

TIDELANDS AND MARINA LEASE

by and between

CITY OF ALAMEDA,
a California municipal corporation

as Landlord,

and

PACIFIC SHOPS, INC.,
a California corporation,

as Tenant,

Dated: May 16, 2012

Alameda Marina Tidelands Property

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LIST OF EXHIBITS

Exhibit A	Property Legal Description
Exhibit B	Fee Property Legal Description
Exhibit C	Diagram Depicting Property and Fee Property
Exhibit D	Diagram Depicting Easements
Exhibit E	Form of Annual Report
Exhibit F	Diagram Depicting Dredging Area
Exhibit G	Form of Memorandum of Lease
Exhibit H	Form of Lease Amendment (extending Term)
Exhibit I	Form of Memorandum of Lease Amendment (extending Term)
Exhibit J	Form of Lease Amendment (adjusting Rent for Upland Portion)

TIDELANDS AND MARINA LEASE

THIS TIDELANDS AND MARINA LEASE (“Lease”), is made this ___ day of _____, 2012, by and between the CITY OF ALAMEDA, a California municipal corporation (“Landlord or City”), and PACIFIC SHOPS, INC., a California corporation (“Tenant”).

ARTICLE 1 OVERVIEW; PROPERTY REDEVELOPMENT AND LEASE TERM

Section 1.1 Overview. Landlord and Tenant entered into a tidelands lease dated July 27, 1965 and amended June 7, 1968 (the “Area A Lease”) and subsequently a second tidelands lease executed July 19, 1996 (the “Area B Lease”) (the Area A Lease and the Area B Lease are collectively referred to as the “Original Leases”). Landlord and Tenant desire to terminate the Original Leases and enter into a new lease that will reflect changes in circumstances and the intentions of the parties, have a term that will extend beyond the term of the Original Leases to reflect such changed circumstances, facilitate the redevelopment of the Property and certain adjacent “Fee Property” (defined in Section 1.2(b)), and make other changes all as set forth herein. This Lease supersedes and replaces the Original Leases and the Original Leases shall terminate upon full execution and delivery of this Lease.

Section 1.2 Property and Fee Property.

(a) Leased Property. Landlord leases to Tenant and Tenant leases from Landlord all of the dry and submerged land described in Exhibit A and graphically depicted in Exhibit C (“Property”), together with all fixtures and improvements located thereon or used in connection therewith. The Property consists of two separate parcels of land depicted on Exhibit C as “Lease Area A” and “Lease Area B”. The entirety of the Property consists of public trust tidelands that were conveyed by the State of California to the City of Alameda, subject to certain public trust use restrictions, pursuant to Chapter 348 of the Statutes of 1913, as amended (“Legislative Grant”). The terms and conditions of the Legislative Grant are incorporated herein by reference.

(b) Tenant Fee Owned Property. Tenant owns that certain land located adjacent to the Property described in Exhibit B and graphically depicted in Exhibit C (“Fee Property”). The Fee Property is improved with various buildings and facilities, including parking areas, which, in conjunction with the buildings and improvements on the Property, are used by Tenant for operation of the marina known as “Alameda Marina.”

Section 1.3 Redevelopment of Property and Fee Property; Grant of Easements.

(a) Redevelopment Timing. Prior to the end of Lease Year 1 (defined in Section 1.5(a)), Tenant, at its expense, shall retain a land use planning/consulting firm to prepare one or more proposed development plans setting forth Tenant’s proposal for demolition and/or replacement and/or comprehensive rehabilitation of existing improvements on the Property and Fee Property and construction of a new higher-value project (“Development Project”) thereon. Tenant shall keep Landlord apprised of the status of such development plan(s) by submitting to Landlord at least annually a summary of Tenant’s efforts and progress with respect thereto and shall coordinate with Landlord’s planning staff in the preparation of such plan(s). Prior to the end of Lease Year 5, Tenant shall complete such planning efforts and submit to City a complete development plan application setting forth Tenant’s Development Project proposal. Tenant shall use diligent, commercially reasonable efforts to obtain on or before the end of

Lease Year 8, City's final approval of the proposed development plan, issuance of all other permits and land use entitlements required by other governmental agencies exercising jurisdiction over the Development Project, and financing for the first phase comprising a substantial portion of the Development Project. Tenant agrees that the time periods set forth in this Section 1.3 shall not be extended regardless of adverse changes in economic conditions, either of Tenant specifically or the economy generally, changes in market conditions or demand, and/or Tenant's inability to obtain financing or other lack of funding for the Development Project. Tenant expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Commencement Date.

(b) **Redevelopment Scope.** Tenant will propose a mixed-use commercial and/or residential and/or industrial project be developed as the Development Project. The development plan for the Development Project shall include finalization of "Easements" (defined in Section 1.3(d)) as provided in Section 1.3(d), and, to the extent applicable, any proposed amendments of the existing zoning and general plan land use designations. The development plan may also include proposed lot line adjustments as provided in Section 1.3(f) to the extent such lot line adjustments are necessary or desirable for the planning and/or completion of the Development Project as proposed, and Landlord, at Tenant's expense, shall cooperate with any such lot line adjustments in good faith.

(c) **City's Reservation of Discretion.** By execution of this Lease, the City is not committing itself, or agreeing to approve a Development Project or any particular development plan that may be submitted by Tenant. City reserves full and complete discretion with respect to consideration of any proposed Development Project and all proceedings and decisions in connection therewith, including any proposed general plan amendment and/or rezoning, and any CEQA review that may be required in connection with such project.

(d) **Tenant's Grant of Easements.** Landlord and Tenant acknowledge and agree that Landlord desires additional easements over the Fee Property for (i) public access and vehicular and pedestrian access over the easements areas shown on **Exhibit D** attached hereto; and (ii) utility easements to accommodate connection of the utilities in place on Lease Area A and Lease Area B to utilities in place on and under Clement Avenue. As a material inducement to Landlord to enter into this Lease, Tenant, at no cost to Landlord, shall grant to Landlord perpetual appurtenant easements (collectively, the "Easements") across, on and under the Fee Property in favor of the Property for each of the purposes set forth above. Because the Fee Property is anticipated to be substantially reconfigured in connection with the Development Project, the parties desire to establish the location of the Easements and record the grant of Easements in connection with approval of a development plan for the proposed Development Project. Notwithstanding the foregoing, if for any reason the Easements have not been established on or before the end of Lease Year 8, then prior to the end of Lease Year 9, Tenant shall grant to Landlord perpetual Easements for each of the purposes described above across, upon and under the areas generally depicted in the Easement Diagram attached hereto as **Exhibit D**; provided, however, that the utility easements granted by Tenant shall be solely for the utilities in place on Lease Area A and Lease Area B on the Commencement Date in their respective locations as of the Commencement Date. Landlord shall reimburse Tenant for fifty percent (50%) of the reasonable out-of-pocket costs incurred by Tenant to survey and establish the Easements, which reimbursement may, at Landlord's option, either be through a payment to Tenant or an offset against Base Rent, and Tenant agrees to provide Landlord with evidence reasonably acceptable to Landlord of such out-of-pocket costs. The grant of Easements shall be in a form reasonably acceptable to the parties and the easement rights granted shall be for the benefit of Landlord and current and future tenants, sublessees and users of the Property, including Tenant during the Term of this Lease. The grant of Easements shall allow Tenant to relocate all or any of the Easements (including, without limitation, the pedestrian gate and public pedestrian access pathways referred to in Section 1.3(e)) from time to time in the future, at Tenant's sole cost and expense, and Landlord agrees to execute an

amendment to the grant of Easements in a form reasonably acceptable to the parties in connection with each such relocation of any of the Easements. From and after the date the Easements have been established, any reconfiguration of the parking area, utility conduits or facilities, or public access improvements within the area of the Easements which Tenant desires to undertake on the Fee Property shall be at Tenant's sole cost and shall be subject to Landlord's review and approval, which approval shall not be unreasonably withheld.

(e) Public Access. Tenant, at its expense, shall maintain the existing pedestrian and vehicular gate on the west end of the Fee Property and the existing pedestrian and vehicular gate on the east end of the Fee Property as well as the existing pathway improvements to such gates to facilitate public pedestrian and bicycle access across the Property and the Fee Property (and vehicular access over that portion of the pathways designated on **Exhibit D**) seven days a week during commercially reasonable hours and in all events between dawn and dusk; provided, however, that Tenant may request modifications to such schedule from time to time, and Landlord agrees not to unreasonably withhold its consent to such requested modifications. Notwithstanding the foregoing, Tenant may periodically close such gates and public pedestrian and vehicular access for temporary periods if such closure is reasonably required for public safety while demolition, construction, dredging or other rehabilitation work is being performed at the Property or the Fee Property; provided, however, any closure for more than 2 weeks shall require prior notice to Landlord. At such time as Tenant grants to Landlord the Easements, including public pedestrian access easements, provided for under Section 1.3(d), a new pedestrian gate shall be installed to link to the Bay Trail which presently terminates at the west end of the Fee Property, and such new pedestrian gate may (at Tenant's option) replace the existing pedestrian and vehicular gate at the west end of the Fee Property. The rights of Landlord and its designees, including members of the public, to utilize the gates and public pedestrian access pathways shall be as set forth and governed by such grant of Easements. The locations of the existing gates and public pedestrian and vehicular access routes across the Property and the Fee Property, as well as the new gate to be installed no later than the end of Lease Year 9, are depicted in **Exhibit D**. The parties agree that the locations of the existing gates and existing public access routes shown on **Exhibit D** may be subject to reasonable modification at the time Tenant grants the Easements to Landlord. Landlord from time to time, at its expense, shall have the right to install signage at reasonable locations on the Property and Fee Property designating the location of the public access pathways. Landlord shall coordinate with Tenant in the planning and design of such signage.

(f) Lot Line Adjustments. Tenant is the owner of four buildings that straddle the lot line between the Property and the Fee Property and, therefore, lie in part on public trust tidelands. Landlord and Tenant acknowledge that to the extent the Development Project contemplates leaving one or more of these buildings in place, the success of the Development Project may be affected by the current lot lines between the Property and the Fee Property. In light of these facts, Tenant may seek tidelands exchanges/lot line adjustments that would (i) place all or some of the existing buildings onto the Fee Property, (ii) better position the Property and Fee Property for the Development Project, and (iii) result in a net gain (or at minimum no net loss) of public trust tidelands. Tenant may, at its sole expense, seek approval from the State Lands Commission (or such other entity that has jurisdiction over the adjustment of the tidelands boundary) for adjustment of the tidelands boundary and, if such approval is granted, seek lot line adjustments from the City of Alameda. Landlord agrees not to unreasonably withhold approval of any lot line adjustment that has been approved by the State Lands Commission or such other entity that has jurisdiction over the adjustment of the tidelands boundary. Effective upon any such lot line adjustment, the definitions of the Property and the Fee Property shall be revised to reflect the new boundaries, the definition of the Upland Portion shall be appropriately revised in light of the boundary changes, and the respective obligations of the parties hereunder (including the calculation of Rent) shall be revised to reflect the revised definitions of the Property, the Fee Property and the Upland Portion.

Section 1.4 Condition of Property; AS-IS Lease. Tenant acknowledges that it has been continuously in possession of the Property under the Original Leases since July 27, 1965 in the case of Lease Area A ("**Area A Commencement Date**") and July 19, 1996 in the case of Lease Area B ("**Area B Commencement Date**") and, as such, is completely familiar with all aspects of the Property, including, without limitation, the zoning of the Property, the conformity of the Property to Applicable Laws and the physical condition of the Property and the improvements thereon. Tenant further acknowledges and agrees that Landlord has not made, is not making, and, in entering into this Lease, Tenant is not relying on, any representation or warranty of any kind or nature respecting the foregoing matters or any other matters respecting the Property or improvements thereon, and that Tenant is leasing the Property, including improvements thereon, in its "AS-IS / WHERE-IS CONDITION AND WITH ALL FAULTS." Notwithstanding the foregoing, and except as otherwise expressly set forth in Section 21.3(b), Tenant shall not be responsible for any contamination of Lease Area A occurring prior to the Area A Commencement Date, nor shall Tenant be responsible for any contamination of Lease Area B occurring prior to the Area B Commencement Date (such contamination is hereinafter referred to individually and collectively as the "**Pre-Existing Conditions**"). In furtherance of the foregoing, Landlord acknowledges that a portion of the Property is filled land and that such fill was placed by unknown parties prior to Tenant's occupancy of the Property.

Section 1.5 Term of Lease.

(a) Term. The initial term ("**Initial Term**") of this Lease shall commence on the date first set forth above ("**Commencement Date**") and, unless extended or sooner terminated as provided herein, shall expire on the 25th anniversary of the Commencement Date ("**Expiration Date**"). As used herein, and unless the context otherwise requires, "**Term**" shall mean the Initial Term, together with the Extension Term (defined below), if applicable and properly exercised. For purposes of this Lease, the term "**Lease Year**" shall mean each calendar year (January 1 – December 31) during the Term. Lease Year 1 shall mean the partial calendar year commencing on the Commencement Date and ending on December 31, 2012. The last Lease Year shall commence on January 1 of the year in which the Expiration Date occurs and end on the Expiration Date.

(b) Option to Extend. Tenant shall have the option to extend the Initial Term of this Lease for one period of forty-one (41) years ("**Extension Term**"), such that the Expiration Date will occur on the 66th anniversary of the Commencement Date, on and subject to the satisfaction of each of the following terms and conditions:

(1) Tenant shall have submitted a development plan application for the Development Project within the time set forth in Section 1.3(a);

(2) Tenant shall have obtained final City approval of the development plan for the Development Project and obtained issuance of all other permits and land use entitlements within the time set forth in Section 1.3(a); and

(3) Tenant shall have closed or be ready to close escrow for Development Project construction financing, and shall be ready to commence construction of an initial phase of the Development Project that includes a new investment of not less than \$10,000,000.00 for demolition, construction, remediation of Hazardous Materials, financing costs (including, without limitation, loan fees, commitment fees, closing costs, placement costs and interest), and soft costs relating to any of the foregoing (including, without limitation, design, engineering, City fees, permit fees, development impact fees and legal and other consulting fees, but excluding any amounts paid to Lessee's Affiliates, Svendsen's Boat Works, Inc., or any member of Lessee or any shareholder, officer, director of

Svendsen's Boat Works, Inc.), in each case within the times and in accordance with the terms of Section 1.3(a).

Tenant's exercise of such option shall be by written notice ("**Option Notice**") given to Landlord prior to the end of Lease Year 8. Tenant's Option Notice shall be accompanied by evidence of satisfaction of the conditions precedent set forth in Subsections (1) through (3) above. Notwithstanding anything to the contrary contained in this Section 1.5(b), Tenant shall have no right to exercise the option at a time when a "**Tenant Default**" (defined in Section 16.1) exists, or after Landlord has given Tenant notice of a Tenant failure or an event which, with the passage of time, will become a Tenant Default pursuant to Section 16.1 unless cured within the applicable cure period (in which event the period during which Tenant may give the Option Notice shall be extended until the end of the applicable cure period). Further, all rights of Tenant under this Section 1.5(b) shall terminate and be of no further force or effect, notwithstanding Tenant's due and timely exercise of the option to extend, if, at any time after Tenant's exercise and prior to the commencement of the Extension Term, a Tenant Default exists. If, for any reason, Tenant fails to satisfy each and every condition to option exercise set forth in subsections (1) through (3) above within the time periods set forth in this Lease, Tenant shall have no right to the extend the Initial Term of this Lease and this Lease shall expire on the expiration of the Initial Term unless earlier terminated as provided herein.

(c) **Amendment of Lease to Reflect Extension.** If the Initial Term is extended as provided in Section 1.5(b), the parties shall enter into an amendment to this Lease memorializing Tenant's exercise of the extension option and, if not previously memorialized in an amendment to this Lease, the Fair Market Rental of the Upland Portion for the remainder of the Term in the form attached hereto as **Exhibit H**. Additionally, the parties shall execute, acknowledge and record a memorandum providing notice of such Extension Term in the form attached hereto as **Exhibit I**. If required in connection with Tenant's construction financing, such amendment to this Lease and such memorandum of the Extension Term shall be delivered through the escrow established for Tenant's construction financing, at the closing of which escrow, such memorandum shall be recorded in the official records of Alameda County immediately before the recordation of any security instruments executed and required to be recorded in connection with Tenant's construction financing.

ARTICLE 2 DEFINITIONS

Section 2.1 **Defined Terms.** The capitalized terms set forth herein shall, for all purposes of this Lease and all agreements supplemental hereto, have the meanings herein specified.

"Accounting Year" is defined in Section 4.6.

"Affiliate" means any corporation that controls, is controlled by or is under common control with Tenant, or any corporation resulting from a merger or consolidation with Tenant, or any partnership or other entity in which Tenant has greater than a fifty percent (50%) equity interest as a partner, member, shareholder or other owner. The parties agree that as of the Effective Date Svendsen's Boat Works, Inc., a California corporation, is not an Affiliate of Tenant.

"Alameda Marina" means the marina referred to in Section 1.2(b).

"Annual Report" is defined in Section 4.7.

"Applicable Laws" means all applicable laws, ordinances, statutes, codes, orders, decrees, rules, regulations, official policies, standards and specifications (including any ordinance, resolution, rule,

regulation, standard, official policy, condition, or other measure) of the United States, the State of California, the County of Alameda, City of Alameda, or any other political subdivision in which the Property and/or Fee Property is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over Landlord, Tenant, the Property, the Fee Property and/or the proposed Development Project, including Environmental Laws.

“Area A Commencement Date” is as defined in Section 1.4.

“Area A Lease” is defined in Section 1.1.

“Area B Commencement Date” is as defined in Section 1.4.

“Area B Lease” is defined in Section 1.1.

“Base Rent” is defined in Section 3.1.

“Capital Replacement Account” is defined in Section 11.5.

“City” shall mean the City of Alameda.

“Claims” is defined in Section 6.3.

“Commencement Date” is defined in Section 1.5(a).

“Development Project” is defined in Section 1.3(a).

“Dredging Project” means the actual dredging work, together with all related environmental sampling and testing, obtaining all required permits and approvals, engineering of the dredging, preparation of bid documents, disposal of dredged materials and preparation of a post-dredging survey.

“Easements” is defined in Section 1.3(d).

“Engineering Report” is as defined in Section 11.1.

“Environmental Laws” is defined in Section 21.9.

“Expiration Date” is defined in Section 1.5(a).

“Extension Term” is defined in Section 1.5(b).

“Fair Market Rental” is defined in Section 3.3(a).

“Fee Property” is defined in Section 1.2(b).

“Force Majeure” is defined in Section 25.21

“good order, repair and condition” is as defined in Section 10.1.

“Gross Boat Slip Receipts” is defined in Section 4.1(a).

“Gross Fuel Sale Receipts” is defined in Section 4.1(b).

“*Gross Other Receipts*” is defined in Section 4.1(c).

“*Gross Receipts*” is defined in Section 4.1.

“*Hazardous Materials*” is defined in Section 21.9.

“*Imposition*” and “*Impositions*” are defined in Section 5.4.

“*Initial Rehabilitation Projects*” is defined in Section 11.3.

“*Initial Term*” is defined in Section 1.5(a).

“*Landlord*” means the City of Alameda and its successors and assigns.

“*Landlord Indemnified Parties*” is defined in Section 6.3.

“*Lease*” shall mean this Tidelands and Marina Lease.

“*Lease Area A*” shall mean the parcel of land depicted on Exhibit C as “Lease Area A.”

“*Lease Area B*” shall mean the parcel of land depicted on Exhibit C as “Lease Area B.”

“*Lease Year*” is defined in Section 1.5(a).

“*Leasehold Mortgage*” is defined in Section 9.1.

“*Leasehold Mortgagee*” is defined in Section 9.1.

“*Legislative Grant*” is as defined in Section 1.2.

“*Live-Aboards*” is defined in Section 23.1.

“*Option Notice*” is defined in Section 1.5(b).

“*Original Leases*” is defined in Section 1.1.

“*Peer Review*” is as defined in Section 11.1.

“*Percentage Rent*” is defined in Section 3.2.

“*Personal Property Taxes*” is defined in Section 5.3.

“*Pre-Existing Conditions*” means any and all Hazardous Materials contamination of the Property that predated (i) the Area A Commencement Date in the case of Lease Area A, or (ii) the Area B Commencement Date in the case of Lease Area B.

“*Property*” is as defined in Section 1.2 and further described in Exhibits A and C.

“*Real Property Taxes*” is defined in Section 5.3.

“*Release*” is defined in Section 21.2(b).

“*Rent*” is as defined in Section 3.4.

“*Shoreline Repairs*” is defined in Section 11.6.

“*Tenant*” shall mean Pacific Shops, Inc. and its permitted successors and assigns.

“*Tenant Default*” is defined in Section 16.1.

“*Tenant Party*”/“*Tenant Parties*” is defined in Section 6.3.

“*Term*” is defined in Section 1.5(a).

“*Third Party Releases*” is defined in Section 13.1.

“*Transfer*” is defined in Section 8.1.

“*Upland Portion*” is defined in Section 3.3(a).

“*Upland Rent Commencement Date*” is defined in Section 3.3(d).

“*Utility Charges*” is defined in Section 5.2.

“*worth at the time of the award*” is as defined in Section 16.3.

ARTICLE 3 RENT

Section 3.1 Base Rent. Beginning on the Commencement Date and continuing until increased as provided below, Tenant shall pay to Landlord annual base rent (“**Base Rent**”) in the amount of \$116,992.00. The Base Rent shall be payable in equal monthly installments on the first day of each calendar month during the Term. The initial amount of monthly Base Rent shall be \$9,749.33 per month. The Base Rent amount shall be adjusted at the beginning of Lease Year 5 and every five (5) years thereafter during the Term (i.e., at the beginning of Lease Years 10, 15, 20, etc.) to an amount equal to 75% of the average total annual Base Rent, Percentage Rent and other amounts payable by Tenant pursuant to Section 3.3 paid over the preceding five (5) Lease Years; provided, however, in no event shall the Base Rent ever be reduced below the Base Rent in effect immediately prior to the adjustment date.

Section 3.2 Percentage Rent. In addition to the Base Rent provided under Section 3.1, Tenant shall pay to Landlord, as additional Rent, the applicable percentages of its Gross Receipts as provided for in this Section 3.2 (“**Percentage Rent**”).

(a) Commencing on the Commencement Date and continuing through and including Lease Year 14, Tenant shall pay to Landlord as Percentage Rent an amount equal to (i) 10% of Gross Boat Slip Receipts, plus 5% of that portion of Gross Other Receipts generated from the rental of buildings located in whole or in part on that portion of the Property comprising Lease Area B, less (ii) the total amount of Base Rent actually paid by Tenant for such Lease Year.

(b) Commencing in Lease Year 15 and continuing thereafter until expiration of the Term, Tenant shall pay to Landlord as Percentage Rent an amount equal to (i) 10% of Gross Boat Slip Receipts, plus 5% of Gross Other Receipts, plus 3% of Gross Fuel Sale Receipts, less (ii) the total amount of Base Rent actually paid by Tenant for such Lease Year.

Percentage Rent shall be calculated on a twelve-month basis, commencing on the first day and ending on the last day of each Lease Year and shall be due and payable in full on or before March 1st of the Lease Year immediately following the Lease Year for which the Percentage Rent is due. In calculating Percentage Rent due, no deduction shall be made for any expenses, late charges or any other charge or expense paid or payable by Tenant under this Lease.

Section 3.3 Fair Market Rental Value Adjustment.

(a) Upon Tenant's development of the Development Project, the "Rent" (defined below) payable by Tenant under this Lease shall be increased by 85% of the then Fair Market Rental of that portion of the Property depicted on Exhibit C as the "Upland Portion". For purposes of this Lease, "**Fair Market Rental**" shall mean an annual rent amount for the Upland Portion over the remainder of the Term (including periodic escalations, if any, agreed to by the parties in connection with the initial calculation of Fair Market Rental of the Upland Portion or established by the appraiser(s) or other expert in connection with the determination of Fair Market Rental of the Upland Portion pursuant to Section 3.3(b) and (c)) that is commensurate with the value added to the Fee Property as a result of Tenant's ability to include the Upland Portion within the development plan for the Development Project and thereby cluster non-revenue generating, public trust compliant uses, such as open space, public access corridors and/or public parking, on the Upland Portion, so that the Fee Property can be developed with a proportionately greater amount of revenue-generating uses than would otherwise be allowed under Applicable Laws. In the calculation of Fair Market Rental of the Upland Portion, Tenant shall pay an increased Rent in an amount equal to 85% of the Fair Market Rental of the Upland Portion less an annual credit based on the amount of the costs incurred by Tenant to remediate any Pre-Existing Conditions pursuant to Section 21.3(b)) and/or to develop the Upland Portion for any public use (e.g., a public park) and the credit for such costs shall be applied against each future year's Rent increase until such costs have been recouped. After all such remediation and/or public use development costs have been recouped, Tenant shall pay increased Rent in an amount equal to 85% of the Fair Market Rental of the Upland Portion. If the remediation and/or public use development costs incurred by Tenant exceed 85% of such Fair Market Rental amount, Tenant shall not be entitled to any credit for such excess costs against the Rent otherwise payable under this Lease.

(b) Within six (6) months following the date that Tenant submits its development plan application, Landlord and Tenant shall meet and confer in an effort to negotiate, in good faith, the Fair Market Rental of the Upland Portion. If Landlord and Tenant have not agreed upon the Fair Market Rental of the Upland Portion within nine (9) months following the submittal date of Tenant's development plan application (or such longer period as Landlord and Tenant may mutually agree each in its sole discretion), then Landlord and Tenant shall attempt to agree in good faith upon a single MAI licensed real estate appraiser, land use economist, or other mutually acceptable expert to determine the Fair Market Rental of the Upland Portion on or before the date which is one year following the date Tenant submits its development plan application (or such later date as Landlord and Tenant may mutually agree). If Landlord and Tenant are unable to agree upon a single appraiser or other expert within such time period, then Landlord and Tenant shall each appoint one MAI licensed commercial real estate appraiser on or before the date which is twelve (12) months following the submittal date of Tenant's development plan application (or such later date as Landlord and Tenant may mutually agree). If either Landlord or Tenant fails to appoint its appraiser within the prescribed time period, the single appraiser appointed shall determine the Fair Market Rental of the Upland Portion. If both parties fail to appoint an appraiser within the prescribed time period, then the first appraiser thereafter selected by a party shall determine the Fair Market Rental of the Upland Portion. Each party shall bear the cost of its own appraiser and the parties shall share equally the cost of the single appraiser or other expert, if applicable. The appraisers shall be MAI licensed appraisers and have at least ten (10) consecutive years experience in valuing ground lease development sites in the State of California.

(c) If each party appoints an appraiser, such appraisers shall, within 90 days after the appointment of the last appraiser to be appointed, complete their determinations of Fair Market Rental and furnish the same to Landlord and Tenant. If the low valuation varies from the higher valuation by 5% of the low valuation or less, the Fair Market Rental shall be the average of the two valuations. If the low valuation varies from the high valuation by more than 5%, the two appraisers shall, within 10 days after submission of the last rental determination report, appoint a third appraiser who shall meet the qualifications set forth in this Section 3.3. If the two appraisers shall be unable to agree on the selection of a third appraiser in a timely manner, then either Landlord or Tenant may request such appointment by the presiding judge of the Superior Court of Alameda County. The third appraiser, however selected, shall be a person who has not previously acted in any capacity for or against either party. Such third appraiser shall, within 60 days after appointment, make a determination of Fair Market Rental and said third appraiser shall select the opinion of Fair Market Rental as determined by the one rental determination, completed by the two appraisers, which most closely matches the third appraiser's opinion of Fair Market Rental. Effective as of the Upland Rent Commencement Date (as defined in Section 1.3(d)), the Rent payable hereunder shall be increased by the Fair Market Rental of the Upland Portion as selected by said third appraiser. All fees and costs of the third appraiser in connection with the determination of Fair Market Rental shall be paid one-half by Landlord and one-half by Tenant.

(d) If the Fair Market Rental is not established on or before the date which is the earlier of the following dates (such earlier date is referred to herein as the "Upland Rent Commencement Date"): (i) twenty-four (24) months following issuance of the first certificate of occupancy for a building or unit constructed as part of the Development Project or (ii) the date on which the initial phase of the Development Project is substantially complete, then Tenant shall pay the increased Rent, as determined by Landlord. When the Fair Market Rental has been established, the new Rent shall be retroactively effective as of the Upland Rent Commencement Date, and Landlord shall refund Tenant any overpayments within 30 days after the establishment of the new Base Rent and Percentage Rent.

(e) Notwithstanding any provision hereof to the contrary, if the Fair Market Rental of the Upland Portion has been determined by the parties prior to final approval of a development plan for the Development Project, and the anticipated costs of the Development Project, as finally approved, are higher or lower, or the fair market value of the Development Project, as finally approved, is higher or lower than the costs and/or value assumptions used to determine the Fair Market Rental of the Upland Portion as provided above, the parties agree that the Rent increase attributable to inclusion of the Upland Portion in the Development Project will be proportionately adjusted by an amount commensurate with the percentage increase or decrease in anticipated costs, or the percentage increase or decrease in anticipated value, of the Development Project, as finally approved by City, as applicable.

(f) As soon as the Fair Market Rental of the Upland Portion has been established, the parties shall enter into an amendment to this Lease memorializing such Fair Market Rental and the new Rent for the remainder of the Term in the form attached hereto as Exhibit J.

Section 3.4 Rent. Base Rent, Percentage Rent, any increases in Rent, including the Fair Market Rental increase with respect to the Upland Portion provided for in Section 3.3, and all other amounts payable by Tenant to Landlord hereunder, shall constitute "**Rent**" under this Lease. Except as may otherwise be expressly provided in this Lease, Rent shall be payable without abatement, offset or deduction of any kind.

ARTICLE 4
GROSS RECEIPTS AND REPORTING

Section 4.1 Gross Receipts. As used in this Lease, the term “**Gross Receipts**” shall mean and include Gross Boat Slip Receipts, Gross Fuel Sale Receipts and Gross Other Receipts, as such terms are defined below. The individual components of Gross Receipts described below are intended by the parties to collectively include all gross receipts described in Section 4.1(a), (b) and (c), whether upon credit or for cash and whether operated by or for Tenant or any subtenant, agent or concessionaire. Sales upon credit shall be included in the Gross Receipts when payment is made.

(a) “**Gross Boat Slip Receipts**” shall mean and include the entire gross receipts by Tenant or its Affiliates of every kind and nature from the rental of boat slips on the Property or the provision of incidental services to the occupants of such slips, including berthing fees, rents charged to Live-Aboards, guest docking fees and boat ramp fees, but excluding charges and/or reimbursements for haul-outs, battery charges, pump-outs, salvage, emergency repairs, clean-up of environmental spills or other incidental slip related services not expressly included in Gross Boat Slip Receipts.

(b) “**Gross Fuel Sale Receipts**” shall mean and include the entire gross receipts by Tenant or its Affiliates of every kind and nature from fuel sales sold or dispensed on the Property.

(c) “**Gross Other Receipts**” shall mean and include the entire gross receipts by Tenant or its Affiliates of every kind and nature from the rental of space on the Property, including dry boat storage and rental of buildings, parking areas or other improvements located on the Property, and the total gross receipts derived from incidental sales of goods, wares, products and/or merchandise and all services sold or rendered by Tenant or its Affiliates on or about the Property or improvements thereon, including incidental slip related services not expressly included in Gross Boat Slip Receipts, but excluding therefrom any revenues included with Gross Boat Slip Receipts or Gross Fuel Sale Receipts. In the case of any building or improvement which is located partially on the Property and partially on the Fee Property, the Gross Other Receipts generated from the rental of or activities within such building or other improvement shall be prorated proportionately based on the portion of the rentable area of such building or other improvement located on the Property.

Section 4.2 Exclusions from Gross Receipts. Gross Receipts shall exclude:

(a) All sales and excise taxes payable by Tenant to Federal, State, County, or municipal governments as a direct result of operations under this Lease;

(b) All refunds for goods returned, and refundable deposits;

(c) All gift certificates (until and unless redeemed);

(d) Any donation of merchandise to benefit charitable organizations;

(e) Insurance proceeds, except to the extent such proceeds derive from business interruption or similar insurance that is intended by the parties to cover the Rent payments;

(f) Tips and gratuities;

(g) Amounts paid to financial institutions or other credit card issuers or facilitators in connection with credit card sales or electronic payments of any kind;

(b) Sums deposited in vending machines maintained on the Property, regardless of the ownership of the machine, or whether such sums are removed or counted by Tenant or others;

(i) Charge backs for bad debts on non-cash transactions in the year claimed by Tenant for federal income tax purposes, provided that any amount subsequently collected shall be included in the appropriate category of Gross Receipts when collected;

(j) Amounts earned by Tenant from activities taking place on the Fee Property but not on the Property, unless otherwise explicitly included in Gross Receipts as defined herein; and

(k) Amounts received by Tenant from its subtenants or licensees as reimbursement for Utility Charges, Real Property Taxes and other common area charges.

Section 4.3 Records. Tenant shall, during the Term and for at least the period of time specified in Section 4.5, keep or cause to be kept true and complete records of all business activities conducted on or about the Property or with respect to this Lease. Such records shall be kept in conformance with Tenant's standard accounting practices, which shall be consistently applied and in conformance with marina industry standards. Tenant's accounting records shall be supported by source documents from which an accurate accounting of Gross Receipts (and exclusions therefrom) can be readily determined, such as, but not limited to, sales slips, receipts, purchase invoices, or other pertinent documents. All sales transactions shall be recorded electronically and processed in such a manner that the amount of the transaction is displayed to the customer and a receipt provided. Transactions shall be reconciled with the corporate accounting system, if applicable, on a daily basis.

Section 4.4 Subleases. All subleases of berths and buildings located in whole or in part on the Property shall be documented in writing through subleases, licenses or other appropriate agreements which, at a minimum, set forth the term of the sublease or license and the subtenant's payment obligations thereunder.

Section 4.5 Location of Records. The financial and accounting records described in this Article 4, including sales slips, receipts, purchase invoices, berth subleases and all banking deposit tickets, statements and other banking records, and all records of sales, excise or luxury taxes paid or payable by Tenant with respect to operation of the Property shall be kept and be available for inspection and copying by Landlord or its designee at one location on the Property or Fee Property for a period of at least five (5) Lease Years following the Lease Year to which such financial and accounting records relate.

Section 4.6 Accounting Year. Tenant's "**Accounting Year**" shall be each period of twelve (12) full calendar months during the Term, beginning on January 1 and ending December 31, except for the first Accounting Year which shall begin on the Commencement Date and end on December 31 of the year in which the Commencement Date occurs and the last Accounting Year which shall begin on January 1 of the year in which the Expiration Date occurs and end on the Expiration Date. Tenant's Accounting Year shall not change unless Landlord specifically approves in writing a different Accounting Year.

Section 4.7 Annual Reporting. Within 60 days after the end of each Accounting Year, Tenant shall, at its own expense, prepare and submit to Landlord, attention Community Development Director, a report ("**Annual Report**") setting forth: (i) by line item, all Gross Boat Slip Receipts, Gross Fuel Sale Receipts and Gross Other Receipts for such Accounting Year, (ii) a description of all material alterations and improvements performed during such Accounting Year pursuant to Section 10.2, (iii) a description of the expenditures made by Tenant on the Initial Rehabilitation Projects since the date of the last Annual Report, (iv) reasonable documentation that Tenant's employee labor cost did not exceed the

cost that would have been paid to a qualified unrelated third party to perform such work, and (v) a description of how any funds in the Capital Replacement Account were spent during such Accounting Year (i.e., identifying the specific capital replacement and rehabilitation work performed during such Accounting Year and the amounts spent for each such project). The Annual Report shall be certified by Tenant or its responsible agent as being accurate and complete and shall be substantially in the form attached hereto as **Exhibit E**, with such changes or additions as may be reasonably required by Landlord from time to time. If Landlord objects to any of the expenditures or other information set forth in any Annual Report, then Landlord shall have the following respective time periods within which to give Tenant written notice specifically describing any item(s) to which Landlord objects: (A) one (1) year from the date of such Annual Report with respect to the amount of Gross Boat Slip Receipts, Gross Fuel Sale Receipts and/or Gross Other Receipts for such Accounting Year or (B) three (3) months from the date of such Annual Report with respect to all expenditures and other information set forth in such Annual Report, Landlord must specify in detail in its objection notice the basis for each such objection. Blanket objections to an Annual Report shall not be permitted. All expenditures and information in an Annual Report with respect to which Landlord has not notified Tenant in a timely manner of any specific objection in accordance with this Section 4.7 shall be deemed consented to by Landlord.

Section 4.8 **Audit Right.** Landlord, through its duly authorized agents or representatives, shall have the right to examine and audit Tenant's accounting records for the purpose of determining the accuracy of the accounting records and the accuracy of the Annual Reports prepared and submitted by Tenant as required under this Article 4, provided that any consultant or accounting firm engaged by Landlord to perform such audit may not be retained on a contingency fee basis. The cost of any such audit shall be borne by Landlord, unless the audit reveals an understatement of greater than 5% of Gross Receipts, in which case Tenant shall be responsible for the costs of the audit. If one or more categories of Gross Receipts reported by Tenant should be found to be less than the amount of annual Gross Receipts disclosed by the audit and such discrepancy affects the amount Tenant owes Landlord, Tenant shall pay any delinquent amount within 10 days after Landlord's written demand therefor.

ARTICLE 5 UTILITIES, TAXES AND OTHER CHARGES

Section 5.1 **Late Fee.** If Tenant fails to make any payment of Rent due under this Lease when due and the default is not cured within 10 days of receipt of written notice from Landlord, it would be impracticable or extremely difficult to fix the actual damage to Landlord resulting from nonpayment and the collection efforts of Landlord necessitated thereby. Therefore, Landlord and Tenant estimate that such damage shall be 5% of the amount in default, and Tenant shall pay that sum as additional Rent in addition to all other sums owing. An additional charge of 10% per annum on said payment (excluding late charges), or the highest lawful interest rate permissible under Applicable Law, whichever is lower, shall be added to the unpaid balance for each additional month that said payment remains unpaid.

Section 5.2 **Utilities.** Tenant shall pay or caused to be paid before delinquency, and hold Landlord free and harmless from, all fees, charges and expenses for the installation, connection, maintenance, relocation, removal, furnishing and use of all utilities, utility facilities, and services relating to the Property (collectively, "**Utility Charges**") from and after the Commencement Date and during the Term, including gas, water, electricity, telephone service, sewage and other utilities and services provided to the Property and for the removal of garbage, rubbish, and debris from the Property. Landlord shall cooperate, to the extent it is able and at Tenant's expense, in providing such utilities and services.

Section 5.3 **Taxes.** Because Tenant has been in continuous occupancy of the Property and the improvements thereon prior to the commencement of this Lease, Tenant agrees that it shall be liable for the payment of any and all taxes due, and for compliance with all tax requirements, as a result of

entering into this Lease. Tenant acknowledges and understands that this Lease may create a real property possessory interest and may be subject to real property or other taxation. Throughout the Term, Tenant shall pay, prior to delinquency, all "**Real Property Taxes**," which shall mean and include all real property taxes (including, without limitation, possessory interest taxes) and assessments (whether general or special, provided that, unless otherwise approved by Tenant in its sole discretion, no such special assessment may cover solely all or a portion of the Property and/or the Fee Property) levied or assessed on the Property or any part thereof or the improvements thereon, or Tenant's use thereof, for each fiscal tax year or portion thereof during the Term, including taxes imposed on Landlord against or measured by rents or rental income payable pursuant to this Lease levied or assessed in lieu of or as a direct substitute for real property taxes and assessments levied or assessed on the Property. Tenant shall also pay before delinquency all taxes and assessments levied or assessed on the trade fixtures, equipment and all other personal property of Tenant situated on or installed in the Property ("**Personal Property Taxes**").

Section 5.4 Contest. Tenant shall have the right at its own expense to contest the amount or validity, in whole or in part, of any Utility Charges, Real Property Taxes or Personal Property Taxes (individually, an "**Imposition**," and, collectively, the "**Impositions**") by appropriate proceedings diligently conducted in good faith, but only if and so long as either (i) such proceedings have the effect of staying the enforcement of any lien or charge against the Property or any part thereof associated with the Imposition being contested or (ii) Tenant pays the Imposition being contested pending the contest, and in each case if and so long as neither the Property nor any part thereof would by reason of such contest or the postponement or deferment of the payment of such Imposition be in danger of being forfeited or lost. Upon the termination of such proceedings, Tenant shall pay the amount of the Imposition or part thereof as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees (including any attorneys' fees awarded to the taxing entity levying the Imposition), interest, penalties or other liabilities payable by Tenant in connection therewith.

Section 5.5 Property Tax Proceedings. Tenant shall have a right to seek a reduction in the valuation of the Property assessed for tax purposes and to prosecute any action or proceeding in connection therewith. Tenant shall be authorized to collect and retain any tax refund obtained by reason thereof.

Section 5.6 Landlord's Participation. Landlord shall not be required to join in any proceedings referred to in Section 5.5 unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by and/or in the name of Landlord, in which case Landlord shall join in such proceedings or permit the same to be brought in its name. Landlord shall not ultimately be subject to any liability for the payment of any costs or expenses in connection with any such proceedings, and Tenant will indemnify and hold Landlord harmless from and against any such costs and expenses.

Section 5.7 Reimbursement of Other Costs. The Rent due and payable hereunder shall be absolutely "net" to Landlord and, therefore, in addition to Base Rent, Percentage Rent, Utility Charges, Real Property Taxes and Personal Property Taxes, Tenant shall reimburse Landlord within 10 days following Landlord's demand therefor, for all reasonable costs and expenses, including reasonable attorney's fees, paid or incurred by Landlord in curing any Tenant Default or expressly set forth in any indemnity given herein by Tenant to Landlord.

ARTICLE 6
INSURANCE AND INDEMNITY

Section 6.1 Insurance. Throughout the Term, Tenant shall obtain and continuously maintain in force, the following forms and amounts of insurance:

(a) Fire and Extended Coverage Insurance in All-Risk form, with vandalism and malicious mischief endorsements, covering the Property and improvements thereon against loss or damage in an amount equal to not less than 100% of the "agreed value" (as reasonably determined by Tenant and the insurer) from time to time, without deduction for depreciation, and with such commercially reasonable deductible as may be approved by Landlord in its reasonable discretion.

(b) Rental Income Protection Insurance covering loss due to the perils required to be insured against under Section 6.1(a), with a period of indemnity not less than one year.

(c) Business Interruption Insurance on an "all risk" basis which will provide recovery for a minimum of twelve (12) months of Tenant's continuing Rent obligations.

(d) Commercial General Liability Insurance endorsed for premises-operations, and contractual liability, in the initial amount of One Million Dollars (\$1,000,000) per occurrence, plus an umbrella policy of at least Four Million Dollars (\$4,000,000).

(e) Auto Liability Insurance endorsed for all owned and non-owned vehicles in the initial amount of One Million Dollars (\$1,000,000) per occurrence, plus an umbrella policy of at least One Million Dollars (\$1,000,000), but only if Tenant utilizes automobiles in the operation of its business.

(f) Worker's Compensation Insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California.

(g) Lender Insurance. Any additional policy of insurance required by any lender providing construction or permanent financing to Tenant for the Development Project.

Section 6.2 General. Without in any way limiting any of Tenant's indemnification obligations under this Lease, Tenant shall provide and maintain at its own expense during the Term of this Lease the programs and policies of insurance set forth in this Article 6. Landlord may from time to time during the Term, but not more frequently than once every five (5) years, require Tenant to increase the amounts of its Commercial General Liability Insurance and Automobile Liability Insurance to commercially reasonable amounts. Such insurance shall be provided by insurer(s) reasonably satisfactory to Landlord and evidence of such coverages reasonably satisfactory to Landlord shall be delivered to Landlord on or before the Commencement Date and thereafter during the Term upon Landlord's request. Such evidence shall specifically identify this Lease and, if and to the extent available at the time the insurance is issued, shall contain express conditions that Landlord is to be given written notice at least thirty (30) days in advance of any material modification or termination of any program of insurance (provided that only ten (10) days' prior notice shall be required in the event of cancellation of insurance for nonpayment of premium); if Tenant's insurer will not agree to give such notice, then Tenant agrees to immediately forward to Landlord a copy of any such notice received by Tenant. Companies writing the insurance required hereunder shall be licensed to do business in the State of California. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. The Commercial General Liability and Automobile Liability Insurance policies hereunder shall name Landlord and its officers, employees, contractors and representatives as additional insureds. Tenant shall furnish Landlord with a certificate of insurance evidencing the required insurance coverage and a duly executed endorsement

evidencing such additional insured status. The certificate shall contain a statement of obligation on the part of the carrier to notify Landlord of any material change, cancellation, termination or reduction of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation, termination or reduction (provided that only ten (10) days' prior notice shall be required in the event of cancellation of insurance for nonpayment of premium), provided that at the time the insurance is issued the carrier is willing to agree to give such notice. Coverage provided hereunder by Tenant shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by Landlord, and the policy shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of Landlord, and Tenant hereby waives any right of recovery against Landlord for injury or loss due to hazards covered by insurance required to be carried by Tenant under this Lease. As often as any such policies shall expire or terminate, renewal or additional policies shall be procured and maintained in like manner and to like extent. Subject to the rights of any Leasehold Mortgagees, Landlord shall be made a loss payee on all insurance policies covering casualty losses and builder's risk. If Tenant fails to purchase, renew or maintain any insurance policies required herein, in addition to any other rights and remedies available to Landlord and without waiving Tenant's Default, Landlord shall have the right to purchase any such insurance and the amount of any such advance by Landlord shall constitute Rent due and payable pursuant to Section 14.1.

Section 6.3 Indemnity. In addition to, and without limiting any other indemnification obligations of Tenant under this Lease, Tenant shall protect, indemnify, defend (by legal counsel reasonably acceptable to Landlord) and hold harmless Landlord, and its elected and appointed officials, officers, employees and representatives (collectively, the "**Landlord Indemnified Parties**"), from and against any and all demands, liabilities, claims, actions, judgments, damages, costs and expenses (including reasonable attorneys' fees and expenses) (collectively, "**Claims**") arising out of or connected with: (i) Tenant's Default under this Lease; (ii) the use or occupancy of the Property by Tenant or its officers, partners, shareholders, members, principals, or its or their agents, employees, representatives, subtenants, permittees, concessionaires, contractors or subcontractors (individually a "**Tenant Party**" and, collectively, the "**Tenant Parties**") or the use or occupancy of the improvements on the Property by the Tenant Parties or the conduct of business by the Tenant Parties or any activity, work or other things done or permitted on or about the Property (or any portion thereof), by the Tenant Parties; and (iii) the negligent acts or omissions of the Tenant Parties on or about the Property. Notwithstanding the foregoing, Tenant's indemnification obligations under this Section 6.3 shall not apply to the extent any Claims arise from the active negligence or willful misconduct of Landlord or any of the Landlord Indemnified Parties or where the Claim is caused by the sole action of Landlord or the Landlord Indemnified Parties. Tenant's indemnity obligations under this Section 6.3 shall survive the termination or expiration of this Lease.

ARTICLE 7 INSURED AND UNINSURED CASUALTY

Section 7.1 Losses Covered or Required to be Covered. If, during the Term of this Lease, the improvements on the Property are totally or partially damaged or destroyed from a risk required to be covered by Tenant's insurance described herein or actually covered by Tenant's insurance, this Lease shall not terminate, and Tenant shall, within 90 days after the date of such damage or destruction, commence and thereafter diligently pursue to completion the repair, replacement, or reconstruction of the improvements on the Property to substantially the same condition as they were in immediately before such damage or destruction, to the extent that the insurance proceeds are sufficient to cover the actual cost of the repair, replacement, or reconstruction (or would have been sufficient to cover such actual cost had Tenant obtained the required coverage as set forth in Section 6.1), less Tenant's deductible. Repair, replacement, or reconstruction of the improvements on the Property shall be accomplished pursuant to the standards and requirements of Article 4 of this Lease.

Section 7.2 Losses Not Covered or Required to be Covered. If, during the Term of this Lease, the improvements on the Property are totally or partially damaged or destroyed from any cause not fully covered by insurance carried or required to be carried by Tenant under this Lease (less Tenant's deductible), then:

(a) If the cost of such repair, replacement and/or reconstruction is less than 20% of the replacement cost of the improvements on the Property prior to such damage or destruction, Tenant shall, to the extent permitted by law, and provided that Landlord provides the funds necessary to accomplish the same (which Landlord is under no obligation to do), perform the work required to restore the improvements on the Property to their condition prior to the damage or destruction, and this Lease shall remain in full force and effect. Subject to Landlord making such funds available to Tenant, Tenant shall within 90 days after the later of (i) the date of such damage or destruction or (ii) the date Landlord makes such funds available to Tenant, commence and thereafter diligently pursue to completion the repair, replacement or reconstruction of the improvements on the Property. Repair, replacement or reconstruction of the improvements on the Property shall be accomplished pursuant to the standards and requirements of Article 4 of this Lease. Should Landlord opt not to provide the requisite funds, Tenant shall have the right to either (i) perform such repair, replacement and/or reconstruction of the improvements on the Property at Tenant's expense, or (ii) terminate this Lease by written notice given to Landlord within 90 days after the date of such damage or destruction, which termination shall be effective 30 days after the date of such notice, and Rent and other charges shall be apportioned as of the date of termination.

(b) In the event that (i) Landlord opts not to provide the requisite funds referred to in subsection (a) above, or (ii) the cost of such repair, replacement and/or reconstruction is 20% or more of the replacement cost of the improvements on the Property prior to such damage or destruction and Tenant elects not to restore at its sole expense, Tenant shall have the right to terminate this Lease by written notice given to Landlord within 90 days after the date of such damage or destruction, which termination shall be effective 30 days after the date of such notice, and Rent and other charges shall be apportioned as of the date of termination. Upon termination, Tenant shall put the Property and improvements thereon in a safe condition or, at Tenant's option, adequately secure the Property from public access by the installation of a cyclone fence and/or other barricade. Thereupon, this Lease shall terminate and the parties shall have no further obligations to each other excepting those previously accrued but theretofore unsatisfied and those obligations which survive termination of this Lease.

(c) For the purposes of this Section 7.2 the extent of destruction of the improvements on the Property shall be determined by dividing the estimated cost of repair, replacement and/or restoration as evidenced by estimates prepared by licensed general contractors reasonably acceptable to Landlord by the full replacement cost of such improvements, as reasonably determined by Tenant.

Section 7.3 Civil Code Waiver. The provisions of this Article 7 shall govern the rights of the parties in the event of any full or partial destruction of the improvements on the Property. Tenant hereby waives the provisions of Civil Code Section 1932(2) and Civil Code Section 1933(4) and any similar successor statute or law with respect to any destruction of such improvements.

ARTICLE 8 ASSIGNMENT, SUBLETTING, ETC.

Section 8.1 Landlord's Consent Required. Except as provided in Section 8.2 and Article 9, Tenant shall not voluntarily, involuntarily, or by operation of law, assign, transfer, hypothecate, or otherwise encumber this Lease or Tenant's interest therein or sublet all or a substantial portion of the Property (each, a "Transfer"), without first obtaining in each instance Landlord's written consent, which

consent will not be unreasonably withheld. If consent is once given by Landlord to any such Transfer, such consent shall not operate as a waiver of the necessity for obtaining Landlord's consent to any subsequent Transfer. Any such Transfer without Landlord's consent shall be void and shall, at Landlord's option, constitute a Tenant Default under this Lease. This Lease shall not, nor shall Tenant's interest therein, be assignable by operation of law, without Landlord's prior written consent. Tenant's request for approval of Transfer shall be submitted in writing and shall include such documentation as may be reasonably required by Landlord to evaluate the proposed transaction and the proposed transferee's financial capability and management experience, including the proposed assignment and assumption (or sublease agreement) by which the assignee expressly agrees to assume all rights and obligations of Tenant under this Lease arising after the effective date of the assignment (or the subtenant agrees to assume those obligations pertaining to the subleased premises). Tenant acknowledges that, except as otherwise provided in Section 8.2 with respect to permitted Transfers, Landlord intends for Lease Area A and Lease Area B to remain under control of a single Tenant and, therefore, any proposed sublease of a substantial portion of the Property which would result in Lease Area A and Lease Area B being under control of separate unaffiliated entities or persons, shall be subject to Landlord's approval in its reasonable discretion. With respect to all other assignments of this Lease or subleases of all or a substantial portion of the Property, Landlord may not withhold consent to a Transfer if (i) the prospective assignee or subtenant has the financial capability and management experience to perform Tenant's obligations under this Lease, including, with respect to the contemplated Development Project (if applicable at the time of the assignment and, in the case of a sublease, to the extent such obligations are assumed by the subtenant), the Initial Rehabilitation Projects (if applicable at the time of the assignment and, in the case of a sublease, to the extent such obligations are assumed by the subtenant) and subsequent capital replacement projects to be undertaken during the Term as provided in Article 4 (in the case of a sublease, to the extent such obligations are assumed by the subtenant), and including the obligation to keep the marina on the Property in good order, repair and condition throughout the remaining Term (in the case of an assignment) or throughout the sublease term (in the case of a sublease), and (ii) the proposed assignment or sublease is not prohibited by the terms of this Lease. The prospective assignee or subtenant may satisfy the requirements with respect to marina management experience by partnering or contracting with a marina management company or individual with at least five (5) years experience in managing marina facilities similar to the Alameda Marina.

Section 8.2 Permitted Assignment and Subletting. Landlord's consent shall not be required for the following Transfers which shall be considered permitted Transfers: (1) assignments of this Lease or subleases of all or a substantial portion of the Property to an entity that is controlled by Bill Poland and/or B.P.M.P. Family Partners, LLC, a California limited liability company, provided that the form of the assignment and assumption or sublease agreement is reasonably acceptable to Landlord, and (2) the sublease or license of portions of the Property to a single person or entity, provided that such sublease or license (individually or collectively with all prior or concurrent subleases or licenses with the same person or entity) does not cover all or a substantial portion of the Property. Affiliated entities shall be considered a single entity for purposes of determining whether a sublease or license is a permitted Transfer under clause (2) above. As used in this Article 8, the term "**substantial portion**" of the Property shall mean (i) all of Lease Area A, or (ii) all of Lease Area B, or (iii) more than forty-nine percent (49%) of the entirety of the Property (i.e., Lease Area A and Lease Area B).

Section 8.3 Release of Tenant from Post-Assignment Obligations. Upon any assignment of this Lease to which Landlord has given its consent, Tenant shall be released from Tenant's obligations under this Lease arising after the date of the assignment. Each transferee who is an assignee of this Lease shall assume and be deemed to have assumed this Lease and shall automatically become liable for the payment of all Rents due hereunder on or after the date of the assignment and for the due performance during the remaining Term of this Lease of all the covenants and conditions herein set forth by Tenant to

be performed on or after the date of the date of the assignment. Tenant shall remain responsible for all obligations of Tenant accruing prior to the effective date of the assignment.

Section 8.4 Delivery of Documentation. Promptly upon Landlord's demand, Tenant agrees to furnish Landlord with a rent roll covering the portions of the Property that are subject to Percentage Rent, together with a copy of Tenant's then standard sublease forms. If Tenant does sublease on commercially reasonable terms, Landlord will execute such non-disturbance agreement as sublessee may reasonably request.

ARTICLE 9 MORTGAGING OF LEASE BY TENANT

Section 9.1 Tenant's Right to Mortgage Lease. Tenant shall have the right, at any time and from time to time, to mortgage, grant a deed of trust on and/or pledge the interest of Tenant under this Lease to one or more banks or other institutional lenders (together with any successors or assigns, "**Leasehold Mortgagee**") in accordance with the provisions set forth below in this Section 9.1. Tenant agrees to furnish Landlord with a true, correct and complete copy of each such mortgage, deed of trust or pledge (each, a "**Leasehold Mortgage**") regardless of whether or not Landlord's consent is required. Landlord acknowledges that any Leasehold Mortgage may encumber all or a portion of Tenant's interest under this Lease together with all or a portion of Tenant's interest in the Fee Property. In no event shall any Leasehold Mortgage encumber Landlord's fee interest in the Property.

(a) Tenant shall have the right, at any time and from time to time prior to the end of Lease Year 2, without Landlord's consent or approval, to enter into one or more Leasehold Mortgages to secure any financing obtained by Tenant in connection with all or any portion of the Property, which Leasehold Mortgage(s) may also cover all or a portion of the Fee Property.

(b) Tenant shall have the right, at any time and from time to time, without Landlord's consent or approval, to enter into one or more Leasehold Mortgages to secure the financing of all or any portion of the Development Project and/or any of the work required under Article 11 of this Lease, provided that substantially all of the loan proceeds (net of financing costs and closing costs) are either (i) used to pay off then existing debt secured by the Property (or, if the Leasehold Mortgage also encumbers all or a portion of Tenant's interest in the Fee Property, used to pay off then existing debt secured by the Property and the Fee Property) and/or (ii) reinvested in the Property (or, if the Leasehold Mortgage also encumbers all or a portion of Tenant's interest in the Fee Property, a significant portion of the loan proceeds shall be reinvested in the Property).

(c) Tenant shall have the right, at any time and from time to time, with Landlord's prior written consent, which shall not be unreasonably withheld or delayed, to enter into one or more Leasehold Mortgages to secure financing that does not meet the criteria of Section 9.1(a) or (b). Tenant's request for consent shall be accompanied by detailed information regarding the proposed financing, including information sufficient for Landlord to evaluate the loan to value ratio, debt coverage ratio and the uses of loan proceeds. Tenant agrees that it shall be reasonable for Landlord to withhold its consent to a proposed financing if (i) the principal amount of the resulting loan would exceed 75% of the fair market value of the Property encumbered by the Leasehold Mortgage, as determined by an independent appraiser selected by the Leasehold Mortgagee, or (ii) the resulting loan would cause the ratio of the pro forma annual stabilized net operating income generated by the Property to the annual debt service from the proposed loan and all other loans, assessments and special taxes that would be secured by the Property to be less than 1.20 to 1.00. The foregoing calculation of the annual net operating income shall include a reasonable set aside of sufficient reserves, as reasonably determined by Leasehold Mortgagee, for Tenant to maintain the marina on the Property in good order, repair and condition throughout the remaining

Term. The foregoing calculation of the debt service coverage ratio shall otherwise be determined in accordance with generally accepted accounting principles. If the proposed loan will also be secured by all or any portion of the Fee Property, then such portion of the Fee Property shall be included in the calculation of the debt service coverage ratio, in both the numerator and the denominator. The parties recognize that, in order to meet loan commitment deadlines of proposed Leasehold Mortgagees, timely consideration of proposed financings will be needed. To facilitate meeting of such deadlines, Tenant agrees to use good faith, diligent efforts to expedite submittal of all materials required by Landlord for timely review and consideration of any proposed financing request, and Landlord agrees to use good faith diligent efforts to promptly review and respond to all such requests for approval.

Section 9.2 Landlord's Covenants. Landlord agrees, for the benefit of Tenant and each Leasehold Mortgagee, to comply with the following provisions, all of which shall be binding on Tenant and each Leasehold Mortgagee, as set forth herein:

(a) There shall not be entered into between Landlord and Tenant any agreement of cancellation, termination, surrender, acceptance of surrender, amendment or modification of this Lease without the prior written consent of the Leasehold Mortgagee, whose consent shall not be unreasonably withheld. This Lease shall not merge into the fee of the Property without the prior written consent of such Leasehold Mortgagee.

(b) Landlord, upon giving Tenant any notice under this Lease, including, without limitation, notice of Tenant Default, shall at the same time serve by one of the methods specified in Section 17.1, copies of such notice upon each Leasehold Mortgagee whose address has theretofore been provided to Landlord by Tenant in writing (the accuracy of which address shall be Tenant's sole responsibility). No notice served upon Tenant (including, without limitation, a notice of termination of this Lease) shall be effective unless a copy thereof has been served upon each Leasehold Mortgagee at the address provided by Tenant. Following receipt of any such notice of Tenant Default (and provided that the Leasehold Mortgagee (i) expeditiously pursues its cure rights as herein described and (ii) continues to pay all Rent and other sums payable by Tenant under this Lease while the cure is pending), each such Leasehold Mortgagee shall have the right to remedy the Tenant Default, or cause the same to be remedied, within the same time allowed to Tenant therefor, plus, in the case of monetary Defaults, an additional 30 days, and in the case of non-monetary defaults, an additional 60 days or such longer time period as may be provided under Section 9.2(c).

(c) With respect to those events of non-monetary default the curing of which requires entry upon the Property, then (i) whenever a Leasehold Mortgagee desires to cure a Tenant Default, there shall be added to the period otherwise provided to the Leasehold Mortgagee for the cure of the Tenant Default the additional period needed by the Leasehold Mortgagee in the exercise of reasonable diligence to enter upon the Property; (ii) whenever a Leasehold Mortgagee seeks to have a receiver appointed for the interest of Tenant under this Lease, so as to have the receiver cure such Tenant Default, then there shall be added to the period otherwise provided to the Leasehold Mortgagee for the cure of such Tenant Default, the additional period needed by the Leasehold Mortgagee to effect, with reasonable diligence, the appointment of such receiver and the entry by such receiver upon the Property; and (iii) whenever a Leasehold Mortgagee elects to foreclose upon the interest of Tenant under this Lease, there shall be added to the period otherwise provided to the Leasehold Mortgagee for the cure of such Tenant Default, such additional period as is needed, in the exercise of reasonable diligence, for the effectuation of the foreclosure sale.

(d) If a noncurable breach of this Lease occurs, a Leasehold Mortgagee shall have the right to begin foreclosure proceedings and to obtain possession of the Property, so long as Leasehold Mortgagee complies with the conditions set forth below:

(1) Notifies Landlord, within thirty (30) days after receipt of Landlord's notice of a Tenant Default, of its intention to effect this remedy;

(2) Diligently institutes steps or legal proceedings to foreclose on or recover possession of the leasehold (after Leasehold Mortgagee has completed its customary pre-foreclosure due diligence requirements), and thereafter prosecutes the remedy or legal proceedings to completion with due diligence and continuity; and

(3) Keeps and performs, during the foreclosure period (including pre-foreclosure due diligence period), all of the covenants and conditions of this Lease requiring the payment of money, including, without limitation, payment of all Base Rent, Percentage Rent, Utility Charges, Real Property Taxes, Personal Property Taxes and insurance premiums required by this Lease to be paid by Tenant and which become due during the pre-foreclosure or foreclosure period.

(e) Any Leasehold Mortgagee or other purchaser at a foreclosure sale under a Leasehold Mortgage who acquires title to the leasehold estate shall immediately provide Landlord with written notice of such transfer. Such Leasehold Mortgagee or other purchaser shall be subject to the following terms and conditions:

(1) So long as the Leasehold Mortgagee shall have observed all of the conditions of this Section 9.2, then the following breaches, if any, relating to the prior Tenant shall be deemed cured: (i) attachment, execution of or other judicial levy upon the leasehold estate, (ii) assignment for the benefit of creditors of Tenant, (iii) judicial appointment of a receiver or similar officer to take possession of the leasehold estate or the Property or (iv) filing any petition by, for or against Tenant under any chapter of the Federal Bankruptcy Code;

(2) By its acceptance of the leasehold estate, such Leasehold Mortgagee or other purchaser (i) assumes this Lease as to the entire leasehold estate, but only during the period when such Leasehold Mortgagee or other purchaser owns such leasehold estate, (ii) covenants with Landlord to be bound hereby during such period of ownership, and (iii) agrees to execute and deliver to Landlord a commercially reasonable lease assumption agreement evidencing such acceptance and assumption, but only during the period when such Leasehold Mortgagee or other purchaser owns such leasehold estate, in a form reasonably acceptable to Landlord; and

(3) Such Leasehold Mortgagee or other purchaser shall have the right to further assign this Lease without Landlord's consent.

(f) Landlord shall accept performance by or on behalf of any Leasehold Mortgagee who has complied with the notice provisions of Section 9.2 as if the same had been performed by Tenant.

(g) Leasehold Mortgagee shall have the right, to the extent Tenant agrees in writing, to appear in a legal action or proceeding on behalf of Tenant.

(h) It is expressly agreed that each Leasehold Mortgagee has the right to act for and in the place of Tenant, to the extent permitted by the applicable Leasehold Mortgage or otherwise agreed to by Tenant in writing. Without limiting the foregoing, each Leasehold Mortgagee may, to the extent permitted in its Leasehold Mortgage, exercise options and otherwise exercise the rights of Tenant.

(i) In the event of conflict between the rights of multiple Leasehold Mortgagees, the rights of the respective Leasehold Mortgagees shall be determined in the order of priority of their Leasehold Mortgages.

(j) The name of the Leasehold Mortgagee may be added as a loss payee of any fire and extended coverage insurance carried by Tenant, provided insurance proceeds are first used for repair and restoration as required by this Lease, unless a Leasehold Mortgagee's security has been impaired and such Leasehold Mortgagee is legally entitled to the application of the insurance proceeds to the unpaid indebtedness of Tenant, in which case such insurance proceeds shall be paid to the Leasehold Mortgagee up to the amount of the unpaid indebtedness secured by any such Leasehold Mortgagee(s).

(k) Except as otherwise provided in Section 9.2(b) with respect to payment of Rent, the Leasehold Mortgagee shall not be liable for the performance of Tenant's obligations under this Lease unless the Leasehold Mortgagee has succeeded to and has possession of the interest of Tenant under this Lease.

(l) If an actual or prospective Leasehold Mortgagee shall require Landlord to deliver a customary ground lessor estoppel certificate as part of such Leasehold Mortgagee's financing arrangement with Tenant, Landlord shall execute, acknowledge and deliver such ground lessor estoppel certificate, which ground lessor estoppel certificate shall include, without limitation, the provisions set forth in Section 9.2(t). At the option of such Leasehold Mortgagee, such ground lessor estoppel certificate shall be in the form of an agreement between Landlord and such Leasehold Mortgagee.

(m) Whenever requested in writing by any Leasehold Mortgagee, Landlord shall, within 30 days after such request, execute, acknowledge and deliver to such Leasehold Mortgagee, a certificate certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and stating the modifications), (ii) the dates, if any, to which the Base Rent, Percentage Rent and additional Rent and other sums payable under this Lease have been paid, (iii) the amounts spent by Tenant on capital improvements pursuant to Section 11.2 or Section 11.3, as applicable, as of the date of such certificate, (iv) the Expiration Date of the Term of this Lease, (v) whether or not to the knowledge of Landlord, there is then existing any Tenant Default under this Lease (and, if so, specifying same), (vi) whether there are any outstanding notices of Tenant Default or termination, and the nature thereof, and (vii) if notice of Tenant Default has been given, the period remaining for the cure of said Tenant Default as then estimated by Landlord.

(n) The making of any Leasehold Mortgage shall not be deemed to constitute an assignment or Transfer of this Lease or of the leasehold estate, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or the leasehold estate so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant under this Lease to be performed.

(o) Landlord agrees, whenever requested by any Leasehold Mortgagee, to confirm, in writing, the receipt of any notice from such Leasehold Mortgagee.

(p) The Leasehold Mortgagee shall have the option to be assigned this Lease in the event that Tenant, Tenant's trustee or Tenant's assignee elects to reject this Lease pursuant to Section 365(a) of the Bankruptcy Code. In the event that the Leasehold Mortgagee exercises its option to have this Lease assigned to it, such a rejection by Tenant, Tenant's trustee or Tenant's assignee, whether by election, pursuant to operation of law or otherwise, shall not terminate this Lease if the Leasehold Mortgagee cures any outstanding Tenant Defaults under this Lease other than Tenant Defaults that are personal to Tenant and cannot be cured by a party other than Tenant, such as transfer and bankruptcy.

(q) No Leasehold Mortgage shall encumber or create any lien or charge against Landlord's fee interest in the Property.

(r) Landlord consents to a provision in any Leasehold Mortgage or otherwise for an assignment of rents from subleases of the Property to the holder thereof, effective upon any default under such Leasehold Mortgage.

(s) The foreclosure of a Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in any Leasehold Mortgage, or any conveyance of the leasehold estate created hereby from Tenant to any Leasehold Mortgagee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not breach any provision of or constitute a default under this Lease and shall not require Landlord's consent, and upon such foreclosure, sale or conveyance and Leasehold Mortgagee's execution and delivery to Landlord of a lease assumption agreement in a form consistent with the requirements of Section 9.2(e)(2), Landlord shall recognize the Leasehold Mortgagee, or such other purchaser at such foreclosure sale, as Tenant hereunder.

(t) In the event that Tenant's interest under this Lease is terminated by Landlord for any reason including, without limitation, Tenant's default or rejection of this Lease by a trustee in bankruptcy or a debtor in possession (and provided there is an unsatisfied Leasehold Mortgage of record) or in the event Tenant's interest under this Lease shall be sold, assigned or transferred pursuant to the exercise of any remedy of any Leasehold Mortgagee, or pursuant to judicial or other proceedings, Landlord, at Leasehold Mortgagee's expense, shall prepare and promptly enter into a new lease of the Property with such Leasehold Mortgagee or its nominee, purchaser, assignee or transferee, promptly following written request by such Leasehold Mortgagee or such nominee, purchaser, assignee or transferee given within sixty (60) days after such sale, assignment or transfer for the remainder of the term of this Lease with substantially the same agreements, covenants and conditions (except for any requirements which have been fulfilled by Tenant prior to termination) as were contained herein and with priority equal to that hereof; provided, however, that such Leasehold Mortgagee shall promptly cure any default of Tenant susceptible to cure by such Leasehold Mortgagee, and provided further that if more than one Leasehold Mortgagee requests such new lease, the Leasehold Mortgagee holding the most senior Leasehold Mortgage shall prevail. Upon execution and delivery of such new lease, Landlord shall cooperate with the new Tenant, at the expense of such new Tenant, in taking such action as shall be necessary to cancel and discharge this Lease and to remove Tenant named herein from the Property. In such event the ownership of improvements to the Property to the extent owned by Tenant shall be deemed to have been transferred directly to such transferee of Tenant's interest in this Lease.

ARTICLE 10 MAINTENANCE AND MINOR ALTERATIONS

Section 10.1 Tenant's Maintenance. Throughout the entire Term of this Lease, Tenant, at its expense, shall be responsible for the maintenance and repair of all improvements to the marina facilities, including slips, docks, floats, bulkheads, seawalls, shoreline, rip rap, fixtures and equipment, and all utilities to the points of connection with the utility companies' facilities; provided, however, that Tenant shall have no responsibility for the Pre-Existing Conditions or for Third Party Releases, except as expressly provided in Article 21. Tenant shall take the necessary actions during the Term to keep the marina on the Property in good order, repair and condition throughout the Term, including at expiration thereof. Tenant's maintenance and repair obligations extend to all interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, and foreseen and unforeseen repairs as well as periodic dredging work; provided, however, that Tenant shall have no responsibility for the Pre-Existing Conditions nor for Third Party Releases. The phrase "**good order, repair and condition**," as used in this Lease, shall mean and include all maintenance, repair, renovation and/or replacement of improvements, including slips, docks, floats, bulkhead, seawalls, rip rap, utilities, shoreline, buildings, equipment, furniture, fixtures, landscaping and appurtenances, as well as periodic dredging work necessary to ensure that the marina on the Property is functionally viable, recognizing that rehabilitation projects are intended

to be accomplished in 15-year increments; provided, however, that Tenant shall have no responsibility for the Pre-Existing Conditions or for Third Party Releases, except as expressly provided in Article 21.

Section 10.2 Tenant's Alterations. Tenant shall be permitted to make alterations to the marina improvements at Tenant's expense without Landlord's approval in its capacity as Landlord, provided (i) the total value of the improvements on the Property will not be reduced as a result thereof, (ii) each Annual Report submitted to Landlord shall include a description of all such alterations and improvements performed during the Accounting Year covered by such Annual Report, and (iii) Tenant complies with the provisions of Article 12. Tenant shall comply, at Tenant's expense, with all Applicable Laws and obtain all necessary permits and approvals in connection with any such alterations.

ARTICLE 11 DREDGING AND REHABILITATION

Section 11.1 Existing Improvements. Landlord and Tenant acknowledge that not all of the existing improvements on the Property are in "good order, repair and condition" as defined in Section 10.1, that Tenant has had occupancy of Lease Area A since the Area A Commencement Date and Lease Area B since the Area B Commencement Date, and that Tenant is leasing the Property in its AS-IS / WHERE IS AND WITH ALL FAULTS condition as provided in, and subject to the terms of, Section 1.4. The existing deficiencies of the improvements on the Property are described, in part, in an engineering report prepared by Sea Engineering, Inc., dated December 2010 ("**Engineering Report**"), a copy of which is on file with the City Community Development Department. The City's consultant, Weston Solutions, Inc., has completed a peer review of the Engineering Report dated March 15, 2011 ("**Peer Review**"), a copy of which is on file with the City Community Development Department.

Section 11.2 Dredging Project. Prior to the commencement of Lease Year 3, Tenant, at its expense, shall perform dredging work in the area generally depicted in **Exhibit F**. The dredging work shall be undertaken in accordance with a dredging plan approved by Landlord's City Manager or designee in his or her reasonable discretion; provided, however, that if after testing the dredging material Tenant determines that the cost of the Dredging Project is likely to exceed \$500,000, then Tenant shall have the right to reasonably modify the scope of the Dredging Project so that the cost of the Dredging Project will not exceed \$500,000. All permits and other approvals, including US Army Corp permits, required in connection with the dredging work shall be obtained by Tenant at its expense. Upon completion of the dredging, Tenant shall cause a new baseline depth for the entire marina to be established using surveying techniques approved by City in its reasonable discretion. Up to \$500,000 of Tenant's actual and reasonable out-of-pocket costs incurred in connection with the Dredging Project may be counted towards Tenant's Initial Rehabilitation Projects expenditure obligation as set forth in Section 11.3. Tenant shall be entitled to a credit in the amount of \$40,000 toward Base Rent for lost boat slip rental and operational costs incurred by Tenant in connection with the subtenants during the dredging period, which credit shall apply to the Base Rent due immediately after Tenant's completion of the dredging work pursuant to this Section 11.2.

Section 11.3 Initial Rehabilitation Projects Required During First 15 Years. To address certain existing deficiencies at the marina, Tenant, prior to the end of Lease Year 15, shall expend a minimum of \$1,500,000 in performing infrastructure rehabilitation projects described in the Engineering Report and Peer Review ("**Initial Rehabilitation Projects**"). The categories of costs that will count toward such \$1,500,000 expenditure requirement shall be limited to the following: labor (excluding Tenant's management); materials, design, engineering, handling, hauling and disposal; and all permits and fees. Labor costs may include the cost of Tenant's employees (including wages, required withholdings and workers compensation insurance premiums) to the extent they perform the recommended work, except to the extent such employee labor cost exceeds the cost that would be paid to

a qualified unrelated third party to perform such work. The recommended work shall be performed in the phases described in the Engineering Report, as revised by the Peer Review; provided, however, that the priority and scope of the foregoing work may be adjusted and/or modified by Tenant in order to address life/safety concerns and/or to maximize the generation of revenue from the Property. Tenant shall spend at least \$500,000 for the work of Initial Rehabilitation Projects by the end of Lease Year 5, and Tenant shall spend a cumulative total of \$1,000,000 for such work by the end of Lease Year 10. If Tenant has not spent at least \$1,000,000 for the work of Initial Rehabilitation Projects by the end of Lease Year 10, then Tenant agrees to set aside in an escrow account funds in an amount equal to the difference between \$1,500,000 and the amount actually spent by Tenant for such work. In the event an escrow account is established, the parties shall execute joint escrow instructions authorizing prompt disbursement of the escrowed funds to Tenant to pay costs to be incurred by Tenant in performing such work prior to the end of Lease Year 15. If Tenant has not completed all of the Initial Rehabilitation Projects after Tenant has spent at least \$1,500,000 on such work, then Tenant nevertheless agrees to diligently complete such Initial Rehabilitation Projects after Lease Year 15, together with such other reasonably necessary rehabilitation work as may be identified in subsequent engineering reports and City's peer review of the same as set forth in Section 11.4. The Annual Report submitted to Landlord within 60 days following the end of each of Lease Years 1 through 15, shall detail the expenditures made by Tenant on the Initial Rehabilitation Projects since the date of the last Annual Report, which notification shall include a statement that Landlord's failure to object to any of the expenditures listed within three (3) months of the date of such Annual Report in accordance with Section 4.7 shall be deemed Landlord's consent to and agreement with such reported expenditures. As part of such Annual Report, Tenant agrees to provide Landlord with reasonable documentation that Tenant's employee labor cost did not exceed the cost that would have been paid to a qualified unrelated third party to perform such work. Upon receipt of such Annual Report, Landlord may request, and Tenant shall provide, such documentation including invoices, employee hour reports, etc., as is reasonably requested by Landlord to verify the accuracy of the information regarding the Initial Rehabilitation Projects in such Annual Report. If Landlord does not notify Tenant in writing of any specific objection to any of the expenditures reflected in any such Annual Report within three (3) months after receipt thereof, then such expenditures shall be credited toward the expenditure requirements set forth in this Section 11.3. Landlord agrees that any expenditures by Tenant after January 1, 2012 for the work of Initial Rehabilitation Projects which work meets the requirements of this Article 11, shall count toward expenditures required under this Section 11.3 (i.e., \$500,000 by the end of Lease Year 5, \$1,000,000 by the end of Lease Year 10, and \$1,500,000 by the end of Lease Year 15).

Section 11.4 Rehabilitation Projects Required After Lease Year 15. Because of the length of the Term, Tenant shall be required to perform certain substantial capital replacement and rehabilitation work with respect to the facilities and improvements on the Property in order to ensure that the marina on the Property will be in good order, repair and condition upon the expiration of the Term. In order to identify required capital replacement and rehabilitation projects, Tenant, at its expense, shall cause an engineering firm reasonably acceptable to Landlord prepare and present to Landlord an updated marina engineering report on or before the end of Lease Year 15, and Tenant shall decide on an updated capital replacement and rehabilitation program covering the remaining Term if the Initial Term has not been extended as provided in Section 1.5(b), or the next fifteen (15) years of the Term if the Initial Term has been so extended. If the Initial Term has been extended as provided in Section 1.5(b), this process shall be repeated every fifteen (15) years thereafter during the Term. The engineering firm preparing the report shall be informed of Tenant's obligation to ensure that the marina on the Property is in good order, repair and condition and functionally viable upon the expiration of the Term. Landlord, at Landlord's expense, may obtain a peer review of each Tenant engineering report. The capital replacement and rehabilitation work noted in the engineering report, with reasonable modifications or additions noted in Landlord's peer review, if any, shall be completed by Tenant, at its expense, by such reasonable methods and in accordance with such schedule as shall be determined by Tenant, subject to Tenant's obligation to surrender possession of the Property to Landlord with the marina on the Property in good order, repair

and condition and functionally viable upon the expiration of the Term, regardless of whether the capital replacement reserve deposits described in Section 11.5 are adequate to fund the entire cost of such work. Landlord agrees to cooperate with Tenant in connection with any public financing of such work through the issuance of Community Facilities District (CFD) bonds or other bonds proposed by Tenant.

Section 11.5 Capital Replacement Fund. To ensure that Tenant sets aside funding to pay a significant portion of the required capital replacement and rehabilitation work, Tenant shall, on March 1 of each Lease Year commencing in Lease Year 10, set aside and accrue in a segregated account (the "**Capital Replacement Account**") the greater of (i) \$50,000 or (ii) 5% of the prior Lease Year's annual Gross Boat Slip Receipts to fund necessary capital replacement and rehabilitation work with respect to the marina facilities and improvements. Unspent portions will accumulate with, and not substitute for, the capital replacement fund set aside required in subsequent year(s). Within 10 days following Landlord's written request, Tenant shall provide evidence reasonably satisfactory to Landlord that Tenant has on deposit in the Capital Replacement Account the capital replacement funds required under this Section 11.5. Tenant's failure to deposit, maintain and expend capital replacement funds in accordance with the requirements of this Section 11.5, which failure is not cured within ten (10) business days after Landlord gives Tenant notice of such failure, shall constitute a Tenant Default. The amounts deposited into the Capital Replacement Account shall be immediately available for expenditures by Tenant to fund necessary capital replacement and rehabilitation work with respect to the marina facilities and improvements. The Annual Report provided to Landlord within 60 days after the end of each Accounting Year shall state specifically how any funds in the Capital Replacement Account were spent during such Accounting Year (i.e., identifying the specific capital replacement and rehabilitation work performed during such Accounting Year and the amounts spent for each such project).

Section 11.6 Shoreline Repairs. Tenant's repairs to bulkheads, seawalls and riprap on the Property (collectively, "**Shoreline Repairs**") shall be designed to preserve existing shoreline configurations, but in no event shall Tenant be responsible to Landlord for any loss of land or improvements or increase in land associated with such Shoreline Repairs.

Section 11.7 Compliance. All capital replacement and rehabilitation work, including the Initial Rehabilitation Projects and Shoreline Repairs, and other works of improvement shall be made in compliance with all Applicable Laws. Any work which is not made in compliance with Applicable Laws shall not be counted towards expenditures required under this Article 11. Tenant shall also comply with Environmental Laws (except that Tenant shall have no responsibility for Pre-Existing Conditions or Third Party Releases, except as otherwise expressly set forth in Section 21.3(b)), and shall properly dispose of any contaminated soil that is removed from the Property as a result of construction thereon; provided, however, that Landlord shall execute any manifests associated with Pre-Existing Conditions and any Third Party Releases caused by Landlord Indemnified Parties and Landlord shall bear all costs and expenses associated with the removal, handling, transportation and disposal of any Pre-Existing Conditions and/or Third Party Releases caused by Landlord Indemnified Parties.

Section 11.8 Tenant's Obligation to Perform. Tenant's failure to comply with its obligations under Section 11.3 or Section 11.4 with respect to the Initial Rehabilitation Projects and other capital replacement and rehabilitation projects as provided in this Article 11, which failure is not cured within the cure period set forth in Section 16.1(c), shall constitute a Tenant Default under this Lease, unless proceeding with the capital projects would be illegal under Applicable Laws.

Section 11.9 Marina Reconfiguration. In addition to the Initial Rehabilitation Projects and dredging work described in this Article 11, Tenant, on or before the end of Lease Year 7, shall analyze the potential reconfiguration of the floating docks and slips to determine the best way to maximize Gross Boat Slip Receipts for the mutual benefit of Landlord and Tenant, taking into account the required costs

of, and return on investment anticipated to result from, such reconfiguration, and submit a proposed reconfiguration plan to Landlord for review and approval not to be unreasonably withheld. The reconfiguration plan may propose leaving some of the floating docks and slips in their current configuration, if and to the extent commercially reasonable and consistent with best practices followed by other efficient and attractive marinas in the Oakland/Alameda harbor market area. Tenant shall not be required to wait until preparation and approval of the reconfiguration plan before taking steps to undertake minor reconfigurations of the marina. Tenant shall take steps to accomplish the work outlined in the Landlord approved reconfiguration plan within a commercially reasonable time period, taking into account Tenant's other maintenance, repair, rehabilitation and replacement obligations under Article 10 and this Article 4, the existence of any Pre-Existing Conditions and/or Third Party Releases impacting the reconfiguration plan and Tenant's ability to obtain a positive (industry standard) return on investment.

ARTICLE 12 PROTECTION OF LANDLORD; LIENS

Section 12.1 Protection of Landlord. Nothing in this Lease shall be construed as constituting the consent of Landlord, expressed or implied, to the performance of any labor or the furnishing of any materials in connection with the Development Project or any Initial Rehabilitation Projects, Shoreline Repairs or any other work by any contractor, subcontractor, laborer or materialman, nor as giving Tenant or any other person any right, power or authority to act as agent of, or to contract for or permit the rendering of, any services, or the furnishing of any materials, in such manner as would give rise to the filing of mechanics' liens or other claims against the Property or any portion thereof. Landlord shall have the right at all reasonable times to post, and keep posted, on the Property any notices which Landlord may reasonably deem necessary for the protection of Landlord and of such Property from mechanics' liens or other claims. Tenant shall give Landlord at least ten (10) days' prior written notice of the commencement of any construction work to be done on or about the Property to enable Landlord to post such notices. Tenant shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any work or furnishing any materials or supplies to Tenant or any of its contractors or subcontractors in connection therewith.

Section 12.2 Liens and Stop Notices. Tenant shall keep the Property and all improvements thereon free and clear of all stop notices, mechanics' liens and other liens on account of any work done for Tenant or persons claiming under it. Tenant shall indemnify and save Landlord harmless against liability, loss, damages, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished to Tenant or persons claiming under it. If a claim of a lien or stop notice is given or recorded affecting the Property, or any portion thereof, or any improvements thereon, Tenant shall within 30 days of such recording or service: (i) pay and discharge the same; (ii) effect the release thereof by recording and delivering to Landlord a surety bond described in California Civil Code Section 3143, or successor statute in sufficient form and amount which results in the removal of such lien from the Property, all portions thereof, and all improvements thereon; or (iii) otherwise obtain or effect the release of such lien or stop notice.

ARTICLE 13 LANDLORD NOT LIABLE FOR INJURY OR DAMAGE

Section 13.1 Limitation on Liability. Except as expressly provided herein, Landlord shall not in any event whatsoever be liable for any injury or damage to any property or to any person on, in or about the Property and its appurtenances, nor for any injury or damage to the improvements or facilities on or about the Property or to any property belonging to Tenant or any other person which may be caused by any fire, breakage, leakage or defect or by water, moisture or rain that may leak into, issue or flow from any part of the Property or by the use, misuse or abuse of any of the structures, facilities or areas of

egress or ingress, or which may arise from any other cause whatsoever, except to the extent caused by the active negligence or willful misconduct of Landlord. Notwithstanding anything to the contrary set forth in this Lease, Landlord shall be responsible, at Landlord's sole cost and expense, for all Claims arising out of or resulting from Pre-Existing Conditions, except as otherwise set forth in Article 21. Notwithstanding anything to the contrary set forth in this Lease, nothing in this Lease shall impose any liability or responsibility on Landlord or Tenant for any Claims arising out of or resulting from any discharge from storm drains that adversely affect the Property, including, without limitation, discharges of Hazardous Materials into the water adjacent to the Property, or from any Releases which are caused by persons or entities that are neither Tenant Parties nor Landlord Indemnified Parties (hereinafter, "Third Party Releases").

ARTICLE 14 LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

Section 14.1 Tenant's Failure to Perform. If a Tenant Default exists due to Tenant's failure to pay any Imposition in accordance with the provisions hereof, or to take out, pay for, maintain or deliver any of the insurance or evidence thereof provided for herein, or to make any other payment or perform any other act on its part to be made or performed, then Landlord, without waiving or releasing Tenant from any obligation of Tenant contained in this Lease and in addition to all of its other rights and remedies, may (but shall be under no obligation to) as applicable:

- (a) pay such Imposition;
- (b) take out, pay for and maintain any of such insurance; or
- (c) make such other payment or perform such other act, and if necessary in connection with such performance, enter upon the Property for the purpose and take all such action thereon as may be necessary therefor.

All sums so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at 10% per annum (or, if less, the highest rate allowed by Applicable Law) from the respective dates of Landlord's making of each such payment or incurring of such costs and expenses shall be paid by Tenant to Landlord on demand. Any payment or performance by Landlord pursuant to the foregoing provisions of this Article 14 shall not be deemed to be a waiver or release of the applicable Tenant Default or of the right of Landlord to terminate this Lease, institute summary proceedings and/or take such other action as may be permissible hereunder as a result of such Tenant Default.

ARTICLE 15 PERMITTED USE; COMPLIANCE WITH LAWS

Section 15.1 Permitted Use. Throughout the Term, Tenant shall continuously use, operate and manage the Property only and exclusively for (i) berthing, fueling, and repairing boats; (ii) subject to the limitations of Section 23.1, providing berthing spaces for owners of boats who wish to reside on their boats; (iii) providing services related to any of the activities described in subsections (i) - (ii); and (iv) ancillary uses that are generally consistent with marinas, wharves and public trust use restrictions and for no other purpose, except as otherwise approved by the City in connection with its approval of the development plan for the Development Project. Other uses, activities and programs must receive the prior written consent of Landlord in its sole discretion. Nothing in this Lease shall be construed as Landlord's permission for the Development Project or any other uses that require a use permit or other

approval by the City of Alameda or any other permitting authority, unless such permit or approval is properly obtained.

Section 15.2 Limitations on Use. Tenant shall not use or occupy, nor permit or suffer the Property or any part thereof to be used or occupied for any unlawful or illegal business, use or purpose, or for any business, use or purpose which violates any present or future Applicable Laws, or for any use that is inconsistent with public trust restrictions. Tenant shall immediately upon the discovery of any such unlawful, illegal or non-public trust use take all reasonable steps, legal and equitable, to compel the discontinuance of such use and to oust and remove any sublessees, occupants or other persons guilty of such unlawful, illegal or non-public trust complaint use.

Section 15.3 Compliance With Laws. Tenant, at its expense, shall comply with all Applicable Laws in connection with Tenant's occupancy, use, maintenance, repair and improvement of the Property and improvements and facilities thereon, and the conduct of any business or activities thereon, it being understood and agreed that Landlord shall have no duty or obligation whatsoever with respect thereto, except as otherwise expressly provided in Article 21 with respect to Landlord's responsibility for Pre-Existing Conditions.

ARTICLE 16 DEFAULT; REMEDIES

Section 16.1 Tenant Default. The occurrence of any one or more of the following shall be deemed a default by Tenant ("**Tenant Default**"):

(a) Failure to pay Rent within ten (10) days of the date due; provided, however, that the first occurrence of such a delinquency in any twelve (12) month period shall be a Tenant Default only if Tenant fails to cure such delinquency within five (5) business days after written notice from Landlord thereof.

(b) Failure to perform its obligations under Section 6.1 which is not cured within five (5) business days after written notice from Landlord thereof.

(c) Failure to perform any other covenant or condition of Tenant pursuant to this Lease, for a period of thirty (30) days after notice from Landlord; provided, however, if the nature of the failure is such that more than thirty (30) days are required for its cure, then a Tenant Default shall not exist if Tenant commences to cure within said thirty (30) days and thereafter diligently prosecutes the same to completion.

(d) The making by Tenant of any general assignment for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or of a petition for reorganization or arrangement under any federal or state bankruptcy law (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days after filing); the appointment of a trustee or receiver to take possession of all or substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease and possession is not restored to Tenant within sixty (60) days thereafter; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease and possession is not restored to Tenant within sixty (60) days thereafter.

Section 16.2 Landlord's Remedies. Upon the occurrence of any Tenant Default, Landlord may, at its option and in addition to any other rights and remedies given hereunder or by law, do any of the following:

(a) Landlord shall have the right at any time thereafter to give notice of termination to Tenant, and on the date specified in such notice (which shall not be less than thirty (30) days after the giving of such notice) this Lease shall, subject to Section 16.3, terminate and come to an end as fully and completely as if such date were the day herein definitely fixed for the expiration of this Lease; and Tenant shall then surrender the Property as required by this Lease but shall remain liable as hereinafter provided. If any such termination of this Lease occurs, Landlord may then or any time thereafter re-enter the Property by summary proceedings or otherwise, remove therefrom all persons and property, and repossess and enjoy the Property, without prejudice to any other remedies that Landlord may have by reason of Tenant's Default or of such termination.

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

(c) Landlord shall have the right, without terminating this Lease, to re-enter the Property by summary proceedings or otherwise if allowed by Applicable Laws and remove all persons and property, and Tenant shall remain liable as hereinafter provided. No commencement and prosecution of any action by Landlord in unlawful detainer, ejectment or otherwise, or execution of any judgment or decree obtained in any action to recover possession of the Property, nor any re-entry by Landlord, shall be construed as an election to terminate this Lease, unless Landlord shall give notice to Tenant of such election.

Section 16.3 Damages. Should Landlord terminate this Lease pursuant to Section 16.2, Landlord shall be entitled, at Landlord's election, to damages as provided by law, including those set forth in California Civil Code Section 1951.2. Such damages shall include, subject to the limitations provided in said Section 1951.2:

(a) The worth at the time of award of the unpaid Rent and other sums owing by Tenant to Landlord under this Lease that had been earned at the time of termination of this Lease;

(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 loss of Rent that Tenant proves could have been reasonably avoided;

(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 loss of Rent that Tenant proves could be reasonably avoided; and

(d) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease, or which in the ordinary course of things would be likely to result therefrom.

The "**worth at the time of the award**" of the amounts referred to in subsections (a) and (b) above shall be computed by allowing interest at the maximum rate permitted by Applicable Law. The "**worth at the time of the award**" of the amount referred to in subsection (c) above shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus 1%.

Section 16.4 No Waiver. The waiver by Landlord of any breach of any term, covenant or condition contained in this Lease shall not be deemed a waiver of such term, covenant or condition or any subsequent breach thereof, or of any other term, covenant or condition contained in this Lease.

Landlord's subsequent acceptance of partial Rent or performance by Tenant shall not be deemed to be an accord and satisfaction or a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease or of any right of Landlord to a forfeiture of this Lease by reason of such breach, regardless of Landlord's knowledge of such preceding breach at the time of Landlord's acceptance. No term, covenant or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing and signed by Landlord.

Section 16.5 Landlord Default. If Landlord shall fail to perform any of the terms, covenants or conditions contained in this Lease on its part to be performed within thirty (30) days after written notice of such failure or, when more than thirty (30) days shall be required because of the nature of the default, if Landlord shall fail to proceed diligently to cure such default after written notice thereof, then Tenant shall be entitled to exercise all of its rights and remedies at law or in equity; provided, however, Tenant's remedies shall be limited to specific performance and recovery of actual damages in the event of a Landlord default. Tenant hereby waives the right to recover or seek recovery of any special, punitive or consequential damages as result of any Landlord default.

ARTICLE 17 NOTICES

Section 17.1 Delivery. All notices shall be in writing and shall be delivered via overnight courier, by hand delivery or by certified mail, return receipt requested, to the appropriate party at the addresses set forth below. All communications by courier or hand delivery shall be deemed served upon delivery, or if mailed, upon receipt; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

Notice to Landlord:

City Manager
City of Alameda
2263 Santa Clara Avenue, Room 320
Alameda, CA 94501

With a copies to:

City Attorney
City of Alameda
2263 Santa Clara Avenue, Room 280
Alameda, CA 94501

and

Community Developer Director
City of Alameda
2263 Santa Clara Avenue, Room 120
Alameda, CA 94501

Notice to Tenant:

Pacific Shops, Inc.
1815 Clement Avenue
Alameda, CA 94501
Attn: President

With a copy to:

Bay West Group
2 Henry Adams Street, Suite 450
San Francisco, CA 94103
Attn: Bill Poland

Section 17.2 Notice to Other Parties; Changes in Address. Either party may by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

ARTICLE 18 CONDEMNATION

Section 18.1 Termination of Lease. If at any time during the term of this Lease, all or substantially all of the Property shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Landlord, Tenant and those authorized to exercise such right, at the election of Tenant, this Lease shall terminate and expire on the date of such taking and the Base Rent, Percentage Rent and other sums of money and other charges herein reserved and provided to be paid by Tenant shall be apportioned and paid to the date of such taking.

(a) The term "substantially all of the Property" shall be deemed to mean such portion of the Property as, when so taken, would leave remaining a balance of the Property which, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not under economic conditions, zoning laws or building regulations then existing or prevailing, readily accommodate the uses permitted by this Lease, on the remaining balance of the Property.

(b) If all or substantially all of the Property shall be taken or condemned as provided in this Article 18, and Tenant has elected not to terminate this Lease, Landlord shall be entitled to collect and/or control the collection of the entire award from the condemnor, and Tenant agrees to execute any and all documents that may be required in order to facilitate collection by Landlord of any and all such awards, but the aforesaid award shall be apportioned between Landlord and Tenant as follows:

(1) There shall be first paid any and all reasonable fees and expenses incurred in connection with the collection of the award;

(2) Then, the proceeds shall be paid to restore the Property, unless a Leasehold Mortgagee's security has been impaired and such Leasehold Mortgagee is legally entitled to the application of the proceeds to the unpaid indebtedness of Tenant, in which case there shall be next paid to the Leasehold Mortgagee the unpaid indebtedness secured by any such Leasehold Mortgage(s); and

(3) The balance of the award shall be applied and distributed to Tenant and Landlord proportionately in accordance with their respective interests in the Property and improvements thereon; provided, however, to the extent there is any leasehold bonus value due to below market rate rent, such leasehold bonus value shall be awarded and distributed to Landlord. Notwithstanding the foregoing, if Landlord is the condemnor of Tenant's leasehold interest under this Lease, then (A) Tenant, together with Tenant's subtenants and other persons and entities occupying the Property under this Lease, shall be entitled to collect and/or control the collection of the entire award from the condemnor, (B) Tenant and/or Tenant's subtenants and other persons and entities occupying the

Property under this Lease shall be entitled to retain the entire award from the condemnor, subject to the rights of any Leasehold Mortgagee, and (C) Landlord shall have no rights to any portion of such award.

Section 18.2 Date of Condemnation. For the purpose of this Article 18, the Property or a part thereof, as the case may be, shall be deemed to have been taken or condemned on the date on which actual possession of the Property or a part thereof, as the case may be, is acquired by any lawful power or authority or the date on which title vests therein, whichever is earlier.

Section 18.3 Retention of Remaining Portion of Property. If less than substantially all of the Property is so taken or condemned, Tenant, at its option, may either (i) terminate this Lease by written notice to Landlord or (ii) restore, at its expense, the remaining portion of the Property to an economically operable facility of comparable kind and quality to the facility existing prior to the taking, and the Base Rent shall be proportionately reduced based on the value of the Property so taken as compared to the value of the Property prior to the date of condemnation.

Section 18.4 Temporary Taking. If the temporary use of the whole or any part of the Property shall be taken at any time during the Term of this Lease for any public or quasi-public purpose by any lawful power or authority, by the exercise of the right of condemnation or eminent domain, or by agreement among Landlord, Tenant and those authorized to exercise such right, the Term of this Lease shall not be reduced or affected in any way and Tenant shall continue to pay in full the Rent and other sum or sums of money and charges reserved and provided to be paid by Tenant. In the event of any temporary taking or condemnation as provided in this Section, the entire award or the aggregate of the separate awards to Landlord and Tenant, as the case may be, shall be paid to Tenant, and Tenant shall be entitled to retain such award, provided this Lease is then in force and effect; provided, however, that if such temporary taking shall be for a period extending beyond the expiration of the then current Term of this Lease, Landlord shall be entitled to receive such portions thereof attributable to the period after such expiration.

ARTICLE 19 CERTIFICATES BY LANDLORD AND TENANT

Section 19.1 Tenant's Certificate of Lease. Tenant agrees at any time and from time to time upon not less than 10 business days' prior notice by Landlord to execute, acknowledge and deliver to Landlord, or any other party specified by Landlord, a statement in writing certifying (a) that this Lease is unmodified and in full force and effect, or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect and the date to which the Rent and other charges are paid in advance, if any, (b) that to Tenant's actual knowledge, there are no uncured defaults on the part of Landlord and Tenant hereunder, or if there exist any uncured defaults on the part of Landlord and/or Tenant hereunder stating the nature of such uncured defaults on the part of Landlord and/or Tenant, and (c) the correctness of such other information respecting the status of this Lease as may be reasonably required by the party hereto requesting execution of such statement.

Section 19.2 Landlord's Certificate of Lease. Landlord agrees at any time and from time to time upon not less than 10 business days' prior notice by Tenant to execute, acknowledge and deliver to Tenant, or any actual or prospective Leasehold Mortgagee or proposed Transferee, a statement in writing certifying (a) that this Lease is unmodified and in full force and effect, or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect and the date to which the Rent and other charges are paid in advance, if any, (b) that to Landlord's actual knowledge, there are no uncured defaults on the part of Landlord and Tenant hereunder, or if there exist any uncured defaults on the part of Landlord and/or Tenant hereunder stating the nature of such uncured defaults on

the part of Landlord and/or Tenant, and (c) the correctness of such other information respecting the status of this Lease as may be reasonably required by the party hereto requesting execution of such statement.

ARTICLE 20
SURRENDER OF POSSESSION AND REVERSION OF TITLE
TO IMPROVEMENTS AT END OF TERM

Section 20.1 Surrender at Expiration. On the last day of the Term hereof or upon any earlier termination of this Lease, or upon a re-entry by Landlord upon the Property pursuant to Article 16 hereof, Tenant shall surrender and deliver to Landlord the Property and any improvements then existing on the Property free and clear of all lettings and occupancies other than subleases then terminable at the option of Landlord or subleases to which Landlord shall have specifically consented, in good order, repair and condition, and free and clear of all liens and encumbrances other than those, if any, existing at the date hereof or created by Landlord, without any payment or allowance whatever by Landlord. Landlord and Tenant each hereby waives any notice now or hereafter required by law with respect to vacating the Property on any such termination date. Nothing in this Lease is intended as, nor shall it be construed to, require Tenant to undertake or bear the cost of any remedial or cleanup actions arising out or related to the presence of any Hazardous Materials at the Premises due to the continued terminal operations of Landlord or arising out of or related to any Pre-Existing Conditions, other than remedial work for which Tenant is expressly responsible as set forth in Article 21.

Section 20.2 Title to Improvements. Tenant shall have ownership of all improvements to the land, bulkheads, pilings, and utilities attached to the land and shoreline, within the boundaries of the Property, and ownership of all utilities exclusively serving the Property within the area of the Easements to be established and improvements thereon as provided in Section 1.3(d) until the expiration or earlier termination of this Lease, at which time such ownership shall revert to Landlord.

ARTICLE 21
ENVIRONMENTAL PROVISIONS

Section 21.1 Acknowledgment Regarding Hazardous Materials. Tenant acknowledges that a portion of the Property is filled land and that such fill was placed by unknown parties prior to Tenant's occupancy of the Property. Tenant further acknowledges that Landlord has not made, does not make, and specifically disclaims, any representation or warranty regarding the environmental condition of the Property. Tenant acknowledges that it has been given the opportunity to investigate the Property and the location of Hazardous Materials thereon. The Tenant acknowledges that its planned use and further improvement of the Property, including in connection with the Development Project, may uncover, reveal or otherwise result in discovery of the existence of Hazardous Materials on, under or about the Property. Tenant further acknowledges that the information provided in this Lease satisfies Landlord's notification requirement pertaining to Hazardous Materials established by California Health & Safety Code Section 25359.7.

Section 21.2 Tenant's Compliance. Tenant shall throughout the Term of this Lease comply in all material respects with all Environmental Laws affecting or relating to the Tenant Parties' use, occupancy and improvement of the Property and shall not perform, or suffer or permit to be performed, any acts, or omit or refuse to take any required actions, in violation of Environmental Laws affecting or relating to the Tenant Parties' use, occupancy and improvement of the Property. In particular, and not in limitation of the foregoing, Tenant agrees as follows:

(a) Tenant will not use the Property, nor will Tenant permit the Property to be used, for the purpose of refining, producing, storing, handling, transferring, processing, transporting, generating,

manufacturing, treating or disposing of any Hazardous Materials except in material compliance with Environmental Laws.

(b) Tenant shall comply in all material respects with Environmental Laws affecting or relating to the Tenant Parties' use, occupancy and improvement of the Property and shall notify Landlord of (i) any Release of a Hazardous Materials by a Tenant Party in excess of any reportable quantity or (ii) any violation by a Tenant Party of Environmental Laws affecting the Property that is known to Tenant. In the event of a Release at the Property that is caused by a Tenant Party, Tenant, at its expense, shall take any remedial actions that are reasonably required to abate said Release or otherwise comply with Environmental Laws. For the purpose of this Section 21.2(b), "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment of Hazardous Materials, including, without limitation, any Release occurring in the course of rehabilitation or construction activities. Notwithstanding the foregoing, Tenant shall have no liability with respect to Third Party Releases or Pre-Existing Conditions, except as otherwise expressly set forth in Section 21.3(b).

(c) In the event that an Environmental Lien is filed against the Property or any portion thereof as a result of acts of Tenant or any Tenant Party, including any act that results in excavation or disturbance of any Pre-Existing Conditions, Tenant shall notify Landlord within five (5) days thereof and, within thirty (30) days from the date that Tenant is given notice that said Environmental Lien has been placed against the Property or within such shorter period of time in the event that the State of California has commenced steps to cause the Property or any portion thereof to be sold pursuant to said Environmental Lien, Tenant shall either (i) pay the claim and remove the lien from the Property or any portion thereof or (ii) promptly institute at Tenant's cost and expense, and acting in good faith, an appropriate legal proceeding to contest, object or appeal the validity of any Environmental Lien. The contest, objection or appeal with respect to the validity of an Environmental Lien shall suspend Tenant's obligation to eliminate such Environmental Lien under this Section 21.2(c) pending a final determination by appropriate administrative or judicial authority of the legality, enforceability or status of such Environmental Lien.

(d) Tenant shall use commercially reasonable efforts to cause each and every sublessee and other person using or occupying all or any part of the Property or improvements thereon to comply in all respects with the representations, warranties and covenants contained in subparagraphs (a) through (c) above.

(e) Notwithstanding the foregoing, Tenant shall have no compliance, performance or payment obligations with respect to this Section for any violation by any of the Landlord Indemnified Parties or by any of Landlord's contractors of any Environmental Laws.

Section 21.3 Tenant's Obligations Regarding Pre-Existing Conditions. It is possible that Tenant's performance of the Initial Rehabilitation Projects, Shoreline Repairs, other work of rehabilitation or improvements or construction of the proposed Development Project may lead to discovery of Pre-Existing Conditions. If Tenant discovers, contributes to, or exacerbates any Pre-Existing Conditions, the parties shall have the following obligations:

(a) Tenant shall provide written notice to Landlord within thirty (30) days of discovery and professional evaluation of Hazardous Materials. Tenant shall advise Landlord promptly after Tenant makes a determination or decision as to: (i) whether or not Tenant believes that the Hazardous Materials are or may be Pre-Existing Conditions; and (ii) whether Tenant desires to continue with or cease the construction or rehabilitation work that led to the discovery of such Pre-Existing Conditions on that portion of the Property with such Pre-Existing Conditions. If Tenant opts to cease construction and

development of such construction or rehabilitation work on such portion of the Property, Tenant shall have no further obligation with respect to remediation or payment of the costs of remediation of the Pre-Existing Conditions on such portion of the Property, except as otherwise expressly provided in Section 21.3(c).

(b) Except to the extent Tenant opts to abandon the construction or rehabilitation work that led to the discovery of such Pre-Existing Conditions on that portion of the Property with such Pre-Existing Conditions, Tenant shall undertake and bear full responsibility for the investigation and remediation of such Pre-Existing Conditions, in a manner satisfactory to the relevant regulatory agencies, on that portion of the Property on which Tenant continues to perform construction or rehabilitation work. Tenant shall meet and confer with Landlord in advance of any work or negotiations undertaken by Tenant related to the Pre-Existing Conditions, and shall not proceed with any work without the advance written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

(c) Tenant shall not perform any invasive environmental testing for Hazardous Materials on the Property without Landlord's prior written consent, which consent may be withheld in Landlord's sole and absolute discretion.

Section 21.4 Tenant's Indemnification of Landlord. In addition to Tenant's other obligations of indemnity under this Lease, Tenant agrees to defend (with counsel reasonably acceptable to Landlord), indemnify and hold harmless Landlord and the Landlord Indemnified Parties from and against any and all Claims that result from (i) Releases, or threatened Releases, at the Property caused by a Tenant Party, including any Releases of Pre-Existing Conditions resulting from rehabilitation, construction or excavation work or activities by any Tenant Party, unless Tenant ceases the construction or rehabilitation work that led to the discovery of such Pre-Existing Conditions on that portion of the Property with such Pre-Existing Conditions; (ii) any violations of Environmental Laws with respect to the Property or improvements thereon committed by a Tenant Party; and (iii) any breach of any warranty or representation regarding environmental matters made by Tenant hereunder. However, Tenant shall not have any indemnity or other obligation under this Section for any Claims or costs arising out of (a) the gross negligence or willful misconduct of Landlord or any of the Landlord Indemnified Parties or Landlord's contractors, or (b) any Pre-Existing Conditions, except as otherwise expressly set forth in Section 21.3(b).

Section 21.5 Notification. Landlord agrees that in the event any investigation, litigation or proceeding is threatened in writing or instituted against Landlord, or any remedial action is requested of Landlord, for which Landlord may be entitled to indemnify or defense by Tenant hereunder, Landlord shall promptly notify Tenant in writing.

Section 21.6 Indemnitees Participation in Defense. Tenant, at the request of Landlord and Landlord Indemnified Parties, shall have the obligation to defend against any investigation, litigation or proceeding or requested remedial action, to the extent covered by Section 21.3(c), and Landlord and Landlord Indemnified Parties, at Landlord or the Landlord Indemnified Parties' expense, in any event, may participate in the defense thereof with legal counsel of its or their choice.

Section 21.7 Settlement. Landlord shall give Tenant reasonable prior notice of any settlement, compromise or similar disposition by Landlord of any investigation, litigation or proceeding pursuant to which Tenant has an obligation to defend; provided, however, that Landlord shall not have the right, without Tenant's prior written consent, to settle, compromise or similarly dispose of any investigation, litigation or proceeding if such action (i) imposes any obligation or liability on Tenant or (ii) impairs Tenant's use of the Property, and once tendered and accepted by Tenant, Tenant shall be in control of handling such claims by Landlord.

Section 21.8 Survival of Obligations. The provisions of this Article 21 shall survive the expiration or earlier termination of this Lease.

Section 21.9 "Environmental Laws" and "Hazardous Materials". As used in this Lease, the term "**Environmental Laws**" means any and all federal, state and local laws, regulations, rules, guidelines and ordinances relating to human health, safety, pollution and protection of the indoor or outdoor environment or otherwise relating to the presence, manufacture, processing, distribution, use, treatment, storage, release, transport, handling, recordkeeping, notification, disclosure and reporting requirements of and respecting Hazardous Materials, including the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act and the Occupational Safety and Health Act. As used in this Lease, the term "**Hazardous Materials**" means any flammable explosives, radioactive materials, asbestos, polychlorinated biphenyl's or "PCB's", petroleum products or bi-products, hazardous wastes, toxic substances or related materials, including all substances, wastes, pollutants and contaminants now or hereafter included within such (or any similar) term under any Environmental Laws now existing or hereafter enacted or amended.

ARTICLE 22 REPRESENTATIONS AND WARRANTIES

Section 22.1 Landlord's Representations and Warranties. Landlord represents and warrants to Tenant as follows:

(a) Landlord has full right, power and lawful authority to perform its obligations hereunder and the execution, performance and delivery of this Lease by Landlord has been fully authorized by all requisite actions on the part of Landlord;

(b) To the best of Landlord's knowledge, Landlord's execution, delivery and performance of its obligations under this Lease will not constitute a default or a breach under any contract, agreement or order to which Landlord is a party or by which it is bound; and

(c) To the best of Landlord's knowledge, there has been no action filed for, and there are no plans to file an action for eminent domain or condemnation, that in any way affects the Property, or any notice from any governmental authority regarding the annexation of all or any portion of the Property.

Section 22.2 Tenant's Representations and Warranties. Tenant represents and warrants to Landlord as follows:

(a) Tenant is duly organized, validly existing and in good standing under the laws of the State of California and has all the necessary powers to enter into this Lease and to carry on its business as now owned and operated by it;

(b) Tenant has not employed, retained, relied upon, received assistance or solicited aid from any official, agent, representative or employee of Landlord or any person related by blood or marriage to any said Landlord employee, official, agent or representative in the negotiation of this Lease or in the operation of the Property. Tenant warrants that it will not in the future knowingly employ, retain or become affiliated in any fashion with any officer, agent, representative or employee of Landlord, any business entity in which any such officer, agent, representative or employee is interested or any person related by blood or marriage to any such officer, agent, representative or employee in the performance of this Lease. Tenant's knowing violation of this provision shall be deemed a material breach. In the event Landlord determines such employment, retention or affiliation exists, Landlord, in addition to any other

remedy it may have under this Lease, or at law or equity, may request Tenant to terminate its affiliation, employment or retention of said person and Tenant shall comply with Landlord's request. In the event of the termination of said affiliation, employment or retention, Tenant shall release, indemnify, hold harmless and defend Landlord and all of its agents, officers, employees and representatives from any and all liability, injury, damage or claim of any sort, including attorneys' fees, or other damages or injuries arising out of said termination;

(c) Tenant's execution, delivery and performance of its obligations under this Lease will not constitute a default or a breach under any contract, agreement or order to which Tenant is a party or by which it is bound; and

(d) Tenant is not the subject of any voluntary or involuntary bankruptcy proceeding, and there has been no general assignment or general arrangement for the benefit of any of Tenant's creditors, and no trustee or receiver has been appointed to take possession of substantially all of the assets of Tenant.

Tenant shall, upon learning of any fact or condition that would cause any of the warranties and representations in this Section 22.2 not to be true, immediately give written notice of such fact or condition to Landlord.

ARTICLE 23 COVENANTS

Section 23.1 Live Aboards. Tenant hereby covenants that Tenant shall limit the number of slips it rents to slip tenants who live on or in their vessels while docked in the marina ("Live Aboards") to the maximum number of Live Aboards allowed under Applicable Law, including the Floating Home Residency Law (California Civil Code Section 800 et seq.), as it may be amended. Tenant shall provide and maintain convenient and adequate parking, showers, garbage facilities, sewage pump-out stations and a minimum of one restroom facility for use by Live Aboards and others that have executed an agreement to moor their boats in the marina.

Section 23.2 Customer Service. Tenant hereby covenants that Tenant shall maintain commercially reasonable office hours on the Property or the Fee Property.

Section 23.3 Sales and Use Tax. Tenant agrees to inform Landlord as to how it will determine point of sale or use for purposes of collection of California sales and use tax. To the extent legally feasible given Tenant's business operations, Tenant shall cooperate with Landlord by adopting sales and use tax reporting procedures set forth in a written request from Landlord in order to provide the Landlord the greatest benefit from the allocation of the local 1% share of California sales and use taxes. Tenant shall use commercially reasonable efforts to encourage its general contractor(s) for the Development Project to obtain and maintain a Business License from the City of Alameda. Notwithstanding the above, Tenant shall not be obligated to adopt any procedures pursuant to this Section 23.3 if such procedures result in significant increased cost (including loss of profits or risk of liability for taxes in multiple jurisdictions) to Tenant or if such procedures are contrary to the sales and use tax laws or regulations of California or any other state.

ARTICLE 24 LANDLORD'S RESERVED RIGHTS

Section 24.1 Right to Enter. Landlord and its authorized representatives shall have the right to enter the Property at all reasonable times, after giving Tenant at least one business day's prior telephonic

notice (except in an emergency involving a serious risk of injury to persons or damage to property, in which case no notice shall be required), for any reasonable purpose, including: to determine whether the Property and improvements thereon are in good condition and repair and whether Tenant is complying with its obligations under this Lease; to do any necessary maintenance and make any restoration to the Property or any improvements upon the Property that Landlord has the right to perform; to serve, post or keep posted any notices required or allowed under the provisions of this Lease; to post "for lease" signs during the last two (2) years of the Term, or during any period while there exists an uncured Tenant Default; and to do any act or thing reasonably necessary for the safety or preservation of the Property and improvements thereon if any excavation or other construction is undertaken or is about to be undertaken on any adjacent property or nearby street.

Section 24.2 Rescue Boat Tie Up. Landlord shall have the right to occupy one berth selected by Tenant for mooring of a City emergency response/rescue vessel. Landlord shall not be obligated to pay any rent for such berth, but Landlord agrees to reimburse Tenant for all utility and other out-of-pocket expenses incurred by Tenant in connection with Landlord's use of such berth. The berth shall accommodate a vessel up to 35 feet in length. In non-emergency situations (i.e., situations not involving a serious risk of injury to persons or damage to property), Landlord will use its best efforts to park its access vehicle(s) in compliance with the rules and regulations applicable to the marina on the Property and in a manner that will minimize any interference with the normal marina operations on the Property. If Landlord fails to occupy the berth for more than sixty (60) consecutive days, then Tenant may lease the berth to a third party. Thereafter, within thirty (30) days after Landlord's written request, Tenant shall provide Landlord a berth for occupancy by Landlord in accordance with the terms of this Section 24.2. Landlord agrees to give Tenant at least thirty (30) days' prior notice if Landlord will not be occupying the berth for more than sixty (60) consecutive days, in which event Tenant may lease such berth to a third party as soon as such 60 day period of non-occupancy begins.

Section 24.3 Existing Easements. This Lease and all rights given hereunder shall be subject to all easements and rights-of-way now existing or heretofore granted or reserved by Landlord on, under or over the Property for any purpose whatsoever, and shall be subject to such rights-of-way for reasonable access, sewers, pipelines, conduits and such, telephone, telegraph, light, heat, or power lines as may from time-to-time be determined by Landlord to be in the best interests of the development or use of the Property or surrounding properties. Landlord agrees that such easements and rights-of-way shall be so located and installed as to not unreasonably interfere with the Development Project or the business of Tenant. Notwithstanding the foregoing, Landlord's rights and Tenant's obligations under this Section 24.3 shall automatically terminate upon Tenant's grant of Easements to Landlord in connection with the Development Project or pursuant to Section 1.3(d).

Section 24.4 No Abatement of Rent. Tenant shall be obligated to make all payments of Rent notwithstanding the fact that Landlord or any other party lawfully exercises its rights under this Article 24.

ARTICLE 25 MISCELLANEOUS

Section 25.1 Captions. The captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 25.2 Table of Contents. The table of contents is for the purpose of convenience of reference only and is not to be deemed or construed in any way as part of this Lease or as supplemental thereto or amendatory thereof.

Section 25.3 Time of the Essence. Time is of the essence of each and every term and provision of this Lease.

Section 25.4 Not a Joint Venture or Partnership. Nothing in this Lease shall be construed to create a joint venture or partnership between Landlord and Tenant.

Section 25.5 Interpretation. As used in this Lease, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The words "include" and "including" shall be construed as if followed by the words "without limitation." All exhibits and attachments to this Lease are incorporated by reference as though fully restated herein. This Lease shall be interpreted as though prepared jointly by both parties.

Section 25.6 Written Amendments. This Lease cannot be changed or terminated orally, but only by an instrument in writing executed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

Section 25.7 Consent Not a Waiver. It is understood and agreed that the granting of any consent by Landlord to Tenant to perform any act of Tenant requiring Landlord's consent under the terms of this Lease, or the failure on the part of Landlord to object to any such action taken by Tenant without Landlord's consent, shall not be deemed a waiver by Landlord of its rights to require such consent for any further similar act by Tenant.

Section 25.8 Integration. This Lease contains the entire understanding and agreement of Landlord and Tenant with respect to its subject matter and it supersedes all agreements, whether written or oral, with respect to that subject matter. No modification, amendment, or alteration of this Lease shall be valid unless it is in writing and signed by the duly authorized officers or representative of the parties.

Section 25.9 Severability. If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 25.10 Recording. This Lease shall not be recorded. However, Landlord and Tenant shall execute and record in the official records a memorandum of this Lease substantially in the form attached hereto as Exhibit G.

Section 25.11 Quiet Enjoyment. Landlord covenants that, if and so long as Tenant shall faithfully perform the agreements, terms, covenants and conditions hereof, Tenant shall and may (subject, however, to the exceptions, reservations, terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Property for the Term hereby granted without disturbance by or from Landlord and free of any encumbrance created or suffered by Landlord, except those to which this Lease is expressly subject and subordinate.

Section 25.12 California Law. This Lease shall be governed by and construed in accordance with the internal laws of the State of California.

Section 25.13 Quit Claim. At the expiration or earlier termination of the Term, Tenant shall execute, acknowledge and deliver to Landlord within thirty (30) days after written demand therefor, any quitclaim deed or other document required by any reputable title company to remove the cloud of this Lease from the Property.

Section 25.14 Attorneys' Fees. If either Landlord or Tenant should bring suit against the other with respect to this Lease, then all costs and expenses, including without limitation, actual professional fees and costs such as appraisers', accountants' and attorneys' fees and costs, incurred by the party which prevails in such action, whether by final judgment or out of court settlement, shall be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment. As used herein, "attorneys' fees and costs" shall include, without limitation, attorneys' fees, costs and expenses incurred in connection with any (i) post-judgment motions; (ii) contempt proceedings; (iii) garnishment, levy, and debtor and third party examination; (iv) discovery; and (v) bankruptcy litigation.

Section 25.15 Relocation Waiver. Upon expiration of this Lease or the earlier termination of this Lease as the result of a Tenant Default, Tenant shall fully release and discharge Landlord and Landlord Indemnified Parties from (i) all and any manner of rights, demands, liabilities, obligations, claims, or cause of actions, in law or equity, of whatever kind or nature, whether known or unknown, whether now existing or hereinafter arising, that arise from or specifically relate to the relocation of Tenant's business operations or the relocation of any person or persons, business or businesses, or other occupant or occupants located on the Property, including the specific waiver and release of any right to any relocation benefits, assistance and/or payments under Government Code Sections 7260 et seq., as it may be amended or other state or federal law; and (ii) compensation for any interest in Tenant's business operations or Tenant's leasehold interest in the Property, including leasehold bonus value, fixtures, furniture, or equipment, loss of business goodwill, severance damage with respect to the Fee Property, attorneys' fees or any other compensation of any nature whatsoever; provided, however, that this Section 25.15 shall not apply to a termination of this Lease in connection with any condemnation of all or any portion of the Property or of the leasehold estate created by this Lease.

Section 25.16 Binding on Successors. Subject to the provisions of Article 8, the agreements, terms, covenants and conditions herein shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, personal representatives, executors, administrators, successors and assigns.

Section 25.17 Agents and Brokers. Each party represents and warrants that it has not dealt with any agent or broker in connection with this Lease. If either party's representation or warranty proves to be untrue, such party will indemnify, hold harmless and defend the other party from and against any and all resulting liabilities, costs, claims, damages, obligations, losses, penalties, actions, causes of action, judgments, suits, demands and expenses of any kind or nature (including, without limitation, reasonable attorney's fees and costs).

Section 25.18 Survival. The representations, warranties and indemnification obligations of the parties shall survive the expiration or earlier termination of this Lease.

Section 25.19 Execution in Counterparts. This Lease may be executed in several counterparts and all such executed counterparts shall constitute one lease, binding on all of the parties hereto notwithstanding that all of the parties hereto are not signatories to the original or to the same counterpart.

Section 25.20 Standard for Approval or Consent. Whenever either party's approval or consent is required under this Lease, such party shall not unreasonably withhold, condition or delay such approval or consent, unless otherwise expressly provided in this Lease. In the event either party withholds its consent under this Lease, such withholding of consent must be in writing and the party withholding consent must specify in such writing the reasons for withholding consent and any changes or revisions necessary to obtain such party's consent, if applicable. A party shall be deemed to have failed to respond to a request for its approval or consent, unless such party notifies the requesting party in writing either of

such party's approval or consent, on the one hand, or of such party's disapproval or withholding of consent in accordance with the immediately preceding sentence, on the other hand. If this Lease provides that a contractor, consultant or other party must be "reasonably acceptable" to Landlord and if Tenant sends written notice to Landlord proposing to use such contractor, consultant or other party, then if Landlord fails to notify Tenant in writing of Landlord's approval or disapproval of such party within ten (10) days, Tenant may send a second notice to Landlord (which notice shall contain the capitalized boldface type identified below) stating that if Landlord fails to approve or disapprove such party within ten days following such second notice, such party shall be deemed approved by Landlord. If Landlord fails to respond within such second 10-day notice period, the contractor, consultant or other such party shall be deemed to be reasonably acceptable to Landlord. Subject to the foregoing, unless provision is made for a specific time period, each party shall respond to the other party's request for approval or consent under this Lease within thirty (30) days after receipt of written request for approval, which request shall include all information reasonably required by the other party to evaluate such request (the applicable response period is referred to herein as the "Initial Response Period"). If either party (the "Requesting Party") submits to the other party (the "Responding Party") a written request for approval of any matter for which the Responding Party's approval is required under this Lease, and if the Responding Party fails to respond to the Requesting Party's request within the Initial Response Period, then the Requesting Party shall have the right to send the Responding Party a second request for such approval, which second notice shall include the following statement on the first page in all capital letters and boldface type (or it shall not be deemed validly delivered to the Responding Party): **"YOUR FAILURE TO RESPOND TO [LANDLORD'S] [TENANT'S] REQUEST FOR APPROVAL OF THE MATTER SET FORTH HEREIN WITHIN TEN (10) BUSINESS DAYS SHALL BE DEEMED TO CONSTITUTE [TENANT'S] [LANDLORD'S] APPROVAL OF SUCH MATTER."** If the Responding Party fails to respond to the Requesting Party's second request for such approval within ten (10) business days after the Responding Party's receipt of the second notice that complies with the requirements of this Section, then the matter described in the Requesting Party's first and second requests shall be deemed to have been approved by the Responding Party.

Section 25.21 Force Majeure. If Landlord is delayed or prevented from performing any act required in this Lease by reason of Force Majeure, Landlord's performance of such act is excused for the period of delay caused by such Force Majeure, and the period of the performance of any such act will be extended for a period equivalent to such period. If Tenant is delayed or prevented from performing any act required in this Lease (excluding, however, payment of Rent) by reason of Force Majeure, Tenant's performance of such act is excused for the period of delay caused by such Force Majeure, and the period of the performance of any such act will be extended for a period equivalent to the period of such delay. As used herein, the term "Force Majeure" shall mean a cause beyond the reasonable control of the party whose performance is required, including, without limitation, any moratorium imposed by any governmental agency over the construction anticipated to occur thereon or over any uses thereof, or by fire, flood, unusually severe weather which prevents the ability to perform, global sea level change, strikes, lockouts or other labor or industrial disturbance, civil disturbance, act of public enemy, war, riot, sabotage, blockage, embargo, failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority, and Hazardous Materials conditions, and delays due to necessary regulatory agency approvals, earthquake, or other natural disaster. An extension of time for any such cause shall be for the period of the Force Majeure delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within ninety (90) days of the commencement of the cause. Times of performance under this Lease may also be extended in writing by the mutual agreement of the City Manager of Landlord and Tenant. Tenant expressly agrees that adverse changes in economic conditions, either of Tenant specifically or the economy generally, changes in market conditions or demand, and/or Tenant's inability to obtain financing or other lack of funding to complete any work required under this Lease shall not constitute grounds of Force Majeure pursuant to this Section 25.21. Tenant expressly assumes the risk of such adverse

economic or market changes and/or inability to obtain financing, whether or not foreseeable as of the Commencement Date.

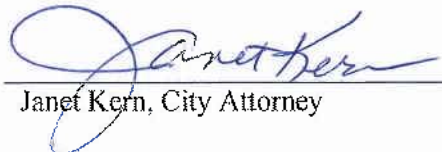
IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

LANDLORD:

THE CITY OF ALAMEDA,
a California municipal corporation

By: 
John A. Russo, City Manager

APPROVED AS TO FORM:


By: 
Janet Kern, City Attorney

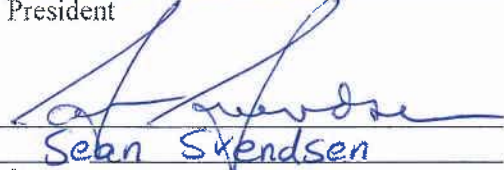
ATTEST:

By: 
Lara Weisiger, City Clerk

TENANT:

PACIFIC SHOPS, INC., a California corporation

By: 
Name: Svend Svendsen
Its: President

By: 
Name: Sean Svendsen
Its: Secretary

APPROVED AS TO FORM:

By: 
Allen Matkins Leck Gamble Mallory & Natsis LLP,
Counsel to Tenant

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

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

LEASE AREA "A":

A PARCEL OF HIGH LAND AND SUBMERGED LAND SITUATED IN THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA AND FURTHER DESCRIBED AS FOLLOWS:

ALL THAT PARCEL OF LAND LYING BETWEEN THE PERALTA GRANT LINE AND THE U. S. PIERHEAD LINE OF 1948 AND BETWEEN THE DIRECT EXTENSION NORTHEASTERLY OF THE NORTHWESTERLY LINE OF CHESTNUT STREET AND A LINE DRAWN PARALLEL WITH AND 140.00 FEET SOUTHEASTERLY AT RIGHT ANGLES FROM THE SOUTHEASTERLY LINE OF GRANT STREET, AS SAID PIERHEAD LINE OF 1948 IS DESIGNATED ON THE OFFICIAL MAP IN THE OFFICE OF THE UNITED STATES ENGINEERS, SAN FRANCISCO, AND AS SAID PERALTA GRANT LINE AND SAID STREETS ARE SHOWN ON THE MAP ENTITLED, "MAP OF ALAMEDA MARSH LANDS, RECORDED AT PAGES 74 TO 78 INCLUSIVE, BOOK 25 OF MAPS, OFFICIAL RECORDS OF ALAMEDA COUNTY.

A STRIP OR PARCEL OF LAND 15.60 FEET WIDE SITUATED IN THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTHEASTERLY LINE OF GRANT STREET WITH THE PERALTA GRANT LINE AS LINES AND INTERSECTION ARE SHOWN ON PARCEL MAP NO. 158 ENTITLED, "A DIVISION OF THE PROPERTY AT THE NORTHEAST CORNER OF GRANT STREET AND CLEMENT AVENUE, ALAMEDA, CALIFORNIA", FILED NOVEMBER 24, 1956 IN BOOK 47 OF PARCEL MAPS AT PAGE 69, OFFICIAL RECORDS OF ALAMEDA COUNTY, SAID INTERSECTION HAVING COORDINATES OF Y = 470,077.22 FEET AND X= 1,494,121.76 FEET BASED ON THE CALIFORNIA COORDINATE SYSTEM, ZONE 111, AS ARE ALL BEARINGS AND DISTANCES IN THIS DESCRIPTION; THENCE SOUTH 41° 47' 00" EAST ALONG SAID PERALTA GRANT LINE 73.46 FEET TO STATION 127 THEREOF; THENCE CONTINUING ALONG SAID PERALTA GRANT LINE SOUTH 6° 17' 00" EAST 92.81 FEET TO A POINT ON A LINE DRAWN PARALLEL WITH SAID SOUTHEASTERLY LINE OF GRANT STREET AND 124.40 FEET SOUTHEASTERLY AT RIGHT ANGLES THEREFROM SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE ALONG SAID PARALLEL LINE NORTH 29° 49' 25" EAST 241.05 FEET TO THE UNITED STATES PIERHEAD LINE OF 1948; THENCE SOUTH 51° 43' 38" EAST ALONG SAID PIERHEAD LINE 7.89 FEET TO STATION 125 THEREOF; THENCE CONTINUING ALONG SAID PIERHEAD LINE SOUTH 56° 57' 34" EAST 7.80 FEET TO A POINT ON A LINE DRAWN PARALLEL WITH SAID SOUTHEASTERLY LINE OF GRAND STREET AND 140.00 FEET SOUTHEASTERLY AT RIGHT ANGLES THEREFROM; THENCE ALONG LAST SAID PARALLEL LINE SOUTH 29° 49' 25" WEST 260.84 FEET TO SAID PERALTA GRANT LINE; THENCE ALONG SAID PERALTA GRANT LINE NORTH 6° 17' 00" WEST 26.47 FEET TO THE TRUE POINT OF BEGINNING.

LEASE AREA "B":

BEGINNING AT ANGLE POINT NUMBER 121 OF THE PERALTA GRANT LINE AS SAID ANGLE POINT AND LINE ARE SHOWN ON THE MAP ENTITLED "MAP OF ALAMEDA MARSH LAND AS PARTITIONED AMONG THE OWNERS THEREOF IN THE SUIT NUMBERED 8923 AND ENTITLED PACIFIC IMPROVEMENT COMPANY, PLAINTIFF, VS. JAMES A. WAYMIRE ET AL. DEFENDANTS, SUPERIOR COURT OF ALAMEDA, STATE OF CALIFORNIA", FILED JULY 30, 1900 IN THE ALAMEDA COUNTY RECORDER'S OFFICE; THENCE ALONG SAID PERALTA GRANT LINE SOUTH 80° 35' WEST 458.22 FEET TO ANGLE POINT NUMBER 122 (THE BEARING OF SOUTH 80° 35' WEST BEING ASSUMED FOR THE PURPOSES OF THIS DESCRIPTION); THENCE CONTINUING ALONG SAID PERALTA GRANT LINE NORTH 83° 40' WEST 163.73 FEET, MORE OR LESS, TO A POINT ON THE SOUTHEASTERLY LINE OF PARCEL NUMBER 22 OF THE 7.66 ACRE TRACT DESCRIBED IN CERTIFIED COPY OF DECREE MADE BY THE UNITED STATES DISTRICT COURT FOR NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, DATED MARCH 24, 1942, IN THE ACTION OF UNITED STATES OF AMERICA VS. CARLO CARLEVARO, ET AL., CASE NUMBER 22133-W, RECORDED MARCH 27, 1942 AT PAGE 354 OF BOOK 4183 OF OFFICIAL RECORDS OF ALAMEDA COUNTY; THENCE ALONG SAID SOUTHEASTERLY LINE NORTH 28° 39' EAST 184.06 FEET; THENCE NORTH 61° 21' WEST 5.50 FEET; THENCE ALONG SAID SOUTHEASTERLY LINE NORTH 28° 39' EAST 235.41 FEET, MORE OR LESS, TO ITS INTERSECTION WITH THE UNITED STATES PIERHEAD LINE OF 1948; THENCE ALONG SAID PIERHEAD LINE SOUTH 67° 52' EAST 112.12 FEET, MORE OR LESS, TO ANGLE POINT NUMBER 137 OF SAID PIERHEAD LINE; THENCE CONTINUING ALONG SAID PIERHEAD LINE SOUTH 60° 51' EAST 484.72 FEET TO ANGLE POINT NUMBER 139; THENCE CONTINUING ALONG SAID PIERHEAD LINE SOUTH 57° 25' EAST 27.29 FEET, MORE OR LESS, TO ITS INTERSECTION WITH THE NORTHWESTERLY LINE OF THAT 1.9275 ACRE TRACT DESCRIBED IN THE CERTIFIED COPY OF DECREE MADE BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, DATED APRIL 21, 1943, IN ACTION OF THE UNITED STATES OF AMERICA VS. CITY OF ALAMEDA, ET AL., CASE NUMBER 22231-S, SAID NORTHWESTERLY LINE BEING ALSO THE NORTHEASTERLY EXTENSION OF THE CENTER LINE OF WILLOW STREET (ABANDONED) AS SAID STREET IS SHOWN ON THAT CERTAIN MAP ENTITLED "PLAN OF SUBDIVISION OF BLOCKS 1, 2, 3, 12, 13 AND 14 OF LAND ADJACENT TO THE TOWN OF ENCINAL, ALAMEDA TOWNSHIP, CALIFORNIA", FILED JULY 20, 1889 AT PAGE 46 OF BOOK 10 OF MAPS OF OFFICIAL RECORDS OF ALAMEDA COUNTY; THENCE ALONG SAID NORTHWESTERLY LINE AND SAID CENTER LINE OF WILLOW STREET, SOUTH 28° 39' WEST 90.92 FEET TO ITS INTERSECTION WITH THE AFORESAID PERALTA GRANT LINE BETWEEN ANGLE POINT NUMBER 120 AND ANGLE POINT NUMBER 121; THENCE ALONG SAID PERALTA GRANT LINE NORTH 56° 10' WEST 106.03 FEET TO THE BEGINNING.

APN: 071-0288-003, as to Lease Area "A"
071-0257-004, as to Lease Area "B"

EXHIBIT B

FEE PROPERTY LEGAL DESCRIPTION

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

PARCEL ONE:

BEGINNING AT A POINT OF INTERSECTION OF THE CENTER LINE OF WILLOW STREET (ABANDONED) WITH THE NORTHEASTERLY LINE OF CLEMENT AVENUE, AS SAID STREET AND AVENUE ARE SHOWN ON THE MAP OF "PLAN OF THE SUBDIVISION OF BLOCKS NOS. 1, 2, 3, 12, 13 AND 14 OF LAND ADJACENT TO THE TOWN OF ENCINAL, ALAMEDA TOWNSHIP, CAL.", FILED JULY 20, 1889 IN BOOK 10 OF MAPS, PAGE 46, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY; RUNNING THENCE NORTHWESTERLY ALONG THE NORTHEASTERLY LINE OF CLEMENT AVENUE TO A POINT WHICH IS 6 FEET NORTHWESTERLY OF THE DIVIDING LINE BETWEEN LOTS 8 AND 9 IN BLOCK 1, AS SAID LOTS AND BLOCK ARE SHOWN ON THE MAP OF "RESUBDIVISION OF BLOCKS 1, 2 AND 3, LANDS ADJACENT TO THE TOWN OF ENCINAL, ALAMEDA TOWNSHIP, ALAMEDA NOVEMBER, 1890", FILED NOVEMBER 20, 1890 IN BOOK 8 OF MAPS, PAGE 47, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY; RUNNING THENCE NORTHEASTERLY PERPENDICULARLY TO THE NORTHEASTERLY LINE OF CLEMENT AVENUE AND PARALLEL TO THE DIVIDING LINE BETWEEN SAID LOTS 8 AND 9, 127.5 FEET TO THE DIVIDING LINE BETWEEN LOTS 8 AND 11 IN SAID BLOCK; RUNNING THENCE NORTHWESTERLY ALONG SAID DIVIDING LINE, 40 FEET TO THE CORNER OF LOTS 7, 8, 11 AND 12 IN SAID BLOCK; RUNNING THENCE NORTHEASTERLY ALONG THE DIVIDING LINE BETWEEN SAID LOTS 11 AND 12 AND THE NORTHEASTERLY EXTENSION THEREOF, 197.38 FEET TO A POINT; RUNNING THENCE NORTH 61° 25' WEST, 19.50 FEET TO A POINT; RUNNING THENCE NORTH 28° 35' EAST, 182.94 FEET TO ITS INTERSECTION WITH THE PERALTA GRANT LINE BETWEEN ANGLE POINT NOS. 122 AND 123 AS SAID ANGLE POINTS AND LINES ARE SHOWN ON THE MAP ENTITLED "MAP OF ALAMEDA MARSHLAND AS PARTITIONED AMONG THE OWNERS THEREOF IN THE SUIT NUMBERED 8923 AND ENTITLED PACIFIC IMPROVEMENT COMPANY, PLAINTIFF, VS. JAMES A. WAYMIRE, ET AL, DEFENDANTS, SUPERIOR COURT, ALAMEDA COUNTY, STATE OF CALIFORNIA", FILED JULY 30, 1900 IN THE ALAMEDA COUNTY RECORDER'S OFFICE, RUNNING THENCE ALONG SAID PERALTA GRANT LINE SOUTH 83° 40' EAST, 163.73 FEET, MORE OR LESS, TO ANGLE POINT NO. 122 OF THE PERALTA GRANT LINE; THENCE NORTH 80° 35' EAST, 458.22 FEET TO ANGLE POINT NO. 121 OF SAID PERALTA GRANT LINE; THENCE ALONG SAID PERALTA GRANT LINE SOUTH 56° 10' EAST 106.03 FEET, TO THE CENTER LINE OF WILLOW STREET (ABANDONED) EXTENDED; THENCE ALONG SAID LAST NAMED LINE SOUTH 28° 35' WEST, TO THE POINT OF BEGINNING.

PARCEL TWO:

BEGINNING AT A POINT OF INTERSECTION OF THE NORTHWESTERN LINE OF CHESTNUT OR 20TH STREET WITH THE NORTHEASTERN LINE OF CLEMENT AVENUE, AS SAID STREET AND AVENUE ARE SHOWN ON THAT CERTAIN MAP ENTITLED, "RE-SUBDIVISION OF BLOCKS 1, 2, & 3, LANDS ADJACENT TO THE TOWN OF ENCINAL, ALAMEDA TOWNSHIP, ALAMEDA, NOVEMBER 1890, FILED NOVEMBER 20, 1890 IN BOOK 8 OF MAPS, PAGE 47 IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY; RUNNING THENCE SOUTH 61° 25' EAST (THE BEARING S. 61° 25' E. BEING ASSUMED FOR THE

PURPOSE OF THIS DESCRIPTION) ALONG THE SAID LINE OF CLEMENT AVENUE PRODUCED AND ALONG THE SAID LINE OF CLEMENT AVENUE 382.5 FEET TO THE SOUTHEASTERN LINE OF LOT 7 IN BLOCK 1, AS SAID LOT AND BLOCK ARE SHOWN ON SAID MAP; THENCE NORTH 28° 35' EAST ALONG THE SOUTHEASTERN LINES OF LOTS 7 AND 12, IN SAID BLOCK 1, AND THEIR PRODUCTION, A DISTANCE OF 324.88 FEET; THENCE NORTH 61° 25' WEST 19.50 FEET; THENCE NORTH 28° 35' EAST 367 FEET; THENCE NORTH 61° 25' WEST 5.5 FEET; THENCE NORTH 28° 35' EAST 233.9 FEET TO A POINT ON THE U. S. PIERHEAD LINE, AS IT EXISTED FEBRUARY 9, 1942; THENCE NORTHWESTERLY ALONG THE SAID MENTIONED LINE 359.80 FEET, MORE OR LESS, UNTIL INTERSECTED BY THE DIRECT PRODUCTION NORTHEASTERLY OF THE SAID LINE OF CHESTNUT STREET; THENCE SOUTH 28° 35' WEST ALONG THE LINE SO PRODUCED AND ALONG THE SAID LINE OF CHESTNUT STREET 885.17 FEET TO THE POINT OF BEGINNING.

PARCEL THREE:

THE NORTHWESTERN 40 FEET OF LOT 8 IN BLOCK 1, OF THE RESUBDIVISION OF BLOCKS 1, 2 AND 3, LANDS ADJACENT TO THE TOWN OF ENCINAL, FILED NOVEMBER 20, 1890 IN BOOK 8 OF MAPS, PAGE 47, ALAMEDA COUNTY RECORDS.

PARCEL FOUR:

LOT 2, PARCEL MAP 158, FILED NOVEMBER 24, 1965 IN BOOK 47 OF PARCEL MAPS, PAGE 69, ALAMEDA COUNTY RECORDS.

APN: 071-0257-003-01 (Parcels One, Two and Three) and 071-0288-001-02 (Parcel Four)

EXHIBIT C

DIAGRAM DEPICTING PROPERTY AND FEE PROPERTY

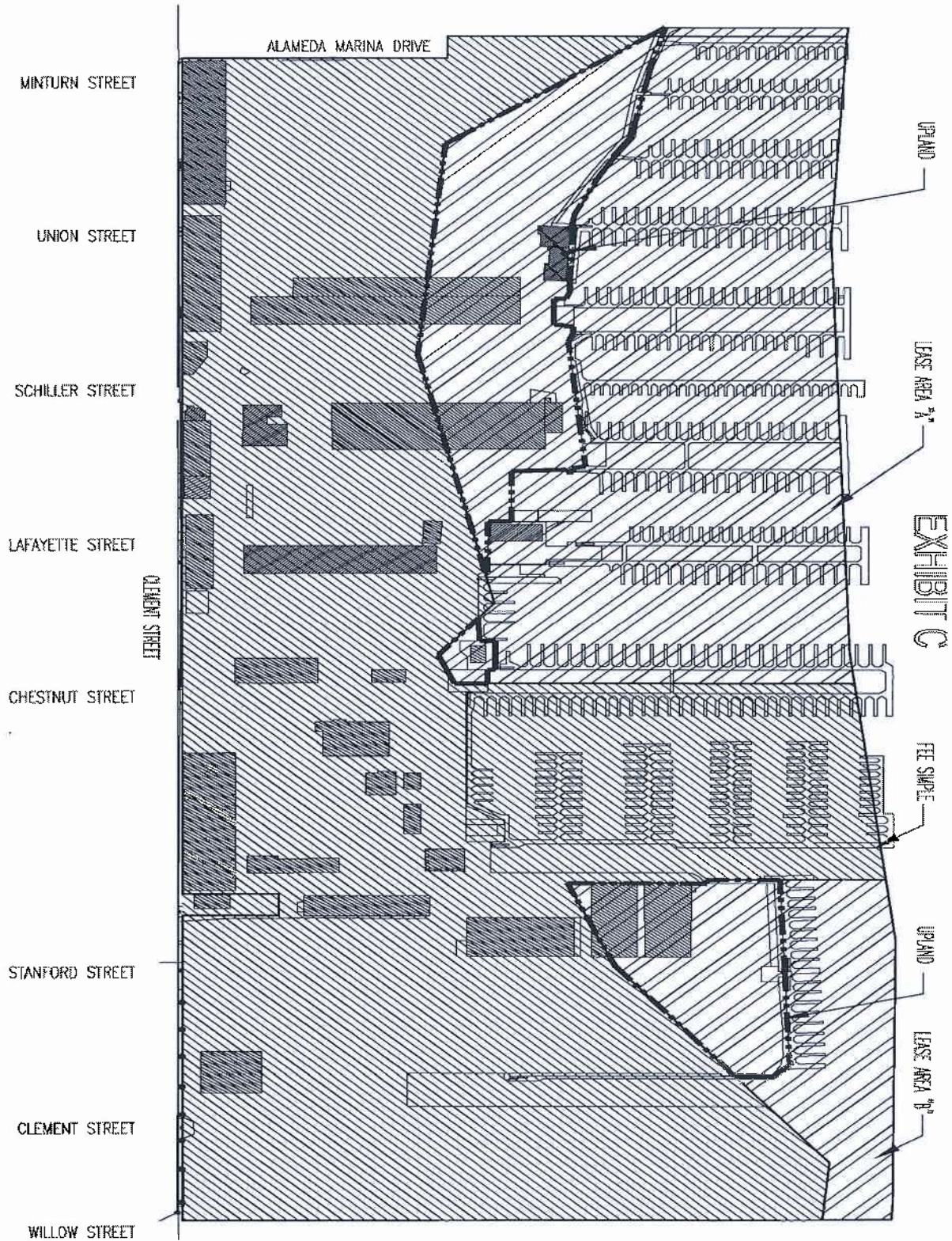


EXHIBIT E

FORM OF ANNUAL REPORT

ANNUAL REPORT TO CITY OF ALAMEDA
pursuant to Tidelands and Marina Lease dated _____, 2012,
between the City of Alameda, as Landlord, and Pacific Shops, Inc., as Tenant

Date of Report: _____, 20__

- Schedule A – Calculation of Percentage Rent
- Schedule B – Material Alterations and Improvements
- Schedule C – Expenditures Incurred for Initial Rehabilitation Projects
- Schedule D – Employee Labor Cost
- Schedule E – Capital Replacement Fund - Accounting
- Tenant's Certification

SCHEDULE A

CALCULATION OF PERCENTAGE RENT

All references below to "Subject Accounting Year" refer to calendar year 20__ [insert year preceding date of Annual Report].

Percentage Rent Calculation

Gross Boat Slip Receipts during Subject Accounting Year	\$ _____
10% of Gross Boat Slip Receipts during Subject Accounting Year	\$ _____
<i>For Lease Years 1-14 as the Subject Accounting Year: Gross Receipts from rental of buildings on Leasehold B during Subject Accounting Year</i>	\$ _____
5% of Gross Receipts from rental of buildings on Leasehold B during Subject Accounting Year	\$ _____
<i>Commencing with Lease Year 15 (i.e., calendar year 2037) as the Subject Accounting Year: Gross Other Receipts during Subject Accounting Year</i>	\$ _____
5% of Gross Other Receipts during Subject Accounting Year	\$ _____
<i>Commencing with Lease Year 15 (i.e., calendar year 2037) as the Subject Accounting Year: Gross Fuel Sale Receipts during Subject Accounting Year</i>	\$ _____
3% of Gross Fuel Sale Receipts during Subject Accounting Year	\$ _____
TOTAL	\$ _____
LESS Base Rent payable during Subject Accounting Year	(\$ _____)
Percentage Rent for Subject Accounting Year	\$ _____*

* NOTE: Percentage Rent will never be less than zero dollars (\$-0-).

SCHEDULE B

MATERIAL ALTERATIONS AND IMPROVEMENTS

PERFORMED IN CALENDAR YEAR 20__

Description

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

SCHEDULE C

EXPENDITURES INCURRED FOR INITIAL REHABILITATION PROJECTS

PERFORMED IN CALENDAR YEAR 20__

<u>Description of Work Performed</u>	<u>Incurred Costs</u>
I. Dredging and Piles	
A.	
B.	
C.	
II. Shoreline Repairs	
A.	
B.	
C.	
III. Floating Docks and Gangways	
A.	
B.	
C.	
IV. Water Piping Systems	
A.	
B.	
C.	
V. Electrical Systems	
A.	
B.	
C.	
VI. _____ [Specify other work]	
TOTAL	\$ _____

SCHEDULE D

EMPLOYEE LABOR COST

DURING CALENDAR YEAR 20__

Gross Wages (for all labor costs included on Schedule C)		\$	_____
Required State/Fed Withholdings		\$	_____
Worker's Comp. contribution*		\$	_____
Employee Benefits contribution**		\$	_____
Total Labor Cost Incurred		\$	_____
Total Labor Hours Incurred	=		_____
Total Average Labor Cost (per hour)		\$	_____

* Based on average Worker's Compensation contribution paid by Tenant for its employees

** Based on average Employee Benefits contribution paid by Tenant for its employees

SCHEDULE E

CAPITAL REPLACEMENT FUND - ACCOUNTING

All references below to "Subject Accounting Year" refer to calendar year 20__ [insert year preceding date of Annual Report].

Current Year Required Funding (Commencing March 1, 2021)

Gross Boat Slip Receipts for Subject Accounting Year \$_____

5% of Gross Boat Slip Receipts \$_____

Required Funding to Capital Replacement Account on March 1, 20__ [insert year of Annual Report]
(Greater of \$50,000 or 5% of Gross Receipts above) \$_____

Capital Replacement Fund Accounting (Commencing with Annual Report due by March 1, 2022)

Deposits to Fund (during Subject Accounting Year) \$_____

[Expenditures from Capital Fund during Subject Accounting Year – Itemize Below]

1. _____ \$(_____)

2. _____ \$(_____)

3. _____ \$(_____)

Ending Balance (as of December 31 of Subject Accounting Year) \$_____

CERTIFICATION BY TENANT

The undersigned hereby certifies that the foregoing Annual Report is accurate and complete.

Dated: _____, 20__

[Insert name of Tenant]

By: _____

Name: _____

Its: _____

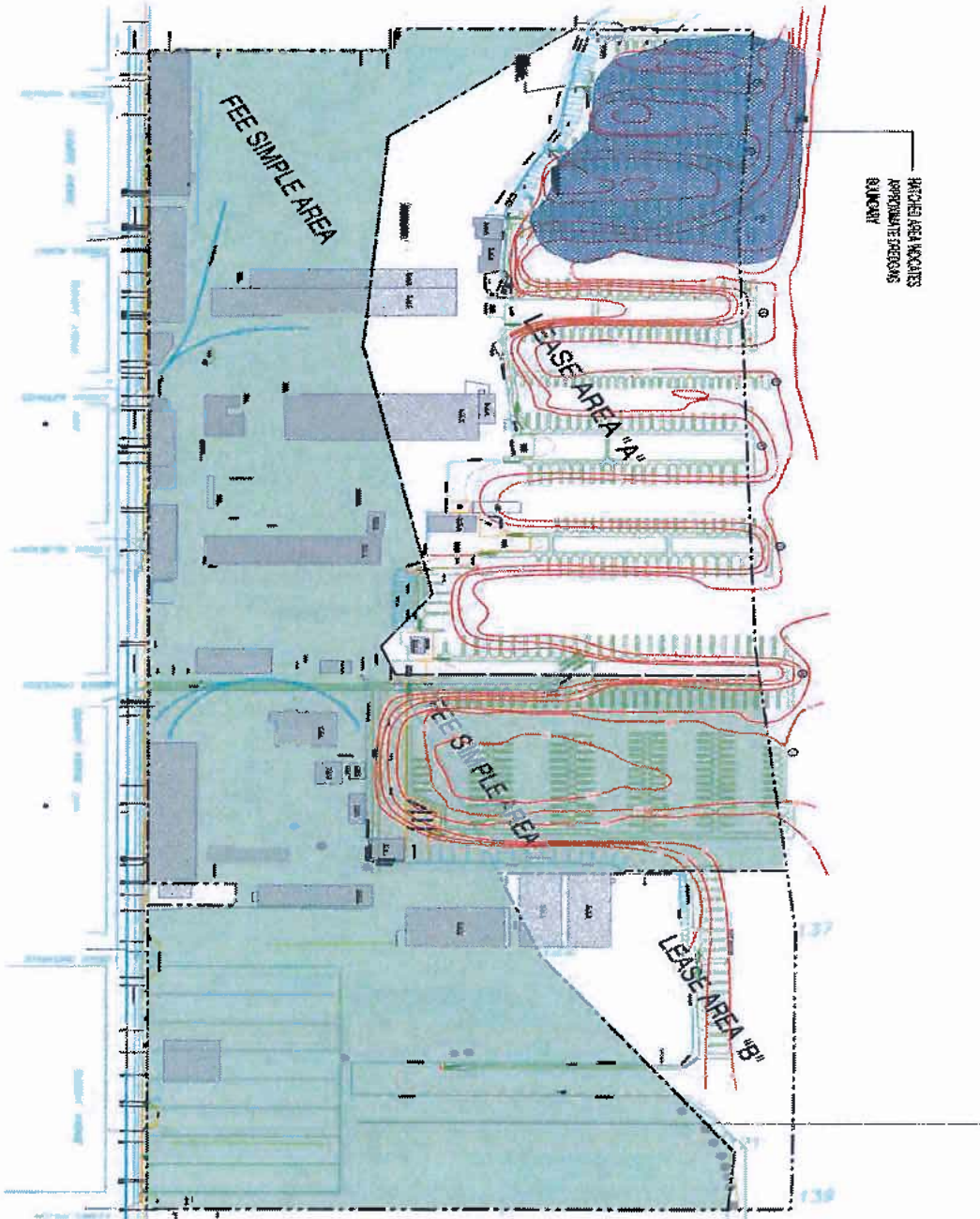


DIAGRAM DEPICTING DREDGING AREA

EXHIBIT F

EXHIBIT G

FORM OF MEMORANDUM OF LEASE

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
Three Embarcadero Center, 12th Floor
San Francisco, California 94111-4074
Attention: Nancy Lundeen, Esq.

(Space Above For Recorder's Use)

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("**Memorandum**") is dated as of _____, 2012, by and between the CITY OF ALAMEDA, a California municipal corporation ("**Landlord**"), and PACIFIC SHOPS, INC., a California corporation ("**Tenant**").

R E C I T A L S :

A. Landlord and Tenant entered into that certain Tidelands and Marina Lease dated as of _____, 2012 (the "**Lease**"), with respect to certain premises located in the City of Alameda, County of Alameda, State of California, consisting of all of the dry and submerged land described in Exhibit A attached hereto and made a part hereof (the "**Property**"). The Property consists of two separate parcels of land depicted as "Lease Area A" and "Lease Area B" on Exhibit C attached hereto. All capitalized terms used herein without definition shall have the respective meanings given to them in the Lease.

B. Tenant owns that certain land located adjacent to the Property described in Exhibit B attached hereto and made a part hereof (the "**Fee Property**"). The Fee Property is improved with various buildings and facilities, including parking areas, which, in conjunction with the buildings and improvements on the Property, are used by Tenant for operation of the marina known as "Alameda Marina."

C. Landlord and Tenant desire to record a Memorandum of the Lease confirming the existence of the Lease.

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

1. Lease. In consideration of the covenants and agreements contained in the Lease, Landlord hereby leases the Property to Tenant, and Tenant hereby leases the Property from Landlord, on all of the terms, covenants and conditions set forth in the Lease.

2. Term. The initial term of the Lease shall commence on the date first set forth above (the "**Commencement Date**") and, unless extended or sooner terminated as provided in the Lease, shall

expire on the 25th anniversary of the Commencement Date, subject to one option of Tenant to extend the Lease term for forty-one (41) years on the terms and conditions set forth in the Lease and subject to any earlier termination as provided in the Lease.

3. Tenant's Grant of Easements. Landlord and Tenant acknowledge and agree that Landlord desires additional easements over the Fee Property for (i) public access and vehicular and pedestrian access over the easements areas shown on Exhibit D attached hereto; and (ii) utility easements to accommodate connection of the utilities in place on Lease Area A and Lease Area B to utilities in place on and under Clement Avenue. As a material inducement to Landlord to enter into the Lease, Tenant, at no cost to Landlord, shall grant to Landlord perpetual appurtenant easements (collectively, the "**Easements**") across, on and under the Fee Property in favor of the Property for each of the purposes set forth above. Because the Fee Property is anticipated to be substantially reconfigured in connection with the Tenant's development of the Property and the Fee Property in accordance with the terms of the Lease, the parties desire to establish the location of the Easements and record the grant of Easements in connection with approval of a development plan for Tenant's proposed development project. Notwithstanding the foregoing, if for any reason the Easements have not been established on or before December 31 2019, then prior to December 31 2020, Tenant shall grant to Landlord perpetual Easements for each of the purposes described above across, upon and under the areas generally depicted in the Easement Diagram attached hereto as Exhibit D; provided, however, that the utility easements granted by Tenant shall be solely for the utilities in place on Lease Area A and Lease Area B on the Commencement Date in their respective locations as of the Commencement Date. Landlord shall reimburse Tenant for a portion of the out-of-pocket costs incurred by Tenant to survey and establish the Easements in accordance with the terms of the Lease. The grant of Easements shall be in a form reasonably acceptable to the parties and the easement rights granted shall be for the benefit of Landlord and current and future tenants, sublessees and users of the Property, including Tenant during the term of the Lease. The grant of Easements shall allow Tenant to relocate all or any of the Easements from time to time in the future, at Tenant's sole cost and expense, and Landlord agrees to execute an amendment to the grant of Easements in a form reasonably acceptable to the parties in connection with each such relocation of any of the Easements. From and after the date the Easements have been established, any reconfiguration of the parking area, utility conduits or facilities, or public access improvements within the area of the Easements which Tenant desires to undertake on the Fee Property shall be at Tenant's sole cost and shall be subject to Landlord's review and approval, which approval shall not be unreasonably withheld.

4. Lot Line Adjustments. Tenant is the owner of four buildings that straddle the lot line between the Property and the Fee Property and, therefore, lie in part on public trust tidelands. Tenant may seek tidelands exchanges/lot line adjustments that would (i) place all or some of the two existing buildings onto the Fee Property, (ii) better position the Property and Fee Property for Tenant's development of the Property and the Fee Property in accordance with the terms of the Lease, and (iii) result in a net gain (or at minimum no net loss) of public trust tidelands. Tenant may, at its sole expense, seek approval from the State Lands Commission (or such other entity that has jurisdiction over the adjustment of the tidelands boundary) for adjustment of the tidelands boundary and, if such approval is granted, seek lot line adjustments from the City of Alameda. Landlord agrees not to unreasonably withhold approval of any lot line adjustment that has been approved by the State Lands Commission or such other entity that has jurisdiction over the adjustment of the tidelands boundary. Effective upon any such lot line adjustment, the definitions of the Property and the Fee Property shall be revised to reflect the new boundaries, and the respective obligations of the parties hereunder shall be revised to reflect the revised definitions of the Property and the Fee Property.

5. Lease Incorporated. The purpose of this Memorandum is solely to provide notice of the existence of the Lease. All of the terms, conditions and covenants of the Lease are incorporated herein by

this reference and are not amended, modified or varied in any way by this Memorandum. The terms of the Lease shall govern in the event of any conflict with this Memorandum.

6. Counterparts. This Memorandum may be executed in multiple counterparts, each of which shall be deemed an original but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease as of the date first above written.

LANDLORD:

CITY OF ALAMEDA, a
California municipal corporation

By: _____
John A. Russo, City Manager

APPROVED AS TO FORM:

By: _____
Janet Kern, City Attorney

ATTEST:

By: _____
Lara Weisiger, City Clerk

TENANT:

PACIFIC SHOPS, INC., a
California corporation

By: _____
Name: _____
Its: President

By: _____
Name: _____
Its: Secretary

ACKNOWLEDGMENT

State of California)
County of _____)

On _____, 2012, before me, _____,
(insert name of notary)

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

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)

ACKNOWLEDGMENT

State of California)
County of _____)

On _____, 2012, before me, _____,
(insert name of notary)

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

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)

ACKNOWLEDGMENT

State of California)
County of _____)

On _____, 2012, before me, _____,
(insert name of notary)

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

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)

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

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

LEASE AREA A:

A PARCEL OF HIGH LAND AND SUBMERGED LAND SITUATED IN THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA AND FURTHER DESCRIBED AS FOLLOWS:

ALL THAT PARCEL OF LAND LYING BETWEEN THE PERALTA GRANT LINE AND THE U. S. PIERHEAD LINE OF 1948 AND BETWEEN THE DIRECT EXTENSION NORTHEASTERLY OF THE NORTHWESTERLY LINE OF CHESTNUT STREET AND A LINE DRAWN PARALLEL WITH AND 140.00 FEET SOUTHEASTERLY AT RIGHT ANGLES FROM THE SOUTHEASTERLY LINE OF GRANT STREET, AS SAID PIERHEAD LINE OF 1948 IS DESIGNATED ON THE OFFICIAL MAP IN THE OFFICE OF THE UNITED STATES ENGINEERS, SAN FRANCISCO, AND AS SAID PERALTA GRANT LINE AND SAID STREETS ARE SHOWN ON THE MAP ENTITLED, "MAP OF ALAMEDA MARSH LANDS, RECORDED AT PAGES 74 TO 78 INCLUSIVE, BOOK 25 OF MAPS, OFFICIAL RECORDS OF ALAMEDA COUNTY.

A STRIP OR PARCEL OF LAND 15.60 FEET WIDE SITUATED IN THE CITY OF ALAMEDA, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTHEASTERLY LINE OF GRANT STREET WITH THE PERALTA GRANT LINE AS LINES AND INTERSECTION ARE SHOWN ON PARCEL MAP NO. 158 ENTITLED, "A DIVISION OF THE PROPERTY AT THE NORTHEAST CORNER OF GRANT STREET AND CLEMENT AVENUE, ALAMEDA, CALIFORNIA", FILED NOVEMBER 24, 1956 IN BOOK 47 OF PARCEL MAPS AT PAGE 69, OFFICIAL RECORDS OF ALAMEDA COUNTY, SAID INTERSECTION HAVING COORDINATES OF Y = 470,077.22 FEET AND X= 1,494,121.76 FEET BASED ON THE CALIFORNIA COORDINATE SYSTEM, ZONE 111, AS ARE ALL BEARINGS AND DISTANCES IN THIS DESCRIPTION; THENCE SOUTH 41° 47' 00" EAST ALONG SAID PERALTA GRANT LINE 73.46 FEET TO STATION 127 THEREOF; THENCE CONTINUING ALONG SAID PERALTA GRANT LINE SOUTH 6° 17' 00" EAST 92.81 FEET TO A POINT ON A LINE DRAWN PARALLEL WITH SAID SOUTHEASTERLY LINE OF GRANT STREET AND 124.40 FEET SOUTHEASTERLY AT RIGHT ANGLES THEREFROM SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE ALONG SAID PARALLEL LINE NORTH 29° 49' 25" EAST 241.05 FEET TO THE UNITED STATES PIERHEAD LINE OF 1948; THENCE SOUTH 51° 43' 38" EAST ALONG SAID PIERHEAD LINE 7.89 FEET TO STATION 125 THEREOF; THENCE CONTINUING ALONG SAID PIERHEAD LINE SOUTH 56° 57' 34" EAST 7.80 FEET TO A POINT ON A LINE DRAWN PARALLEL WITH SAID SOUTHEASTERLY LINE OF GRAND STREET AND 140.00 FEET SOUTHEASTERLY AT RIGHT ANGLES THEREFROM; THENCE ALONG LAST SAID PARALLEL LINE SOUTH 29° 49' 25" WEST 260.84 FEET TO SAID PERALTA GRANT LINE; THENCE ALONG SAID PERALTA GRANT LINE NORTH 6° 17' 00" WEST 26.47 FEET TO THE TRUE POINT OF BEGINNING.

LEASE AREA B:

BEGINNING AT ANGLE POINT NUMBER 121 OF THE PERALTA GRANT LINE AS SAID ANGLE POINT AND LINE ARE SHOWN ON THE MAP ENTITLED "MAP OF ALAMEDA MARSH

LAND AS PARTITIONED AMONG THE OWNERS THEREOF IN THE SUIT NUMBERED 8923 AND ENTITLED PACIFIC IMPROVEMENT COMPANY, PLAINTIFF, VS. JAMES A. WAYMIRE ET AL. DEFENDANTS, SUPERIOR COURT OF ALAMEDA, STATE OF CALIFORNIA”, FILED JULY 30, 1900 IN THE ALAMEDA COUNTY RECORDER’S OFFICE; THENCE ALONG SAID PERALTA GRANT LINE SOUTH 80° 35’ WEST 458.22 FEET TO ANGLE POINT NUMBER 122 (THE BEARING OF SOUTH 80° 35’ WEST BEING ASSUMED FOR THE PURPOSES OF THIS DESCRIPTION); THENCE CONTINUING ALONG SAID PERALTA GRANT LINE NORTH 83° 40’ WEST 163.73 FEET, MORE OR LESS, TO A POINT ON THE SOUTHEASTERLY LINE OF PARCEL NUMBER 22 OF THE 7.66 ACRE TRACT DESCRIBED IN CERTIFIED COPY OF DECREE MADE BY THE UNITED STATES DISTRICT COURT FOR NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, DATED MARCH 24, 1942, IN THE ACTION OF UNITED STATES OF AMERICA VS. CARLO CARLEVARO, ET AL., CASE NUMBER 22133-W, RECORDED MARCH 27, 1942 AT PAGE 354 OF BOOK 4183 OF OFFICIAL RECORDS OF ALAMEDA COUNTY; THENCE ALONG SAID SOUTHEASTERLY LINE NORTH 28° 39’ EAST 184.06 FEET; THENCE NORTH 61° 21’ WEST 5.50 FEET; THENCE ALONG SAID SOUTHEASTERLY LINE NORTH 28° 39’ EAST 235.41 FEET, MORE OR LESS, TO ITS INTERSECTION WITH THE UNITED STATES PIERHEAD LINE OF 1948; THENCE ALONG SAID PIERHEAD LINE SOUTH 67° 52’ EAST 112.12 FEET, MORE OR LESS, TO ANGLE POINT NUMBER 137 OF SAID PIERHEAD LINE; THENCE CONTINUING ALONG SAID PIERHEAD LINE SOUTH 60° 51’ EAST 484.72 FEET TO ANGLE POINT NUMBER 139; THENCE CONTINUING ALONG SAID PIERHEAD LINE SOUTH 57° 25’ EAST 27.29 FEET, MORE OR LESS, TO ITS INTERSECTION WITH THE NORTHWESTERLY LINE OF THAT 1.9275 ACRE TRACT DESCRIBED IN THE CERTIFIED COPY OF DECREE MADE BY THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, DATED APRIL 21, 1943, IN ACTION OF THE UNITED STATES OF AMERICA VS. CITY OF ALAMEDA, ET AL., CASE NUMBER 22231-S, SAID NORTHWESTERLY LINE BEING ALSO THE NORTHEASTERLY EXTENSION OF THE CENTER LINE OF WILLOW STREET (ABANDONED) AS SAID STREET IS SHOWN ON THAT CERTAIN MAP ENTITLED “PLAN OF SUBDIVISION OF BLOCKS 1, 2, 3, 12, 13 AND 14 OF LAND ADJACENT TO THE TOWN OF ENCINAL, ALAMEDA TOWNSHIP, CALIFORNIA”, FILED JULY 20, 1889 AT PAGE 46 OF BOOK 10 OF MAPS OF OFFICIAL RECORDS OF ALAMEDA COUNTY; THENCE ALONG SAID NORTHWESTERLY LINE AND SAID CENTER LINE OF WILLOW STREET, SOUTH 28° 39’ WEST 90.92 FEET TO ITS INTERSECTION WITH THE AFORESAID PERALTA GRANT LINE BETWEEN ANGLE POINT NUMBER 120 AND ANGLE POINT NUMBER 121; THENCE ALONG SAID PERALTA GRANT LINE NORTH 56° 10’ WEST 106.03 FEET TO THE BEGINNING.

APN: 071-0288-003, as to Lease Area A
071-0257-004, as to Lease Area B

EXHIBIT B

FEE PROPERTY LEGAL DESCRIPTION

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

PARCEL ONE:

BEGINNING AT A POINT OF INTERSECTION OF THE CENTER LINE OF WILLOW STREET (ABANDONED) WITH THE NORTHEASTERLY LINE OF CLEMENT AVENUE, AS SAID STREET AND AVENUE ARE SHOWN ON THE MAP OF "PLAN OF THE SUBDIVISION OF BLOCKS NOS. 1, 2, 3, 12, 13 AND 14 OF LAND ADJACENT TO THE TOWN OF ENCINAL, ALAMEDA TOWNSHIP, CAL.", FILED JULY 20, 1889 IN BOOK 10 OF MAPS, PAGE 46, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY; RUNNING THENCE NORTHWESTERLY ALONG THE NORTHEASTERLY LINE OF CLEMENT AVENUE TO A POINT WHICH IS 6 FEET NORTHWESTERLY OF THE DIVIDING LINE BETWEEN LOTS 8 AND 9 IN BLOCK 1, AS SAID LOTS AND BLOCK ARE SHOWN ON THE MAP OF "RESUBDIVISION OF BLOCKS 1, 2 AND 3, LANDS ADJACENT TO THE TOWN OF ENCINAL, ALAMEDA TOWNSHIP, ALAMEDA NOVEMBER, 1890", FILED NOVEMBER 20, 1890 IN BOOK 8 OF MAPS, PAGE 47, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY; RUNNING THENCE NORTHEASTERLY PERPENDICULARLY TO THE NORTHEASTERLY LINE OF CLEMENT AVENUE AND PARALLEL TO THE DIVIDING LINE BETWEEN SAID LOTS 8 AND 9, 127.5 FEET TO THE DIVIDING LINE BETWEEN LOTS 8 AND 11 IN SAID BLOCK; RUNNING THENCE NORTHWESTERLY ALONG SAID DIVIDING LINE, 40 FEET TO THE CORNER OF LOTS 7, 8, 11 AND 12 IN SAID BLOCK; RUNNING THENCE NORTHEASTERLY ALONG THE DIVIDING LINE BETWEEN SAID LOTS 11 AND 12 AND THE NORTHEASTERLY EXTENSION THEREOF, 197.38 FEET TO A POINT; RUNNING THENCE NORTH 61° 25' WEST, 19.50 FEET TO A POINT; RUNNING THENCE NORTH 28° 35' EAST, 182.94 FEET TO ITS INTERSECTION WITH THE PERALTA GRANT LINE BETWEEN ANGLE POINT NOS. 122 AND 123 AS SAID ANGLE POINTS AND LINES ARE SHOWN ON THE MAP ENTITLED "MAP OF ALAMEDA MARSHLAND AS PARTITIONED AMONG THE OWNERS THEREOF IN THE SUIT NUMBERED 8923 AND ENTITLED PACIFIC IMPROVEMENT COMPANY, PLAINTIFF, VS. JAMES A. WAYMIRE, ET AL, DEFENDANTS, SUPERIOR COURT, ALAMEDA COUNTY, STATE OF CALIFORNIA", FILED JULY 30, 1900 IN THE ALAMEDA COUNTY RECORDER'S OFFICE, RUNNING THENCE ALONG SAID PERALTA GRANT LINE SOUTH 83° 40' EAST, 163.73 FEET, MORE OR LESS, TO ANGLE POINT NO. 122 OF THE PERALTA GRANT LINE; THENCE NORTH 80° 35' EAST, 458.22 FEET TO ANGLE POINT NO. 121 OF SAID PERALTA GRANT LINE; THENCE ALONG SAID PERALTA GRANT LINE SOUTH 56° 10' EAST 106.03 FEET, TO THE CENTER LINE OF WILLOW STREET (ABANDONED) EXTENDED; THENCE ALONG SAID LAST NAMED LINE SOUTH 28° 35' WEST, TO THE POINT OF BEGINNING.

PARCEL TWO:

BEGINNING AT A POINT OF INTERSECTION OF THE NORTHWESTERN LINE OF CHESTNUT OR 20TH STREET WITH THE NORTHEASTERN LINE OF CLEMENT AVENUE, AS SAID STREET AND AVENUE ARE SHOWN ON THAT CERTAIN MAP ENTITLED, "RE-SUBDIVISION OF BLOCKS 1, 2, & 3, LANDS ADJACENT TO THE TOWN OF ENCINAL, ALAMEDA TOWNSHIP, ALAMEDA, NOVEMBER 1890, FILED NOVEMBER 20, 1890 IN BOOK 8 OF MAPS, PAGE 47 IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY; RUNNING THENCE SOUTH 61° 25' EAST (THE BEARING S. 61° 25' E. BEING ASSUMED FOR THE

PURPOSE OF THIS DESCRIPTION) ALONG THE SAID LINE OF CLEMENT AVENUE PRODUCED AND ALONG THE SAID LINE OF CLEMENT AVENUE 382.5 FEET TO THE SOUTHEASTERN LINE OF LOT 7 IN BLOCK 1, AS SAID LOT AND BLOCK ARE SHOWN ON SAID MAP; THENCE NORTH 28° 35' EAST ALONG THE SOUTHEASTERN LINES OF LOTS 7 AND 12, IN SAID BLOCK 1, AND THEIR PRODUCTION, A DISTANCE OF 324.88 FEET; THENCE NORTH 61° 25' WEST 19.50 FEET; THENCE NORTH 28° 35' EAST 367 FEET; THENCE NORTH 61° 25' WEST 5.5 FEET; THENCE NORTH 28° 35' EAST 233.9 FEET TO A POINT ON THE U. S. PIERHEAD LINE, AS IT EXISTED FEBRUARY 9, 1942; THENCE NORTHWESTERLY ALONG THE SAID MENTIONED LINE 359.80 FEET, MORE OR LESS, UNTIL INTERSECTED BY THE DIRECT PRODUCTION NORTHEASTERLY OF THE SAID LINE OF CHESTNUT STREET; THENCE SOUTH 28° 35' WEST ALONG THE LINE SO PRODUCED AND ALONG THE SAID LINE OF CHESTNUT STREET 885.17 FEET TO THE POINT OF BEGINNING.

PARCEL THREE:

THE NORTHWESTERN 40 FEET OF LOT 8 IN BLOCK 1, OF THE RESUBDIVISION OF BLOCKS 1, 2 AND 3, LANDS ADJACENT TO THE TOWN OF ENCINAL, FILED NOVEMBER 20, 1890 IN BOOK 8 OF MAPS, PAGE 47, ALAMEDA COUNTY RECORDS.

PARCEL FOUR:

LOT 2, PARCEL MAP 158, FILED NOVEMBER 24, 1965 IN BOOK 47 OF PARCEL MAPS, PAGE 69, ALAMEDA COUNTY RECORDS.

APN: 071-0257-003-01 (Parcels One, Two and Three) and 071-0288-001-02 (Parcel Four)

EXHIBIT C

DIAGRAM DEPICTING PROPERTY AND FEE PROPERTY

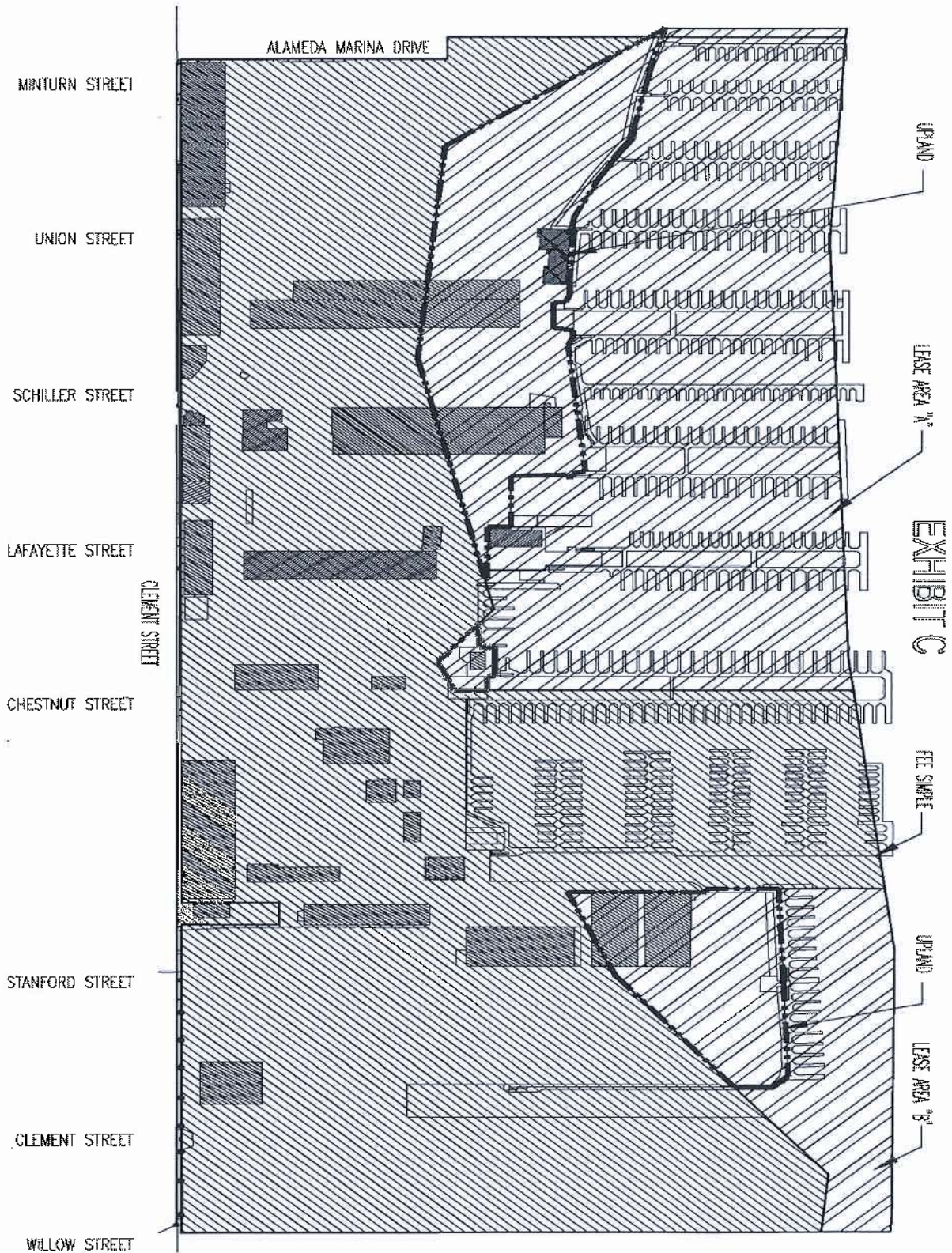


EXHIBIT D

DIAGRAM DEPICTING EASEMENTS

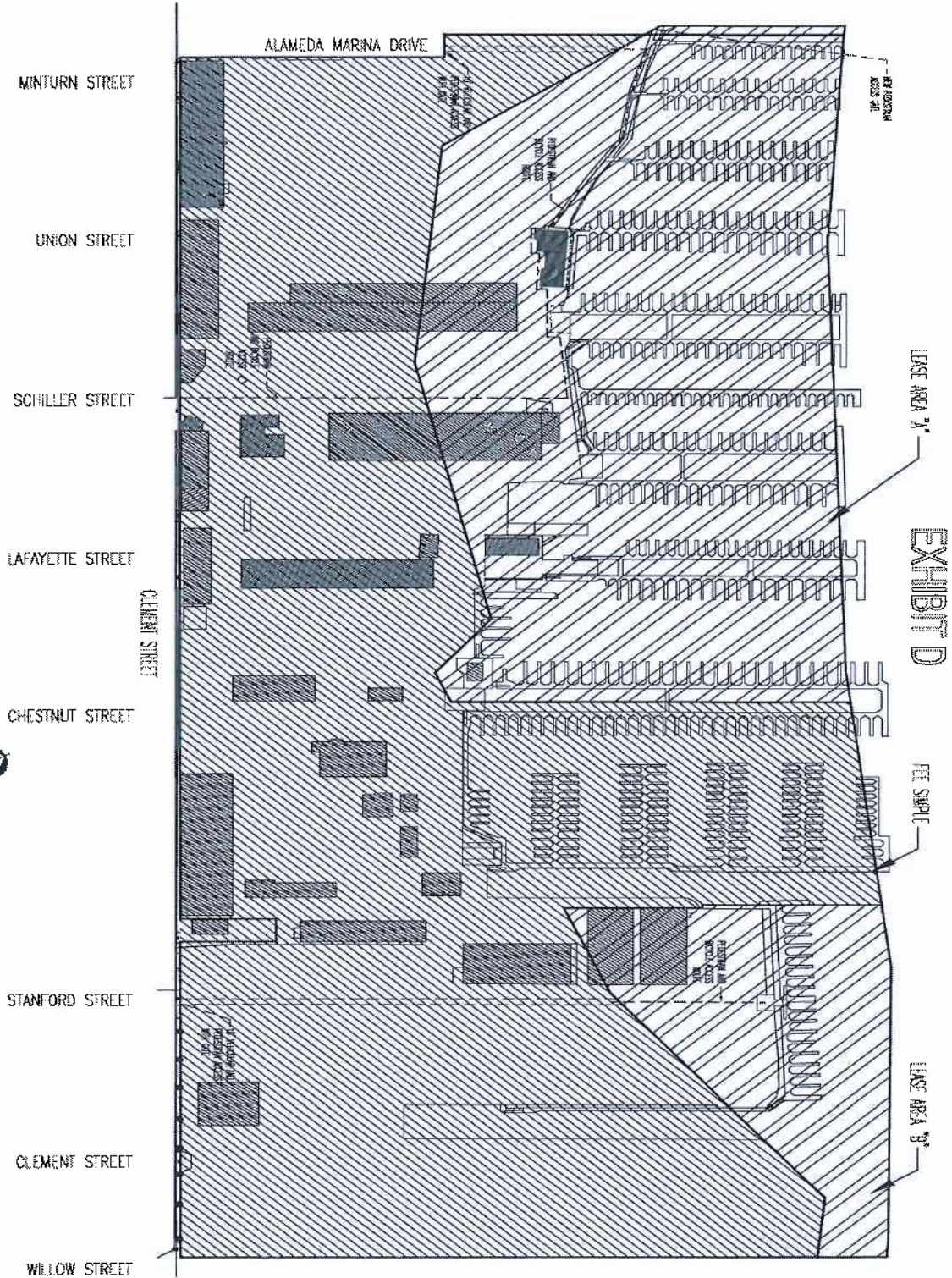


EXHIBIT H

FORM OF LEASE AMENDMENT (EXTENDING TERM)

[FIRST] AMENDMENT TO TIDELANDS AND MARINA LEASE

This [FIRST] AMENDMENT TO TIDELANDS AND MARINA LEASE (this "**Amendment**") is entered into as of _____, 20____, by and between the CITY OF ALAMEDA, a California municipal corporation ("**Landlord**" or "**City**"), and PACIFIC SHOPS, INC., a California corporation ("**Tenant**").

RECITALS:

A. Landlord and Tenant entered into that certain Tidelands and Marina Lease dated as of _____, 2012 (the "**Lease**"), with respect to those certain premises located in the City of Alameda, County of Alameda, State of California, consisting of all of the dry and submerged land described in Exhibit A attached to the Lease (the "**Property**"), which constitutes a portion of the "Alameda Marina." All capitalized terms used herein without definition shall have the respective meanings given to them in the Lease.

B. The term of the Lease was scheduled to expire on _____, 2037.

C. Landlord and Tenant desire to extend the term of the Lease on the terms and provisions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Extension of Lease Term. The Term of the Lease is hereby extended for an additional forty-one (41) years, from _____, 2037, through and including _____, 2078 (the "**Extended Term**"), on all of the terms and conditions set forth in the Lease[, except as set forth in this Amendment].

2. [Rent Adjustment. Pursuant to Section 3.03 of the Lease, effective [retroactively] as of _____, 20____ (which date the parties agree is the "**Upland Rent Commencement Date**," as defined in Section 3.03(d) of the Lease), the Rent payable under the Lease shall be increased by the following annual rent amount for the Upland Portion, which shall be payable in monthly installments for the remainder of the Term: **[Insert 85% of Fair Market Rental of Upland Portion, net of any applicable credits; include both annual rent amount and monthly installments].**]

3. Agents and Brokers. Each party represents and warrants that it has not dealt with any agent or broker in connection with this Amendment. If either party's representation or warranty proves to be untrue, such party will indemnify, hold harmless and defend the other party from and against any and all resulting liabilities, costs, claims, damages, obligations, losses, penalties, actions, causes of action, judgments, suits, demands and expenses of any kind or nature (including, without limitation, reasonable attorney's fees and costs).

4. No Other Modification. Except as set forth in this Amendment, the Lease shall remain in full force and effect with no other modifications.

5. Execution in Counterparts. This Amendment may be executed in several counterparts and all such executed counterparts shall constitute one lease, binding on all of the parties hereto notwithstanding that all of the parties hereto are not signatories to the original or to the same counterpart.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

LANDLORD:

CITY OF ALAMEDA, a
California municipal corporation

By: _____
_____, City Manager

APPROVED AS TO FORM:

By: _____
_____, City Attorney

ATTEST:

By: _____
_____, City Clerk

TENANT:

PACIFIC SHOPS, INC., a
California corporation

By: _____
Name: _____
Its: President

By: _____
Name: _____
Its: Secretary

EXHIBIT I

FORM OF MEMORANDUM OF LEASE AMENDMENT (EXTENDING TERM)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
Three Embarcadero Center, 12th Floor
San Francisco, California 94111-4074
Attention: Nancy Lundeen, Esq.

(Space Above For Recorder's Use)

FIRST AMENDMENT TO MEMORANDUM OF LEASE

THIS FIRST AMENDMENT TO MEMORANDUM OF LEASE (this "**Memorandum Amendment**") is dated as of _____, 20__, by and between the CITY OF ALAMEDA, a California municipal corporation ("**Landlord**"), and PACIFIC SHOPS, INC., a California corporation ("**Tenant**").

R E C I T A L S :

A. Landlord and Tenant entered into that certain Tidelands and Marina Lease dated as of _____, 2012 (the "**Lease**"), with respect to certain premises located in the City of Alameda, County of Alameda, State of California. A memorandum of the Lease was recorded in the Official Records of Alameda County, California, on _____, 20__, as Instrument No. _____ (the "**Memorandum**"). All capitalized terms used herein without definition shall have the respective meanings given to them in the Lease.

B. On _____, 20__, Landlord and Tenant entered into that certain [First] Amendment to Tidelands and Marina Lease dated as of _____, 20__ (the "**Amendment**"), providing for an extension of the term of the Lease.

C. By this Memorandum Amendment, Landlord and Tenant desire to record a memorandum of the Amendment.

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

1. Extension of Lease Term. The Term of the Lease is hereby extended for an additional forty-one (41) years, from _____, 2037, through and including _____, 2078 (the "**Extended Term**"), on all of the terms and conditions set forth in the Lease[, except as set forth in the Amendment].

2. Amendment Incorporated. The purpose of this Memorandum Amendment is solely to provide notice of the existence of the Amendment. All of the terms, conditions and covenants of the Amendment are incorporated herein by this reference and are not amended, modified or varied in any way by this Memorandum Amendment. The terms of the Amendment shall govern in the event of any conflict with this Memorandum Amendment.

3. Counterparts. This Memorandum Amendment may be executed in multiple counterparts, each of which shall be deemed an original but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum Amendment as of the date first above written.

LANDLORD:

CITY OF ALAMEDA, a
California municipal corporation

By: _____
_____, City Manager

APPROVED AS TO FORM:

By: _____
_____, City Attorney

ATTEST:

By: _____
_____, City Clerk

TENANT:

PACIFIC SHOPS, INC., a
California corporation

By: _____
Name: _____
Its: President

By: _____
Name: _____
Its: Secretary

ACKNOWLEDGMENT

State of California)
County of _____)

On _____, 2012, before me, _____,
(insert name of notary)

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

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)

ACKNOWLEDGMENT

State of California)
County of _____)

On _____, 2012, before me, _____,
(insert name of notary)

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

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)

EXHIBIT J

FORM OF LEASE AMENDMENT (ADJUSTING RENT FOR UPLAND PORTION)

[FIRST] AMENDMENT TO TIDELANDS AND MARINA LEASE

This [FIRST] AMENDMENT TO TIDELANDS AND MARINA LEASE (this "**Amendment**") is entered into as of _____, 20___, by and between the CITY OF ALAMEDA, a California municipal corporation ("**Landlord**" or "**City**"), and PACIFIC SHOPS, INC., a California corporation ("**Tenant**").

RECITALS:

A. Landlord and Tenant entered into that certain Tidelands and Marina Lease dated as of _____, 2012 (the "**Lease**"), with respect to those certain premises located in the City of Alameda, County of Alameda, State of California, consisting of all of the dry and submerged land described in Exhibit A attached to the Lease (the "**Property**"), which constitutes a portion of the "**Alameda Marina.**" All capitalized terms used herein without definition shall have the respective meanings given to them in the Lease.

B. Landlord and Tenant desire to provide for an adjustment of the Rent as required under the terms of the Lease, as hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Rent Adjustment. Pursuant to Section 3.03 of the Lease, effective [retroactively] as of _____, 20___ (which date the parties agree is the "Upland Rent Commencement Date," as defined in Section 3.03(d) of the Lease), the Rent payable under the Lease shall be increased by the following annual rent amount for the Upland Portion, which shall be payable in monthly installments for the remainder of the Term: **[Insert 85% of Fair Market Rental of Upland Portion, net of any applicable credits; include both annual rent amount and monthly installments].**

2. Agents and Brokers. Each party represents and warrants that it has not dealt with any agent or broker in connection with this Amendment. If either party's representation or warranty proves to be untrue, such party will indemnify, hold harmless and defend the other party from and against any and all resulting liabilities, costs, claims, damages, obligations, losses, penalties, actions, causes of action, judgments, suits, demands and expenses of any kind or nature (including, without limitation, reasonable attorney's fees and costs).

3. No Other Modification. Except as set forth in this Amendment, the Lease shall remain in full force and effect with no other modifications.

4. Execution in Counterparts. This Amendment may be executed in several counterparts and all such executed counterparts shall constitute one lease, binding on all of the parties hereto notwithstanding that all of the parties hereto are not signatories to the original or to the same counterpart.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written

LANDLORD:

CITY OF ALAMEDA, a
California municipal corporation

By: _____
_____, City Manager

APPROVED AS TO FORM:

By: _____
_____, City Attorney

ATTEST:

By: _____
_____, City Clerk

TENANT:

PACIFIC SHOPS, INC., a
California corporation

By: _____
Name: _____
Its: President

By: _____
Name: _____
Its: Secretary