

AMENDED AND RESTATED AGREEMENT OF MARINA LEASE

by and between

the CITY OF RICHMOND

as Landlord,

and

SHM MBYH, LLC

as Tenant

Dated: December 13, 2022

Property:

Richmond Bay Marina

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AMENDED AND RESTATED MARINA LEASE

This AMENDED AND RESTATED AGREEMENT OF MARINA LEASE (“Lease”) is made as of this _____ day of _____, 2022, between the CITY OF RICHMOND, a municipal corporation of the State of California (“City” or “Landlord”), and SHM MBYH, LLC, a Delaware limited liability company (“Tenant”). It is hereby mutually covenanted and agreed by and between the Parties hereto that this Lease is made upon the foregoing and upon the agreements, terms, covenants and conditions hereinafter set forth.

WHEREAS, Landlord and Richmond Redevelopment Agency, as landlord, and Richmond Bay Marina, LLC, a Delaware limited liability company (“Original Tenant”) are parties to that certain Agreement of Marina Lease dated July 1, 2000 (the “Original Lease”), as amended by the Amendment to the Agreement of Marina Lease dated May 13, 2005 (the “Lease Amendment” and together with the Original Lease, collectively, the “Existing Lease”), pursuant to which Landlord leases to Tenant the Property; and

WHEREAS, the Richmond Redevelopment Agency no longer exists; and

WHEREAS, immediately prior to the execution of this Lease, Original Tenant assigned the Existing Lease to Tenant pursuant to that certain Assignment and Assumption of Lease dated as of the date hereof between Original Tenant and Tenant; and

WHEREAS, Landlord and Tenant desire to amend and restate the Existing Lease in its entirety, including adding back to the Property leased hereby Parcels G and H and the strip of twenty-six (26) feet in width across the northern boundary of Parcel 1, all of which were previously removed from the Property pursuant to the Lease Amendment.

NOW THEREFORE, for good and valuable consideration, Landlord and Tenant hereby agree as follows:

ARTICLE 1. PROPERTY AND TERM OF LEASE

Section 1.01 Property. Landlord does hereby demise and lease to Tenant, and Tenant does hereby lease from Landlord, all of the land described in Exhibit A (and graphically depicted in Exhibit A-1) to this Lease, together with all Improvements and fixtures located thereon and the basin which is a part thereof (collectively, the “Property”). Without limiting the foregoing, Landlord and Tenant agree that the Property includes Parcels G and H, together with the strip of twenty-six (26) feet in width across the northern boundary of Parcel 1, all of which were previously removed from the Property pursuant to the Lease Amendment. Tenant acknowledges the Property does not include any mineral interests under the floor of the Inner Harbor portion of the Property.

Section 1.02 Term. The Term of this Lease commenced on the Commencement Date, and shall continue until 11:59 P.M. on the date fifty five (55) years after the Commencement Date (“Term”) unless such Term shall be sooner terminated as hereinafter provided.

Section 1.03 Rights and Obligations With Respect To Certain Additional Property. In addition to the leasing of the Property to Tenant under Section 1.01, the Parties agree that this Lease establishes certain rights and obligations with respect to certain real and personal property within and/or adjoining the Property.

(a) Landlord shall continue to control and maintain the breakwater structure and those portions of the riprap, the structural components of the riprap shoreline, and the esplanade within or contiguous to the Property, as set forth in Section 10.03.

(b) Landlord shall have the right to ingress, egress, and use of portions of the Property, for official use by itself and its invitees at the Marina, as set forth in Sections 18.03 and 18.04.

(c) Intentionally omitted.

(d) Tenant shall control and maintain all gangways, gang planks and ramps leading from the shore to the floating docks and ties, and associated gates and fencing, and all the terms of this Lease shall be applicable thereto, including but not limited to the income and rent provisions of Articles 3 and 4, the insurance obligations of Article 6, and the maintenance obligations of Article 10.

(e) Tenant shall keep those sections of riprap shoreline that are within or contiguous to the Property free and clear of rubbish and litter, as set forth in Section 10.01.

(f) Tenant shall keep the Channel Entrance, the Marina Fairway and the access channel between them free of permanent obstruction, and shall maintain an adequate depth in the Marina Fairway as set forth in Section 10.04.

(g) Landlord also hereby grants Tenant a non-exclusive right to use the Channel Entrance, the Marina Fairway and an access route between these two areas for access to the Property, and a non-exclusive right to conduct marina operations in the Marina Fairway, during the Term.

(h) Landlord hereby grants Tenant a non-exclusive easement over and across the walkways, roadways, parking areas and other real property which is owned by Landlord and which is depicted on Exhibit A-1 as the "Access Easement Area," for the purpose of allowing Tenant, its sublessees, agents, employees and invitees to obtain access to, and to move and circulate between, the different portions of the Property by pedestrian and vehicular means. Tenant shall not have the right to alter any portion of the Access Easement Area or to construct any improvements thereon. If, in the course of Tenant's use of the Access Easement Area, any damage is done to grass areas, landscaped areas, paved areas or other real or personal property located in or on the Access Easement Area, then Tenant shall, at Tenant's sole cost and expense, promptly repair any and all such damage as necessary to restore the affected area to the condition that existed immediately prior to the commencement of the activities that resulted in such damage. Tenant shall defend, save harmless and indemnify Landlord from any claim for personal injury or property damage that may at any time occur or arise out of the use by Tenant, its sublessees, agents, employees or invitees of the Access Easement Area or the actions of Tenant, its sublessees, agents, employees or invitees. Landlord retains the right to fully use and enjoy the

Access Easement Area, including the right of Landlord to reconfigure the Access Easement Area, to fill over or pave over any portion of the Access Easement Area, to modify the improvements within the Access Easement or to alter the Access Easement Area in any other way, provided that such alterations do not materially interfere with the access rights granted hereunder.

Section 1.04 Certain Ancillary Agreements. Concurrently with the execution of the Original Lease, Landlord and Tenant executed the following agreements (collectively the “Ancillary Agreements”):

- (a) Intentionally omitted;
- (b) that certain Assignment Agreement between City and Tenant regarding the Slip Agreements for which City is landlord thereunder; and
- (c) Intentionally omitted.

ARTICLE 2. DEFINITIONS

The terms, defined in this Article shall, for all purposes of this Lease and all agreements supplemental hereto, have the meanings specified below.

“Accounting Year” shall have the meaning provided in Section 4.11.

“Additional Rent” shall have the meaning provided in Section 3.06.

“Affiliate” shall mean, for any Person, any Person which directly or indirectly controls, is controlled by or is under common control with, such Person.

“Ancillary Agreements” shall have the meaning provided in Section 1.04.

“Annual Minimum Rent” shall have the meaning provided in Section 3.04(b).

“Annual Report” shall have the meaning provided in Section 4.09.

“Assignment Agreement” shall have the meaning provided in Section 1.04(b).

“Audits” shall have the meaning provided in Section 4.12.

“Bathymetric Survey” means the Bathymetric Survey attached to this Lease as Exhibit E.

“Bill of Sale” shall have the meaning set forth in Section 1.04(c).

“Boathouse” shall mean the building of approximately 3300 square feet located on the east shore of the Marina, as indicated on Exhibit A-1.

“Building Revenue” shall have the meaning provided in Section 4.01(c).

“Business Day” shall mean a day of the year on which banks are not required or authorized by law or executive order to close in the State of California.

“Channel Entrance” shall mean that area where the Inner Harbor meets San Francisco Bay, at the southwest corner of the Inner Harbor, as indicated on Exhibit A-1.

“City” shall mean the City of Richmond, a municipal corporation of the State of California.

“City Council” shall have the meaning provided in Section 32.01(b).

“Commencement Date” shall mean July 1, 2000.

“DBAW” shall mean the California Department of Boating and Waterways.

“Default” shall mean any condition or event which, with giving of notice or lapse of time or both, would constitute an Event of Default as defined in Section 19.01.

“Environmental Claim” shall mean any complaint, summons, citation, notice, directive, order, litigation, investigation, judicial or administrative proceeding, judgment, letter or other communication from any governmental authority, or any third party involving any violation of any Environmental Law or any Release of any Hazardous Material.

“Environmental Law” shall mean any federal, state or local law, statute, ordinance or regulation, now or hereafter in effect, and in each case as amended or supplemented from time to time, and any judicial or administrative interpretation thereof, including, without limitation, any judicial or administrative order, consent decree or judgment, relating to the regulation and protection of human health, safety, the environment and natural resources (including, without limitation, ambient air, surface water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation). Environmental Laws shall include without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.) (“CERCLA”); the Hazardous Material Transportation Act, as amended (49 U.S.C. § 180 et seq.) (“HMTA”); the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. § 136 et seq.); the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 et seq.) (“RCRA”); the Toxic Substance Control Act, as amended (42 U.S.C. § 2601 et seq.) (“TSCA”); the Clean Air Act as amended (42 U.S.C. § 7401 et seq.); the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.); the Occupational Safety and Health Act, as amended (29 U.S.C. § 651 et seq.); and the Safe Drinking Water Act as amended (42 U.S.C. § 3001 et seq.), and their state and local counterparts or equivalents, all as amended from time to time, and any transfer of ownership notification or approval statutes.

“Environmental Liabilities and Costs” shall mean, collectively, all obligations, losses, liabilities (including strict liability), damages, punitive damages, consequential damages, treble damages, costs and expenses (including, without limitation, all fees, disbursements and expenses of counsel, experts and consultants and costs of investigation and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any Release or threatened Release of any

Hazardous Material, any Remedial Action, any Environmental Claim or any violation of any Environmental Law.

“Environmental Lien” shall mean any lien in favor of any governmental authority for any Environmental Liabilities or Costs.

“Event of Default” shall have the meaning provided in Section 19.01.

“Gross Income” shall have the meaning provided in Section 4.01.

“Harbormaster Building” shall mean the building of approximately 3000 square feet located on the west shore of the Marina, as indicated on Exhibit A-1.

“Hazardous Material” shall mean any flammable explosive, asbestos, radioactive material, hazardous waste, toxic substance or related injurious material whether injurious by itself or in combination with any other material, any substances defined as a “hazardous substance”, “hazardous material”, or “toxic substance”, in CERCLA, HMTA or RCRA, and any substances defined as a “hazardous waste” in Section 25117 of the California Health and Safety Code or as a “hazardous substance” in Section 25316 of the California Health and Safety Code; or in any regulation adopted or publication promulgated pursuant to any Environmental Law.

“Improvements” shall mean, collectively, all floating docks and ties, buildings, improvements, structures and fixtures now existing or at any time hereafter erected, constructed, affixed or attached to or placed in or placed upon the Land or the basin, whether owned by Tenant or Landlord, or used for or adapted to in any way the use, enjoyment, occupancy and operation of the Land or the buildings, improvements and structures thereon, and any and all alterations, renewals and replacements thereof, additions thereto and substitutes therefor, and shall include but not be limited to the Harbormaster Building, the Boathouse, and the two (2) restroom buildings existing on the Property as of the Commencement Date, but shall exclude all fixtures (and all personal property and equipment) that is the property of Slip Tenants.

“Initial Payment” means the sum of \$5,525,000.00 paid by Original Tenant to Landlord upon execution of the Original Lease.

“Inner Harbor” shall mean the Richmond Inner Harbor as shown on Exhibit A-1.

“Institutional Lender” shall mean (whether acting individually or in a representative, proprietary or fiduciary capacity, or as a general partner, or affiliate of any entity acting in such capacity), a nationally recognized bank, savings bank, investment bank, savings and loan association, commercial bank or trust company, real estate investment trust, or any combination of such entities, which, together with its Affiliates, has a net worth of Five Hundred Million Dollars (\$500,000,000) or more. The participation or securitization of a loan by an Institutional Lender shall not give rise to any requirement that each lender participating in such participation or securitization itself be an Institutional Lender, so long as (a) at the inception of the loan, the originating agent lender is an Institutional Lender, and (b) at the time of any subsequent assignment of the loan, the assignee and agent lender is an Institutional Lender.

“Land” shall mean the parcels of land described in Exhibit A and graphically depicted in Exhibit A-1.

“Landlord” shall mean City and its successors and assigns.

“Landlord’s Agents” shall mean Landlord’s agents, officials, employees, contractors, licensees or invitees.

“Landlord’s Maintenance Property” shall have the meaning provided in Section 10.03.

“Laws” shall mean all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Property, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.

“Lease” shall mean this Amended and Restated Agreement of Lease and all amendments made in compliance herewith.

“Leasehold Mortgage” shall mean any mortgage or deed of trust created by Tenant and constituting a lien on the Improvements and the leasehold interest of Tenant hereunder.

“Leasehold Mortgagee” shall mean an Institutional Lender who is the holder at the time of any Leasehold Mortgage (including the trustee under a deed of trust).

“Live Aboards” shall have the meaning provided in Section 32.02.

“Losses” shall have the meaning provided in Section 11.02.

“Marina” shall be interchangeable with “Property.”

“Marina Fairway” shall mean a strip of property within the Remainder Inner Harbor, immediately south of and abutting the Property, of fifty-five (55) feet in width as indicated in Exhibit A-1.

“Minimum Rate” shall mean the minimum amounts required to be charged to Slip Tenants for Slip Rates under California Harbor & Navigation Code § 71.8(a)(5) and (c).

“Other Income” shall have the meaning provided in Section 4.01(e).

“Parking Revenue” shall have the meaning provided in Section 4.01(d).

“Partial Taking” shall mean a taking, for any public or quasi-public purpose by a lawful power or authority by the exercise of the power of condemnation or by agreement under threat thereof, which does not qualify as a Total Taking as defined.

“Party” shall mean Tenant or Landlord (collectively, “Parties”).

“Percentage Rent” shall have the meaning provided in Section 3.03.

“Periodic Rent” shall have the meaning provided in Section 3.02(a).

“Person” shall mean a corporation, an association, a partnership, a joint venture, a limited liability company, an association, a joint stock company, an estate, a trust, any other legal entity, or an individual. Without exception to the foregoing, each of City and Tenant shall be a Person.

“Property” shall mean the Land and the Improvements, and shall be interchangeable with “Marina.”

“Proposed Sublease” shall have the meaning provided in Section 8.02(b).

“Proposed Transfer” shall have the meaning provided in Section 8.02(a).

“Quarterly Minimum Rent” shall mean one-fourth (1/4) of Annual Minimum Rent, as provided in Sections 3.03(a) and 3.04(a).

“Quarterly Report” shall have the meaning provided in Section 4.09.

“Release” shall mean any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration of any Hazardous Material (including without limitation the abandonment or discarding of any barrel, container or other closed receptacle containing any Hazardous Material) into the indoor or outdoor environment.

“Remainder Inner Harbor” shall mean the area within the Richmond Inner Harbor lying beyond the boundaries of the Property, as shown on Exhibit E.

“Remedial Action” shall mean all actions taken to (a) investigate, clean up, remove, remediate, contain, treat, monitor, assess, evaluate or in any other way address Hazardous Materials in the indoor or outdoor environment, (b) prevent or minimize a Release or threatened Release of Hazardous Materials so they do not migrate beyond the boundaries of the Property or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (c) perform pre-remedial studies and investigations and post-remedial operation and maintenance activities; or (d) perform any other actions authorized and/or required by CERCLA, RCRA, or any other Environmental Law.

“Remedial Expenditure” shall have the meaning provided in Section 10.02.

“Remedial Schedule” shall have the meaning provided in Section 10.02.

“Rent” shall mean Periodic Rent and Additional Rent, collectively.

“Restructured DBAW Loans” shall mean (i) that portion of DBAW loan number 6 which was not paid off and remained outstanding after the application of the Initial Payment, (ii) DBAW loan numbers 7 and 8, no portion of either of which was paid off by the Initial Payment, as shown on Exhibit C, and (iii) a new DBAW loan of up to \$1,500,000.00 and entered on or before December 31, 2000, for purposes of Landlord’s dredging the Channel Entrance.

“Security Deposit” shall have the meaning provided in Section 3.10(a).

“Slip Agreement” shall mean a lease or a license to a slip at the Marina. The Parties understand and agree that (i) Slip Agreements are commercial maritime contracts, (ii) that Slip Agreements shall be governed and interpreted in accordance with the terms and conditions of said Slip Agreement and by the statutory and General Maritime Law of the United States, and (iii) that no residential tenancy is created by any Slip Agreement, even if the Slip Tenant pursuant to such Slip Agreement is a Live Aboard.

“Slip Income” shall have the meaning provided in Section 4.01(a).

“Slip Rate” shall mean the then-current schedule of fees charged by Tenant to Slip Tenants for slips at the Marina, as provided in Section 32.01(b).

“Slip Tenant” shall mean any Person who occupies a slip at the Marina (including without limitation end-ties and side-ties) subject to a Slip Agreement.

“Storage Income” shall have the meaning provided in Section 4.01(b).

“Taxes” shall have the meaning provided in Section 5.01.

“Tenant” shall mean SHM MBYH, LLC, a Delaware limited liability company.

“Tenant’s Agents” shall mean Tenant’s agents, managers, officers, directors, employees, contractors, lessees, licensees and invitees.

“Tenant’s Estate” shall mean all of Tenant’s leasehold interest in the Property under this Lease.

“Term” shall have the meaning provided in Section 1.02.

“Total Taking” shall mean the taking of all or substantially all of the Marina for any public or quasi-public purpose by a condemning authority by the exercise of the power of condemnation or by agreement under threat thereof. The phrase “substantially all of the Marina” shall mean such portion of the Marina as, when so taken, would leave a remainder parcel or parcels which, due either to the area so taken or the location of the portion(s) so taken in relation to the portion(s) not so taken, would not under then existing economic conditions, zoning laws, and building regulations, readily accommodate the economic operation of the Marina, as determined by Tenant in its reasonable discretion.

“TRS Affiliate” shall mean any Person that is under common control with Tenant.

“Unavoidable Delay” shall mean any delay due to strike, lockout, act of God, inability to obtain or general shortage of labor or materials, governmental restrictions, enemy action, civil commotion, fire, casualty, inclement weather, natural disasters, pandemics, epidemics or other causes beyond the reasonable control of any Party, provided that (a) as soon as is reasonably practicable, the Party seeking to claim Unavoidable Delay gives the other Party written notice describing the particulars of the Unavoidable Delay event, (b) any resulting suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Unavoidable Delay event, (c) the Party uses commercially reasonable efforts to overcome or

mitigate the effects of such occurrence, and (d) when the Party is able to resume performance of its obligations under this Lease, such Party shall give the other Party written notice to that effect and shall promptly resume performance under this Lease. The payment of money shall never be subject to Unavoidable Delay.

**ARTICLE 3.
RENT**

Section 3.01 Intentionally Omitted.

Section 3.02 Rent.

(a) Throughout the Term of this Lease, Tenant shall pay Landlord the following (collectively, "Periodic Rent"): (i) Annual Minimum Rent, by paying Quarterly Minimum Rent in advance of each calendar quarter and (ii) Percentage Rent, by paying Percentage Rent in arrears for each calendar quarter. All Rent, whether Annual Minimum Rent payable in advance or Percentage Rent payable in arrears, shall be paid in cash to Landlord at the address set forth in Section 20.03.

(b) Tenant shall pay Periodic Rent as follows:

(i) On or before the first day of each calendar quarter, being the first day of January, April, July and October of each calendar year, Tenant shall pay Quarterly Minimum Rent to Landlord.

(ii) Within fifteen (15) days after the end of each calendar quarter, Tenant shall calculate its Gross Income for such quarter and resulting Percentage Rent for such calendar quarter. If the Percentage Rent so calculated for any calendar quarter is higher than the Quarterly Minimum Rent payment made at the start of that calendar quarter. Tenant shall within the same fifteen (15) day period after the end of such calendar quarter pay the difference to Landlord. If Percentage Rent for any calendar quarter is the same as or less than the Quarterly Minimum Rent payment made for such calendar quarter, Tenant shall be under no obligation to pay any additional amount to Landlord for such calendar quarter, except as set forth in Section 3.09, and neither shall Tenant be entitled to any refund or credit based on such underpayment.

(c) In the event that this Lease commences on a date other than the start of a calendar quarter, or terminates on a date other than the end of a calendar quarter, Tenant's Quarterly Minimum Rent shall be prorated to represent the number of days in such quarter included within the Term of this Lease, divided by the number of days in such calendar quarter.

(d) Intentionally omitted.

(e) Gross Income shall be calculated on a receipts, as opposed to an accrual, basis. Notwithstanding the foregoing, during the first Accounting Year during the Term, Landlord shall receive credit for sums applicable to the period before the Commencement Date and Tenant shall receive credit for sums applicable to the period after the Commencement Date. Accordingly, appropriate prorations shall be made with respect to (a) sums received by Landlord prior to the Commencement Date but applicable to the period after the Commencement Date

(with the amounts applicable to periods before the Commencement Date being for the account of Landlord and amounts applicable to periods after the Commencement Date being for the account of Tenant) and (b) sums received by Landlord or Tenant after the Commencement Date but applicable to the period before the Commencement Date (with the amounts applicable to periods before the Commencement Date being for the account of Landlord and amounts applicable to periods after the Commencement Date being for the account of Tenant).

Section 3.03 Percentage Rent. Tenant shall pay percentage rent to Landlord based on the following percentages of the categories of Gross Income set forth in Section 4.01 (collectively, "Percentage Rent"):

- (i) twenty percent (20%) of Tenant's Slip Income, plus
- (ii) twenty-five percent (25%) of Tenant's Dryboat Storage Income,
- (iii) seven percent (7%) of Tenant's Building Revenue, plus
- (iv) five percent (5%) of Tenant's Parking Revenue, plus
- (v) ten percent (10%) of Tenant's Other Income.

plus

Section 3.04 Annual and Quarterly Minimum Rent.

(a) "Annual Minimum Rent" for each of the first five (5) calendar years of the Term of this Lease, being the calendar years beginning on the Commencement Date and the first, second, third, and fourth anniversaries thereof, shall mean One Hundred Twenty Thousand Dollars (\$120,000.00). "Quarterly Minimum Rent" shall always mean one-fourth (1/4) of Annual Minimum Rent.

(b) For each subsequent period of five (5) calendar years of the Term of this Lease (beginning on the fifth anniversary of the Commencement Date), Annual Minimum Rent shall be adjusted as follows: within fifteen (15) days after the end of each such period, Tenant shall calculate the average of the Percentage Rent paid for each of the three immediately prior Accounting Years, and shall multiply this number by seventy-five percent (75%). If the resulting number is greater than the Annual Minimum Rent for the preceding five-year calendar year period, then Annual Minimum Rent for the new five-year calendar year period shall be increased to such resulting number. If the resulting number is equal to or less than the Annual Minimum Rent for the preceding five-year calendar year period, then Annual Minimum Rent for the new five-year calendar year period shall be the same as the Annual Minimum Rent for the preceding five-year period. The parties acknowledge that the Annual Minimum Rent for the period of July 1, 2020 through June 30, 2025, as previously adjusted pursuant to this subsection (b), is Two Hundred Forty-Three Thousand Five Hundred Four Dollars (\$243,504.00).

Section 3.05 Annual Rent Reconciliation. If Tenant's Annual Report shows that Tenant has overpaid the Percentage Rent for the immediately preceding Accounting Year, Landlord shall, within fifteen (15) days of its receipt of such Annual Report, either (a) refund the overage to Tenant or (b) deduct the overage from Tenant's Quarterly Minimum Rent obligation for the

following calendar quarter(s), at Landlord's sole discretion. If Tenant's Annual Report shows that Tenant has underpaid the Percentage Rent for that Accounting Year, Tenant shall pay to Landlord such deficiency of Percentage Rent within fifteen (15) days after Landlord's receipt of Tenant's Annual Report.

Section 3.06 Additional Rent. Except as otherwise provided herein, Tenant shall pay and discharge, before delinquency, all of Tenant's costs, each and every expense and obligation of every kind arising from Tenant's tenancy or from Tenant's obligations under this Lease (collectively, "Additional Rent"), so that the Periodic Rent due and payable hereunder shall be absolutely "net" to Landlord.

Section 3.07 Reimbursements. Tenant shall reimburse Landlord upon demand for all costs and expenses, including reasonable attorneys' fees, reasonably paid to or incurred by Landlord in curing any Event of Default or arising out of any indemnity given herein by Tenant to Landlord. Landlord shall reimburse Tenant upon demand for all costs and expenses, including reasonable attorneys' fees, paid or incurred by Tenant in curing any of Landlord's defaults or arising out of any indemnity given herein by Landlord to Tenant, provided that Landlord has not cured such default within forty-five (45) days (or such longer period as may be provided herein) of receipt of notice of such default from Tenant.

Section 3.08 Taxes. Tenant shall pay all Taxes as further set forth in Article 5. Reference is hereby made to California Revenue and Taxation Code § 107.6, regarding contracts between public entities and private parties that create possessory interests in real property. Tenant acknowledges and understands that this Lease may create a real property possessory interest and on that basis (among others) Tenant may be subject to real property or other taxation. Tenant covenants and agrees to pay any and all taxes (including any possessory interest tax), assessments, and other charges of any description levied or assessed against or on the Property or the Tenant's use of the Property or any portion thereof, and any interest thereon, by any governmental agency or entity.

Section 3.09 Intentionally Omitted.

Section 3.10 Security Deposit.

(a) Upon the execution of the Original Lease, Tenant provided Landlord with a payment in immediately available funds of Sixty Thousand Dollars (\$60,000.00), which Landlord continues to hold as of the date hereof ("Security Deposit"). The Security Deposit shall be invested in the Local Agency Investment Fund. All interest on the Security Deposit shall accrue for the benefit of Tenant, and shall be added to the Security Deposit at such regular times as may be standard for such investments, but in no instance less frequently than annually nor more frequently than monthly. No trust or fiduciary relationship is created hereby between Landlord and Tenant with respect to the Security Deposit. The funds of the Security Deposit shall at all times be accounted for separately from all other deposits of Landlord, except in the event of Landlord's use of all or a part of the Security Deposit and accrued interest, if any, as a result of Tenant's breach of this Lease. In the event that Landlord uses any portion of the Security Deposit as a result of Tenant's breach, Tenant shall immediately deposit funds sufficient

to restore the Security Deposit to the amount existing immediately prior to such Landlord use or withdrawal, as adjusted from time to time for the accrual of interest.

(b) If Tenant performs all of its obligations under this Lease, the entire amount of the Security Deposit at the time of termination of this Lease plus accrued interest, if any, or so much thereof as has not been applied by Landlord, shall be returned to Tenant within thirty (30) days following the termination of this Lease.

Section 3.11 Late Fee. If any payment due under this Lease is not paid to Landlord within 5 Business Days of when due, a late charge of five percent (5%) of the payment shall be added to the amount outstanding and shall become immediately due and payable to Landlord. An additional charge of ten percent (10%) per annum on said payment (excluding late charges), or the highest lawful interest rate permissible under state and federal law, whichever is lower, shall be added to the unpaid balance for each additional day that said payment remains unpaid, commencing on the due date.

ARTICLE 4. GROSS INCOME AND AUDIT

Section 4.01 Gross Income. As used in this Lease, the term "Gross Income" shall include all gross income received by Tenant (including for purposes of this Section 4.01 any TRS Affiliate) from the Property, including without limitation the following:

(a) Slip Income: All charges levied upon Marina users, whether for cash or credit (but if on credit, Tenant will receive an offset if any portion thereof is not paid) including but not limited to, berthing fees, live-aboard fees charged to Live Aboards, guest docking fees and any penalties levied for delinquent user payments whether levied by Tenant, its agents, sublessees, licensees and/or concessionaires;

(b) Storage Income: All charges levied upon Marina users and all others who store or access boats stored at any location on the Property, whether for cash or credit (but if on credit, Tenant will receive an offset if any portion thereof is not paid), and including but not limited to periodic fees, rents, maintenance charges, utility charges and any penalties levied for delinquent user payments whether levied by Tenant, its agents, sublessees, licensees and/or concessionaires, and including any income from subleases and/or operating agreements relating to such boat storage facility or facilities;

(c) Building Revenue: All other charges received by Tenant, directly or indirectly, from users of the Marina or of the Improvements (other than parking lots, structures, or facilities), including but not limited to locker fees, storage fees, key fees, office rents and other fees associated with the use of the Harbormaster Building or the Boathouse;

(d) Parking Revenue: All charges received by Tenant, directly or indirectly, from users of any parking lot, structure, or facility within the Property, whether existing at the time of the execution of this Lease or constructed during the Term of this Lease; and

(e) Other Income: (i) All of Tenant's interest, and limited solely to Tenant's interest, in sums deposited in any coin-operated vending machine or other device maintained on

the Property, regardless of the ownership of the machine or device, or whether such sums are removed or counted by Tenant or others; (ii) All of Tenant's income from launch fees, haul-out charges, battery charges, pump-outs and other incidental services provided by Tenant; (iii) All of Tenant's incidental sales of goods, wares, products and/or merchandise and the total selling price of all services sold or rendered by Tenant in, on, upon, through or from the Property, whether for cash or credit and if on credit whether or not paid, minus cost of goods sold; (iv) All of Tenant's income from any sailing, diving, boating or other schools or classes which may be established; (v) All of Tenant's payments received from Slip Tenants for utilities and other common area maintenance charges, to the degree such payments exceed the cost to Tenant of such utilities and charges; and (vi) All of Tenant's sales of gasoline, diesel fuel or other fuel from any facilities which may be established for such fuel services if applicable, minus cost to Tenant of such fuel sold.

Section 4.02 Exclusions from Gross Income. Gross Income shall not include:

- (a) Sales or excise taxes paid by Tenant to Federal, State, County, or Municipal governments as a direct result of operations under this Lease;
- (b) Refunds for goods returned, and refundable deposits;
- (c) Tenant-originated gift certificates (until and unless redeemed);
- (d) Tenant's transfer of merchandise, furniture, fixtures or equipment not in the ordinary course of business (not including berths which, if removed by Tenant, shall be replaced);
- (e) Tenant's donation of merchandise to benefit charitable organizations;
- (f) Insurance proceeds, except to the extent such proceeds derive from business interruption or similar insurance that is intended by the Parties to cover Rent payments;
- (g) Tips and gratuities;
- (h) Actual cost to Tenant for utilities and common area maintenance charges which are passed through to Slip Tenants;
- (i) Actual cost to Tenant for collecting fees from and or evicting any Slip Tenant;
- (j) Charges paid to financial institutions or other credit card issuers or facilitators in connection with credit card sales; and
- (k) Any rent paid to Tenant by any subtenant which is a TRS Affiliate; it being the intention of the parties to treat Gross Income received by a TRS Affiliate as Gross Income of Tenant and to avoid a duplicative charge for rent pay to Tenant by any subtenant which is a TRS Affiliate.

Section 4.03 Records. Tenant shall keep or cause to be kept true and complete records of all personnel matters and financial transactions conducted in the operation of its business or the performance of this Lease, which records shall be kept in conformance with generally accepted accounting principles. These accounting records must be supported by source documents such as sales slips, cash register tapes, purchase invoices, or other pertinent documents.

Section 4.04 Cash Register. All sales and charges shall be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers shall be equipped with devices which lock in sales totals and other transaction records, or with counters which are not resettable and which record transaction numbers and sales details. At the beginning and end of each business day, Tenant shall read and record the sales total on each register. Exceptions to the use of cash registers of the type mentioned above must be approved in writing by Landlord.

Section 4.05 Section 4.05 Admission Charges. In the event of admission charges or rents, either as a universal practice or for special events, Tenant shall issue serially numbered tickets for each such admission or rent and shall keep an adequate record of said tickets, both issued and unissued. The admission charges received by Tenant shall be considered Other Income.

Section 4.06 Slip Agreements. All Slip Agreements of berths or slips to Slip Tenants shall, to the extent practicable, be documented by written leases which, at a minimum, set forth the term of such agreement, the Slip Tenant's payment obligations thereunder and the Slip Tenant's name, address, vessel identification and vessel size.

Section 4.07 Location of Records. The financial and accounting records described in this Article 4, including sales slips, cash register tapes, purchase invoices, berth leases and all banking deposit tickets, statements and any other banking records, and all records of sales, excise or luxury taxes paid or payable by Tenant for sales, fees and charges from the operation of the Property, shall be kept and made available at one location in Northern California for a period of at least six (6) years.

Section 4.08 Quarterly Reporting. Within fifteen (15) days after the end of each calendar quarter, Tenant shall deliver to Landlord a Statement of Operations for such calendar quarter substantially in the form of, and containing the same level of detail as set forth in, Exhibit D, together with Tenant's statement of Periodic Rent, Additional Rent and capital expenditures for such calendar quarter ("Quarterly Report"). The Quarterly Report shall be accompanied by Tenant's payment of Percentage Rent for such calendar quarter.

Section 4.09 Annual Reporting. Within twenty (20) days after the end of each calendar year, Tenant shall, at its own expense, deliver to Landlord a Statement of Operations for such calendar year substantially in the form of, and containing the same level of detail as set forth in, Exhibit D, together with Tenant's statement of Gross Income, Periodic Rent, Additional Rent and capital expenditures for such calendar year (the "Annual Report").

Section 4.10 Filing. Tenant shall file all statements and reports required under this Article 4 with Landlord. Any and all reports which Tenant is required to provide hereunder shall be prepared in accordance with generally accepted accounting principles and shall be certified as to accuracy by the managing member or executive officer of Tenant.

Section 4.11 Accounting Year. Tenant's "Accounting Year" shall be the calendar year, except for the first Accounting Year which shall begin on the Commencement Date and end on December 31, 2000. This definition of Accounting Year shall not change unless Landlord specifically approves in writing a different Accounting Year. Landlord shall approve a change in Accounting Year only in the event of undue hardship being placed on either Tenant or Landlord, and not because of mere convenience or inconvenience.

Section 4.12 Landlord Audits. Landlord shall, through its duly authorized agents or representatives, 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 all financial and accounting reports prepared or submitted by Tenant under this Article 4 ("Audits"). Within twenty (20) days' after receipt of notice by Landlord of any Audit, Tenant shall make its account records available to Landlord and its representatives during normal business hours at the Property. The cost of any Audit shall be borne by Landlord, unless the audit reveals a discrepancy of greater than four percent (4%), in which case Tenant shall be responsible for the costs of the Audit. If the annual Gross Income shown by Tenant's Annual Report should be found to be less than the amount of annual Gross Income disclosed by an Audit and such discrepancy affects the amount Tenant owes Landlord, Tenant shall pay any delinquent amount within thirty (30) days after the date on which Landlord mails Tenant a bill therefor.

ARTICLE 5. TAXES AND OTHER CHARGES

Section 5.01 Payment Responsibility. Tenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Property, Tenant's personal property, or any portion thereof, or Tenants use of the Property or any portion thereof ("Taxes"). Tenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) Business Days prior to delinquency, subject, however, to Tenant's right to challenge or protest any Tax. With respect to real property taxes and assessments levied on or assessed against the Property for which Landlord receives the tax bill directly from the taxing authority, Tenant shall reimburse Landlord for payment of such sums within ten (10) Business Days after demand from Landlord. Notwithstanding the foregoing, Tenant shall not be liable for any real property tax increase under Proposition 13 resulting from Landlord's sale of the Land or Improvements. Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest.

Section 5.02 Utilities. Tenant shall pay or caused to be paid, and hold Landlord free and harmless from, all charges for the installation, connection, maintenance and furnishing of all necessary utilities, utility facilities, and services from and after the Commencement Date,

including but not limited to, gas, water, electricity, telephone and telecommunications services, sewage and other public utilities to the Property during the Term of this Lease and for the removal of garbage, rubbish, and weeds from the Property during the Term of this Lease. Landlord shall cooperate, at Tenant's expense and to the extent it is able, in providing such utilities and services.

Section 5.03 Pro-Rata Taxes. Any Tax on any portion of the Property relating to a fiscal period of the taxing authority, a part of which period is included within the Term of this Lease and a part of which is included in a period of time before the commencement or after the expiration of the Term of this Lease, shall (whether or not such Tax shall be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Property, or shall become payable, during the Term of this Lease) be apportioned between Landlord and Tenant on a straight-line pro-rata apportionment, provided, however, that if, at the expiration of the Term, Tenant owes Landlord any Rent hereunder, Tenant shall not be entitled to the refund of any such Tax paid by Tenant prior to such expiration, up to the amount of such Rent.

Section 5.04 Contest. Tenant shall have the right, at its sole cost and expense, to contest in good faith the amount or validity, in whole or in part, of any Tax by appropriate proceedings diligently conducted in good faith, provided that (a) Tenant gives Landlord written notice of Tenant's intention to do so at least 30 days prior to delinquency, (b) Tenant diligently prosecutes any such contest, (c) Tenant either pays the full amount of such Tax under protest or posts a bond sufficient in Landlord's reasonable judgment to at all times protect the Property against the imposition of any lien upon any portion of the Property or this Lease and to effectively stay or prevent any non-judicial or judicial foreclosure of any such lien, and (d) Tenant pays any final judgments relating to any such Tax so contested. Landlord shall, if requested, cooperate with Tenant at any such proceedings at Tenant's sole expense but only if and so long as neither the Property nor any part thereof would by reason of such postponement or deferment be in danger of being foreclosed, forfeited or lost. Upon the termination of such proceedings, Tenant shall pay the amount of the Tax 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 counsel fees), interest, penalties or other liabilities in connection therewith, and upon such payment, Landlord shall return any amount deposited with it with respect to such Tax as aforesaid; provided, however, that Landlord shall, if requested by Tenant, disburse said moneys on deposit with it directly to the imposing authority to whom such Tax is payable. If at any time during the continuance of such proceedings Landlord shall reasonably determine in good faith that the amount deposited as aforesaid insufficient, Tenant shall upon demand, make an additional deposit of such additional sums or other acceptable security as Landlord reasonably may request, and upon failure of Tenant so to do, the amount theretofore deposited may be applied by Landlord to the payment, removal and discharge of such Tax and the interest and penalties in connection therewith and any costs, fees (including counsel fees) or other liability accruing in any such proceedings, and the balance, if any, shall be returned to Tenant or the deficiency, if any, shall be paid by Tenant to Landlord on demand.

Section 5.05 No Tax Lien Foreclosure. Tenant shall immediately, and in any event prior to foreclosure, discharge by payment or bond any lien for any Taxes payable by Tenant under this Lease imposed or threatened to be imposed upon the Property or any portion thereof, or upon any equipment or other personal property located on the Property.

Section 5.06 Receipts. Upon Landlord's written request, Tenant shall, within ten (10) days after the date when any Taxes are due and payable, furnish to Landlord official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Landlord evidencing payment thereof, subject to Tenant's rights to protest and challenge as set forth in this Article 5.

Section 5.07 Intentionally Omitted.

ARTICLE 6. INSURANCE

Section 6.01 General Provisions. Certificates and Other Requirements.

(a) Tenant shall procure and maintain insurance against claims for injuries to persons or damages to the Property which may arise from or in connection with Tenant's operation and use of the Property and Improvements. The cost of such insurance shall be borne by the Tenant.

(b) All insurance policies required under this Article 6 shall be satisfactory to Landlord in its reasonable discretion and shall be provided by companies having a Best's rating of "A" or better (and if Best no longer provides such ratings, an equivalent rating).

(c) Tenant shall promptly provide to Landlord all certificates of insurance with original endorsements reflecting coverage required by this Article on or before the effective date of the Lease. Upon request, Tenant shall provide Landlord with copies of policies.

(d) All insurance policies required under this Lease shall be in full force and effect during the Term. 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 during the term of this Lease.

Section 6.02 Workers' Compensation Insurance. Tenant shall, at Tenant's own cost and expense, procure and maintain workers' compensation insurance in accordance with the laws of California.

Section 6.03 General Liability Insurance. Tenant shall, at Tenant's own cost and expense, secure and maintain commercial general liability insurance, written on an occurrence basis and naming each of City and the State of California as additional insureds, insuring Tenant, Tenant's Agents and Tenant's officers and employees against all bodily injury, property damage, personal injury, and other loss or liability caused or connected with Tenant's operation and use of the Marina under this Lease in amounts not less than Five Million Dollars (\$5,000,000) per injury to or death of one person and, subject to the limitation for the injury or death of one person, of not less than Eight Million Dollars (\$8,000,000) for injury to or death of two or more persons as a result of any one accident or incident. Tenant's insurance coverage shall be primary insurance as respects City and its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by City and its officers, officials, employees or volunteers shall be excess of Tenant's insurance and shall not contribute with it.

Section 6.04 Property Insurance.

(a) Tenant shall, at Tenant's own cost and expense, secure and maintain all risk extended form insurance coverage in an amount equal to 100% of the full replacement cost of the Property (including all changes in building code requirements) and Tenant's personal property and covering course of construction exposure and all risks of direct physical loss (including flood, earthquake and materials and supplies used at the site including all changes in code requirement). Any loss payable under any policy described in this Section shall be used to rebuild and/or repair the damaged portions of the Property or Tenant's personal property. The insurer shall waive all rights of subrogation against Landlord. City shall be named a loss payee on all insurance policies covering casualty losses and builder's risk.

(b) Tenant's obligation to secure and maintain earthquake insurance shall be conditioned upon Tenant's ability to obtain such coverage with commercially reasonable premium cost, as determined by mutual agreement between Landlord and Tenant. If such earthquake insurance coverage should, after diligent effort by Tenant, be unobtainable at such mutually determined commercially reasonable premium cost, then Tenant shall obtain the maximum insurance reasonably obtainable at commercially reasonable premium cost (if any) and give notice to Landlord of the extent of Tenant's inability to obtain, in full, the insurance required by this Lease, and in such event, Tenant's obligation to procure and maintain such insurance, to the extent unobtainable, shall be excused. Notwithstanding the foregoing, if at any time Tenant's Mortgagee requires Tenant to carry earthquake insurance in excess of that required by Tenant to be carried pursuant to this Section 6.04, Tenant shall carry such additional earthquake insurance for the benefit of Landlord.

Section 6.05 Business Interruption Insurance. Tenant shall, at Tenant's own cost and expense, procure and maintain during the entire term of this Lease, business interruption insurance to insure that the payments provided for in Article 3 shall be paid to Landlord for a period of up to one (1) year in the event the Property is totally or partially damaged or destroyed so as to render Tenant's business activities at the Marina impossible or impracticable, due to any cause whatsoever, include cause(s) not otherwise required to be insured against under this Lease. Tenant shall maintain coverage based on the Annual Minimum Rent and Percentage Rent for the then current five-year period, as determined in accordance with Article 3.

Section 6.06 Automobile Insurance. Tenant shall, at Tenant's own cost and expense, secure and maintain during the entire term of this Lease, automobile insurance insuring Tenant and Tenant's employees to an amount not less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.

Section 6.07 Landlord's Right to Perform Tenant's Obligations. In the event of Tenant's failure to procure or renew insurance as required by this Section, Landlord may, at its discretion, procure or renew such insurance and pay all premiums in connection therewith and all monies so paid by Landlord shall be repaid by Tenant to Landlord upon demand.

Section 6.08 Waiver of Subrogation. To the extent that Landlord or Tenant purchases any hazard insurance relating to the Property (except workers' compensation insurance), the party purchasing such insurance shall obtain a waiver of subrogation from its insurance carrier,

by which the insurance carrier agrees to waive all rights of recovery by way of subrogation against the other parties Lease in connection with any loss covered by such insurance policy.

Section 6.09 Adjustments. The amounts and extent of coverage of property insurance and general liability insurance policies (except workers' compensation insurance) shall be subject to adjustment every five (5) years, based on Landlord's review of such amounts and extent of coverage in consultation with its insurance advisors, and based on customary insurance requirements for facilities of size, value and operation similar to the Property and its improvements.

ARTICLE 7. INSURED AND UNINSURED CASUALTY

Section 7.01 Repair, Replacement or Reconstruction During the First Forty-Five Years.

(a) If, any time on or before December 31, 2044, the Property is totally or partially damaged or destroyed from a risk covered by insurance required to be carried by Tenant hereunder, this Lease shall not terminate, and Tenant shall, within ninety (90) days after the date of such damage or destruction, subject to Unavoidable Delay, commence and diligently pursue to completion the repair, replacement, or reconstruction of the Property to substantially the same condition as it was in immediately before such damage or destruction, whether or not the insurance proceeds actually received are sufficient to cover the actual cost of the repair, replacement, or reconstruction.

(b) If, any time on or before December 31, 2044, the Property is totally or partially damaged or destroyed from a risk not covered by insurance required to be carried by Tenant hereunder, Tenant, subject to the remaining provisions of this Section 7.01(b), shall have the right to terminate this Lease by written notice given to Landlord within ninety (90) days after the date of such damage or destruction, which termination shall be effective thirty (30) days after the date of such notice, and Rent and other charges shall be apportioned as of the date of termination. Prior to such effective termination, Tenant shall remove all debris and rubble, secure the Property from trespassers, provide protections or appropriate warnings to any third parties of any dangerous conditions that may exist on the Property and to protect Landlord from attractive nuisance liability, and put the Property in a safe condition. Thereupon, this Lease shall terminate and the Parties shall have no further obligations to each other excepting those previously accrued but theretofore unsatisfied. Notwithstanding the foregoing, Tenant shall not have the right to terminate this Lease if (a) the cost of restoration, reconstruction and repair is twenty percent (20%) or less of the replacement cost of the Property prior to such damage or destruction, in which event this Lease shall not terminate, and Tenant shall, within one hundred twenty (120) days after the date of such damage or destruction, subject to Unavoidable Delay, commence and diligently pursue to completion the repair, replacement, or reconstruction of the Property to substantially the same condition as it was in immediately before such damage or destruction, whether or not the insurance proceeds actually received (if any) are sufficient to cover the actual cost of the repair, replacement, or reconstruction.

Section 7.02 Insured Losses After the First Forty-Five Years. If, at any time on or after January 1, 2045 the Property is totally or partially damaged or destroyed from a risk covered by

insurance required to be carried by Tenant hereunder, this Lease shall not terminate, and Tenant shall be required to restore, reconstruct and repair the Property, to the extent of insurance proceeds received by Tenant.

Section 7.03 Uninsured Losses After the First Forty-Five Years. If, at any time on or after January 1, 2045 the Property is totally or partially damaged or destroyed from any cause not covered by insurance required to be carried by Tenant hereunder, then:

(a) If the cost of such repair and replacement is less than ten percent (10%) of the replacement cost of the Property prior to such damage or destruction (or, if the cost of such repairs and restoration is ten percent (10%) or more of the replacement cost of the Property prior to such damage or destruction, but Tenant nonetheless, at its sole option, elects within thirty (30) days to restore the Property), then Tenant shall, to the extent permitted by law, and provided that Landlord provides the funds necessary to accomplish the same, perform the work required to restore the Property to its condition prior to the damage or destruction, and this Lease shall remain in full force and effect. Subject to Tenant's receipt of such Landlord funds, Tenant shall commence and diligently pursue to completion the repair, replacement or reconstruction of the Property within one hundred twenty (120) days of the date of such damage or destruction, subject to Unavoidable Delay. Should Landlord not provide the requisite funds, Tenant shall have the right to terminate the Lease.

(b) In the event that (i) Landlord does not provide the requisite funds referred to in subsection (a) above, or (ii) the cost of such repair and replacement is ten percent (10%) or more of the replacement cost of the Property prior to such damage or destruction and Tenant elects not to restore, Tenant shall have the right to terminate this Lease by written notice given to Landlord within ninety (90) days after the date of such damage or destruction, which termination shall be effective thirty (30) days after the date of such notice, and Rent and other charges shall be apportioned as of the date of termination. Prior to such effective termination, Tenant shall remove all debris and rubble, secure the Property from trespassers, provide protection or appropriate warnings to any third parties of any dangerous conditions that may exist on the Property and to protect Landlord from attractive nuisance liability, and put the Property in a safe condition. Thereupon, this Lease shall terminate and the Parties shall have no further obligations to each other excepting those previously accrued but theretofore unsatisfied.

If Tenant terminates this Lease under this Article 7, Tenant shall remit to Landlord any casualty insurance proceeds it receives. All repair, replacement, or reconstruction of the Property pursuant to this Article 7 shall be accomplished pursuant to the requirements of Article 11 of this Lease.

Section 7.04 No Option to Terminate for Insured Casualty. Except as stated in Section 7.03, Tenant shall have no option to terminate this Lease or otherwise be relieved of its obligation to restore the Improvements on the Premises where the damage or destruction results from a cause required to be insured against by this Lease. Tenant hereby waives and releases its rights under the provisions of California Civil Code §§ 1932(2) and 1933(4), it being the intention of the parties hereto that the express terms of this Lease shall control under any circumstances in which those provisions might otherwise apply.

Section 7.05 Certain Proceeds. If in connection with any casualty Landlord receives any insurance or other proceeds which are required to be paid to Tenant, Landlord shall deliver such proceeds to the highest priority Leasehold Mortgagee whose address has been provided to Landlord in accordance with Article 9.

ARTICLE 8.
ASSIGNMENT, SUBLETTING, ETC.

Section 8.01 Tenant's Right to Sublet and Assign.

(a) Tenant may not sell, assign, transfer, sublease, encumber, convey or otherwise dispose of the Tenant's interest in this Lease (including, without limitation, an assignment of this Lease or a subletting of the Property, as an entirety or substantially as an entirety) without the prior written consent of Landlord as set forth in Section 8.03, provided, however, that (i) with respect to Slip Agreements, Tenant shall from time to time (but not less frequently than annually) provide Landlord with its then-current form Slip Agreement, which Landlord shall approve or disapprove in its commercially reasonable discretion and, so long as such standard Slip Agreement has been approved, Tenant need not seek approval for any Slip Agreement that conforms to such then-standard form, and (ii) Landlord's consent shall not be required for subleases with TRS Affiliates. In no event shall Tenant have the right, or attempt, to enter into any assignment, transfer, sublease or other transfer agreement which purports to extend any rights to any third party beyond the Term of this Lease.

(b) Any transaction or series of transactions (i) which would result in the cumulative transfer of more than fifty percent (50%) of any Person's ownership in or control of Tenant, as compared to the ownership structure of Tenant as of the date hereof (provided that the foregoing shall not apply to any transfers of stock or other equity interests held and traded through a nationally recognized exchange), or (ii) which would result in the addition, removal or replacement of one or more general partners or managing members in Tenant if Tenant is a partnership or a limited liability company or comparable entity, shall be deemed an assignment for purposes of this Article 8 subject to the prior written consent of Landlord as set forth in Section 8.03.

Section 8.02 Landlord Right of First Refusal. If Tenant proposes to assign, transfer or sublet fifty percent (50%) or more of its interest in this Lease at any time after January 1, 2030 and such assignment, transfer or subletting would otherwise require Landlord's prior written consent (a "Proposed Transfer"), Tenant shall provide Landlord with written notice of such desire and the terms upon which Tenant proposes to consummate the Proposed Transfer. Within ninety (90) days thereafter, Landlord shall provide Tenant with written notification as to whether Landlord will exercise its right of first refusal with respect to the Proposed Transfer, on the same terms as set forth in Tenant's notice of the Proposed Transfer. During such ninety (90) day period, Tenant shall make the Property and Tenant's books and records reasonably available for inspection by Landlord and Landlord's Agents and third parties as reasonably requested by Landlord. If Landlord either (i) fails to elect to exercise its right of first refusal within the ninety (90) day period or (ii) gives written notice that it has elected not to exercise its right of first refusal, then Tenant shall be entitled to consummate the Proposed Transfer with a third party, subject to Landlord's approval rights otherwise set forth in this Article 8, and so long as the

economic terms upon which Tenant proposes to consummate the Proposed Transfer do not materially change (a material change being a change of 5% or more to the transferee's benefit) and the other terms of the Proposed Transfer do not materially change from the terms initially disclosed to Landlord. If, at any time prior to the consummation of the Proposed Transfer, the economic terms upon which Tenant proposes to consummate the Proposed Transfer materially change or the other terms of the Proposed Transfer materially change from the terms initially disclosed to Landlord, Tenant shall so notify Landlord and the transaction, as so modified, shall be deemed a new Proposed Transfer subject to the terms of this Section 8.02.

Section 8.03 Landlord Review. Landlord's review of any proposed assignment, transfer, or sublease under this Lease which requires Landlord's consent shall be made according to the terms of this Section 8.03, as well as the rights set forth in Section 8.02 for Proposed Transfers if applicable.

(a) Landlord's consent to a proposed assignment, transfer or sublease shall not be unreasonably withheld. In determining whether to grant or withhold consent to a proposed assignment, transfer or sublease, Tenant agrees that it is reasonable for Landlord to consider any relevant factors. Without limiting the foregoing, Tenant agrees that it is reasonable for Landlord to consider whether:

(i) Tenant has complied with the requirements set forth in Article 8 above;

(ii) The proposed assignee or subtenant, in Landlord's reasonable judgment, has a sufficient worth, considering the financial responsibility involved;

(iii) The prospective assignee or subtenant has, in Landlord's reasonable judgment, the marina management experience necessary to perform Tenant's obligations under this Lease;

(iv) Landlord has had prior negative leasing experience with the proposed assignee or subtenant;

(v) The use of the Property by the proposed assignee or subtenant will be identical to the use permitted by this Lease;

(vi) In Landlord's reasonable judgment, the proposed assignee or subtenant is engaged in a business, or the relevant part of the Property will be used in a manner, that is not in keeping with the then current standards of the Property, or that will violate any restrictive or exclusive covenant as to use of the Property or any Law;

(vii) The proposed assignee or sublessee assumes in writing all of the obligations of Tenant (other than payment of rent in the case of a subletting) under the Lease applicable to the portion of the Property affected by the assignment or subletting arising on or after the date of such assignment or subletting; or

(viii) Tenant is then in default of any obligation of Tenant under this Lease beyond applicable notice and/or cure periods, and Tenant has defaulted under this Lease

beyond applicable notice and/or cure periods on three (3) or more occasions during the twenty-four (24) months preceding the date on which Tenant makes its request.

(b) Tenant acknowledges that the time needed for Landlord to review a proposed assignment depends on many factors, including without limitation the complexity of the proposed transaction, the financial and other information submitted for review, and the workload of Landlord's personnel. Notwithstanding the foregoing, Landlord shall act as promptly as governmental processes permit in processing and acting upon a requested approval of an assignment of Tenant's interest under this Article 8.

(c) Landlord's decision either to grant or to deny consent to any proposed assignment, transfer or sublease shall not limit or affect Landlord's ability to assess independently subsequently proposed assignments, transfers or subleases.

(d) Tenant shall be required to reimburse Landlord for its costs incurred in connection with the proposed assignment, whether or not Landlord ultimately grants its approval to the proposed assignment.

(e) Promptly upon Landlord's demand, Tenant agrees to furnish Landlord with a photostatic copy of each sublease, license and assignment made for space in the Property, including but not limited to Slip Agreements and subleases with TRS Affiliates. Landlord shall have no obligation to execute any nondisturbance agreement with any proposed assignee or sublessee not approved by Landlord.

(f) Tenant hereby waives any and all rights which it does or may have under California Civil Code § 1995.310 with respect to Landlord's failure to consent to a proposed assignment, transfer or sublease.

Section 8.04 Existing Slip Agreements. City previously executed the Assignment Agreement, pursuant to which City assigned and transferred to Original Tenant, and Original Tenant assumed, City's interest as landlord under the Slip Agreements (together with all deposits and prepaid rent, if any, held by City) applicable to the Property.

ARTICLE 9. MORTGAGING OF LEASE BY TENANT

Section 9.01 Tenant's Right to Mortgage Lease.

(a) Upon not less than thirty (30) days written notice to Landlord, Tenant shall have the right, at any time and from time to time, with Landlord's written consent or approval, not to be unreasonably withheld, to mortgage and/or pledge the interest of Tenant under this Lease to one or more Institutional Lenders.

(b) Tenant agrees to furnish Landlord with a photostatic copy of each such mortgage or pledge. Until such time as Tenant provides Landlord with such a copy, Tenant shall not be able to enforce this Article against the Landlord.

(c) No mortgage and/or pledge of the interest of Tenant under this Lease shall result in a loan to value ratio of more than seventy percent (70%) without Landlord's prior written approval.

Section 9.02 No Subordination. Landlord's rights in the Property and this Lease, including without limitation Landlord's right to receive Periodic Rent, shall not be subordinated to the rights of any Leasehold Mortgagee. Notwithstanding the foregoing, a Leasehold Mortgagee shall have all of the rights set forth in the Leasehold Mortgage, as approved by Landlord in accordance with this Article 9, to the extent that such rights are not inconsistent with the terms of this Lease, including the right to commence an action against Tenant for the appointment of a receiver and to obtain possession of the Property under and in accordance with the terms of said Leasehold Mortgage, provided that all obligations of Tenant hereunder shall be kept current, including but not limited to the payment of Periodic Rent and curing of all defaults or Events of Default hereunder.

Section 9.03 Landlord's Covenants. Landlord agrees, for the benefit of the Tenant and of each Leasehold Mortgagee, to comply with the following provisions, all of which shall be binding on the Tenant and each Leasehold Mortgagee, as set forth herein:

(a) Landlord and Tenant shall not enter any agreement of cancellation, surrender, acceptance of surrender or modification of this Lease without the prior written consent of the Leasehold Mortgagee. This Lease shall not merge in the fee of the Property without the prior written consent of such Leasehold Mortgagee.

(b) Landlord, upon serving Tenant any notice or demand under Section 3.09, Section 4.12, Section 5.01, Section 10.05, Article 19 or Section 28.04 of this Lease, shall at the same time serve copies of such notice upon each Leasehold Mortgagee that has complied with the provisions of this Article 9, and no such notice or demand shall be deemed to have been served unless and until so served upon each such Leasehold Mortgagee. Tenant shall provide the address of each Leasehold Mortgagee to Landlord, and shall be solely responsible for the accuracy thereof. Each such Leasehold Mortgagee shall have the right to remedy the Event of Default, or cause the same to be remedied, within the time allowed to Tenant therefor, plus, in the case of monetary Events of Default, an additional twenty (20) days, and in the case of non-monetary Events of Default, an additional forty-five (45) days (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature reasonably be performed, done or removed, as the case may be, within such time period, in which case no Event of Default shall be deemed to exist so long as Leasehold Mortgagee shall have commenced curing the same within such time period and shall diligently and continuously prosecute the same to completion), provided that Leasehold Mortgagee (i) expeditiously pursues its remedies as herein described, (ii) continues to pay Percentage Rent and Quarterly Minimum Rent while the cure is pending, and, (iii) continues to perform and/or cure all of Tenant's obligations (provided, however, that in no event shall any Leasehold Mortgagee ever be required to cure any default by Tenant under Section 31.03(b)).

(c) With respect to those Events of Default the curing of which requires entry upon the Property, then (1) whenever a Leasehold Mortgagee desires to cure an Event of Default, there shall be added to the period otherwise provided to the Leasehold Mortgagee for the cure of

the Event of Default the additional period needed by the Leasehold Mortgagee in the exercise of reasonable diligence to enter upon the Property, (2) whenever a Leasehold Mortgagee seeks to have a receiver appointed for the interest of the Tenant under this Lease, so as to have the receiver cure such Event of Default, then there shall be added to the period otherwise provided to the Leasehold Mortgagee for the cure of such Event of 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, (3) whenever a Leasehold Mortgagee elects to foreclose upon the interest of the Tenant under this Lease, there shall be added to the period otherwise provided to the Leasehold Mortgagee for the cure of such Event of Default, such additional period as is needed, in the exercise of reasonable diligence, for the effectuation of a private foreclosure sale and (4) whenever a Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant, then there shall be added to the period otherwise provided to the Leasehold Mortgagee for the cure of such Event of Default the additional period needed by the Leasehold Mortgagee to avoid such prohibition, provided, in each case, that Leasehold Mortgagee shall have fully cured any Event of Default in the payment of any monetary obligation and shall continue to pay currently those monetary obligations as and when the same fall due and shall have cured or be in the process of curing all non-monetary Events of Default that are capable of being cured by such Leasehold Mortgagee without possession of the Property (provided, however, that in no event shall any Leasehold Mortgagee ever be required to cure any default by Tenant under Section 31.03(b)). Landlord recognizes that each Leasehold Mortgagee has the right to proceed by any or a combination of the courses of action described in clauses (1), (2), (3) and (4) of this Section 9.03(c), and, in that event, the Leasehold Mortgagee in question shall be entitled to the maximum cumulative period allowed by any one such clause (but not the cumulative period of two or more such clauses added together), so long as such Leasehold Mortgagee is proceeding diligently and in good faith. For the protection of each Leasehold Mortgagee, it is the intention of the Parties that there shall not be any Event of Default or condition entitling Landlord to terminate this Lease, which is incapable of being cured by a Leasehold Mortgagee upon taking possession of the Property or by any other person who acquires the interest of Tenant hereunder as a result of the foreclosure of a Leasehold Mortgage.

(d) Landlord shall accept performance by, or on behalf of, any Leasehold Mortgagee who has complied with the notice provisions of Section 10.02 as if the same had been performed by Tenant. Such acceptance shall not thereby create any additional rights as against Landlord in such Leasehold Mortgagee, nor shall such Leasehold Mortgagee thereby be subrogated to any interest or right of Landlord.

(e) 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.

(f) 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.

(g) Foreclosure of the Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of this Lease in lieu of foreclosure or through other appropriate proceedings in the nature thereof, from Tenant to (1) any Leasehold Mortgagee, (2) any affiliate of any Leasehold Mortgagee (a "Leasehold Mortgagee Affiliate") or (3) any third party which (A) has the marina management experience (either directly or by contract with a manager having such experience) necessary to perform Tenant's obligations under this Lease, (B) has a minimum net worth of at least \$3,000,000 (as increased by four percent (4%) on January 1 of each calendar year, on a cumulative basis, commencing on January 1, 2002), and (C) and satisfies Landlord's requirements under Sections 8.03(a)(v) and (vii) (a "Permitted Purchaser"), shall not, in the case of such Leasehold Mortgagee or such Leasehold Mortgagee Affiliate, require the consent of Landlord and shall not, in the case of such Permitted Purchaser, require any further consent of Landlord, or constitute a breach of any provision of, or a default under, this Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize such Leasehold Mortgagee, Leasehold Mortgagee Affiliate or Permitted Purchaser, as the case may be, as the Tenant under this Lease.

(h) Landlord agrees that, in the event of termination of this Lease by Tenant or any debtor in possession, Landlord will, upon request of Leasehold Mortgagee, enter into a new lease of the Property with the applicable Leasehold Mortgagee, Leasehold Mortgagee Affiliate or Permitted Purchaser for the remainder of the Term, effective as of the date of such termination, at the then-applicable Periodic Rent and upon the terms, provisions, covenants and agreements as contained in this Lease with respect to the remainder of the Term, provided:

(i) Said Leasehold Mortgagee, Leasehold Mortgagee Affiliate or Permitted Purchaser shall make written request upon Landlord for such new lease within thirty (30) days after the date of its receipt of written notice from Landlord of such termination and such written request shall be accompanied by payment to Landlord of all sums then due Landlord under this Lease up to date of termination as to which Landlord has previously notified the Leasehold Mortgagee. Landlord shall, within ten (10) Business Days after request from any Leasehold Mortgagee, advise such Leasehold Mortgagee of the amounts then claimed by Landlord to be due under this Lease.

(ii) Said Leasehold Mortgagee, Leasehold Mortgagee Affiliate or Permitted Purchaser shall pay to Landlord as they become due, Periodic Rent and any other amounts hereunder and, at the time of execution and delivery of said new lease, any and all sums which would at the time of execution and delivery thereof, be due pursuant to this Lease but for such termination, and in addition thereto, any expenses, including reasonable attorneys' fees, to which Landlord shall have been subjected to by reason of such Event of Default and termination, less the net income actually collected by Landlord subsequent to the termination of this Lease and prior to execution of the new lease as rental payments; any excess of such net income over the aforesaid sums and expenses shall be applied in payment of the Periodic Rent thereafter becoming due under the new lease.

(iii) Said Leasehold Mortgagee, Leasehold Mortgagee Affiliate or Permitted Purchaser shall cure all past defaults and remedy any other conditions which Tenant

under the terminated lease was obligated to perform under the terms of this Lease, whether before or after the default or execution and delivery of a new lease.

(iv) The Leasehold Mortgagee, Leasehold Mortgagee Affiliate or Permitted Purchaser shall have the same right, title and interest in and to the Property and Improvements thereon as Tenant had under the terminated lease, to the extent that priority of interest may be preserved by law or by the inclusion in this Lease of the right to obtain such new lease; and, notwithstanding the reference to such new lease as a "new lease" such "new lease" shall be a continuation or extension of this Lease; and in the event that any Leasehold Mortgagee, Leasehold Mortgagee Affiliate or Permitted Purchaser shall exercise its right to such new lease, such new lease shall be considered for all purposes a continuation or extension of this Lease, without lapse or break in continuity of Tenant's interest or of the Term, and the termination from which the right to such new lease has arisen shall be deemed void ab initio except to the extent of terminating the rights of the then Tenant, transferring all such rights to the Leasehold Mortgagee, Leasehold Mortgagee Affiliate or Permitted Purchaser electing the new lease, and forming the basis for such election.

(v) Landlord shall assign its interest, if any, in all applicable leases and subleases then in force for all or a portion of the Property to the Leasehold Mortgagee, Leasehold Mortgagee Affiliate or Permitted Purchaser under the new lease and deliver to said Leasehold Mortgagee, Leasehold Mortgagee Affiliate or Permitted Purchaser all unapplied security deposits, if any, which were delivered to Landlord and the income thereon. Such assignment shall be effective as of the termination of the terminated lease and all rights of Tenant (sublessor) thereunder shall be transferred to the new tenant.

(i) In the event any Leasehold Mortgagee, Leasehold Mortgagee Affiliate or Permitted Purchaser becomes the Tenant under this Lease as a result of foreclosure or conveyance in lieu thereof, or under a new lease, as provided herein, such Leasehold Mortgagee, Leasehold Mortgagee Affiliate or Permitted Purchaser shall be required, as a condition to Landlord's recognition of such party as the Tenant under this Lease, to cure all previous Events of Default hereunder (except as set forth in Section 28.09 and except for any previous default under Section 31.03(b)) that are capable of being cured or performed by such transferee. Following such cure, each such party shall be personally liable for the obligations of Tenant under this Lease or the new lease (as applicable) only insofar as they arise during the period of time that such party remains the beneficial holder of the leasehold estate under this Lease.

(j) The name of the Leasehold Mortgagee may be added as a named insured to any insurance carried by Tenant, provided insurance proceeds are first used for repair and restoration, and provided, further, that said addition has no effect upon the rights of Landlord hereunder.

(k) Whenever requested in writing by any Leasehold Mortgagee, Leasehold Mortgagee Affiliate or Permitted Purchaser, Landlord shall, within twenty (20) days after such request, execute, acknowledge and deliver to such Leasehold Mortgagee, Leasehold Mortgagee Affiliate or Permitted Purchaser a certificate certifying (1) 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), (2) the dates, if any, to which the Periodic Rent and

Additional Rent and any other sums payable with respect to this Lease have been paid, (3) the Commencement Date and expiration date of the Term of this Lease, (4) whether or not to the knowledge of Landlord, there are then existing any Events of Defaults under this Lease (and, if so, specifying same), (5) whether there are any outstanding notices of Event of Default or termination, and the nature thereof, and (6) if notice of Event of Default has been given, the period remaining for the cure of said Event of Default as then estimated by Landlord.

(l) The making of any Leasehold Mortgage shall not, by itself, 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.

(m) All notices to which any Leasehold Mortgagee shall be entitled under this Article from Landlord shall be sent by certified or registered mail, return receipt requested, and shall be marked LANDLORD'S NOTICE TO LEASEHOLD MORTGAGEE.

(n) Upon request, Landlord agrees to execute, acknowledge and deliver to the Leasehold Mortgagee an agreement, prepared by the Leasehold Mortgagee at Tenant's sole cost and expense, agreeing to the foregoing provisions.

ARTICLE 10. MAINTENANCE

Section 10.01 Tenant Responsible for Maintenance and Repair.

(a) Tenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Property, including paved and unpaved ground surfaces and landscaping and the gangways, gangplanks and ramps, whether or not they cross the boundary of the Property, from and after the Commencement Date. Tenant shall make all repairs, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen or unforeseen, which may be necessary to maintain the Property and Improvements at all times in as good condition as exists on the Commencement Date, and in a reasonably clean, safe, attractive and sanitary condition. Tenant's repair, restoration, and maintenance activities shall be performed in a manner consistent with commercially reasonable maintenance at other first-class marina facilities in the San Francisco Bay region. Tenant specifically agrees to provide and maintain proper containers for trash and garbage, screened from public view, and to keep the Property (including those sections of riprap shoreline that are within or contiguous to the Property) free and clear of rubbish and litter. Landlord shall not be responsible for the performance of any repairs, changes or alterations to the Property, nor shall Landlord be liable for any portion of the cost thereof, except for repairs necessitated by the gross negligence or willful misconduct of Landlord or Landlord's Agents after the Commencement Date or as otherwise provided in this Lease.

(b) Without limiting Tenant's obligations under this Section 10.01, Tenant shall each year set aside and accrue at least five percent (5%) of that year's annual Gross Income, from all categories, to repair and maintain the Property. Unspent portions of this five percent

(5%) shall accumulate with, and not substitute for, the five percent (5%) maintenance set aside for any subsequent year(s). For purposes of this Section 10.01(b), the costs of Tenant's capital improvements and reasonable overhead allocable to same shall qualify as expenditures for repair and maintenance of the Property.

(c) Tenant shall keep and maintain records of all expenditures and accruals pursuant to this Section 10.1 and shall provide reasonable proof of such expenditures and accruals, and /or make Tenant's records of such expenditures and/or accruals, available to Landlord, at Landlord's reasonable request.

Section 10.02 Intentionally Omitted.

Section 10.03 Landlord's Maintenance. Landlord shall, at its sole cost and expense, (1) perform future breakwater repair as necessary; and (2) repair as necessary the riprap and the structural components of the riprap shoreline and the esplanade within and contiguous to the Property (each as shown in Exhibit A-1, and together with all their components, systems, members and features, "Landlord's Maintenance Property"). Landlord's future use and development of Landlord's Maintenance Property shall not materially interfere with Tenant's use of and operations at the Property as such existed on the Commencement Date. The exclusion of Landlord's Maintenance Property from Tenant's repair and maintenance obligations under this Article 10 shall not relieve Tenant from the obligation to repair and restore any damage to Landlord's Maintenance Property caused by Tenant or Tenant's Agents, their use of the Property, or by improvements constructed by or on behalf of Tenant, and Tenant hereby agrees to perform such repair or restoration work at Tenant's sole cost and expense.

Section 10.04 Dredging. To the degree required, as indicated by the Bathymetric Survey, Landlord previously dredged the Channel Entrance to a depth of eleven (11) feet below mean lower low water ("MLLW"). Landlord shall periodically thereafter dredge the Channel Entrance and the access channel to the Marina Fairway (but not the Marina Fairway) as needed when the floor thereof is less than eight (8) feet below MLLW. Tenant shall have responsibility for dredging the Property and the Marina Fairway to the depths required for the operation of the Marina; provided, however, that Tenant shall never dredge the Property and the Marina Fairway beneath the floor levels shown on the Bathymetric Survey without the written consent of Landlord, which Landlord may withhold in its sole discretion.

Section 10.05 Failure to Repair by Tenant. If Tenant defaults in its obligation to make any repairs or replacements as required by this Lease, Landlord may make or arrange for such repairs or replacements, and Tenant shall reimburse Landlord for all costs associated therewith, including but not limited to the cost of labor, overhead, materials and equipment, together with interest thereon calculated as the highest rate allowed by law or three percent (3%) over the Bank of America prime rate, whichever is lower. Landlord shall provide notice to Tenant on or prior to commencing action under this Section 10.05, but shall not be required to wait or to undertake additional delay therefor.

ARTICLE 11. CAPITAL IMPROVEMENTS

Section 11.01 Capital Improvements. The Parties anticipate that Tenant will from time to time make capital improvements to the Property. Prior to undertaking any material capital improvements, whether mandatory (because required by Tenant's obligations under this Lease (including without limitation Articles 10 and 12) or voluntary, Tenant shall provide Landlord with detailed plans and specifications for such capital improvements, together with evidence of its contractors' and subcontractors' insurance in conformity with the provisions of this Lease. All capital improvements, whether mandatory or voluntary, shall be subject to, and made in compliance with, the requirements of this Article 11.

Section 11.02 Compliance. All capital improvements by Tenant or Tenant's Agents, whether voluntarily undertaken or undertaken in order to comply with Tenant's obligations under this Lease, shall be made in material compliance with all applicable permits, authorizations, building and zoning laws and with all other Laws, including Environmental Laws. Tenant shall properly dispose of any contaminated soil and other material that is Released from the Property by Tenant or Tenant's Agents as a result of construction thereon. Tenant understands and agrees that Tenant's use of the Property and alterations thereto may require authorizations, approvals or permits from governmental agencies with jurisdiction over the Property. To the extent such approvals or permits are required, Tenant shall be solely responsible for obtaining any and all such regulatory approvals, including without limitation any regulatory approvals required to be obtained from City acting in its governmental capacities. Tenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval(s) and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be timely and promptly paid and discharged by Tenant, subject to Tenant's rights of appeal thereof, and Landlord shall have no liability, monetary or otherwise, for any such fines or penalties. Tenant shall indemnify, protect, defend and hold harmless forever Landlord and Landlord's Agents against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards, including, without limitation, reasonable attorney and consultant fees (together, "Losses") arising in connection with Tenant's failure to obtain, maintain, or comply in all material respects with the terms and conditions of any regulatory approval, except to the extent that such Losses are caused by the gross negligence or willful misconduct of Landlord or Landlord's Agent. In its proprietary capacity, Landlord shall reasonably cooperate with Tenant with respect to Tenant's obligations under this Section 11.02.

Section 11.03 Landlord's Consent in Proprietary Capacity. City, in addition to any right it may have to review and approve any capital improvement of Tenant in its governmental capacity, shall have the right to remove and reasonably approve all proposed capital improvements in its proprietary capacity as Landlord under this Lease. Accordingly, Tenant shall be required to obtain Landlord's prior written approval in its proprietary capacity of each capital improvement unless such capital improvement(s) cost less than an aggregate of Five Hundred Thousand Dollars (\$500,000.00) in a given Accounting Year and could not reasonably be expected to diminish the value of the Property.

Section 11.04 Disclaimer. Nothing in this Section shall be construed to obligate Tenant to make such capital improvements or repairs that are the responsibility of Landlord under Section 10.03 herein.

Section 11.05 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 and to the extent the same will not materially increase Tenant's cost of doing business, Tenant will adopt sales and use tax reporting procedures which will provide the Landlord the greatest benefit from the allocation of the local 1% share of California sales and use taxes. Tenant agrees to designate the City as the qualifying point of sale for all retail sales, and register such with the State of California Board of Equalization; to report properly consumer use tax; to request vendors to cooperate with Landlord with regard to vendor use tax reporting; and to request that qualified construction contractors cooperate with Landlord with regard to job site allocations of sales and use taxes. Tenant shall exercise commercially reasonable efforts to encourage all businesses that perform services or provide products at the site of Tenant's operations to obtain and maintain a Business License from City.

Section 11.06 Financial Ability. Without limiting the other requirements of this Article 11, prior to the commencement of any construction on the Property, Tenant shall provide to Landlord evidence reasonably satisfactory to Landlord of Tenants ability to satisfy the costs of such construction.

ARTICLE 12.
REQUIREMENTS OF PUBLIC AUTHORITIES AND OF INSURANCE
UNDERWRITERS AND POLICIES

Section 12.01 Tenant's Legal Compliance.

(a) Tenant shall at its own cost and expense promptly comply in all material respects with (i) any and all present and future Laws of any present or future federal, state, city, county or other authority having jurisdiction over the Property or any street, avenue or any sidewalk in front thereof or any vault in or under the same, and of any and all of their departments and bureaus, including, but not limited to all Environmental Laws and the terms, conditions and requirements of BCDC Permits Nos. 11-78, 25-82 and 6-88; (ii) any and all applicable Fire Rating Bureau or other body exercising similar functions affecting the Property or requiring the removal of any encroachment or affecting the maintenance, use or occupation of the Property, whether or not the same involves or requires any structural change or addition in or to the Property, and irrespective of whether or not such changes or additions be required on account of any particular use to which the Property, or any part thereof, may be put by Tenant or Landlord; and (iii) any and all provisions and requirements of any fire, liability or other insurance policy required to be carried by Tenant under the provisions of this Lease.

(b) After the Commencement Date, BCDC may require Landlord and Tenant to be co-permittees under any new BCDC permits or any amendments to the BCDC permits specified in Section 12.01(a). Each Party agrees promptly to execute and deliver such further documents and to perform such further acts as may be necessary to allow Tenant to become such

a co-permittee, provided that Landlord shall not be required to execute and deliver any document or to perform any act which might result in (i) the imposition of any material liability or obligation upon Landlord, (ii) any violation of any Law or (iii) any material expansion of any rights of Tenant under this Lease beyond those contemplated by the Parties on the Commencement Date.

Section 12.02 Landlord's Compliance. Landlord shall comply in all material respects with the terms, conditions and requirements of BCDC Permits Nos. 11-78, 25-82 and 6-88.

Section 12.03 Intentionally Omitted.

ARTICLE 13. LANDLORD ACTING IN PROPRIETARY CAPACITY

Section 13.01 Preservation of Landlord's Governmental Capacity. Tenant understands and agrees that City is entering this Lease in its capacity as a property owner with a proprietary interest in the Property and not in its capacity as a governmental or regulatory agency with police powers, and any obligation(s) or restriction(s) imposed by this Lease on Landlord shall be limited to Landlord's proprietary capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect the governmental and regulatory capacities of Landlord, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions pursuant to federal, state and/or local law. Nothing in this Lease shall limit in any way Tenant's obligation to obtain any required approvals from City officials, departments, boards or commissions having jurisdiction over the Property, nor shall anything in this Lease be deemed a waiver of any governmental or regulatory requirements by any City official, department, board or commission. By entering this Lease, Landlord is in no way modifying or limiting Tenant's obligation to use the Property in accordance with all applicable Laws, as provided in this Lease, or making any representations or warranties, express or implied, regarding its present or future exercise of its governmental and regulatory authority with respect to Tenant or the Property.

ARTICLE 14. LANDLORD NOT LIABLE FOR INJURY OR DAMAGE

Section 14.01 Limitation on Liability. Landlord shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening, on or after the Commencement Date, on, in or about the Property and its appurtenances, nor for any injury or damage to 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 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, areas of egress or ingress, or which may arise from any other cause whatsoever, except to the extent caused by the gross negligence or willful misconduct of Landlord or Landlord's Agents or their breach of any of its representations and/or obligations hereunder.

ARTICLE 15.
INDEMNIFICATION OF LANDLORD

Section 15.01 Tenant's Indemnification of Landlord. In addition to any other indemnities to Landlord specifically provided in this Lease, Tenant shall indemnify, defend, protect, and save harmless Landlord and Landlord's Agents from and against all liabilities, suits, obligations, fines, damages, penalties, demands, claims, costs, charges and expenses, including without limitation reasonable fees of attorneys, architects and consultants, which may be imposed upon or incurred by or asserted against Landlord and arising directly or indirectly out of any of the following (except to the extent accrued prior to the Commencement Date or caused by the gross negligence or willful misconduct of Landlord or Landlord's Agent, or Landlord's breach of any of its representations and/or obligations hereunder):

(a) any work, act or event occurring on the Property or any part thereof, or any work, act or event occurring in any area adjacent to the Property and related to the activities of Tenant or Tenant's Agents;

(b) any use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Property or any part thereof;

(c) any negligence on the part of Tenant or any of Tenant's subtenants, contractors, employees, licensees or invitees;

(d) any lien or claim which may be alleged to have arisen against or on the Property under the laws of the State of California or of any other governmental authority;

(e) any breach by Tenant of any of its representations and/or obligations under this Lease; or

(f) any failure on the part of Tenant to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in any Leasehold Mortgage or in any subleases or other contracts or agreements affecting the Property, on Tenants part to be kept, observed or performed.

This Article 15 shall survive the expiration or termination of this Lease.

ARTICLE 16.
LANDLORD'S RIGHT OF ACCESS

Section 16.01 Access. Landlord, Landlord's Agents, and DBAW shall have the right to enter onto the Property or any portion thereof at all reasonable times and upon not less than 24 hours oral or written notice to Tenant (except in the case of emergency access by Landlord or Landlord's Agents) in order to review the condition of the Property and to perform Landlord's obligations or to exercise Landlord's rights hereunder. An emergency is any event or circumstance which poses an imminent threat to life or property.

Section 16.02 Emergency Access. In the event of emergency access, Landlord shall have the right to enter without notice and shall not be responsible for any damage or injury to any

property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Property, or an eviction, actual or constructive, of Tenant from the Property or any portion thereof.

Section 16.03 No Liability. Landlord shall not be liable in any manner, and Tenant hereby waives any claims, for any inconvenience, disturbance, loss of business, loss of revenue, loss or profit, nuisance or any other damage arising out of Landlord's entry onto the Property, except damage resulting from the gross negligence or willful misconduct of Landlord or Landlord's agents.

ARTICLE 17. LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

Section 17.01 Landlord's Right to Cure Tenant Defaults. If Tenant shall at any time fail to pay any Tax in accordance with the provisions hereof, or to take out, pay for, maintain or deliver any of the insurance policies provided for herein, or shall fail to make any other payment or perform any other act on its part to be made or performed under this Lease, then Landlord, without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall be under no obligation to):

- (a) pay such Tax payable by Tenant pursuant to the provisions hereof;
- (b) take out, pay for and maintain any of the insurance policies provided for herein; or
- (c) make any other payment or perform any other act on Tenant's part to be made or performed under this Lease. Landlord may, after such notice as is provided for herein, enter upon the Property for the purpose of curing Tenant's defaults and take all such action thereon as may be necessary to effect such cure.

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 the highest rate allowed by law or five percent (5%) over the Bank of America prime rate, whichever is lower, from the respective dates of Landlord's making of each such payment and giving written notice of same to Tenant, shall be paid by Tenant to Landlord on demand. Any payment or performance by Landlord pursuant to the foregoing provisions of this Article shall not be nor be deemed to be a waiver or release of the default or Event of Default of Tenant with respect thereto or of the right of Landlord to terminate this Lease, institute summary proceedings and/or take such other action as may be permissible hereunder in the event of default or Event of Default by Tenant.

ARTICLE 18. PERMITTED USE

Section 18.01 Permitted Use. Tenant shall use, operate and manage the Property only and exclusively for the purposes of (i) berthing, fueling, and storing boats; (ii) providing berthing spaces for owners of boats who wish to reside on their boats; (iii) other uses that are generally consistent with waterfront recreation areas; and (iv) providing services related to any the

activities described in subsections (i)-(iii), or any other commercially reasonable services arising in connection with operation of the Marina, such as lockers, food, beverage and goods concessionaires, and other services. Other uses, activities and programs must receive the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Tenant shall provide security protections to the Premises at a level at least equal to the level customarily provided at Northern California marinas comparable to the Marina. Nothing in this Section shall be construed as Landlord's permission for uses that require a use permit or other approval by the City, unless such permit or approval is properly obtained.

Section 18.02 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, noisy, hazardous or illegal business, use or purpose, or for any business, use or purpose in any way in violation of any present or future Laws. Tenant shall immediately upon the discovery of any such unlawful or illegal use take all reasonable steps, legal and equitable, to compel the discontinuance of such use and to oust and remove any subtenants, occupants, licensees, invitees, or other persons guilty of such unlawful or illegal use.

Section 18.03 Landlord's Use.

(a) Landlord and their officials and employees shall have the right to use, in their official capacity, the boat launch ramp and up to six (6) boat side-ties at no cost or expense to Landlord.

(b) Intentionally omitted.

(c) Landlord and its designees (including without limitation the Marina Bay Neighborhood Council) shall have the continuing right to use the Property, including without limitation the Harbormaster Building, the Boathouse and the docking berths for the Sea Scouts/Northland Nautical Foundation, for public events and activities (including without limitation public water-related activities) throughout the Term. Tenant shall have the right to charge Landlord or its designees, as appropriate, for such uses and activities at such reasonable and non-discriminatory rates as shall be set by Tenant from time to time. Landlord shall deliver a reservation notice to Tenant no less than sixty (60) days in advance of any proposed use or activity by Landlord or its designees. So long as the facility in question has not already been booked for the date and activity requested, Tenant shall use its best commercial efforts to accommodate such reservation.

(d) Intentionally omitted.

Section 18.04 Public Use. The general public "shall at all times have the right and ability to gain access to the shoreline of San Francisco Bay and the Marina, as further provided in the BCDC permits applicable to the Property, the Restructured DBAW Loans, and certain Laws of the State of California, including California Harbors and Navigation Code § 40.

ARTICLE 19.
DEFAULT, REMEDIES, ETC.

Section 19.01 Event of Default. Each of the following events shall be an “Event of Default” hereunder:

(a) Any action taken or suffered by Tenant under any insolvency or bankruptcy act, including the appointment of a receiver to take possession of all or substantially all of the assets of Tenant, provided that if such action is not initiated by Tenant, Tenant shall have sixty (60) days in which to terminate, set aside, or dismiss such action;

(b) Any general assignment by Tenant on behalf of creditors;

(c) Any vacation or abandonment of the Property by Tenant for more than thirty (30) consecutive days, except to the extent such abandonment is caused by Unavoidable Delay or by damage or destruction covered by Section 7.01 or 7.02 of this Lease;

(d) Any failure by Tenant to make any scheduled monetary payment where delinquency continues for ten (10) days after the due date of the payment, or any failure by Tenant to make any unscheduled monetary payment to payment where delinquency continues for ten (10) days after Tenant’s receipt of written notice of such delinquency from Landlord; or

(e) Any failure by Tenant to perform or comply with any other term, covenant, or condition contained in this Lease within thirty (30) days after Tenant’s receipt of Landlord’s written notice of default; provided, however, that if the default is of such a nature that it cannot reasonably be cured within a thirty (3.0) day period, such failure shall not constitute an Event of Default so long as Tenant, after receiving such notice, begins to cure the default as soon as reasonably possible and diligently continues in good faith to take all steps necessary to complete the cure as soon as reasonably possible; provided further, however, that such default must in all events be finally cured within one-hundred twenty (120) days after Tenant’s receipt of Landlord’s initial notice of default.

Section 19.02 Termination of Lease. In the event of an occurrence of an Event of Default Landlord may, at its option, terminate this Lease by giving Tenant written notice, and thereupon this Lease shall cease and terminate and Tenant’s rights in and to the Property shall also terminate, and Tenant shall quit and surrender possession of the Property; provided, however, that such termination shall not relieve Tenant from its obligation to pay any Rent or any other sums then due and payable to Landlord hereunder or from any obligations which survive the expiration or termination of this Lease, and Landlord may recover any such Rent or other sums by any means allowed under applicable Law.

Section 19.03 Landlord’s Rights and Remedies. In the event of any Event of Default or breach of this Lease by Tenant, Landlord’s obligations under this Lease shall be suspended and Landlord may at any time thereafter, without limiting Landlord in the exercise of any other right or remedy at law or in equity which Landlord may have (all remedies provided herein being non-exclusive and cumulative), do any one or more of the following:

(a) This Lease shall continue in effect so long as Landlord does not terminate Tenant's right to possession of the Property after a breach of this Lease, and Landlord may enforce all of its rights and remedies, including the right to recover Rent as it becomes due; and

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

(c) After notice as provided herein, Landlord may elect to terminate this Lease after the occurrence of any Event of Default and in such case Landlord may declare this Lease and Tenant's right to possession terminated and reenter the leased Property and remove Tenant's property therefrom and store such property for Tenant's account and at Tenant's expense.

(d) If this Lease terminates, Landlord shall be entitled to recover from Tenant:

(i) the worth at the time of award of the unpaid Rent which had been earned at the time of termination;

(ii) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;

(iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of the award exceeds the amount of each such rental loss that the Tenant proves could be reasonably avoided; and

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

(e) The "worth at the time of award" of the amounts referred to in subsection (i) and (ii) of subdivision (d) shall be computed by allowing interest at the highest rate then allowed by Law. The worth at the time of award of the amount referred to in paragraph (iii) of subsection (d) shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

Section 19.04 Tenant's Rights and Remedies. If Landlord defaults in the performance of its obligations hereunder, then Tenant shall be entitled to exercise all rights and remedies available to Tenant at law and equity if Landlord has not commenced curing such default within forty-five (45) days after receipt of written notice from Tenant specifying such default.

ARTICLE 20.
NOTICES

Section 20.01 Definition of Notice. As used in this Lease, notice includes but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver and appointment.

Section 20.02 Requirements. All notices must be in writing, except as otherwise provided in this Lease.

Section 20.03 Delivery. All notices shall be delivered via confirmed facsimile, overnight courier, by hand delivery or by certified mail, return receipt requested, to the appropriate party at the addresses set forth below. All communications shall be deemed served upon delivery of, or if mailed, upon the first to occur of receipt or the expiration of three (3) days after the deposit in the United States Postal Service mail, postage prepaid and addressed to the address specified below or, if transmitted via facsimile, upon electronic confirmation of receipt; provided, however, that non-receipt of any communication as the result of any change of address or facsimile number 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's Office, City of Richmond
450 Civic Center Plaza
Richmond, CA 94804-1630
Attn: Shasa Curl, City Manager
Phone: 510-620-6512
Fax: 510-620-6542

Notice to Tenant:

SHM MBYH, LLC
c/o Safe Harbor Marinas, LLC
14785 Preston Road, Suite 975
Dallas, TX 75254
Attn: Legal
Phone: 972-488-1314

Section 20.04 Other Parties. Either Party and any Leasehold Mortgagee or Institutional Lender 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 21. CONDEMNATION

Section 21.01 Date of Condemnation. The Property or any portion thereof shall be deemed to have been taken or condemned on the earlier of (a) the date on which actual possession of the Property or such portion is acquired by the condemning authority or (b) the date on which title to the Property or such portion vests in such condemning authority.

Section 21.02 Total Taking. If a Total Taking shall occur, then this Lease shall terminate on the date of such taking and the Periodic Rent and other sums and charges herein provided to be paid by Tenant shall be apportioned and paid to the date of such taking. If this Lease terminates as provided in this Section 21.02, each of Landlord and Tenant shall have the right to seek a condemnation award and such award shall be apportioned between Landlord and Tenant under then applicable Law as their interests may appear. The parties to this Lease hereby waive the provisions of California Code of Civil Procedure § 1265.130. This Lease shall not terminate due to Tenant's determination that the taking involves "substantially all of the Marina" without the first priority Leasehold Mortgagee's prior written consent, unless the indebtedness of Tenant to such Leasehold Mortgagee is paid in full.

Section 21.03 Partial Taking.

(a) If a Partial Taking shall occur, then this Lease shall terminate as to the portion(s) so taken but shall remain in effect as to the portion(s) not so taken; provided, however, that in such event, each of Landlord and Tenant shall execute any and all documents that may be required in order to facilitate collection of any and all condemnation awards from the condemning authority, but such award shall be apportioned between Landlord and Tenant as follows:

(i) There shall be first paid any and all reasonable fees and expenses incurred by Landlord, and then by Tenant, in connection with the collection of the award(s);

(ii) Remaining proceeds, if any, shall be applied to repair, rebuild or restore any remaining part of the Improvements not taken, provided, however, that (a) if so required by either DBAW (as to Landlord's proceeds) or any Leasehold Mortgagee (as to Tenant's proceeds), such funds as may be necessary shall first be applied to the unpaid debts owed to DBAW or such Leasehold Mortgagee(s), as the case may be, followed then by the protection of Improvements as set forth in this Section 21.03(a)(ii) and (b) if required by both DBAW and any Leasehold Mortgagee, such funds as may be necessary shall be applied first to the unpaid debts of DBAW and second to the unpaid debts of such Leasehold Mortgagee(s), respectively, followed then by the protection of Improvements as set forth in this Section 21.03(a)(ii). Tenant shall perform such repair, rebuilding or restoration in accordance with the applicable requirements of this Lease; and

(iii) Remaining proceeds, if any, shall be distributed to Landlord and Tenant as if they were proceeds of a Total Taking.

(b) In the event of a Partial Taking, and from the date thereof, Annual Minimum Rent shall be reduced by a fraction, the numerator of which is the number of slips

remaining at the Marina following the taking, and the denominator of which is the number of slips existing immediately prior to the date of the Partial Taking, provided, however, at no time shall the Annual Minimum Rent be reduced below Seventy-Five Thousand Dollars (\$75,000) per year, and the percentages of the categories of Gross Income set forth in Article 3 shall remain the same following any Partial Taking.

Section 21.04 Temporary Taking. If a temporary taking shall occur with respect to the use or occupancy of the whole or any part of the Marina for a period greater than one hundred and twenty (120) days, for any public or quasi-public purpose by any lawful power or authority, by the exercise of the power of condemnation or by agreement under threat thereof, then Tenant shall, at its option, be entitled to terminate this Lease effective as of the commencement of such temporary taking. If the temporary taking relates to a period of one hundred and twenty (120) days or less, or if Tenant does not elect to terminate this Lease, then all proceeds and awards relating to such temporary taking (to the extent attributable to periods within the Term) shall be paid to Tenant, and Tenant's obligations under this Lease shall not be affected in any way; provided, however, that if such temporary taking shall be for a period extending beyond the expiration of the Term, Landlord shall be entitled to receive such portions thereof attributable to the period after such expiration on a straight-line pro-rata apportionment.

Section 21.05 Other Governmental Action. In case of any governmental action not resulting in the taking or condemnation of any portion of the Property but creating a right to compensation therefor, such as the changing of the grade of any street upon which the Property abuts, this Lease shall continue in full force and effect without reduction or abatement of Rent and the award shall be paid to Tenant.

Section 21.06 Certain Proceeds. If in connection with any condemnation or conveyance in lieu thereof Landlord receives any proceeds which are required to be paid to Tenant, Landlord shall deliver such proceeds to the highest priority Leasehold Mortgagee of whose address has been provided to Landlord in accordance with Article 9.

ARTICLE 22. IMPROVEMENTS

Section 22.01 Ownership of Improvements. All Improvements located on the Land on the Commencement Date shall be the property of Landlord. Any Improvements erected on the Property by Tenant (including Original Tenant) during the Term shall be the property of Tenant during the Term, but shall become the property of Landlord upon the expiration or sooner termination of this Lease, without Landlord's payment of any consideration therefor. Notwithstanding Landlord's ownership of the improvements located on the Land on the Commencement Date, it is the intention of Landlord and Tenant that Tenant shall have the right to the federal income tax depreciation on all of the Improvements, whether owned by Landlord or Tenant, during the Term.

ARTICLE 23.
CERTIFICATES BY LANDLORD AND TENANT

Section 23.01 Tenant's Certificate of Lease. Tenant agrees at any time and from time to time upon not less than ten (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 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) and the dates to which the Rent, Taxes and other amounts and charges due under this Lease have been paid, and stating whether or not to the best knowledge of Tenant Landlord is in default in the performance of any covenant, agreement or condition contained in this Lease on Landlord's part to be performed and, if so, specifying each such default of which Tenant may have knowledge.

Section 23.02 Landlord's Certificate of Lease. Landlord agrees at any time and from time to time upon not less than twenty (20) days' prior notice by Tenant to execute, acknowledge and deliver to Tenant, or any Institutional Lender or other approved Leasehold Mortgagee, a statement in writing certifying 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) and the dates to which the Rent, Taxes and other amounts and charges due under this Lease have been paid, and stating whether or not, to the best knowledge of Landlord, Tenant is in default in the performance of any covenant, agreement or condition contained in this Lease on Tenant's part to be performed, and, if so specifying each such default of which Landlord may have knowledge.

ARTICLE 24.
LANDLORD'S CONSENTS

Section 24.01 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 24.02 Reasonable Modifications, of Lease. Landlord shall consent to any commercially reasonable modifications of this Lease required by any Leasehold Mortgagees, provided that such modifications do not change the fundamental economic terms of the Lease or, in Landlord's sole opinion, materially adversely affect its interests under this Lease. Where Landlord's consent is so requested, Landlord shall be reasonable in its consideration. Landlord's consent is deemed denied if not given within sixty (60) days of request.

ARTICLE 25.
SURRENDER AT END OF TERM

Section 25.01 Terms of Surrender. On the last day of the Term or upon any earlier termination of this Lease, or upon a re-entry by Landlord upon the Property pursuant to Article 19 hereof, Tenant shall surrender and deliver to Landlord the Property, without any payment or

allowance whatever by Landlord, (a) free and clear of all (i) lettings and occupancies other than subleases then terminable at the option of Landlord or subleases to which Landlord shall have specifically consented, and (ii) liens and encumbrances other than those, if any, existing at the date hereof or created by Landlord or subsequent owners of the Land, and (b) in good condition and repair, as required by this Lease, ordinary wear and tear excepted. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Property on any such termination date. Tenant hereby waives any claim to relocation benefits available to it under California or federal law as a result of the termination of this Lease.

Section 25.02 Holdover. Tenant shall not holdover after the termination, revocation or expiration of this Lease without the prior written approval of Landlord, which may be withheld in Landlord's sole discretion. Any unpermitted holdover shall be deemed an extension of this Lease upon a month-to-month basis upon the same terms and conditions as set forth in this Lease as such exist immediately prior to the commencement of the holdover period, except that Annual Minimum Rent shall be increased to one hundred twenty five percent (125%) of the Annual Minimum Rent applicable to the immediately preceding Accounting Year. In the event of any unpermitted holdover, Tenant shall be a tenant at sufferance.

ARTICLE 26. NO ORAL AGREEMENTS

Section 26.01 Integration. This Lease contains the entire understanding of the Parties. Tenant acknowledges that there is no other written or oral understanding between the Parties with respect to the Marina. No modification, amendment, or alteration of this Lease shall be valid unless it is in writing and signed by each of the Parties.

ARTICLE 27. QUIET ENJOYMENT

Section 27.01 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 subject and subordinate.

ARTICLE 28. ENVIRONMENTAL PROVISIONS

Section 28.01 Tenant's Compliance. Tenant, Tenant's Agents and Affiliates shall comply with all Environmental Laws affecting 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. In addition to the foregoing, Landlord and Tenant agree 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 Material except in material compliance with all Environmental Laws and as necessary for the operation of

Tenant's business (but in no event in excess of that required for the ordinary commercial operations of comparable marinas).

(b) Tenant shall comply, and shall cause Tenant's Agents, Affiliates, Slip Tenants and other Persons using or occupying all or a portion of the Property with Tenant's consent or to Tenant's knowledge to comply, with all Environmental Laws affecting the Property and shall notify Landlord of any Release or any violation of any Environmental Law affecting the Property that is actually known to Tenant. Tenant shall be responsible for all Environmental Liabilities and Costs and all Remedial Actions associated with any Release or threatened Release in, over, on, under or about the Property which occurs after the Commencement Date and which is caused by Tenant or any Tenant Agent, Affiliate, Slip Tenant, or other Person using or occupying all or a portion of the Property. Without limiting the foregoing (but subject to the provisions of this Article 28), Tenant shall be responsible for all Environmental Liabilities and Costs and all Remedial Actions associated with any Release or threatened Release in, over, on, under or about the Property which occurs after the Commencement Date and which is caused by Tenant or any Tenant Agent, Affiliate, Slip Tenant, or other Person using or occupying all or a portion of the Property in the course of Tenant's construction or dredging activities.

(c) Except as set forth in Section 28.01(d), Tenant shall have no liability or responsibility for Environmental Liabilities and Costs arising from Hazardous Materials present in, over, on, under or about the Property on or prior to the Commencement Date ("Pre-existing Hazardous Materials"), or the migration or threatened migration of Pre-existing Hazardous Materials within the Property or from the Property onto adjacent or other third-party property, including without limitation any liability or responsibility of Landlord with respect to Preexisting Hazardous Materials under the provisions of the Harding Lawson Associates Final Remedial Action Plan dated as of July 25, 1993, as amended from time to time (the "RAP").

(d) If any disturbance of Pre-existing Hazardous Materials occurs in the course of Tenant's construction or dredging activities (each a "Disturbance of Pre-existing Hazardous Materials"), or any Environmental Claim arises as a result of a Disturbance of Pre-existing Hazardous Materials which requires Remedial Action or other compliance with Environmental Laws with respect to Pre-existing Hazardous Materials in an area larger than that affected by the Disturbance of Pre-existing Hazardous Materials (each a "Follow-On Claim"), Tenant shall be responsible for such Disturbance of Pre-existing Materials and associated Follow-On Claims as set forth below. If any Disturbance of Pre-existing Materials occurs, Tenant shall immediately notify Landlord of such occurrence and shall promptly take all necessary Remedial Actions required to contain the Disturbance of Pre-existing Materials and inform Landlord of such actions.

(i) If the Disturbance of Pre-existing Hazardous Materials occurs in connection with Tenant's construction activities on the land portion of the Property, Tenant shall be responsible for all Environmental Liabilities and Costs associated with the Disturbance of Pre-existing Materials and all Follow-On Claims, as set forth in Article 11.

(ii) If the Disturbance of Pre-existing Hazardous Materials occurs in connection with Tenant's construction activities in the water portions of the Property, and Tenant has obtained Landlord's prior written consent to such construction activities in accordance with

this Agreement and complied in all material respects with all applicable Laws in connection with such activities, Tenant shall be responsible for all Environmental Liabilities and Costs associated with the Disturbance of Pre-existing Materials; provided, however, that in such event Tenant shall not be obligated to incur more than \$250,000 in costs in connection with any single Disturbance of Pre-existing Hazardous Materials and shall not be responsible for any Follow-On Claims. However, if Tenant failed to obtain Landlord's prior written consent and approval of the construction activities in accordance with this Agreement or failed to comply in all material respects with all applicable Laws in connection with such activities, then Tenant shall be responsible for all Remedial Activities required to contain the Disturbance of Pre-existing Materials and for all resulting Follow-On Claims.

(iii) If the Disturbance of Pre-existing Hazardous Materials occurs in connection with Tenant's dredging activities, and Tenant has obtained Landlord's prior written consent to dredge beneath the floor levels recorded in the Bathymetric Survey, then Tenant's responsibility for Environmental Liabilities and Costs associated with the Disturbance of Pre-existing Hazardous Materials and all Follow-On Claims shall be determined by the terms of Landlord's consent.

(iv) If the Disturbance of Pre-existing Hazardous Materials occurs in connection with Tenant's dredging activities, and Tenant has not obtained Landlord's prior written consent to dredge beneath the floor levels recorded in the Bathymetric Survey, Tenant shall be responsible for all Environmental Liabilities and Costs associated with the Disturbance of Pre-existing Materials. Tenant shall be responsible for all Follow-On Claims if Tenant intentionally dredged beneath such levels, but shall not be responsible for any Follow-On Claims if Tenant negligently dredged beneath such levels.

(e) For purposes of this Section 28.01, Tenant shall be deemed to have negligently dredged beneath the floor levels recorded in the Bathymetric Survey if Tenant failed to exercise reasonable management and control over its own operations or over the contractors, subcontractors or other Tenant Agents, Affiliates or Persons engaged in such activity on Tenant's behalf.

(f) In the event that an Environmental Lien is filed against the Property or any portion thereof as a result of any act or omission for which Tenant bears responsibility under this Article 28, Tenant shall immediately notify Landlord thereof and, within thirty (30) days from the date that Tenant receives notice that said Environmental Lien has been placed against the Property or within such shorter period of time as may be required to stay the enforcement of such Environmental Lien and to ensure that no portion of the Property shall be sold pursuant to any foreclosure of any such Environmental Lien, Tenant shall either (i) pay the claim and remove the lien from the Property or any portion thereof or (ii) institute at Tenant's sole cost and expense, and acting diligently and in good, faith, an appropriate legal proceeding to contest, object or appeal the validity of such Environmental Lien; provided, however, that 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 paragraph pending a final determination by appropriate administrative or judicial authority of the legality, enforceability or status of such Environmental Lien.

(g) Tenant shall cause all of Tenant's Agents, Affiliates, Slip Tenants and other Persons using or occupying all or any part of the Property to comply in all material respects with the representations, warranties and covenants contained in subparagraphs (a) through (f) above.

Section 28.02 Tenant's Indemnification of Landlord. Except as expressly set forth in Section 28.03, Tenant agrees to defend, indemnify and hold harmless Landlord and its respective Agents from and against any and all Environmental Liabilities and Costs which result directly or indirectly from (a) any violation of any Environmental Law with respect to all or any portion of the Property caused by Tenant or any of Tenant's Agents, Affiliates, Slip Tenants or other Persons using or occupying all or a portion of the Property after the Commencement Date; (b) any Environmental Liability or Cost and any Remedial Action associated with any Release or threatened Release in, over, on, under or about the Property which occurs after the Commencement Date and which is caused by Tenant or any Tenant Agent, Affiliate, Slip Tenant, or other Person using or occupying all or a portion of the Property; (c) any breach of any warranty or representation regarding environmental matters made by Tenant hereunder; (d) the migration, seepage, leaching or other movement of any Hazardous Materials which have been Released onto the Property by Tenant or any of Tenant's Agents, Affiliates, Slip Tenant or other Persons using or occupying all or a portion of the Property after the Commencement Date (regardless of whether, in the case of migration of Hazardous Materials into the soils beneath the water portions of the Property, such migration affects sediments lying beneath or above the levels recorded in the Bathymetric Survey); and (e) any obligation of Tenant with respect to Pre-existing Hazardous Materials under Section 28.01 above.

Section 28.03 Landlord's Indemnification of Tenant. Landlord agrees to defend, indemnify and hold harmless Tenant and its Affiliates and their respective Agents from and against any and all Environmental Liabilities and Costs which result directly or indirectly from (a.) any violation of any Environmental Laws at, in, under or about the Property, or any Environmental Claims, arising from acts, omissions or events which occurred prior to the Commencement Date (except for any Disturbance of Pre-existing Hazardous Materials or Follow-On Claim for which Tenant is responsible pursuant to Section 28.01 above); (b) any violation of any Environmental Law caused by the gross negligence or willful misconduct of Landlord or Landlord's Agents after the Commencement Date; (c) the presence or Release of any Pre-existing Hazardous Materials or any seepage, leaching or other movement, of any Pre-existing Hazardous Materials (regardless of whether, in the case of migration of Hazardous Materials into the soils beneath the water portions of the Property, such migration affects sediments lying beneath or above the levels recorded in the Bathymetric Survey (except for any Disturbance of Pre-existing Hazardous Materials or Follow-On Claim for which Tenant is responsible pursuant to Section 28.01 above); (d) any obligation of Landlord's with respect to Pre-existing Hazardous Materials under Section 28.01 above; and (e) any obligations and liabilities of Landlord under the RAP.

Section 28.04 Notification. The Parties agree that in the event that any investigation, litigation or proceeding is threatened in writing or instituted against either Tenant or Landlord, or any Remedial Action is requested of either Tenant or Landlord, for which the other Party hereto may be entitled to indemnification or defense hereunder, the Party against which the

investigation, litigation or proceeding is threatened or instituted shall promptly notify the other Party in writing.

Section 28.05 Indemnitees. Any Indemnatee may participate in the defense of any investigation, litigation or proceeding with legal counsel of their choice at their cost.

Section 28.06 Intentionally Omitted.

Section 28.07 Survival of Obligations. The provisions of this Article 28 shall survive the expiration or earlier termination of this Lease.

Section 28.08 Third Party Actions. Nothing in this Article 28 or this Agreement shall preclude or prejudice either Party's right or ability to assert a claim or bring an action against any responsible third party, including but not limited to the United States Government and certain Kaiser entities, under any state or federal statutory or common law concerning the environmental condition of the Property.

Section 28.09 Leasehold Mortgages. Anything to the contrary in Article 9 or in this Article 28 notwithstanding, the Leasehold Mortgagee shall not be obligated to cure any default of Tenant under this Article 28 or to indemnify any party or perform any Remedial Action at any time with respect to any Hazardous Materials existing or disturbed on the Property prior to the date that such Leasehold Mortgagee or its designee succeeds to the interest of Tenant under the Lease.

ARTICLE 29. INVALIDITY OF CERTAIN PROVISIONS

Section 29.01 Survival of Lease. 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.

ARTICLE 30. RECORDING OF MEMORANDUM

Section 30.01 Recording. Landlord and Tenant may execute and record in the official records a Memorandum of Lease and Tenant's rights thereunder, pertaining to the Property.

ARTICLE 31. REPRESENTATIONS AND WARRANTIES

Section 31.01 Mutual Representations and Warranties. On and as of the date hereof, each of Landlord and Tenant represents and warrants to the other Party as follows:

(a) The consummation of the transactions contemplated by this Lease are duly authorized by the appropriate authority and will not violate any provision of its governing

documents or require any notice, consent or filing or result in the breach of any term or provision of any contract, governmental regulation, judgment, decree, writ, injunction, order of any court or governmental authority or agreement to which it or any of its Affiliates are a Party or by which it or its Affiliates are bound;

(b) No action, suit or proceeding is pending or, to its actual knowledge, threatened against it or any portion of the Property which may adversely affect the consummation of the transaction contemplated by this Lease.

Section 31.02 Landlord's Representations and Warranties. On and as of the date hereof, Landlord represents and warrants to Tenant as follows:

(a) No eminent domain or condemnation action has been filed against the Property and, to Landlord's actual knowledge, there are no plans to file an action for eminent domain or condemnation against the Property, and Landlord has not received any notice from any governmental authority regarding the annexation of all or any portion of the Property;

(b) Except as previously disclosed to Tenant, there are no currently effective material contracts or agreements entered into by Landlord relating to the sale, management, maintenance, or operation of the Property;

(c) Except as previously disclosed to Tenant, to Landlord's actual knowledge the Property is not the subject of any government investigation;

(d) The Restructured DBAW Loans are all loans outstanding between Landlord and DBAW;

(e) There are no leases of the Property entered into by Landlord other than this Lease; and

(f) Except as previously disclosed to Tenant, Landlord is not now subject to, to Landlord's actual knowledge, nor has Landlord received or been served with any written notice of any liens or any written notices or reports of any material violation of any Law applicable to the Property (including without limitation any zoning ordinance or BCDC permit).

(g) Landlord has disclosed to Tenant all material documentation in its possession regarding the environmental condition of the Property and the immediately surrounding harbor.

(h) Landlord has, to Landlord's actual knowledge, followed and satisfied the requirements of California Harbor and Navigation Code § 72.

(i) As used in this Section 31.02, "to Landlord's actual knowledge" means to the actual, current knowledge of James Atencio.

Section 31.03 Tenant's Representations and Warranties. On and as of the date hereof, 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 Delaware 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 aide 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. Violation of this provision shall be deemed a material breach and an Event of Default. In the event the 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; and

(c) All information regarding Tenant and its members submitted by Tenant or such members in connection with approval of the assignment of the Existing Lease by Original Tenant to Tenant (including without limitation financial information and information regarding operations experience) has been true and correct in all material respects and has not omitted any information required to be disclosed in connection therewith in order for the disclosed information not to be materially misleading.

(d) The Marina Fairway, Channel Entrance and access channel between them, are adequate for the anticipated use of and access to the Marina.

Section 31.04 Condition of the Property.

(a) Tenant is leasing the Property in its "as-is condition" with all faults and without representation or warranty of any kind by Landlord, except as explicitly set forth in this Lease, and subject to all Laws. Tenant acknowledges that neither Landlord nor any of Landlord's Agents shall be deemed to have made or given (and Landlord hereby disclaims) any representation or warranty, express or implied, as to the value or condition of the Property or any other representation or warranty, express or implied, with respect to the Property, except as expressly set forth herein. This Lease is made subject to any and all easements, covenants, conditions, restrictions and other title matters and rights appurtenant to the Property or any portion thereof, whether or not of record, as further referenced in Section 33.01, including without all limitation all existing Slip Agreements.

(b) Without limiting the foregoing, Tenant acknowledges and agrees that, except as expressly set forth herein, neither Landlord nor any of Landlord's Agents have made, and Landlord hereby disclaims, any representations or warranties, express or implied, concerning

(i) title or survey matters affecting the Property; (ii) the physical, geological, seismological or environmental condition of the Property or any adjoining property, including without limitation the Remainder Inner Harbor; (iii) the quality, nature or adequacy of any utilities serving the Property; (iv) the feasibility, cost or legality of constructing any alterations or improvements on the Property; or (v) the safety of the Property, whether for the use of Tenant or any other person, including without limitation Tenant's Agents.

(c) Except to the extent Landlord expressly assumes liability for Environmental Liabilities and Costs pursuant to Article 28, Tenant hereby releases Landlord and Landlord's Agents from, and accepts and assumes, as between Landlord and Tenant, sole responsibility for, all claims, loss or liability, including third party claims and regardless of legal theory, arising by virtue of the physical or environmental condition of the Property or the use and condition of the Property after the Commencement Date. Tenant agrees to waive the benefits of California Code of Civil Procedure § 1542, which provides as follows:

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

ARTICLE 32. COVENANTS

Section 32.01 Slip Agreements.

(a) Tenant hereby covenants that it shall use its best commercial efforts to enter into Slip Agreements with responsible boaters for any slips which become vacant during the Term.

(b) Tenant hereby covenants that, notwithstanding any other provision of this Lease, so long as Landlord is indebted to DBAW under the Restructured DBAW Loans, all slip fees, slip rents, or other charges for services offered by Tenant at the Marina (collectively the "Slip Rates") shall be set at or above the Minimum Rate approved by the Council of the City of Richmond ("City Council") as provided in this Section 32.01(b). On or after April 1 of each calendar year, the City Council shall hold a public hearing to consider readjusting the Minimum Rate in conformity with California Harbors & Navigation Code § 71.8(a)(5) and (c), which provide that a Minimum Rate shall be set to cover the repayment of principal and interest on outstanding DBAW debts as well as Tenant's operating, maintenance and repair expenses. In determining whether to adjust the Minimum Rate, the City shall assume that all slips are occupied so as to spread the rate adjustment, if any, across all slips, and not just those which are actually occupied, and unless the City determines otherwise, the number and linear footage of slips covered by this Lease shall be based on the slips in existence as of the Commencement Date. In any given year during which the City determines that the Minimum Rate should be adjusted, it will make such determination no later than May 1, so long as by February 1 of that year Tenant has submitted its Annual Report for the preceding year, as required by this Lease. The date by which the City is required to make a Minimum Rate adjustment determination shall be extended by the number of days after February 1 that Tenant actually submits its Annual Report. Tenant may also submit such other information as Tenant believes it would be

commercially reasonable for the City Council to consider in adjusting the Minimum Rate. The City Council shall notify Tenant in writing within thirty (30) days in the event of any determination of a new Minimum Rate, and Tenant shall if necessary adjust its Slip Rates accordingly within thirty (30) days of its receipt of such notice, or as otherwise set forth in any existing Slip Agreement(s) as of Tenant's receipt of such notice.

Section 32.02 Live Aboards. Tenant hereby covenants that Tenant shall use at all times limit to seventy-five (75) the number of slips it rents to Slip Tenants who live on or in their vessels while docked in the Marina ("Live Aboards"), in accordance with a City program approved by the San Francisco Bay Conservation and Development Commission ("BCDC"). Tenant acknowledges that, unless and until otherwise approved by BCDC, Live Aboards shall be charged at the same berthing rates and utility charges as other Slip Tenants, and in addition shall be charged a live-aboard fee of no less than One Hundred Fifty Dollars (\$150) per month per berth. Nothing in this covenant shall otherwise limit Tenant in its full right to manage and control the Marina, including Tenant's right to charge each of its Slip Tenants, including Live Aboards, their pro-rata portion of insurance, maintenance, taxes and other expenses passed through to the Slip Tenants. Tenant shall assume the obligations of the Landlord for all the Slip Agreements, including those with Live Aboards, if any.

Section 32.03 Customer Service and Periodic Meetings. Subject to the other provisions of this Lease, Tenant hereby covenants that Tenant shall keep the Property open and operate the Marina in a commercially reasonable fashion as a public marina throughout the Term of this Lease, and shall maintain office hours every business day (except holidays) from 8:00 a.m. to 6:00 p.m., subject to Unavoidable Delay. Tenant shall establish a practice acceptable to Landlord to hear complaints of the Slip Tenants on an ongoing basis. In addition, Tenant shall hold a meeting once every six (6) months thereafter to address the concerns of a representative advisory board of Slip Tenants and any other community groups specified by Landlord.

Section 32.04 Compliance with Municipal and Health and Safety Codes.

(a) Tenant agrees to observe the provisions of Section 2.28.030 of the Municipal Code of the City of Richmond, obligating every contractor or subcontractor under a contract or subcontract with the City for public works or for goods or for services to refrain from discriminatory employment or subcontracting practices on the basis of the race, color, sex, sexual orientation, religious creed, national origin or ancestry of any employee, any applicant for employment or any potential subcontractor. Said Section 2.28.030 is, by this reference, made a part of this Lease.

(b) Tenant agrees to comply with all applicable provisions of Chapter 2.50 of the Municipal Code of the City of Richmond.

(c) Pursuant to Section 33436 of the California Health and Safety Code, Tenant covenants by and for itself and its administrators and assigns, and all persons claiming under or through it or them, and this Lease is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Property nor

shall Tenant itself, or any person claiming under or through Tenant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the Property.

Section 32.05 Intentionally Omitted.

Section 32.06 Compliance with Agreements. Tenant shall comply in all material respects with all easements, covenants, conditions, restrictions and other title matters and rights appurtenant to the Property or any portion thereof, whether or not of record, as denominated in Section 33.01, including without all limitation all existing Slip Agreements.

Section 32.07 Intentionally Omitted.

ARTICLE 33. EASEMENTS

Section 33.01 Existing Easements. This Lease and all rights given hereunder shall be subject to all recorded and unrecorded easements, rights-of-way and other encumbrances now existing or heretofore granted or reserved by the State of California, City, or third parties into or over the Property for any purpose whatsoever, and to 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 hereafter be determined by Landlord to be in the best interests of the development or use of the Property. Landlord agrees that any easements and rights-of-way subsequent to the Commencement Date shall be so located and installed as to not materially interfere with the business of Tenant. Tenant shall be obligated to make all payments of Rent notwithstanding the fact that the Tenant or the Landlord or any other Party lawfully exercises its rights under any such easement(s), right(s)-of-way or other encumbrances.

ARTICLE 34. MISCELLANEOUS

Section 34.01 Limitation on Landlord's Liability. Except to the extent Landlord expressly assumes liability for Environmental Liabilities and Costs pursuant to Article 28 and such liability is the subject of an Environmental Claim brought either by a federal, state or local agency which administers or enforces Environmental Laws or by any other third party, the liability of Landlord hereunder for damages or otherwise shall be limited to Landlord's interest in the Property including, without limitation, the proceeds of any insurance policies covering or relating to the Property, any proceeds received in connection with any sale of the Property, including, without limitation, any awards payable in connection with any condemnation of the Property or any part thereof and Landlord shall have no personal liability beyond its interest therein. Notwithstanding the foregoing, if Tenant negligently dredges beneath the floor levels recorded in the Bathymetric Survey (as described in Section 28.01(d)(iv) and (e)), the liability of Landlord hereunder for damages or otherwise shall be limited as set forth in the preceding sentence. Further, and notwithstanding anything to the contrary in this Lease, Landlord shall not be liable to Tenant or to any Tenant Affiliate or Agent for indirect or consequential damages, including without limitation any loss of profits, loss of business or loss or revenue, incurred as a

result of any Release or threatened Release of any Hazardous Material, any Remedial Action, any Environmental Claim or any violation of any Environmental Law.

Section 34.02 Signs. Tenant agrees not to construct, maintain or allow any sign, banner or flag on the Property except in conformity with applicable Law and as approved by Landlord, which approval shall not be unreasonably withheld or delayed. Unapproved signs, banners and flags shall be immediately removed by Tenant upon request of Landlord.

Section 34.03 Identification of Property. Signs, literature and advertising shall identify the Property, as far as reasonably practicable, as being owned by City and operated by Tenant as a public Marina. Such signs, literature and advertising shall be designed so as not to mislead the public into believing that the Property is private and not open to the general public. Signs shall be posted indicating that the Marina is open to the general public. Tenant shall also provide and maintain any signs required by agreements between City and DBAW or by any BCDC permit.

Section 34.04 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 34.05 Table of Contents. The table of contents preceding this Lease 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 34.06 Time of the Essence. Time is of the essence of each and every term and provision of this Lease.

Section 34.07 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 34.08 Neuter Pronoun. The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant, and the use herein of the words "successors and assigns" or "successors or assigns" of Landlord or Tenant shall be deemed to include the heirs, legal representatives and permitted assigns of any individual Landlord or Tenant.

Section 34.09 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 34.10 California Law. This Lease shall be governed by and construed in accordance with the laws of the State of California.

Section 34.11 Binding on Successors. 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, and permitted successors and assigns.

Section 34.12 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, disbursements, demands and expenses of any kind or nature (including, without limitation, reasonable attorney's fees and costs through all appellate actions and proceedings, if any). The foregoing shall survive until the termination of this Lease.

Section 34.13 Execution in Counterparts. This Lease may be executed in several counterparts and all such executed counterparts shall constitute one (1) 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 34.14 Relocation Benefits. As further and additional consideration for leasing the Property, Tenant does hereby voluntarily and knowingly release and forever discharge Landlord, and its successors and assigns, from any and all claims or demands for relocation assistance benefits which may arise by reason of Article 9 of Chapter 4 of Division 24 of the Health and Safety Code of the State of California, or by reason of Chapter 16 of Division 7 of Title I of the Government Code of the State of California, or by reason of the federal act entitled "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" (Public Law 91-646), as amended.

Section 34.15 Amendment and Restatement. Effective as of the date hereof, this Lease amends and restates the Existing Lease in its entirety.

[signature page follows]

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

LANDLORD:

CITY OF RICHMOND
a municipal corporation of the State of
California

By: _____

APPROVED AS TO FORM:

By:  _____
City Attorney

Attest

By: _____

TENANT:

SHM MBYH, LLC,
a Delaware limited liability company

By: _____

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

LANDLORD:

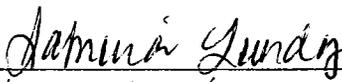
CITY OF RICHMOND
a municipal corporation of the State of
California

By: 
Thomas K. Butt, mayor

APPROVED AS TO FORM:

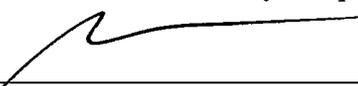
By: _____
City Attorney

Attest

By: 
Sabrina Lundy, Deputy City Clerk

TENANT:

SHM MBYH, LLC,
a Delaware limited liability company

By: 
Name: Baxter Underwood
Title: CEO

ACKNOWLEDGMENT

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

State of California
County of Contra Costa)

On December 12, 2022 before me, Sabrina Lundy, Notary Public
(insert name and title of the officer)

personally appeared Thomas K. Butt,
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 Sabrina Lundy (Seal)

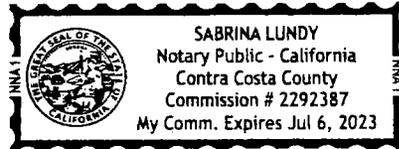


EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

See attached.

The Property does not include any minerals under the surface of the ground or seafloor and the rights to same.

Exhibit A

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All of the real property situated in the County of Contra Costa, City of Richmond, State of California, described as follows:

A LEASEHOLD ESTATE IN AND TO THE FOLLOWING:

Being Portions of Lots 17, 18, 31 and 32, Section 24, Township 1 North, Range 5 West, and Portions of Lots 22, 23, 24, 25, 26, 27 and 28, section 19, Township 1 North, Range 4 West, Mt. Diablo Base and Meridian as shown on the map entitled "Map No. 1 of Salt Marsh and Tide Lands", filed June 11, 1917, Rack Map No. 9, Contra Costa County Records, described as follows:

PARCEL A:

Lots 2 and 3, as shown on the Map of subdivision 6042, Marina Bay-Unit No. 2, filed April 27, 1983, in Book 269 of Maps, Page 29, Contra Costa County Records.

EXCEPTING THEREFROM:

All oil, gas, other hydrocarbon and mineral substances lying not less than 500 feet below the surface of said land provided that Grantor, its successors and assigns shall not have the right to go upon the surface of said land for the purpose of extracting said oil, gas, or other hydrocarbon and mineral substances, nor for any purpose in connection therewith, but shall have the right to extract and remove said oil, gas, and other hydrocarbon and mineral substances by means of slant drilled wells or similar methods located on adjacent or nearby land or by other means which shall not require entry upon the surface of said land, as reserved in the Deeds from Santa Fe Land Improvement Company, recorded September 16, 1977, in Book 8506, Pages 381 and 415, Official Records.

PARCEL B:

Lot 1, as shown on the Map of subdivision 6042, Marina Bay-Unit No. 2, filed April 27, 1983, in Book 269 of Maps, Page 29, Contra Costa County Records.

EXCEPTING THEREFROM:

All oil, gas, other hydrocarbon and mineral substances lying not less than 500 feet below the surface of said land provided that Grantor, its successors and assigns shall not have the right to go upon the surface of said land for the purpose of extracting said oil, gas, or other hydrocarbon and mineral substances, nor for any purpose in connection therewith, but shall have the right to extract and remove said oil, gas, and other hydrocarbon and mineral substances by means of slant drilled wells or similar methods located on adjacent or nearby land or by other means which shall not require entry upon the surface of said land, as reserved in the Deeds from Santa Fe Land Improvement Company, recorded September 16, 1977, in Book 8506, Pages 381 and 415, Official Records.

Exhibit A

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Lot 4, as shown on the Map of Subdivision 6042, Marina Bay-Unit No. 2, filed April 27, 1983, in Book 269 of Maps, Page 29, Contra Costa County Records.

EXCEPTING THEREFROM:

All oil, gas, other hydrocarbon and mineral substances lying not less than 500 feet below the surface of said land provided that Grantor, its successors and assigns shall not have the right to go upon the surface of said land for the purpose of extracting said oil, gas, or other hydrocarbon and mineral substances, nor for any purpose in connection therewith, but shall have the right to extract and remove said oil, gas, and other hydrocarbon and mineral substances by means of slant drilled wells or similar methods located on adjacent or nearby land or by other means which shall not require entry upon the surface of said land, as reserved in the Deeds from Santa Fe Land Improvement Company, recorded September 16, 1977, in Book 8506, Pages 381 and 415, Official Records.

PARCEL D:

A portion of Parcels A, B and C, a portion of Lot 5 and all of Lots 6 through 19, inclusive, as shown on the Map of Subdivision 6042, Marina Bay-Unit No. 2, filed April 27, 1983, in Book 269 of Maps, Page 29, Contra Costa County Records, a portion of Lots 17 and 32, Section 24, Township 1 North, Range 5 West, and a portion of Lots 22, 23, 24, 25, 26, 27 and 28, Section 19, Township 1 North, Range 4 West, Mt. Diablo Base and Meridian, as shown on the map entitled "Map No. 1 of Salt Marsh and Tide Lands", filed June 11, 1917, Rack Map No. 9, Contra Costa County Records, described as follows:

Beginning at a point within said Parcel A of said Subdivision 6042 distance 147.98 feet at a bearing of North 89° 19' 27" West from the Southwestern monument in Spinnaker Way as shown on said Map of Subdivision 6042 (269 M 29); thence South 01° 08' 16" West 533.82 feet within Parcel A, through Lot 5, through Parcel B and into said Parcel C of said Subdivision 6042 (269 M 29); thence along a line parallel to and 5 feet Southerly of the South line of said Parcel C and the Southern boundary of said Subdivision 6042 (269 M 29) North 88° 51' 44" West, 961.00 feet; thence along a line parallel to and 25 feet Westerly of the Western line of said Subdivision 6042 (269 M 29) North 01° 08' 16" East 565.00 feet; thence North 88° 51' 44" West 1526.05 feet; thence along a line parallel to and approximately 15 feet East of the Eastern line of Parcel D as shown on the Parcel Map MS 758-89, recorded October 3, 1989, in Book 142 of Parcel Maps, Pages 36 and 37, Contra Costa County Records, North 1° 08' 16" East 280.04 feet; thence North 46° 08' 16" East 32.59 feet; thence North 01° 08' 16" East 170.23 feet; thence North 46° 08' 16" East 19.00 feet; thence South 43° 51' 44" East, 113.00 feet; thence North 46° 08' 16" East, 73.00 feet; thence North 43° 51' 44" West, 113.00 feet; thence North 46° 08' 16" East, 24.00 feet; thence South 88° 51' 44" East, 125.00 feet; thence South 43° 51' 44" East, 65.50 feet; thence Southerly along a line parallel to and approximately 27 feet Westerly of the West line of Lot 3 as shown on the Map of Subdivision 6041, Marina Bay-Unit No. 1 in the City of Richmond, recorded April 2, 1982, in Book 263 of Maps, Pages 40 through 46; South 01° 08' 16" West 88.00 feet; thence along the arc of a tangent 27.00 foot radius curve to the left, through a central angle of 90°, a distance of 42.41 feet; thence along a tangent line parallel to and approximately 27 feet Southerly from the South line of said Lot 3 of said Subdivision 6041, South 88° 51' 44"

Exhibit A

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East 100.00 feet; thence along the arc of a tangent 27.00 foot radius curve to the left, through a central angle of 90° , a distance of 42.41 feet; thence along a tangent line parallel to and approximately 27 feet Easterly of the East line of said Lot 3, North $01^\circ 08' 16''$ East 97.24; thence South $88^\circ 51' 44''$ East, 20.00 feet; thence North $1^\circ 08' 16''$ East, 15.62 feet; thence along the arc of a non-tangent 27.00 foot radius curve to the left, the center of which bears North $11^\circ 10' 27''$ West, through a central angle of $77^\circ 41' 17''$ a distance of 36.61 feet; thence along a tangent line, North $01^\circ 08' 16''$ East, 44.00 feet; thence North $46^\circ 08' 16''$ East, 76.00 feet; thence South $88^\circ 51' 44''$ East 6.00 feet; thence along the arc of a tangent 27.00 foot radius curve to the left, through a central angle of $74^\circ 58' 26''$ a distance of 35.33 feet; thence South $88^\circ 51' 44''$ East, 75.00 feet; thence North $1^\circ 08' 16''$ East, 38.08 feet; thence North $46^\circ 08' 16''$ East, 55.59 feet; thence South $88^\circ 51' 44''$ East, 210.00 feet; thence South $01^\circ 08' 16''$ West 133.00 feet; thence South $88^\circ 51' 44''$ East 120.00 feet; thence North $01^\circ 08' 16''$ East 200.00 feet; thence South $88^\circ 51' 44''$ East 104.00 feet; thence South $43^\circ 51' 44''$ East 26.00 feet; thence South $01^\circ 08' 16''$ West 40.00 feet; thence South $43^\circ 51' 44''$ East 20.00 feet; thence South $01^\circ 08' 16''$ West 143.00 feet; thence South $43^\circ 51' 44''$ East 93.00 feet; thence South $88^\circ 51' 44''$ East 580.51 feet; thence South $43^\circ 51' 44''$ East 386.79 feet to a point within said Parcel A of Subdivision 6042 (269 M 29); thence Southerly along a line parallel to and approximately 15 feet Easterly of the West line of said Parcel A of said Subdivision 6042 (289 M 29); South $01^\circ 08' 16''$ West 269.60 feet; thence along a line parallel to and approximately 15 feet North of the South line of said Parcel A of said Subdivision 6042, South $88^\circ 51' 44''$ East 399.82 feet; thence South $43^\circ 51' 44''$ East 41.27 feet to the point of beginning.

EXCEPTING THEREFROM:

All oil, gas, other hydrocarbon and mineral substances lying not less than 500 feet below the surface of said land provided that Grantor, its successors and assigns shall not have the right to go upon the surface of said land for the purpose of extracting said oil, gas, or other hydrocarbon and mineral substances, nor for any purpose in connection therewith, but shall have the right to extract and remove said oil, gas, and other hydrocarbon and mineral substances by means of slant drilled wells or similar methods located on adjacent or nearby land or by other means which shall not require entry upon the surface of said land, as reserved in the Deeds from Santa Fe Land Improvement Company, recorded September 16, 1977, in Book 8506, Pages 381 and 415, Official Records.

PARCEL E:

A portion of the Melville Square, as shown on the Map of Subdivision 6041, Marina Bay-Unit No. 1, filed April 2, 1982, in Book 263 of Maps, Page 40, Contra Costa County Records, and a portion of Lots 22 and 23, Section 19, Township 1 North, Range 4 West, Mt. Diablo Base and Meridian, as shown on the map entitled "Map No. 1 of Salt Marsh and Tide Lands", filed June 11, 1917, Rack Map No. 9 Contra Costa County Records, described as follows:

Beginning at a point 19.00 feet from and at a bearing of South $43^\circ 51' 44''$ East from the most Southern monument in Melville Square as shown on said Map of Subdivision 6041; thence along a line parallel to and Northwest 5.00 feet from the Southeast line of Melville Square as shown on said Subdivision 6041, North $46^\circ 08' 16''$ East 327.00 feet; thence along the arc of a tangent

Exhibit A

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28.00 foot radius curve to the right, through a central angle of $42^{\circ} 50' 34''$ a distance of 20.94 feet; thence along a non-tangent line North $46^{\circ} 08' 16''$ East 36.96 feet; thence South $43^{\circ} 51' 44''$ East 152.58 feet; thence along the arc of a tangent 56.00 foot radius curve to the right, through a central angle of 45° , a distance of 43.98 feet; thence along a tangent line South $01^{\circ} 08' 16''$ West 66.39 feet; thence along the arc of a tangent 56.00 foot radius curve to the right, through a central angle of 45° , a distance of 43.98 feet; thence along a tangent line South $46^{\circ} 08' 16''$ West 190.25 feet; thence along the arc of a tangent 56.00 foot radius curve to the right, through a central angle of 45° , a distance of 43.98 feet.; thence along a tangent line North $88^{\circ} 51' 44''$ West 135.48 feet; thence along the arc of a tangent 56.00 foot radius curve to the right, through a central angle of 45° , a distance of 43.98 feet; thence along the arc of a reverse tangent 12.00 foot radius curve to the left, through a central angle of $25^{\circ} 31' 44''$ a distance of 5.35 feet; thence along a tangent line North $69^{\circ} 20' 28''$ West 8.48 feet; thence along the arc of a tangent 12.00 foot radius curve to the right, through a central angle of $25^{\circ} 31' 44''$ a distance of 5.35 feet; thence along a tangent line North $43^{\circ} 51' 44''$ West 93.20 feet; thence North $46^{\circ} 08' 16''$ East 68.00 feet to the point of beginning.

EXCEPTING THEREFROM:

All oil, gas, other hydrocarbon and mineral substances lying not less than 500 feet below the surface of said land provided that Grantor, its successors and assigns shall not have the right to go upon the surface of said land for the purpose of extracting said oil, gas, or other hydrocarbon and mineral substances, nor for any purpose in connection therewith, but shall have the right to extract and remove said oil, gas, and other hydrocarbon and mineral substances by means of slant drilled wells or similar methods located on adjacent or nearby land or by other means which shall not require entry upon the surface of said land, as reserved in the Deeds from Santa Fe Land Improvement Company, recorded September 16, 1977, in Book 8506, Pages 381 and 415, Official Records.

PARCEL F:

A portion of Lots 17 and 18, Section 24, Township 1 North, Range 5 West, Mt. Diablo Base and Meridian, as shown on the Map entitled "Map No. 1 of Salt Marsh and Tide Lands", filed June 11, 1917, Rack Map No. 9 Contra Costa County Records, described as follows:

Beginning at the Northeastern corner of Parcel B of Parcel Map MS 758-89 filed October 2, 1989, in Book 142 of Parcel Maps, Page 36, Contra Costa County Records, said point of beginning also being on the Southern line of Hall Avenue as shown on said Parcel Map MS 758.89; thence South $88^{\circ} 53' 41''$ East, 109.04 feet to the Eastern end of said Hall Avenue; thence along the East line of said Hall Avenue, North $01^{\circ} 08' 16''$ East 56.00 feet; thence leaving said Eastern line South $88^{\circ} 53' 41''$ East 72.60 feet; thence North $46^{\circ} 08' 16''$ East 68.43 feet; thence South $88^{\circ} 51' 44''$ East, 92.00 feet; thence South $1^{\circ} 08' 16''$ West, 67.50 feet; thence South $88^{\circ} 51' 44''$ East 21.00 feet; thence South $01^{\circ} 08' 16''$ West 64.00 feet; thence South $88^{\circ} 51' 44''$ West 44.25 feet; thence North $01^{\circ} 08' 16''$ East 7.50 feet; thence North $88^{\circ} 51' 44''$ West 18.00 feet; thence South $46^{\circ} 08' 16''$ West 8.50 feet; thence North $43^{\circ} 51' 44''$ West 21.60 feet; thence North $46^{\circ} 08' 16''$ East 17.74 feet; thence North $88^{\circ} 51' 44''$ West 15.00 feet; thence South $01^{\circ} 08' 16''$ West 42.00 feet to a point on the Northern line of Parcel C of said Parcel Map

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MS 758-89; thence along said Northern line of said Parcel C, North 88° 51' 44" West 237.00 feet to an angle point in said Northern line of said Parcel C of said Parcel Map MS 758.89; thence continuing along said Northern line of said Parcel C, North 01° 08' 16" East 6.50 feet; thence continuing along said Northern line of said Parcel C, North 88° 51' 44" West 22.32 feet to the Eastern line of said Parcel B of said Parcel Map MS 758.89; thence along the Eastern line of said Parcel B; North 05° 08' 30" East 33.29 feet to the point of beginning.

EXCEPTING THEREFROM:

All oil, gas, other hydrocarbon and mineral substances lying not less than 500 feet below the surface of said land provided that Grantor, its successors and assigns shall not have the right to go upon the surface of said land for the purpose of extracting said oil, gas, or other hydrocarbon and mineral substances, nor for any purpose in connection therewith, but shall have the right to extract and remove said oil, gas, and other hydrocarbon and mineral substances by means of slant drilled wells or similar methods located on adjacent or nearby land or by other means which shall not require entry upon the surface of said land, as reserved in the Deeds from Santa Fe Land Improvement Company, recorded September 16, 1977, in Book 8506, Pages 381 and 415, Official Records.

PARCEL G:

A portion of Regatta Square, as shown on the Map of Subdivision 6041, Marina Bay-Unit No. 1, filed April 2, 1982, in Book 263 of Maps, Page 40, Contra Costa County Records, and a portion of Lot 17, Section 24, Township 1 North, Range 5 West, Mt., Diablo Base and Meridian, as shown on the map entitled "Map No. 1 of Salt Marsh and Tide Lands", filed June 11, 1917, Rack Map No. 9, Contra Costa County Records, described as follows:

Beginning at a point on the Northern extension of the Western line of Lot 5 as shown on the Map of said Subdivision 6041, Marina Bay-Unit No. 1, North 01° 08' 16" East 8.50 feet North of the Northwest corner of said Lot 5; thence Southerly from said point of beginning along the said Northern extension of and the Western line of said Lot 5 and along a portion of the Western line of Lot 4 as shown on said Subdivision 6041, South 01° 08' 16" West 234.00 feet; thence along the arc of a tangent 20.00 foot radius curve to the right, through a central angle of 90°, a distance of 31.42 feet; thence along a tangent line North 88° 51' 44" West 148.18 feet; thence North 01° 08' 16" East 302.92 feet; thence along the arc of a non-tangent 214.00 radius curve, the center of said curve bearing North 40° 39' 30" East, through a central angle of 39° 31' 14" an arc distance of 147.61 feet; thence South 88° 51' 44" East 32.00 feet to the point of beginning.

EXCEPTING THEREFROM:

All oil, gas, other hydrocarbon and mineral substances lying not less than 500 feet below the surface of said land provided that Grantor, its successors and assigns shall not have the right to go upon the surface of said land for the purpose of extracting said oil, gas, or other hydrocarbon and mineral substances, nor for any purpose in connection therewith, but shall have the right to extract and remove said oil, gas, and other hydrocarbon and mineral substances by means of slant drilled wells or similar methods located on adjacent or nearby land or by other means which

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shall not require entry upon the surface of said land, as reserved in the Deeds from Santa Fe Land Improvement Company, recorded September 16, 1977, in Book 8506, Pages 381 and 415, Official Records.

PARCEL H:

A portion of Regatta Square, as shown on the Map of Subdivision 6041, Marina Bay-Unit No. 1, filed April 2, 1982, in Book 263 of Maps, Page 40, Contra Costa County Records, and a portion of Lot 17, Section 24, Township 1 North, Range 5 West, Mt., Diablo Base and Meridian, as shown on the map entitled "Map No. 1 of Salt Marsh and Tide Lands", filed June 11, 1917, Rack Map No. 9, Contra Costa County Records, described as follows:

Beginning at a point on the extension of the Southern line of Lot 6 of said Subdivision 6041, Marina Bay-Unit No. 1, 5.00 feet on a bearing of North 88° 51' 44" West from the Southwest corner of said Lot 6; thence Easterly along the Southern line and the said extension thereof at a bearing of South 88° 51' 44" East 291.00 feet; thence leaving said Southern line of said Lot 6, South 01° 08' 16" West 80.60 feet; thence along the arc of a tangent 28.00 foot radius curve to the right, through a central angle of 45°, a distance of 21.99 feet; thence along a tangent line South 46° 08' 16" West 28.85 feet; thence along a tangent 28.00 foot radius curve to the right, through a central angle of 45°, a distance of 21.99 feet; thence along a tangent line North 88° 51' 44" West 99.60 feet; thence along a tangent 186.00 foot radius curve to the right, through a central angle of 41° 12' 11" and a distance of 133.76 feet; thence along a arc of a tangent compound 60.00 foot radius curve to the right, through a central angle of 48° 47' 49" a distance of 51.10 feet; thence along a tangent line North 01° 08' 16" East 37.80 feet to the point of beginning.

EXCEPTING THEREFROM:

All oil, gas, other hydrocarbon and mineral substances lying not less than 500 feet below the surface of said land provided that Grantor, its successors and assigns shall not have the right to go upon the surface of said land for the purpose of extracting said oil, gas, or other hydrocarbon and mineral substances, nor for any purpose in connection therewith, but shall have the right to extract and remove said oil, gas, and other hydrocarbon and mineral substances by means of slant drilled wells or similar methods located on adjacent or nearby land or by other means which shall not require entry upon the surface of said land, as reserved in the Deeds from Santa Fe Land Improvement Company, recorded September 16, 1977, in Book 8506, Pages 381 and 415, Official Records.

PARCEL I:

A portion of Lot 17, Section 24, Township 1 North, Range 5 West, Mt. Diablo Base and Meridian, as shown on the map entitled "Map No. 1 of Salt Marsh and Tidelands", filed June 11, 1917, Rack Map No. 9, Contra Costa County Records, described as follows:

Commencing at the point on the Northern extension of the Western line of Lot 5, as shown on the Map of Subdivision 6041, Marina Bay-Unit No. 1 in the City of Richmond, recorded April 2,

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1982, in Book 263 of Maps, Pages 40 through 46, North 01° 08' 16" East, 8.50 feet, North of the Northwest corner of said Lot 5; thence Southerly from said point of commencement along said Northern extension of and Western line of said Lot 5 and along a portion of the Western line of Lot 4 as shown on said Subdivision 6041, South 01° 08' 16" West, 271.61 feet to the point of beginning; thence South 01° 08' 16" West, 72.04 feet; thence North 43° 51' 44" West, 101.88 feet; thence South 88° 51' 44" East, 72.04 feet.

EXCEPTING THEREFROM:

All oil, gas, other hydrocarbon and mineral substances lying not less than 500 feet below the surface of said land provided that Grantor, its successors and assigns shall not have the right to go upon the surface of said land for the purpose of extracting said oil, gas, or other hydrocarbon and mineral substances, nor for any purpose in connection therewith, but shall have the right to extract and remove said oil, gas, and other hydrocarbon and mineral substances by means of slant drilled wells or similar methods located on adjacent or nearby land or by other means which shall not require entry upon the surface of said land, as reserved in the Deeds from Santa Fe Land Improvement Company, recorded September 16, 1977, in Book 8506, Pages 381 and 415, Official Records.

PARCEL J:

A portion of Lot 23, Section 19, Township 1 North, Range 4 West, Mt. Diablo Base and Meridian, as shown on the map entitled "Map No. 1 of Salt Marsh and Tidelands", filed June 11, 1917, Rack Map No. 9, Contra Costa County Records, described as follows:

Beginning at a point 225.45 feet from and at a bearing of South 51° 02' 49" West from the most Southern monument in Mellville Square as shown on the Map of Subdivision 6041, Marina Bay-Unit No. 1, in the City of Richmond, recorded April 2, 1982, in Book 263 of Maps, Pages 40 through 46, inclusive; thence South 46° 08' 16" West, 63.02 feet; thence North 43° 51' 44" West, 38.16 feet; thence North 46° 08' 16" East, 63.02 feet; thence South 43° 51' 44" East 38.16 feet to the point of beginning.

EXCEPTING THEREFROM:

All oil, gas, other hydrocarbon and mineral substances lying not less than 500 feet below the surface of said land provided that Grantor, its successors and assigns shall not have the right to go upon the surface of said land for the purpose of extracting said oil, gas, or other hydrocarbon and mineral substances, nor for any purpose in connection therewith, but shall have the right to extract and remove said oil, gas, and other hydrocarbon and mineral substances by means of slant drilled wells or similar methods located on adjacent or nearby land or by other means which shall not require entry upon the surface of said land, as reserved in the Deeds from Santa Fe Land Improvement Company, recorded September 16, 1977, in Book 8506, Pages 381 and 415, Official Records.

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PARCEL 1:

A portion of Lots 17 and 18, Section 24, Township 1 North, Range 5 West, Mt. Diablo Base and Meridian, as shown on the map entitled "Map No. 1 of Salt Marsh and Tidelands", filed June 11, 1917, Rack Map No. 9, Contra Costa County Records, described as follows:

Commencing at the Northeastern corner of Parcel B as shown on Parcel Map MS 758-89, filed October 2, 1989, in Book 142 of Parcel Maps, Page 36, Contra Costa County Records, said point of commencement also being on the Southern line of Hall Avenue as shown on said Parcel Map MS 758-89; thence South $88^{\circ} 53' 41''$ East 109.03 feet to the Eastern end of said Hall Avenue; thence along the Eastern line of said Hall Avenue, North $01^{\circ} 08' 16''$ East 56.00 feet to the point of beginning; thence along said Eastern line of Hall Avenue, North $01^{\circ} 08' 16''$ East 4.00 feet; thence North $88^{\circ} 53' 41''$ West 112.38 feet to the Eastern line of Marina Way, South as shown on said Parcel Map MS 758-89; thence along said Eastern line of said Marina Way South, North $01^{\circ} 08' 16''$ East 444.26 feet; thence South $88^{\circ} 51' 44''$ East 507.43 feet; thence South $01^{\circ} 08' 16''$ West 213.84 feet; thence along a tangent 20.00 foot radius curve to the right, through a central angle of 90° , a distance of 31.42 feet; thence along a tangent line North $88^{\circ} 51' 44''$ West 104.57 feet; thence South $46^{\circ} 08' 16''$ West 81.31 feet; thence South $01^{\circ} 08' 16''$ West 108.43 feet; thence North $88^{\circ} 51' 44''$ West 92.00 feet; thence South $46^{\circ} 08' 16''$ West, 68.43 feet; thence North $88^{\circ} 53' 41''$ West, 72.60 feet to the point of beginning.

EXCEPTING THEREFROM:

All oil, gas, other hydrocarbon and mineral substances lying not less than 500 feet below the surface of said land provided that Grantor, its successors and assigns shall not have the right to go upon the surface of said land for the purpose of extracting said oil, gas, or other hydrocarbon and mineral substances, nor for any purpose in connection therewith, but shall have the right to extract and remove said oil, gas, and other hydrocarbon and mineral substances by means of slant drilled wells or similar methods located on adjacent or nearby land or by other means which shall not require entry upon the surface of said land, as reserved in the Deeds from Santa Fe Land Improvement Company, recorded September 16, 1977, in Book 8506, Pages 381 and 415, Official Records.

PARCEL 2:

A portion of Lot 17, Section 24, Township 1 North, Range 5 West, Mt. Diablo Base and Meridian, as shown on the map entitled "Map No. 1 of Salt Marsh and Tidelands", filed June 11, 1917, Rack Map No. 9, Contra Costa County Records, described as follows:

Beginning at a point distant thereon 396.99 feet at a bearing of North $60^{\circ} 17' 57''$ East from the Northeastern corner of Parcel B as shown on Parcel Map MS-758-89, filed October 2, 1989, in Book 142 of Parcel Maps, Page 36, Contra Costa County Records; thence North $46^{\circ} 08' 16''$ East 73.00 feet; thence South $43^{\circ} 51' 44''$ East 200.00 feet; thence South $46^{\circ} 08' 16''$ West 73.00 feet; thence North $43^{\circ} 51' 44''$ West 200.00 feet to the point of beginning.

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EXCEPTING THEREFROM:

All oil, gas, other hydrocarbon and mineral substances lying not less than 500 feet below the surface of said land provided that Grantor, its successors and assigns shall not have the right to go upon the surface of said land for the purpose of extracting said oil, gas, or other hydrocarbon and mineral substances, nor for any purpose in connection therewith, but shall have the right to extract and remove said oil, gas, and other hydrocarbon and mineral substances by means of slant drilled wells or similar methods located on adjacent or nearby land or by other means which shall not require entry upon the surface of said land, as reserved in the Deeds from Santa Fe Land Improvement Company, recorded September 16, 1977, in Book 8506, Pages 381 and 415, Official Records.

TOGETHER WITH AND APPURTENANT TO HEREIN ABOVE DESCRIBED PARCELS:

A non-exclusive easement over and across the walkways, roadways, parking areas and other real property which is owned by the landlord and which is depicted on "Exhibit A-1" attached hereto, for the purposes of allowing Tenant, its subleases, agents, employees and invitees to obtain access to, and move and circulate between the different portions of the property by pedestrian and vehicular means.

BEING APN NUMBERS: 560-181-062, 560-470-004, 560-470-026 & 560-470-027

EXHIBIT A-1

PARCEL MAP OF PROPERTY

The survey prepared by A-N West, Inc. entitled "Marina Bay Berthing, Parking Lots, and Buildings" includes five sheets:

- C-2 Boundaries of Parcels with an aerial photo base (Rev. 3 – Nov. 27, 2000)
- C-3 Legal Descriptions of Parcels from Old Republic Title Company 1st Amended and Updated Report (Date: Nov. 2, 2000)
- C-4 Easement Locations (Date: Nov. 2, 2000)
- C-5 Building Locations (4) (Date: Nov. 2, 2000)
- C-6 A blanket-type easement covering areas between separated parcels and the berthing parcel (Rev. 1 – Nov. 27, 2000)

EXHIBIT B
INTENTIONALLY OMITTED

EXHIBIT C

**RESTRUCTURED DBAW LOANS
(based on July 1, 2000 Initial Payment)**

A portion of Loan No. 6 is a Restructured DBAW Loan, as indicated below.

Loans 7 and 8 are Restructured DBAW Loans.

<u>Loan Number</u>	<u>Estimated Loan Balances August 1, 2000⁽¹⁾</u>	<u>Estimated Restructured Loan Term⁽²⁾</u>	<u>Estimated Annual Loan Payment</u>
6	\$ 784,011.12	August 1, 2034	\$42,968.00
7	\$2,261,618.80	August 1, 2039	\$117,611.00
8	\$83,402.21	August 1, 2042	\$4,229.00
TOTAL	\$3,129,032.13		\$164,808.00

- (1) DBAW debt terms have an August 1 annual payment date.
August 1, 2000 loan balances include interest at 4.5% from June 1 initial payment date.
- (2) August 1 of the year that is 50 years from the date of the first loan.

EXHIBIT D

**Form of Report for Statement of Operations
For the period _____ to _____**

	CURRENT PERIOD						YEAR-TO-DATE					
	ACTUAL	RATIO	BUDGET	RATIO	VARIANCE	%	ACTUAL	RATIO	BUDGET	RATIO	VARIANCE	%
Departmental Revenue												
Slip Rental												
Lease Income												
Other Income												
Total departmental revenue												
Departmental Expenses												
Slip Rental												
Other costs												
Administrative and general												
Repairs and maintenance												
Heat, light and power												
Lease Expense												
Taxes												
Insurance												
Regional personnel & acctg.												
Management Fees												
Total departmental expenses												
Income before interest, depreciation & amortization expense												
Depreciation and amortization												
Total												
Net Income												

Form of Report for Lease Income
For the period _____ to _____

	CURRENT PERIOD					
	ACTUAL	RATIO	BUDGET	RATIO	VARIANCE	%
Lease Income						
Lease income - yacht sales						
Lease income - office						
Lease income - yacht club						
Total lease income revenue						

	YEAR-TO-DATE					
	ACTUAL	RATIO	BUDGET	RATIO	VARIANCE	%

Form of Report for Heat, Light and Power
For the period _____ to _____

	CURRENT PERIOD					
	ACTUAL	RATIO	BUDGET	RATIO	VARIANCE	%
Heat, Light and Power Expenses						
Electricity						
Water						
Sewer						
Total heat, light and power						
Departmental Profit						

	YEAR-TO-DATE					
	ACTUAL	RATIO	BUDGET	RATIO	VARIANCE	%

Form of Report for Lease Expense
For the period _____ to _____

	CURRENT PERIOD					
	ACTUAL	RATIO	BUDGET	RATIO	VARIANCE	%
Lease Expense						
Lease expense (concession fee)						
Total lease expense						
Departmental Profit						

	YEAR-TO-DATE					
	ACTUAL	RATIO	BUDGET	RATIO	VARIANCE	%

Form of Report for Taxes
For the period _____ to _____

	CURRENT PERIOD					
	ACTUAL	RATIO	BUDGET	RATIO	VARIANCE	%
Taxes .						
Real estate taxes						
Personal property taxes						
Total tax expenses						
Departmental Profit						

	YEAR-TO-DATE					
	ACTUAL	RATIO	BUDGET	RATIO	VARIANCE	%

Form of Report for Insurance
For the period _____ to _____

	CURRENT PERIOD					
	ACTUAL	RATIO	BUDGET	RATIO	VARIANCE	%
Insurance						
Property						
Liability						
Crime						
Boiler						
Total insurance expenses						
Departmental Profit						

	YEAR-TO-DATE					
	ACTUAL	RATIO	BUDGET	RATIO	VARIANCE	%