



VENTURA PORT DISTRICT BOARD OF PORT COMMISSIONERS

Jim Friedman, Chairman
Everard Ashworth, Vice Chairman
Bruce E. Smith, Secretary
Robert J. Bravo, Commissioner
Gregory Carson, Commissioner

Oscar Peña, General Manager
Timothy Gosney, Legal Counsel
Jessica Rauch, Clerk of the Board

PORT COMMISSION AGENDA REGULAR MEETING APRIL 8, 2015 AT 12:00 P.M. 1603 ANCHORS WAY DRIVE, VENTURA, CA

A **Closed Session** of the Board will be held at approximately **11:00A.M.** in the Port District Office located at 1603 Anchors Way Drive, Ventura, California to discuss items on the Attachment to Agenda-Closed Session Conference with Legal Counsel and then reconvene thereafter to the Regular Meeting.

The Board will convene in **Open Session** at the Port District Office located at 1603 Anchors Way Drive for its Regular Meeting at **12:00P.M.**

ADMINISTRATIVE AGENDA

CALL TO ORDER: By Vice Chair, Ev Ashworth.

PLEDGE OF ALLEGIANCE: By Vice Chair, Ev Ashworth.

ROLL CALL: By the Clerk of the Board.

ADOPTION OF AGENDA (3 minutes)

Consider and approve, by majority vote, minor revisions to agenda items and/or attachments and any item added to, or removed/continued from the Port Commission's agenda. Administrative Reports relating to this agenda and materials related to an item on this agenda submitted after distribution of the agenda packet are available for public review at the Port District's office located at 1603 Anchors Way Drive, Ventura, CA during business hours as well as on the District's website - www.venturaharbor.com (Public Notices). Each item on the agenda shall be deemed to include action by an appropriate motion, resolution or ordinance to take action on any item.

APPROVAL OF MINUTES

The Minutes of March 25, 2015 will be considered for approval.

PUBLIC COMMUNICATIONS (3 minutes)

The Public Communications period is set aside to allow public testimony on items not on today's agenda. Each person may address the Commission for up to three minutes or at the discretion of the Chair.

BOARD COMMUNICATIONS (5 minutes)

Port Commissioner's may present brief reports on port issues, such as seminars, meetings and literature that would be of interest to the public and/or Commission, as a whole.

STAFF COMMUNICATIONS (5 minutes)

Ventura Port District Staff will update the Commission on important topics.

CLOSED SESSION REPORT (3 minutes)

Closed Sessions are not open to the public pursuant to the Brown Act. Any reportable actions taken by the Commission during Closed Session will be announced at this time.

CONSENT AGENDA: (5 minutes)

Matters appearing on the Consent Calendar are expected to be non-controversial and will be acted upon by the Board at one time, without discussion, unless a member of the Board or the public requests an opportunity to address any given item. Approval by the Board of Consent Items means that the recommendation is approved along with the terms set forth in the applicable staff reports.

1) Approval of Out of Town Travel Requests

Recommended Action: Motion

That the Board of Port Commissioners approve by motion the Out of Town Travel Request for Marketing Manager, Jennifer Talt-Lundin.

2) Approval of Barefoot Boutique New Lease

Recommended Action: Motion

That the Board of Port Commissioners approve by motion a new Retail lease agreement between the Ventura Port District dba Ventura Harbor Village and the Barefoot Boutique for the premises located at 1575 Spinnaker Drive #106B consisting of a total of 605 square feet for a two (2) year term.

3) Approval of Casa De Regalos New Lease

Recommended Action: Motion

That the Board of Port Commissioners approve by motion a new Retail lease agreement between the Ventura Port District dba Ventura Harbor Village and Casa de Regalos for the premises located at 1583 Spinnaker Drive #104B & 105 consisting of a total of 1,856 square feet for a three (3) year term.

4) Approval of Milano's Italian Restaurant New Lease

Recommended Action: Motion

That the Board of Port Commissioners approve by motion a new Restaurant lease agreement between the Ventura Port District dba Ventura Harbor Village and Milano's Ventura, Inc. dba Milano's Italian Restaurant for the premises located at 1559 Spinnaker Drive #100 consisting of a total of 1,864 square feet for an eight (8) year term.

STANDARD AGENDA: (50 minutes)

1) Approval of Donation of "Mermaid Playing Cello" Statue (10 minutes)

Recommended Action: 4/5ths Roll Call Vote.

That the Board of Port Commissioners approve by a 4/5ths vote to:

- a) Accept the donation of "Mermaid Playing Cello," to the Ventura Port District by Alex Benke;
- b) Authorize the General Manager, working with Legal Counsel, to enter into a donation agreement with Alex Benke; and
- c) Authorize Construction of a pedestal for the statue at a point adjacent to the Middle Jetty at Harbor Cove at no cost to the Ventura Port District.

2) Approval of Per Diem Employment Contract with G. Scott Miller (10 minutes)

Recommended Action: Resolution No. 3272.

That the Board of Port Commissioners adopt Resolution No. 3272 authorizing the Ventura Port District to offer G. Scott Miller retirement employment prior to the California Public Employees' Retirement System's (CalPERS) required 180 day wait period.

3) Approval of Notice of Proposed Ordinance for the Ventura Harbor Marine Fuel Inc. New Lease (10 minutes)

Recommended Action: Resolution No. 3273.

That the Board of Port Commissioners adopt Resolution No. 3273 authorizing the Ventura Port District to publish a Notice of Proposed Ordinance for the Ventura Harbor Marine Fuel Inc. new Lease in a newspaper of general circulation.

4) Approval of Public Records Act Policy (10 minutes)

Recommended Action: Resolution No. 3274.

That the Board of Port Commissioners adopt Resolution No. 3274 approving the Policy and Procedures Implementing the Public Records Act Policy for the Ventura Port District.

5) Authorize submittal of a Grant Application to Sea Grant to Define a Permitting Strategy to Secure Entitlements for Commercial Shell Fish Operations (10 minutes)

Recommended Action: Motion.

That the Board of Port Commissioners approve the submittal of a grant to provide funding to secure expert consulting services to define a permit strategy for sustainable commercial shell fish operations.

ADJOURNMENT

*This agenda was posted on Friday, April 3, 2015 at 5:00 p.m.
at the Port District Office and on the Internet - www.venturaharbor.com (Public Notices).*

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*In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Ventura Port District at (805) 642-8538. Notification 48 hours before the meeting will enable the District to make reasonable arrangements to ensure accessibility.
(28 CFR 35.102.35.104 ADA Title II)*

**ATTACHMENT TO PORT COMMISSION AGENDA
CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL**

WEDNESDAY, APRIL 8, 2015

1. Per Government Code Section 54956.8 – Conference with Real Property Negotiators:

- | | |
|----------------------|---|
| a) Property: | 1551 Spinnaker Drive, 3A1, 3A2 |
| Negotiating Parties: | Oscar Peña, Timothy Gosney |
| Under Negotiation: | Ventura Harbor Marine Fuel Facility Inc.
New Lease Terms |
| b) Property: | 1559 Spinnaker Drive #100 |
| Negotiating Parties: | Oscar Peña, Timothy Gosney |
| Under Negotiation: | Milano's Italian Restaurant New Lease Terms |
| c) Property: | 1583 Spinnaker Drive #104B and #105 |
| Negotiating Parties: | Oscar Peña, Timothy Gosney |
| Under Negotiation: | Casa De Regalos New Lease Terms |
| d) Property: | 1575 Spinnaker Drive #106B |
| Negotiating Parties: | Oscar Peña, Timothy Gosney |
| Under Negotiation: | Barefoot Boutique New Lease Terms |
| e) Property: | Parcel 20 |
| Negotiating Parties: | Oscar Peña, Timothy Gosney |
| Under Negotiation: | New Lease Terms |

2. Potential Litigation - Per Government Code Section:

- a) **54956.9(d)(2)** - Claim of Bonnie Beck

APRIL 8, 2015

BOARD OF PORT COMMISSIONERS

APPROVAL OF MINUTES



Minutes of Special Workshop Meeting of the Ventura Port District Board of Port Commissioners Held March 25, 2015

The Regular Meeting of the Ventura Board of Port Commissioners was called to order by Chairman Jim Friedman at 7:19PM at the Ventura Port District Office located 1603 Anchors Way Drive, Ventura, CA 93001.

Commissioners Present:

Everard G. Ashworth, Vice Chair
Robert J. Bravo
Gregory L. Carson
Jim Friedman, Chair
Bruce E. Smith, Secretary

Commissioners Absent:

None

Port District Staff:

Oscar Peña, General Manager
Scott Miller, Harbor Master
Gloria Adkins, Fiscal Manager
Robin Baer, Property Manager
Frank Locklear, Marina Manager
Pat Hummer, Harbor Patrol
John Higgins, Harbor Patrol
Jessica Rauch, Clerk of the Board

Legal Counsel:

Timothy Gosney

AGENDA

CALL TO ORDER: By Chair, Jim Friedman at 7:19PM.

PLEDGE OF ALLEGIANCE: By Commissioner Carson.

ROLL CALL: All Commissioners were present.

ADOPTION OF AGENDA

ACTON: Commissioner Carson moved, seconded by Commissioner Bravo and carried by a vote of 5-0 to adopt the March 25, 2015 agenda.

APPROVAL OF MINUTES

The Minutes of March 11, 2015 were considered as follows:

ACTION: Commissioner Bravo moved, seconded by Commissioner Smith and carried by a vote of 4-0-1 to (Carson abstained) approve the minutes of March 11, 2015.

PUBLIC COMMUNICATIONS: Harbor Patrolman, John Higgins reported that it is Tsunami preparedness week and the District is more than prepared if a Tsunami were to occur. He also updated the Commission on the juvenile white sharks. Mr. Higgins reported on the success of the Volleyball Courts at Harbor Cove Beach, which he got fully funded by a donation. Sam Sadove updated the Commission on his plan for expansion and improvements to the Boat Yard and fuel dock (parcel 20).

CLOSED SESSION REPORT: Mr. Gosney stated that the Board met in closed session; discussed and reviewed all of the items listed on the Attachment to Agenda. Staff was given instructions as to how to proceed as appropriate and there was no action taken reportable under The Brown Act.

LEGAL COUNSEL REPORT: Mr. Gosney reported that his office has created a Public Record Act Policy for the District and it should be coming to the Board for approval next month. He also reported that State Fish filed for bankruptcy.

BOARD COMMUNICATIONS: Commissioner Ashworth announced that Coastal Marine Biolabs will be hosting a smart talk on The Magic of Fluorescence in the Sea, Thursday, March 26th. He also thanked the Commission for allowing him to attend the fisheries conference, which was very successful. Commissioner Ashworth thanked the Port District for allowing the Power Squadron to use the facilities for manager's training. He also announced that he cannot attend the Opening Day for the Ventura Yacht Club on April 11th, but another Commissioner can attend. Commissioner Carson commented on an NPR story he heard about mussel farming and also reported on his trip to Washington DC to attend the CMANC Conference.

DEPARTMENTAL STAFF REPORTS: Richard Parsons gave the Commission a report that the federal dredge project removed 780,000 cubic yards of sand and the harbor entrance is in excellent shape.

GENERAL MANAGER REPORT: Mr. Peña reported that Sondermann Ring Partners got approval on the plan specifications from the City's Design Review Committee (DRC). However, the DRC did not approve the landscape plans.

CONSENT AGENDA:

1) Approval of Financial Statements and Checks for the month of January 2015

Recommended Action: Resolution No. 3267

That the Board of Port Commissioners adopt Resolution No. 3267 accepting and approving the Financial Statements, Payroll and Regular Checks for expenses in January 2015.

ACTION: Commissioner Ashworth moved, seconded by Commissioner Carson and carried by a vote of 5-0 to adopt Resolution No. 3267 accepting and approving the Financial Statements, Payroll and Regular Checks for expenses in January 2015.

2) Approval of Out of Town Travel Requests

Recommended Action: Motion

That the Board of Port Commissioners approve by motion the Out of Town Travel Requests for Harbor Patrolman, John Higgins and Marketing Manager, Jennifer Talt-Lundin.

ACTION: Commissioner Ashworth moved, seconded by Commissioner Bravo and carried by a vote of 5-0 to approve by motion the Out of Town Travel Requests for Harbor Patrolman, John Higgins and Marketing Manager, Jennifer Talt-Lundin.

STANDARD AGENDA:

1) Approval of Modifications to the Human Resources Manual: Paid Sick Leave

Recommended Action: Resolution No. 3268.

That the Board of Port Commissioners adopt Resolution No. 3268, modifying the Human Resources Manual to comply with provisions of the "Healthy Workplaces, Healthy Families Act of 2014".

ACTION: Commissioner Bravo moved, seconded by Commissioner Carson and carried by a vote of 5-0 to adopt Resolution No. 3268, modifying the Human Resources Manual to comply with provisions of the "Healthy Workplaces, Healthy Families Act of 2014".

2) Approval of Commercial and Recreational Slip Fee Increases

Recommended Action: Resolution No. 3269.

That the Board of Port Commissioners adopt Resolution No. 3269, approving the commercial and recreational slip fee increases.

ACTION: Commissioner Ashworth moved, seconded by Commissioner Smith and carried by a vote of 5-0 to adopt Resolution No. 3269, approving the commercial and recreational slip fee increases.

Public Comment: Jack Wilbur does not believe the fees should increase when the services are considerably less than other marinas. Terry Wilmarth commented that the District has been maintaining the same level of services for some time and if slip fees are increased, boaters will be paying more for less. Cole Walters feels unsafe at the Marina because there have been many break-ins and the accommodations are subpar. John Higgins reiterated Mr. Walters claims about break-ins in the marina and parking lot and the safety issues occurring at the Marina.

3) Harbormaster and Business Operations Manager Positions

Recommended Action: Motion.

That the Board of Port Commissioners approve by motion the recommended changes to the District's organization regarding the position of Harbormaster and Business Operations Manager.

ACTION: Commissioner Smith moved, seconded by Commissioner Carson and carried by a vote of 5-0 to approve the recommended changes to the District's organization regarding the position of Harbormaster and

Business Operations Manager, with direction to staff to look at the overall function of the organizational chart and report back at a later date.

4) Adopt Revised Salary Resolution No. 3270 and Rescind Resolution No. 3263

Recommended Action: Resolution No. 3270.

That the Board of Port Commissioners adopt Resolution No. 3270, which amends the salary range of the Harbormaster position and adds the salary range for the new position of Business Operations Manager and rescind Resolution No. 3263.

ACTION: Commissioner Carson moved, seconded by Commissioner Bravo and carried by a vote of 5-0 to adopt Resolution No. 3270, which amends the salary range of the Harbormaster position and adds the salary range for the new position of Business Operations Manager and rescinds Resolution No. 3263.

5) Approval Board of Port Commissioners Protocols Manual

Recommended Action: Resolution No. 3271.

That the Board of Port Commissioners adopt Resolution No. 3271, approving the Board of Port Commissioners Protocols and Policies Manual.

ACTION: Commissioner Ashworth moved, seconded by Commissioner Smith and carried by a vote of 3-2 (Bravo/Carson no) to adopt Resolution No. 3271, approving the Board of Port Commissioners revised Protocols and Policies Manual with the recent blue and redline changes.

Commissioner Comment: Commissioner Bravo stated for the record that his reason for voting against the Resolution was that the Board does have regular subcommittees (i.e. the audit committee on which he has served for many years) and the discouragement against the use of subcommittees as stated in the manual is inaccurate, unnecessary and that subcommittees do enhance the efficiency of Board operations.

REQUEST FOR FUTURE AGENDA ITEMS: Commissioner Friedman asked that an informational item be brought to the Commission on the safety of the Village Marina. Commissioner Smith asked that an action item be brought to the Commission to consider appointing the General Manager as Board Secretary.

DEDICATION OF MEETING TO SANDFORD WADDELL

ADJOURNMENT: The meeting was adjourned at 10:35PM.

Secretary

APRIL 8, 2015

BOARD OF PORT COMMISSIONERS

CONSENT AGENDA ITEM NO. 1

APPROVAL OF OUT OF TOWN TRAVEL REQUESTS

**VENTURA PORT DISTRICT
BOARD COMMUNICATION**

CONSENT AGENDA ITEM 1
Meeting Date: April 8, 2015

TO: Board of Port Commissioners
FROM: Oscar F. Peña, General Manager
SUBJECT: Out of Town Travel Requests

RECOMMENDATION:

That the Board of Port Commissioners discuss and take appropriate action on the following out of town travel requests:

- A) Marketing Manager, Jennifer Talt-Lundin's travel to Sacramento, California to participate in a presentation to Visit California Staff from May 13 – May 14, 2015. This benefits the District by allowing our Marketing Manager to present as part of a team with Central Coast as the Ventura and CINP rep to the entire Visit California Staff, which includes publicists and social media specialists, travel trade and promotional teams.

Registration	\$ 0.00
Car Rental & Gas	\$ 285.00
Lodging (1 night)	\$ 250.00
Meals	\$ 45.00
Miscellaneous-Parking, etc.	<u>\$ 50.00</u>
TOTAL	\$ 630.00

APRIL 8, 2015

BOARD OF PORT COMMISSIONERS

CONSENT AGENDA ITEM NO. 2

APPROVAL OF BAREFOOT BOUTIQUE NEW LEASE

**VENTURA PORT DISTRICT
BOARD COMMUNICATION**

CONSENT AGENDA ITEM 2
Meeting Date: April 8, 2015

TO: Board of Port Commissioners
FROM: Robin Baer, Property Manager
SUBJECT: New Retail Lease Agreement for Barefoot Boutique
1575 Spinnaker Drive #106B

RECOMMENDATION:

That the Board of Port Commissioners approve by motion a new Retail lease agreement between the Ventura Port District dba Ventura Harbor Village and the Barefoot Boutique for the premises located at 1575 Spinnaker Drive #106B consisting of a total of 605 square feet for a two (2) year term.

SUMMARY:

The District's Property Manager has been working with the tenant Barefoot Boutique to improve their overall experience within the Village. They enjoy the Village and have made new connections with the community and expanding their inventory of clothing.

BACKGROUND:

They have been a retail tenant since June 2013. The tenant continues to grow their business year after year and has doubled their sales within the last year.

FISCAL IMPACT:

The average occupancy expense per year is \$25,000 plus 3% of its gross sales which could result in an additional \$9,000 per year.

We look forward to future success with this tenant. Staff recommends the Board's approval of the new lease transaction.

APRIL 8, 2015

BOARD OF PORT COMMISSIONERS

CONSENT AGENDA ITEM NO. 3

APPROVAL OF CASA DE REGALOS NEW LEASE

**VENTURA PORT DISTRICT
BOARD COMMUNICATION**

CONSENT AGENDA ITEM 3
Meeting Date: April 8, 2015

TO: Board of Port Commissioners
FROM: Robin Baer, Property Manager
SUBJECT: New Retail Lease Agreement for Casa de Regalos
1583 Spinnaker Drive #104B and 105

RECOMMENDATION:

That the Board of Port Commissioners approve by motion a new Retail lease agreement between the Ventura Port District dba Ventura Harbor Village and the Casa de Regalos for the premises located at 1583 Spinnaker Drive #104B & 105 consisting of a total of 1,856 square feet for a three (3) year term.

SUMMARY:

Casa de Regalos would like to continue their occupancy within the Ventura Harbor Village. They offer coastal clothing and knick knacks that has provides our visitors a destination experience.

BACKGROUND:

They have been a retail tenant since August 1986. They have been one of our longest retail tenants within the Village. The tenant has been a good consistent tenant that would like to continue their tenancy.

FISCAL IMPACT:

The average occupancy expense over the three year period is \$48,125 per year plus 3% of its gross sales which could result in an additional \$9,000 per year.

We look forward to future success with this tenant. Staff recommends the Board's approval of the new lease transaction.

APRIL 8, 2015

BOARD OF PORT COMMISSIONERS

CONSENT AGENDA ITEM NO. 4

APPROVAL OF MILANO'S ITALIAN RESTAURANT NEW LEASE

**VENTURA PORT DISTRICT
BOARD COMMUNICATION**

CONSENT AGENDA ITEM 4
Meeting Date: April 8, 2015

TO: Board of Port Commissioners
FROM: Robin Baer, Property Manager
SUBJECT: New Retail Lease Agreement for Milano's Italian Restaurant
1559 Spinnaker Drive #100

RECOMMENDATION:

That the Board of Port Commissioners approve by motion a new Restaurant lease agreement between the Ventura Port District dba Ventura Harbor Village and Milano's Ventura Inc. dba Milano's Italian Restaurant for the premises located at 1559 Spinnaker Drive #100 consisting of a total of 1,864 square feet for an eight (8) year term.

SUMMARY:

The District's Property Manager has been working with the tenant Milano's to expand on their current bar location. We have provided a new positive option to expand the location and design of a bar within the restaurant. This new concept will enhance the overall experience and hopefully increase revenues.

BACKGROUND:

They have been a restaurant tenant since July 2006. The tenant has made upgrades to the location and changes to their menu throughout the years. They continue to be a steady and profitable tenant.

FISCAL IMPACT:

The average occupancy expense in the first three years is \$65,000 per year plus 3% of food gross sales and 5% of liquor sales which could result in an additional \$45,000 per year.

We look forward to future success with this tenant. Staff recommends the Board's approval of the new lease transaction.

APRIL 8, 2015

BOARD OF PORT COMMISSIONERS

STANDARD AGENDA ITEM NO. 1

**APPROVAL OF DONATION OF
“MERMAID PLAYING CELLO” STATUE**

**VENTURA PORT DISTRICT
BOARD COMMUNICATION**

STANDARD AGENDA ITEM 1

Meeting Date: April 8, 2015

TO: Oscar Peña, General Manager
FROM: G. Scott Miller, Harbormaster
SUBJECT: Donation of "Mermaid Playing Cello" Statue

RECOMMENDATION:

That the Board of Port Commissioners approve by a 4/5ths vote to:

- a) Approve the donation of "Mermaid Playing Cello," given to the Ventura Port District by Alex Benke;
- b) Authorize the General Manager, working with Legal Counsel, to enter into a donation agreement with Alex Benke; and
- c) Construct a pedestal for the statue at a point adjacent to the Middle Jetty at Harbor Cove at no cost to the Ventura Port District.

INFORMATION FOR DISCUSSION:

Alex Benke, working closely with Andy Soter, are largely responsible for the installation of the "Mermaid Playing Flute" statue at the base of the North Jetty. Both men approached the District on March 12, 2015 about doing a similar installation on Parcel 8 at the base of the Middle Jetty on the north side of Harbor Cove Beach. Mr. Benke would donate a similar statue, "Mermaid Playing Cello" and install it on a pedestal "at no cost to the Port District". All parties are excited at the prospect of having two statues act as iconic landmarks to the main channel of the harbor.

On Wednesday, April 1, the General Manager and Harbormaster walked the area with Commissioner Smith to determine the most appropriate location with an eye on future development of Parcel 8 and Mr. Benke's desire that the statue be placed in an area with high visibility and a view of the ocean. We determined that if the statue were to be placed adjacent to the middle jetty at approximate location: N 34° 14.895' W 119° 16.085' this location is still highly visible, creates the "mermaid bookend" look, and greatly reduces concern that the statue would need to be moved when the parcel is developed. Mr. Benke says, "I love this location."

This location appears to be very near the border between Port District and State Lands property. The District has a lease with State Lands for "dredging purposes" and other uses with written permission.

The District will also enter into a donation agreement with the donor to stipulate that Mr. Benke will be required to submit design drawings to the Board of Port Commissioners for approval prior to submitting building plans to the City. Additionally, Mr. Benke must obtain all required City, County and State permits prior to beginning construction.

As a business owner, Mr. Benke is sympathetic to the realization that when Parcel 8 is developed, it may be necessary to relocate the statue. His only request is that due consideration be given to having the statue relocated to a comparable location. We believe that should not be an issue.

ATTACHMENTS:

Attachment 1 – Mermaid Statue Pictures
Attachment 2 – Mermaid Statue Locations



CURRENT STATUE



PROSPECTIVE STATUE

ATTACHMENT #2



APRIL 8, 2015

BOARD OF PORT COMMISSIONERS

STANDARD AGENDA ITEM NO. 2

APPROVAL OF PER DIEM EMPLOYMENT

CONTRACT WITH G. SCOTT MILLER

**VENTURA PORT DISTRICT
BOARD COMMUNICATION**

STANDARD AGENDA ITEM 2

Meeting Date: April 8, 2015

TO: Board of Port Commissioners
FROM: Oscar Peña, General Manager
SUBJECT: Post Retirement Employment Resolution: G. Scott Miller

RECOMMENDATION:

That the Board of Port Commissioners adopt a Resolution No. 3272 authorizing the Ventura Port District to offer G. Scott Miller retirement employment prior to the California Public Employees' Retirement System's (CalPERS) required 180 day wait period.

INFORMATION FOR DISCUSSION:

Vice-Chair Ev Ashworth approached the General Manager and suggested that the District enter into a contract with the soon retiring Scott Miller in case his expertise is needed after his retirement.

Section 7522.56 of California Public Employees' Retirement Law regulates the conditions and limitations on service for retired public employees. It stipulates a 180 day wait period prior to post-retirement employment for retirees, but also offers an exception "because the retired person has skills needed to perform work needed for a limited duration". Such an appointment must be approved by the governing body in a public meeting and the appointment may not be placed on the consent agenda.

Mr. Miller has informed the District that he is willing to continue his services with the Ventura Port District via phone calls and/or in person. He has also presented a proposal, in which, he would continue his employment so the District could take advantage of his skills and knowledge as the positions of Harbormaster and Business Operations Manager are being filled. The terms are:

Mr. Miller will be a Per Diem Employee as defined in the Ventura Port District Human Resources Manual and only entitled to those benefits that might be required by law. The following conditions of employment will be in place:

- Hourly Rate: \$43.32
- Minimum of 4 hours for on-site work per week
- Minimum of 1 hour for off-site work per week

The General Manager is recommending that the Board approve the rehire of a retiring employee who has a critical skill set following retirement.

ATTACHMENTS:

Attachment 1 – Resolution No. 3272



RESOLUTION NO. 3272

**RESOLUTION OF THE BOARD OF PORT COMMISSIONERS
OF VENTURA PORT DISTRICT AUTHORIZING THE
VENTURA PORT DISTRICT TO EXTEND A POST-RETIREMENT
OFFER OF EMPLOYMENT PRIOR TO THE 180 DAY WAIT PERIOD**

WHEREAS, in compliance with Government Code Section 7522.56, Ventura Port District must provide CalPERS the certification resolution when hiring a retiree before 180 days has passed since his or her retirement date; and

WHEREAS, G. Scott Miller, retired from the Ventura Port District in the position of Harbormaster effective April 24, 2015; and

WHEREAS, Government Code Section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is April 24, 2015, without this certification resolution; and

WHEREAS, Government Code Section 7522.56 provides that this exception to the 180 day wait period shall not apply if the retiree accepts any retirement-related incentive; and

WHEREAS, the Ventura Port District and G. Scott Miller certify that G. Scott Miller has not and will not receive a Golden Handshake or any other retirement-related incentive; and

WHEREAS, no matters, issues, terms or conditions related to this employment and appointment have been or will be placed on a consent agenda; and

WHEREAS, the employment shall be limited to 960 hours per fiscal year; and

WHEREAS, the employment shall be limited to a minimum of 4 hours for on-site work and a minimum of 1 hour for off-site work per week; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties; and

WHEREAS, the maximum base salary for this position is \$8,093 monthly and the hourly equivalent is \$46.69, and the minimum base salary for this position is \$5,499 monthly and the hourly equivalent is \$31.73; and

WHEREAS, the hourly rate paid to G. Scott Miller will be \$43.32; and



ATTACHMENT 1

WHEREAS, G. Scott Miller has not and will not receive any other benefit, incentive, compensation in lieu of benefit or other form of compensation in addition to this hourly pay rate; and

WHEREAS, the Ventura Port District hereby authorizes the appointment of G. Scott Miller as a Per Diem retired annuitant to perform the duties, which require specialized skills, of Harbormaster, under Government Code Section 21224, effective immediately; and

NOW, THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the Ventura Port District hereby certifies the nature of the appointment of G. Scott Miller as described herein and that this appointment is necessary to keep, due to his expertise and knowledge of the job and District.

PASSED, APPROVED AND ADOPTED by the Board of Port Commissioners, this 8th day of April 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

Jim Friedman, Chairman

Bruce Smith, Secretary

(Seal)

APRIL 8, 2015

BOARD OF PORT COMMISSIONERS

STANDARD AGENDA ITEM NO. 3

**APPROVAL OF NOTICE OF PROPOSED ORDINANCE FOR
THE VENTURA HARBOR MARINE FUEL INC. NEW LEASE**

**VENTURA PORT DISTRICT
BOARD COMMUNICATION**

STANDARD AGENDA ITEM 3

Meeting Date: April 8, 2015

TO: Board of Port Commissioners
FROM: Oscar Peña, General Manager
SUBJECT: Approval of Notice of Proposed Ordinance for the Ventura Harbor Marine Fuel Inc. New Lease

RECOMMENDATION:

That the Board of Port Commissioners adopt Resolution No. 3273 authorizing the Ventura Port District to publish a Notice of Proposed Ordinance for the Ventura Harbor Marine Fuel Inc. new Lease in a newspaper of general circulation.

SUMMARY:

The Ventura Harbor Marine Fuel Facility Inc. is extending their lease at 1551 Spinnaker Drive. This lease includes a fuel dock pier, underground tanks and distribution system within parcels 3A1 and 3A2. The permitted use includes the sale of diesel fuel, oil filters, commercial fish gear and supplies, and offers services that include oil changes and marine waste and bilge water disposal.

BACKGROUND:

This tenant has been in operation since January 2001 and has been successful in offering goods and services to the public. This proposed lease is for a term of twenty (20) years and the tenant has agreed to:

- Annual rent of \$16,428 with annual CPI adjustments (not less than 3%);
- Percentage rent of 5% on all products sold;
- Additional rent of \$0.030 on all diesel sales;
- Transient slip rental set at 22%; and
- Tenant shall be responsible to maintain and/or replace any part of the fuel pier, dock system or delivery system at its sole expense during the term of the lease.

Since this lease term exceeds ten (10) years, the Board of Port Commissioners is required, pursuant to the California Harbors and Navigations Code Section 6270, to authorize and direct staff to publish a notice of its intent to adopt an Ordinance authorizing execution of the lease in the form attached here to. A copy of the Notice of Proposed Ordinance is attached hereto for the Board's consideration.

Assuming that the Board is satisfied with the lease agreement and adopts Resolution No. 3273 to move forward with the publication, the District will publish the Notice of Proposed Ordinance in a newspaper of general circulation. The Board may then adopt the Ordinance on May 13, 2015, and the lease will become effective 30 days from adoption.

ATTACHMENTS:

Attachment 1 – Resolution No. 3273



RESOLUTION NO. 3273

**RESOLUTION OF THE BOARD OF PORT COMMISSIONERS
OF THE VENTURA PORT DISTRICT TO CONDITIONALLY ADOPT
THE LEASE AGREEMENT BETWEEN VENTURA PORT DISTRICT
AND VENTURA HARBOR MARINE FUEL INC.**

WHEREAS, the Ventura Port District ("District") is considering entering into a certain lease agreement with Ventura Harbor Marine Fuel, Inc., with a commencement date of April 1, 2015 ("Lease"), for the leasing of a fuel facility, commonly known as 1551 Spinnaker Drive, 3A1, 3A2, Ventura, California;

WHEREAS, the Lease is for a period of twenty (20) years;

WHEREAS, pursuant to the California Harbors and Navigation Code section 6270, a lease of District property for a period of more than ten (10) years must be authorized by ordinance and published in a newspaper of general circulation in Ventura County at least once before final passage (Exhibit A);

NOW, THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the Ventura Port District hereby authorizes and directs District staff to publish a notice of its intent to adopt an ordinance authorizing execution of the Lease in the form attached hereto as Exhibit B, to comply with Harbors and Navigation Code section 6270.

PASSED, APPROVED, AND ADOPTED at a Regular Meeting of the Board of Port Commissioners of Ventura Port District held this 8th day of April, 2015, adopted by the following vote:

AYES:
NOES:
Absent:
Abstain:

Jim Friedman, Chairman

Attest:

Bruce Smith, Secretary

(Seal)



EXHIBIT A

**NOTICE OF PROPOSED ORDINANCE
OF THE VENTURA PORT DISTRICT**

(California Harbors and Navigation Code section 6270)

NOTICE IS HEREBY GIVEN that on May 13, 2015, at 11:00 a.m., a meeting of the Board of Port Commissions of the Ventura Port District will be held at the District office located at 1603 Anchors Way Drive, Ventura, California.

Said meeting of the Board of Port Commissions is, in part, for the purpose of considering the adoption and passage of the following ordinance:

“ORDINANCE NO. 49”

AN ORDINANCE OF THE BOARD OF PORT COMMISSIONERS
OF VENTURA PORT DISTRICT AUTHORIZING
EXECUTION OF THE LEASE AGREEMENT WITH
VENTURA HARBOR MARINE FUEL, INC.
(California Harbors and Navigation Code section 6270)

The Board of Port Commissioners of the Ventura Port District hereby ordains as follows:

The General Manager of the Ventura Port District is authorized and directed to execute the Lease Agreement between Ventura Port District, d.b.a. Ventura Harbor Village, and Ventura Harbor Marine Fuel Inc. New Lease, Inc., with a commencement date of April 1, 2015.”

A copy of the proposed lease agreement is available for inspection during regular business hours at the District Office located at 1603 Anchors Way Drive, Ventura, California.

If the foregoing ordinance is adopted upon the majority vote of the Board of Port Commissioners of the Ventura Port District, said ordinance will become effective thirty (30) days after final passage.

This Notice is published at the direction of the Board of Port Commissioners pursuant to Resolution No. 3273 duly adopted at the regular meeting of the Board of Port Commissioners of the Ventura Port District held on April 8, 2015.

Oscar Peña, General Manager
Ventura Port District

FUELING LEASE
BETWEEN
VENTURA PORT DISTRICT
AND
VENTURA HARBOR MARINE FUEL, INC.
A CALIFORNIA CORPORATION

EXHIBIT B

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Fueling Facility Lease

1. Identification.

This Fueling Facility Lease (hereafter "Lease") is made and entered into as of the 1st day of April, 2015, (hereafter "Effective Lease Date"), between VENTURA PORT DISTRICT, a California Port District (hereafter "Lessor"), and VENTURA HARBOR MARINE FUEL, INC., a California corporation (hereafter "Lessee").

2. Recitals.

2.1 Lessor is the owner of certain land and water area within the City of San Buenaventura, County of Ventura, which Lessor is developing, improving and operating as a harbor, now known as "Ventura Harbor."

2.2 A portion of said harbor known as the Fuel Dock Area/Underground Tanks and Distribution System, located on Parcels 3A1 and 3A2 (1551 Spinnaker Drive) is improved with structures and facilities that include a fuel pier, and related underground and above ground storage and delivery facilities to be operated and maintained as a fueling facility by Lessee. Lessee may utilize the east side of the fuel pier for the mooring of vessels on a transient basis unless otherwise prohibited by another public agency. The water area for this transient use is 7.425 square feet (165' x 45'). (See Exhibit A-1).

2.3 The parties desire to enter into this Lease for the improvement and operation of a fueling facility on the Premises identified in Article 3.

3. Lease of Premises.

Lessor hereby leases to Lessee, and Lessee takes and leases from Lessor, for the term and upon the terms and conditions set forth herein, that area of land, water, improvements and equipment (including underground storage tanks, piping and related fuel delivery facilities) located thereon and in certain common areas in that portion of Ventura Harbor known as Ventura Harbor Village situated within the City of San Buenaventura, County of Ventura, State of California, and located in the Ventura Harbor, as more particularly depicted and shown on the map and diagram, collectively, attached hereto as Exhibit "A" and by this reference incorporated herein, which area of land and water, improvements and equipment, shall hereafter be referred to as the "Premises". This Lease and the rights and privileges granted Lessee in and to the Premises are subject to all covenants, conditions, restrictions, and exceptions of record or apparent, including those which are set out in the Harbors and Navigation Code of the State of California as originally adopted and amended from time to time. The Premises are further subject to the conditions in the Exchange Agreement of August 26, 1980, between the Lessor and the State of California State Lands Commission, and the Local Coastal Plan of the City of San Buenaventura. This form of Lease is subject to the prior approval of the California Department of Boating and Waterways ("DBAW").

Except as otherwise specifically provided in this Lease, the Premises shall be delivered to Lessee in its present "As-Is" condition and with all faults. It shall be the sole

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responsibility of Lessee, at Lessee's sole expense, to investigate and determine the conditions of the Premises, the condition of the existing improvements, including the underground storage tanks and piping on the Premises, and the suitability of such conditions for Lessee's use and occupancy of the Premises, including, but not limited to, the business to be conducted by Lessee from or on the Premises.

4. Term.

4.1 Term.

The term of this Lease, hereafter "Lease Term", is for a period of twenty (20) years commencing April 1, 2015 the Effective Lease Date, and shall expire on the earlier of either (i) March 31, 2035, or (ii) upon the giving of written notice of termination of this Lease by Lessor as provided in this Lease.

5. Rent.

5.1 Minimum Annual Rental.

During the Lease Term, Lessee agrees to pay Lessor, in advance, on or before the first day of each calendar month, at the office of Lessor, without deduction or offset, and without abatement except as set forth in Articles 17 and 18, below, a minimum annual rental of Sixteen Thousand Four Hundred Twenty-Eight Dollars (\$16,428.00) and payable to the Lessor in twelve (12) monthly installments of One Thousand Three Hundred and Sixty-Nine Dollars (\$1,369.00).

5.2 Adjusted Minimum Annual Rent.

The minimum annual rent shall be subject to a Consumer Price Index ("CPI") adjustment, or a three percent (3%) increase, whichever is greater, each year on the anniversary of the Effective Lease Date (with each such anniversary referred hereafter as an "Adjustment Date"), commencing June 1, 2015 as follows:

The base for computing the CPI adjustment is the Consumer Price Index for all Urban Consumers for the Los Angeles/Riverside/Orange County area, published by the United States Department of Labor, Bureau of Labor Statistics (hereafter "Index"), which is in effect on the Effective Lease Date (hereafter "Beginning Index"). If the Index published for the month immediately preceding the then applicable Adjustment Date (hereafter "Extension Index") has increased over the Beginning Index, the minimum annual rent for the following year (until the next annual rent adjustment) shall be set by multiplying the

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minimum annual rent set forth in Article 5.1, above, by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. Thereafter, the adjusted minimum annual rent for each year shall be paid in twelve (12) monthly installments.

In no case shall the minimum annual rent be less than the amount specified in Article 5.1 above.

The Index for the Adjustment Date shall be the one reported in the U. S. Department of Labor's newest comprehensive official index then in use and most nearly answering the foregoing description of the index to be used. If the Index is changed so that the base year differs from that in effect when the Lease Term commences, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Lease Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

5.3 Percentage Rental.

(a) In addition to other rent, fees and charges specified in this Lease, Lessee shall pay to Lessor, on a monthly basis, in arrears, within the time specified in subparagraph (a) of Article 5.8, below, without deduction or offset, an amount equal to the percentages of gross income and rate per gallon of fuel (as defined in Article 5.4 below) ("Percentage Rent"), in, upon, on, or from the Premises or within Ventura Harbor, which are set forth in Exhibit "B" attached hereto and by this reference incorporated herein. Lessee acknowledges, understands, and agrees that the calculation of Percentage Rent for any calendar month shall not be reduced by any minimum annual rental or Slip Fee Percentage Rent that is or may be due and payable under this Lease. Lessor shall have the right to verify the accuracy of said Percentage Rent pursuant to Articles 5.7 and 5.8, below.

(b) Percentage Rent shall be adjusted every five (5) years from the Effective Lease Date, with each five (5) year anniversary of the Effective Lease Date referred to hereafter as a "Percentage Rent Adjustment Date," to a rate equal to the fair market value of percentage rentals rates for comparable marine fueling facilities located within Ventura County and Santa Barbara County determined as of the then applicable Percentage Rent Adjustment Date. Within ninety (90) days, but not more than one hundred twenty (120) days, prior to a Percentage Rent Adjustment Date, Lessee shall notify Lessor, in writing, of Lessee's determination of the fair market value of percentage rental rates for such comparable marine fueling facilities determined as of the then applicable Percentage Rent Adjustment Date. In the event Lessee does not provide Lessor with such notice within the time required, the adjusted percentage rental rate as of the then applicable Percentage Rent Adjustment Date (until the next percentage rental adjustment) shall be

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the fair market value of percentage rental rates for such comparable marine fueling facilities as determined by Lessor in its reasonable discretion. Within sixty (60) days after Lessor's receipt of such notice, Lessor shall provide written notice to Lessee of its acceptance or rejection of Lessee's determination of such percentage rental rates. In the event Lessor rejects Lessee's determination, Lessor's written notice shall include Lessor's determination of the fair market value of such percentage rental rates determined as of the then applicable Percentage Rent Adjustment Date. In the event Lessor does not provide Lessee with such written notice within the time required, the adjusted percentage rental rate as of the then applicable Percentage Rent Adjustment Date (until the next percentage rental adjustment) shall be a rate equal to the fair market value of percentage rental rates for such comparable marine fueling facilities as determined by Lessee in its reasonable discretion. In the event Lessor and Lessee cannot agree on the fair market value of the adjusted percentage rental rate to be paid by Lessee as of the then applicable Percentage Rent Adjustment Date (until the next percentage rental adjustment) within thirty (30) days of Lessee's receipt of Lessor's rejection notice, the fair market value of such adjusted percentage rental rate determined as of the then applicable Percentage Rent Adjustment Date shall be determined by arbitration, as set forth in subparagraph (c) of this Article 5.3 below.

(c) **Arbitration of Percentage Rental Renegotiation Disputes.**

(i) Within thirty (30) days after the expiration of the thirty (30) day time period set forth in subparagraph (b) of this Article 5.3, above, Lessor and Lessee shall jointly appoint a single neutral arbitrator who will be required to select only that rate proposed by Lessor or Lessee which most closely approximates the fair market value of percentage rental rates for such comparable marine fueling facilities determined as of the then applicable Percentage Rent Adjustment Date. The fees of such arbitrator shall be divided equally between the parties. If within said thirty (30) day period the parties are unable to agree on one arbitrator, within the next seven (7) days, each party shall appoint one arbitrator and the two arbitrators together shall be required to select only that rate proposed by Lessor or Lessee which most closely approximates the fair market value of percentage rental rates for such comparable marine fueling facilities determined as of the then applicable Percentage Rent Adjustment Date (until the next percentage rental adjustment).

(ii) If, within sixty (60) days of their appointment, the two (2) arbitrators so appointed are unable to agree on which adjusted percentage rental rate to select, then they shall, in writing, immediately appoint a third arbitrator and the third arbitrator so appointed shall be required to make such selection within sixty (60) days of the appointment of the third arbitrator. The fees of the third arbitrator shall be divided equally between the parties. The third arbitrator may conduct any hearings he may in his sole discretion determine to be necessary or appropriate in selecting the rate proposed by either Lessor or Lessee. The third arbitrator may not select any other alternative or compromise percentage rental rate unless the parties otherwise agree in writing that such a determination shall be within the power and authority of the arbitrator to make.

(iii) In selecting only that rate proposed by Lessor or Lessee which most closely approximates the fair market value of percentage rental rates for such comparable boatyards determined as of the then applicable Percentage Rent Adjustment Date (until the next percentage

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rental adjustment), the arbitrator or arbitrators shall assume that Lessee and its subtenants are conducting their business operations on the Premises in a most efficient and cost-effective way so as to maximize the rate of return from those operations for both Lessor and Lessee. Said arbitrator or arbitrators shall consider only the percentage rental rate to be paid for the next succeeding five (5) year period, commencing retroactively to the then applicable Percentage Rental Adjustment Date, during the Lease Term, and shall not take into account any past occurrences, breaches, defaults or claims of Lessor or Lessee, one against the other. The arbitrator or arbitrators shall reduce the decision to writing and shall deliver to each of the parties a statement of that decision, specifying the adjusted percentage rental rate selected by the arbitrator(s). The arbitrator(s) so appointed pursuant to the foregoing provisions shall be attorneys, certified public accountants, or members in good standing of the American Institute of Real Estate Appraisers holding an M.A.I designation and primarily engaged in the business or occupation of appraising or evaluating businesses, real property and improvements. Should any arbitrator(s) be made a party to any legal proceedings arising out of this Article 5.4, Lessor and Lessee shall jointly hold said arbitrator(s) harmless and indemnify them against any and all costs and expenses incurred in said proceedings.

NOTICE: BY INITIALING IN THE SPACE BELOW, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF PERCENTAGE RENTAL RENEGOTIATION DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR BY JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF PERCENTAGE RENTAL RENEGOTIATION DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF PERCENTAGE RENTAL RENEGOTIATION DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

Lessor

Lessee

5.4 Definition of “Gross Income”.

The term “gross income”, as used herein, shall include:

(a) All amounts received, by Lessee, its agents, sublessees, concessionaires, licensees, invitees or patrons, from the sale of fuel, oil products, and related products typically sold by a fuel pier operator, including oil changes and related incidental repairs of marine vessels within the Premises and the Ventura Harbor, including the sale of all goods, products or services sold on or from the Premises or the Ventura Harbor, whether sold before trade-in allowances, or whether for cash or on credit, and the disposition of waste material and products associated with marine vessels.

(b) All amounts received by Lessee, its agents, sublessees, concessionaires, licensees, invitees or patrons for the sale, lease or other rendition on or from the Premises, or within Ventura Harbor, of services of any nature or kind whatsoever, whether for cash or on credit.

(c) All rent and other fees of any nature or kind received on or from the Premises by Lessee, its agents, sublessees, concessionaires or licensees.

(d) All non-refundable or forfeited deposits received by Lessee, its agents, sublessees, concessionaires, or licensees in connection with any transaction in, at, upon, or from the Premises.

(e) Gross receipts from coin-operated or other vending devices on the Premises, including telephones.

(f) All charges or gross income or receipts received by Lessee, its agents, sublessees, concessionaires or licensees, based on orders taken on or from the Premises or Ventura Harbor to be filled or paid for elsewhere, or vice versa, whether for cash or credit.

(g) The fair rental value of facilities constructed for rental uses (such as an office), when used by Lessee, or lessee’s agents and employees, for purposes other than the business or administrative purposes for which the Premises are leased, except for promotional or other similar uses consistent with standards of the industry.

(h) The fair market value of any vessel or related equipment, title to which is obtained by Lessee, its agents, or employees in satisfaction of any lien or debt owing for services provided, but only to the extent the fair market rental exceeds the amount of the lien or debt, provided the amount of such lien or debt has previously been reported as gross income.

(i) All gross income as defined herein, of Lessee, its agents, sublessees, concessionaires or licensees received from any operations in, at, upon, or from the Premises or Ventura Harbor, which are neither included in nor excluded from gross income by other provisions of this Lease.

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(j) All charges or gross income or receipts received by Lessee, its agents, sublessees, concessionaires or licensees from internet sales, which include, but are not limited to, any and all commercial transactions completed online, whether through a website operated by Lessee, its agents, sublessees, concessionaires or licensees, or through third party e-commerce websites, of any and all fuel sales, oil, filters, commercial fish gear and supplies, other supplies, slip rentals, goods, wares, merchandise, products or services that are related to Lessee's business or would be attributable to Lessee's business conducted on the Premises or within Ventura Harbor in the customary or ordinary course of Lessee's operations.

For purposes of this Article 5.4, any transaction, sale, charge, fee, deposit or amount received based upon a cash transaction shall be treated as a transaction for the amount received in the month and year in which that transaction, billing or sale is made. When the transaction, billing sale, charge, fee, deposit, or amount is based on a credit card, the full amount charged shall be deemed received in the month and year in which the transaction or sale is made.

5.5 Exclusions from Gross Income.

Excluded from gross income, or subtracted if previously included, shall be:

(a) All sums collected and paid out for sales taxes, luxury taxes, excise taxes, and similar taxes required by law to be added to the total sales price, whether now or hereafter in force, to be collected from customers and paid by Lessee, its agents, sublessees, concessionaires or licensees.

(b) Merchandise transferred or exchanged between other stores or warehouses owned by or affiliated with Lessee, its agents, sublessees, concessionaires or licensees, if those transfers or exchanges are made solely for convenient operation of such business and not for the purpose of consummating a sale previously made on or from the Premises or for the purpose of depriving Lessor of the benefit of a sale that otherwise would be made on or from the Premises.

(c) Merchandise returned to shippers or manufacturers.

(d) All credits and cash refunds made on any sale that took place on or from the Premises, provided the sales price was previously included in gross income under Article 5.5.

(e) All cash or credit received in settlement of any claims for loss of or damage to merchandise.

(f) Any income or receipts that, under generally accepted accounting principles, are derived from the sale or disposal of any capital assets, or from the retirement of any indebtedness, or from any financing or refinancing of the Premises by Lessee, or from the investment by Lessee, its agents, sublessees, concessionaires or licensees of any funds not invested in (i) the Premises or (ii) the operation of a business within the Premises.

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(g) That portion of the gross receipts of all coin-operated devices, including pay telephones, that lessee, its agents, sub lessees, concessionaires or licensees must, by contract concerning them, turn over to a person, firm, or corporation in which Lessee, its agents, sublessees, concessionaires or licensees have no direct or indirect financial interest.

(h) Any charges or monies received by Lessee from any of its agents, sublessees, concessionaires, or licensees as and for rentals to be paid by such agents, sublessees, concessionaires, or licensees to Lessee, with respect to any business activity which results in gross income as defined above for which percentage rent is payable.

(i) Any refundable deposits received by Lessee, its agents, sublessees, concessionaires or licensees; provided, however, that in the event Lessee, its agents, sublessees, concessionaires or licensees become entitled to any or all of said deposits by reason of any act of the depositor, the amounts to which Lessee, its agents, sublessees, concessionaires or licensees becomes entitled shall be included in gross income.

Notwithstanding any provision of this Article 5.5 to the contrary, Lessee shall not for the purpose of accounting to Lessor pursuant to the terms and provisions of this Lease, deduct from Lessee's gross income the amount of any charge made by Lessee against its reserve for bad debts for amounts theretofore included by Lessee in gross income, provided, however, Lessee shall be authorized to deduct from Lessee's gross income an amount not to exceed Nine Hundred Dollars (\$900.00) per year for bad debt for sums paid to a credit card issuer by Lessee or its sublessees, concessionaires or licensees on account of credit card sales.

5.6 Slip Fee Percentage Rent.

(a) Lessee shall pay to Lessor, on a monthly basis, in arrears, within the time specified in subparagraph (a) of Article 5.8, below, without deduction or offset, an amount equal to the percentages of all slip/side-tie fees or slip/side-tie rentals paid to, or received by, Lessee ("Slip Fee Percentage Rent"), in, upon, or from the Premises or Ventura Harbor, which are set forth in Exhibit "J" attached hereto and by this reference incorporated herein, for the mooring of any and all boats, ships, or vessels, whether commercial or non-commercial. Lessor shall have the right to verify the accuracy of said Slip Fee Percentage Rent pursuant to Articles 5.7 and 5.8, below.

(b) Slip Fee Percentage Rent shall be adjusted every five (5) years from the Effective Lease Date, with each five (5) year anniversary of the Lease Date referred to hereafter as a "Slip Fee Percentage Rent Adjustment Date," to a rate equal to the fair market value of slip fee percentage rental rates for comparable marinas located within Ventura County determined as of the then applicable Slip Fee Percentage Rent Adjustment Date. Within ninety (90) days, but not more than one hundred twenty (120) days, prior to a Slip Fee Percentage Rent Adjustment Date, Lessee shall notify Lessor, in writing, of Lessee's determination of the fair market value of slip fee percentage rental rates for such comparable marinas determined as of the then applicable Slip Fee Percentage Rent Adjustment Date. In the event Lessee does not provide Lessor with such notice within the time required, the adjusted slip fee percentage rental rate as of the then applicable Slip Fee Percentage Rent Adjustment Date (until the next slip fee percentage rental

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adjustment) shall be a rate equal to the fair market value of slip fee percentage rental rates for such comparable marinas as determined by Lessor in its reasonable discretion. Within sixty (60) days after Lessor's receipt of such notice, Lessor shall provide written notice to Lessee of its acceptance or rejection of Lessee's determination of such slip fee percentage rental rates. In the event Lessor rejects Lessee's determination, Lessor's written notice shall include Lessor's determination of the fair market value of such slip fee percentage rental rates determined as of the then applicable Slip Fee Percentage Rent Adjustment Date. In the event Lessor does not provide Lessee with such written notice within the time required, the adjusted slip fee percentage rental rate as of the then applicable Slip Fee Percentage Rent Adjustment Date (until the next slip fee percentage rent adjustment) shall be a rate equal to the fair market value of slip fee percentage rental rates for such comparable marinas as determined by Lessee in its reasonable discretion. In the event Lessor and Lessee cannot agree on the fair market value of the adjusted slip fee percentage rental rate to be paid by Lessee as of the then applicable Slip Fee Percentage Rent Adjustment Date (until the next slip fee percentage rent adjustment) within thirty (30) days of Lessee's receipt of Lessor's rejection notice, the fair market value of such adjusted slip fee percentage rental rate determined as of the then applicable Slip Fee Percentage Rent Adjustment Date shall be determined by arbitration, as set forth in subparagraph (c) of this Article 5.6, below.

(c) **Arbitration of Slip Fee Percentage Rental Renegotiation Disputes.** The parties agree to arbitrate any slip fee percentage rental adjustment renegotiation disputes arising under subparagraph (b) of this Article 5.6, above, in the same manner and upon the same terms and conditions as set forth in subparagraph (c) of Article 5.3, above; provided, however, in connection with such disputes, the arbitrator(s) will be required to only select that rate proposed by Lessor or Lessee which most closely approximates the fair market value of slip fee percentage rental rates for comparable marinas located within Ventura County determined as of the then applicable Slip Fee Percentage Rent Adjustment Date.

NOTICE: BY INITIALING IN THE SPACE BELOW, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF SLIP FEE PERCENTAGE RENTAL RENEGOTIATION DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR BY JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF SLIP FEE PERCENTAGE RENTAL RENEGOTIATION DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.

**YOUR AGREEMENT TO THIS ARBITRATION PROVISION
IS VOLUNTARY.**

**WE HAVE READ AND UNDERSTAND THE FOREGOING
AND AGREE TO SUBMIT DISPUTES ARISING OUT OF
THE MATTERS INCLUDED IN THE "ARBITRATION OF
PERCENTAGE RENTAL RENEGOTIATION DISPUTES"
PROVISION TO NEUTRAL ARBITRATION.**

Lessor

Lessee

5.7 Maintenance of Records.

(a) Lessee shall at all times during the term of this Lease, keep or cause to be kept, true and complete books, records and accounts of all financial transactions of the operation of all business activities of whatever nature conducted pursuant to the rights granted herein, including all transactions of Lessee, its sublessees, concessionaires, licensees and agents. The records must be supported by source documents such as sales slips, signed work orders, cash register tapes, computerized sales records, purchase invoices, or other pertinent documents, including contracts, agreements and signed work orders related to the financial transactions.

(b) All books of account and records related to this Lease or to business operations conducted within or from the Premises, including such books, accounts and records of Lessee and Lessee's agents, sublessees, concessionaires or licensees, shall be kept and made available without restriction at one location either at the Premises or at such other locations as are acceptable to Lessor. Lessor shall, through its duly authorized agents or representatives, have the right to examine and audit said books of account and records at any and all reasonable times upon three (3) days' prior notice, for the purpose of determining the accuracy thereof, and of the monthly statements of sales made and monies received. Lessee shall keep, or cause to be kept, full, complete and proper books, records and accounts of the gross income for both cash and on credit, of each separate business of Lessee, its agents, sublessees, concessionaires or licensees, at any time operated on the Premises; said books, records and accounts, including any sales tax reports that Lessee, its agents, sublessees, concessionaires or licensees may be required to furnish to any governmental agency, shall be open to the inspection of and copying by Lessor, Lessor's auditor, or other authorized representative or agent of Lessor at all reasonable times during business hours. In the event the Lessee does not make available the original records and books of account at the leased premises or within the limits of Ventura County, Lessee agrees to pay all necessary travel, lodging and meal expenses incurred by Lessor in conducting an audit at the location where said records and books of account are maintained.

(c) In the event that the Lessee's business operations conducted within or from the Premises are part of a larger business operation of the Lessee and that any part of the books, records, financial statements and documentation required herein are prepared only for the larger operation and not solely for the business operations of the Premises, the Lessor shall also have

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the right to examine and audit that part of said books, records, financial statements and documentation of the larger business operation. Lessee's failure to keep such books of account, records, financial statements and documentation and make them available for inspection by the Lessor is a breach of this Lease and cause for termination of this Lease.

5.8 Verification of Records, Computation, Payment and Correction of Additional Percentage Rentals.

(a) Within twenty (20) days after the end of each calendar month during the Lease Term, Lessee shall furnish Lessor with a statement in the form prescribed by Lessor and certified as correct by Lessee which is to set forth the gross income of each separate business of Lessee, its agents, sublessees, concessionaires or licensees operating on the Premises for the month just concluded, and the authorized deductions, if any, therefrom, including any and all slip/side-tie fees and slip/side-tie rentals paid to, or received by, Lessee, for which Slip Fee Percentage Rent is calculated pursuant to Article 5.6, above, and with each statement the Lessee shall pay Lessor (i) the amount of the additional percentage rent, if any, which is payable to Lessor based on the application of percentages set forth in Exhibit "B" to said gross income, as shown in said statement, and (ii) the amount of the Slip Fee Percentage Rent, if any, which is payable to Lessor based on the application of percentages set forth in Exhibit "J" to such slip/side-tie fees and rentals, as shown in said statement. The statement shall also specify all amounts received by Lessee from any subtenants, including a separate specification of all amounts paid as deposits, rents, common area charges, or pass through rents.

(b) Within one hundred twenty (120) calendar days after the end of each calendar year during the Lease Term, Lessee shall at its own expense submit to Lessor a balance sheet and income and other financial statements prepared or audited by an independent certified public accountant, reflecting all business transacted on or from the Premises and within the Ventura Harbor during the preceding calendar year. The certified public accountant, retained at Lessee's sole cost and expense, shall attest that the balance sheet and income and other financial statements submitted are accurate representations of Lessee's records as reported to the United States of America for income tax purposes.

(c) Concurrently with the foregoing submittal of financial documents covering each calendar year, Lessee shall submit to Lessor a statement certified as to its accuracy by an independent certified public accountant wherein the total gross income from the Premises and within the Ventura Harbor for the calendar year is classified according to the categories of business established for percentage rental purposes and listed in Exhibit "B" to this Lease, and for any other business conducted on or from the Premises or within the Ventura Harbor, including gross rentals received by Lessee for the rental of office or storage space, if any, during said calendar year. Further, within each business category, Lessee shall separately identify each source of gross income by business name (including Lessee, its agents, sublessees, concessionaires and licensees conducting any business activities whatsoever on the Premises or within the Ventura Harbor), or other appropriate identification, specifying the exact amount of gross income derived from that source during said calendar year. The statement shall also specify all amounts received by Lessee from its subtenants, including a separate specification of all amounts paid as deposits, rents, common area charges, or pass through rents. In the event such statement discloses that the

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percentage rental on the annual gross income, or the slip fee percentage rental on the slip /side-tie fees or slip/side-tie rentals, respectively, for the preceding calendar year exceeds the total amounts of percentage rental or slip fee percentage rental, respectively, paid to Lessor by Lessee during said period, Lessee shall immediately pay the amount of such deficiency to Lessor. Similarly, should the statement disclose an overpayment of rent during said period, Lessor shall promptly refund to Lessee the amount of such overpayment, without interest.

(d) If upon audit by Lessor it is disclosed that the gross income or Slip Fee Percentage Rent reported by Lessee for any calendar month or as set forth in the certified annual statement was understated by more than three percent (3%) and/or Lessee has failed to maintain complete and accurate books of account, records, financial statements and documentation in accordance with this paragraph, Lessee shall pay Lessor on demand, and in addition to making payment of the additional percentage rent and/or Slip Fee Percentage Rent due to Lessor for that month or, in the case of an audit of the annual statement, for that calendar year, the cost of said audit; otherwise Lessor shall bear the cost. Audit costs when payable by Lessee would include, but not be limited to all outside accounting, auditing, bookkeeping and computer fees and expenses, administrative, financial and economic consultant fees and related legal fees. Payment required under this Lease shall be made in such currency of the United States as at the time of payment shall be legal tender for the payment of private debts or by check or other order as is then customary in business transactions.

(e) Should the auditor submit a report to Lessor containing recommendations for changes in accounting procedures and/or records retention practices of Lessee or any Sublessee of Lessee, Lessor shall deliver a copy of said report to Lessee and, promptly thereafter, Lessee shall take all reasonable steps necessary to promptly implement the recommended changes in procedures and practices.

5.9 Acceptance Not Waiver and Retention of Records.

(a) The acceptance by Lessor of any monies paid to Lessor by Lessee as additional rental for the Premises, as shown by any statement furnished by Lessee, shall not be an admission of the accuracy or the sufficiency of the amount of said additional rental payment, but Lessor shall be entitled at any time within four (4) years after the receipt of any additional rental payment to question the sufficiency of the amount thereof and/or the accuracy of the statement or statements furnished by Lessee to justify the same. For the purpose of enabling Lessor to check the accuracy of any such statement or statements, and the sufficiency of any additional rental payment made in accordance therewith, Lessee shall, for said period of four (4) years after submission to Lessor of any such statement, keep or cause to be kept safe and intact all of Lessee's records, books, and accounts, and other data, including records, books and accounts of its agents, sublessees, concessionaires, or licensees, which in any way bear upon or are required to establish in detail gross income and any authorized deductions therefrom as shown by any such statement, and shall, upon Lessor's request, make the same available to Lessor for examination at any time during said four (4)-year period.

(b) Upon the request of Lessor, Lessee shall promptly provide, at Lessee's expense, necessary data to enable Lessor to fully comply with any and every requirement of the

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State of California or the United States of America for information or reports relating to this Lease and to Lessee's use of the Premises. Such data shall include, if required, a detailed breakdown of Lessee's receipts and expenses.

5.10 Late Charges and Interest on Delinquent Payments.

If Lessee fails to make any payment of any sum of money due under this Lease, and if such delinquency continues for ten (10) calendar days following the due date thereof, there shall be imposed an additional charge of ten percent (10%) of said payment which shall be added to the amount due and the total sum shall become immediately due and payable.

5.11 Negation of Partnership.

Nothing in this Lease shall be construed to render Lessor in any way or for any purpose a partner, joint venturer, fiduciary or associate in any relationship with Lessee, other than that of landlord and tenant, nor shall this Lease be construed to authorize either to act as agent for the other, except as expressly provided to the contrary in this Lease.

5.12 Designation as Additional Rent.

Lessee shall pay, as additional rent, all sums of money required to be paid pursuant to the terms of this Article 5, and all other sums of money or charges required to be paid by Lessee under this Lease, whether or not the same be designated as "additional rent." If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless be collectible as additional rent with the monthly installment of Minimum Annual Rent thereafter falling due, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charges at the time the same becomes due and payable hereunder, or limit any other remedy of Lessor.

6. Uses.

6.1 Permitted Uses.

Subject to Article 14.3, Lessee shall be permitted to maintain and operate during the Lease Term the use or uses set forth in Exhibit "C" attached hereto, initialed by the parties and by this reference incorporated herein. Lessee shall not maintain or permit any use or uses other than those specified under Exhibit "C" and Article 6.2 of this Lease. Said permitted uses are non-exclusive and Lessor reserves the right to permit other lessees to conduct the same or similar uses on property leased from Lessor within Ventura Harbor.

6.2 Other Uses.

Lessee may, with Lessor's prior consent, use the Premises for any other lawful purposes in addition to or in place of those enumerated above; provided, however, that, prior to the commencement of such use or purpose by Lessee, the parties shall have agreed upon a percentage rental rate to be applied to such use or purpose, which agreement shall be in the form

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of an amendment to this Lease, duly executed by the parties. Lessor reserves the right to consent or withhold its consent to any request for such additional use as Lessor shall determine, in its sole discretion.

7. Improvements on Premises.

7.1 Required Improvements.

(a) As a material part of the consideration for this Lease, Lessee shall plan, design and construct certain required improvements on the Premises and the parties acknowledge and agree that the prompt, full and complete construction of said required improvements is a critical factor in the anticipated financial success of the business operations to be conducted by Lessee on or from the Premises.

(b) The required improvements shall be constructed at Lessee's sole cost and expense under this Article 7.1 and are specified in Exhibit "D" (and Article 7.2 relating to replacement of the floating dock system) attached hereto and by this reference made a part hereof. Construction of said required improvements must be substantially completed to the satisfaction of Lessor and Lessee shall comply with the provisions of the Lease relating to the planning, design, and construction of additional leasehold improvements in Article 7.3, below, subject to Lessor's approval (which such approval shall not be unreasonable withheld or delayed). Failure to complete such construction by the deadlines set forth in Exhibit "D" shall be deemed to be a material default by Lessee pursuant to Article 16 of the Lease.

7.2 Replacement of Floating Dock Systems.

(a) Submission of Notice and Plan.

On or before July 1, 2017, Lessee shall provide Lessor with a plan to completely replace the floating dock systems and ramps described in Exhibit "D" (the "replacement plan"), which, at a minimum, includes conceptual drawings, renderings, schematic plans, draft CEQA documents (if required), detailed cost estimates and a proposed budget, for Lessor's review.

(b) Initial Evaluation of Replacement Plan.

(i) Within one hundred twenty (120) calendar days after Lessee's submission to Lessor of the items identified in subparagraph (a) of Article 7.2, above, including such additional data or information as Lessor may request, Lessor shall determine if the replacement plan is acceptable.

(ii) In the event Lessor determines that the replacement plan is not acceptable, Lessee and Lessor will, within a period not exceeding sixty (60) calendar days, attempt to negotiate an acceptable replacement plan.

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(iii) In the event Lessor and Lessee are unable to agree on an acceptable replacement plan within the specified time, within thirty (30) days thereafter, Lessor and Lessee shall each appoint an engineer or other design professional to a dispute resolution panel to consider the requirements of the replacement plan. Within sixty (60) calendar days thereafter, the engineers or design professionals appointed by Lessor and Lessee shall jointly appoint a mutually agreeable third equally well-qualified member to the panel. The three panel members shall thereafter confer amongst themselves as necessary and shall, within ninety (90) calendar days of the appointment of the third panel member, attempt to reach agreement on a replacement plan based on the vote of any two panel members which shall be binding upon Lessor and Lessee.

(c) Final Evaluation of Replacement Plan.

If Lessor and Lessee mutually agree on the replacement plan or an agreeable plan is developed by the dispute resolution panel under subsection (iii) of subparagraph (b) of Article 7.2, above, within one hundred twenty (120) days of such agreement, Lessee shall submit preliminary plans for the replacement plan to Lessor and shall thereafter complete the design of the plan under and in accordance with the provisions of the Lease relating to the planning, design, and construction of additional leasehold improvements in Article 7.3, below, subject to Lessor's approval. Lessee shall also reimburse Lessor for all out-of-pocket costs incurred by Lessor in connection with the processing of the request for initial and final approval of the replacement plan within thirty (30) days after receiving an invoice from Lessor for said costs and expenses.

(d) Financing of Replacement Plan.

(i) If Lessor and Lessee mutually agree on the items in the design process identified in subparagraph (c) of Article 7.2, above, within sixty (60) calendar days after reaching such agreement, Lessee shall submit all of the following to Lessor for its review:

(aa) Proof of approved financing for all work to be done under the replacement plan.

(bb) Copies of all proposed loan documents, if any.

(cc) Financial information for the immediately preceding five (5) years, including, but not limited to, Lessee's federal and state tax returns, financial statements, statements of cash flows, slip rate data and other information that Lessor may request evidencing Lessee's ability to implement and complete the replacement plan.

(dd) If financing is not to be used to complete the work to be done under the replacement plan, copies of all documents which Lessor may request verifying the source, amount and availability of all funds Lessee will use to implement and complete the replacement plan; and

(ee) Copies of, or satisfactory proof, that Lessee has obtained all permits, entitlements, bonds, etc., necessary to implement and complete the work contemplated under the replacement plan.

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(ii) Within sixty (60) calendar days after Lessee's submission to Lessor of the items identified above in subsections (aa) through (ee), inclusive, of subparagraph (d), above, of Article 7.2, as applicable, Lessor shall approve or disapprove such items.

(iii) If any of the items identified in subparagraphs (aa) through (ee), inclusive, of subparagraph (d), above, of this Article 7.2, are disapproved by Lessor, the basis for such disapproval shall be stated in a written notice to Lessee and Lessee shall have one hundred twenty (120) calendar days thereafter to cure or rectify the problem(s) with any such disapproved item. If Lessee fails to cure or rectify such problem(s) within the specified time period to the reasonable satisfaction of Lessor, such failure shall constitute a material default under the Lease.

(e) Completion of Replacement Plan.

(i) On or before the end of the fifth (5th) year after the Effective Lease Date, Lessee shall complete all work required under the replacement plan. Subject to subsection (ii) of this subparagraph (e) of this Article 7.2, below, failure to complete such plan within the specified period shall constitute a material default under the Lease.

(ii) If construction of work required under the replacement plan is cumulatively delayed more than thirty (30) days by strikes, natural disaster, fire, hostile acts of warfare, civil disobedience, or other causes beyond the control of Lessor or its construction contractor, the period allowed to complete the work required under such plan shall be extended for a time equal to the cumulative time period of such delay. To claim such an extension of the completion date, Lessee shall give Lessor written notice of claimed delay, specifying the reasons therefor and the estimated period of the delay. Such notice must be given, if at all, within ten (10) business days after Lessee becomes aware of the cause or circumstances causing the delay. Thereafter the parties will meet and confer in good faith in an effort to reach mutual agreement on the propriety and length of the delay. Any dispute over such claimed delays in the completion date shall be resolved by arbitration under Article 48, below.

(iii) The provision of Article 8.2, below, regarding security for completion of improvements on the Premises, shall apply to all replacement work required to be performed by Lessee under this Article 7.2.

7.3 Planning and Construction of Additional Improvements.

In the event Lessee wishes to construct during the Lease Term other improvements on the Premises in addition to or in place of those now existing or required to be constructed on the Premises, then Lessee shall first obtain Lessor's conceptual approval of the proposed additional improvements and pay Lessor a non-refundable processing fee of One Thousand Dollars (\$1,000.00). Lessee shall also reimburse Lessor for all out-of-pocket costs incurred by Lessor in connection with the processing of the request for conceptual approval within thirty (30) days after receiving an invoice from Lessor for said costs and expenses. The procedure for the submission of designs, plans, drawings and other documents shall be as follows:

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(a) Lessee shall submit to Lessor “schematic plans”, as that term is defined and used in the Design Criteria attached hereto as Exhibit “E”, for the proposed additional improvements to be constructed on the Premises. Upon at least thirty (30) days’ prior written notice to Lessee, Lessor shall have the right in its absolute and sole discretion to change, revise, amend, modify, or update the Design Criteria in any matter whatsoever.

(b) Concurrently with the submittal of schematic plans set forth in this Article 7.3, Lessee shall, at its sole cost and expense, prepare and submit a preliminary environmental assessment of the proposed additional improvements to assist Lessor in determining whether the environmental impacts of the proposed additional improvements exceed those addressed in prior environmental assessments prepared by or for Lessor. If Lessor determines that the impacts of the proposed additional improvements exceed those addressed in prior environmental assessments, then Lessor may require Lessee to take all actions necessary to comply with CEQA, at Lessee’s sole cost and expense.

(c) After approval of the schematic plans by Lessor and certification of the EIR (or the filing of a negative declaration if no EIR is required), Lessee shall submit to Lessor “preliminary plans”, as that term is defined and used in the Design Criteria, for the construction of the proposed additional improvements to be constructed on the Premises.

(d) After approval of the preliminary plans by Lessor, Lessee shall submit to Lessor “working drawings”, as that term is defined and used in the Design Criteria, for the proposed additional improvements to be constructed on the Premises. Said submittal shall also include estimates of the cost of construction of the proposed additional improvements and a schedule for the commencement and completion of construction of said improvements.

(e) Concurrently with the submittal of working drawings set forth in Article 7.3(d) above, Lessee shall submit working drawings to the Building and Safety Department and Department of Public Works of the City of San Buenaventura (“City”) for plan check and shall pay such fee as required by said departments.

(f) Lessee shall promptly make all revisions and complete all corrections and modifications to the working drawings and other comments required by Lessor and City and further, shall obtain all permits and approvals necessary for the commencement of construction pursuant to the schedule therefor approved by Lessor.

(g) Any approval by Lessor of plans, specifications or other designs under this Article 7.3 shall in no event be considered as approval by Lessor of an application for any building or other permit. Further, in its review of and decision of any plan, specification or other design submitted pursuant to the terms of this Lease, Lessor shall be guided by the provisions of this Lease as well as the architectural and construction standards set forth in the “Design Criteria” as it now exists or as it may be amended from time to time by Lessor. A current copy of the Design Criteria is on file at the office of Lessor for review, as indicated on Exhibit “E” attached hereto. In the event of an inconsistency or conflict between the terms and provisions of this Lease

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and the Design Criteria, the terms and provisions of this Lease shall control and supersede the Design Criteria.

(h) In addition to all submittal to be made and approvals to be obtained by Lessee as provided above in this Article 7.3, Lessee must secure, at Lessee's sole cost and expense, all necessary permits and approvals from any and all governmental entities and agencies with jurisdiction over the planning, design and construction of said additional improvements.

(i) In all instances in this Article 7.3 where Lessor has authority to approve, reject, disapprove, request modification, revision or correction of plans, specifications, designs and assessments submitted by Lessee, Lessor agrees to act reasonably and cooperatively and shall communicate its action with respect to such review pursuant to Article 29, below. In the event such plans, specifications, or other designs are rejected or requested to be modified by Lessor, the reasons for such rejection or required modification shall be communicated in writing to Lessee in the manner provided. In the event Lessor requests revision, modification, or correction of the plans, specifications, or other designs so submitted, Lessee shall have thirty (30) calendar days from the date of action by Lessor to submit a revised, modified, or corrected plan, specification, or other design, as the case may be. In the event such plans, specifications, or other designs are neither approved nor rejected by Lessor within thirty (30) calendar days after the submission of said revised, modified or corrected plans, specifications, or other designs, they shall be deemed to have been approved by Lessor. Should Lessee fail or refuse to submit a revised, modified or corrected plan, specification, or other design within the specified period, such failure or refusal will be deemed a withdrawal of Lessee's request for approval and all processing thereof by Lessor shall thereafter cease and terminate.

(j) In the event Lessee withdraws, or is deemed to have withdrawn its request for approval under this Article 7.3 or if this Lease is terminated pursuant to its terms while a request for approval hereunder is pending, Lessee shall forthwith deliver to Lessor at Lessee's sole cost and expense, copies of all tests, studies, inspections, reports, investigations, renderings and other documents and things made, prepared, developed or generated by or for Lessee in connection with the withdrawn or pending request for approval, all of which documents shall thereafter be and come the sole and exclusive property of Lessor.

7.4 Alterations or Modifications.

Lessee may make at its own cost and expense any alterations, modifications, or other changes in the Premises necessary or desirable for Lessee's use of the Premises; provided, however, that such alterations, modifications or other changes shall not be made on the Premises except in accordance with the plans, specifications or other designs previously submitted to and approved in writing by Lessor in the manner provided in Article 7.3 above, and after appropriate permits and approvals from any and all other governmental entities or agencies with jurisdiction over the conduct of such work on the Premises shall have been obtained. Notwithstanding anything to the contrary in this Lease, Lessor's consent to any alterations, modifications or other changes in the Premises shall not be required unless such work requires the issuance of a permit from any governmental entity.

7.5 Utilities.

(a) Lessee agrees that any authorized utility company (including those that provide water, removal of sewage, electricity, telephone, internet, and other like common utilities) has the right, subject to Lessor's written approval, to run utility lines, cables, pipe, conduits, or duct-work where necessary or desirable through the Premises in a manner which will not unnecessarily interfere with Lessee's use of the Premises. Lessee hereby agrees to waive and hold Lessor free and harmless from any and all claims of Lessee, its agents, sublessees, licensees and concessionaires for loss or damage as a result of any negligent act or omission of a utility company in the exercise of any rights granted to it by Lessor.

(b) Lessee shall have the responsibility to continue or to connect the utilities provided on or to the Premises to its facilities, and to furnish, install and maintain, at its own expense, all necessary ducts, pipes, meters and conduits to service adequately its own installations and to relocate at its cost and expense all existing utilities required to be relocated by reason of Lessee's development and operation of the Premises. All utilities shall be carried underground.

7.6 As-Built Plans and Substantial Compliance.

Within one hundred twenty (120) calendar days following completion of the construction of any improvements to or on the Premises required or permitted hereunder, Lessee shall furnish to Lessor a complete set of "as-built" plans depicting the improvements as constructed, which construction shall be in substantial compliance with approved working drawings.

7.7 Signs.

Lessee shall not construct, maintain, or allow any sign upon the Premises except as provided in the Design Criteria (Exhibit "E") and as approved by Lessor.

8. Security.

8.1 Security for Future Performance by Lessee.

(a) Concurrently with the execution of this Lease, Lessee shall deposit with Lessor the sum of Three Thousand Dollars (\$3,000.00). Said deposit shall be in cash, an unconditional irrevocable letter of credit or a combination thereof, and shall be held by Lessor as security for the faithful performance by Lessee of all of the terms, covenants, and conditions of this Lease by Lessee to be kept and performed during the Lease Term. If at any time during the Lease Term any of the rent herein reserved shall be overdue and unpaid, or any other sum payable by Lessee to Lessor hereunder shall be overdue and unpaid, then Lessor may, at the option of Lessor, appropriate and apply any portion of said deposit to the payment of any such overdue rent or other sum. In the event of the failure of Lessee to keep and perform all of the

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terms, covenants and conditions of this Lease to be kept and performed by Lessee, Lessor may, at its option, appropriate and apply said deposit, or so much thereof as may be necessary to compensate Lessor for all loss or damage sustained or suffered by Lessor due to such breach on the part of Lessee, including fees incurred on account of services rendered or work performed at the request of Lessor by accountants, attorneys and other consultants.

(b) If Lessee elects to make the deposit in the form of a letter of credit, such letter shall be from a commercial lending institution approved in advance by and in a form reasonably acceptable to Lessor. Said letter of credit shall remain in effect during the Lease Term, and the ninety (90) days immediately following the expiration or earlier termination of this Lease.

(c) Should the entire deposit, or any portion thereof, be appropriated and applied by Lessor for the payment of overdue rent or other sums due and payable to Lessor by Lessee hereunder, then Lessee shall, upon the written demand of Lessor, forthwith remit to Lessor a sufficient amount in cash, or a modified or new letter of credit, to restore said security to the original sum set forth in Article 8.1(a) above.

(d) Should Lessee comply with all of said terms, covenants, and conditions and promptly pay all rent as it comes due, and all other sums payable by Lessee to Lessor hereunder, the cash portion of said deposit shall be returned to Lessee within ninety (90) days after the expiration or termination of the Lease Term.

(e) Lessor is not a trustee of said deposit and may commingle it use it in the ordinary course of business, transfer, or assign it. No interest shall accrue on the deposit for the benefit of Lessee.

8.2 Security for Compliance with Commencement, Development, and Completion of Construction of Required and Additional Improvements or Alterations on the Premises.

(a) Lessee shall provide to Lessor a bond of a responsible surety company licensed to do business in California, in an amount not less than one hundred twenty-five percent (125%) of the cost of any improvements to be constructed on the Premises (not including any refurbishment) at any time during the term of this Lease. Said bond shall remain in effect until the entire cost of the work has been paid in full and the improvements shall have been insured as provided in this Lease. Said bond shall state that it is for the purpose of securing the completion of the proposed construction, free of all claims and liens of contractors, subcontractors, mechanics, laborers and materialmen. Said bond shall state that the construction work shall be effected by Lessee, its general contractor, or in the event of their default, by the surety. Said bond shall provide that in default of such completion and payments, such part of the amount of the bond as shall be required to complete the work shall be paid to Lessor as liquidated damages, and not as a penalty, which sum Lessor and Lessee agree represents a reasonable attempt by the parties to estimate a fair compensation for the foreseeable losses that might result from such a breach and nonperformance by Lessee under this Lease. In addition, said bond shall provide that the surety will defend and indemnify Lessor against all loss, cost, damages, expenses, and liability arising out of or connected with the construction of said improvements, including the

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cost of any professional, investigative, accounting, legal or other services which may reasonably be required by Lessor.

(b) Lessee shall, at all times, indemnify and save Lessor harmless from all claims for labor or materials in connection with construction, repair, alteration or installation of structures, improvements, equipment or facilities within or on the Premises, and from the cost of defending against such claims, including attorneys' fees. If required by reason of the nature of work being conducted, Lessee further shall carry, or cause to be carried by its contractor or contractors, coverage in Workers' Compensation and Longshoremen and Harbor Workers Insurance in adequate amounts to protect all workers employed by its contractor or contractors involved with the construction, renovation or modernization of any improvements on the Premises at any time during the Lease Term.

(c) In the event a lien is imposed upon the Premises as a result of any construction, repair, alteration, or installation work on the Premises, Lessee shall procure and record a bond which frees the Premises from the claim of the lien and from any action brought to foreclose the lien. Should Lessee fail to procure and record said bond within thirty (30) calendar days after Lessee receives written notice of the filing of such a lien, this Lease shall be in default and shall be subject to immediate termination, at the option of Lessor. If Lessor elects to terminate this Lease as provided in the previous sentence, Lessor shall give Lessee written notice of termination in accordance with the provisions of Article 29 hereof. The notice shall be effective and this Lease terminated and of no further force and effect upon the actual or deemed receipt of said notice as provided in Article 29.

(d) The providing of the security and insurance under this Article 8.2 shall not be construed to limit Lessee's liability hereunder, nor to fulfill the indemnification provision and requirements of this Lease. Notwithstanding said bond, Lessee shall be obligated for the full and total amount of any damage, injury, or loss, including all costs, expenses and attorneys' fees, caused by negligence or neglect arising out of any act or omission of Lessee, its agents, employees, sublessees, licensees and concessionaires connected with this Lease or with the use or occupancy of the Premises.

8.3 Quitclaim Deed.

As further security for the performance of the obligations of Lessee under this Lease and to ensure the clearing of title to the Premises upon termination of this Lease, lessee shall, prior to or contemporaneously with the execution of this Lease and/or upon the addition of any property to the Premises covered by this Lease, deliver to Lessor a quitclaim deed in the same form as set forth in Exhibit "F" attached hereto and by this reference made a part hereof, which deed shall be held and recorded by Lessor in accordance with the terms of said deed. Upon recordation, said deed shall constitute conclusive evidence of the termination of this Lease and all right of Lessee, or those claiming under Lessee, in and to the Premises.

8.4 Negation of Warranties, Lessee Waivers, Litigation Limitations.

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(a) The parties recognize and agree that this Lease, the limited development process contemplated by this Lease and the business operations Lessee proposes to conduct on the Premises pursuant to this Lease, contain elements of risk, especially with respect to permits, approvals and financing that may be necessary in order for the parties' objectives for entering into this Lease to be achieved. Lessee acknowledges and agrees: (i) that this risk shall be borne by Lessee alone; (ii) that Lessor does not and cannot guarantee permits or approvals will be secured from all required agencies; and (iii) that Lessor does not warrant or guarantee financial title, financing or feasibility, except for any specific agreements or commitments made by Lessor in this Lease and the fact that Lessor covenants and agrees that it will not voluntarily encumber or place any cloud on Lessee's title to the Premises.

(b) Lessee further covenants, acknowledges and agrees as follows:

(i) That Lessor is a Port District formed under and pursuant to the terms and provisions of the Harbors and Navigation Code of the State of California. The powers and authority of Lessor to act are governed by said Code, the Exchange Agreement with the State of California State Lands Commission dated August 26, 1980, and other applicable laws and regulations of the State of California and City, and other county and municipal laws and regulations. Lessee accepts this Lease, subject to the terms and provisions of said Code and such other applicable laws and regulations now existing or hereafter enacted, and, as they may be amended from time to time; and

(ii) That the Premises are within the coastal zone and subject to the California Coastal Act, that any proposed further development of the Premises is subject to compliance with CEQA and the California Coastal Act.

8.5 Conflict of Interest Affidavit.

Lessee acknowledges that Lessor has adopted and disclosed to Lessee its policy regarding the procedure for conducting lease negotiations related to parcels in Ventura Harbor and financial disclosures required of lessees and/or prospective lessees in connection therewith. Lessee covenants and agrees to abide by said policy in the conduct of any negotiations with Lessor connected with this Lease during the Lease Term and concurrently with the execution of this Lease, shall complete, execute and deliver to Lessor a conflict of interest affidavit in the same form as set forth in Exhibit "G" attached hereto and by this reference incorporated herein.

9. Lessee's Obligation to Maintain and Repair.

9.1 Normal Repairs.

(a) Lessee shall, at its sole cost and expense, keep and maintain the Premises and all improvements of whatever kind that may be now or hereafter erected, installed or otherwise made thereon, including, but not limited to, the docks and related substructures, floating dock systems, bulkheads, fuel dock pier and gangways, fuel tanks, delivery system, filters, pumps, bearing walls, roof, and exposed and unexposed plumbing systems that supply the fuel dock exclusively, and the surrounding area and water area, in good and safe condition and

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repair and sanitary conditions acceptable to the Lessor and in accordance with all applicable laws, rules, ordinances, orders and regulations, including, but not limited to, the Americans with Disabilities Act of 1990 and any corresponding laws of the State of California, relating to any part of the Premises or the improvements and equipment thereon, and shall make all necessary repairs and alterations thereto. Lessee further shall provide proper containers for trash and garbage and keep the Premises at all times free and clear of rubbish, garbage, debris, litter, and any other materials or items. Lessee shall also comply with all applicable federal, state, and local laws, rules, guidelines, regulations, and orders relating to or concerning air and water quality.

(b) Lessee shall keep, maintain and repair the Premises and improvements and equipment thereon such that they will remain in a condition comparable to other similarly situated business operations with comparable premises and improvements in Santa Barbara and Ventura Counties, free from any defects or maintenance deficiencies (excepting reasonable wear and tear) and of most pleasing appearance to the public and to the patrons and invitees making use of and being accommodated by the improvements, facilities and amenities.

(c) Lessee waives all right to make repairs and replacements at the expense of Lessor as provided in Section 1942 of the California Civil Code and all rights provided by Section 1941 of said Code.

(d) Subject to Lessee's maintenance and repair obligations under this Article 9.1, Lessee shall inspect, on a quarterly basis, (i) existing fuel piping and the 3" double wall fiberglass piping to the sump located at marine fuel dock, and (ii) single wall fiberglass vent lines located on the Premises. Lessee shall promptly provide Lessor with a copy of any and all inspection reports or notices received by Lessee relating to or arising from Lessee's use and/or occupancy of the Premises, the conduct of Lessee's operations on or from the Premises, and/or Lessee's maintenance and repair obligations under this Lease

9.2 Lessee's Obligation to Maintain Water Depth.

Lessee shall be solely responsible at its expense to take actions necessary to maintain an appropriate water depth in the water area throughout the Premises, and agrees to cooperate in good faith to coordinate its efforts with Lessor in maintaining adequate water depth within the Premises so as to minimize any dredging costs that may be incurred and to minimize the disruption of operations within Ventura Harbor. Lessee shall reimburse Lessor for any costs incurred by Lessor in obtaining permits for dredging within the Premises within thirty (30) days after receipt of invoice from Lessor.

9.3 Inner Harbor Conditions.

Lessee acknowledges, understands, and agrees that maintenance of the access areas of the harbor (including, without limitation, the mouth of the harbor) is the absolute and sole responsibility of the federal government, and that Lessor has no responsibility or obligation to maintain or dredge such access areas. Lessor and Lessee acknowledge that the waters of the

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inner portion of the harbor areas adjacent to the Premises and the Ventura Harbor Village may be subject to shoaling caused by the discharge of silt, sand and other debris through storm drains and other pathways emptying into the inner portion of the harbor. Lessor agrees to take action at its sole cost and in its discretion as may be reasonably necessary to maintain the inner portion of the harbor, taking into account the costs of such action, Lessor's fiscal limitations, government requirements and weather conditions. Such maintenance operations of the inner portion of the harbor by Lessor, such as dredging, shall not be deemed to have disturbed or interfered with Lessee's possession and use of the Premises, and shall not be considered as an eviction of Lessee, either actually or constructively, from the Premises. Neither Lessee nor any persons claiming through Lessee shall be entitled to any actual, special, incidental, or consequential damages on account of Lessor's maintenance of the inner portion of the harbor.

10. Maintenance and Repair by Lessor.

10.1 Lessor's Right of Entry for Purposes of Repair.

(a) Lessor shall not be required to maintain, repair or replace any improvements, equipment or facilities on the Premises. Lessor reserves the right, however, to enter upon the Premises, or any portion thereof, from time to time, for the purpose of inspecting, establishing, extending, repairing or rebuilding revetted slopes or bulkheads, and other docks and piers or otherwise to make any such repairs or improvements at its own expense as are necessary in the sole opinion of Lessor for the continued maintenance of property within Ventura Harbor. Further, Lessor reserves the right to enter upon the Premises upon reasonable prior notice, for the purpose of inspecting and/or acting to cure an actual or suspected breach of this Lease by Lessee which reasonably requires entry upon the Premises. In the exercise of said rights, Lessor shall utilize its best efforts not to unreasonably disrupt Lessee or its sublessees, licensees or concessionaires in their use or occupation of the Premises and Lessor shall not be liable to the occupant of any portion of the Premises for any loss, damage or harm arising out of Lessor's exercise of the rights reserved herein and neither Lessee nor any Sublessee, licensee or concessionaire, nor other person claiming under or through Lessee, shall be entitled to any special, incidental or consequential damages arising therefrom.

(b) If Lessee fails to make repairs or replacements as required in this Lease, Lessor may notify Lessee of said failure in writing. Should Lessee fail to make said repairs or replacements within a reasonable time thereafter, as established by Lessor, Lessor may make such repairs and replacements and the cost thereof, including but not limited to the cost of design, labor, material, equipment, and the cost of professional services such as attorneys, accountants, contractors and other consultants as may be reasonably incurred or paid by Lessor, shall be paid by Lessee to Lessor within ten (10) calendar days after Lessee's actual or deemed receipt of a statement from Lessor identifying said costs. Further, should Lessor make such repairs or replacements, Lessee shall indemnify and hold Lessor harmless from and against all claims, demands, loss or liability of any kind whatsoever arising out of or connected in any way with such work, including, but not limited to claims by Lessee, its officers, employees, agents. Sublessees, licensees, concessionaires and the patrons or visitors of Lessee or its sublessees.

10.2 Lessor's Obligation to Maintain Water Depth.

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Lessor agrees to take such action at its sole expense as may be reasonably necessary to maintain the water area in Ventura Harbor not included in any ground lease ("fairways") at a reasonable depth, given the cost of such action, permits that may be required, foreseeable weather conditions and the foreseeable impact upon all operations in Ventura Harbor. Lessor agrees to cooperate in good faith to coordinate its efforts with Lessee in maintaining adequate water depth in the fairways so as to minimize any dredging costs that may be incurred and to minimize the disruption of operations within Ventura Harbor, including obtaining permits for dredging within the fairways and Premises, if needed, subject to Lessee's obligation to reimburse Lessor pursuant to Article 9.2. Lessor shall not be obligated to maintain the water depth in the fairways at a deeper level than Lessee maintains any portion of the water area within the Premises. Nothing contained in this Section 10.2 shall be construed as modifying, altering, changing, or eliminating any of Lessee's obligations under Section 9.2, above.

10.3 Limitations on Lessor's Obligation to Repair.

Excepting only as in this Lease expressly provided, Lessor shall have no duty, obligation or liability whatsoever to care for or maintain the Premises or any improvements or equipment situated thereon or therewith, including, but not limited to, any duty, obligation, or liability of Lessor to cure, correct, repair, remediate, or rectify any violation of, or claims of noncompliance with, the Americans with Disabilities Act of 1990 or any corresponding laws of the State of California, with respect to the Premises and any improvement or equipment situated thereon or therewith, it being the intent of the parties that Lessee shall have the sole responsibility, at its sole cost and expense, for curing, correcting, repairing, remediating, and rectifying any such violations or claims of noncompliance. In the event that, by any express provision of this Lease, Lessor agrees to care for or maintain the whole or any part of the Premises, improvements or equipment, such agreement on the part of Lessor shall constitute a covenant only, and no obligation or liability whatsoever shall exist on the part of Lessor to Lessee by reason thereof unless Lessor fails to commence performance of such obligation with reasonable diligence after receipt of a written notice from Lessee specifying (a) the provisions of this Lease whereunder said duty is claimed to exist on the part of Lessor, and (b) the facts existing that require the performance of such duty. In such event, Lessor's liability shall be limited to the costs and expenses of performing such obligation, and neither Lessee nor any person claiming under Lessee shall be entitled to special, incidental, or consequential damages arising therefrom.

11. Surrender of Leased Premises.

11.1 Lessee's Obligation to Surrender Upon Expiration of Lease Term or Upon Termination.

Lessee hereby covenants that (a) upon the expiration of the Lease Term or (b) upon the termination of this Lease at the election of Lessor after default by Lessee, or (c) upon any other termination of this Lease, Lessee shall forthwith quit and surrender to Lessor the Premises and, within 90 calendar days after expiration or termination of this Lease, remove all improvements, fixtures and furnishings, including, but not limited to, underground storage tanks,

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pipelines, conduits, sumps, vaults, and other fuel delivery related facilities utilized in connection with Lessee's business operation conducted pursuant to this Lease, both above and below ground level, and restore the ground surface to a clean and safe condition to the fullest extent possible. Notwithstanding the foregoing, Lessor may elect at its option by written notice given pursuant to Article 29, to only require certain improvements, equipment and facilities be removed by Lessee, in which event, all buildings, structures, installations and other improvements and equipment remaining on the Premises, except trade fixtures owned or installed by Lessee or its sublessees, shall be restored or placed in good and clean operating condition so as to leave the Premises, and said remaining buildings, structures, installations and other improvements in substantially the same condition as when first occupied by Lessee after construction, subsequent alteration or modification, reasonable wear and tear excepted. Lessee further agrees that in the event of such termination or expiration of the Lease Term, the title to all of said buildings, structures, installations and other improvements and equipment of any kind placed on the Premises by Lessee or its sublessees, except trade fixtures owned or installed by Lessee or its sublessees which are not required to be removed by Lessor, shall thereupon vest in Lessor and shall become the absolute property of Lessor without cost or expense to Lessor. Lessee agrees to execute any and all documents necessary to transfer title to said buildings, structures, installations and other improvements and equipment to Lessor and hereby appoints Lessor as its attorney-in-fact to execute said documents on its behalf. Prior to any removal or disposal of such improvements, fixtures and furnishings by Lessee, Lessee shall provide Lessor with (i) proof that Lessee has obtained all permits and approvals necessary for the due and proper removal of such improvements, fixtures and furnishings; and (ii) payment and performance bonds (of a responsible surety company approved in advance by Lessor and licensed to do business in California) insuring removal of such improvements, fixtures and furnishings, in a form satisfactory to Lessor, in an amount not less than one hundred twenty-five percent (125%) of the estimated cost of removing and disposing said improvements, as determined in Lessor's reasonable discretion. Such bonds shall remain in effect until the entire cost of removal and disposal has been paid in full.

11.2 Ownership of Trade Fixtures Upon Expiration or Termination.

All trade fixtures owned or installed in or about the Premises by Lessee, its sublessees or licensees may, at the option of Lessee, its sub-lessees or licensees, be removed within sixty (60) calendar days following the expiration or termination of the Lease Term, whichever occurs first; provided, however, that Lessee shall pay Lessor a sum of money equal in amount to two (2) times the minimum monthly rental owing under Article 5.1 above, converted to a daily rate immediately prior to the expiration or termination of this Lease, for each day after the expiration or termination of the Lease Term during which any trade fixtures remain on the Premises. Lessee shall repair any damage to the Premises resulting from said removal. The free and unencumbered title to all trade fixtures located in or about the Premises not so removed within said period shall vest in Lessor and become the absolute property of Lessor without cost or expense to Lessor. In such event, Lessee agrees to execute and deliver, or cause to be executed and delivered, any and all documents necessary to transfer title to said trade fixtures to Lessor and hereby appoints Lessor as its attorney-in-fact to execute said documents on its behalf.

11.3 Security for Surrender of Premises.

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The deposit specified in Article 8 shall be retained by Lessor for a reasonable time, not to exceed ninety (90) calendar days, after expiration or other termination of this Lease as security for the surrender of the Premises by Lessee in substantially the same condition as when first occupied by Lessee, taking into account subsequent construction, alteration, modification as required or allowed by this Lease, reasonable wear and tear excepted. Lessor may reserve, apply or appropriate said deposit, or so much thereof as may be necessary to compensate Lessor for the reasonably anticipated cost and expense of restoring the Premises to the surrender condition specified in this Article. Further, should such restoration costs exceed the amount of the deposit, Lessee shall, within sixty (60) calendar days after receiving a written statement therefor from Lessor, pay Lessor such amount as may be specified in the statement as being reasonably necessary to restore the Premises to said condition.

12. Title and Warranties.

(a) Lessee acknowledges, understands, and agrees that: (i) it has operated a commercial fuel dock from the Premises and other areas since April 1, 2002; (ii) it is familiar with the Premises and improvements now existing thereon, and takes and accepts its leasehold interest in the Premises in their **PRESENT "AS IS"** condition and with all faults; (iii) it has been given an opportunity to inspect and measure the Premises; (iv) it has been advised by Lessor to satisfy itself with respect to the size and condition of the Premises (including, but not limited to, the electrical, HVAC and fire sprinkler systems, if any, security, environmental aspects, and compliance with any and all building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances, including, but not limited to, the Americans with Disabilities Act of 1990 and any corresponding laws of the State of California), and their suitability for Lessee's intended use; (v) it has made such investigation as it deems necessary with reference to such matters, and assumes all responsibility therefor, at its sole cost and expense, as the same relate to its occupancy and use of the Premises, including, but not limited to, making any necessary corrective work thereto that may be required for Lessee's use and occupancy of the Premises, and to ensure compliance with all building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances, including, but not limited to, the Americans with Disabilities Act of 1990 and any corresponding laws of the State of California; and (vi) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the rent stated herein.

Lessee further acknowledges that the Premises are subject to public trusts, covenants, conditions, easements and restrictions of record. Subject to prior approval by DBAW, if necessary, Lessor warrants that it has the authority to lease the Premises to Lessee in accordance with the terms of this Lease for uses not inconsistent with the trusts under which the Premises are held by Lessor pursuant to the authority granted to Lessor under the Harbors and Navigation Code of the State of California and the public trust. Lessor and Lessee agree and acknowledge that no warranties, covenants, promises or representations as to the title, possession or use of the Premises are made by Lessor in this Lease, or in any other form or manner, except as provided in this Article 12.

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(b) Except as hereinabove specifically provided, in the event Lessee performs and observes all of the covenants and conditions on its part to be performed hereunder, including the sums payable to Lessor by Lessee, Lessor shall secure to Lessee during the Lease Term, the quiet and peaceful possession of the Premises against all persons. Lessor shall upon acquiring actual knowledge of the claims of any such person, at Lessor's own cost and expense and with reasonable diligence, file such actions and take such proceedings as may be reasonably necessary to remove the claim of such person and the interference and disturbance thereby with the quiet, peaceful and lawful possession by Lessee, but aside therefrom, Lessee shall not have any claim against Lessor for any damages, nor shall Lessee be released or discharged from any of its obligations, liabilities, or indebtedness hereunder, unless and until Lessee is legally, actually, and physically (as distinguished from constructively) evicted from the Premises by such person or persons.

(c) Subject to Articles 10.1 and 10.2, Lessee understands that from time to time during the term of the Lease, but regularly as determined by physical conditions in Ventura Harbor assessed by Lessor in its sole discretion, construction, rehabilitation, replacement, repair and restoration activities, and dredging operations in and around Ventura Harbor may be conducted by or under the authority of Lessor. Lessee acknowledges that said activities and related operations, including the staging, storage and docking activities on other parcels in and around Ventura Harbor are necessary and for the benefit of Lessee, other lessees in Ventura Harbor and the public, and that the regular conduct of such operations shall never be deemed to have disturbed or interfered with Lessee's possession and use of the Premises nor to have caused Lessee to be evicted, either actually or constructively, from the Premises.

(d) In addition to the foregoing, Lessor warrants and agrees that, to the best of Lessor's knowledge:

(i) Subject to prior approval by DBAW, Lessor holds, or prior to the effective date of this Lease, will hold good title to the Premises, and has or will have the right to grant this Lease to Lessee on the effective date hereof; further, Lessor will cause good and marketable title to the leasehold to be transferred to Lessee;

(ii) This Lease will be valid and binding between the parties;

(iii) Lessee's use of the Premises pursuant to this Lease does not violate any covenants or restrictions of record of which Lessor is aware;

(iv) There is no physical condition of the Premises, or limitation on the title thereto, which would restrict or prevent Lessee from using the Premises as set forth in Article 6, above;

(v) There are no agreements, covenants, conditions, restrictions or other matters known to Lessor, unknown to Lessee and not disclosed by Lessor to Lessee, prior to entering into this Lease that will affect Lessee's use of the Premises pursuant to this Lease.

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Provided, however, none of the foregoing warranties contained in this subparagraph (d) of this Article 12 shall be construed as being a representation or warranty of any kind by Lessor that the Premises and any improvements thereon comply with the Americans with Disabilities Act of 1990 or any corresponding laws of the State of California. Lessee acknowledges, understands, and agrees that it shall have the sole responsibility for determining whether the Premises and any improvements located thereon comply with the Americans with Disabilities Act of 1990 and any corresponding laws of the State of California.

(e) Concurrently with the execution of this Lease, Lessee and its attorneys have executed a Waiver of Relief attached hereto as Exhibit "H" and by this reference made a part hereof. In said Waiver, Lessee acknowledges that it has reviewed and understands the rights Lessee has or may have under California Code of Civil Procedures Section 1179 and California Civil Code Sections 1950.7(c), 1954.1 and 3275 connected with this Lease, that Lessee has consulted with an attorney of its own choosing concerning those rights and the effect upon Lessee and its successors of an effective waiver of those rights. Lessee understands and agrees that this waiver is a material part of the consideration for Lessor's agreement to enter into and execute this Lease on the terms set forth herein, and that Lessor would not have entered into and executed this Lease with Lessee in the absence of such Waiver. Lessee represents and warrants that if Lessee breaches this Lease, and as a result thereof, this Lease is terminated, Lessee will not suffer any undue hardship as a result of such termination and, during the Lease Term, Lessee will make such alternative or other contingency plans to provide for vacation of the Premises.

13. Encumbrance of Leasehold.

13.1 Lessee's Right To Encumber To Finance Construction of Improvements.

(a) In the event it becomes necessary for Lessee to secure interim or permanent financing for the construction of any required or additional improvements on the Premises, and subject to the terms and provisions of this Article 13, Lessee shall have the right to subject Lessee's leasehold estate in the Premises, and any and all improvements on the Premises (provided, however, nothing herein shall be construed as providing Lessee with a right to encumber any non-exclusive areas or licensed areas referred to in this Lease, if any), to one or more mortgages as security for a loan or loans from an institutional lender as defined below, upon such terms as may be reasonably satisfactory to Lessor, provided among other things, that:

(i) The loan application, loan agreement, mortgage, all related documents and instruments and all rights acquired under the mortgage documents shall be subject and subordinate to each and all of the covenants, conditions and restrictions set forth in this Lease and to all rights and interests of Lessor, except as may be expressly provided in this Lease;

(ii) The mortgage shall not be placed upon or encumber fee simple title to the Premises;

(iii) The amount of indebtedness secured by the proposed mortgage, plus the amount of indebtedness secured by all other mortgages, if any, encumbering Lessee's interest in the Premises, shall not exceed seventy percent (70%) of the fair market value of

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Lessee's interest in this Lease and the improvements on the Premises, as determined by an appraiser selected by Lessor who shall be a member in good standing of the American Institute of Real Estate Appraisers holding an M.A.I. designation and be primarily engaged in the business or occupation of appraising or evaluating business real property and improvements. All costs and fees of obtaining such market value determination shall be at Lessee's sole expense.

(iv) The annual debt service ratio for the mortgage shall be not less than one and one-quarter (1.25) of the average revenues generated from the Premises during the prior two (2) years.

(v) The mortgage shall encumber only Lessee's interest in the improvements on the Premises and Lessee's interest in this Lease and no other real property (unless a default under such mortgage relating to such other property does not permit the mortgagee to foreclose upon or exercise any of its other remedies with respect to the Premises);

(vi) The mortgage shall not be cross-defaulted with agreements relating to other property or transactions;

(vii) The mortgage shall expressly provide that it shall not be modified, extended, renewed or otherwise revised, nor shall the mortgage, or any interest therein, be further mortgaged, pledged, encumbered, hypothecated or any security otherwise granted therein, without the prior written consent of Lessor, which consent shall not be unreasonably withheld;

(viii) The mortgage shall not, by its terms or effect, be used to transfer ownership of this Lease or Lessee's interest herein, or in the improvements on the Premises (except a security interest therein) nor to change control of Lessee; and

(ix) The mortgage and related documents shall further state that:

(1) the terms and provisions of this Lease shall prevail, govern and control in any instance where an inconsistency or conflict exists between the terms and provisions of this Lease and the terms and provisions of any mortgage document;

(2) any proceeds from fire or extended coverage insurance shall first be used for the repair, rebuilding, restoration or reconstruction of improvements on the Premises, if required under the Lease, and only the remaining proceeds, if any, may then be used to repay any part of the outstanding indebtedness secured by the mortgage;

(3) should the encumbrance holder or any successor-in-interest to it, succeed to the interests of Lessee in the Premises or under this Lease by any means or proceedings whatsoever, then the encumbrance holder shall be obligated to keep and perform all of the covenants and conditions of this Lease required to be kept and performed by Lessee; and

(4) the encumbrance holder, regardless of whether or not a request for notice shall have been recorded by Lessor, shall give Lessor written notice of any

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default under the mortgage and related documents, which notice shall be given within twenty (20) calendar days after the encumbrance holder learns of the default.

(b) Whenever the words “mortgage” or “encumbrance” appear herein, the words “security instrument” may be substituted in their place. Further, as used in this Lease, the words “institutional lender” shall mean (i) a foreign or domestic savings and loan association, a savings bank, a commercial bank or trust company, an insurance company, a state, municipal or private employees’ welfare, pension or retirement fund or system, an investment banking firm, real estate investment trust, college, university or other educational or eleemosynary institution, provided in each case that such entity is subject to or submits to service of process within the State of California and has, as of the date such institutional lender issues a commitment to make a loan secured by a mortgage encumbering all or any portion of the Premises, total assets of at least Five Hundred Million Dollars (\$500,000,000) and a net worth of at least Twenty Million Dollars (\$20,000,000) and which is determined to Lessor’s reasonable satisfaction to generally make commercial loans; or (ii) any other lender approved by Lessor in connection with the subject financing and having total assets of at least Two Hundred Million Dollars (\$200,000,000) and a net worth of at least Ten Million Dollars (\$10,000,000).

13.2 Lessor’s Approval of Encumbrance and Processing Fee.

Prior to the making of any such lien or encumbrance allowed under Article 13.1, above, Lessee must submit to Lessor the proposed terms and conditions of said loan, setting forth the total amount thereof, the interest rate, the payment schedules and a description of the security for repayment and all other information required in Article 13.1, and Lessor shall have the right of approval of such encumbrance. A non-refundable fee of One Thousand Dollars (\$1,000) shall be paid by Lessee to Lessor at the time of submission for processing each request for consent to such mortgage or encumbrance submitted to Lessor. Said fee shall be paid concurrently with the initial submission of encumbrance documents and loan information and is deemed earned by Lessor when paid and shall not be refundable. Lessor shall not unreasonably withhold or delay approval of the encumbrance, but Lessor may deny approval if Lessee or any of its successors or assigns is then in default of any obligation under this Lease, or if the proposed encumbrance holder is not an institutional lender, or other lender approved by Lessor, which approval shall not be unreasonably withheld, or if, acting in good faith, Lessor determines that the proposed encumbrance is not consistent with this Article 13. Lessee shall provide and make available to Lessor all documents and information related to its operations, past and/or contemplated business activities and other information which Lessor may request and reasonably require in order to determine the commercial reasonableness of the proposed encumbrance. Lessor’s consent to any such encumbrance or mortgage shall not be deemed to be, nor construed as, Lessor’s consent to any other encumbrance or mortgage regardless of whether such other encumbrance is secured, in whole or in part, by the same collateral or property interests as an encumbrance or mortgage to which Lessor has previously consented. Lessee shall also pay within thirty (30) days after receipt of an invoice from Lessor all out-of-pocket expenses reasonably incurred by Lessor in its review of the submission.

13.3 Lessor’s Option To Permit Refinancing.

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During the Lease Term, but only with Lessor's prior written consent, Lessee may obtain any financing or refinancing secured by Lessee's leasehold estate under this Lease, or any portion thereof (including interests of Lessee as sublessor under any sublease of a portion of the Premises), and/or Lessee's interest in improvements on the Premises, or any portion thereof. As a condition of any such refinancing, Lessee shall comply with each and every term and condition of encumbrancing set forth in Articles 13.1, 13.2, and 47.

13.4 Rights of the Encumbrance Holder.

(a) Nothing contained in this Lease shall be deemed to preclude the transfer of this Lease without the consent of Lessor as a result of a judicial foreclosure or a foreclosure through the exercise of a power of sale under any deed of trust or mortgage executed to obtain financing referred to in Articles 13.1 or 13.3, or by a deed in lieu thereof, or any subsequent transfer by the encumbrance holder subject to the requirements hereof, if:

(i) the encumbrance holder is the purchaser at such foreclosure sale;
and

(ii) the encumbrance holder is an institutional lender, as defined herein, at the time said encumbrance holder succeeds to Lessee's interests under this Lease or, if the transfer by the encumbrance holder is approved in writing by Lessor.

(b) In the event that the encumbrance holder purchases Lessee's interest in the Premises under this Lease at a foreclosure sale or acquires such interest by a deed in lieu thereof, said encumbrance holder shall immediately cure all defaults then existing under this Lease which are curable by the encumbrance holder, and, further, shall thereafter comply with all of the terms and conditions of this Lease during the period said encumbrance holder, or a receiver appointed at its instance and request, is in possession, or entitled to possession, of the Premises, or retains the leasehold interest so acquired. If the encumbrance holder is an institutional lender at the time it acquires Lessee's interest in the Premises under this Lease, and provided that the encumbrance holder certifies to Lessor in writing at the time it proposes to make a transfer of its interest in the Premises, that it is an institutional lender as defined herein, and provided further that the Lease is not then in default, the encumbrance holder may transfer the leasehold interest so acquired to a third party, provided that as a condition of such transfer said transferee shall assume and expressly agree in a writing in a form reasonably acceptable to Lessor to be bound by all of the terms, covenants, conditions and agreements of this Lease.

(c) In the event the encumbrance holder is not the purchaser at such foreclosure sale or does not acquire such interest by a deed in lieu of foreclosure directly from Lessee, or is not an institutional lender, then no such subsequent transfer by the purchaser can be made without obtaining the prior written consent of Lessor pursuant to the terms and provisions of Article 15, below. In the event of any transfer, the transferor shall promptly give written notice to Lessor of such transfer, including the name and address of the transferee and the effective date of such transfer.

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(d) Notwithstanding any provision of this Lease to the contrary, Lessor agrees that it will not terminate this Lease because of any default or breach thereunder on the part of Lessee, if the encumbrance holder, within sixty (60) calendar days after service of written notice from Lessor of its intention to terminate this Lease for such default or breach (or within thirty (30) calendar days after receipt by the encumbrance holder of written notice from Lessor stating that Lessee has commenced curing said default but is not diligently prosecuting the same to completion) shall cure such default or breach which is curable by the encumbrance holder, and thereafter keep and perform all of the covenants and conditions of this Lease provided herein to be kept and performed by Lessee.

(e) If the breach or default is not curable, or if there are multiple defaults, some being curable and some not (in which case the encumbrance holder shall cure the curable defaults within thirty (30) calendar days), the encumbrance holder, within said thirty (30) day period, shall commence and thereafter diligently pursue to completion proceedings for the foreclosure and sale under and pursuant to the terms of its encumbrance, which shall be accomplished within one hundred eighty (180) calendar days (hereafter "Foreclosure Period"), after service of written notice by Lessor of its intention to terminate this Lease. The actions required under the preceding sentence may include, but are not limited to the initiation and prosecution of proceedings under the Bankruptcy Code, 11 USC §§101 et seq., to lift any stay or other order which may be in effect. During the Foreclosure Period, the encumbrance holder shall perform or cause to be performed all of Lessee's obligations required under the Lease, which the encumbrance holder is capable of performing.

(f) Should the encumbrance holder be barred or stayed from timely completion of any foreclosure proceeding by order of any court of competent jurisdiction, including such orders as may be in effect under and pursuant to the Bankruptcy Code, the encumbrance holder shall, prior to expiration of the Foreclosure Period, furnish, or cause to be furnished, to Lessor an irrevocable letter of credit in the amount of One Hundred Thousand Dollars (\$100,000) in a form acceptable to Lessor, together with instructions to the issuer to allow Lessor to draw upon said letter of credit to compensate or reimburse Lessor for rent coming due under this Lease and any costs, expenses, damages or losses Lessor may incur or pay as a result of or arising from any breach or default under this Lease by Lessee or the encumbrance holder. If the encumbrance holder fails or refuses to comply with any or all of the terms of this paragraph (f) of Article 13.4, Lessor shall be released from the covenants of forbearance contained herein.

(g) Notwithstanding any provisions of this Lease to the contrary, Lessor further agrees that it will not terminate this Lease because of any default or breach by Lessee specified in Article 16 below, if prior to expiration of the Foreclosure Period, the encumbrance holder gives written notice to Lessor agreeing to cure all curable defaults under this Lease, and to assume all obligations of Lessee under this Lease during such period that the encumbrance holder, or a receiver appointed at the instance and request of the encumbrance holder, shall be in possession or entitled to possession of the Premises. If the encumbrance holder fails or refuses to comply with any or all of the terms of this paragraph (g) of Article 13.4, Lessor shall be released from the covenants of forbearance contained herein.

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(h) In the event a “First Encumbrance Holder” as defined herein succeeds to all interests of Lessee under this Lease and, within sixty (60) calendar days thereafter gives Lessor written notice of its request to enter into a new lease covering the Premises as lessee on the same terms and conditions as provided in this Lease, Lessor shall execute and deliver a new lease to the First Encumbrance Holder as lessee for the remainder the Lease Term hereunder provided the First Encumbrance Holder shall have:

(i) paid to Lessor all rent and other charges due under this Lease, up to and including the date of the commencement of the term of such new lease, together with all reasonable expenses incurred by Lessor in connection with the request for and negotiation of the new lease (including without limitation reasonable administrative, financial, economic, accounting and/or legal costs and fees);

(ii) cured or commenced to cure any and all other defaults under this Lease; and

(iii) executed and delivered to Lessor a lease assumption agreement as would be required of an assignee of Lessee’s interest under this Lease pursuant to the terms hereof, together with a quitclaim deed, conflict of interest affidavit and waiver of relief in the forms attached hereto as Exhibits “F”, “G” and “H”, respectively.

The First Encumbrance Holder shall not be required to cure any default or event of default under this Lease, which is exclusively personal to Lessee and which no encumbrance holder has the power to cure (such as, for example, the bankruptcy of Lessee), as a prerequisite to the exercise of the rights to a new lease provided herein. The term “First Encumbrance Holder” as used in this Article 13.4 shall mean the encumbrance holder demonstrated to Lessor’s reasonable satisfaction to be holding the most senior lien on the interest of Lessee under this Lease, or any portion thereof, as consolidated, renewed, extended, modified or replaced from time to time. Lessor shall have no obligation whatsoever to offer a new lease to any encumbrance holder other than a First Encumbrance Holder, and if for any reason the First Encumbrance Holder fails to request a new lease within the time specified in this paragraph (h) of Article 13.4, or to sign a new lease within thirty (30) calendar days after delivery by Lessor pursuant to the terms hereof Lessor shall have no further obligations to enter into or offer a new lease pursuant to this Article 13.4.

(i) Any notice to the encumbrance holder provided for in this Lease may be given contemporaneously with any notice to Lessee. Further, nothing herein contained shall be deemed to impose any obligation on the part of the Lessor to deliver physical possession of the Premises or any part thereof to any encumbrance holder, or any successor thereto, provided, however, that if Lessor is fully indemnified therefore by such encumbrance holder to Lessor’s satisfaction (including without limitation indemnification for reasonable attorneys’ fees), Lessor shall cooperate with such encumbrance holder (by joining as a party in any appropriate action or proceeding, or otherwise) at the sole cost and expense of such encumbrance holder, and at no cost, expense, risk or liability to Lessor, for the purpose of enabling such encumbrance holder to obtain possession of the Premises.

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(j) Any such new lease, and the leasehold estate thereby created, are intended to continue to maintain the same priority as this Lease, with regard to any encumbrance or mortgage on the Premises, or any part thereof, or any other lien, charge or encumbrance thereon caused or made by the Lessor whether or not the same shall then be in existence; provided, however, that although the provisions of this sentence are intended to be self-executing, Lessor shall not be obligated to expend any funds or take any other action to accomplish or obtain such priority for any such new lease or leasehold estate.

(k) Lessee and each encumbrance holder which shall succeed to the rights of Lessee under this Lease, or which shall enter into a new lease pursuant to the terms of this Article 13.4, shall be deemed to have agreed to apply the rents, issues and profits of the Premises to fulfill Lessee's obligations under this Lease, or such new lease (as the case may be) before applying the same for any other purpose.

14. Indemnification, Hold Harmless and Insurance.

14.1 Indemnification.

(a) Lessee shall defend, protect, indemnify and save harmless Lessor, its officers, agents, and employees, from and against any and all claims, demands, loss or liability of any kind or nature which Lessor, its officers, agents, and employees, may sustain or incur or which may be imposed upon them or any of them for injury to or death of persons, or damage to property, as a result of or arising out of any claims related to Lessee's obligations under this Lease, or with occupancy and use of the Premises by Lessee, its officers, agents, employees, sublessees, concessionaires, licensees, patrons, visitors, or trespassers. If any such action is brought against Lessor or its agents, employees or attorneys, Lessee shall, upon notice from Lessor, defend the claims at Lessee's sole expense with counsel reasonably satisfactory to Lessor. Lessee's obligations under this subparagraph (a) of this Article 14.1 shall extend to any and all claims made against Lessor, its officers, agents and employees that the Premises and/or the improvements thereon violate or do not comply with the Americans with Disabilities Act of 1990 and/or any corresponding laws of the State of California.

(b) Lessor shall defend, protect, indemnify and save Lessee, its officers, agents and employees from and against any and all claims demands, loss, liability of any kind or nature which Lessee, its officers, agents, and employees, may sustain or incur as a result of or arising out of the sole and active negligence of Lessor; provided, however, Lessor's obligations under this subparagraph (b) of this Article 14.1 shall not extend to any claims made against the Lessee, its owners, shareholders, directors, members, officers, employees, representatives, agents, companies, subsidiaries, entities, affiliates, and successors and assigns that the Premises and/or the improvements thereon violate or do not comply with the Americans with Disabilities Act of 1990 and/or any corresponding laws of the State of California.

14.2 Waiver of Claims.

Lessee, as a material part of the consideration for this Lease, hereby waives all claims against Lessor for damages to goods, wares, merchandise, buildings, installations or other

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improvements in, upon, or about the Premises and for injuries to Lessee, its agents or employees, or third persons in or about the Premises from any cause arising at any time, except claims for damages or injuries to the extent such damages or injuries arise out of the negligence of Lessor or the failure by Lessor to perform an affirmative duty imposed under this Lease or by applicable law; provided, however, notwithstanding anything contained in the foregoing to the contrary, Lessee hereby waives any and all claims against Lessor that Lessor has failed to comply with the Americans with Disabilities Act of 1990 or any corresponding laws of the State of California, with respect to the Premises or the improvements thereon. Lessee will defend, protect, indemnify and hold Lessor exempt and harmless from any damages or injury to any person, or to the goods, wares, merchandise, watercraft, facilities, or other property of any person arising from the occupancy or use of the Premises by Lessee, its agents, officers, employees, sublessees, concessionaires, licensees, patrons or visitors or from the failure of Lessee to keep the Premises in good condition and repair, as provided in this Lease, when such damage or injury shall be caused in part or in whole by the negligence or fault of, or omission of any duty with respect to the same by Lessee, or its agents, officers, employees, sublessees, concessionaires, licensees, patrons or visitors. If any such action is brought against Lessor or its agents, employees or attorneys, Lessee shall, upon notice from Lessor, defend the claims at Lessee's sole cost and expense with counsel reasonably satisfactory to Lessor.

14.3 Hazardous Substances.

(a) The term "Hazardous Substance" shall mean any substance whose presence on the Premises is either: (i) potentially injurious to tile public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a potential basis for liability of Lessor to any governmental agency or third party. Hazardous Substance shall include without limitation petroleum and petroleum products and fractions thereof. Lessee shall not engage in any use of Hazardous Substances in, on or about the Premises (including the installation or use of any above-ground or underground storage tank) without Lessor's prior written consent, except that such consent is not required for the use, in compliance with all applicable laws, of products necessary and customary in the operation and maintenance of a commercial fueling facility and other uses permitted under this Lease. Lessor may condition its consent upon Lessee's giving Lessor such additional assurances as Lessor, in its reasonable discretion, deems necessary to protect itself, the public, the Premises, Ventura Harbor and the environment against damage, contamination, injury or liability, including without limitation the deposit of additional security under Article 8.1 above.

(b) If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance, or a condition involving or resulting from a Hazardous Substance, may be present on, under, or about the Premises, in violation of applicable law, other than as previously consented to by Lessor, or as allowed by this Lease, Lessee shall immediately give written notice of such fact to Lessor, together with copies of all reports or notifications to or from governmental agencies or private parties concerning the same.

(c) Lessee has operated a fueling facility from the Premises since approximately April 1, 2002. Lessee is familiar with the Premises and improvements now existing thereon, and takes and accepts its leasehold interest in the Premises in their "as is"

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condition and with all faults. Lessee hereby acknowledges that Lessor does not and has not made any statement or representation to Lessee concerning the presence or absence of any Hazardous Substances in, on or under the Premises, or with regard to fill material, compaction, geologic constraints or faults. Lessor has, however, delivered to Lessee a copy of Applied Environmental Technologies, Inc.'s ("AET") Executive Summary Assessment ("Assessment"), which is a summary compilation of AET's findings and reports dated September 16, 1998, February 23, 1999, and February 24, 2000. Lessee hereby acknowledges receipt of the Assessment, takes and accepts its leasehold estate in the premises subject to and with full knowledge and acceptance of the contents of said Assessment and reports referred to therein.

(d) Subject to subparagraph (e) of this Article 14.3, Lessee shall indemnify, protect, defend and hold harmless Lessor, its officers, elected officials, agents, attorneys and employees, against any losses, liabilities, damages, demands, actions, judgments, causes of action, assessments, penalties, costs and expenses (including, without limitation, the reasonable fees and disbursements of legal counsel and accountants) and all foreseeable and unforeseeable special, incidental, and consequential damages which might arise or be asserted against Lessor as a result of a storage tank existing within or brought onto the Premises by Lessee or its subtenants, or under Lessee's control, or a claimed violation of any and all present and future federal, state and local laws by Lessee, its agents, sublessees, licensees and concessionaires, regarding Hazardous Substances (whether under common law, statute, rule, regulation or otherwise), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") and the applicable provisions of the California Health and Safety Code and the California Water Code relating to the environment or to any Hazardous Substance, activity or material connected with the condition of the Premises. If any such action or proceeding is brought against Lessor, its officers, elected officials, agents, attorneys or employees, Lessee, upon notice from Lessor, shall defend the claim at Lessee's sole cost and expense with counsel reasonably satisfactory to Lessor. Except as specifically provided in subparagraph (e) below, Lessee's obligations under this paragraph (d) of Article 14.3 shall include, without limitation, loss of rents to Lessor, the effects of any contamination or injury to person, property or the environment, the cost of investigation, remediation, restoration and abatement. Subject to subparagraph (e) below, Lessee's obligations hereunder shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this paragraph (d) of Article 14.3, unless specifically provided in subparagraph (e) below or stated in writing in the agreement and signed by Lessor.

(e) Between one hundred eighty (180) and two hundred ten (210) days prior to the natural expiration of this Lease, Lessee shall conduct at its sole cost and expense a Phase II analysis of the areas covered by the AET Assessment and other reports referenced in subparagraph (c) of this Article 14.3. On or before one hundred eighty (180) days prior to the natural expiration of this Lease, Lessee shall submit to Lessor a refundable Phase II deposit of Five Thousand Dollars (\$5,000) to guarantee completion of the Phase II analysis. Lessor shall refund Lessee the Phase II deposit if the Phase II analysis indicates that no remediation is required or upon completion of remediation or clean-up, as provided below, if the Phase II analysis indicates that remediation is required. Existing soil and groundwater conditions of the Premises are documented by the AET Assessment and related reports. Should the Phase II

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analysis reveal that remediation is required in order for the Premises to be in compliance with the regulatory requirements of the Ventura County Environmental Health Division, the City of Ventura Fire Department, the Regional Water Quality Control Board, or other regulatory agency, the cost of such remediation shall be shared by Lessor and Lessee as hereinafter provided. The data from the AET Assessment and related reports shall be used as a baseline to determine Lessor's and Lessee's proportional share of any remediation costs required by any regulatory agency as a result of the Phase II analysis. Lessee shall be solely responsible for remediation costs associated with petroleum hydrocarbon concentrations demonstrated by the Phase II analysis which are above the baseline documented in the AET Assessment and related reports. Lessor shall be solely responsible for the remediation costs associated with petroleum hydrocarbon concentrations identified by the Phase II analysis which are below the baseline concentrations documented in the AET Assessment and related reports, but above the remediation or clean-up standard for the particular petroleum hydrocarbon standard involved. Percentages of shared remediation costs shall be based on the percentage differences between the then existing remediation or clean-up standards, the petroleum hydrocarbon baseline concentrations, and the petroleum hydrocarbon concentrations at the time remediation may be required. The following is an example of the parties' contemplated cost-sharing percentages should remediation be required after natural Lease expiration and subsequent to the Phase II analysis required above:

The AET Assessment and related reports indicate baseline conditions of impacted soil containing diesel at a concentration of 400 mg/kg. The Phase II analysis reveals impacted soil containing diesel at a concentration of 1,000 mg/kg. At Lease expiration, the remediation or clean-up standard for diesel-impacted soil is 200 mg/kg.

Accordingly, the total remediation required is 800 mg/kg. Applying the contemplated cost-sharing concept, Lessee would be responsible for remediating the impacted soil from 1,000 mg/kg down to 400 mg/kg (a reduction of 600 mg/kg). Lessor would be responsible for remediating the impacted soil from 400 mg/kg down to 200 mg/kg (a reduction of 200 mg/kg). Thus, Lessee would be responsible for seventy-five percent (75%) of the total remediation costs (600 mg/kg of the total 800 mg/kg remediation required, equaling 3/4 or 75%) and Lessor would be responsible for the remaining twenty-five (25%) of the remediation costs (200 mg/kg of the total 800 mg/kg remediation required, equaling 1/4 or 25%).

(f) Lessee shall, at its sole cost and expense, comply with (i) any and all requirements necessary for the maintenance of reasonable fire and public liability insurance covering the Premises; and (ii) any and all rules, regulations, requirements and mandates of those federal, state and local public agencies now existing or as may hereafter be established or modified, with jurisdiction, power and authority to monitor, enforce and administer matters relating to air and water quality, waste management and disposal, storage tanks, fish and game, commerce and navigation and other matters of the environment, especially those of a marine nature, within and connected with Ventura Harbor.

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(g) Lessor shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease and applicable laws and regulations. The cost of the inspection shall be borne by Lessor unless a default under this Lease, violation of law, or a contamination caused or contributed to by Lessee, is found to exist, in which case Lessee shall reimburse Lessor on demand for all costs of inspection, investigation, remediation, restoration or abatement, including all legal, accounting and other professional consulting fees and expenses incurred or paid by Lessor. Such payment shall be made to Lessor within thirty (30) calendar days after Lessee receives Lessor's written demand therefor pursuant to Article 29, below.

14.4 Public Liability and Property Damage Insurance.

(a) In addition to and independently of all other provisions of this Lease, Lessee shall, at its own cost and expense, maintain insurance acceptable to Lessor in full force and effect throughout the term of this Lease. The policy or policies of insurance shall name Lessor as an additional insured and shall, as a minimum, provide the following forms of coverage in the amounts specified:

(1) Commercial General Liability:

(i) Two Million Dollars (\$2,000,000) bodily injury, each occurrence; and

(ii) One Million Dollars (\$1,000,000) property damage each occurrence.

(2) If alcoholic beverages are served or sold on the Premises, liquor liability coverage in the amount of not less than one million dollars (\$1,000,000) shall be obtained.

(3) Commercial property insurance covering the Premises and all fixtures, equipment, buildings and improvements of any kind situated in, on or constituting a part of the Premises. The coverage shall be at least as broad as the Insurance Services Office broad causes of loss form CP 10 20, and approved in writing by Lessor. Coverage shall be sufficient to insure 100% of the replacement value and there shall be no coinsurance provisions or pollution exclusion. The policy shall include an inflation guard endorsement 100% rents coverage, contents coverage, coverage for personal property of others, ordinance or law and increased cost of construction coverage. Lessor shall not be liable for any business income or other consequential loss sustained by Lessee. Lessor shall not be liable for any loss of Lessee's personal property if such loss is not caused by the sole and active negligence of Lessor, Lessor's employees or its agents. Policies of insurance providing this coverage shall contain a provision that within the period during which there is a mortgage or deed of trust upon the leasehold given by Lessee with the prior consent of the Lessor, then and for that period all property insurance policies shall be made jointly to the mortgagee or beneficiary and Lessee, and any proceeds collected therefrom shall be held by said mortgagee or beneficiary for the following purposes:

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(i) As a trust fund to pay for the reconstruction, repair or replacement of the damaged or destroyed fixtures, equipments, buildings, and improvements in kind and scope in progress payments as the work is performed with any excess remaining after completion of said work to be retained by such mortgagee or beneficiary and with any excess remaining after full payment of said debt to be paid over to Lessee; or

(ii) In the event that this Lease is terminated with consent of both Lessor and mortgagee or beneficiary and said improvements on the Premises are not reconstructed, repaired or replaced, the insurance proceeds shall be retained by said mortgagee or beneficiary to the extent necessary to fully discharge the debt secured by said mortgage or deed of trust and said mortgagee or beneficiary shall hold the balance thereof without liability to restore the Premises to a neat and clean condition and then for Lessor and Lessee as their interests may appear.

(b) Any deductibles or self-insurance retentions must be declared and acceptable to the Lessor. If the deductibles or self-insured retentions are unacceptable to the Lessor, the Lessee shall have the option of either: reducing or eliminating such deductibles or self-insured retentions as respects the Lessor, its officers, officials and employees; or, procuring a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(c) The liability and property insurance shall be in force the first day of the term of this Lease. The property insurance shall be extended to and in force upon the date of completion of construction or installation of any required or additional improvements to the Premises made by Lessee.

(d) Each policy of insurance shall contain a clause substantially similar to the following clause:

"It is agreed that this policy shall not be canceled nor the coverage reduced until thirty (30) calendar days after the General Manager of Ventura Port District shall have received written notice of such cancellation or reduction. The notice shall be sent by certified or registered mail and shall be deemed effective the date delivered to said General Manager, as evidenced by a properly validated return receipt."

(e) Lessee agrees to deposit with Lessor, at or before the times at which required to be in effect, one copy of each policy or policies necessary to satisfy the insurance provisions of this Lease and to keep such insurance in effect and the policy or policies therefor on deposit with Lessor during the entire term of this Lease. All policies of insurance shall be issued by insurance companies admitted to do business in the State of California and rated not less than Best's Financial Class VII and Best's Policy Holder Rating Level A, A-, or such other rating service as Lessor shall select in its sole discretion if Best's is no longer available or providing such rating service. Further, all policies of insurance shall contain language to the effect that: (i)

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the insurer waives the right of subrogation against Lessor and Lessor's elected officials, officers, employees, agents, attorneys and members of all boards and commissions and all employees of Lessor performing services for or under this Lease; (ii) the policies are primary and noncontributing with any insurance that may be carried by Lessor; (iii) the insurance is to apply severally as if each named insured were the only named insured, and separately as to each insured against whom a claim is made or an action is brought; and (iv) the inclusion of any person or entity as an insured is not to affect any right such person or entity would have as a claimant against another insured.

(f) Lessor shall retain the right at any time to review the coverage, form and amount of the insurance required to be maintained by Lessee under this Lease. If, in the opinion of Lessor, the insurance provisions in this Lease do not provide adequate protection for Lessor and for members of the public using the Premises, Lessor may require Lessee to obtain insurance sufficient in coverage, form and amount to provide adequate protection. Lessor's requirements shall be commercially reasonable and designed to assure protection from and against the kind and extent of the risks which exist at the time a change in insurance is required.

(g) Lessor shall notify Lessee in writing of changes in the insurance requirements and, if Lessee does not deposit copies of acceptable insurance policies with Lessor incorporating such changes within sixty (60) calendar days of receipt of such notice, this Lease shall be in default and Lessor shall be entitled to all rights and remedies available by law and under this Lease, including the right to terminate this Lease.

(h) The procuring of such required policy or policies of insurance shall not be construed to limit Lessee's liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policy or policies of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Lease or with the use or occupancy of the Premises.

(i) If Lessee fails or refuses to maintain insurance as required in this Lease, or fails to provide proof of insurance, Lessor has the right to declare this Lease in default without further notice to Lessee and Lessor shall be entitled to exercise all legal remedies.

(j) Lessee agrees not to use the Premises in any manner, even if use is for purposes stated herein, that will result in the cancellation of any insurance Lessor may have on the Premises or on adjacent premises. Lessee further agrees not to keep on the Premises or permit to be kept, used or sold thereon, anything prohibited by any property insurance policy covering the Premises. Lessee shall, at its sole expense, comply with any and all requirements, in regard to Premises, of any insurance organization necessary for maintaining fire and other insurance coverage at reasonable cost.

14.5 Workers' Compensation Insurance.

If required, Lessee shall procure, at its own expense, and shall keep in force during the Lease Term, adequate insurance against liability arising on account of injuries or death to workers or employees on the Premises or any installation or other improvements of Lessee. Such

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workers' compensation insurance to be provided by Lessee shall be in the amounts required under the Workers' Compensation Insurance and Safety Act of the State of California. Lessee shall also procure and maintain, if required during the Lease Term, by separate policy or by endorsement, insurance against liability arising from or related to the United States Longshoremen and Harbor Workers' Act.

14.6 Business Interruption Insurance Rental Insurance.

Lessee shall procure, at its own expense, and shall keep in force during the Lease Term insurance in such amounts as will protect Lessor against loss to Lessor of rent provided for in Article 5 and to ensure Lessor shall not receive less than the minimum monthly rental required to be paid hereunder for a period of twelve (12) months after the occurrence of any covered peril which causes disruption of the operations of Lessee, its sublessees, licensees or concessionaires.

14.7 Other Insurance.

Lessee shall procure, at its own cost and expense, and shall keep in force during the Lease Term:

(a) Boiler and machinery insurance if at any time such equipment is located on the Premises.

(b) Except for construction by Lessor, course of construction insurance at all times during which any improvements to be located on the Premises are under construction and not yet otherwise insured under Article 14.4 above.

(c) Other insurance in amounts from time to time reasonably required by Lessor against other insurable risks if at the time they are commonly insured against for premises similarly situated and containing comparable improvements.

15. Assignment and Subletting.

15.1 Restriction on Assignment.

(a) Except as otherwise permitted in connection with assignments as security for an encumbrance under Article 13, Lessee shall not assign, transfer, convey or otherwise sell this Lease, or Lessee's interest in this Lease, without the prior written consent of Lessor. If Lessor elects not to exercise its right and option to accept the assignment of this Lease on the terms and conditions set forth in sub-paragraph 15.1(b) below, Lessor shall act in a commercially reasonable manner in granting or denying its approval of any proposed assignment. As a condition precedent to Lessor's determination of commercial reasonableness, the following requirements must be met:

(i) Lessee shall give Lessor reasonable advance written notice of the proposed assignment sufficient to enable Lessor to conduct an investigation and review of the transaction and the proposed assignee.

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(ii) Lessee shall have provided Lessor with such appropriate documentation as Lessor may require, including (1) all loan applications, transaction loan agreements, financing, and escrow documents, which shall specify any brokerage commissions, finder's fees or other charges and payments to third persons not parties to the proposed assignment, (2) the name and address of each shareholder or member and his or her shareholding or membership interests in the proposed assignee, if the proposed assignee is a corporation or a limited liability company, but not one whose stock or membership interest is available for purchase or sale by the public through the New York, Pacific or American Stock Exchanges, (3) the name and address of each general partner or joint venture, and a statement of his or her equity interest in the proposed assignee, if the proposed assignee is a partnership or joint venture, (4) evidence of the proposed assignee's business history, (5) current financial statement(s) for the proposed assignee(s), (6) the last three years' income tax returns for the proposed assignee(s), (7) the business plan and financial projections of the proposed assignee(s), (8) a statement of any litigation affecting the proposed assignee(s), its shareholders, members or general partners thereof, if the proposed assignee is a partnership, (9) identification of each operator or independent contractor the proposed assignee intends to use in its business operations on the Premises, including name, address, business experience and references, (10) copies of any management or operation agreements between the proposed assignee and its independent contractors which shall be subject to specific prior approval by Lessor, (11) such other information and material that evidences that proposed assignee has the experience, reputation, business background and financial capacity to reasonably ensure the continued prompt performance of the obligations of Lessee under this Lease after such assignment is to become effective and, (12) such other documents and information as may be required by Lessor to determine the commercial reasonableness of the proposed assignment.

(iii) The proposed assignee shall expressly agree in a writing in a form acceptable to Lessor to be bound by all of the terms, covenants, conditions and agreements of this Lease.

(iv) Lessee is not in default.

(v) Lessee shall pay Lessor a non-refundable fee for processing each request for approval of assignment in the amount of Three Thousand Dollars (\$3,000), plus Lessor's out-of-pocket costs and overhead expense that may be incurred in connection with the processing of said assignment, including without limitation the cost of making investigations as to the acceptability of the proposed assignee, together with any and all other reasonable administrative, financial, economic, accounting and/or legal costs and fees incurred or expended in connection with any such proposed assignment. The payment of Lessor's out-of-pocket costs and overhead expense shall be made within thirty (30) days after receiving an invoice from Lessor for said costs and expenses.

(vi) The proposed assignee shall, in Lessor's reasonable business judgment, have sufficient business reputation and/or experience to operate a successful business of the type and quality permitted under this Lease.

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(vii) The proposed assignee(s) shall sign and deliver to Lessor a quitclaim deed in the form attached hereto as Exhibit "F".

(viii) The proposed assignee(s) shall provide to Lessor all funds necessary to replace, replenish, or increase any security deposit required to be made under Article 8 of this Lease.

(b) If Lessee proposes to assign this Lease to any person or entity who shall have made a firm good faith offer to accept an assignment of this Lease on terms acceptable to Lessee, Lessee shall give Lessor written notice as provided in Article 29, below, of said proposed assignment, specifying all material terms and provisions of the good faith proposal, and providing copies of all documents as required under paragraph (a), above, of this Article 15.1. Lessor shall then have the right and option, to be exercised by a written notice to Lessee pursuant to Article 29, below, to accept an assignment of this Lease on the terms and conditions and for the same consideration, if any, as the good faith offer made by any person or entity, less any brokerage commissions, finder's fees or other charges and payments to third persons not parties to the proposed assignment and with no control relationship whatsoever with Lessee or the proposed assignee, which are payable by Lessee out of the consideration to be paid for or as a result of the proposed assignment of this Lease. This right and option must be exercised, if at all, by Lessor within sixty (60) calendar days after receipt by Lessor of the notice of proposed assignment. If Lessor exercises the right and option set forth herein, Lessee shall thereafter be relieved and released from all duties and obligations under this Lease arising after the date Lessee receives or is deemed to have received Lessor's written notice of acceptance of assignment as above provided. For purposes of this paragraph (b) of Article 15.1, a proposed sublease of a majority of the income producing square footage of the Premises for fifty percent (50%) or more, of the remainder of the Lease Term, shall be an assignment, and Lessor shall have all rights specified herein with respect to such sublease. Further, as used in this Lease, the terms "control", "controlled" or "control relationship" shall refer to the ability or possession of the ability, whether direct or indirect, of the power to direct or cause the direction of the management policies of the controlled person or entity. The ownership, directly or indirectly, of thirty-five percent (35%) or more, of the voting or ownership interests of any person or entity shall be presumed to constitute control.

(c) If Lessee is a corporation, a limited liability company, a partnership of any kind, or an unincorporated association, any sale, transfer, conversion, redemption or encumbrance, hereafter "Transfer" or "Transfers", of any voting stock or ownership interest in Lessee which (i) results in a change in control of Lessee, or (ii) either separately or in the aggregate with other Transfers taking place after the effective date of this Lease, or since the last assignment of this Lease under this Article 15, whichever event is the last to occur, shall be an assignment for purposes of this Article 15. If Lessee is a corporation or a limited liability company, but not a publicly traded corporation, Lessee shall concurrently with the execution of this Lease deliver to Lessor a list of all shareholders of the corporation or members of the limited liability company, which list shall be certified to be true and correct by the secretary of the corporation, and Lessee shall give Lessor written notice of any proposed Transfer at least sixty (60) calendar days prior to such Transfer taking place and regardless of whether said Transfer is itself an assignment or will be deemed to be an assignment under this Article 15. If Lessee is a

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partnership, joint venture or unincorporated association, Lessee shall concurrently with the execution of this Lease deliver to Lessor a list of all partners, joint venturers or owners constituting Lessee, specifying the type of partner and percentage ownership interest of each partner, joint venturer or owner, which list shall be certified to be true and correct by at least one general partner or managing owner of Lessee. Further, if any proposed transferee is a partnership, joint venture or unincorporated association, a similar certified list of partners, joint venturers or owners in the proposed transferee shall be delivered to Lessor together with the written notice of proposed Transfer specified above.

(d) Any assignment without Lessor's prior written consent shall be void and at the option of Lessor, be grounds for terminating this Lease.

(e) Neither an assignment of this Lease by Lessee nor Lessor's consent to any assignment shall operate to release or discharge Lessee from any obligations under this Lease unless Lessor's written consent to assignment expressly so states.

15.2 Assignments Pursuant to the Bankruptcy Code.

The restrictions on assignments of this Lease and other terms and conditions set forth in Article 15.1, above, shall, to the extent allowed by law, apply to any assignment, transfer, conveyance or sale of this Lease, or any interest of Lessee under this Lease, pursuant to the Bankruptcy Code, or by operation of law. In addition, the following restrictions shall be conditions precedent to the effectiveness of the assignment or other transfer, conveyance or sale of this Lease:

(a) Any person or entity to which this Lease, or any interest herein, is so assigned, transferred, conveyed or sold, shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall, upon demand by Lessor, execute and deliver to Lessor a written document confirming such assumption.

(b) Such assignee shall provide Lessor with cash deposits, appropriate bond or bonds, personal guarantees or other forms of security acceptable to Lessor to ensure the future performance of the obligations of Lessee remaining to be performed under this Lease, provided such cash, bond or security is in commercially reasonable amounts, taking into account Lessee's past performance under this Lease and the extent and nature of the proposed assignee's future obligations hereunder.

(c) Any and all monies, cash equivalents, or other consideration payable or otherwise to be delivered in connection with each assignment shall be paid or delivered to Lessor, shall be and remain the exclusive property of Lessor and shall not constitute property of Lessee or of the estate of Lessee within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting Lessor's property under the preceding sentence not paid or delivered to Lessor shall be held in trust for the benefit of Lessor and be promptly paid or delivered to Lessor.

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(d) The lease of real property set forth herein is a lease in a shopping center within the meaning of the Bankruptcy Code.

15.3 Restrictions on Subletting.

Lessee shall not sublet the Premises, or any portion thereof, or any right or privilege appurtenant thereto, and shall not sublet any buildings, or other structures on the Premises except the rental of transient slips, without the prior written consent of Lessor. Lessor shall act reasonably in reviewing and granting or denying its approval of subleases pursuant to this Article 15.3, however, Lessor need not approve any sublease if Lessee is in default under any provision of this Lease at the time Lessor's consent is requested or at the time the sublease is to be or become effective, or if Lessor has a reasonable belief that the sublease has been so structured and negotiated to avoid the sublease being considered as an assignment under Article 15.1, above, nor must Lessor approve any sublease which does not, as a minimum, meet or conform to the following criteria:

(a) Lessee shall give Lessor reasonable advance written notice, in the manner provided in Article 29, below, of the proposed sublease, providing appropriate documentation to Lessor as Lessor may reasonably require relating to the financial capacity and reputation of the proposed Sublessee (excluding limited partners and shareholders), including but not limited to a statement of pending litigation involving the proposed Sublessee, past employment and business history of Sublessee and its managing agents or officers, and a listing of felony convictions of Sublessee, or each separate entity or person making up Sublessee.

(b) Sublessee must acknowledge in writing that Sublessee has had an opportunity to review and has reviewed the terms and provisions of this Lease.

(c) Sublessee must acknowledge in writing that the sublease is subordinate and subject to this Lease and that Sublessee shall attorn to Lessor in the event Lessor succeeds to the interests of Lessee/sublessor.

(d) If the business activities of the proposed Sublessee to be conducted on the sublet portion of the Premises will generate gross income as that term is defined in this Lease, the sublease shall contain an express provision obligating the proposed Sublessee to conduct its business activities as a continuous operation during all normal business hours.

(e) No sublease term shall exceed or extend beyond the Lease Term.

(f) The Sublessee must acknowledge in writing that Sublessee waives all claims against Lessor for damages to goods, wares, merchandise, buildings, installations or other improvements in, upon, or about the sublet portion of the Premises, and agrees that Sublessee shall indemnify and save harmless Lessor, its appointed officials and representatives, officers, agents, attorneys and employees, from and against any and all claims, demands, loss or liability of any kind or nature which Lessor, its appointed officials and representatives, officers, agents, attorneys and employees may sustain or incur or which may be imposed upon them or any of them (i) for injury or death of persons, or damage to property as a result of, arising out of, or in

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any manner connected with the sublease or with the occupancy and use of any portion of the Premises by Sublessee, its officers, agents, employees, contractors, concessionaires, licensees, patrons or visitors, and (ii) in connection with any and all liens for labor, services, supplies or materials arising out of the design, construction, repair, alteration or installation of structures, improvements, equipment or facilities within the Premises caused by Sublessee.

(g) Any mortgage, pledge, hypothecation, encumbrance, transfer, sublease or assignment of Sublessee's interest in the Premises, or any portion thereof, whether voluntarily or by operation of law, shall first be approved in writing by Lessor, and if not so approved, shall be void and shall, at Lessee/sublessor's option, terminate the sublease.

(h) Sublessee shall not discriminate against any person or class of persons by reason of sex, race, color, religious creed, ancestry, national origin, age, disability, physical handicap, sexual orientation, medical condition or marital status, and shall make its accommodations and services available to all persons on an equal basis.

(i) No alterations, improvements, or erecting of signs may be accomplished by Sublessee on the Premises without the prior written approval of Lessor and such other governmental agencies as may have jurisdiction over said work.

(j) Lessee pays a non-refundable fee to Lessor for processing each request for consent to a sublease in the amount of One Thousand Dollars (\$1,000) plus Lessor's out-of-pocket expenses paid to unrelated third parties such as attorneys, accountants and other consultants connected with the processing of the request for consent to sublease.

(k) Under the sublease, Sublessee shall expressly agree in writing to maintain and make available for inspection by Lessor all records required by Article 5, above, in the manner set forth in that Article.

(l) Lessee/sublessor shall grant Sublessee only non-exclusive rights for the conduct of any business activities and operations on the Premises, unless Lessor shall expressly agree otherwise in writing.

(m) The sublease shall expressly obligate the Sublessee to conduct its business operations in compliance with the schedules, price lists and procedures therefor approved by the General Manager as required by Articles 22 and 23, below.

15.4 Restrictions on Sublessees' Right to Encumber.

(a) No Sublessee shall mortgage, pledge, hypothecate, encumber, sublet or assign its interest in the Premises as security, whether voluntarily or by operation of law, without obtaining Lessor's prior written consent, which consent shall not be unreasonably withheld. Any such encumbrancing shall only be on such terms as may be satisfactory to Lessor. Lessee shall submit to Lessor the proposed terms and conditions of any such encumbrancing by a Sublessee, including the terms of any loan connected therewith, and shall deliver to Lessor any other

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documents and information Lessor may request in determining whether or not to consent or withhold its consent to such encumbrance.

(b) Lessee shall pay a non-refundable fee to Lessor for processing each request for consent to an encumbrancing of a subleasehold estate in the amount of One Thousand Dollars (\$1,000) plus Lessor's out-of-pocket expenses paid to third parties such as attorneys, accountants and other consultants connected with the processing of the request for consent. The payment of said out-of-pocket expenses shall be made within thirty (30) days after receiving an invoice from Lessor for said expenses.

15.5 Lessor's Discretion.

In granting its consent to any sublease or related encumbrancing, Lessor shall have the right to impose upon the proposed Sublessee, as a condition to its consent, compliance with all terms, covenants, conditions and agreements in this Lease. Any subletting or encumbrancing of a subleasehold estate by a Sublessee, or by Lessee as sublessor, without such consent, shall be void, and shall, at the option of Lessor, be grounds for terminating this Lease.

15.6 Transfer on Termination.

Termination of this Lease prior to expiration of the Lease Term shall not serve to cancel approved subleases, but shall operate as an assignment to Lessor of any and all such subleases and all rights of Lessee thereunder shall terminate and shall pass to Lessor, provided the Sublessee is not then in default under any term or provision of the sublease. Lessor shall also succeed to rights, title and interests of Lessee/sublessor to any security and other deposits made by Sublessee under the sublease. Lessor agrees to be bound by the terms of said subleases so long as sublessees are not in default in the performance of their obligations under said subleases. Lessor may, at its option, transfer said subleases to a new lessee.

15.7 Assignment and Sublease Documents.

It shall be the sole responsibility of Lessee to ensure that all documents relating to any assignment or sublease of all or any portion of the Premises shall be consistent with the terms and provisions of this Lease, and particularly this Article 15.

15.8 Consent Not a Waiver.

Any consent by Lessor to one assignment, transfer, conveyance, sale, subletting, occupation or use by any person shall not be deemed to be a consent to any subsequent assignment, transfer, conveyance, sale, subletting, occupation or use, nor shall such consent constitute or operate as a waiver, release, modification or abandonment by Lessor of any rights or claims of Lessor under this Lease.

16. Default.

16.1 Definition of Default.

Not by way of limitation, the following shall be deemed a default by Lessee and, subject to Article 16.2, a material breach of this Lease:

(a) Failure to pay rent, additional rent, arrears rent, taxes of any type or nature connected with the Premises or the possession, use or occupation of the Premises, or any other sum, fee or charge specified under this Lease to be paid by Lessee to Lessor;

(b) Failure to pay principal and/or interest, or any other sum when due, to an encumbrance-holder approved by Lessor, taking into account any grace period or rights of waiver or deferral contained in the applicable mortgage documents;

(c) Failure to maintain and provide financial records and documents as required by Article 5.7, above;

(d) Failure to furnish any monthly, quarterly or annual statements of gross income pursuant to Article 5.7, above, within the time required;

(e) Failure to reimburse Lessor within the time required for the cost of auditing any monthly or annual statement pursuant to Article 5.7, above;

(f) Failure to adopt or implement sales or record keeping procedures as requested by Lessor under Article 5.7, above;

(g) Permitting the Premises, or any portion thereof, to be used for any purpose or purposes not authorized by or in violation of Article 6.1, above;

(h) Failure to complete construction and installation of the required improvements pursuant to Article 7.1;

(i) Failure to submit schematics, preliminary plans, working drawings, environmental assessments or draft supplemental or subsequent environmental impact reports for any repairs, maintenance or refurbishing pursuant to Article 7.3, above, within the time required;

(j) Failure to deposit with Lessor, or to restore said deposit after Lessor's written demand therefore, pursuant to Article 8.1, above, within the time required;

(k) Failure to provide any construction, payment performance or lien release bond required to be provided by Lessee under Article 8.2, above, according to all terms, provisions and conditions specified therein;

(l) Failure to disclose information required by Lessor under its policy for lease negotiation and financial disclosure, as provided in Article 8.5, above, or submission by Lessee of such information which is incomplete, misleading or materially false;

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(m) Failure to maintain and repair the Premises or maintain water depth pursuant to Article 9, or pay Lessor for the cost of repairs and replacements made by Lessor pursuant to Article 10.1, above, within the time required;

(n) Encumbering, or attempting to encumber, Lessee's interest in the Premises, or any part thereof, or in the improvements on the Premises, or any part thereof, without first obtaining Lessor's prior written consent to such encumbrance pursuant to Article 13, above;

(o) Encumbering, or attempting to encumber the fee simple title to the Premises, or any part thereof;

(p) Failure to reimburse Lessor for all costs associated with a Hazardous Substance contamination of the Premises caused or contributed to by Lessee, or its agents, sublessees, licensees or concessionaires, pursuant to paragraph (d) of Article 14.3, above, within the time required;

(q) Failure to maintain required insurance or insurance coverages, or to implement changes in such insurance or insurance coverages, pursuant to Article 14, above, within the time required;

(r) Voluntarily assigning, or attempting to voluntarily assign, Lessee's interest under this Lease in the Premises, or any part thereof, or improvements thereon, without first obtaining Lessor's prior written consent to such assignment, pursuant to Article 15.1, above;

(s) Subletting, or attempting to sublet, all or any portion of the Premises, or improvements thereon, without first obtaining Lessor's prior written consent to such subletting pursuant to Article 15.3, above;

(t) Permitting any Sublessee, licensee or concessionaire to encumber its subleasehold estate, or other interest in the Premises, without Lessor's prior written consent in violation of Article 15.4, above.

(u) Abandonment of the Premises by Lessee at any time during the Lease Term;

(v) Failure of Lessee to commence the repair, construction, reconstruction, replacement or restoration of the Premises, or any part thereof, or any building, structure or other improvement thereon, within the time required, and/or to diligently prosecute such work to completion, pursuant to Article 18.4, below;

(w) Failure of Lessee or its agents, sub-lessees, licensees or concessionaires to conduct business operations on the Premises in full compliance with the effective schedules and procedures therefor, pursuant to Article 22, below;

(x) Failure to do, observe, keep and perform any of the covenants, conditions and agreements of this Lease to be done, observed, kept or performed by Lessee;

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(y) Failure to immediately commence curing of any default involving action other than the payment of money, and promptly to proceed in good faith to rectify the same and prosecute the same to completion with diligence;

(z) Any involuntary assignment or transfer of Lessee's interest in the Premises under this Lease or any part thereof, or improvements thereon, without first obtaining the prior written consent of Lessor;

(aa) Filing of a voluntary or involuntary petition in bankruptcy, or for reorganization, or for an arrangement by Lessee, by a member or partner of Lessee, if Lessee is a general partnership or joint venture, or by a general partner of Lessee, if Lessee is a limited partnership;

(bb) Appointment of a receiver of the business or assets of Lessee, or of a member or partner of Lessee, if Lessee is a general partnership or joint venture, or of a general partner of Lessee, if Lessee is a limited partnership, except a receiver appointed at the instance and request of an approved encumbrance holder; and

(cc) The making of a general assignment or an assignment for the benefit of creditors, whether voluntarily or involuntarily, by Lessee, by a member or partner of Lessee, if Lessee is a general partnership or joint venture, or by a general partner of Lessee, if Lessee is a limited partnership.

As used in this Lease, the word "default" includes the word "breach".

16.2 Lessee's Right to Cure a Default.

(a) As to any default identified in Article 16.1, above, which can be cured by the payment of money to Lessor, an encumbrance holder or other governmental entity or agency, Lessee may cure such default by making the required payment within ten (10) calendar days after receiving written notice from Lessor pursuant to Article 29, below, to remedy or cure such default.

(b) As to any default identified in Article 16.1, above, which cannot be cured by the payment of money, and excluding the events of default identified in paragraphs (aa) and (bb) of Article 16.1, above, Lessee may cure such default by taking such action and doing such things as may be necessary to cure such default within thirty (30) calendar days after receipt of written notice from Lessor pursuant to Article 29, below.

(c) As to any default identified in paragraph (aa) of Article 16.1, above, Lessee may cure such default by obtaining and delivering to Lessor a dismissal of the petition in bankruptcy upon which the event of default is based within sixty (60) calendar days after filing of the bankruptcy petition.

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(d) As to any default identified in paragraph (bb) of Article 16.1, above, Lessee may cure such default by obtaining and delivering to Lessor, a dismissal of the legal proceedings upon which the event of default is based within sixty (60) calendar days after receipt of written notice from Lessor pursuant to Article 29, above, to remedy or cure such default.

16.3 Lessor Remedies.

(a) In the event Lessee fails, refuses or neglects to cure a default within the time specified in Article 16.2, above, then, in addition to any other remedy Lessor may have by operation of law, including all rights available to Lessor under Sections 1951.2 and 1951.4 of the Civil Code of the State of California (where a lessor is given the right, among others, to continue the lease in effect after a lessee's breach and abandonment and recover rent as it becomes due, if the lessee has a right to sublet or assign, subject to reasonable limitations), or otherwise provided herein, Lessor shall have the right and option, without further demand or notice, to:

(i) Declare this Lease at an end, in which event Lessee shall immediately pay Lessor a sum of money equal to the amount, if any, by which the then cash value of the rent reserved under this Lease for the balance of the Lease Term exceeds the then cash reasonable rental value of the Premises for the balance of the Lease Term; or

(ii) Without terminating this Lease, relet the Premises, or any part of the Premises, as the agent for and for the account of Lessee, upon such terms and conditions as Lessor may deem advisable, in which event the rents received on such reletting shall be applied first to the expenses of Lessor in such reletting and collection, including the cost of advertising, any necessary renovation and alterations of the Premises to accommodate the requirements of the new tenant, reasonable attorneys' fees, any real estate commissions paid, and thereafter to payment of all sums due or to become due Lessor under this Lease. If a sufficient sum is not realized to pay all such costs and expenses and other charges, Lessee shall immediately pay Lessor, upon demand, any deficiency, even though Lessor may have received rental in excess of the rental stipulated to in this Lease in previous or subsequent months. Lessor may bring an action therefor as such monthly deficiency shall arise. Lessor shall in no event be liable in any way whatsoever for failure to relet the Premises, or in the event that the Premises are relet, for failure to collect the rent therefor under such reletting (provided, however, Lessor shall have the duty to mitigate its damages as required by law); or

(iii) At the option of Lessor, this Lease shall continue in effect for the remainder of the Lease Term so long as Lessor does not terminate Lessee's right to possession, and Lessor may enforce all of the rights and remedies under this Lease, including, but not by way of limitation, the right to recover from Lessee the rent, and all other sums and amounts as they become due hereunder.

If Lessor elects to declare this Lease at an end as above provided, Lessor shall give written notice of termination of this Lease to Lessee pursuant to Article 29, below, which notice shall be effective as therein set forth. Lessor may also record the quitclaim deed referred to in Article 8.3.

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(b) In the event that Lessee files any type of petition in bankruptcy or has such petition filed against it, and Lessor cannot elect to terminate this Lease pursuant to law, and in the event that the trustee or receiver appointed by the bankruptcy court assumes or adopts or fails to disaffirm this Lease and fails or refuses to give Lessor adequate assurance of compliance with this Lease, then Lessor shall have the right to terminate this Lease within thirty (30) calendar days after gaining knowledge of such failure to give such adequate assurances, or within thirty (30) calendar days after receipt of written notice from said trustee or receiver of refusal to give such adequate assurances, whichever is earlier.

16.4 Right of Re-entry.

The exercise of any right of re-entry by Lessor under Article 16.3, above, shall be allowed by Lessee without hindrance, and Lessor shall not be liable in damages to Lessee or its agents, sublessees, licensees or concessionaires for any such re-entry, or be guilty of trespass or forcible entry.

16.5 Percentage Rental upon Default.

For purposes of this Article 16, the additional percentage rental for any period after default by Lessee shall be at a monthly rate, equal to the average monthly percentage rental which Lessee was obligated to pay Lessor during the twelve (12) months immediately preceding the month during which such default occurs or the actual percentage rental due hereunder, whichever amount is greater.

16.6 Lessor's Right to Cure Default.

In the event of Lessee's breach or default of any term, covenant or condition in this Lease, Lessor may, at any time after thirty (30) calendar days written notice of default to Lessee and Lessee's failure to cure, act to cure such default for the account of and at the expense of Lessee. If Lessor at any time by reason of such breach or default is compelled to pay, or elects to pay, any sum of money or to do any act which will require the payment of any sum of money, or is compelled to incur any expense, including fees on account of services rendered or work performed by accountants or consultants, or reasonable attorneys' fees in instituting, prosecuting, or defending any actions or proceedings to enforce Lessor's rights under this Lease or otherwise, the sum or sums paid by Lessor shall bear interest at the maximum rate then allowed by law, and all such interest, costs and damages shall be deemed to be additional rent under this Lease and shall be due from Lessee to Lessor on the first day of the month following the incurring of such expenses.

16.7 Attorneys' Fees.

In the event of the bringing of any action by either party hereto against the other by reason of the breach of any covenant or condition on the part of the other party or arising out of this Lease, then the prevailing party in whose favor final judgment shall be entered shall be entitled to recover reasonable attorneys' fees.

16.8 Right to Legal and Equitable Remedies, and Waiver.

(a) In the event of a default or threatened default by either party of any term, covenant, condition or agreement of this Lease, the other party shall have the right of injunction and the right to invoke any remedy allowed by law or in equity. Mention in this Lease of any particular remedy shall not preclude either party from any other remedy at law or in equity.

(b) Lessor and Lessee waive all rights to trial by jury in any action, proceeding or counterclaim brought by either of them against the other on any matters arising out of this Lease or the use and occupancy of the Premises (except claims in unlawful detainer or for personal injury or property damage). If Lessor commences any summary proceeding for nonpayment of rent or other sums due under this Lease, Lessee will not interpose any counterclaim in any such proceeding unless expressly permitted by law. Further, Lessor and Lessee hereby agree and consent that any dispute or controversy between them arising out of this Lease, except as otherwise provided in this paragraph (b) of this Article 16.8, shall be heard by a sitting state or federal judge with appropriate subject matter jurisdiction and the venue for all such proceedings shall be in the County of Ventura, State of California.

16.9 Rights of Sublessee.

Any Sublessee shall have the right, at its election, to cure a curable default under this Lease. If any such Sublessee cures all defaults then existing which are capable of being cured, Sublessee's possession and use shall not be disturbed by Lessor as long as (a) Sublessee performs in accordance with the terms of its sublease, and (b) Sublessee attorns to Lessor.

16.10 No Lessee Rights After Termination.

Should Lessor exercise rights available to it by law, specifically granted to it under this Article 16 or reserved or granted to it elsewhere under this Lease, to terminate this Lease and all of Lessee's rights and interest in and to this Lease, the Premises, or the improvements on the Premises, such termination shall be without compensation to Lessee for any remaining value of this Lease or the leasehold improvements now existing or hereafter constructed on the Premises by or under the authority of Lessee, and title to such improvements will automatically revert to Lessor as provided in Article 11.1, above. Lessee shall execute such documents as may be necessary to effectuate the transfer of title to the improvements and hereby appoints Lessor as its attorney-in-fact to execute such documents on Lessee's behalf.

17. Condemnation.

17.1 Termination on Total Taking.

If title to all of the Premises is taken for any public or quasi-public use under any statute, or by right of eminent domain, by any duly empowered public entity, including Lessor, then this Lease shall terminate on the date that possession of the Premises is taken.

17.2 Termination on Partial Taking.

EXHIBIT B

If title to so much of the Premises is taken for any public or quasi-public use under any statute or by right of eminent domain by any duly empowered public entity, including Lessor, such that it is economically infeasible for Lessee to use and operate the remaining portion of the Premises for the purposes contemplated by this Lease, Lessee may, at its option, terminate this Lease as of the date that possession of such part of the Premises is taken, provided Lessee shall give written notice to Lessor of its intention pursuant to Article 29, within thirty (30) calendar days following the date that possession of such part of the Premises is taken.

17.3 Adjustment of Rent on Partial Taking.

If any part of the Premises shall be so taken and this Lease is not terminated pursuant to the provisions of this Article 17, then this Lease shall, as to the part so taken, terminate as of the date that possession of such part is taken, and the minimum monthly rental payable hereunder shall be abated in the proportion which the percentage rental applicable to the portion of the Premises so taken, payable hereunder for the full twelve (12) month period immediately preceding the month in which such part of the Premises is taken, bears to the total percentage rental payable hereunder for said twelve (12) month period. Pursuant to Article 9.1, above, Lessee shall make all reasonably necessary repairs or alterations to the buildings and improvements on that portion of the Premises not taken which is reasonably suitable for Lessee's continued occupancy for the purposes and uses for which the Premises are leased, at its own expense and subject to Lessor's prior approval. Any plans, designs or specifications for such work shall be promptly submitted to Lessor for its review and approval prior to commencement of work by Lessee and Lessee shall secure, at its own expense, all permits and other approvals required for said work from Lessor, the City and any other agency or governmental authority with jurisdiction over said work, including all actions, studies, assessments and reports that may be required in order to comply with all requirements of CEQA and the California Coastal Act. Further in the carrying out of all such work, Lessee shall comply with and abide by all laws, ordinances, rules and regulations applicable thereto.

17.4 Allocation of Award.

Lessor shall be entitled to receive and shall receive all compensation for the condemnation of all or any portion of the Premises by exercise of eminent domain except as hereinafter provided. Lessee shall be entitled to that portion of said compensation which is granted for the value of Lessee's leasehold interest under this Lease, including any award for loss of use of the leasehold improvements for the remainder of the Lease Term, including goodwill, plus any amount specifically awarded for costs or losses Lessee may sustain or incur in the relocation or removal of Lessee's trade fixtures.

17.5 Proration of Rent and Repayment of Security Deposit.

If this Lease is terminated pursuant to this Article 17, the rent and all other obligations of Lessee hereunder shall be prorated to the date of termination. If Lessee has paid, performed and observed all of Lessee's covenants and obligations hereunder, Lessor shall repay

to Lessee the security deposit and any rent and other payments hereunder paid by Lessee for any period beyond the date of termination.

18. Destruction.

18.1 Destruction by Non-insurable Peril.

(a) In the event of the destruction, whether total or partial, of any building, structure or other improvement of Lessee, which destruction results from a peril for which Lessee is not required to secure and maintain insurance under the provisions of Article 14 above, and against which Lessee has no insurance in effect at the time of such destruction (hereafter referred to as a “non-insurable peril”), Lessee shall be under no obligation to repair, construct, reconstruct or restore said building, structure or other improvement.

(b) In the event the Premises are destroyed as a result of a non-insurable peril to such an extent that Lessee, acting reasonably, determines that it is economically infeasible for Lessee to operate and use the remaining portion of the Premises for the purposes contemplated by this Lease, Lessee may, at its option, terminate this Lease as of the date of such destruction, upon Lessee giving written notice to Lessor pursuant to Article 29, below, of its intention within ninety (90) calendar days following such destruction.

18.2 Proration of Rent and Repayment of Security Deposit on Termination.

If this Lease is terminated pursuant to the provisions of Article 18.1 above, the rent and all other obligations of Lessee hereunder shall be prorated to the date of termination. If Lessee has paid, performed and observed all of Lessee’s covenants and obligations hereunder, Lessor shall repay to Lessee the security deposit and any rent and other payments to Lessor hereunder paid by Lessee for any period beyond the date of termination.

18.3 Adjustment of Rent upon Less than Total Destruction by Non-Insurable Peril.

If any part of the Premises shall be destroyed by a non-insurable peril and this Lease is not terminated pursuant to Article 18.1, above, then this Lease shall, as to the part so destroyed, terminate as of the date of such destruction and the minimum monthly rental payable hereunder shall be abated in the proportion which the percentage rental applicable to the portion of the Premises so destroyed, payable hereunder for the full twelve (12)-month period immediately preceding the month in which such destruction occurs, bears to the total percentage rental payable hereunder for such twelve (12) month period immediately preceding the month in which such destruction occurs. In such event, Lessee shall, at its own expense, clear the debris from the destroyed improvements and make all necessary repairs or alterations to its buildings or improvements not destroyed which are reasonably suitable for Lessee’s continued occupancy for the purposes and uses for which the Premises are leased, and, in so doing, shall comply with all applicable laws, rules, regulations and procedures, and shall obtain all necessary permits and governmental approvals.

18.4 Destruction by Insurable Peril.

In the event of the destruction, whether total or partial, of any building, structure or improvements of Lessee as a result of a peril for which Lessee has insurance or for which Lessee is required to secure and maintain insurance under Article 14 above, Lessee shall, within ninety (90) calendar days from the date of such destruction, commence the repair, construction, reconstruction or restoration of said building, structure or other improvement and shall prosecute the same diligently to completion. Said repair, construction, reconstruction or restoration shall be completed in accordance with plans prepared by Lessee and submitted to and approved by Lessor. Any such destruction, whether total or partial, shall in no way annular void this Lease, except that Lessee shall be entitled to a proportionate reduction of rent from the date of such destruction and continuing to the completion of such repair, construction, reconstruction or restoration. Such proportionate reduction shall be based upon the extent to which the making of such repair, construction, reconstruction or restoration shall interfere with the business conducted by Lessee on the Premises. Lessor shall determine the amount of any reduction in its sole discretion. In the event the rental insurance required under Article 14.6 above is not in effect at the time of such destruction for any reason whatsoever, Lessee shall not be entitled to the rent reduction provided above in this Article 18.4.

18.5 Controlling Agreement.

This Lease shall be considered an express agreement governing any case of damage to or destruction of buildings, structures or improvements on the Premises by fire or other casualty, and any law which purports to govern the rights of Lessor and Lessee in such a contingency in the absence of express agreement, and any successor or other law of like import, shall have no application.

19. Abandonment.

Lessee shall not abandon the Premises at any time during the Lease Term. If Lessee shall abandon the Premises, or be dispossessed by process of law or otherwise, any personal property, including trade fixtures, belonging to Lessee and left on the Premises, or in any building, structure, or other improvements made by Lessee on the Premises, shall, at the option of Lessor, be deemed to have been abandoned within the meaning of the California Civil Code and Code of Civil Procedure and, in addition to all rights and remedies allowed by law, Lessor shall have the right to recover from Lessee all costs and expenses incurred and paid by Lessor in storing and disposing of such property, including attorneys' fees.

20. Waiver of Breach.

No waiver of any default shall constitute a waiver of any other breach or default, whether of the same or any other covenant or condition. No waiver, benefit or privilege voluntarily given or performed by either party shall give the other party any contractual right by custom, estoppel or otherwise. The subsequent acceptance of rent pursuant to this Lease shall not constitute a waiver of any preceding default by Lessee other than the default in the payment of the particular rental payment so accepted, regardless of Lessor's knowledge of the preceding

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breach at the time of accepting the rent. Nor shall the acceptance of rent or any other payment due hereunder after termination constitute a reinstatement, extension or renewal of this Lease or revocation of any notice or other act by Lessor, except as expressly agreed to in writing by Lessor.

21. Compliance with the Law.

21.1 Rules, Statutes and Ordinances.

Lessee and all of its agents, sublessees, licensees, and concessionaires, shall, in all activities on or in connection with the Premises and in all uses thereof, including the making of any alterations or changes and the installation of any equipment and other improvements, abide by and conform to all reasonable and non-discriminatory rules and regulations prescribed by Lessor, any ordinances of said Lessor, and any applicable federal or state statutes or municipal laws now in force or which may hereafter be in force, including the American with Disabilities Act of 1990, and any corresponding laws of the State of California. Further, in the event a violation of any such rule, regulation, ordinance, statute or other law is attributable to actions or conduct of any Sublessee, concessionaire or licensee of Lessee, Lessee shall not be deemed to be in default under this Lease so long as Lessee acts with diligence to obtain compliance or if unable to do so promptly, takes steps necessary to evict or remove such Sublessee, concessionaire or licensee.

21.2 Judicial Decrees.

The final judgment of any court of competent jurisdiction, or the admission by either party in any action or proceeding, including arbitrations or administrative proceedings to which either Lessor or Lessee is a party, that either party has violated such rules and regulations, ordinance, statute, or other law in the use or occupancy of the Premises, shall be conclusive of the fact as between Lessor and Lessee.

22. Control of Operating Hours and Operating Procedures by Lessor.

22.1 Schedule and Procedures.

Before commencing business operations within the Premises, schedules and procedures shall be designed by Lessee to make all the services to be provided by Lessee, its agents, sublessees, concessionaires, or licensees under the terms of this Lease available to the public to the fullest extent reasonable in accordance with generally accepted industry standards for marine fueling facilities, and shall be submitted to the General Manager of Lessor for his prior approval. Fueling service by Lessee shall be conducted on a twenty-four (24) hour basis, seven (7) days per week except for scheduling of "on call" hours when an attendant will be available for fueling service within thirty (30) minutes of any call. "On call" hours to be established pursuant to Article 22 of this Lease.

22.2 Changes to Schedules and Procedures.

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Any changes proposed in such schedules and procedures shall be submitted to the General Manager of Lessor for his approval ten (10) calendar days before they are to be implemented. In the event the General Manager does not approve the proposed schedules and procedures or changes therein, Lessee shall have the right to confer with the General Manager and to present reasons for proposing such schedules and procedures. If after conferring with Lessee, the General Manager continues to disapprove of the proposed schedules and procedures, the General Manager shall make such changes therein as he deems reasonably proper, and Lessee, its agents, sublessees, concessionaires or licensees shall institute such changes. Lessee may, however, appeal the matter to the Board of Port Commissioners, the decision of which shall be final and binding on the parties. Lessee agrees that Lessee, its agents, sublessees, concessionaires or licensees shall operate in accordance with the schedules and procedures approved by the General Manager, or, if appealed to the Board of Commissioners, in accordance with the decision of said Board. The prior schedules and procedures shall remain in effect until the decision of the dispute. The failure of Lessee, its agents, sublessees, concessionaires or licensees to comply with said schedules and procedures shall be an event of default under this Lease and Lessor shall have available to it all other rights and remedies allowed by law and by this Lease, including the right to terminate this Lease.

22.3 Public Purpose.

In implementing this Article 22, the General Manager shall give primary consideration to the public purpose of the Ventura Harbor.

22.4 Operating Rules.

Lessee agrees that it will operate and manage the services and facilities offered on and from the Premises in a competent and efficient manner at least comparable to other well managed operations of similar type. Lessee shall at all times retain active, qualified, competent and experienced personnel to supervise Lessee's operation and to represent and act for Lessee. Lessee shall further require its attendants and employees to be properly dressed, clean, courteous, efficient and neat in appearance at all times. Lessee shall not employ any person(s) in or about the Premises who shall use offensive language or act in a loud, boisterous or otherwise improper manner. Lessee shall maintain a close check over attendants and employees to insure the maintenance of a high standard of service to the public and shall replace any employee whose conduct is detrimental to the best interests of the public.

22.5 Binding on Sublessees.

The provisions of this Article 22 shall be binding upon the agents, sublessees, assignees, concessionaires, permittees and licensees of Lessee.

22.6 Continuous Operation.

Lessee shall continuously conduct its business operations on the Premises and shall keep the Premises open for business and cause such businesses to be conducted thereon during usual business hours of each business day that is customary for businesses of like

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character in Santa Barbara and Ventura Counties. As to businesses conducted on the Premises by third parties pursuant to subleases or other agreements with Lessee and which are approved by Lessor, Lessee shall use its best efforts to ensure said third parties conduct their business operations on the Premises in accordance with the same standards applicable to Lessee's operations under this Article 22.6. All businesses conducted on the Premises shall maintain adequate stocks of fuel and merchandise and shall employ sufficient personnel on the Premises to operate all businesses in accordance with sound business practices.

22.7 Tenant's Other Operations.

Lessee, and its companies, affiliates, subsidiaries, entities, shareholders and owners shall not, during the Lease Term, directly or indirectly, operate or own any similar business except those already approved by Lessor within a radius of three (3) miles from the location of the Premises. Without limiting Lessor's remedies, in the event Lessee or any of its companies, affiliates, subsidiaries, entities, shareholders or owners should violate this covenant, Lessor acknowledges, agrees, and understands that Lessor may, at its option, include the "gross income" of such other business in "gross income" transacted from the Premises for the purpose of computing the percentage rent due hereunder. Lessee agrees to deliver to Lessor a certified statement of such gross income from such other business, certified as correct by a Certified Public Accountant licensed to practice in the State of California. Article 5 is incorporated herein by reference as though set forth in full as to Lessor's rights and Lessee's duties in regard to the "gross income" of such other business. "Gross income" of such other business shall be as further defined in Article 5.

23. Controlled Prices.

(a) Lessee shall at all times maintain a schedule on the Premises of the prices, based on industry standards for a commercial fuel dock, for the use by the public of the facilities, whether the same are supplied by Lessee or by its sublessees, assignees, concessionaires, permittees or licensees, and shall make said schedule available to Lessor. Lessor reserves the right and power to fix and determine the rates, fees and prices to be charged by Lessee for the use by the public of the improvements on the Premises. Said prices shall be fair and reasonable, based upon the following considerations:

(i) The Premises are intended to serve a public use and to provide needed fueling facilities to the public at fair and reasonable cost.

(ii) Lessee is entitled to a fair and reasonable return upon its investment pursuant to this Lease.

(b) The provisions of Article 23 shall be binding upon all agents, sublessees, assignees, concessionaires, permittees and licensees of Lessee.

24. Taxes.

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This Lease may result in a taxable possessory interest and be subject to the payment of property taxes. Lessee agrees and shall pay or cause to be paid before delinquency all taxes, assessments or fees levied, assessed or charged upon Lessee or the Premises including those levied, assessed or charged by reason of any buildings, structures, equipment, appliances or other improvements of any nature whatever erected, installed, or maintained by Lessee, its sub lessees, concessionaires or licensees, or by reason of the business or other activities of Lessee, its sublessees, concessionaires or licensees upon or in connection with the Premises. Lessee shall further pay or cause to be paid any fees imposed by law for licenses or permits for any business or activity of Lessee, its sublessees, concessionaires or licensees upon or in connection with the Premises or under this Lease.

25. Lessee's Association.

Lessee agrees to maintain membership and pay dues in any organization that may be organized, formed or sponsored by Lessor for substantially all lessees within the Ventura Harbor or to which a majority of the lessees in Ventura Harbor belong, and to pay such fees, in any, as may be established by the membership, to be used (except for reasonable administrative expenses) at the direction of the officers of such organization for the promotion of the commercial operations located within the Harbor; provided, that under the bylaws of such organization, no matters (including, without limitation, the election of officers and the establishment of dues and fees) shall be deemed to have been adopted by such organization for purposes of this Article unless approved by a majority of the lessees holding leases within the Harbor at the time of adoption.

26. Waste.

Lessee shall not commit, or suffer to be committed, any waste or nuisance upon the Premises.

27. Holding Over.

This Lease shall terminate without further notice at the expiration of the Lease Term. Any holding over after the expiration of the Lease Term, or extension thereof, with the consent of Lessor, shall be construed to be a tenancy from month-to-month, at the monthly rental, including percentage rental, then in effect, and shall otherwise be on the terms and conditions herein specified, so far as applicable. Such holding over shall include any time employed by Lessee in the removal of trade fixtures in the manner provided in Article 11 for such removal. Any holding over by Lessee after expiration of the Lease Term shall not constitute a renewal or extension or give Lessee rights in or to the Premises, except as otherwise expressly provided in this Lease.

28. Non-discrimination.

Lessee shall not discriminate against any person or class of persons by reason of sex, race, color, creed, religion, national origin, ancestry, age, physical handicap, sexual orientation or medical condition and agree at all times to comply fully with all laws prohibiting

EXHIBIT B

such discrimination. Lessee shall make its accommodations, services and facilities available to the public on fair and reasonable terms. In complying with all laws, including, without limitation, the Americans With Disabilities Act of 1990 and any corresponding laws of the State of California, Lessee shall be solely responsible for such compliance and required programs and there shall be no allocation of any such responsibility between Lessor and Lessee.

29. Notices.

(a) Any and all notices or demands by or from Lessor to Lessee, or Lessee to Lessor, shall be in writing. They shall be served either personally or by certified mail. If personally served, service shall be conclusively deemed made at the time of service. If served by certified mail, service shall be conclusively deemed made seventy-two (72) hours after the deposit thereof in the United States mail, postage prepaid, addressed to the party to whom such notice or demand is to be given, as hereinafter provided. Any notice or demand to Lessor may be given in care of the General Manager of Lessor, 1603 Anchors Way Drive, Ventura, California 93001. Any notice or demand to Lessee may be given to it at 1551 Spinnaker Drive, San Buenaventura, California 93001.

(b) Any notice or demand given to Lessee by Lessor may also be given contemporaneously to any encumbrance holder of Lessee at such addresses as Lessee shall specify to Lessor in writing at the date of the execution of this Lease. All addresses provided herein may be changed by written notice given in the manner provided herein.

30. Successors.

Subject to the provisions herein relating to assignment and subletting, each and all of the terms, conditions, and agreements herein contained shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of any and all of the parties hereto: and all of the parties hereto shall be jointly and severally liable hereunder.

31. Captions.

The titles or headings to the Articles of this Lease and Table of Contents of this Lease are not a part of this Lease, and shall have no effect upon the construction or interpretation of any part hereof.

32. Time.

Time is of the essence as to this Lease.

33. Gender and Number.

With respect to all words used herein, the masculine, feminine or neuter gender, and the singular or plural number shall each be deemed to include the others whenever the context so indicates.

34. Savings Clause.

In the event that any provision or provisions of this Lease is, or is hereafter adjudged to be, for any reason, invalid or unenforceable, the remaining provisions of this Lease shall continue to exist and remain in full force and effect.

35. Intentionally Left Blank.

36. Estoppel Certificate.

Lessee, within ten (10) days after notice from Lessor, agrees to execute and deliver to Lessor a certificate addressed to such person as Lessor shall specify, stating that this Lease is in full force and effect, stating the modifications, if any, to the Lease, stating all other agreements between Lessor and Lessee, and stating whether Lessee claims any default or breach on the part of Lessor. The certificate also shall state the amount of minimum monthly rent, the date to which minimum rental and percentage rental has been paid, and the amount of any security deposit or prepaid rent. If Lessee fails to deliver the certificate within ten (10) days, it shall be conclusively presumed for the benefit of Lessor and the addressee that this Lease is in full force and effect and has not been modified except as may be represented by Lessor, and Lessee shall be deemed to have waived any breach or default of Lessor.

37. Intentionally Left Blank.

38. Amendments.

This Lease sets forth all of the agreements and understandings of the parties and any amendments must be written and signed by the parties.

39. Entire Understanding.

This Lease contains the entire and only understanding and agreement of the parties, and Lessee, by accepting the same, acknowledges that there is no other written or oral understanding or agreement between the parties with respect to the demised Premises and that this Lease supersedes all prior negotiations, discussions, obligations and rights of the parties hereto. No waiver, modification, amendment or alteration of this Lease shall be valid unless it is expressly in writing signed by authorized persons of the parties hereto. Each of the parties to this Lease acknowledges that no other party, nor any agent or attorney of any other party, has made any promise, representations, waiver or warranty whatsoever, expressed or implied, which is not expressly contained in writing in this Lease, and, each party further acknowledges that it has not executed this Lease in reliance upon any collateral promise, representation, waiver or warranty, or in reliance upon any belief as to any fact not expressly recited in this Lease.

40. Reservations to Lessor.

(a) The Premises, including the underground piping and fuel delivery facilities located in the common area of Ventura Harbor Village, are accepted by Lessee subject to any and

EXHIBIT B

all known existing easements and encumbrances, as may be disclosed by a preliminary title report or title policy to be obtained by Lessee at Lessee's option and sole cost and expense. Lessor reserves the right to install, lay, construct, maintain, repair and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes and connections; water, oil and gas pipelines; telephone telegraph, cable television and power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across and along the Premises or any part thereof, and to enter the Premises for any and all such purposes. Lessor also reserves the right to grant franchises, easements, rights of way and permits in, over, upon, through, across and along any and all portions of the Premises. No right reserved by Lessor in this clause shall be so exercised as to interfere unreasonably with Lessee's operations hereunder or to impair the security of any secured creditor of Lessee. Should such action by Lessor cause a substantial interference with the operations of Lessee there shall be a proportionate abatement or reduction in rent during the period of said interference.

(b) Lessor agrees that rights granted to third parties by reason of this clause shall contain provisions that the surface of the land shall be restored as nearly as practicable to its original condition upon the completion of any construction.

41. Signatures.

This Lease shall be signed by the Chairman and Secretary of the Board of Lessor and by an officer of Lessee following due authorization thereof.

42. Execution in Counterparts.

This Lease may be executed in two or more counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

43. Interpretation.

This Lease has been prepared by Lessor and its professional advisors and reviewed by Lessee and its professional advisors. The parties agree that any ambiguity contained in this Lease should not be interpreted in favor of either Lessor or Lessee. The laws of the State of California shall govern the validity, interpretation, performance and enforcement of this Lease.

44. Payments as Additional Rent.

All fees, payments, assessments, charges and other sums payable to Lessor by Lessee under this Lease, including any interest due or accruable thereon, shall be deemed to be additional rent due and payable to Lessor hereunder. In the event the Premises, or any possessory interest therein, should at any time be subject to ad valorem taxes or privilege taxes levied, assessed or imposed on such property, Tenant shall pay taxes upon the assessed value of the entire Premises and not merely upon the assessed value of its leasehold interest. The failure to make payment of any such sum when due shall be a default under paragraph (a) of Article 16.1, above, in addition to being a breach of the provision of this Lease wherein the obligation to make said payment is

EXHIBIT B

specified. Upon such breach or default, Lessor shall have available to it all rights and remedies provided by law and under this Lease, including the right to terminate this Lease.

45. No Broker.

Lessor and Lessee represent that they have not dealt with or through a broker or other agent with respect to the negotiation and entering into this Lease, and that neither party is aware of any such person or entity who claims or is entitled to a finders fee or commission arising out of this Lease.

46. Authority.

If Lessee is a corporation, limited liability company or a partnership, those persons executing this Lease for and on behalf of Lessee represent that they have been authorized and directed to execute this Lease for and on behalf of such corporation or partnership.

47. Appreciation Rent.

In the event Lessee assigns, transfers, conveys, or otherwise sells this Lease (each, an "Assignment"), or Lessee's interest in this Lease, pursuant to Article 15, above, and in addition to all other sums payable by Lessee to Lessor under this Lease, then Lessee shall pay Lessor, as Appreciation Rent, an amount equal to three percent (3%) of the fair market value of the total consideration given in exchange for the Assignment, including all cash and non-cash consideration passing as a result thereof. In addition, if Lessee sublets all or any portion of the Premises to a sublessee for more than fifty percent (50%) of the remainder of the Lease Term, such sublease shall constitute an Assignment of Lease under this Article 47. The Lessee and the assignee in the case of an Assignment, or the sublessee in the case of a sublease, shall be jointly and severally liable for payment of the Appreciation Rent, which shall be due and payable at the time Lessor renders its approval of the proposed Assignment. In the event Lessee refinances the debt structure secured by this Lease, or obtains any additional mortgage(s) pursuant to Article 13, above, and in addition to all other sums payable by Lessee to Lessor under this Lease, Lessee shall pay Lessor, as Appreciation Rent, an amount equal to three percent (3%) of (i) the total loan proceeds to the extent such loan proceeds exceeds any monetary encumbrances existing on Lessee's leasehold interest in a portion or all of the Premises in connection with any such refinancing; or (ii) the amount of indebtedness secured by any such additional mortgage(s) on Lessee's leasehold interest in a portion or all of the Premises in the case of a new encumbrance. Such Appreciation Rent, in the case of a refinancing or new encumbrance, shall be paid upon the close of escrow or escrows established in connection with said refinancing or new encumbrance.

48. Arbitration.

48.1 Binding Arbitration.

With the exception of disputes between the parties concerning the determination of fair market value of Percentage Rent under Article 5.3(c), above, and the adjustment of Slip Fee Percentage Rental under Article 5.6(c), above, all disputed matters arising under this Lease shall be resolved by binding arbitration pursuant to this Article 48. Except as otherwise provided by

EXHIBIT B

this Article 48, arbitrations between the parties pursuant to this Lease shall be conducted in accordance with the then-existing provisions of the California Arbitration Act, which as of the date hereof is contained in Title 9 of Part III of the California Code of Civil Procedure, commencing with Section 1280. Such arbitrations shall occur in Ventura County unless otherwise agreed by the parties in writing.

48.2 Initiation of Arbitration Process.

Either party (the “Initiating Party”) may initiate the arbitration process by sending written notice (“Request for Arbitration”) to the other party (the “Responding Party”) requesting initiation of the arbitration process and setting forth a brief description of the dispute or disputes to be resolved and the contention(s) of the Initiating Party. Within thirty (30) days after service of the Request for Arbitration, the Responding Party shall file a “Response” setting forth the Responding Party’s description of the dispute and the contention(s) of Responding Party. If Responding Party has any “Additional Disputes”, such party shall follow the format described for the Initiating Party. The Initiating Party will respond within thirty (30) days after service of the Request for Arbitration of the Additional Disputes, setting forth Initiating Party’s description of the Additional Disputes and contention(s) regarding the Additional Disputes.

VENTURA PORT DISTRICT,
A California Independent Port District

VENTURA HARBOR MARINE FUEL, INC.,
A California Corporation

By: _____
Chairman

By: _____
Robert A. Bartosh, President

Attest:

By: _____
Secretary

By: _____
Secretary

“LESSOR”

“LESSEE”

EXHIBIT B

EXHIBIT “A” – DIAGRAM DEPICTING PREMISES

(A PORTION OF PARCELS 3A1 and 3A2)

EXHIBIT B

EXHIBIT “B” – PERCENTAGES OF GROSS INCOME

PERCENTAGE RENTAL RATES

USES/ACTIVITY

PERCENTAGE RATE

Fuel Sales

June 1, 2014 – May 31, 2019

\$0.03 per gallon

Oil, Filters, and Commercial Fish Gear and Supplies, Apparel, and any Internet Sales

June 1, 2014 – May 31, 2019

5%

Percentage rental rates shall be subject to adjustment pursuant to Article 5.3 of the Lease.

Lessor's Initials

Lessee's Initials

EXHIBIT B

EXHIBIT "C"

PERMITTED USES

Tenant shall use the Premises only as a marine fueling station with all incidental facilities, fixtures and equipment required in connection with the commercial handling and sale of petroleum products and such other related services as may be required by trade demands and for no other purpose without the prior written consent of the General Manager. Nothing in this Lease shall be construed to give Tenant an exclusive right to dispense or sell petroleum products in the Ventura Harbor.

Such permitted uses include:

- Diesel Sales
- Oil Change Services (Marine Related Only)
- Marine Waste and Bilge Water Disposal
- Sale of Marine Oriented Petroleum and Engine Products (i.e., oil, lubricants, batteries, spark plugs, etc.)
- Commercial Fishing Gear, Supplies and brand apparel
- Transient Slip Rental

Lessor's Initials

Lessee's Initials

EXHIBIT B

EXHIBIT “D” – REQUIRED IMPROVEMENTS

Pursuant to Article 7 of this Lease, and in order to upgrade existing diesel fuel storage and delivery systems on the Premises to comply with all applicable legal requirements, Lessee shall at its sole cost and expense complete the following work within the time period specified below:

1. Remove and replace floating dock system and ramp on the west side of the fuel dock pier. This work shall be completed before the end of the first 5 years of the lease term.
2. Repair or replace any railing on the fuel pier as may be required by Lessor in its reasonable discretion.
3. Repair any pilings/and fender pile system as may be required by Lessor in its reasonable discretion.
4. Lessee shall submit a maintenance plan for Lessor’s approval (which such approval shall not be unreasonably withheld or delayed) that addresses the repair of the deck surface of the fuel pier so that it can periodically be maintained over the term of the lease. Such plan should be delivered to Lessor within the first 12 months of the lease term and implemented as outlined in such plan.

Lessee shall comply with the provisions of the Lease relating to the planning, design, and construction of additional leasehold improvements in Article 7.3 of the Lease, subject to Lessor’s approval (which such approval shall not be unreasonably withheld or delayed).

Lessee’s Initials

Lessor’s Initials

EXHIBIT B

EXHIBIT “E” – DESIGN CRITERIA–VENTURA HARBOR

A current copy of the Design Criteria is on file at the office of the Ventura Port District, located at 1603 Anchors Way Drive, Ventura, California 93001.

EXHIBIT B

EXHIBIT “F” – FORM FOR QUITCLAIM DEED

(See Attached)

EXHIBIT B

Recording Requested By and
When Recorded Mail To:

VENTURA PORT DISTRICT
1603 Anchors Way Drive
Ventura, California 93001-4229

Attention: _____

QUITCLAIM DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, VENTURA HARBOR MARINE FUEL, INC., a California Corporation ("LESSEE"), hereby remises, releases and forever quitclaims to the VENTURA PORT DISTRICT, a California Port District, all right, title and interest in and to those certain premises in the City of San Buenaventura, County of Ventura, State of California, described as follows:

That certain parcel of land (and water) in the City of San Buenaventura, County of Ventura, State of California, more particularly described as follows:

Parcels 3A1 and 3A2 of Parcel Map LD 341 in the City of San Buenaventura, County of Ventura, as per Map file in Book33, Pages 57 and 58 of parcel maps in the Office of the County Recorder of said County.

to which LESSEE was granted rights by the VENTURA PORT DISTRICT under a Lease dated _____, 2014.

It is understood and agreed that this Quitclaim Deed is executed and delivered, and is to be held by the VENTURA PORT DISTRICT in accordance with the terms of said Lease and WILL BE RECORDED ONLY IN THE EVENT THAT LESSEE FAILS TO COMPLY WITH THE TERMS OF SAID LEASE AND THE VENTURA PORT DISTRICT TERMINATES THE RIGHTS OF THE LESSEE THEREUNDER. UPON RECORDING OF SAID QUITCLAIM DEED, ALL RIGHTS OF LESSEE UNDER THE LEASE SHALL TERMINATE AND SAID LEASE SHALL NO LONGER BE OF ANY FORCE OR EFFECT.

EXHIBIT B

IN THE EVENT LESSEE COMPLIES WITH ALL OF THOSE TERMS, CONDITIONS, COVENANTS AND AGREEMENTS IN THE LEASE, VENTURA PORT DISTRICT SHALL FORTHWITH RETURN THIS QUITCLAIM DEED WITHOUT RECORDATION TO LESSEE.

DATED: _____

VENTURA HARBOR MARINE FUEL, INC.,
A California Corporation

By: _____

Its: _____

STATE OF CALIFORNIA)
)
COUNTY OF VENTURA)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT "G"
CONFLICT OF INTEREST AFFIDAVIT

STATE OF CALIFORNIA)
)
COUNTY OF VENTURA)

_____, being first duly sworn, deposes, acknowledges and says that:

1. He/She is the _____ of _____
("Lessee") under the Lease dated _____, with Ventura Port District
("Lessor").

2. All information required to be disclosed under the policy of Ventura Port District regarding lease negotiations and financial disclosure adopted by Ventura Port District on _____ as Resolution No. _____, has been fully, completely and accurately disclosed, including any loans, business dealings or other transactions of a financial nature or effect, or any past or prospective gifts, having a value in excess of One Hundred Dollars (\$100.00) or more, to or from a member of the Ventura Port District Board of Port Commissioners, or the General Manager or Harbormaster of said District.

3. _____ agrees and promises to abide by the aforesaid policy of Ventura Port District at all times and in all dealings with Ventura Port District under and in connection with said Lease.

4. Any violation of said policy is an event of default under the Lease and could result in termination of the Lease.

5. _____ has not directly or indirectly colluded, conspired, connived, or agreed with any other person, firm or entity to secure an advantage against or over Ventura Port District in seeking and obtaining the Lease or any rights, grants and entitlements thereunder and it will not do so in the future in connection with any and all dealings and transactions with Ventura Port District in connection with the Lease.

6. _____ has not paid and will not pay any fee, commission or other form of consideration, or provide any benefit, economic or otherwise, to any person, firm or entity in connection with seeking or obtaining the Lease, or any rights, grants or entitlements thereunder, which has not been fully and completely disclosed to Ventura Port District, and that it will not do so in the future in connection with any and all dealings and transactions with Ventura Port District related to the Lease,

EXHIBIT B

without first disclosing to Ventura Port District all information, facts and details related to such fee, commission, payment or other consideration or benefit.

DATED: _____

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT B

EXHIBIT “H”

WAIVER OF RELIEF

(See Attached)

EXHIBIT B

WAIVER OF RELIEF

Lessee, VENTURA HARBOR MARINE FUEL, INC., a California corporation, represents and warrants to VENTURA PORT DISTRICT that it has reviewed and understands California Code of Civil Procedure Section 1179 and Civil Code Sections 1950.7(c), 1954.1 and 3275, copies of which are attached hereto and initialed by Lessee and its attorney, and that Lessee has consulted its attorney concerning rights it has or may have under said statutes pertaining to or arising out of the Lease dated April 1, 2015, between VENTURA HARBOR MARINE FUEL, INC., a California corporation, and VENTURA PORT DISTRICT, and the effect of an effective waiver of such rights. **LESSEE HEREBY EXPRESSLY WAIVES ANY AND ALL SUCH RIGHTS GRANTED TO LESSEE, OR ITS SUCCESSORS-IN-INTEREST UNDER CODE OF CIVIL PROCEDURE SECTION 1179 AND CIVIL CODE SECTIONS 1950.7(c), 1954.1 and 3275.**

Lessee further represents and warrants that if it fails to perform under the Lease and, as a result thereof, the Lease is terminated, Lessee will not suffer any undue hardship as a result of such termination.

DATED: _____

“LESSEE”

VENTURA HARBOR MARINE FUEL, INC.,
A California Corporation

By: _____

Its: _____

By: _____

Its: _____

APPROVED AS TO FORM:

Dated: _____

EXHIBIT B

Attorney for Lessee

COPIES OF CC SECTIONS 1950.7(c), 1954.1 AND 3275

AND CCP SECTION 1179

Lessee's Initials

Lessee's Attorney's
Initials

CIVIL CODE

DIVISION 3. OBLIGATIONS

PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS

TITLE 5. HIRING

CHAPTER 2. HIRING OF REAL PROPERTY

§ 1950.7. (a) Any payment or deposit of money the primary function of which is to secure the performance of a rental agreement for other than residential property or any part of the agreement, other than a payment or deposit, including an advance payment of rent, made to secure the execution of a rental agreement, shall be governed by the provisions of this section. With respect to residential property, the provisions of Section 1950.5 shall prevail.

(b) The payment or deposit of money shall be held by the landlord for the tenant who is party to the agreement. The claim of a tenant to the payment or deposit shall be prior to the claim of any creditor of the landlord, except a trustee in bankruptcy.

(c) The landlord may claim of the payment or deposit only those amounts as are reasonably necessary to remedy tenant defaults in the payment of rent, to repair damages to the premises caused by the tenant, or to clean the premises upon termination of the tenancy, if the payment or deposit is made for any or all of those specific purposes.

(1) If the claim of the landlord upon the payment or deposit is only for defaults in the payment of rent and the security deposit equals no more than one month's rent plus a deposit amount clearly described as the payment of the last month's rent, then any remaining portion of the payment or deposit shall be returned to the tenant at a time as may be mutually agreed upon by landlord and tenant, but in no event later than 30 days from the date the landlord receives possession of the premises.

(2) If the claim of the landlord upon the payment or deposit is only for defaults in the payment of rent and the security deposit exceeds the amount of one month's rent plus a deposit amount clearly described as the payment of the last month's rent, then any remaining portion of the payment or deposit in excess of an amount equal to one month's rent shall be returned to the tenant no later than two weeks after the date the landlord receives possession of the premises, with the remainder to be returned or accounted for within 30 days from the date the landlord receives possession of the premises.

(3) If the claim of the landlord upon the payment or deposit includes amounts reasonably necessary to repair damages to the premises caused by the tenant or to clean the premises, then any remaining portion of the payment or deposit shall be returned to the tenant at a time as may be mutually agreed upon by landlord and tenant, but in no event later than 30 days from the date the landlord receives possession of the premises.

(d) Upon termination of the landlord's interest in the unit in question, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or the landlord's agent shall,

EXHIBIT B

within a reasonable time, do one of the following acts, either of which shall relieve the landlord of further liability with respect to the payment or deposit:

(1) Transfer the portion of the payment or deposit remaining after any lawful deductions made under subdivision (c) to the landlord's successor in interest, and thereafter notify the tenant by personal delivery or certified mail of the transfer, of any claims made against the payment or deposit, and of the transferee's name and address. If the notice to the tenant is made by personal delivery, the tenant shall acknowledge receipt of the notice and sign his or her name on the landlord's copy of the notice.

(2) Return the portion of the payment or deposit remaining after any lawful deductions made under subdivision (c) to the tenant.

(e) Upon receipt of any portion of the payment or deposit under paragraph (1) of subdivision (d), the transferee shall have all of the rights and obligations of a landlord holding the payment or deposit with respect to the payment or deposit.

(f) The bad faith retention by a landlord or transferee of a payment or deposit or any portion thereof, in violation of this section, may subject the landlord or the transferee to damages not to exceed two hundred dollars (\$200), in addition to any actual damages.

(g) This section is declarative of existing law and therefore operative as to all tenancies, leases, or rental agreements for other than residential property created or renewed on or after January 1, 1971.

**CIVIL CODE SECTIONS 1954.1 AND 3275
AND CCP SECTIONS 1179**

Civil Code §1954.1 Occupation of Leased Business Premises Under Assignment for Benefit or Creditors.

In any general assignment for the benefit of creditors, as defined in Section 493.010 of the Code of Civil Procedure, the assignee shall have the right to occupy, for a period of up to 90 days after the date of the assignment, any business premises held under a lease by the assignor upon payment when due of the monthly rental reserved in the lease for the period of such occupancy, notwithstanding any provision in the lease (whether heretofore or hereafter entered into) for the termination thereof upon the making of the assignment or the insolvency of the lessee or other condition relating to the financial condition of the lessee. This section shall be construed as establishing the reasonable rental value of the premises recoverable by a landlord upon a holding-over by the tenant upon the termination of a lease under the circumstances specified herein.

Civil Code §3275. Relief in Case of Forfeiture.

Whenever, by the terms of an obligation, a party thereto incurs a forfeiture, or a loss in the nature of a forfeiture, by reason of his failure to comply with its provisions, he may be relieved therefrom, upon making full compensation to the other party, except in case of a grossly negligent, willful, or fraudulent breach of duty.

Code of Civil Procedure §1179 Relief From Judgment on Payment of Bank Rent–Petition, Notice and Service.

The court may relieve a tenant against a forfeiture of a lease or rental agreement, whether written or oral, and whether or not the tenancy has terminated, and restore him or her to his or her former estate or tenancy, in case of hardship, as provided in Section 1174. The court has the discretion to relieve any person against forfeiture on its own motion.

An application for relief against forfeiture may be made at any time prior to restoration of the premises to the landlord. The application may be made by a tenant or subtenant, or a mortgagee of the term, or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which the relief is sought, and be verified by the applicant. Notice of the application, with a copy of the petition, must be served at least five days prior to the hearing on the plaintiff in the judgment, who may appear and contest the application. Alternatively, a person appearing without an attorney may make the application orally, if the plaintiff either is present and has an opportunity to contest the application, or has been given ex parte notice of the hearing and the purpose of the oral application. In no case shall the application or motion be granted except on condition that full payment of rent due, or full performance of conditions or covenants stipulated, so far as the same is practicable, be made.

Lessee's Initials

Lessee's Attorney's
Initials

EXHIBIT B

EXHIBIT "I"

DESCRIPTION AND DESIGN OF LANDSIDE
DIESEL FUELING OPERATION

[To be prepared by Lessee and approved by Lessor prior to being attached to Lease.]

Lessor's Initials

Lessee's Initials

EXHIBIT “J”**SLIP FEE PERCENTAGE RENT****USES/ACTIVITY****SLIP FEE PERCENTAGE RENT**

Slip/Side-Tie Fees and Rentals

April 1, 2015 – March 31, 2017 22%

April 1, 2017 – March 31, 2019 23%

April 1, 2019 – March 31, 2020 25%

Slip Fee Percentage Rent after this period shall be subject to adjustment pursuant to Article 5.6 of the Lease.

EXHIBIT B

EXHIBIT "K"

Recording Requested By and
When Recorded Mail To:

VENTURA PORT DISTRICT
1603 Anchors Way Drive
Ventura, California 93001-4229

Attention: General Manager

MEMORANDUM OF LEASE

For good and valuable consideration, VENTURA PORT DISTRICT leases the premises legally described in the attachment hereto, to VENTURA HARBOR MARINE FUEL, INC., a California corporation, and VENTURA HARBOR MARINE FUEL, INC., a California corporation hereby leases and hires said premises from VENTURA PORT DISTRICT, for the term and on the provisions contained in the written lease dated and effective as of April 1, 2015, which is incorporated herein by this reference.

The primary term of the Lease is twenty (20) years, commencing on April 1, 2015, and ending on March 31, 2035. The Lease also sets forth special terms and provisions relating to the validity and enforceability of encumbrances secured by Lessee's leasehold in the premises and any subleases therein.

This Memorandum is not a complete summary of the Lease and shall not be used to interpret the Lease or its provisions. In the event of a conflict between the terms of this Memorandum and the Lease, the terms and provisions of the Lease shall control.

Dated: _____

VENTURA PORT DISTRICT, a California
Port District

By: _____

By: _____

VENTURA HARBOR MARINE FUEL,
INC., a California corporation.

By: _____

APRIL 8, 2015

BOARD OF PORT COMMISSIONERS

STANDARD AGENDA ITEM NO. 4

APPROVAL OF PUBLIC RECORDS ACT POLICY

**VENTURA PORT DISTRICT
BOARD COMMUNICATION**

STANDARD AGENDA ITEM 4

Meeting Date: April 8, 2015

TO: Board of Port Commissioners
FROM: Oscar Peña, General Manager
SUBJECT: Approval of Public Records Act Policy

RECOMMENDATION:

That the Board of Port Commissioners adopt Resolution No. 3274, approving the Policy and Procedures implementing the Public Records Act for the Ventura Port District.

INFORMATION FOR DISCUSSION:

At a previous meeting, Commissioner Smith asked Legal Counsel if the District had a written Public Records Act Policy. After researching this request, it was concluded that the District did not have a formal written Public Records Act Policy in place; only a request form for the public to complete.

A public record is any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics (Gov. Code Section 6252(e)).

In the interests of openness and transparency and in keeping with the public's right of access to all public records in the District's custody and control, and subject to certain exemptions as provided by law, the District staff recommends the Board approve the draft policy in the form attached to Resolution No. 3274.

ATTACHMENTS:

Attachment 1 – Resolution No. 3274



RESOLUTION NO. 3274

**RESOLUTION OF THE BOARD OF PORT COMMISSIONERS
OF THE VENTURA PORT DISTRICT TO APPROVE THE POLICY
AND PROCEDURES IMPLEMENTING THE CALIFORNIA PUBLIC RECORDS ACT**

WHEREAS, pursuant to the provisions of the California Public Records Act (Gov. Code Section 6250 et seq.), and hereafter referred to as the "Act"), in the interests of openness and transparency and in keeping with the public's right of access to all public records in the District's custody and control, and subject to certain exemptions as provided by law, Ventura Port District ("District") should adopt procedures and formal a policy to ensure compliance with the Act; and

WHEREAS, in adopting these procedures, it is the goal of the District to respond to all requests for information and documents under the Act in a prompt and consistent manner; and

WHEREAS, a public record is "any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by an state or local agency regardless of physical form or characteristics (Gov. Code Section 6252(e)); and

NOW, THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the Ventura Port District hereby adopts the Policy and Procedures Implementing the California Public Records Act for the Ventura Port District, in the form attached hereto as Exhibit A;

BE IT FURTHER RESOLVED that the General Manager and staff are hereby authorized and directed to take such additional and further actions as may be necessary and appropriate to carry out the purpose and intention of this resolution.

PASSED, APPROVED, AND ADOPTED at a Regular Meeting of the Board of Port Commissioners of Ventura Port District held this 8th day of April, 2015, adopted by the following vote:

AYES:
NOES:
Absent:
Abstain:

Jim Friedman, Chairman

Attest:

Bruce Smith, Secretary

(Seal)



EXHIBIT A

VENTURA PORT DISTRICT

Policy and Procedures Implementing the California Public Records Act

Ventura Port District ("District"), pursuant to the California Public Records Act ("Act") (Government Code §§ 6250 et seq.) and in keeping with the public's right of access to all public records in the District's custody, and subject to certain exemptions as provided by law or necessary to protect the individual privacy rights, adopts the procedures outlined below. In adopting these procedures, it is the goal of the District to respond to all requests for information under the Act in a prompt and consistent manner.

Section I. Requesting Public Records.

- A. A public record is “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” (Gov. Code § 6252(e).)
- B. All requests for public records of the District must be in writing, and shall state whether the request is for examination of the records or for copies. The request must clearly identify the document, record or information requested and the person making the request, and shall be dated and signed. The District may provide forms to be utilized by those persons requesting examination or copies of District records.
- C. The Board of Port Commissioners of the District designates the General Manager as the “reviewing official” under this policy, but on a case by case basis, the General Manager may delegate this function to another District employee. The reviewing official shall have exclusive authority for reviewing and approving requests under the Act. Immediately upon District staff’s receipt of a public records request, the request shall be submitted to the reviewing official.
- D. The reviewing official must review and approve each request for inspection or copying before any public record of the District is released to the requesting party. Requests to examine public records of the District, will be processed promptly, provided that the reviewing official is available to supervise the examination and retrieval of records without interfering with the ordinary business operations of the District. If the request presents no questions or issues and identifies records that are routinely provided to members of the public, the reviewing official may direct that the request be complied with immediately, if at all possible. If the request is vague or too broad, the reviewing official, or his or her designee, shall work with the requesting party to assist in focusing the request, pursuant to Gov. Code §6253.1.

EXHIBIT A

Section II. Review for Exemption.

- A. In some cases, District staff will have to review the records further to determine whether all or any part may be privileged, confidential, or otherwise exempt from disclosure (for a list of some common exemptions, see Section V below). Where there is a question as to whether a particular exemption applies, the reviewing official may consult with District legal counsel prior to making a decision on a request. Where a portion of the record requested contains information which is exempt from disclosure under the Act, the reviewing official will make a determination as to whether the non-exempt portion of the record is reasonably segregable from the exempt portion of the record. Within ten (10) days from the date the request is received, the District will determine whether the request, in whole or in part, seeks copies or inspection of disclosable public records in the District's possession, and notify the requestor of such determination in writing. This written notice shall identify and be signed by the reviewing official. The District shall also determine the cost of reproducing the record or document (see Section IV, below), and include this information in the notice to the requesting party.
- B. If necessary, and notwithstanding Paragraph A, above, in unusual circumstances, as determined by the reviewing official in his/her reasonable discretion, the time to respond may be extended by not more than an additional fourteen (14) days. A notification of extension must be made in writing within ten (10) days of receipt of the initial request stating the reasons for the delay and the expected date of determination.
- C. If the reviewing official determines that the request is to be denied, then a written notice of determination shall be sent to the requesting party. Reasons for denial, include, but are not limited to: the record sought is privileged, confidential, or otherwise exempt from disclosure under the Act (see Section V below); or the record sought is not found in the District's files or records. All letters stipulating grounds for denial must be written only after consulting with District's legal counsel; sent only after it is approved by the General Manager; and must identify and be signed by the reviewing official. A copy of the denial will be provided to the General Manager and legal counsel.
- D. The District will retain in its records all written requests for inspection or copying of public records in accordance with the District's records retention policy and guidelines.

Section III. Examination of Public Records.

- A. Staff Response. Public inspection of files/documents shall be handled by the responding staff as follows:
 - 1. The requesting party will be contacted to schedule a time for public

EXHIBIT A

record review or inspection. The District will provide an area at its offices for examination of the public records. Generally, public records should be open to inspection at all times during regular office hours of the District, but in scheduling an appointment for examination of public records, the reviewing official must be cognizant of the press of District business at any given time. Responding staff should endeavor to be as accommodating as possible to the requesting party regarding the scheduling of records inspections during those hours. Examinations must take place on District premises, and will be subject to observation by District personnel.

2. Before any public record, document, or file is provided for public review, inspection, or copying, the reviewing official or responding staff shall remove or redact any such materials, writings, or documents which statutes specifically make exempt or confidential (as described in Government Code § 6250 et seq. or in this policy).
3. The public record, document or file review will be monitored by assigned staff, as appropriate. This may include document or file review within view of assigned staff.

B. Guidelines For Requestor During Inspection. The following procedures are for the sole purpose of protecting original records against tampering or theft. Any examination of original District records will be subject to the following rules:

1. No document or record, or any part thereof, shall be removed from the District premises or from the file, notebook, folder, or other compilation in which it is contained.
2. No document or record shall be written on, marked on, or erased, nor shall any writing or information therein otherwise be removed, nor shall any person destroy, mutilate, deface, alter or falsify any document or record. Violations of this rule will be prosecuted pursuant to Government Code §6201.
3. The party examining records shall comply with all instructions of District personnel, provided, however, that any restriction or termination of an examination may be appealed to the reviewing official or General Manager. District personnel may terminate or restrict the examination as may be necessary to preserve District records.
4. The District may never make records available only in electronic form (Gov. Code § 6253.9(e)); and fees for “inspection” or “processing” are prohibited (Gov. Code § 6253).

EXHIBIT A

Section IV. Recovery of Costs.

- A. District may charge a “statutory fee” set by the Legislature (not by local ordinance) if applicable, or the “direct cost of duplication.” (Gov. Code §6253(b).) No charge will be made for staff time expended in the search, retrieval, review, deletion, or copying of requested records and documents. (Gov. Code §6253(b).)
- B. If a request for electronic records either (1) is for a record normally issued only periodically, or (2) requires data compilation, extraction, or programming, copying costs may include the cost of the programming. (Gov. Code §6253.9(a), (b).)
- C. Payment of the cost of copying requested records may be by cash, check or money order, and must be made before the copies will be provided to the requesting party. Upon request and payment of mailing expenses in addition to the copying charges, the copied records will be mailed as directed by the requesting party.
- D. If reviewing official reasonably determines that the most efficient means of providing copies of requested documents is through the use of an outside or professional copying service, the District will notify the requesting party, and may require pre-payment of the estimated cost for the outside or professional service. The District will issue a refund to the requesting party if, after the outside or professional service has been completed, the cost was less than the amount pre-paid by the requesting party. Conversely, if the cost is greater than estimated, the requesting party shall pay the difference before the copies are released to the requesting party.

Section V. Exempt and Non-exempt Records.

- A. Exempt Records. The following District records are exempt from disclosure. However, this list is not all inclusive of applicable exemptions, nor is it meant to cover every exemption. If reviewing staff or the reviewing official is unsure whether an exemption not listed here applies, District’s legal counsel should be consulted for guidance.
 - 1. Preliminary drafts, notes, interagency and intra-agency memoranda which are not retained by the District as permanent records, where circumstances justify nondisclosure. (Gov. Code § 6254(a).)
 - 2. Records pertaining to pending litigation to which the District is a party, or to claims filed against the District, which were created in connection with the litigation and were intended to be confidential, until the pending litigation or claim has been finally adjudicated or otherwise settled. (Gov. Code § 6254(b).)

EXHIBIT A

3. Personnel records of District staff and public employees. (Gov. Code § 6254(c).)
4. Medical, dental and other insurance records of District employees and Commissioners, if applicable. (Gov. Code § 6254(c).)
5. Geological and geophysical data and similar information relating to utility systems development which are obtained in confidence from any person. (Gov. Code § 6254(e).)
6. Home addresses of District employees and Commissioners. (Gov. Code § 6254.1.)
7. Test questions, scoring keys and other examination data used for employment tests administered by the District. (Gov. Code § 6254(g).)
8. The contents of real estate appraisals or engineering or feasibility estimates and evaluations prepared relative to the acquisition of property or to construction or supply contracts, until the property or agreement has been obtained. (Gov. Code § 6254(h).)
9. Closed session minutes and legal memoranda and other materials distributed in a closed session of the Board of Port Commissioners held pursuant to Government Code § 54956.9. (Gov. Code § 6254.25.)
10. Attorney-Client discussions are confidential, even if the District is the client. (Gov. Code §§ 6254(k), 6254.25, 6276.04.)
11. Records, the disclosure of which, would violate the Evidence Code. (Gov. Code § 6254(k).)
12. Records, which assess vulnerability to a terrorist attack or other criminal act intended to disrupt the District's operations. (Gov. Code §§ 6254(aa); 6254.19.)
13. Records, which contain critical infrastructure information, as defined in Gov. Code § 6254(ab).
14. Where the facts of a particular case dictate that the public interest served by not making the record public clearly outweigh the public interest served by disclosure of the record, the request may be denied. The reviewing official should consult with District legal counsel prior to making such a determination. (Gov. Code § 6255.)
15. Sensitive financial information submitted to the District by tenants as part of the District's real estate operations, which are intended to be confidential by the tenant and which are received by the District with

EXHIBIT A

the understanding they will be dealt with confidentially to the extent allowed by law.

B. Non-Exempt Records. The following District records are subject to disclosure under the Act:

1. Minutes of Board meetings and agenda materials provided to Commissioners.
2. Auditors' reports, budgets and financial reports of the District.
3. All District ordinances, resolutions, regulations, policies and procedures.
4. All Political Reform Act filings by District officers and Commissioners.
5. All correspondence or memoranda maintained in the ordinary course of District business and not subject to any statutory exemption.
6. Employment contracts (Gov. Code § 6254.8).

EXHIBIT A

VENTURA PORT DISTRICT Public Records Request Form

Requesting Party (NAME): _____
(PLEASE PRINT)

Mailing Address: _____

Phone Number: _____

1. The Requesting Party requests (CHECK ONE):

_____ That the Ventura Port District provide the documents, records and information described below for the Requesting Party to examine at the District's offices during District business hours.

_____ That the Ventura Port District provide the Requesting Party with photocopies of the documents, records and information described below.

2. Description of the documents, records and information requested. (Description must be specific enough to identify the public records sought).

3. If the request is for copies of public records, the Requesting Party (CHECK ONE):

_____ Will return to pick up the copies and will pay for copying costs at the time of pickup. (Requesting Party should leave a phone number at which they may be contacted when the copies are ready.)

_____ Requests that the copies be mailed to the address specified above. (All copying and postage costs must be paid before the copies will be mailed. The District will notify the Requesting Party of the amount of copying costs and postage by telephone or mail at the Requesting Party's choice.)

Dated: _____

Signature of Requesting Party

FOR OFFICE USE ONLY

Reviewing Official _____ Received On _____ Approved By _____

Number of Copies _____ Copying Cost _____ Date Paid _____

APRIL 8, 2015

BOARD OF PORT COMMISSIONERS

STANDARD AGENDA ITEM NO. 5

**AUTHORIZE SUBMITTAL OF A GRANT APPLICATION TO
SEA GRANT TO DEFINE A PERMITTING
STRATEGY TO SECURE ENTITLEMENTS FOR
COMMERCIAL SHELL FISH OPERATIONS**

**VENTURA PORT DISTRICT
BOARD COMMUNICATION**

STANDARD AGENDA ITEM 5

Meeting Date: April 8, 2015

TO: Board of Port Commissioners
FROM: Ev Ashworth, Port Commission Vice Chair
SUBJECT: Approval to Submit a Grant Application to Sea Grant to Define a Permitting Strategy to Secure Entitlements for Commercial Shell Fish Operations

RECOMMENDATION:

That the Board of Port Commissioners approve the submittal of a grant to provide funding to secure expert consulting services to define a permit strategy for sustainable commercial shell fish operations.

INFORMATION FOR DISCUSSION:

Vice-Chair Ashworth, together with Coastal Marine Biolabs (CMB) and The Cultured Abalone, have been exploring how to develop the Ventura Port District into a sustainable commercial shell fish industry. This commercial shell fish operation will provide fresh seafood for the Harbor Village restaurants, support our commercial fishing fleet, and provide additional revenue to the District. Senior staff at California Department of Fish and Game have identified a \$300,000 in kind grant from federal funding sources that will provide funding to secure expert consulting services to develop a permit strategy to obtain all entitlements for this commercial shell fish operation. Under the terms of the grant, the Ventura Port District would not be required to provide funding, but rather in-kind services of time spent by CMB staff, a Port District Commissioner, and The Cultured Abalone staff. Drafting of the grant proposal will be done principally by District staff, Vice Chair Ashworth, CMB, and Cultured Abalone staff with input from California Department of Fish and Wildlife staff. It is anticipated that there will be direction provided by District Staff, but not a significant amount of direct labor.

ATTACHMENTS:

Attachment 1 – Announcement of Federal Funding Opportunity

ATTACHMENT 1

ANNOUNCEMENT OF FEDERAL FUNDING OPPORTUNITY

EXECUTIVE SUMMARY

Federal Agency Name(s): Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce

Funding Opportunity Title: NOAA Sea Grant Aquaculture Extension and Technology Transfer 2015

Announcement Type: Initial

Funding Opportunity Number: NOAA-OAR-SG-2015-2004399

Catalog of Federal Domestic Assistance (CFDA) Number: 11.417, Sea Grant Support

Dates: Applications are due to Grants.gov by 5:00 p.m. Eastern Time April 27, 2015. Applications received after the closing dates and times will not be accepted.

Funding Opportunity Description: Depending on availability of funds, NOAA Sea Grant expects to have available about \$1,600,000 for each of FY 2015 and FY 2016 for a national competition to fund marine aquaculture extension and technology transfer efforts, as part of the overall plan to support the development of environmentally and economically sustainable ocean, coastal and Great Lakes aquaculture. Aquaculture that occurs in the Great Lakes or its coastal zone is considered marine aquaculture for this competition.

This Federal Funding Opportunity includes information on application and criteria for aquaculture extension proposals requesting a maximum of \$300,000 in total federal funding for up to a two-year period. Matching funds are required. Proposals are required to include a partnership (e.g., with local community governments, state and Federal agencies, regional management efforts, industry, non-governmental organizations). Awards are anticipated to start no later than September 1, 2015. Additional proposals from this competition may be selected for funding in subsequent fiscal years, subject to the availability of funds.

FULL ANNOUNCEMENT TEXT

I. Funding Opportunity Description

A. Program Objective

The NOAA National Sea Grant College Program was established by Congress to promote responsible use and conservation of the nation's ocean, coastal, and Great Lakes resources. Sea Grant carries out NOAA's mission of stewardship of our country's oceanic and atmospheric resources through a broadly based network of universities. Sea Grant aquaculture-related activities are integrated with the rest of NOAA via the NOAA Aquaculture Office, which includes activities across multiple NOAA Line Offices: Oceanic and Atmospheric Research (Sea Grant), the National Marine Fisheries Service (Office of Aquaculture, Fisheries Science Centers and Regional Offices), and the National Ocean Service (Beaufort Laboratory and Hollings Marine Laboratory). NOAA recognizes the role of other Departments, such as the U.S. Department of Agriculture and the Department of Interior, and state and regional management partners in aquaculture and coordinates with other Department representatives at the regional level and at the national level through the Joint Subcommittee on Aquaculture.

Proposed projects must support one or both of the goals stated in the NOAA National Sea Grant College Program 2014–2017 Strategic Plan's Focus Area of Sustainable Fisheries and Aquaculture:

1. a safe, secure and sustainable supply of seafood to meet public demand; and/or
2. informed consumers who understand the health benefits of seafood consumption and how to evaluate the safety and sustainability of the seafood they buy.

The National Sea Grant College Program Strategic Plan is available at <http://seagrant.noaa.gov/WhoWeAre/StrategicPlan.aspx>

Proposed projects also must be consistent with the Aquaculture Policies of NOAA and Department of Commerce, which are available at http://www.nmfs.noaa.gov/aquaculture/policy/2011_policies_homepage.html.

Projects supported under this funding opportunity should contribute to a target increase of the following national performance measure, which has been set by NOAA or component NOAA programs, including Sea Grant:

Number of fishermen, seafood processors and aquaculture industry personnel who modify their practices using knowledge gained in fisheries sustainability and seafood safety as a result of Sea Grant activities.

B. Program Priorities

This aquaculture extension and technology transfer competition is designed to support the development of environmentally and economically sustainable ocean, coastal, and Great Lakes region aquaculture.

The following are program priorities for this competition. The most successful proposals will address all of the following priorities:

1. High probability of significantly advancing sustainable domestic marine aquaculture development in the short-term (1-2 years) or medium-term (3-5 years). This could include extension efforts such as: enhanced aquaculture education and training; expanded transfer of technology (from research and development to implementation by end- users); and/or communication that disseminates the best available, science-based knowledge, tools, and technologies to stakeholders (e.g., consumers, industry, state and local governments).

2. Directly or indirectly increase the national performance measure target listed in section I.A., above. "Direct increase" means the proposal includes the above performance measure, with targets, in its work plan. "Indirect increase" means the proposal includes well-formed performance measures that the applicant credibly shows will lead to increased targets for the above national performance measure.

3. Support aquaculture of ocean, coastal, or Great Lakes species (including state- and federally-managed species). It is not a programmatic priority to fund projects that risk introducing nonnative species where they are not already established.

4. Support aquaculture occurring in the coastal zone (as defined by the Coastal Zone Management Act), including state waters and the terrestrial coastal zone, and federal waters. This includes the coastal zone of the Great Lakes Region.

C. Program Authority

33 U.S.C. 1121 et seq.

II. Award Information

A. Funding Availability

Depending on availability of funds, NOAA Sea Grant expects to have available about \$1,600,000 for each of FY 2015 and FY 2016 (two-year total of \$3,200,000) for this competition. Each individual proposal can request a maximum of \$300,000 in total federal funds per Sea Grant Program. Proposals may be submitted jointly by multiple Sea Grant Programs; in this case, the total federal request can be up to \$300,000 multiplied by the number of programs involved.

B. Project/Award Period

Projects can be for a maximum duration of two years, but shorter-term project proposals are welcome. Proposals must provide a project description and budget that can easily be divided into annual increments of significant work that result in solid accomplishments.

Awards are anticipated to start no later than September 1, 2015. Additional proposals from this competition may be selected for funding in the next fiscal year FY 2016, subject to the availability of funds.

C. Type of Funding Instrument

Applications selected for funding will be funded through grants or cooperative agreements. Sea Grant will use cooperative agreements if the proposed project includes substantial NOAA involvement as described in the award. Examples of substantial NOAA involvement may include non-compensated collaboration in research or approval of key stages in the project before subsequent steps are undertaken.

III. Eligibility Information

A. Eligible Applicants

The following entities are eligible to apply to this funding opportunity: Sea Grant College Programs, Sea Grant Institutional Programs, Sea Grant Coherent Area Programs, and the National Sea Grant Law Center.

A given proposal can involve two or more of these Sea Grant Programs working in collaboration. In the case of proposals submitted jointly by multiple Sea Grant Programs, the project must be submitted as a single proposal with one Sea Grant Program designated as responsible for the proposal (awardee of record) and other Sea Grant Programs listed as sub-awards.

Other interested parties are encouraged to work with the Sea Grant Programs in their region to explore opportunities for partnering. Contact information for all eligible state Sea Grant programs can be found at <http://seagrant.noaa.gov/WhoWeAre/Leadership/SeaGrantDirectors.aspx> or may also be obtained by contacting the Agency Contact listed in Section VII.

B. Cost Sharing or Matching Requirement

Non-federal matching funds equal to at least 50 percent of the federal funding request must be provided.

C. Other Criteria that Affect Eligibility

Proposals must involve partnership(s) with relevant groups (e.g., industry, academia, community collaboration, relevant state and federal agencies, regional management councils, and interstate aquaculture or fisheries commissions) and demonstrate resource leveraging.

IV. Application and Submission Information

A. Address to Request Application Package

Proposals must be submitted electronically, via Grants.gov (<http://www.grants.gov>), addressing opportunity number NOAA-OAR-SG-2015-2004399.

The application package is available on Grants.gov. A Title Page template, Sea Grant 90-2 form, Sea Grant 90-4 form (OMB Control No. 0648-0362) and NEPA questionnaire (OMB Control No. 0648-0538) are available at <http://www.seagrant.noaa.gov/fundingfellowships/seagrantformsandtemplates.aspx> or may be requested from the Agency Contact listed in section VII.

B. Content and Form of Application

Applications must adhere to the provisions under Format Requirements and Content Requirements below. Applications that exceed page limitations will be truncated at the page limit before evaluation. Any appendices or other additional items that are not explicitly allowed will not be evaluated. Any section of the application that does not meet format or content requirements will not be evaluated.

Format Requirements: All application materials should be submitted in

Portable Document Format (PDF) or a common word processing format, and when printed out should meet all format requirements. All pages must be single- or double-spaced; printed or typed in at least 12-point font; and printable on 8.5-inch x 11-inch paper, with 1-inch margins.

Content Requirements: Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the Project Description may not exceed 12 pages. Tables and visual materials, including charts, graphs, maps, photographs and other pictorial presentations are included in the 12-page limit. The signed title page, project summary, references, budgets and justification, previous, current and pending support, letter(s) of support, vitae, NEPA questionnaire, and data sharing plan do not count towards the 12-page limit. All information needed for review of the proposal should be included in the main text; no appendices are permitted.

For each proposal the following information must be included:

a. Signed title page (one-page maximum): The title page must clearly identify the project via the following format: the letters "PI" and the last name of the Principle Investigator, followed by a hyphen, "Sea Grant Aquaculture Extension 2015", and a brief descriptive title of the proposal. For example, "PI Smith - Sea Grant Aquaculture Extension 2015: Transfer of a new site planning tool". The title page must include: (a) the name, affiliation, and address of the investigators with e-mail and telephone numbers; (b) the budgets requested and match offered for each year, and (c) the total project amount. An optional Title Page template is available at <http://www.seagrants.noaa.gov/fundingfellowships/seagrantsformsandtemplates.aspx>

b. Project Summary on a 90-2 Project Summary Short Form (OMB Control No. 0648-0362): The project summary must include: (a) Title: the exact title as it appears in the rest of the application; (b) Investigators: the names and affiliations of each investigator who will significantly contribute to the project, starting with the Principal Investigator; (c) Partner(s): the names and affiliation of each project partner; (d) Funding request: total and annual federal request and matching funds summary for the project; (e) Project Period: the start and completion dates; and (f) Project Abstract (300-word maximum). This information will be used for public dissemination, if the proposal is funded. This abstract must be written for a non-technical audience and include the project rationale, the scientific or technical objectives and/or hypotheses to be tested, a brief summary of work, and expected accomplishments.

If your proposed activities generate any environmental data, the form must also include a summary of the project's data sharing plan (the requirements of which are described more fully below). If your proposed activities do not generate any environmental data, include a statement that "this project will not generate any environmental data" on the form. The 90-2 Project Summary Short Form is available at <http://www.seagrant.noaa.gov/fundingfellowships/seagrantformsandtemplates.aspx>.

c. Project description (12-page maximum):

(1) Introduction/background/justification: This section must succinctly state the project's goals, objectives, and activities. It must include a clear statement of the aquaculture extension work to be undertaken for each proposed project. A description of the project's aquaculture constituency and the state program's existing capacity to meet that constituency's extension needs should be included. Applicants are encouraged to explicitly demonstrate how the state's existing aquaculture extension resources are insufficient to meet their constituency's demand for extension and how their proposal will address this shortage of aquaculture extension services. Subjects that the investigator(s) must include in this section are: (i) current state of knowledge of problem or issue and justification for proposed work;

(ii) contributions the study will make to the particular discipline, industry, or issue; (iii) contributions the study will make toward addressing the problems identified in the appropriate Sea Grant Strategic Plan, Regional Research and Information Plan, or NOAA or Department of Commerce Aquaculture Policy; and (iv) how this proposal addresses each of the Program Priorities listed in Section I.B above.

(2) Extension Work Plan: Provide a specific, measurable, time-bound work plan for activities. This should include objectives to be achieved, questions to be addressed, statistical analyses, and role of all project personnel. Describe specific outreach goals, activities, and deliverables including publications, presentations, and public education. This section must also include at least one milestone (a significant activity to be performed or objective to be achieved) per year. If the project calls for the use of outside consultants who have not yet been selected, the selection criteria must be included here.

This section must discuss how project progress will be measured and

reported. Please provide a detailed explanation of how achievement of this project's objectives will lead to a direct or indirect increase in targets for the performance measure in section I.A. If the project directly increases the performance measure target, please state the target and explanation of how this project brings about that increase. If the project indirectly supports an increase to the performance measure target, please include well-formed intermediate performance measures that logically lead to an increased target for the national performance measure in section I.A. If intermediate performance measures lead to the performance measure listed in section I.A., they should be outcome-based, rather than activity based. If a project is selected, the relevant Sea Grant program will be expected to incorporate this performance measure increase into its strategic plan.

(3) Description of partnership(s): Describe the required partnership and coordination with other programs or ongoing research or extension. Describe any other proposals or outside activities that are essential to the success of this proposal. This includes description of the coordination with various elements within and between participating Sea Grant programs and with other partners outside Sea Grant (e.g., industry, state and Federal agencies including NOAA, regional management groups).

(4) Outcome: Describe how the results of the project will benefit stakeholders (e.g., coastal communities, industry, public and private sectors). This section must describe how the part of the extension project will be integrated to effectively lead to the desired outcome for stakeholders. One suggestion is a logic model or some depiction of the logical relationships between resources, activities, outputs, and outcomes of the proposed work. This section should describe the desired end state (e.g., specific changes adopted by the aquaculture industry), not just a description of the activities to be performed (e.g., providing aquaculture training). Specifically, describe the planned project outcomes in objective, quantifiable terms and how the outcomes will contribute to improving and enhancing sustainable domestic marine aquaculture. Describe the scale of the outcome and how it will affect an identified regional, state, or national aquaculture priority. Describe how the outcomes of the project will be measured and reported.

d. References and literature citations: Must be included as appropriate. This section does not count towards the 12-page maximum.

e. Budget and matching funds justification: Applications must reflect the total budget necessary to accomplish the project. There must be a separate budget for each year of the project as well as a cumulative budget for the entire

project. Applicants must use the Sea Grant Budget Form 90-4 (OMB Control No. 0648-0362, available at <http://www.seagrant.noaa.gov/fundingfellowships/seagrantformsandtemplates.aspx>). Subcontracts must have a separate budget page. The appropriateness of all matching funds (including in-kind contributions) will be determined on the basis of guidance provided in applicable federal cost principles, and applicants will be bound by the percentage of matching funds in the grant award. Applicants must provide justification for all budget items in sufficient detail to enable review of the appropriateness of the funding requested.

For proposals that seek to support new aquaculture extension personnel capacity, a clear transition plan for these personnel is required for after this funding terminates.

Pay special attention to any travel or supply budgets and provide detailed justification. Budgets should include funds for attending a national aquaculture symposium to present project results. This section does not count towards the 12-page maximum.

f. Previous, current and pending support: Applicants must provide project titles, agencies, and total award periods on all previous (last four years), current, and pending federal and state (including state Sea Grant) supported aquaculture projects and proposals that require a portion of time of the principal investigator and other senior personnel. For current and pending projects and proposals, the relationship between the proposed project and these other projects or proposals must be described, and the assignment of person- months per year to be devoted to each of the projects or proposals must be stated. This section does not count towards the 12-page maximum.

g. Letter(s) of support: Applicants may provide letters of support from stakeholders and partners. This section does not count towards the 12-page maximum.

h. Vitae (2 pages maximum per investigator): This section does not count towards the 12-page maximum.

i. Standard application forms: Standard application forms are available through grants.gov. They are mandatory for a proposal application. This section does not count towards the 12-page maximum.

j. NOAA NEPA Questionnaire: As part of this application process, questions from "The Environmental Compliance Questionnaire for NOAA Federal Financial Assistance Applicants" (OMB Control No. 0648-0538) must be answered.

This NEPA Questionnaire form is available at <http://www.seagrant.noaa.gov/fundingfellowships/seagrantformsandtemplates.aspx>. All applicants need to fill in sections A, D, E and F. If you are proposing activities Related to Fisheries Sampling and Research, fill out section H. Failure to complete all of the indicated questions will result in the application being considered incomplete. This section does not count towards the 12- page maximum.

k. Data Sharing Plan: Environmental data and information collected and/or created under NOAA grants/ cooperative agreements must be made visible, accessible, and independently understandable to general users, free of charge or at minimal cost, in a timely manner (typically no later than two (2) years after the data are collected or created), except where limited by law, regulation, policy or security requirements.

(1) Unless otherwise noted in the federal funding announcement, a Data/Information Sharing Plan of no more than two pages shall be required. A typical plan should include descriptions of the types of environmental data and information created during the course of the project; the tentative date by which data will be shared; the standards to be used for data/metadata format and content; policies addressing data stewardship and preservation; procedures for providing access, sharing, and security; and prior experience in publishing such data. The Data/Information Sharing Plan will be reviewed as part of the NOAA Standard Evaluation Criteria, Item 1 -- Importance and/or Relevance and Applicability of Proposed Project to the Mission Goals.

(2) The Data/Information Sharing Plan (and any subsequent revisions or updates) must be made publicly available at time of award and, thereafter, will be posted with the published data.

(3) Failing to share environmental data and information in accordance with the submitted Data/Information Sharing Plan may lead to disallowed costs and be considered by NOAA when making future award decisions.

(4) If your proposed activities do not generate any environmental data, your application is still required to address the data sharing plan requirement by including a statement that "this project will not generate any environmental data" on the 90-2 project summary short form.

(5) The data sharing plan does not count towards the 12-page maximum.

C. Submission Dates and Times

Applications are due to Grants.gov by 5:00 p.m. Eastern Time April 27, 2015. The timeliness of applications received through Grants.gov will be determined by the date and time indicator included when applications are submitted. Applications received after the deadline will not be reviewed.

D. Intergovernmental Review

Applications under this Program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

E. Funding Restrictions

No special restrictions apply.

F. Other Submission Requirements

Proposals must be submitted through Grants.gov by the Sea Grant Program. If a Sea Grant Program does not have internet access, contact the Agency Contact listed in section VII for submission instructions.

V. Application Review Information

A. Evaluation Criteria

1. Importance and/or relevance and applicability of proposed project to the National Sea Grant program goals (maximum 30 points): This ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, federal, regional, state, or local activities. For this competition, this ascertains:

(a) the degree of impact of the proposed work to increase domestic ocean, coastal or Great Lakes aquaculture production, contribute to environmental sustainability, and advance the state of the industry, science, or state-of-the-art methods for marine aquaculture;

(b) the degree to which the proposal addresses the program priorities for this competition (listed in Section I.B.);

(c) the degree to which the proposal includes a concrete, unambiguous, specific desired outcome that is relevant to Sea Grant Strategic Goals, as well as the Department of Commerce and NOAA Aquaculture Policies, and has a good

chance of achieving that outcome (including meeting stated performance measure targets); and

(d) the appropriateness of the Data Sharing Plan (if the project involves generating environmental data).

2. Technical/scientific merit (maximum 20 points): This assesses if the approach is technically sound and/or innovative, the methods are appropriate, and there are clear project goals and objectives. For this competition, this ascertains:

(a) the quality of the work plan, including (if appropriate) plans for identifying and conducting future research, extension, technology transfer, or other actions;

(b) if the proposal includes all components necessary to achieve the desired outcome. Is there an effective plan for integrating all components and an objective way to determine success; and

(c) if the proposal includes a clear and logical target increase for the performance measure identified in section I.A. If it does not include this, does it include well-formed, outcome-based performance measures with targets, and credibly demonstrate how achieving these performance measure targets will lead to an increased target for the performance measure in section I.A.

3. Overall qualifications of applicants (maximum 15 points): This ascertains whether the applicant and others on the team possess the necessary education, experience, training, facilities, and resources to accomplish the project. This includes applicant's record of achievement with previous funding, as well as the qualifications of project partners. If the proposal includes the use of outside consultants not yet identified, this criterion includes how clearly the selection factors for the outside consultants are set out, and the expected qualifications of the consultants based on those selection factors.

4. Project costs (maximum 15 points): The budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame. For this competition, this includes (if appropriate) how aquaculture extension personnel capacity will be maintained when funding from this competition terminates.

5. Outreach and education (maximum 20 points): Assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources. For this

competition, this ascertains: a) if the proposal includes a clear and objective work plan for outreach strategy and specific activities to maximize dissemination of results to stakeholders; b) the level of active participation by partners on the project; c) the ability of the project to serve as a model for other states or regions projects; and d) if the proposal includes an effective plan to measure the effectiveness of its outreach and education efforts.

B. Review and Selection Process

An initial administrative review is conducted to determine compliance with requirements, completeness of the application, and whether it addresses the programmatic priorities.

All complete and timely proposals will be subjected to technical peer review by the National Sea Grant Office based on the evaluation criteria. Evaluation will be conducted by a review panel of government, academic, NGO and/or private sector scientists and managers. Reviewers will not make a consensus decision, but will provide individual scores based on the evaluation criteria. The Competition Manager will review the ranking of the proposals and the review panel comments and make recommendations to the Selecting Official. Awards will be made in rank order unless a proposal is justified to be selected out of rank based upon one or more of the selection factors.

C. Selection Factors

The Selecting Official shall award in rank order unless a proposal is justified to be selected out of rank based upon one or more of the following factors:

1. Availability of funding
2. Balance and distribution of funds
 - a. Geographically
 - b. By type of institutions
 - c. By type of partners
 - d. By research areas
 - e. By project types
3. Duplication of other projects funded or considered for funding by NOAA

or other Federal agencies

4. Program priorities and policy factors as given in section I.B.

5. Applicant's prior award performance

6. Partnerships and/or Participation of targeted groups

7. Adequacy of information necessary for NOAA staff to make a National Environmental Protection Act (NEPA) determination and draft necessary documentation before recommendations for funding are made to the Grants Officer.

Consequently, awards may not necessarily be made to the highest-scored proposals.

Investigators may be asked to modify objectives, work plans, or budgets prior to approval of the award. Subsequent administrative processing will be in accordance with current NOAA grants procedures. A summary statement of the review by the peer panel will be provided to each applicant of a proposal.

D. Anticipated Announcement and Award Dates

Subject to the availability of funds, awards are expected to be made by September 1, 2015. Some awards may be funded solely from FY2016 appropriations, and these awards will not start until after those appropriations become available. This may result in applicants being asked to modify their start dates.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive notification that the application has been recommended for funding to the NOAA Grants Management Division. This notification is not an authorization to begin performance of the project. Official notification of funding, signed by the NOAA Grants Officer, is the authorizing document that allows the project to begin. Unsuccessful applicants will be notified that their proposal was not selected for recommendation.

To enable the use of a universal identifier and to enhance the quality of information available to the public as required by the Federal Funding Accountability and Transparency Act of 2006, to the extent applicable, any proposal awarded in response to this announcement will be required to use the Central Contractor Registration and Dun and Bradstreet Universal Numbering

System and be subject to reporting requirements, as identified in OMB guidance published at 2 CFR Parts 25, 170 (2010),

http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr25_main_02.tpl

http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr170_main_02.tpl

B. Administrative and National Policy Requirements

1. DEPARTMENT OF COMMERCE PRE-AWARD NOTIFICATION REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS – The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the Federal Register notice of December 30, 2014 (79 FR 78390) are applicable to this solicitation and may be accessed online at

<http://www.gpo.gov/fdsys/pkg/FR-2014-12-30/pdf/2014-30297.pdf>.

2. LIMITATION OF LIABILITY – In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

3. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) – NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA website:

<http://www.nepa.noaa.gov/>, including our NOAA Administrative Order 216-6 for NEPA, http://www.nepa.noaa.gov/NAO216_6.pdf, and the Council on Environmental Quality implementation regulations,

http://energy.gov/sites/prod/files/NEPA-40CFR1500_1508.pdf. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems).

In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to

assist NOAA in drafting an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. Failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

4. UNPAID OR DELINQUENT TAX LIABILITY – In accordance with current Federal appropriations law, NOAA will provide a successful corporate applicant a form to be completed by its authorized representatives certifying that the corporation has no Federally- assessed unpaid or delinquent tax liability or recent felony criminal convictions under any Federal law.

5. REVIEW OF RISK – After applications are proposed for funding by the selecting official, the Grants office performs administration reviews. These may include financial stability of an applicant, quality of the applicant’ s management systems, history of performance, and the applicant’ s ability to effectively implement statutory, regulatory, or other requirements imposed on non-Federal entities. Upon review of these factors, if appropriate, special conditions that correspond to the degree of risk may be applied.

6. OMNI-CIRCULAR – Please note that on December 26, 2013, OMB published final guidance titled Uniform Administrative Requirements, Cost Principles, and Audit Requirements (OMB Uniform Guidance) (<https://www.federalregister.gov/articles/2013/12/26/2013-30465/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards>), which streamlines the language from eight existing OMB circulars, including Cost Principles (OMB Circulars A-21, A-87, A 122) and administrative requirements (OMB Circulars A-102 and A 110), into one consolidated set of guidance applicable to federal assistance awards. The OMB Uniform Guidance has been adopted and supersedes DOC’ s uniform administrative requirements set out at 15 C.F.R. parts 14 and 24 as of December 26, 2014. This means the OMB Uniform Guidance applies to all new awards and to additional funding to existing awards made after December 26, 2014. In addition, the audit requirements of the OMB Uniform Guidance will apply to audits of non-Federal entities beginning on or after December 26, 2014. Therefore, applicants should familiarize themselves with the OMB Uniform Guidance. Additional information on the substance of and transition to the OMB Uniform Guidance may be found at <https://cfo.gov/cofar/>.

7. If an applicant has not previously established an indirect cost rate with a Federal agency they may choose to negotiate a rate with the Department of Commerce or use the de minimis indirect cost rate of 10% of MTDC (as allowable under 2 C.F.R. § 200.414). The negotiation and approval of a rate is subject to the procedures required by NOAA and the Department of Commerce Standard Terms and Conditions Section B.06. The NOAA contact for indirect or facilities and administrative costs is:

Lamar Revis, Grants Officer

NOAA Grants Management Division

1325 East West Highway

9th Floor

Silver Spring, Maryland 20910

lamar.revis@noaa.gov

8. FOIA – In the event that an application contains information or data that you do not want disclosed prior to award for purposes other than the evaluation of the application, you should mark each page containing such information or data with the words "Privileged, Confidential, Commercial, or Financial Information – Limited Use" at the top of the page to assist NOAA in making disclosure determinations. DOC regulations implementing the Freedom of Information Act (FOIA) are found at 5 U.S.C 552, which sets forth rules for DOC to make requested materials, information, and records publicly available under FOIA. The contents of funded applications may be subject to requests for release under the FOIA. Based on the information provided by you, the confidentiality of the content of funded applications will be maintained to the maximum extent permitted by law.

C. Reporting

Award recipients will be required to submit financial and performance (technical) reports. These reports are to be submitted electronically to Grants Online, unless the recipient does not have proven Internet access, in which case hard copy submissions may be accepted; however, no facsimiles will be accepted.

Sea Grant Programs also are required to use the National Sea Grant

Planning Implementation Evaluation Reporting (PIER) System to communicate with the National Sea Grant Office on activities relating to this award. This includes tracking progress and impacts, in addition to performance metrics. Successful applicants will be asked to provide performance progress information in a form compatible with this system. If a proposal is selected and funded, information about the project and investigators will be recorded in the PIER system, and can be made public.

The Federal Funding Accountability and Transparency Act of 2006 includes a requirement for awardees of applicable Federal grants to report information about first-tier subawards and executive compensation under Federal assistance awards issued in FY 2011 or later. All awardees of applicable grants and cooperative agreements are required to report to the Federal Subaward Reporting System (FSRS) available at www.FSRS.gov on all subawards over \$25,000.

VII. Agency Contacts

Agency contact for information regarding the NOAA Sea Grant Aquaculture Extension and Technology Transfer 2015 should be directed to Dorn Carlson, 301-734-1080 or Devin Brakob, 301-734-1085; or via e-mail at oar.hq.sg.aquaculture@noaa.gov ; Mailing Address: Attention: Aquaculture, NOAA Sea Grant; 1315 East-West Highway, SSMC3, R/SG; Silver Spring, MD 20910.

Questions about this funding opportunity may be sent to oar.hq.sg.aquaculture@noaa.gov. Questions of general interest will be responded to, time permitting, on a question-and-answer website about this competition:

[http://seagrant.noaa.gov/FundingFellowships/NationalStrategicInvestments\(NSIs\)/AquacultureCompetition](http://seagrant.noaa.gov/FundingFellowships/NationalStrategicInvestments(NSIs)/AquacultureCompetition)

VIII. Other Information

None