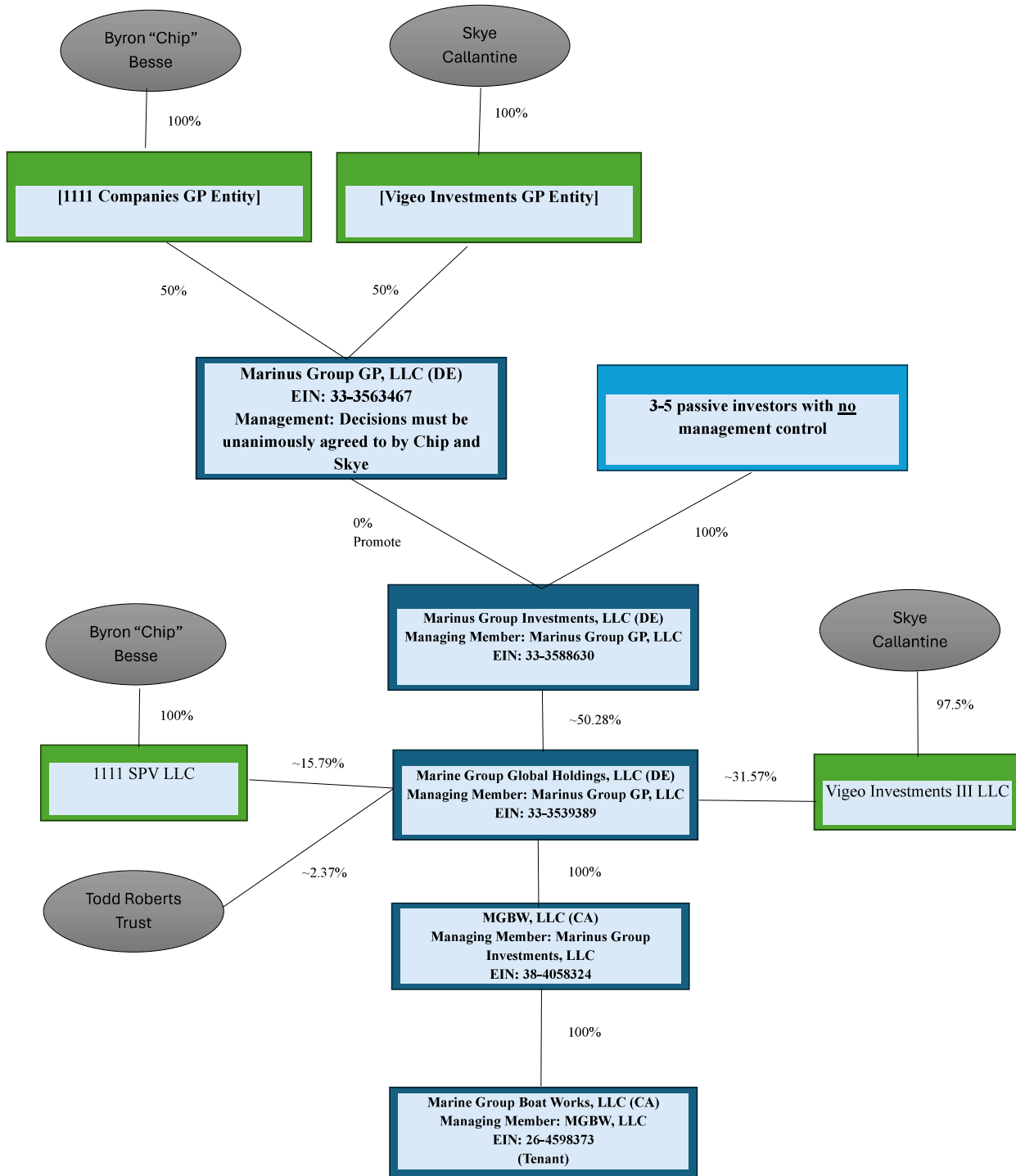
**EXHIBIT A**  
**LEASE**

See attached.

## ADDENDUM B

### Ownership Structure

(attached)



ADDENDUM C

Credit Application

(attached)



# MARINE GROUP

BOAT WORKS

## CREDIT APPLICATION

<b>Billing Address</b>		
Send all invoices and correspondence to:	Voice	(619) 427-6767 X 123
Marine Group Boat Works, LLC	FAX	(619) 427-0324
Accounts Payable	Email	<a href="mailto:AP@marinegroupbw.com">AP@marinegroupbw.com</a>
997 G Street	Web Site	<a href="http://www.marinegroupbw.com">www.marinegroupbw.com</a>
Chula Vista, CA 91910-3414		
<b>Delivery Addresses</b>		
Marine Group Boat Works, LLC		
997 G Street		
Chula Vista, CA 91910-3414		
<b>Company Info &amp; Principals</b>		
Limited Liability Company established 2009	Art Engel	
In business since 1986	1311 First St.	
	Coronado, CA 92118-1502	
Federal Tax ID No. 26-4598373	(619) 437-6999	
	Herb Engel	
	1311 First St.	
	Coronado, CA 92118-1502	
	(619) 437-6999	
Marine Group Boat Works is a full-service superyacht repair and refit facility located along the San Diego Bay with a location in Los Cabos, BCS, Mexico. With a 820-ton hoist, the facility can work on private, commercial and government vessels up to 220 feet long with specialized services including retrofits; conversions; hull extensions; carpentry, mechanical and electrical work; and custom painting.		
<b>Vendor Specific Information</b>		
Resale No.: SR FH 101-537857		
Purchasing Contact is Nino Zizzo (619)427-6767 X 121   <a href="mailto:gzizzo@marinegroupbw.com">gzizzo@marinegroupbw.com</a>		
A/P Contacts are: Alex Copley (619) 621-2249 (primary);		
Tom Lunch Controller (619) 427-6767 X 139 (secondary)		
<b>Bank Reference</b>		
California Bank & Trust		
Account Number:	2120438851	
Contact Person:	Julia Mahmood	
	11375 El Camino Real, Suite 150	
	San Diego, CA 92130	
Voice	(858)720-9353	
Fax	(858)720-9366	
<b>Trade References</b>		
Name WestAir Gases and Equipment	Voice	(619) 423-9912
Address 2300 Haffley Ave, National City, CA 91950	<a href="mailto:ar@westairgases.com">ar@westairgases.com</a>	
Name Truitt Machine & Fabrication, Inc	Voice	(619) 498-1300
Address 4304 Vista Coronado Dr.Chula Vista, CA 91910	<a href="mailto:truittmachine@yahoo.com">truittmachine@yahoo.com</a>	
Name JAG Yacht Coating, Inc	Voice	(619) 947-4663
Address 684 Marcilla Way, Chula Vista, CA 91910	<a href="mailto:msflores@jagsd.com">msflores@jagsd.com</a>	
Name Dependable Marine, Inc.	Voice	(619) 226-2015
Address 3134 Main St. Unit B, San Diego, CA 92113	<a href="mailto:beckied@dependablemarinecat.com">beckied@dependablemarinecat.com</a>	



**SAN DIEGO UNIFIED PORT DISTRICT  
DEVELOPMENT SERVICES DEPARTMENT**

P.O. BOX 120488  
SAN DIEGO, CA 92112-0488  
(619) 686-6419

**COASTAL DEVELOPMENT PERMIT AMENDMENT NO. 1**

**Permittee:** ~~Todd Roberts, General Manager~~ President Byron “Chip” Besse  
South Bay Boatyard (Marine Group Boat Works)  
997 G Street  
Chula Vista, California 91910

**Project:** South Bay Boatyard (Marine Group Boat Works) Improvements Project  
(UPD#83356-MND-660)

**Location:** 997 G Street, Chula Vista, California 91910

You are hereby granted an amendment to Coastal Development Permit (CDP or Permit) CDP-2005-04 (Non-Appealable). The original CDP, Clerk Document No. 49916, was issued on December 14, 2005 in conformance with the California Coastal Act of 1976 and the Coastal Permit Regulations of the San Diego Unified Port District (District), as adopted by the Board of Port Commissioners on July 1 1980, Resolution No. 80-193, and as amended on December 2, 1980, Resolution No. 80-343, and on February 14, 1984, Resolution No. 84-62. The District has determined that this amendment to the original CDP-2005-04 is a material change to the Permit. On [Insert Date], the Board of Port Commissioners approved issuance of Amendment No. 1 to CDP-2005-04 (Resolution No.: xxxx)

The proposed project is located between the sea (as defined in the Coastal Act) and the first inland continuous public and road paralleling the sea. The project is fully consistent with Public Resources Code Sections 30604(c), 30210-30224, and the Coastal Act public access and recreation policies referenced herein.

This amendment is limited to the modifications described below in ~~strikeout~~/underline format and set forth in material on file with the San Diego Unified Port District (District). All remaining terms, conditions, limitations and provisions of CDP-2005-04 (as amended), is also hereby assigned to Byron “Chip” Besse and unless shown as deleted in this amendment, are to remain in effect.

**DEVELOPMENT**

The ~~project site~~ Marine Group Boat Works’s site located at 997 G Street, Chula Vista, California 91910 (Site) consists of approximately 371,000 square feet of water area referred to as the boat basin, and approximately 412,000 square feet of land area referred to as the boatyard.

The proposed project is the placement and operation of a new 820-ton travelift, as specified in Exhibit B, programed and operated with a maximum capacity of 660-ton vessel displacement weight and the removal of the existing 660-ton travelift. Other than a second 100-ton capacity travelift and the 820-ton travelift, no other travelifts are authorized to be placed or operated on the Site.

The proposed project also includes boat basin improvements involving the construction of two steel fingers to support a Travelift and the removal of five floating docks. The 820-ton travelift operated at no more than 660-tons capacity boat hoist (Travelift) will enable the removal of large vessels (in excess of 100-feet in length) from the water for repair. The fingers would be mounted upon pilings, which would be driven into the seabed. The steel will be lifted into position and secured to the pilings such that they can be removed and relocated in the same manner if desired. The piles cannot be relocated. In addition, five existing floating docks and associated anchor piles in the eastern portion of the boat basin will be removed. See attached maps and drawings. Boat basin modifications will take place entirely within the leased area that is protected by a wave attenuation wall.

Boatyard improvements include general site modifications and replacement of the existing office building and workshop with a new 16,690 square foot modular office building and workshop. With the exception of the largest building located in the southwestern portion of the boatyard, all other existing buildings will be removed. General site modifications include replacement of all interior fences and landscaping, relocating the existing stormwater collection and control facilities, resurfacing the entire boatyard, paving a 45,000 square foot area, removal of existing crane foundations, and establishment of a reinforced pathway on which the Travelift would traverse. As part of the resurfacing activities, the existing 150 on-site parking spaces will for formalized, including the striping of parking spaces. Parking would be located on-site between the proposed modular building and G Street, and also just north of the large building remaining. All boatyard improvements will take place within the perimeter of the boatyard's lease area.

The Site is a non-conforming use and hence, other than the 660-ton displacements of vessels, no intensification of use is part of the DEVELOPMENT. DEVELOPMENT may be referred to as the "Project" in the conditions set forth below.

#### PRIOR TO ISSUANCE

1. Marine Group Boat Works, LLC shall transfer its interest in the Marine Group Boat Works to Marine Group Global Holdings, LLC (MGGH) and MGGH shall enter into an Amended, Restated and Combined Lease (ARC Lease) with the District within six (6) months of approval of this Coastal Development Permit Amendment No. 1. This Prior to Issuance Condition shall be satisfied upon the effectiveness and full execution of the ARC Lease.

STANDARD PROVISIONS

1. Permittee shall adhere strictly to the current plans for the Project DEVELOPMENT as approved by the District and the Project features DEVELOPMENT, described above, for the Project.
2. Permittee shall notify the District of any changes in the DEVELOPMENT Project. Notification shall be in writing and be delivered to the District prior to any changes to the DEVELOPMNET. The District shall determine whether or not District approvals of the change(s) is required prior to implementation of any changes, and if the Project change will require environmental review in accordance with the California Environmental Quality Act, an amendment to this Permit or a new Coastal Development Permit. Implementation of the change without prior District review and approval shall be a violation of this Permit.
3. Any questions of intent or interpretation of any condition shall be resolved by the District Executive Director or the Board of Port Commissioners and NOT the Permittee.
4. Permittee and the Project shall meet all applicable codes, statutes, ordinances and regulations, and Permittee shall obtain all necessary permits from local, regional, state, and federal agencies prior to implementation of the DEVELOPMENT.
5. Permittee shall conform to, and this Permit is subject to, the permit rules and regulations of the District, including, but not limited to, the District's Coastal Development Permit Regulations and Port Code, as well as the California Coastal Act.
6. Permittee shall be responsible for compliance with ADA and Title 24 specifications.
7. Permittee shall commence development within two (2) years following the date of the permit issuance by the District. Construction shall be pursued in a diligent manner and completed within a reasonable period of time.
8. The Permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
9. This Permit shall not be valid unless two copies have been returned to the Land Use Planning Development Services Department of the District, upon which copies the Permittee has signed a statement agreeing that the Permittee will abide by the terms, conditions, limitations, and provisions of the permit.
10. The Permittee and contractor shall implement all best management practices (BMPs) must be performed during construction and maintenance operations. This includes no pollutants in the discharges to storm drains or to San Diego Bay, to the maximum

extent practicable. No non-stormwater (irrigation, wash water, etc.) may discharge to the District's storm drains. Storm water discharges to storm drains or to Pacific Ocean are allowable, if they do not contain pollutants.

- ~~11. All Port of San Diego tidelands are regulated under Regional Water Quality Control Board Order No. R9-2007-0001, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0108758, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, and the San Diego Unified Port District (Municipal Permit). The Municipal Permit prohibits any activities that could degrade stormwater quality. On May 8, 2013, the San Diego Regional Water Quality Control Board adopted No. R9-2013-0001, NPDES No. CAS0109266, Waste Discharge Requirements for Discharges from the Municipal Separate Storm System draining the watersheds within the San Diego Region. However, the Jurisdictional Urban Runoff Management Program (JURMP) requirements of the 2007 permit will remain in effect until the water Quality Improvement Plans are approved approximately two years from the effective date.~~

~~The Permittee shall ensure that post construction/operational use of this Project site complies with the Municipal Permit and District direction related to permitted activities including the requirements found in the District Jurisdictional Urban Runoff Management Document (JURMP). The JURMP is available on the District website: <http://www.portofsandiego.org/environment/stormwater.html> or by contacting the Environmental and Land Use Management Department, (619) 686-6254.~~

- ~~11. All District tidelands are regulated under Regional Water Quality Control Board Order No. R9-2013-0001, as amended by Order Nos. R9-2015-001 and R9-2015-0100, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0109226, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds Within the San Diego Region (Municipal Permit). The Municipal Permit prohibits any activities that could degrade stormwater quality.~~

~~The Permittee shall ensure that post-construction / operational use of this Project site complies with the Municipal Permit and District direction related to permitted activities including the requirements found in the District's Jurisdictional Runoff Management Program (JRMP). The JRMP is available on the District website: <https://www.portofsandiego.org/environment/environmental-protection/stormwater> or by contacting the Environmental Protection Department at (619) 686-6254.~~

- ~~12. This Project may be subject to the Port Standard Urban Stormwater Mitigation Plan (SUSMP) process. As such, approval of the Project by the District is necessarily conditioned upon submission by the Permittee of a project specific Urban Stormwater Mitigation Plan (USMP) that meets District requirements. The Permittee shall implement all USMP structural and non-structural best management practices (BMPs) throughout the life of the Project. A link to the District's SUSMP guidance documents~~

is \_\_\_\_\_ posted \_\_\_\_\_ on \_\_\_\_\_ the \_\_\_\_\_ District \_\_\_\_\_ website:  
<http://www.portofsandiego.org/environment/stormwater.html>

~~The Implementation and maintenance of the USMP BMPs constitute regulatory obligations for the Permittee, and failure to comply with the Municipal Permit, the JURMP, or the Port approved USMP, including the specific BMPs contained therein, may be considered a violation of the permit.~~

12. This Project may be subject to the District post-construction BMP requirements. If so, approval of the Project by the District is necessarily conditioned upon submission by the Permittee of a specific Stormwater Quality Management Plan (SWQMP) for the Project that meets District requirements and is compliant with the District BMP Design Manual (JRMP Appendix D). If required, the Permittee shall implement all post-construction structural and non-structural BMPs in perpetuity.

The implementation and maintenance of the post-construction BMPs constitute regulatory obligations for the Permittee, and failure to comply with the Municipal Permit, the JRMP, or the District approved SWQMP, including the specific BMPs contained therein, may be considered a violation of the permit and a violation of District Code.

13. In the discretion of the District, prior to commencement of construction, Permittee may be required to require that their contractor(s) furnish security, naming the District as a dual obligee, in the form of a performance bond and a payment bond, each in an amount deemed appropriate by the District to guarantee payment of the subcontractors, completion of the approved work under this permit, and compliance with the conditions and limitations upon which such permit is granted. Prior to commencement of construction, Permittee may also be required by the District to furnish security in the form of a payment bond in an amount deemed appropriate by the District to guarantee payment to the contractor(s) for work performed under this permit.

14. By accepting this Permit, Permittee acknowledges and agrees (a) that the Project site may be subject to environmental conditions and hazards; (b) to assume the risks to the Permittee of injury and damage from such conditions in connection with the implementation or operations of the Project; (c) to unconditionally waive any claim of damage or liability against the District, its Board of Port Commissioners, officers, agents and employees ("District" for purposes of this condition) for injury or damage from such conditions to persons performing the development for which this Permit is issued or operating on the Project site under this Permit; (d) to defend, indemnify and hold harmless, and require that Permittee's contractor(s) engaged to perform the development on the Project defend, indemnify and hold harmless, the District from any claim, demand, liability, loss, action, administrative agency appeal, damage, cost, expense (including all attorneys' fees and consultant/expert fees), award, fine, penalty or judgment (collectively, Claims) arising out of, resulting from, or in any way related to the performance of the development by Permittee's contractor(s) for which

this Permit is issued, with the exception of any claim, action, damages, liability or costs arising or resulting from the project caused by the gross negligence or willful misconduct of the District; (e) to defend, indemnify and hold harmless the District from any Claims arising out of, resulting from, or in any way related to Permittees operation of the Project site with the exception of any claim, action, damages, liability or costs arising or resulting from the project caused by the gross negligence or willful misconduct of the District; (f) to defend, indemnify and hold harmless the District from any Claims arising out of, resulting from, or in any way related to the District's approval of the Project, the granting of this Permit, and the District's adoption of the Final Negative Declaration; and (g) that Permittee will require Permittee's contractors to name the District as an additional insured on all policies of insurance, now in existence or to be obtained by them, for the work conducted pursuant to this Permit.

15. Permittee acknowledges and agrees that: (a) it is the sole and exclusive responsibility of Permittee, and not the District, to ensure that all persons and/or entities who provide any labor, services and/or equipment in connection with the project, shall comply with the requirements of California's prevailing wage laws (the "PWL"), to the extent such laws are applicable; and (b) it is the sole and exclusive responsibility of Permittee, and not the District, to determine whether the Project is subject to the PWL by obtaining a determination by means that do not involve the District. If the Project is determined to be subject to the PWL, Permittee shall comply with all applicable provisions of the PWL, and shall take reasonable steps to ensure that all persons and/or entities who provide any labor, services, equipment and/or materials in connection with the Project shall likewise comply with all applicable provisions of the PWL.

Permittee further acknowledges and agrees that Permittee's failure to comply with all applicable provisions of the PWL, and/or their failure to take reasonable steps to ensure that all persons and/or entities who provide any labor, services, equipment and/or materials in connection with the Project comply with all applicable provisions of the PWL, shall render Permittee, and not the District, liable for all remedies (inclusive of all applicable fines and penalties), afforded by law as a consequence of such non-compliance. Permittee expressly agrees to defend, indemnify and hold harmless the District, from any claim, demand, liability, loss, action, damage, cost, expense (including all attorneys' fees and consultant/expert fees), award, fine, penalty or judgment arising out of, resulting from, or in any way related to the PWL (collectively "PWL Claim") made against or incurred by the District in any capacity (including, without limitation, as a real party in interest), except for any PWL Claim arising out of the sole negligence or willful misconduct of the District.

16. The conditions of this Permit are independent of, and in addition to, the obligations of the Permittee under any existing lease(s), Tidelands Use and Occupancy Permit(s), or other contractual agreement(s) with the District, and are binding upon Permittee and its agents, representatives, successors and permitted assigns.

### SHORT TERM CONSTRUCTION MEASURES

1. To minimize noise during construction, the Permittee will require the construction contractor to (a) restrict normal construction activities from 7:00 am to 7:00 pm; (b) keep construction equipment as far as possible from sensitive receptors; and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.
2. To minimize fugitive air emissions during construction, the Permittee will require the construction contractor to keep fugitive dust down by regular watering.
3. To minimize nuisance effects from lights or glare during construction, the ~~contractor~~ Permittee will require the construction contractor to shield and direct night lighting away from adjacent areas.
4. All trucks hauling loose material during Project construction, either on-site or off-site, shall be adequately covered, and adhere to adopted truck routes.
5. Suspend all ground-disturbing activities when wind speeds (As instantaneous gusts) exceed 25 mph at a portable weather station on the Project site.
6. Access points onto local paved roads shall be kept clean and swept as necessary. If visible soil material is carried onto adjacent public paved roads, use of a water sweeper will be required to clean the public road.
7. Traffic speeds on all unpaved surfaces shall be limited to 15 mph.
8. Permittee shall prevent inactive trucks from idling more than 10 minutes during construction once they arrive on the construction site.
9. All construction equipment shall be maintained in peak condition to reduce operational emissions.
10. Diesel equipment shall use low-sulfur diesel fuel.
11. Electric equipment shall be used to the maximum extent feasible during construction.
12. ~~Construction employees shall be provided~~ The Permittee shall require the construction contractor to provide construction employees with transit and ride share information.
13. The Permittee shall ensure that any site contamination is identified and a site restoration plan, acceptable to the appropriate regulatory agencies, is prepared and implemented to reduce any existing contamination to a level that has no potential to threaten employee or human health as defined under existing regulations. If any

potential exists for impacts to employee health from exposure to ~~acidic or caustic soils, hazardous materials~~, workers shall be provided with adequate protective gear.

14. The Permittee shall require all employees that are exposed to noise levels in excess of Occupational Safety and Health Administration hearing protection thresholds, during construction or operation, to wear noise protection devices (ear plugs and covers) that are protective of individual hearing.
15. Permittee and/or contractor shall comply with State Water Resources Control Board Order No. ~~99-08-DWQ~~ 2022-0057-DWQ (National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002), and Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (commonly known as the " ~~General Construction Storm Water~~ General Permit"), as adopted, amended, and/or modified. ~~The District is responsible for submitting the Notice of Intent to comply with the General construction Storm Water Permit. The Permittee and/or contractor must comply with the General Construction Storm Water Permit and District direction related to permitted activities. Construction activity subject to the General Construction Storm Water General Permit requires development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). The Permittee and/or contractor must prepare and submit the SWPPP for review and approval by the District prior to site work~~ are responsible for submitting to the District a SWPPP that is compliant with the Construction General Permit and District required minimum BMPs. The District requires the use of District SWPPP templates. Once approved, the SWPPP document shall be maintained on the construction site at all times and made available for review by the District or other regulatory agencies.

The Permittee and/or contractor is responsible for ensuring that the SWPPP document is maintained on the site, implemented, and amended as required throughout construction. No discharges of any material or waste, including potable water, wash water, dust, soil, trash, and debris, may contaminate stormwater or enter the stormwater conveyance system. Any such material that inadvertently contaminates stormwater or enters the stormwater conveyance system as part of site operations shall be removed immediately. All unauthorized discharges to the stormwater conveyance system or the Bay or the ocean shall be reported immediately to the District Stormwater Department, in order to address any regulatory permit requirements regarding spill notifications.

A project's total disturbed soil area (DSA) shall not exceed 5 acres during the rainy season (October 1 - April 30) and 17 acres during the non-rainy season (May 1 - September 30). The District may temporarily increase these limits if the individual site is in compliance with applicable stormwater regulations and the site has adequate control practices implemented to prevent stormwater pollution.

## SPECIAL PROVISIONS

1. This Coastal Development Permit Amendment No. 1 shall only apply to the Permittee and an amendment to this Permit shall be required to transfer the Permit to another person or entity.
  
2. Permittee shall comply with all applicable Mitigation Monitoring and Reporting Program requirements for the "South Bay Boatyard Improvements Project" Final Mitigated Negative Declaration (Document No. UPD #83356-MND-600). Mitigation measures are briefly outlined below. Permittee shall refer to the Mitigation Monitoring and Reporting Program for specific requirements (attached as Exhibit CA)
  - a) Biological Resources

Pile driving activities shall not occur between March 1<sup>st</sup> and September 15<sup>th</sup>, which represents the earliest and latest dates of the breeding season for the various sensitive species located in the project vicinity. If the breeding season is determined by a Port District approved biologist to have ended prior to September 15<sup>th</sup> construction will be permitted from that time forth.
  - b) Biological Resources

The 1,800 square feet of increased coverage over the San Diego Bay would require one of the following: 1) Removal of 1,800 square feet of additional existing docks, or 2) A comparable enhancement as determined by a Port approved biologist. Enhancement would be completed prior to construction of the fingers and to the satisfaction of a Port of San Diego and any applicable resource agencies.
  - c) Hydrology/Water Quality

Silt curtains shall be used around the submerged construction area to minimize sediment disturbances. Typically, the curtain is anchored along the ocean floor with weights (i.e. a chain) and is anchored to the top with a floating chain of buoys. The curtain wraps around the area of disturbance to prevent turbidity for traveling outside the immediate project area. Turbidity immediately outside of the silt curtains shall be monitored to determine if sediments have spread outside the curtains. If it has, work shall slow and the curtain will be inspected and repaired to limit the spread of sediments. Once the impacted region resettles the curtains are removed.
  
3. The 820-ton travelift is only allowed to service vessels with a displacement weight of 660 tons or less (Maximum Displacement). Any change to the travelift size or exceedance in service vessel over 660 tons shall require additional California Environmental Quality Act analysis, an amendment to this Coastal Development Permit, and the District's approval.

4. The Permittee or its successor shall allow authorized representatives from the District without prior notice to enter the Site for the purpose of inspection, compliance verification, or Permit enforcement. During inspection and upon request, Permittee shall show the inspector the travelift's displacement tonnage.
5. The District shall place noise monitors, at Permittee's expense, at location(s) on the façade of the Gaylord Hotel subject to the approval of the Gaylord Hotel or a location that is mutually acceptable by both Parties that is similarly situated, and at the boundary of the Refuge to monitor noise levels during operations. The noise monitoring shall be implemented in a manner that automatically sends alerts of noise exceedance of the Noise Standards, as that term is defined in Exhibit B, to at least two (2) designated personnel of the Permittee that are present at the MGBW facility during operations and at least two (2) designated personnel of the District ("Designated Personnel"). Within twenty-five (25) minutes of an alert to Permittee's Designated Personnel, Permittee shall promptly cease such operations causing the noise violation for the duration of the daytime or nighttime shift, as the case may be. Upon receiving an automated alert that Permittee's operations have exceeded the Noise Standards, Permittee shall promptly, but in no event more than seven (7) days after the date of the violation, propose a plan to the District to ensure that future operations will not violate the Noise Standards, which may include installation of noise buffering measures and/or relocation of offending operations to a different portion of the Premises. Permittee's plan shall be subject to the District's reasonable approval. The District may propose additional reasonable measures to ensure compliance with the Noise Standards, provided that District and Permittee shall cooperate, in good faith, to ensure a solution that (i) mitigates the noise from operations to a level that complies with the Noise Standards and (ii) does not unreasonably interfere with Permittee's ability to operate at the facility.
6. Within ten (10) business days of receipt of a written request from the District (that may be transmitted by electronic mail), Permittee shall provide to the District, operating logs for the previous six (6) months that consist of (i) the vessel's name, (ii) haul weight in tons, (iii) launch weight in tons, (iv) haul date and launch date. The operating log shall be submitted with a declaration under penalty of perjury that the information is accurate and that the vessels reported in the log are the only vessels serviced by the 820-ton travel lift.
7. The Permittee or its successor shall ensure that lighting does not spill over the property line and into adjacent properties. All lighting is required to be shielded downward, and away from the hotel and convention center, marsh land and sensitive habitats.
8. Permittee shall strictly comply with the "Use Restrictions" as specified in Exhibit B.
9. Any violation of the Maximum Displacement or Prohibited Nighttime Operations, as defined in Exhibit B, shall be subject to a \$100,000 penalty for each violation.

10. The District shall also have all other remedies available to it under law and equity for a violation of the "Use Restrictions" and this Permit, including without limitation an enforcement action either by the District or California Coastal Commission.

Exhibits:

- A. 820-Travelift Description
- B. "Use Restrictions"
- C. Mitigation Monitoring and Reporting Program

If you have any questions on this Permit, please contact the Development Services Department of the San Diego Unified Port District at (619) 686-6419.

SCOTT CHADWICK  
President/Chief Executive Officer

By: \_\_\_\_\_  
Wileen C. Manaois  
Director, Development Services

I have read and understand the reasonable terms, conditions, limitations, and provisions of this Permit and agree to abide by them. I further understand that the reasonable terms, conditions, limitations, and provisions of the Permit are material to its issuance by the District, and that such terms, conditions, limitations, and provisions are included to ensure consistency with applicable laws and regulations, including the Coastal Act. Any failure to abide by the reasonable terms, conditions, limitations, and provisions may result in enforcement by the District and/or the California Coastal Commission, including revocation, as may be warranted.

\_\_\_\_\_  
Signature of Permittee  
Todd Roberts  
President, Marine Group Boat Works, LLC

\_\_\_\_\_  
Date

## Exhibit A

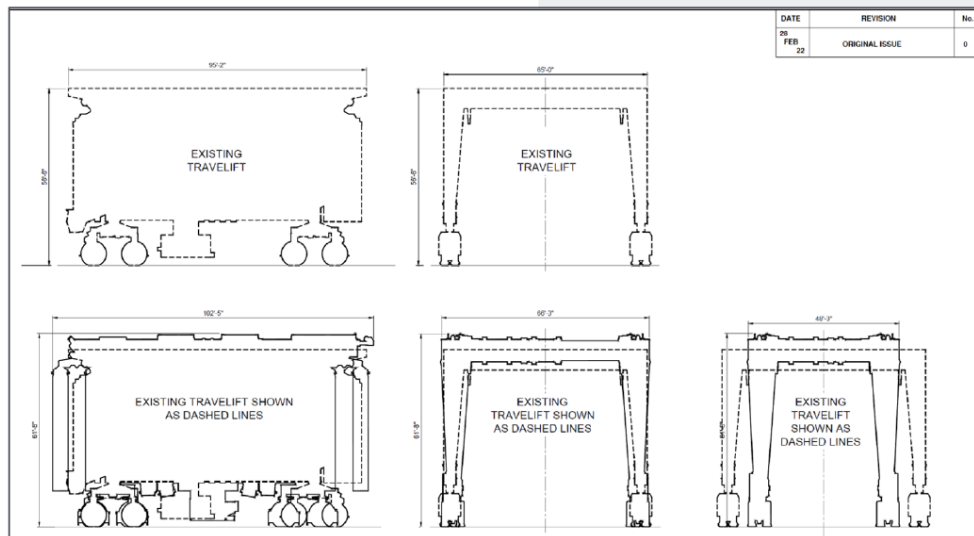
### 820-Ton Travel lift Replacement

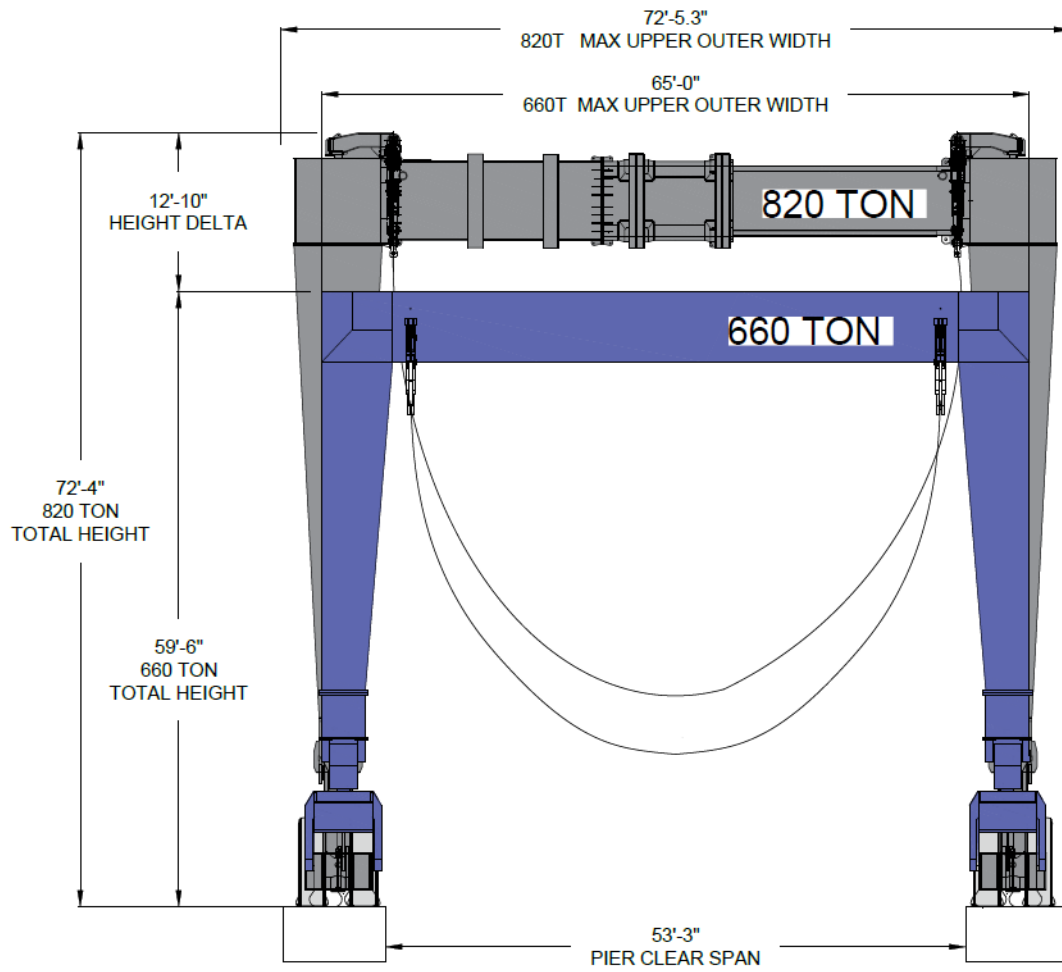
MGBW seeks to replace its existing, outdated 660-ton travel lift with a more efficient and sustainable 820-ton variable width travel lift. The 820-ton mobile lift works with MGBW's existing infrastructure. In other words, the 820-ton lift will have the same footprint as our existing travel lift (See Figure 7). The mobile lift will be equipped with a variable width feature that allows MGBW to optimize spacing and blocking of vessels onshore to more efficiently to utilize the space on land. The amount the width is reduced is dependent on the beam of the boat being hauled.

With the new 820-ton Variable Width Travel lift, boats will be able to be placed closer together, while still leaving enough room between them to facilitate the required work.

Last, but not least, the new 820-ton travel lift will be equipped with Tier 4 engines, the most sustainable model on shelves today.

*Figure 7: New Travelift Will Have Smaller Footprint than Existing Travelift*





## **Exhibit B**

### **Use Restrictions**

The DEVELOPMNET and operations at the Site are subject to the following restrictions (collectively, "Use Restrictions"): (a) any change to the Permitted Use, travel lift size, or tonnage limit, including the Maximum Displacement Requirement, Prohibited Nighttime Operations, Lighting Requirement and Noise Standards, as those terms are herein defined, shall require BPC approval, to be granted or withheld in the BPC's sole and absolute discretion, (b) no greater than 660-ton travel lift displacements shall occur and Tenant shall provide Landlord, within five (5) business days of written request from Landlord, a signed declaration from the travel lift's manufacture that the travel lift on the Premises has been and remains electronically limited to a maximum lifting capacity of 660 tons displacement, (c) lighting on and from the Premises during night operations shall be directed away from the adjacent resort and convention center the, wildlife refuge, and wildlife habitat; (d) operations on the Premises shall be subject to the Chula Vista exterior noise limits in accordance with Table III of Chapter 19.68.030 of the Chula Vista Municipal Code, and in particular (i) the limits from 10:00 p.m. to 7:00 a.m. shall be those standards for Multiple Dwelling Residential exterior noise limits in accordance with Table III of Chapter 19.68.030 of the Chula Vista Municipal Code and (ii) the limits from 7:00 a.m. to 10:00 p.m. shall be those standards for Commercial exterior noise limits in accordance with Table III of Chapter 19.68.030 of the Chula Vista Municipal Code except, at the boundaries of the Refuge, during the typical avian breeding season of January 15 to August 31 noise levels shall not exceed 60 dB(A) (decibel, A-weighted) Leq (equivalent continuous sound level) (collectively, "Noise Standards"), and (e) Tenant shall not do any of the following between the hours of 10:00 p.m. and 7:00 a.m.:

- Sand blasting
- High pressure water jetting
- Travel lift operation\*
- Crane operation
- Hammering or other banging on metal
- Metal cutting, except for metal cutting that can be accomplished without any appreciable noise, such as cutting with an acetylene torch
- Metal grinding
- Any other activity that would exceed the Noise Standards and Lighting Requirement

\*There may be occasional urgent night-time requests from the U.S. Coast Guard to remove a vessel from the water that is in danger of sinking, in which case the travel lift may be used to remove the requested vessel.

The foregoing in subsection (e) with the exception of "any other activity that would exceed the Noise Standards and Lighting Requirement" are collectively referred herein as "Prohibited Nighttime Operations".

## **Exhibit C**

### **MITIGATION MONITORING AND REPORTING PROGRAM FOR THE SOUTH BAY BOATYARD IMPROVEMENTS PROJECT MITIGATED NEGATIVE DECLARATION**

#### **PURPOSE OF THE MONITORING AND REPORTING PROGRAM**

This Mitigation Monitoring and Reporting Program (MMRP) was prepared for the proposed South Bay Boatyard Improvements Project (Project) to comply with the California Environmental Quality Act (CEQA) mitigation monitoring statute (Public Resources Code Section 21081.6). This statute, entitled "Reporting or Monitoring Programs," requires public agencies to "adopt a reporting or monitoring program for the changes to the project, which it has adopted or made a condition of approval, in order to mitigate or avoid significant effects on the environment." This MMRP shall be made a requirement of project approval and shall be adopted by the Lead and Responsible Agencies upon formulation of Findings pursuant to Section 15091 of the State CEQA Guidelines. The Lead Agency for this project is the San Diego Unified Port District ("Port District").

The purpose of the MMRP is to ensure that the mitigation measures, required by the Mitigated Negative Declaration (MND) for the Port's requested actions, are properly implemented. As Lead Agency for the project under CEQA, the Port will monitor the mitigation measures for construction and operation of the project. The Mitigation Monitoring Checklist provides a mechanism for monitoring the mitigation measures in compliance with the MND. General guidelines for the use and implementation of the monitoring program are described below.

An effective reporting system shall be established prior to any monitoring efforts. Copies of the measures shall be distributed to the participants of the monitoring effort to ensure that all parties involved have a clear understanding of the mitigation monitoring measures adopted.

#### **MITIGATION MONITORING CHECKLIST**

The Mitigation Monitoring Checklist is organized by categories of environmental impacts, (e.g., Biological Resources, Water Quality, Land Use, and Noise). Potential impacts identified in the MND are summarized for each impact area and the required mitigation measures are listed. The checklist identifies the implementation schedule, who is responsible for implementing the measure, monitoring mechanism, and required monitoring and reporting frequency. A description of these items is provided below.

**Mitigation Measure.** The specific mitigation measure as outlined in the Mitigated Negative Declaration is described by category.

**Monitoring Requirement.** Specific requirements are provided for use by monitoring staff to ensure that measures are included on implementing maps and later installed on-site.

**Responsible for Mitigation Implementation.** The Responsible for Mitigation Implementation column explains who will ensure that the mitigation measures are properly implemented. The Port District shall be responsible for either monitoring each measure, or delegating to an agency or party, at their discretion.

**Completion Requirement.** The mitigation measures required for the project will be implemented at various times as construction proceeds and during operation. Some measures must be implemented before or during construction activities, while others must be implemented upon completion.

**Agency Responsible for Verification.** This column describes who will be ultimately responsible for ensuring that each mitigation measure is monitored and who will coordinate the final reporting program.

### MITIGATION MONITORING CHECKLIST

Mitigation Measure	Monitoring Requirement	Responsible For Mitigation Implementation	Completion Requirement	Agency Responsible For Verification
<b>Biological Resources</b>				
<b>BR1</b> Pile driving activities shall not occur between March 1st and September 15th, which represents the earliest and latest dates of the breeding season for the various sensitive species located in the project vicinity. If the breeding season is determined by a Port District approved biologist to have ended prior to September 15th construction will be permitted from that time forth.	Construction	South Bay Boatyard	Upon completion of pile driving.	Port District/ CDFG/ USFWS/ City of Chula Vista
<b>BR2</b> The 1,800 square feet of increased coverage over the San Diego Bay would require one of the following: 1) Removal of 1,800 square feet of additional existing docks, or 2) A comparable enhancement to the satisfaction of a Port District approved biologist. Enhancement would be completed prior to construction of the fingers and to the satisfaction of a Port of San Diego and applicable resource agencies.	Construction	South Bay Boatyard	Prior to construction of fingers.	Port District/ CDFG/ USFWS
<b>Water Quality</b>				
<b>WQ1</b> Silt curtains shall be used around the submerged construction area to minimize sediment disturbances. Typically, the curtain is anchored along the ocean floor with weights (i.e. a chain) and is anchored to the top with a floating chain of buoys. The curtain wraps around the area of disturbance to prevent turbidity for traveling outside the immediate project area. Turbidity immediately outside of the silt curtains shall be monitored to determine if sediments have spread outside the curtains. If it has, work shall slow and the curtain will be inspected and repaired to limit the spread of sediments. Once the impacted region resettles the curtains are removed.	Construction	South Bay Boatyard	Upon completion of in water improvements.	Port District/ RWQCB
<b>Land Use</b>				
<b>BR1</b> Pile driving activities shall not occur between March 1st and September 15th, which represents the earliest and latest dates of the breeding season for the various sensitive species located in the project vicinity. If the breeding season is determined by a Port District approved biologist to have ended prior to September 15th construction will be permitted from that time forth.	Construction	South Bay Boatyard	Upon completion of pile driving.	Port District/ CDFG/ USFWS/ City of Chula Vista

Mitigation Measure	Monitoring Requirement	Responsible For Mitigation Implementation	Completion Requirement	Agency Responsible For Verification
<b>Noise</b>				
<b>BR1</b> Pile driving activities shall not occur between March 1st and September 15th, which represents the earliest and latest dates of the breeding season for the various sensitive species located in the project vicinity. If the breeding season is determined by a Port District approved biologist to have ended prior to September 15th construction will be permitted from that time forth.	Construction	South Bay Boatyard	Upon completion of pile driving.	Port District/ CDFG/ USFWS/ City of Chula Vista

**DRAFT****RESOLUTION 20xx-xxx**

**RESOLUTION (1) FINDING THE FOLLOWING BOARD ACTION EXEMPT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), INCLUDING, BUT NOT LIMITED TO, CEQA GUIDELINE SECTION 15302; AND (2) AUTHORIZING THE ISSUANCE OF AMENDMENT NO. 1 TO NON-APPEALABLE COASTAL DEVELOPMENT PERMIT CDP-2005-04 FOR THE PLACEMENT OF A 820-TON TRAVELIFT AT MARINE GROUP BOAT WORKS, LLC**

**WHEREAS**, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

**WHEREAS**, Section 21 of the Port Act authorizes the Board of Port Commissioners (BPC) to pass all necessary ordinances and resolutions for the regulation of the District; and

**WHEREAS**, Marine Group Boat Works, LLC (MGBW) has a lease with the District to operate a full-service boat and super-yacht facility that specializes in the repair and fabrication of personal, commercial and small craft government vessels, located at 997 G Street within the City of Chula Vista (Existing Lease); and

**WHEREAS**, the Existing Lease commenced on February 1, 1985 and terminates on January 31, 2030 wherein MGBW has an option to extend the term for an additional 11 years to January 31, 2041, provided certain condition precedents are satisfied prior to MGBW exercising the option; and

**WHEREAS**, in 2005, the District issued a non-appealable Coastal Development Permit (CDP) (CDP-2005-04) to MGBW to, among other items, place and operate a 660-ton travelift on site; and

**WHEREAS**, in February 2025, it came to the attention of District staff that the 660-ton travelift has been removed and replaced with an 820-ton travelift; and

**WHEREAS**, the placement of the 820-travelift onsite is “development” under the California Coastal Act requiring an amendment to MGBW’s existing CDP or a new CDP; and

**WHEREAS**, it also is a default under the Existing Lease’s requirement to comply with laws, including the Coastal Act, and to obtain District approval prior to installing or removing machines such as the travelift; and

20xx-xxx

**WHEREAS**, in order to cure the Coastal Act violation and the default, an amendment to the CDP is required to allow the placement and operation of the 820-ton travelift with conditions for certain use restrictions and that the travelift cannot be used for more than 660-ton displacements; and

**WHEREAS**, the special conditions in the CDP amendment require that the 820-ton travelift will be used as if the 660-ton travelift was on-site and the use restrictions ensure that no intensification of use will occur; and

**WHEREAS**, additional special conditions are incorporated to the CDP to: 1) allow for District staff to conduct unannounced site inspections; 2) require MGBW to submit quarterly logs with detail accounting of vessels serviced by the 820-ton travelift; 3) ensure the operation is in compliance with the City of Chula Vista Noise Ordinance and Multiple Species Conservation Program, as well as the Chula Vista Bayfront Natural Resources Management Plan; 4) no light spillage over the MGBW leasehold boundary; and 5) any violation of the “use restrictions” will be subject to a \$100,000 penalty for each violation and the District may require Permittee to cease operations pending enforcement of the Permit; and

**WHEREAS**, the 820-ton travelift measures approximately 13 feet taller in height when compared to the previously approved 660-ton travelift; the increased height is nearly negligible when viewed from a distance because the view of the travelift would be obscured by the existing buildings and vessels parked in the travel lift; and

**WHEREAS**, the travelift is not a solid or stationary object that would permanently obstruct views from the surrounding areas; therefore, no visual impacts will occur and with the conditions in the CDP, no environmental or coastal resource impacts will occur; and

**WHEREAS**, in accordance with Section 14.d of the District’s CDP Regulations, the Development Services Director determined that an amendment to CDP-2005-04 is necessary and that the proposed amendment would be a material change due to the nature and extent of the proposed changes; and

**WHEREAS**, the District’s CDP Regulations require material amendments be considered by the Board of Port Commissioners (BPC), along with the consideration of consistency with the PMP; and

**WHEREAS**, the proposed BPC actions, including without limitation authorizing the issuance of Amendment No. 1 to CDP-2005-04, consenting to the assignment and assumption of the leasehold interest from MGBW to MGGH, and an ordinance granting an amended and restated lease to MGGH to update the lease to current terms, are Categorical Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15302 (Replacement or

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Reconstruction) and Section 3.b.(2) of the District's Guidelines for compliance with CEQA because the project would consist of the removal of the existing 660-ton travelift, and placement of the a 820-ton travelift which would have substantially the same purpose and capacity as the 660-ton travelift as it would be programmed to adhere to the 660-ton carrying capacity and use restrictions are required to be implemented; therefore, the 820-ton travelift will not result in expansion of use beyond existing condition; and

**WHEREAS**, the 820-ton travelift would not result in adverse visual impact to the surrounding areas as it is not a solid structure and or stationary object that would permanently obstruct views; and

**WHEREAS**, the view of the travelift will be obscured by the existing buildings and vessels onsite; and

**WHEREAS**, the District has determined none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2); and

**WHEREAS**, the proposed BPC actions comply with Section 21,35, and 87 of the Port Act, which allow the BPC to pass resolutions and to do all acts necessary and convenient for the exercise of its powers and the construction, reconstruction, repair, maintenance and operation of buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation; and

**WHEREAS**, the proposed BPC actions are consistent with the Port Act and, accordingly, the Public Trust Doctrine; and

**WHEREAS**, the placement and operation of the new travelift would support the existing water-dependent use and the PMP designates MGBW's landside area for the following land uses: Commercial-Recreation, Habitat Replacement, and Promenade; and

**WHEREAS**, the PMP recognizes that MGBW is a non-conforming use under the current designated land uses, and "*may continue to operate until the site is redeveloped to a conforming Commercial Recreation use; prior to redevelopment, additional boat repair capacity will be identified*"; and

**WHEREAS**, the 820-ton travelift is limited to the previously approved maximum vessel carrying capacity of 660 tons; as a result, the placement of the 820-ton travelift is consistent with the certified PMP; and

**WHEREAS**, the placement of the new travelift is consistent with the California Coastal Act Sections 30604(c), 30251, 30253, and 30255; and

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**WHEREAS**, staff recommends the BPC (1) adopt a resolution finding the BPC action exempt under the CEQA including but not limited to, CEQA Guidelines section 15302; and (2) authorize the issuance of Amendment 1 to the Non-Appealable CDP-2005-004.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Port Commissioners (BPC) of the San Diego Unified Port District, as follows:

1. The BPC finds the facts recited above are true and further finds that this BPC has jurisdiction to consider, approve and adopt the subject of this Resolution.
2. Based on the entire record available to the BPC and the findings set forth in this Resolution, the BPC finds that the issuance of Amendment No. 1 to CDP-2005-04, consenting to the assignment and assumption of the leasehold interest from MGBW to MGGH, and an ordinance granting an amended and restated lease to MGGH to update the lease to current terms, are Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15302 (Replacement or Reconstruction) of and Section 3.b.(2) of the District's Guidelines for compliance with CEQA because the project would consist of the removal of the existing 660-ton travelift and the placement of a 820-ton travelift (with a maximum vessel carrying capacity of 660 tons and implementation of use restrictions) . The 820-ton travelift would be programmed to adhere to the 660-ton carrying capacity, therefore, will not result in expansion of use beyond existing condition. Furthermore, the 820-ton travelift would not result in adverse visual impact to the surrounding areas as it is not a solid structure and or stationary object that would permanently obstruct views. Moreover, the view of the travelift will be obscured by the existing buildings and vessels onsite.
3. The BPC finds that none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2).
4. The BPC finds that the proposed actions comply with Section 21,35, and 87 of the Port Act, which allow the BPC to pass resolutions and to do all acts necessary and convenient for the exercise of its powers and the construction, reconstruction, repair, maintenance and operation of buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation.
5. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed BPC action is consistent with the Public Trust Doctrine.

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6. Based on the entire record available to the BPC and the findings set forth in this Resolution, the Executive Director or their designated representative is hereby authorized to issue Amendment 1 to CDP-2005-004 for the placement and operation of the 820-ton travelift with a maximum vessel carrying capacity of 660 tons and associated boat basin improvements (South Bay Boatyard Improvements Project). Said Amendment No. 1 to Non-Appealable CDP shall require compliance with all the conditions set forth in Amendment No. 1 to Non-Appealable CDP; provided, however, as a condition of this approval, Marine Group Boat Works LLC shall indemnify and hold the San Diego Unified Port District harmless against all third-party legal challenges, claims, lawsuits, proceedings, and the like, including reimbursement of all District attorneys' fees, costs and other expenses incurred by the District, related to the District's approval of Amendment No. 1 to Non-Appealable CDP and any actions undertaken pursuant to Amendment No. 1 to Non-Appealable CDP. Said indemnity and hold harmless condition is independent of any agreements by and between Marine Group Boat Works, LLC.

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

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By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 24th day of April 2025, by the following vote: