

SAN DIEGO UNIFIED PORT DISTRICT

MEMORANDUM

Date: June 5, 2025

To: Board of Port Commissioners

Via: Michael LaFleur
Chief Operations Officer, Maritime & Operations
mlafleur@portofsandiego.org

Tony Gordon
Vice President, Real Estate
agordon@portofsandiego.org

Adam Meyer
Acting Director, Real Estate
ameyer@portofsandiego.org

From: James Hammel
Department Manager, Real Estate
jhammel@portofsandiego.org

Subject: Agenda Related Material for the Consent to Transfer of Ownership Interest in Marine Group Boat Works to Marine Group Global Holdings and related Amended and Restated Lease

The purpose of this memo is to provide additional agenda related information for Agenda File No. 2025-111 with the following description that will go before the Board for consideration at the June 6, 2025 Board meeting.

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

Subject: Agenda Related Material for the Assignment and Assumption of the Marine Group Boat Works Leasehold to Marine Group Global Holdings

C. Ordinance Granting an Amended and Restated Lease to Marine Group Boat Works to Update Lease to Current Terms

The additional documentation that is being provided is a redline of the Amended and Restated Lease showing minor clean up edits and addition of Exhibit materials.

If you have any questions, please contact James Hammel at (619) 400-4761 or via email at jhammel@portofsandiego.org.

Attachment(s):

Attachment A: Redline of Amended and Restated Lease

Attachment A

**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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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, June 6,~~ 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~~ Approximately 45 years 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 additional 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~~ Twenty Million Dollars (\$20 million20,000,000) 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~~ Six Million Dollars (\$6,000,000) to ~~twenty million dollars~~ 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
San Diego, CA 92112-0488

1.8 Guaranty:

Tenant's performance of all its obligations under this Lease shall be guaranteed by [SKC Investments, LLC, a](#) [limited liability company, and Fly Ry Adventures, LLC,](#) [a Colorado limited liability company](#)_____, 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 ~~aan~~ 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 ~~4.74.10~~ 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 compounded 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**”.

4.1.1 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.

4.1.2 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.

4.1.3 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.

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 4-5-24.4.2 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~~Article 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~~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 st violation in a calendar year	\$5,000
2 nd violation in a calendar year	\$10,000
3 rd violation in a calendar year	\$20,000
4 th 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 _____. Chip Besse at chipbesse@gmail.com and at 970-531-3174, and to Todd Roberts at todd@marinegroupbw.com and at 619-954-5353.

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~~Article 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~~Article 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.~~

4.5 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.

4.6 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.

4.7 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.

4.8 Waste or Nuisance.

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

4.9 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 ~~4.64.9~~.

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. 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.

6.2.1 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 Tenant's~~ comprehensive sign program ~~depicted in Exhibit G attached hereto have~~has 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)7.4.2.1 *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)~~**7.4.2.2** *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)~~**7.4.2.3** *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)~~**7.4.2.4** *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 ~~ana Landlord~~ 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 ~~ana Landlord~~ 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 ~~ana Landlord~~ 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 ~~ana Landlord~~ 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(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)~~**10.3.2.1** *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)~~**10.3.2.2** *Possession Required.* If such default as specified in part (ii) of Section ~~10.3.2(a)~~**10.3.2.1** 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)~~10.3.2.3 *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)~~**10.3.2.1**(i) above, and (ii) has cured all other defaults in a timely manner as provided in Sections ~~10.3.2~~**10.3.2.1**(a)ii) and ~~10.3.2(b)~~**10.3.2.2** above, other than any Incurable Default.

~~(d)~~10.3.2.4 *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)~~**10.3.2.3** 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)~~10.3.2.4 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)~~10.3.2.4 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;~~11.3.3—~~

~~11.3.4~~**11.3.3 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~~**11.3.4 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 11.3.5 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 11.3.6 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~~11.3 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~~two and ~~One-half~~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:

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

(b) 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

(c) 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

(d) 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

(e) 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~~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 Five Million Dollars (\$5,000,000) per claim or occurrence and Ten Million Dollars (\$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 sole 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~~ **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~~year 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) 22.4.3.1 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)~~**22.4.3.2** *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 021.3. 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

ADA:	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.
ADDITIONAL RENT:	all sums of money other than Monthly Rent required to be paid by Tenant to Landlord under this Lease.
AFFILIATE:	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.
AGGREGATE DEBT AMOUNT:	defined in Section 11.10.
ALTERATIONS:	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.
ALTERATION PLANS:	defined in Section 6.3.16.2.1 .
APPROVED PARENT:	defined in Section 11.10.
AR LEASE:	defined in Recital F.
ASSIGNMENT:	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.
ASSIGNMENT PARTICIPATION FEE:	defined in Section 11.10.

DEFINITIONS ADDENDUM

ASTS:	defined in Section 21.4.1.
BANKRUPTCY CODE:	Title 11 of the United States Code, as amended.
BANKRUPTCY EVENT:	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.
BMP:	defined in Section 15.1.
BPC:	Board of Port Commissioners of the San Diego Unified Port District.
BUILDABLE CONDITION:	defined in Section 7.2.
CASP:	defined in Section 29.19.
CCC:	defined in Section 4.34.6 .
CDP:	defined in Section 1.3.
CEQA:	defined in Section 4.34.6 .
CERTIFICATES:	defined in Section 18.3.1.
CFR:	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)~~22.4.3.1.

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

DEFAULT RATE:	an annual rate equal to the lesser of (i) the annual " Bank Prime Loan " 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.
DEMOLITION AND REMEDIATION CONTRACTOR:	defined in Section 7.4.1.
DEMOLITION AND REMEDIATION REPORT:	defined in Section 7.4.1.
DEMOLITION AND REMEDIATION REPORT UPDATE:	defined in Section 7.4.2(a).
DEMOLITION AND REMEDIATION SECURITY AMOUNT:	defined in Section 7.4.2.
DEMOLITION AND REMEDIATION SECURITY FUNDING PERIOD:	defined in Section 7.4.2.
DEMOLITION NOTICE:	defined in Section 20.2.
DISCRETIONARY ACTION:	defined in Section 8.3.
DISCRETIONARY PROJECT:	defined in Section 8.1.
EFFECTIVE DATE	is the date first set forth in the introductory paragraph to this Lease.
ENVIRONMENTAL CLEANUP:	defined in Section 21.1.4.
ENVIRONMENTAL LAWS:	defined in Section 21.1.1.
ESTIMATED DEMOLITION AND REMEDIATION COST:	defined in Section 7.4.2.

DEFINITIONS ADDENDUM

EXISTING IMPROVEMENTS:	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.
EXPIRATION DATE:	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.
FEE GENERATING TRANSFER:	defined in Section 11.10.
FINANCIAL INSTITUTION:	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.
FINANCING PARTICIPATION FEE:	defined in Section 10.5.
FINANCING TRANSACTION:	defined in Section 10.1.1.
FORCE MAJEURE EVENT:	defined in Section 6.4.
FORECLOSURE PURCHASER:	defined in Section 10.3.3.
GOVERNMENT AGENCY:	defined in Section 21.1.2.
GROSS PROCEEDS:	defined in Section 11.10.

DEFINITIONS ADDENDUM

HAZARDOUS MATERIAL:

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 "**Hazardous Material**" or "**Hazardous Substance**" 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.

HAZARDOUS MATERIALS ACTIVITY:

defined in Section 21.1.1.

IMPROVEMENTS:

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.

INCURABLE DEFAULT:

defined in Section ~~10.3.2(b)~~10.3.2.2.

INITIAL TERM:

means the Term prior to any term extensions or exercise of the Option to Extend.

INTEREST PURCHASE:

defined in Recital J.

INQUIRY:

defined in Section 21.1.2.

LANDLORD:

The San Diego Unified Port District, and where applicable the Landlord acting through the BPC.

LANDLORD END OF TERM ELECTION:

defined in Section 7.2.

DEFINITIONS ADDENDUM

LANDLORD PARTIES:	Landlord, its officers, directors, members of the BPC, employees, partners, affiliates, agents, contractors, successors and assigns.
LATE CHARGES:	defined in Section 5.4.
LAWS:	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 (“ CERCLA ”), the Resource Conservation and Recovery Act (“ RCRA ”), 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.
LEASE YEAR:	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.
LEASEHOLD AWARD:	defined in Section 14.7.1.

DEFINITIONS ADDENDUM

LEGAL REQUIREMENTS:	defined in Section 4.3.
LETTER OF CREDIT:	defined in Section 28.2.
MAJOR ALTERATIONS:	defined in Section 6.2.26.2.1
MEMORANDUM OF LEASE:	defined in <u>Exhibit F</u> .
MINIMUM NET WORTH REQUIREMENT:	defined in Section 1.8.
MINOR ALTERATIONS:	defined in Section 6.2.2.
MONTHLY RENT:	defined in Section 5.2.
MSDS:	defined in Section 21.1.1.
NET PROCEEDS:	defined in Section 10.5.
NEW LEASE:	defined in Section 10.3.2(d) <u>10.3.210.3.2.4</u> .
NOISE STANDARDS:	defined in Section 4.1
NOTICE OF ELECTION TO TERMINATE:	defined in Section 20.2.
OFAC:	defined in Section 17.3.
OPTION TERM:	each extension of the Term pursuant to a properly exercised Option to Extend.
OPTION TO EXTEND:	the extension period or periods described in Section 1.1.3.
ORIGINAL LEASE	defined in Recital A.
PERMITTED ENCUMBRANCE:	defined in Section 10.2.
PERMITTED LENDER:	defined in Section 10.2.

DEFINITIONS ADDENDUM

PERMITTED USE:	defined in Section 1.3.
PERSON:	any individual, partnership, firm, joint venture, association, corporation, limited liability company, government agency or any other form of business entity.
PMP:	defined in Section 1.3.
PMPA:	defined in Section 8.1.
PRE-EXISTING HAZARDOUS MATERIAL:	<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>
PREMISES:	defined in Section 1.2.
PRIMARY USE:	defined in Section 1.3.
PROHIBITED PERSON:	defined in Section 17.3.
PROHIBITED PERSONS:	defined in Section 17.3.
PROPERTY EXPENSES:	defined in Section 16.2.
PWL:	defined in Section 6.7.

DEFINITIONS ADDENDUM

QUALIFYING CAPITAL INVESTMENT:	defined in Recital K L.
REGULATED WASTE REMOVAL:	defined in Section 21.5.1.
REIMBURSEMENT PROCEDURE:	defined in Section 5.6.
REMOVAL EXTENSION:	defined in Section 7.5.
REMOVAL PERIOD:	defined in Section 7.4.1.
RENT:	defined in Article 5.
RENT COMMENCEMENT DATE:	defined in Section 1.4.
RENTAL PERIODS:	defined in Section 1.4.
REVENUE:	shall mean all income, receipts, proceeds, amounts, money, cash, assets, property or other things of value, whether collected, uncollected, received, payable or accrued.
SUBLEASE:	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.
SUBTENANT:	any subtenant (or sub-subtenant or other level of subtenant), occupant, franchisee, licensee, operator, concessionaire or manager under any Sublease.
TAX EXPENSES:	shall have the meaning as defined in Section 16.1.
TENANT:	defined in the Preamble of this Lease.
TENANT ART INVESTMENT:	defined in Section 6.6.
TENANT HAZARDOUS MATERIAL:	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.

TENANT PARENT: a Person which Controls, directly or indirectly, Tenant.

TENANT PARTY: 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.

TENANT RELATED PARTY: (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.

TERM: defined in Section 1.1.

THIRD PARTY: defined in Section 11.10.

TRANSFER: defined in Section 11.1.

TRANSFER NOTICE: defined in Section ~~11.2~~11.2.

TRANSFeree: defined in Section 11.2 and ~~11.3~~11.2.

USA PATRIOT ACT: defined in Section 17.3.

USTs: defined in Section 21.4.1.

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Parcel "1"

All that certain portion of land conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on the certain Miscellaneous Map No. 562, filed in the Office of the San Diego County Recorder on May 28, 1976, File No. 76-164686, in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

Commencing at the point of intersection of the Ordinary High Water Mark for the Bay of San Diego, as said Ordinary High Water mark is delineated on Miscellaneous Map No. 217, filed September 25, 1950 in the Office of the San Diego County Recorder, with the center line of "G" Street, as said "G" Street was dedicated and established as and for a public street by the City of Chula Vista Council Resolution No. 4205, dated 4 October 1966, (San Diego Unified Port District Document No. 2249, dated 14 October 1966), said point of intersection lies South 58°28'01" East a distance of 78.65 feet from Monument Station No. 107 on said Ordinary High Water Mark; thence along the center line of "G" Street South 72°12'00" West a distance of 816.26 feet; thence leaving said center line of "G" Street North 17°48'00" West a distance of 31.00 feet to a point of intersection with the northerly right of way line of said "G" Street; thence along said northerly right of way line South 72°12'00" West a distance of 347.54 feet to the **True Point of Beginning** of Parcel No. 1; thence continuing along said northerly right of way line South 72°12'00" West 172.37 feet to the beginning of a tangent curve concave to the North having a radius of 20.00 feet; thence northwesterly along the arc of said curve through a central angle of 82°24'47" an arc distance of 28.77 feet to a point which bears South 64°36'47" West from the center of said curve, said point also being on the most westerly limit line of "G" Street as established by the above described documents of dedication; thence along said westerly limit line South 25°23'13" East a distance of 17.51 feet to a point of intersection with the southwesterly prolongation of the northerly right of way line of said "G" Street; thence leaving said westerly limit line and along said southwesterly prolongation South 72°12'00" West a distance of 178.11 feet; thence leaving said southwesterly prolongation North 17°48'00" West a distance of 18.00 feet to a point on a line which lies parallel with and distant 18.00 feet northerly of the said southwesterly prolongation of the northerly right of way line of "G" Street; thence along said parallel line South 72°12'00" West a distance of 36.50 feet; thence leaving said 18.00 foot parallel line North 17°48'00" West a distance of 183.72 feet; thence North 72°05'20" East a distance of 23.41 feet; thence North 17°54'40" West a distance of 190.01 feet; thence North 72°05'20" East a distance of 300.00 feet; thence North 17°54'40" West a distance of 139.00 feet; thence North 72°05'20" East a distance of 393.78 feet; thence South 21°36'53" East a distance of 458.78 feet to the beginning of a non-tangent 250.00 foot radius curve concave Northwesterly to which a radial line bears South 42°50'20" East; thence Southwesterly along the arc of said curve through a central angle of 16°02'23" a distance of 69.99 feet; thence South 63°12'03" West 193.56 feet to the beginning of a tangent 382.00 foot radius curve concave Southeasterly; thence Southwesterly along the arc of said curve through a central angle of 13°13'12" a distance of 88.14 feet to the **TRUE POINT OF BEGINNING**.

Containing 327,298 square feet (7.51 acres), more or less.


Patrick A. McMichael, L.S. 6187

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Area "B-1"

All that certain portion of land conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on the certain Miscellaneous Map No. 562, filed in the Office of the San Diego County Recorder on May 28, 1976, File No. 76-164686, in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

Commencing at the point of intersection of the Ordinary High Water Mark for the Bay of San Diego, as said Ordinary High Water mark is delineated on Miscellaneous Map No. 217, filed September 25, 1950 in the Office of the San Diego County Recorder, with the center line of "G" Street, as said "G" Street was dedicated and established as and for a public street by the City of Chula Vista Council Resolution No. 4205, dated 4 October 1966, (San Diego Unified Port District Document No. 2249, dated 14 October 1966), said point of intersection lies South $58^{\circ}28'01''$ East a distance of 78.65 feet from Monument Station No. 107 on said Ordinary High Water Mark; thence along the center line of "G" Street South $72^{\circ}12'00''$ West a distance of 816.26 feet; thence leaving said center line of "G" Street North $17^{\circ}48'00''$ West a distance of 31.00 feet to a point of intersection with the northerly right of way line of said "G" Street; thence along said northerly right of way line and it's prolongation, South $72^{\circ}12'00''$ West a distance of 715.53 feet; thence leaving said southwesterly prolongation North $17^{\circ}48'00''$ West a distance of 18.00 feet to a point on a line which lies parallel with and distant 18.00 feet northerly of the said southwesterly prolongation of the northerly right of way line of "G" Street; thence along said parallel line South $72^{\circ}12'00''$ West a distance of 36.50 feet; thence continuing along said parallel line, South $72^{\circ}12'00''$ West 236.87 feet; thence leaving said 18.00 foot parallel line North $62^{\circ}48'00''$ West a distance of 516.00 feet; thence North $2^{\circ}54'40''$ West a distance of 65.98 feet; thence North $31^{\circ}05'20''$ East a distance of 435.00 feet; thence North $72^{\circ}05'20''$ East a distance of 460.00 feet; thence South $62^{\circ}54'40''$ East a distance of 200.00 feet; thence North $72^{\circ}05'20''$ East 3.00 feet to the TRUE POINT OF BEGINNING; thence South $17^{\circ}54'40''$ East 61.00 feet; thence South $72^{\circ}05'20''$ West 25.00 feet; thence North $17^{\circ}54'40''$ West 61.00 feet; thence North $72^{\circ}05'20''$ East 25.00 feet to the TRUE POINT OF BEGINNING.

Containing 1,525 square feet (0.04 acres), more or less.

Patrick A. McMichael 7-6-2012
Patrick A. McMichael, L.S. 6187 Date

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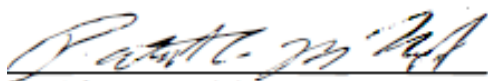


Area "C"

All that certain portion of land conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on the certain Miscellaneous Map No. 562, filed in the Office of the San Diego County Recorder on May 28, 1976, File No. 76-164686, in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

Commencing at the point of intersection of the Ordinary High Water Mark for the Bay of San Diego, as said Ordinary High Water mark is delineated on Miscellaneous Map No. 217, filed September 25, 1950 in the Office of the San Diego County Recorder, with the center line of "G" Street, as said "G" Street was dedicated and established as and for a public street by the City of Chula Vista Council Resolution No. 4205, dated 4 October 1966, (San Diego Unified Port District Document No. 2249, dated 14 October 1966), said point of intersection lies South $58^{\circ}28'01''$ East a distance of 78.65 feet from Monument Station No. 107 on said Ordinary High Water Mark; thence along the center line of "G" Street South $72^{\circ}12'00''$ West a distance of 816.26 feet; thence leaving said center line of "G" Street North $17^{\circ}48'00''$ West a distance of 31.00 feet to a point of intersection with the northerly right of way line of said "G" Street; thence North $21^{\circ}36'53''$ West 74.52 feet to the TRUE POINT OF BEGINNING; thence retracing South $21^{\circ}36'53''$ East 74.52 feet to the northerly right of way line of said "G" Street; thence along said northerly line, South $72^{\circ}12'00''$ West 347.54 feet to the beginning of a non-tangent 382.00 foot radius curve concave Southeasterly to which a radial line bears North $40^{\circ}01'09''$ West; thence leaving said northerly line Northeasterly along the arc of said curve through a central angle of $13^{\circ}13'12''$ a distance of 88.14 feet; thence North $63^{\circ}12'03''$ East 193.56 feet to the beginning of a tangent 250.00 foot radius curve concave Northwesterly; thence northeasterly along the arc of said curve through a central angle of $16^{\circ}02'23''$ a distance of 69.99 feet to the TRUE POINT OF BEGINNING.

Containing 12,918 square feet (0.30 acres), more or less.



Patrick A. McMichael, L.S. 6187

7-6-2012
Date



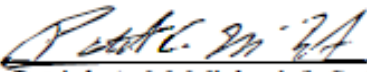
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Area "D"

All that certain portion of land conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on the certain Miscellaneous Map No. 562, filed in the Office of the San Diego County Recorder on May 28, 1976, File No. 76-164686, in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

Commencing at the point of intersection of the Ordinary High Water Mark for the Bay of San Diego, as said Ordinary High Water mark is delineated on Miscellaneous Map No. 217, filed September 25, 1950 in the Office of the San Diego County Recorder, with the center line of "G" Street, as said "G" Street was dedicated and established as and for a public street by the City of Chula Vista Council Resolution No. 4205, dated 4 October 1966, (San Diego Unified Port District Document No. 2249, dated 14 October 1966), said point of intersection lies South $58^{\circ}28'01''$ East a distance of 78.65 feet from Monument Station No. 107 on said Ordinary High Water Mark; thence along the center line of "G" Street South $72^{\circ}12'00''$ West a distance of 816.26 feet; thence leaving said center line of "G" Street North $17^{\circ}48'00''$ West a distance of 31.00 feet to a point of intersection with the northerly right of way line of said "G" Street; thence North $21^{\circ}36'53''$ West 74.52 feet to the TRUE POINT OF BEGINNING; thence continuing North $21^{\circ}36'53''$ West 458.78 feet; thence North $72^{\circ}05'20''$ East 192.35 feet to said Ordinary High Water mark is delineated on Miscellaneous Map No. 217; thence along said Ordinary High Water Mark, South $38^{\circ}00'00''$ East 116.01 feet; thence continuing along said Ordinary High Water Mark, South $23^{\circ}46'54''$ East 244.42 feet; thence leaving said Ordinary High Water Mark, South $47^{\circ}09'55''$ West 250.93 feet to the TRUE POINT OF BEGINNING.

Containing 91,000 square feet (2.09 acres), more or less.

 7-6-2002
Patrick A. McMichael, L.S. 6187 Date

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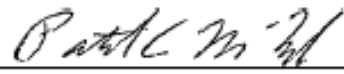


Parcel "2"

All that certain portion of land conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on the certain Miscellaneous Map No. 562, filed in the Office of the San Diego County Recorder on May 28, 1976, File No. 76-164686, in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

Commencing at the point of intersection of the Ordinary High Water Mark for the Bay of San Diego, as said Ordinary High Water mark is delineated on Miscellaneous Map No. 217, filed September 25, 1950 in the Office of the San Diego County Recorder, with the center line of "G" Street, as said "G" Street was dedicated and established as and for a public street by the City of Chula Vista Council Resolution No. 4205, dated 4 October 1966, (San Diego Unified Port District Document No. 2249, dated 14 October 1966), said point of intersection lies South 58°28'01" East a distance of 78.65 feet from Monument Station No. 107 on said Ordinary High Water Mark; thence along the center line of "G" Street South 72°12'00" West a distance of 816.26 feet; thence leaving said center line of "G" Street North 17°48'00" West a distance of 31.00 feet to a point of intersection with the northerly right of way line of said "G" Street; thence along said northerly right of way line and it's prolongation, South 72°12'00" West a distance of 715.53 feet; thence leaving said southwesterly prolongation North 17°48'00" West a distance of 18.00 feet to a point on a line which lies parallel with and distant 18.00 feet northerly of the said southwesterly prolongation of the northerly right of way line of "G" Street; thence along said parallel line South 72°12'00" West a distance of 273.37 feet; thence leaving said parallel line, North 62°48'00" West 258.67 feet to the TRUE POINT OF BEGINNING; thence continuing North 62°48'00" West 257.33 feet; thence North 02°54'40" West 65.98 feet; thence North 31°05'20" East 435.00 feet; thence North 72°05'20" East 460.00 feet; thence South 62°54'40" East 200.00 feet; thence South 72°05'20" West 22.00 feet; thence South 17°54'40" East 200.00 feet; thence South 72°05'20" West 300.00 feet; thence South 17°54'40" East 190.01 feet; thence South 72°05'20" West 443.20 feet to the TRUE POINT OF BEGINNING.

Containing 358,756 square feet (8.24 acres), more or less.

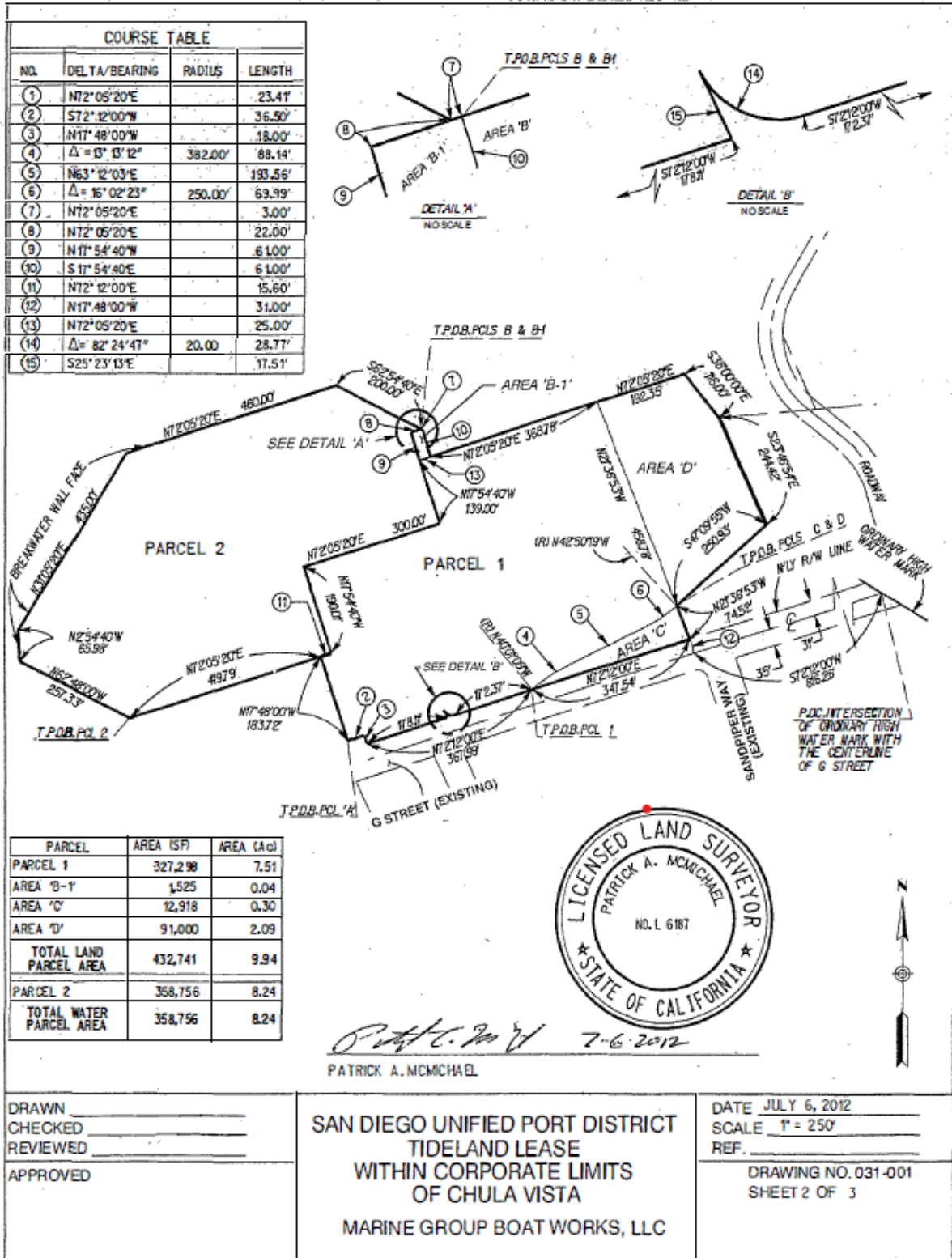

Patrick A. McMichael, L.S. 6187

7.6.2012
Date



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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 ISKC Investments, LLC, a _____ limited liability company, and Fly Ry Adventures, LLC, a Colorado limited liability company _____, hereinafter individually, "**Guarantor**," and collectively, "**Guarantors**," whose business addresses are, respectively 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 Amended and Restated Lease dated as of the same date as this Guaranty (the "**Lease**"); and

WHEREAS, Guarantors have 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, Guarantors jointly and severally, hereby agrees as follows:

1. The foregoing recitals are hereby incorporated by reference.
2. Guarantors jointly and severally, 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. Guarantors represent and warrants that Guarantors ~~are~~ are an Affiliates of Tenant and will derive benefit from Tenant's entering into this Lease.
4. The obligations of Guarantors 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~~ all, or whether any other Guarantor, Tenant, or all are joined in the action.
5. To the extent permitted by law, Guarantors waives the benefit of any statute of limitations affecting Guarantors' 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 Guarantors Guarantors 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, Guarantors 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~~s~~ 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~~s~~ 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~~s~~ waives~~s~~ 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~~s~~ waives~~s~~ 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~~s~~ further waives all rights and defenses that are or may become available to Guarantor~~s~~, 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~~s~~ ha~~ve~~s no right of subrogation against Tenant. Guarantor~~s~~ waives~~s~~: (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~~s~~ 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~~s~~ acknowledges~~s~~ 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 each 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, each 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, each 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 they currently satisfy 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 Guarantors 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 Guarantors 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. Guarantors 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 Guarantors, 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 Guarantors 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, Guarantors 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 Guarantors 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) Guarantors shall not be entitled to exercise ~~its~~ this 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

GUARANTORs:

SKC Investments, LLC, a
limited liability company ~~Marine Group Global~~
~~Holdings, LLC~~
~~a Delaware limited liability company~~

By: _____
Name: _____
Title: _____

Fly Ry Adventures, LLC, Colorado 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

SAN DIEGO UNIFIED PORT DISTRICT

By: _____
Assistant/Deputy

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 **LEASED** PREMISES

EXHIBIT B TO MEMORANDUM OF LEASE

DEPICTION OF **LEASED 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

Top of thumb here

(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

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Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

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- ☐ Individual
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- ☐ 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

Top of thumb here

|

|

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.

Summary report: Litera Compare for Word 11.10.0.38 Document comparison done on 6/5/2025 10:12:48 AM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS: iw://ottenjohnson.cloudimanager.com/DOCS/5896864/1	
Modified DMS: iw://ottenjohnson.cloudimanager.com/DOCS/5896864/2	
Changes:	
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Delete	118
Move From	3
<u>Move To</u>	3
<u>Table Insert</u>	0
Table Delete	1
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	244