



## VENTURA PORT DISTRICT BOARD OF PORT COMMISSIONERS

Chris Stephens, Chairman  
Brian Brennan, Vice Chairman  
Jackie Gardina, Secretary  
Everard Ashworth, Commissioner  
Michael Blumenberg, Commissioner

Brian D. Pendleton, General Manager  
Todd Mitchell, Business Operations Manager  
Andy Turner, Legal Counsel  
Jessica Rauch, Clerk of the Board

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### PORT COMMISSION AGENDA **TELECONFERENCE** SEPTEMBER 16, 2020 5 TELECONFERENCE LOCATIONS VENTURA PORT DISTRICT OFFICE 1603 ANCHORS WAY DRIVE VENTURA, CA 93001

**IN ACCORDANCE WITH THE CALIFORNIA GOVERNOR'S EXECUTIVE STAY AT HOME ORDER AND THE COUNTY OF VENTURA HEALTH OFFICER DECLARED LOCAL HEALTH EMERGENCY AND BE WELL AT HOME ORDER RESULTING FROM THE NOVEL CORONAVIRUS, THE VENTURA PORT DISTRICT ADMINISTRATION BUILDING IS CLOSED TO THE PUBLIC. THIS MEETING IS BEING HELD IN ACCORDANCE WITH THE STATE EMERGENCY SERVICES ACT, THE GOVERNOR'S EMERGENCY DECLARATION, AND THE GOVERNOR'S EXECUTIVE ORDER NO. 25-20 ISSUED ON MARCH 12, 2020 TO ALLOW ATTENDANCE BY MEMBERS OF THE PORT COMMISSION BY TELECONFERENCE IN FULL COMPLIANCE WITH THE BROWN ACT.**

### **PUBLIC PARTICIPATION OPTIONS**

1. Join a Zoom meeting LIVE:  
<https://us02web.zoom.us/j/82493595453>  
Meeting ID: 824 9359 5453  
  
1-669-900-6833  
1-877-853-5257
2. If you do not wish to speak but would like to submit a written comment on a specific agenda item, do so via email by 4:00PM on the day of the meeting. Please submit your comment to the Clerk of the Board at [jrauch@venturaharbor.com](mailto:jrauch@venturaharbor.com). **Written comments will be distributed to the Commissioners and will be attached to the minutes of the meeting but will not be read aloud during the meeting.**
3. If you wish to speak on a specific agenda item when watching the live Zoom meeting, please email the Clerk of the Board at [jrauch@venturaharbor.com](mailto:jrauch@venturaharbor.com) by 4:00PM on the day of the meeting so you can participate appropriately.

Attendees can dial \*9 or use the 'raise hand' function in Zoom if they would like to speak during public comment periods.

**CLOSED SESSION – 5:30PM**

**CALL TO ORDER:** *By Chairman Chris Stephens.*

**ROLL CALL:** *By the Clerk of the Board.*

**PUBLIC COMMUNICATIONS (3 minutes)**

*The Public Communications period is set aside to allow public testimony on items only on the Closed Session Agenda. Each person may address the Commission for up to three minutes or at the discretion of the Chair. Attendees can dial \*9 or use the 'raise hand' function in Zoom if they would like to speak during public comment periods.*

**CONVENE IN CLOSED SESSION – 5:35PM**

**CLOSED SESSION AGENDA (1 hour 25 minutes)**

*See Attachment to Agenda-Closed Session Conference with Legal Counsel.*

**OPEN SESSION – 7:00PM**

**CALL TO ORDER:** *By Chairman Chris Stephens.*

**PLEDGE OF ALLEGIANCE:** *By Chairman Chris Stephens.*

**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](http://www.venturaharbor.com).*

**APPROVAL OF MINUTES (3 minutes)**

*The Minutes of the September 2, 2020 Regular Meeting minutes 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. Attendees can dial \*9 or use the 'raise hand' function in Zoom if they would like to speak during public comment periods.*

**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.*

**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. Port Commissioner's must provide a brief summary and disclose any discussions he or she may have had with any Port District Tenants related to Port District business.*

**STAFF AND GENERAL MANAGER REPORTS (5 minutes)**

*Ventura Port District Staff and General Manager will give the Commission updates on important topics or items of general interest if needed.*

**LEGAL COUNSEL REPORT (5 minutes)**

*Legal Counsel will report on progress of District assignments and any legislative or judicial matters.*

**CONSENT AGENDA:**

**A) Authorization of Spectrum Pacific West, LLC Fiber Optic Installation and Maintenance Agreement**

Recommended Action: Roll Call Vote.

That the Board of Port Commissioners authorize the General Manager to sign the Spectrum Fiber Optic Installation and Maintenance Agreement with Spectrum Pacific West, LLC (Spectrum), its successors and grants a non-exclusive easement and right of way to construct, use, maintain, operate, alter, add to, repair, replace, reconstruct, inspect and remove at any time and from time to time an underground fiber optics system (Utilities) along Anchors Point Way to Schooner Drive connect to the Harbortown Point Resort for Spectrum services.

**B) Acceptance of 12-Month No-Cost Extension to 2018 California Shellfish Grant**

Recommended Action: Roll Call Vote.

That the Board of Port Commissioners authorize the General Manager to execute a 12-month extension to the *Cost Reimbursement Research Subaward Agreement* for the Ventura Shellfish Enterprise (VSE) project.

**STANDARD AGENDA:**

**1) Approval of Notice of Proposed Ordinance for the Assignment of the Existing Parcel 20 Master Lease and an Option Agreement Between the Ventura Port District and Derecktor Marine Holdings for a New 50-Year Master Lease**

Recommended Action: Roll Call Vote.

That the Board of Port Commissioners adopt Resolution No. 3397 authorizing the Ventura Port District to publish a Notice of Proposed Ordinance for the (1) Assignment of the Existing Parcel 20 Master Lease and (2) Option Agreement between Derecktor Marine Holdings and the District for a New 50-year Master Lease in a newspaper of general circulation.

**2) Adoption of Resolution No. 3395 Extending the COVID-19 Ventura Harbor Rental Abatement and Deferment Program**

Recommended Action: Roll Call Vote.

That the Board of Port Commissioners adopt Resolution No. 3398 further extending the COVID-19 Ventura Harbor Rental Abatement and Deferment Program until December 31, 2020, which will allow for the abatement or deferment of all rental payments for those Harbor Master Tenants and Harbor Village Tenants who have been directly impacted by the COVID-19 Pandemic on a monthly basis for repayment of deferred rents within six months after all applicable government emergency orders are rescinded, no sooner than May 12, 2021.

**ADJOURNMENT**

*This agenda was posted on Friday, September 11, 2020 by 5:00 p.m. at the Port District Office  
and online at [www.venturaharbor.com](http://www.venturaharbor.com) - Port District Business - Meetings and Agendas.*

*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, SEPTEMBER 16, 2020**

**1. Conference with Labor Negotiators - Per Government Code Section 54957.6:**

- a) Employee Units: **Courtesy Patrol Officers**  
Groups: International Brotherhood of Teamsters Union, Local 186  
Negotiating Parties: Brian Pendleton, Todd Mitchell, Andy Turner, Oliver Yee  
Under Negotiation: **Labor Negotiations** (Verbal Report)

**2. Conference with Real Property Negotiators - Per Government Code Section 54956.8:**

- a) Property: **Parcel 20**  
Negotiating Parties: Brian Pendleton, Todd Mitchell, Andy Turner  
Derecktor Marine Holdings LLC  
Under Negotiation: **Terms of Assignment of Lease and 50-year Lease Option**  
(Verbal Report)
- b) Property: **1431 – 1691 Spinnaker Drive**  
Negotiating Parties: Brian Pendleton, Todd Mitchell, Andy Turner  
All Ventura Harbor Village Tenants  
Under Negotiation: **COVID-19 Ventura Harbor Rental Abatement and Deferment Program**
- c) Property: **Parcels 10A, 4, 9, 7, 15, 16, 18, 2, 3, 1, 19, 3A1, 3A2, 3A4, 20, 17, 6**  
Negotiating Parties: Brian Pendleton, Todd Mitchell, Andy Turner  
All Master Tenants  
Under Negotiation: **COVID-19 Ventura Harbor Rental Abatement and Deferment Program**

**3. Conference with Legal Counsel - Potential Litigation per Government Code Section 54956.9(d)(2): 1 Case. (verbal report)**





# BOARD OF PORT COMMISSIONERS

## SEPTEMBER 16, 2020

### APPROVAL OF MINUTES

## SEPTEMBER 2, 2020 REGULAR MEETING

# VENTURA PORT DISTRICT

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## BOARD OF PORT COMMISSIONERS MINUTES OF SEPTEMBER 2, 2020

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### **CLOSED SESSION**

#### **CALL TO ORDER:**

The Ventura Board of Port Commissioners Regular Closed Session Meeting was called to order by Chairman Chris Stephens at 5:30PM at the Ventura Port District Administration Office, 1603 Anchors Way Drive, Ventura, CA 93001 and via Zoom meeting.

#### **ROLL CALL:**

##### **Commissioners Present:**

Chris Stephens, Chairman  
Brian Brennan, Vice Chairman  
Jackie Gardina, Secretary via teleconference  
Everard Ashworth via teleconference  
Michael Blumenberg via teleconference

##### **Commissioners Absent:**

None.

##### **Port District Staff:**

Brian Pendleton, General Manager  
Todd Mitchell, Business Operations Manager  
Jessica Rauch, Clerk of the Board

##### **Legal Counsel:**

Andy Turner via teleconference  
Elsa Sham via teleconference

**PUBLIC COMMUNICATIONS:** None.

**CONVENED TO CLOSED SESSION AT 5:32PM.**

**ADJOURNMENT:** Closed Session was adjourned at 6:58PM.

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### **OPEN SESSION**

#### **ADMINISTRATIVE AGENDA:**

#### **CALL TO ORDER:**

The Ventura Board of Port Commissioners Regular Open Session Meeting was called to order by Chairman Chris Stephens at 7:02PM at the Ventura Port District Administration Office, 1603 Anchors Way Drive, Ventura, CA 93001 and via Zoom Meeting.

**PLEDGE OF ALLEGIANCE:** By Vice Chairman Brennan.

**ROLL CALL:**

**Commissioners Present:**

Chris Stephens, Chairman  
Brian Brennan, Vice Chairman  
Jackie Gardina, Secretary via teleconference  
Everard Ashworth via teleconference  
Michael Blumenberg via teleconference

**Commissioners Absent:**

None.

**Port District Staff:**

Brian Pendleton, General Manager  
Todd Mitchell, Business Operations Manager  
Jessica Rauch, Clerk of the Board  
Robin Baer, Property Manager via teleconference  
John Higgins, Harbormaster via teleconference  
Joe Gonzalez, Facilities Manager via teleconference  
Dave Werneburg, Marina Manager via teleconference

**Legal Counsel:**

Andy Turner via teleconference  
Elsa Sham via teleconference

**ADOPTION OF AGENDA**

**ACTION:** Commissioner Brennan moved, seconded by Commissioner Gardina, and carried by a vote of 5-0 to adopt the September 2, 2020 agenda.

**APPROVAL OF MINUTES**

The Minutes of the July 15, 2020 Regular Meeting and August 19, 2020 Special Meeting were considered as follows:

**ACTION:** Commissioner Blumenberg moved, seconded by Commissioner Brennan, and carried by a vote of 5-0 to approve the July 15, 2020 Regular Meeting and August 19, 2020 Special Meeting Minutes.

**PUBLIC COMMUNICATIONS:** None.

**CLOSED SESSION REPORT:** Mr. Turner stated that the Board met in closed session; discussed and reviewed all items on the closed session agenda. The Board gave direction to staff as how to proceed. No action was taken that is reportable under The Brown Act.

**BOARD COMMUNICATIONS:** None.

**STAFF AND GENERAL MANAGER REPORTS:** Mr. Pendleton reported that staff has created a new staff report template that includes the District's long-term goals and 5-year objectives as it relates to the item.

**LEGAL COUNSEL REPORT:** None.

**CONSENT AGENDA:**

**a) Approval of New Restaurant Lease Agreement for Rigoberto Lopez Rangel dba Baja Bay Surf Taco**

Recommended Action: Roll Call Vote.

That the Board of Port Commissioners approve a new restaurant lease agreement for the premises located at 1567 Spinnaker #104, consisting of 773 square feet with 623 patio square feet between the Ventura Port District dba Ventura Harbor Village and Rigoberto Lopez Rangel dba Baja Bay Surf Taco for a two-year term with a two-year option.

Public Comment: None.

**ACTION:** Commissioner Brennan moved, seconded by Commissioner Gardina and carried by a vote of 5-0 to approve a new restaurant lease agreement for the premises located at 1567 Spinnaker #104, consisting of 773 square feet with 623 patio square feet between the Ventura Port District dba Ventura Harbor Village and Rigoberto Lopez Rangel dba Baja Bay Surf Taco for a two-year term with a two-year option.

**STANDARD AGENDA:**

**1) Consideration of Preliminary Operations Plan and Draft Economic and Fiscal Impacts of the Proposed Ventura Shellfish Enterprise Project**

Recommended Action: Informational.

That the Board of Port Commissioners receive an informational report on the Preliminary Operations Plan and Draft Economic and Fiscal Impacts of the Proposed Ventura Shellfish Enterprise Project.

Report by General Manager, Brian D. Pendleton; Robert Smith, K&L Gates; Laurie Monarres, John Davis IV, and Andrea Dransfield, Dudek; Ralph Imondi, Coastal Marine Biolabs, Scott Lindell, Woods Hole Oceanographic Institution; and Michael Wright, Illuminas Consulting.

Public Comment:

Sam Sadove, owner of Ventura Harbor Marina Associates, LLC would like more time for the public to review the documents and comment, especially the commercial fishermen who are currently out fishing and have not seen it. He commented that Blue Whales have been excluded from the report, which he believes is not true and should be added to the document. He stated commercial fishermen will not be able to afford the startup costs and suggested staff look into grant opportunities.

Mike Conroy, West Coast Fisheries Consultants and Executive Director of the Pacific Coast Federation of Fishermen's Associations agreed with Mr. Sadove's comments, would like more time to review and stated that there have only been three entanglements reported in lobster gear.

**ACTION:** The Board of Port Commissioners received an informational report on the Preliminary Operations Plan and Draft Economic and Fiscal Impacts for the Proposed Ventura Shellfish Enterprise Project.

**2) Ventura Port District Operations Update as it Relates to COVID-19**

Recommended Action: Informational. (Verbal Report)

That the Board of Port Commissioners receive an update on:

- a) The COVID-19 Ventura Harbor Rental Abatement and Deferment Program; and
- b) Status of Ventura Port District operations.

Report by General Manager, Brian D. Pendleton.

Public Comment: Sam Sadove, owner of Ventura Harbor Marine Associates, LLC. reported that he temperature checks his employees twice a day. They had a scare a few weeks ago and his staff all did the rapid testing, which is now available. However, to get it for free, you have to have symptoms or have a doctor's note.

**ACTION:**      **The Board of Port Commissioners received an update on COVID related items.**

**ADJOURNMENT:** The meeting was adjourned at 9:16PM.

The next meeting is Wednesday, September 16, 2020.

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Jackie Gardina, Secretary



# BOARD OF PORT COMMISSIONERS

SEPTEMBER 16, 2020

DEPARTMENTAL STAFF REPORTS

AUGUST 2020

&

LONG TERM GOALS

5-YEAR OBJECTIVES

INDEX

**Ventura Port District - Long Term Goals 5-Year Objectives**

<b>Long Term Goals</b>				
<b>#</b>	<b>Category</b>		<b>Sub #</b>	<b>Intent/Strategy</b>
1	Safety & Navigation	Maintain and enhance a safe and navigable harbor	a	Securing funding for dredging the Harbor entrance through the Army Corps of Engineers in coordination with agencies and our elected officials;
			b	Dredging the Inner Harbor and preserving infrastructure;
			c	Providing superior Harbor Patrol, Maintenance, and related District services;
			d	Preserving and enhancing infrastructure, equipment and facilities for a modernized, efficient and safe working harbor.
2	Commercial & Recreational Boating & Fishing	Support and promote commercial and recreational boating and fishing.		
3	Economic Vitality	Increase economic development, vitality, and diversity of the District through effective leasing and marketing strategies.		
4	Sustainability	Promote sustainable use of our natural environment through business practices and programs designed in concert with our tenants, educators, agencies, and interest groups.		
5	Relationships	Build respectful, productive, and mutually beneficial business relationships with our tenants, public agencies, elected officials and the community.		
6	Public Service	Provide exceptional public service and transparency at all levels within the organization through effective leadership, training, mentoring, and oversight. This promotes accountability, increased public trust, and a more efficient, effective and public focused organization.		

<b>5 Year Objectives</b>				
<b>#</b>	<b>Category</b>	<b>Objective</b>	<b>Sub #</b>	<b>Intent/Strategy</b>
D	Harbor Dredging	Ensure that annual dredging occurs at the federal Harbor entrance and as needed in the inner Harbor	1	Support and advocate for congressional funding to the Army Corps of Engineers in support of the Harbor's annual dredging program
			2	Provide an on-going leadership role and active participation with California Marine Affairs and Navigation Conference (CMANC) and other relevant organizations in support of federal and state assistance
			3	Ventura Port District Dredging
E	Public and Civic Engagement Plan	Strengthen communication and further develop close working relationships with stakeholders, business partners, and civic leaders	1	Collaborate with business partners and stakeholders through increased engagement, communication, and participation.
			2	Public and Civic Engagement Planning
F	Commercial Fishing	Support current commercial fishing industry central to Ventura's premier working waterfront through: stakeholder engagement, diversification, and infrastructure improvements	1	Reactivate Ventura's commercial fishing association and/or establish fishermen working group as part of improved stakeholder engagement
			2	Continue improvements of Commercial Fishing Industry service offerings by District
			3	VSE Project Grant utilization
			4	Complete permitting, regulatory, and legislative approvals for VSE project
M	Master Tenants & Parcels 5+8	Collaborate with existing and future Master Tenants to maintain, improve, and develop the Harbor	1	Engagement and support of Master Tenants for successful business operations at the Harbor
			2	Evaluate opportunities for Parcels 5 and 8
P	National/State Parks Collaboration	Maintain Channel Islands National Park Service (NPS) presence at Harbor	1	Coordinate with NPS Superintendent and General Services Administration (GSA) to secure long-term leases for NPS personnel currently located at 1441 and 1691 Spinnaker Dr. (Harbor Village)
		Draw upon Ventura Harbor area Nat'l. & State parks and wetland areas to enhance ecotourism	2	Coordinate with National & California State Parks to develop destination-based ecotourism offerings
T	Village Parking & Traffic	Continue to increase and/or maximize visitor parking and traffic circulation during busy periods	1	Evaluate pedestrian, bicycling, transit networks and parking within and around the Harbor
			2	Pursue needed improvements and management plans
			3	Evaluate pedestrian, bicycling, transit networks and pursue needed improvements, enforcement strategies in partnership with the City
V	Harbor Village	Maintain and improve Harbor Village infrastructure and enhance the overall visitor experience	1	Complete Harbor Village refresh programs
			2	Leasing/Property Management Action Plan
			3	Marketing Action Plan

# DEPARTMENTAL STAFF REPORTS

## CAPITAL PROJECTS

### LONG-TERM GOALS:

#### Goal 1: Safety & Navigation

Maintain and enhance a safe and navigable harbor

c: Providing superior Harbor Patrol, Maintenance, and related District services.

d: Preserving and enhancing infrastructure, equipment, and facilities for a modernized, efficient and safe working harbor.

#### Goal 3: Economic Vitality

Increase economic development, vitality, and diversity of the District through effective leasing and marketing strategies

#### Goal 4: Sustainability

Promote sustainable use of our natural environment through business practices and programs designed in concert with our tenants, educators, agencies, and interest groups

#### Goal 5: Relationships

Build respectful, productive, and mutually beneficial business relationships with our tenants, public agencies, elected officials, and the community.

#### Goal 6: Public Service

Provide exceptional public service and transparency at all levels within the organization through effective leadership, training, mentoring, and oversight. This promotes accountability, increased public trust, and a more efficient, effective, and public focused organization.

### 5-YEAR OBJECTIVES:

#### Objective E: Public and Civic Engagement Plan

Strengthen communication and further develop close working relationships with stakeholders, business partners, and civic leaders

1: Collaborate with business partners and stakeholders through increased engagement, communication, and participation.

#### Objective F: Commercial Fishing

Support current commercial fishing industry central to Ventura's premier working waterfront through: stakeholder engagement, diversification, and infrastructure improvements

2: Continue improvements of Commercial Fishing Industry service offerings by District

#### Objective V: Harbor Village

Maintain and improve Harbor Village infrastructure and enhance the overall visitor experience.

1: Complete Harbor Village refresh programs



**VENTURA PORT DISTRICT**  
**DEPARTMENTAL STAFF REPORT**

Meeting Date: September 16, 2020

TO: Board of Port Commissioners  
FROM: Joe A. Gonzalez, Capital Projects Manager  
SUBJECT: August 2020 Capital Projects Report

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***VHV PAINTING PROJECT***

**Status: Project 98% Complete**

**Budget: On Budget**

After



Before



The Ventura Harbor Village painting project continues to move a little faster these days due to the warm weather we have been experiencing recently. The Buildings are approximately 98% completed with new paint, the painting crew is following up with minor touch-ups.

We are currently concentrating on finishing all the staircases and decking areas that had severe dry rot damage. We continuing to work closely with all tenants to have minimal or no interruption of their businesses during these types of repairs. Garland and sub-contractors have been adjusting their daily working schedules to accommodate the tenants. We have been very fortunate that tenant businesses are experiencing minimal to no impact to their operations during these dry rot repairs.

The painting crew continues to work on maintaining the COVID-19 guidelines provided by the Department of Health (CDC) as this issue progresses, Garland (DBS) is closely monitoring and adjusting and implementing COVID-19 guidelines to assure the safety of the public and staff.

Garland and the subcontractor have addressed and repaired the majority of all the dry rot within the staircase, decking at 1449 building from the recent change order. The approved change order also included repairs/replacement of corroded metal weather guards, above glass panels that are located on two buildings those materials have been ordered. All dry rot damaged weather wooden capping on the 2<sup>nd</sup> floor has been replaced. Additionally, all rusted failing metal flashing on the west side of the floor decking has also been replaced with new flash metal, the final waterproofing materials for the 1449 decking will be apply early next week (weather permitting).

As mention on my previous report, all change orders were based on agreed unit cost in the original proposal and in most cases was anticipated additional expense likely with the two deck

replacement projects having the most significant unforeseen conditions requiring remediation outside of the scope.

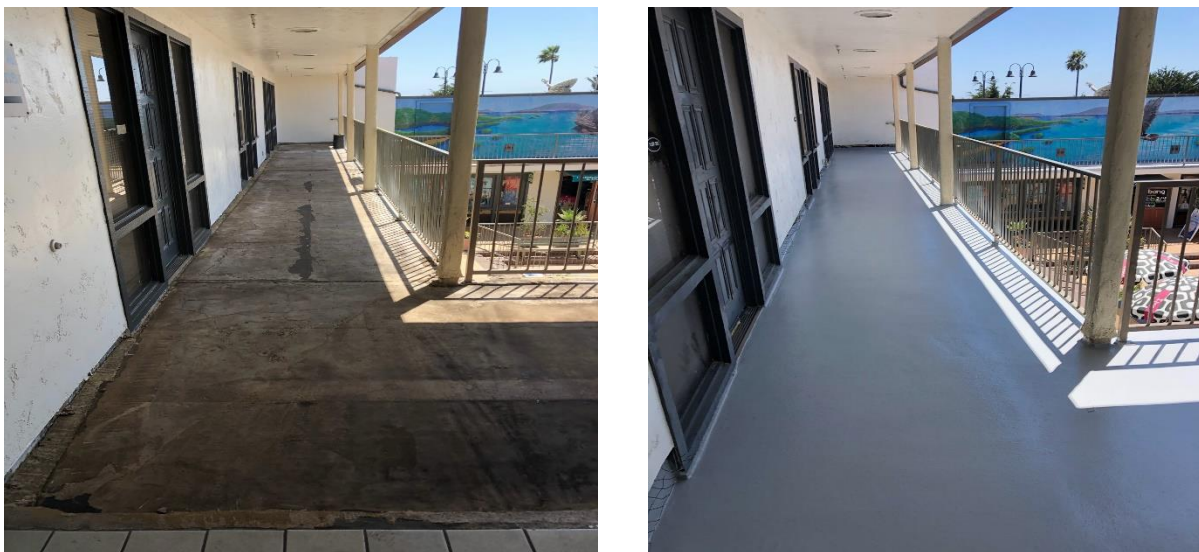
Overall, the project continues to be within budget, change orders have not exceeded the 10% cost of the budget.

We continue to be pleased that Garland is considerate of our tenant needs and are working together with staff to accommodate our requests to make this a successful project. The District has requested an additional change order for Garland to paint other areas that were not included in the original bid, such as common areas railings, repaint staircase ADA stripe to match the existing new color palette, all areas are located within the Ventura Harbor Village complex.

1449 staircase



1559 inner courtyard 2<sup>nd</sup> level decking



## **CALIFORNIA COASTAL CONSERVANCY FISHERIES GRANT**

**Status: Ongoing**

**Budget: On Budget**

The District has yet to receive the documentation for the \$318,600 Fisheries Grant. The final grant award contract is expected to be provided by the Conservancy in August however we have been advised that all costs incurred by the District prior to May 1, 2020 will be not eligible for reimbursement. The grant is being used to fund two projects, the modernization of the Fishermen's Storage Yard and the procurement and installation of a second derrick crane for the fish pier. Staff has submitted a draft Work Program to the Conservancy and is awaiting approval which will be followed by an updated budget proposal.

Jensen Designs has completed the engineering design and submitted the construction plans to the City of Ventura in June. The plans are now in Planning and a minor modification has been submitted.

The second element to the project is the procurement of a second 1-ton derrick crane for the fish pier. The manufacturer (Allied Power Products) has encountered additional problems with the performance of the hot-dip galvanization, which is essential to properly protect the crane from corrosion. The District is requiring that the parts be re-dipped before assembly. This will result in additional delays and we do not yet know the duration. The District will be adding into the scope some structural deck improvements to the fish pier.

### **ONGOING CAPITAL PROJECTS:**

- |                                      |  |
|--------------------------------------|--|
| • 1559 public restrooms ADA upgrades | Status: Preparing Preconstruction meeting      |
| • 1591 suite 112 ADA entry upgrades  | Status: Waiting on the City for plans approval |
| • 1567 A Building roofing project    | Status: Reviewing bids                         |
| • 1559 suite 103 tenant improvement  | Status: 100% completed (within budget)         |
| • 1575 suite 104 (Sugar Labs)        | Status: Monitoring/Assisting contractors       |
| • VHV trash enclosures project       | Status: working with Architects with plans     |

# DEPARTMENTAL STAFF REPORTS

## DREDGING

### **LONG-TERM GOALS:**

#### Goal 1: Safety & Navigation

Maintain and enhance a safe and navigable harbor

- a: Securing funding for dredging the Harbor entrance through the Army Corps of Engineers in coordination with agencies and our elected officials
- b: Dredging the inner harbor and preserving infrastructure

#### Goal 2: Commercial & Recreational Boating & Fishing

Support and promote commercial and recreational boating and fishing

### **5-YEAR OBJECTIVES:**

#### Objective D: Harbor Dredging

Ensure that annual dredging occurs at the federal Harbor entrance and as needed in the inner harbor

- 1: Support and advocate for congressional funding to the Army Corps of Engineers in support of the Harbor's annual dredging program
- 2. Provide on-going leadership role and active participation with California Marine Affairs and Navigation Conference (CMANC) and other relevant organizations in support of federal and state assistance.

**VENTURA PORT DISTRICT  
DEPARTMENTAL STAFF REPORT**

Meeting Date: September 16, 2020

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TO: Board of Port Commissioners  
FROM: Todd Mitchell, Business Operations Manager  
SUBJECT: August 2020 Dredging Report

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**CMANC**

Due to the COVID-19 pandemic, the CMANC fall meeting will be held virtually. Over the past few months, CMANC leadership has held periodic meetings often hosted by Ventura Port District. In keeping with the objective of maintaining a leadership role in CMANC, these meetings continue to strengthen our involvement in the organization that has been extremely effective in assisting both elected officials and the US Army Corps of Engineers in justifying and executing Navigation (i.e. dredging) projects in California.

**INNER HARBOR DREDGING – PERMIT AMENDMENTS**

Work has begun in reviewing historical data on dredging sediment volumes and characterization to provide justification to governing agencies for the amendment of the permits held by the District to relax restrictions on inner harbor dredging during low- or no-flow in the Santa Clara river. The next step planned is to meet with the US Army Corps of Engineers to discuss the rationale for the amendment and seek their support and/or understand any further requirements they may seek in an amendment application.

**POLITICAL ACTIVITIES**

During the months of July and August, two state legislative bills and one state agency plan were identified as having potentially adverse effects on the District's navigation and fishing stakeholders. Staff participated in meetings with the California Special Districts Association legislative representatives, our commercial fishing interests, and also directly with the office of one of the Assembly Members. Both bills failed to be passed in the current year's legislative session allowing for the opportunity for suitable amendments to be included next year. The California State Water Quality Control Board also received numerous comment letters requesting more consultation with stakeholders and possible modification to a plan likely affecting all harbors and coastal cities in Ventura and Los Angeles counties.

# DEPARTMENTAL STAFF REPORTS

## FACILITIES

### **LONG-TERM GOALS:**

#### Goal 1: Safety & Navigation

Maintain and enhance a safe and navigable harbor

c: Providing superior Harbor Patrol, Maintenance, and related District services.

d: Preserving and enhancing infrastructure, equipment, and facilities for a modernized, efficient and safe working harbor.

#### Goal 3: Economic Vitality

Increase economic development, vitality, and diversity of the District through effective leasing and marketing strategies

#### Goal 4: Sustainability

Promote sustainable use of our natural environment through business practices and programs designed in concert with our tenants, educators, agencies, and interest groups

#### Goal 5: Relationships

Build respectful, productive, and mutually beneficial business relationships with our tenants, public agencies, elected officials, and the community.

#### Goal 6: Public Service

Provide exceptional public service and transparency at all levels within the organization through effective leadership, training, mentoring, and oversight. This promotes accountability, increased public trust, and a more efficient, effective, and public focused organization.

### **5-YEAR OBJECTIVES:**

#### Objective E: Public and Civic Engagement Plan

Strengthen communication and further develop close working relationships with stakeholders, business partners, and civic leaders

1: Collaborate with business partners and stakeholders through increased engagement, communication, and participation.

#### Objective F: Commercial Fishing

Support current commercial fishing industry central to Ventura's premier working waterfront through: stakeholder engagement, diversification, and infrastructure improvements

2: Continue improvements of Commercial Fishing Industry service offerings by District

#### Objective V: Harbor Village

Maintain and improve Harbor Village infrastructure and enhance the overall visitor experience.

1: Complete Harbor Village refresh programs



**VENTURA PORT DISTRICT**  
**DEPARTMENTAL STAFF REPORT**

Meeting Date: September 16, 2020

TO: Board of Port Commissioners  
FROM: Todd Mitchell, Business Operations Manager  
Sergio Gonzalez, Maintenance Supervisor  
SUBJECT: August 2020 Facilities Report

Staff continues to perform everyday maintenance and on-the-spot repairs throughout the Ventura Harbor Village and other VPD properties.

**COVID-19 MAINTENANCE RESPONSE /UPDATE**

**Status: Ongoing**

**Budget: Over normal operating budget**

VPD Maintenance Department has continued to respond to the COVID-19 pandemic by increasing janitorial services throughout the District with a concentration on high-touch surfaces, including restrooms, door handles, etc.

Maintenance staff continue to work with shifts staggered to minimize overlap in arrival and departure times. In addition, we have implemented a variation in staff schedule to ensure a Maintenance employee is on shift until 9:30PM, 7 days a week to improve visibility of staff throughout the Village. Staff is provided three surgical masks per week and N95 masks upon request (limited due to national shortage), gloves, and disinfectant wipes. Morale remains good and Village facilities are kept at a high standard of cleanliness.

Signage has been placed throughout the village addressing the social distancing guidelines. We continue to work with tenants to ensure cooperative compliance with these orders. We have continued the service for the two outdoor portable hand wash stations at the VHV lawn and one adjacent to Andria's front lawn to give the public additional access to sanitize their hands since these two grassy areas are being utilized as Seaside Take Out Zones and will be in place through the end of September.



All restrooms throughout the Village are open, hours were reduced based on restaurant hours and to discourage issues with vandalism and theft. As of September 10<sup>th</sup>, we have opened all the public restrooms at VHV (other than two single use all-gender restrooms) to accommodate the influx of visitors due to the County's reopening. Open restrooms hours have been adjusted to close at either 9:30PM or 11:00PM depending on the surrounding opened restaurants closing time.

### **LAUNCH RAMP PAID PARKING SIGNS**

**Status: Completed**

**Budget: Within Budget**

With coordination with Harbormaster John Higgins we have removed all old paid parking signage within the Launch Ramp parking lot and replaced with new signage reflecting the new rates in correspondence with the newly installed paid parking machine.

Old sign



New sign



Pay rate sign



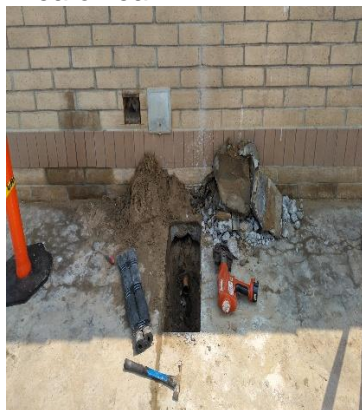
### **SURFERS KNOLL MAIN WATER LINE LEAK**

**Status: Completed**

**Budget: Within Operating Budget**

On Friday, August 28<sup>th</sup>, we developed a major main water line leak outside the public restroom at Surfers Knoll. Being that we were expecting overcrowding due to the forecasted weather, we initiated an expediated repair in conjunction with maintenance department staff and an outside plumbing company in order to keep the facilities open for the weekend. Water, restrooms and outside showers were closed until the repair was completed in the early afternoon enabling facilities to remain open through the weekend.

Area of leak



Repair of ruptured



Source of leak, frozen gate valve





### ***VHV PROMENADE BENCH INSTALATION***

**Status: Completed**

**Budget: Within Operating Budget**

Benches that were removed within the Village to acomodate tenants with their outside operations due to Covid were re-utilized to provide additional seating on the promenade. Benches were installed in the void left behind were the old G-Dock gangway was removed .

Before



After



### **INTER-DEPARTMENTAL SUPPORT**

#### **CAPITAL PROJECTS MANAGER/ PROPERTY MANAGER:**

Assist Capital Projects Manager and Property Manager in completing the tenant improvement at VHV 1559 suite #103 before deadline of August 31<sup>st</sup> with inhouse facilities repairs.

#### **MARINA/MARKETING DEPARTMENTS:**

The Maintenance Department continues to perform monthly inspections on all gangways, docks, fire extinguishers and fire boxes. Assist Marketing Department with banner placement and COVID-19 related signage.

#### **HARBOR PATROL:**

Assist in the everyday operations by performing preventive maintenance and on the spot repairs of equipment, vehicles, and vessels.

# DEPARTMENTAL STAFF REPORTS

## FEDERAL

### **LONG-TERM GOALS:**

#### Goal 1: Safety & Navigation

Maintain and enhance a safe and navigable harbor

- a: Securing funding for dredging the Harbor entrance through the Army Corps of Engineers in coordination with agencies and our elected officials

#### Goal 2: Commercial & Recreational Boating & Fishing

Support and promote commercial and recreational boating and fishing

#### Goal 5: Relationships

Build respectful, productive, and mutually beneficial business relationships with our tenants, public agencies, elected officials and the community.

### **5-YEAR OBJECTIVES:**

#### Objective D: Harbor Dredging

Ensure that annual dredging occurs at the federal Harbor entrance and as needed in the inner harbor

- 1: Support and advocate for congressional funding to the Army Corps of Engineers in support of the Harbor's annual dredging program
2. Provide on-going leadership role and active participation with California Marine Affairs and Navigation Conference (CMANC) and other relevant organizations in support of federal and state assistance
- 3: Ventura Port District Dredging

## FY 2021 Appropriations Update

To date, the House has passed ten of the twelve Fiscal Year (FY) 2021 appropriations bills (only the Homeland Security and Legislative Branch bills have not passed the House). The Senate has yet to take any action on their FY21 appropriations bills. There are less than 40 days until the end of the current federal fiscal year on September 30<sup>th</sup>. When Congress is back in session following the August recess, they will need to pass a Continuing Resolution (CR) to allow the federal government to remain open and funded. Neither political party in Congress wants to see a government shutdown just weeks before the November election. It is expected that the CR will run until sometime after the election, perhaps until mid-December.

## Special District Legislation Introduced in the Senate

Senators Krysten Sinema (D-AZ) and John Cornyn (R-TX) have introduced a Senate version of the “Special Districts Provide Essential Services Act” (S. 4308) that was introduced in the House last month by Rep. Garamendi (D-CA). This bill would ensure that special districts are eligible for any additional direct federal financial assistance provided by Congress to state, county, and local governments. Additionally, the bill directs the Board of Governors of the Federal Reserve System to include special districts as eligible issuers in the Municipal Liquidity Facility program. Senators Feinstein and Harris are both cosponsors of the legislation.

## Legislation Introduced in House and Senate to Reduce Border Pollution and Improve Water Quality

In early August, legislation was introduced in both the House (Reps. Vargas, Peters, Davis, and Levin) and the Senate (Sen. Feinstein) entitled the “Border Water Quality Restoration and Protection Act” (S. 4352 and H.R. 7991). The legislation aims to reduce pollution along the border and improve water quality in the Tijuana and New Rivers by:

- Designating the EPA as the lead agency to address border pollution along the U.S.-Mexico Border and improve water quality of the Tijuana and New rivers entering the United States.

- Requiring the EPA, along with its federal, state and local partners, to identify a list of priority projects and would authorize EPA to accept and distribute federal, state, and local funds to build, operate and maintain those projects.
- Codifying the existing Border Water Infrastructure Program to manage stormwater runoff and water reuse projects.
- Requiring the International Boundary and Water Commission to participate in the construction of projects identified in the Tijuana and New rivers' comprehensive plans and specifically authorizes the commission to address stormwater.

## **Feinstein and Daines Introduce Wildfire Legislation**

Senators Dianne Feinstein (D-CA) and Steve Daines (R-MT) introduced the “Emergency Wildfire and Public Safety Act.” This bill will help protect communities from catastrophic wildfires by implementing wildfire mitigation projects, sustaining healthier forests that are more resilient to climate change and providing important energy, and retrofitting assistance to businesses and residences to mitigate future risks from wildfire. The legislation is supported by the California Natural Resources Agency, the California Farm Bureau Federation, and the Rural County Representatives of California.

## **GAO Issues Legal Decision on the Legality of Homeland Security Appointments**

The Government Accountability Office (GAO) has issued a legal decision finding that Acting Secretary of Homeland Security Chad Wolf and his deputy Ken Cuccinelli are serving under an invalid order of succession under the Vacancies Reform Act, which governs how temporary appointments can be made to positions that require Senate confirmation. GAO's decision does not discuss the consequences of these improper appointments, or the impact on the actions they have taken while in these roles. Those questions have instead been referred to the Department of Homeland Security Inspector General.

## **Federal Agencies Sign Hydropower Agreement**

The US Army Corps of Engineers, the Department of Energy, and the Bureau of Reclamation have signed an interagency memorandum of understanding regarding hydropower. The agencies have agreed to collaborate on common issues and leverage resources related to hydropower generation, as well as create an action plan designed to adapt hydropower to the changing energy landscape. The action plan will focus on developing projects and activities using data driven, risk-based decision-making and consider projects in the areas of asset management, improving the value of hydropower, workforce training, water supply reliability, and environmental outcomes.

## **Treasury Issues Interim Report on CARES Act Coronavirus Relief Fund**

The Department of Treasury Office of Inspector General released an interim report regarding initial spending of CARES Act Coronavirus Relief Funds (CRF). The report outlines prime state and local government recipients reported total costs incurred by ten broad categories from the period until June 30<sup>th</sup>.

## A Look Ahead: COVID-19 Relief Legislation

Congress returns in September facing a deadline of September 30<sup>th</sup> when several major policy items will expire, unless extended by Congress—most critically funding for the government. At this time, it is expected that Congress will pass a short-term continuing resolution (CR) before September 30<sup>th</sup> that will fund the government, likely through the elections at which time Congress may look to take up a larger full-year bill during the lame duck session in November.

In addition to appropriations, authorization for the surface transportation programs—highway, rail, and transit—are also set to expire at the end of September. House and Senate authorizers have begun discussions over an extension which could last anywhere from a few months up to a full year. In July, the House passed a major infrastructure package, H.R. 2, the Moving Forward Act which included a five-year reauthorization of surface transportation programs. The Senate has not passed a companion bill. Other programs set to expire at the end of September include the National Flood Insurance Program (NFIP) and the Child Care and Development Block Grant (CCDBG) program.

Finally, negotiations over another COVID-19 relief package have stalled over the more than \$1 trillion dollar difference in proposed package sizes and aid to state and local governments. House Speaker Nancy Pelosi, Treasury Secretary Steve Mnuchin and White House Chief of Staff Mark Meadows held another call late this month in an attempt to restart negotiations. Both sides have expressed an interest in extending the expanded unemployment benefits authorized by the CARES Act which expired last month, along with additional stimulus checks, and assistance to small businesses. As lawmakers return, it is expected that both sides will pressure House and Senate leaders and the White House to reach an agreement on a final package that could be passed in both chambers.

## Federal Agency Nominations/Positions

**Department of Homeland Security.** President Trump announced that he will be formally nominating Acting Secretary of the Department of Homeland Security Chad Wolfe to serve as the Secretary. Wolfe has been serving as the Acting Secretary since November 2019.

**National Park Service.** The current acting director of the National Park Service, David Vela, will be leaving the agency in September. Department of the Interior Secretary David Bernhardt has announced that Margaret Everson will replace Vela. Everson has been serving as a counselor to Secretary Bernhardt and principal deputy director of the Fish and Wildlife Service.

## Federal Agency Grant Announcements

**WaterSMART Desalination Water Purification Research Program.** The Bureau of Reclamation has released a funding opportunity for the WaterSMART Desalination Water Purification Research Program. This program provides funding to conduct laboratory or pilot scale studies to address a broad range of desalting and water purification needs. Applications are due October 7<sup>th</sup>.

**FEMA Building Resilient Infrastructure and Communities.** The Federal Emergency Management Agency (FEMA) has announced that on September 30<sup>th</sup>, it will open the application period for the new hazard mitigation grant program called the Building Resilient Infrastructure and Communities (BRIC). The BRIC program has five goals: 1. Encourage innovation 2. Enable large infrastructure projects 3. Maintain flexibility 4. Provide consistency and 5. Promote partnerships. The program will have \$500 million available in funding, with \$446 million of that amount for competitive grants for mitigation projects. Applications are due January 29, 2021.

# DEPARTMENTAL STAFF REPORTS

## HARBOR PATROL

### **LONG-TERM GOALS:**

#### Goal 1: Safety & Navigation

Maintain and enhance a safe and navigable harbor

c: Providing superior Harbor Patrol, Maintenance, and related District services.

d: Preserving and enhancing infrastructure, equipment, and facilities for a modernized, efficient and safe working harbor.

#### Goal 2: Commercial & Recreational Boating & Fishing

Support and promote commercial and recreational boating and fishing.

#### Goal 5: Relationships

Build respectful, productive, and mutually beneficial business relationships with our tenants, public agencies, elected officials, and the community.

#### Goal 5: Public Service

Provide exceptional public service and transparency at all levels within the organization through effective leadership, training, mentoring, and oversight. This promotes accountability, increased public trust, and a more efficient, effective, and public focused organization.

### **5-YEAR OBJECTIVES:**

#### Objective E: Public and Civic Engagement Plan

Strengthen communication and further develop close working relationships with stakeholders, business partners, and civic leaders

1: Collaborate with business partners and stakeholders through increased engagement, communication, and participation.



**VENTURA PORT DISTRICT  
DEPARTMENTAL STAFF REPORT**

Meeting Date: September 16, 2020

TO: Board of Port Commissioners  
FROM: John Higgins, Harbormaster  
SUBJECT: August 2020 Harbormaster/Harbor Patrol Report



**PUBLIC SAFETY**

**Overview:**

I am confident that this last month was the busiest month on record. While we were hopeful the crowds would remain low, the mix of warm temperatures and COVID-19 restrictions had many people taking refuge at the Harbor. As mentioned previously, all areas of the Harbor were seeing a significant increase in visitors. Midweek crowds were constant, and the water activity was robust.



Labor Day weekend was the finale with inland temperatures reaching record highs. The entire Port District staff worked double-time to ensure the safest and most enjoyable experience possible. Overall there were no significant issues during these three days.

**COVID-19**



**Community Overview:**

Ventura County appears to be improving on the numbers of COVID-19 infections, with the most current stats showing significantly more people recovered vs. currently infected. On September 9, 2020, the Ventura County Board of Supervisors online update at [www.venturarecovers.org](http://www.venturarecovers.org) reported much better numbers. They reported we are on the verge of moving to the next level of openings if the trend continues. Everyone will be looking at the next two weeks to see if the holiday resulted in a significant number of infections.

Should we stay on course, the County appears to be moving towards the next level of openings, which will once again allow inside dining along with other areas. We will be monitoring the progress and keep staff informed of the trends should they improve.

At a previous meeting, a member of the public was requesting notification of infections within the Harbor. While the Port District is not the appropriate Agency to disperse this information, official stats are broken down daily and by area code daily at both Ventura County websites:



### **COVID-19 FEMA Reimbursement Status:**

We continue to track the costs associated with mitigation and response to the current COVID-19 epidemic. The current estimate of expenses related to this across all our Departments is \$66,197.72. We will be submitting this request with the understanding that there is a match required, and some of our requests may not qualify. We are hopeful that our good documentation and preparation will result in the maximum reimbursement possible.

### **Essential Supplies:**

The Port District continues to maintain a healthy supply of masks and cleaning supplies. I have worked with the City of Ventura to obtain additional supplies should there be a sudden drain of our inventory. Maintenance Supervisor Sergio Gonzalez has also found several sources of reliable supplies.

### **COVID-19 Protective Measures:**

Facial coverings, hand washing, and social distancing continue to be the most effective method of protecting against infection. The Harbor Patrol staff have access to these supplies in all their workspaces, including the boats. We carry a small inventory of surgical masks if a member of the public needs one.

## **BEACHES**

### **Anticipated Extended Season:**

While the official Summer season has ended, we are entering the warmest part of the year traditionally. This, along with the current trends of limited in-person working and school, may result in larger than expected crowds both mid-week and on weekends. The Harbor Patrol Marine Safety Officers will be vital to providing extra staffing should this occur.

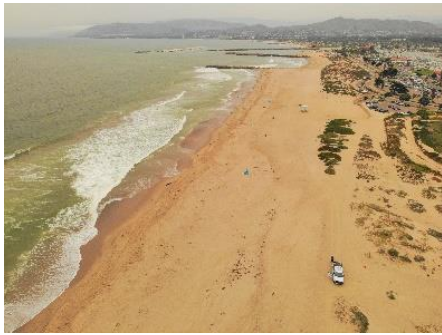
### **Harbor Cove:**



Harbor Cove is probably the most consistently visited location within the Harbor on a daily basis. We will continue to keep the accessibility mat out on the sand until the next dredging cycle. The Port District Maintenance staff continues to work diligently to ensure the area is clean and safe. With such large crowds, we are pleased that the trash on the beach has been minimum. The seasonal addition of a large dumpster has provided people additional disposal opportunities and provided for a cleaner beach.

Due to the State Health Order, the beach volleyball courts remain closed. We have reached out to the State and County, but as it is a low priority, there have been no changes. This has been a minor inconvenience for the players and our lessee.

### **South Beach:**



We are preparing for the annual beach erosion to occur. Due to a calm summer surf wise, there was very little sand added to the Beach. As the northwest storm season approaches, we expect to see the typical erosion. This erosion will start near the Surfers Knoll groin and move steadily South.

We will try to get a measurement of the sand from the dunes to give us a better reference to the amount of sand loss moving forward.

### **State Park Lifeguards:**

As the summer winds down, I am happy to report there were no significant emergencies at the beach. The tower that was added last year was instrumental in meeting this year's record crowds. I will work with the State Parks Supervisors moving forward to obtain the stats for this season and determine if additional offseason coverage is warranted.

### **Protected Bird Nesting:**

Harbor Patrol worked with California State Parks to ensure we were observant of nesting south of the Harbor this year. Overall, the number of nest sites were decreased significantly on our side; this is possibly due to increasing crowds on the beaches. The official breeding season is ending September 15, and the fencing will be removed soon after. While the fencing will be removed, our staff have learned to be observant throughout the year when traversing along the Beach.

### **FIRE BOAT:**

#### **The One-Year Anniversary of the Dive Boat Conception Disaster:**

We participated in the first anniversary memorial at Santa Cruz Island on September 9, 2020. Other agencies included Tow Boat US, US Coast Guard, Channel Islands Harbor Patrol, Santa Barbara Harbor Patrol, California Fish and Game, National Parks Service, NOAA, and Santa Barbara County Sheriff. Volunteers raised funds and deployed an underwater memorial for the victims. Family and friends were transported to the site from both Ventura and Santa Barbara Harbors. Family members who were certified divers were able to visit the underwater memorial and, before the end of the event, share some private time.

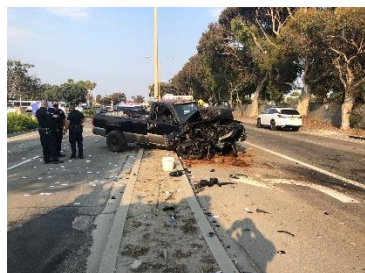


#### **Updating MOU with Ventura City Fire Department**

I have met twice with the City Fire Department to update the Fireboat MOU. The original document was completed in 2004 and has since become obsolete. In looking at an update, common issues are being discussed as well as better in-kind support from the City Fire Department. Unlike Channel Islands Harbor's agreement with Ventura County Fire Department, the Ventura Port District has funded all but a few nozzles and hoses for the boat. We will continue to work towards a

mutually beneficial update. Fortunately, this has not negatively affected our strong working relationship, and we remain jointly committed to providing the highest level of service possible.

## **EMERGENCY RESPONSES ON LAND AND WATER**



### **8/22/2020: 911 Call "Traffic Accident – Vehicle Rollover"**

Harbor Patrol Officers arrived first on the scene to a single-vehicle traffic accident on Spinnaker Drive. There were minor injuries, and the Police Department reported speed was a contributing factor to the accident. Harbor Patrol assisted the Police with traffic control while the scene was investigated, and the vehicle towed away.



### **8/29/2020: 911 Call "Capsized Vessel = 3 persons in the Water"**

The Harbor Patrol arrived first on scene and pulled the three fishermen out of the water near the break wall and towed the vessel back to the launch ramp. There were no associated injuries, and the vessel was assisted back on to its trailer.



### **9/7/2020: May Day Call: "Vessel Sinking = 2 Passengers"**

Harbor Patrol Officers were on routine patrol when a May Day Call went out from a local boater approximately 5 miles off the Harbor. Harbor Patrol Officers responded and were first on scene and determined the emergency had been resolved by turning off a valve that stopped the incoming water. Harbor Patrol stood by until Tow Boat US and US Coast Guard arrived and took over the call.



### **9/10/2020: Multiple Reports: "Vessel Running Aground"**

Harbor Patrol Officers received multiple reports of a vessel running aground North of Ventura near Emma Wood State Park Campground. Harbor Patrol Officers arrived first on scene and determined that the vessel was unoccupied and appeared secured. Harbor Patrol worked with State Parks and Tow Boat US, which was later contracted to remove the vessel. The vessel was determined to have originated from Santa Barbara's unofficial anchorage.

## **UNMANNED AERIAL SYSTEM PROGRAM (UAS)**

We continue to use the UAS primarily for photo documentation of the Beach. The system is a DJI Mavic 2 Enterprise and has several capabilities, including a loud speaker, spotlight, night strobes, and thermal sensing camera. These added features provide real value in future rescues and public safety needs.







## **SOUNDINGS**

There have been no changes in shoaling or depths. Boaters are encouraged to stay within the defined channels and contact the Harbor Patrol for instructions during adverse weather events.

## 911 Calls Dispatched (911 calls received (31) 8/11-8/11)

<a href="#">20-0066078</a>	HARB1	M5	TRAUMATIC INJURIES NON EMD	County Fire Department	1404 Anchors Way	Ventura	8/15/2020 1:22:44 PM
<a href="#">20-0066480</a>	HARB1, ME2, MED451, MED665	F4	TC	Ventura County Fire Department	1567 Spinnaker Dr	Ventura	8/16/2020 6:38:32 PM
<a href="#">20-0066746</a>	HARB1, ME2, MED472	M5	FALL	Ventura County Fire Department	1644 Anchors Way Dr	Ventura	8/17/2020 1:14:51 PM
<a href="#">20-0067306</a>	HARB1, ME2, ME5, MED471	F4	TC	Ventura County Fire Department	1583 Spinnaker Dr	Ventura	8/19/2020 3:09:06 AM
<a href="#">20-0067621</a>	HARB1, ME2, MED471	F4	MOTORCYCLE COLLISION	Ventura County Fire Department	Schooner Dr / Anchors Way	Ventura	8/19/2020 10:36:03 PM
<a href="#">20-0067918</a>	HARB1, ME5, MED474	M5	CHEST PAIN NON TRAUMA	Ventura County Fire Department	1559 Spinnaker Dr	Ventura	8/20/2020 4:40:55 PM
<a href="#">20-0068492</a>	HARB1, ME2, MED471	M3	UNCONSCIOUS/FAINT HIGH	Ventura County Fire Department	1583 Spinnaker Dr	Ventura	8/22/2020 12:36:08 PM
<a href="#">20-0068570</a>	B1, HARB1, ME2, MED474, MT5	F3	TC (HEAVY RESCUE)	Ventura County Fire Department	1363 Spinnaker Dr	Ventura	8/22/2020 5:25:18 PM
<a href="#">20-0068800</a>	B15, B2, B61, BOAT2, CSTGRD2, E66, E68, EMS63, HARB1, HARBOR, LIFEGRD2, ME53, MED663, OR53, OR66, T160, U60	F5	OCEAN RESCUE LOW	Ventura County Fire Department	Amalfi Way / Mandalay Beach Rd	Oxnard	8/23/2020 12:15:16 PM
<a href="#">20-0068885</a>	HARB1, ME2, MED474	M5	FALL NON EMD	Ventura County Fire Department	1691 Spinnaker Dr	Ventura	8/23/2020 5:01:55 PM
<a href="#">20-0070731</a>	AIRS08, B14, B2, BOAT1, CSTGRD1, EMS48, EMS63, HARB1, LIFEGRD2, ME1, ME2, MED473, MRE23, OR1, OR53, OR66	F4	OCEAN RESCUE HIGH	Ventura County Fire Department	34°14'52.43"N / 119°16'20.54"W		8/29/2020 3:47:58 PM
<a href="#">20-0070757</a>	HARB1, ME2, MED471	M5	BEHAVIORAL EMERGENCY NON EMD	Ventura County Fire Department	1644 Anchors Way Dr	Ventura	8/29/2020 5:02:53 PM
<a href="#">20-0071008</a>	HARB1	M5	TRAUMATIC INJURIES NON EMD	Ventura County Fire Department	1559 Spinnaker Dr	Ventura	8/30/2020 3:00:26 PM
<a href="#">20-0071122</a>	HARB1, ME2, MED662, MED664	M5	UNKNOWN PROBLEM NON EMD	Ventura County Fire Department	E HARBOR BLVD / SCHOONER DR	Ventura	8/31/2020 12:47:14 AM
<a href="#">20-0071901</a>	HARB1, ME102, MED473	M3	SICK PERSON HIGH	Ventura County Fire Department	1215 Anchors Way	Ventura	9/2/2020 2:17:42 PM
<a href="#">20-0072048</a>	HARB1, IV2, ME102, ME5, MED471	M7	ABDOMINAL PAIN NO CODE	Ventura County Fire Department	1363 Spinnaker Dr	Ventura	9/2/2020 11:37:52 PM
<a href="#">20-0072704</a>	HARB1, ME2, MED471	M7	BURNS / EXPLOSIONS NO CODE	Ventura County Fire Department	1415 Spinnaker Dr	Ventura	9/5/2020 8:15:22 AM
<a href="#">20-0072975</a>	HARB1, ME2, MED471	M5	MEDICAL ALARM	Ventura County Fire Department	1215 Anchors Way	Ventura	9/5/2020 8:13:17 PM
<a href="#">20-0073236</a>	HARB1, ME2, MED663	M5	UNCONSCIOUS/FAINT	Ventura County Fire Department	1559 Spinnaker Dr	Ventura	9/6/2020 1:42:24 PM
<a href="#">20-0073321</a>	HARB1	M5	ALLERGIES/ENVENOMATION NON EMD	Ventura County Fire Department	1603 Anchors Way Dr	Ventura	9/6/2020 4:52:04 PM
<a href="#">20-0073611</a>	HARB1, HARB2, ME5, MED471	M5	FALL	Ventura County Fire Department	1559 Spinnaker Dr	Ventura	9/7/2020 12:48:02 PM
<a href="#">20-0073643</a>	HARB1, ME2, MED472	M7	SICK PERSON NO CODE	Ventura County Fire Department	1215 Anchors Way	Ventura	9/7/2020 3:24:43 PM
<a href="#">20-0074169</a>	HARB1, ME2, MED474	M5	UNKNOWN PROBLEM NON EMD	Ventura County Fire Department	1196 Ports ide Dr	Ventura	9/9/2020 2:15:19 AM
<a href="#">20-0074367</a>	HARB1, HARB2, ME2, MED473	M5	MEDICAL ALARM	Ventura County Fire Department	1215 Anchors Way	Ventura	9/9/2020 5:22:36 PM
<a href="#">20-0074532</a>	HARB1, ME2, MED472	M3	CARDIAC/RESP ARREST/DEATH HIGH	Ventura County Fire Department	1050 Schooner Dr	Ventura	9/10/2020 8:56:47 AM

# DEPARTMENTAL STAFF REPORTS

## MARINA

### **LONG-TERM GOALS:**

#### Goal 1: Safety & Navigation

Maintain and enhance a safe and navigable harbor

c: Providing superior Harbor Patrol, Maintenance, and related District services.

d: Preserving and enhancing infrastructure, equipment, and facilities for a modernized, efficient, and safe working harbor.

#### Goal 2: Commercial & Recreational Boating & Fishing

Support and promote commercial and recreational boating and fishing.

#### Goal 5: Relationships

Build respectful, productive, and mutually beneficial business relationships with our tenants, public agencies, elected officials, and the community.

#### Goal 6: Public Service

Provide exceptional public service and transparency at all levels within the organization through effective leadership, training, mentoring, and oversight. This promotes accountability, increased public trust, and a more efficient, effective, and public focused organization.

### **5-YEAR OBJECTIVES:**

#### Objective E: Public and Civic Engagement Plan

Strengthen communication and further develop close working relationships with stakeholders, business partners, and civic leaders

1: Collaborate with business partners and stakeholders through increased engagement, communication, and participation.

#### Objective F: Commercial Fishing

Support current commercial fishing industry central to Ventura's premier working waterfront through: stakeholder engagement, diversification, and infrastructure improvements.

2: Continue improvements of Commercial Fishing Industry service offerings by District

**VENTURA PORT DISTRICT  
DEPARTMENTAL STAFF REPORT**

Meeting Date: September 16, 2020

TO: Board of Port Commissioners  
FROM: Dave Werneburg, Marina Manager / Commercial Fisheries  
SUBJECT: August 2020 Marina Report

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**MARINA DEPARTMENT ACTIVITIES**

**California Market Squid Harvest – Ventura Harbor**

- No commercial squid landings in August in Ventura Harbor
- Squid fleet continues to enjoy modest landings in Monterey and Halfmoon Bay areas.
- 19 - 20YTD (Starting April 1, 2019): 581 landings, 9,262,965 lbs. / 4,631 tons.
- California Squid Season Limit: 118,000 tons.

**Commercial Fishing Vessel Activity**

As we cautiously transition into a La Nina condition, Marina is slowly starting to repopulate with returning fishing fleet. By mid-October we anticipate a full house.

**Dive Boat Conception Anniversary**

September 2<sup>nd</sup> was the first anniversary of the tragic fire on the Dive Boat Conception that claimed 34 lives. We feel privileged and honored to have participated in observing this first year's anniversary. There were numerous organizations, agencies, and individuals who came together to commemorate the victims. Barbara Gentile, owner of Malibu Divers, had a very personal connection to more than a few of those divers who perished. Barbara worked tirelessly over the past year to orchestrate a memorial and bringing families together to honor their loved ones. It required seven permits, one permit alone was 70+ pages, but she brought it all together in time for the first anniversary. Please reference the press release below for more detail:

<https://www.divenewswire.com/families-dive-community-honor-lives-lost-on-the-anniversary-of-the-m-v-conception-tragedy/>

One of the logistics was to transport a 900-pound granite memorial stone from Ventura Harbor out to Santa Cruz Island. On August 31<sup>st</sup> the memorial stone arrived on our Fish Pier to be loaded onto a Los Angeles Port Police vessel for transport. Their vessel was equipped with its own crane, although the District had staff on hand to assist with the use of the District's crane, if required. Out of curiosity, I inquired how would they move a 900-pound granite stone from the vessel to the shore. Barbara just smiled and said it was never intended to go ashore; it would be lowered in the exact GPS location that the Conception sank, thus creating an underwater monument within a National Park.

It was a collaborative effort with the LA Port Police, Los Angeles Sheriff Department Dive Team and Reserve Dive Team and NOAA in transporting and positioning the monument in the exact location and resting place beneath the surface waters of Platt's Harbor. Many of the Sheriff's Dive Team and Reserve Dive Team were those who recovered the bodies and wreckage of the vessel in the days following this tragic accident. It was a day of remembrance, reverence, prayer, great sadness, and tears. In the process of positioning the monument a very friendly and curious sea lion was ever present. He's been dubbed The Guardian of the Sone. He remained throughout the installation and for the next several days when family and friends were allowed to dive down.









# DEPARTMENTAL STAFF REPORTS

## MARKETING

### **LONG-TERM GOALS:**

#### Goal 3: Economic Vitality

Increase economic development, vitality, and diversity of the District through effective leasing and marketing strategies.

#### Goal 5: Relationships

Build respectful, productive, and mutually beneficial business relationships with our tenants, public agencies, elected officials, and the community.

#### Goal 5: Public Service

Provide exceptional public service and transparency at all levels within the organization through effective leadership, training, mentoring, and oversight. This promotes accountability, increased public trust, and a more efficient, effective, and public focused organization.

### **5-YEAR OBJECTIVES:**

#### Objective E: Public and Civic Engagement Plan

Strengthen communication and further develop close working relationships with stakeholders, business partners, and civic leaders

- 1: Collaborate with business partners and stakeholders through increased engagement, communication, and participation.

#### Objective V: Harbor Village

Maintain and improve Harbor Village infrastructure and enhance the overall visitor experience

- 3: Marketing Action Plan

# AUGUST MARKETING REPORT

## Enhance Visitor Experiences

### RECOVERY MESSAGING

A new mask blog post & dedicated page developed to showcase the over seven locations to purchase masks in the Harbor Village. Messaging remains featured on the home page, shop pages, visitor Information page, and the COVID update pages on the website, as well as social media channels.



### TENANT FEEDBACK

Following input from the **Village Tenant Meet Up** on Successes & Challenges, the Marketing team has **added additional mask wearing signs** at five entrances to various courtyards facing parking lots in Ventura Harbor Village reminding guests to bring and wear their face covering from their vehicle. Inspired by a flyer produced by Island Packers at their entrance, the messaging resonates to inspire cooperation to help local businesses to remain open.



### VENTURA HARBOR VIRTUAL SUMMER CONCERTS

In a continuous effort to engage on social media as well as keep in touch with Ventura Harbor Village customers that remain at home, or those interested and promotion of take-out Ventura Harbor Village restaurant options as well, the **Live Streaming Series** continued in August.



**Unkle Monkey**  
August 1, 2020  
Total Reach: **8k**  
Minutes Watched: **2,798**  
Post Engagement: **689**



**Pan On De Run**  
August 15, 2020  
Total Reach: **7k**  
Minutes Watched: **2033**  
Post Engagement: **625**

### NEW PHOTO OP

**New Photo Board** for visitor photos! Serves as an opportunity to encourage social media engagement.



### CA FLAGS ON PROMENADE



As part of the **California Road Trip campaign**, new California flags were displayed on the Village Promenade in August and will continue into the Fall as well to welcome visitors on their California Road Trip seaside.

### HOLIDAY DECORATIONS

Marketing team continues to engage in meetings regarding holiday décor as well as options as holidays are getting closer, and what would be possible with Covid regulations. Looking at **virtual Halloween happenings & contesting** as well as Christmas in the harbor and continuing the program forward to enhance the new holiday décor.



# AUGUST MARKETING REPORT

## Engage Customers via Paid Media

### DATA DRIVEN DECISIONS

Demographic data is derived from website & social media platform analytics, campaign performance, & data surveys. The top demographics for August 2020 are:

Ages

AGES 35 - 54

Markets

**LOS ANGELES**  
VENTURA COUNTY  
SANTA CLARITA

Interests

PATIO DINING  
BOAT RENTALS  
SHOP / PLAY  
COVID INFO  
HARBOR LIVE  
BEACHES

#### PLEASE NOTE:

The data above is a summary of top results for the month, it is not reflective of all demographic data on Ventura Harbor Platforms.

### RECOVERY MESSAGING

Two Tenant Enewsletters featured consumer travel data sharing national & California research on visitor travel trends. Tenant Meet Up in August provided an opportunity to share Challenges & Successes. **Patio dining** continued to be a top topic as well as those **businesses that had to pivot** to outdoors for services. Frenchies Nail Salon, outdoor space was promoted on number of outlets, as well as a new virtual room released by The Ultimate Escapes Room.



### PAID ADVERTISING WITH LOCAL & REGIONAL REACH

**Ventana** features "Best Seaside Patio Dining & Scenic Views" (Reaches 33,000+)  
**805 Living Magazine** full page ad with all tenants listed + 3 digital 'The Post' send outs featuring: "Frenchies Now Open in Harbor Village" / "Seas the Day" Visit Ventura Harbor Safely / Whale Watching with Island Packers (Reaches 31,800+)  
**Downtown Ventura Big Belly Ads** daily display to downtown visitors  
**Ventura RV Park Welcome Booklet Ad** daily display RV Park Guests  
**Facebook & Instagram Paid Ads** focus on Patio Dining / Whale Watching / Day-cations  
**Ventura Auto Center Electronic Billboard** see details below (885 displays per day)  
**Visit Ventura Digital Web Banner** We're Open + "Seas the Day" messaging  
**Visit Ventura Center** "Seas the Day" poster with Harbor tenants & Village Map Distribution  
**Visit Ventura Blog:** see details below (50k Impressions)

### VISIT VENTURA TOURISM CO-COP

Joined in a coop paid blog post with Visit Ventura to promote a new "Daycation" itinerary for Ventura Harbor Village. Results: **50k** impressions | **2k** clicks | **\$200** spend  
Primary market was California, then Texas & Florida for planning ahead for future travel to Ventura.



### 101 FREEWAY ELECTRONIC SIGN

In August, in an effort to reach those traveling north and south on Highway 101, visitors and residents alike, two ads were featured: Patio Dining Best Scenic Views & We're Open Sea You Seaside on the electronic Ventura Auto Center electronic sign board in Oxnard to promote visitation and awareness.



# AUGUST MARKETING REPORT

## Social Media & Content Development

### RECOVERY MESSAGING

In August, the goal was to curate and gather more **content on face coverings**. Marketing incorporated weekly visuals of guests wearing masks. Overall website sessions were up 77%! Los Angeles Market far surpassed any other region with over 5k sessions during the month of August.

### INSTAGRAM

19,063 Followers (↑ 4.4%)  
13,769 Engagement (↑ 15.7%)  
394,715 Impressions (↑ 28.8%)

### FACEBOOK

26,106 Followers (↑ 1%)  
64,327 Engagement (↓ 7%)  
1.37 mil Impressions (↓ 5%)

### TWITTER

5,499 Followers (↑ .1%)  
32 Link Clicks (↓ 55.6%)  
8,786 Impressions (↓ 13.9%)



### SAMPLE SOCIAL TOPICS:

Harbor Dining, Retail, Experiences + new signage at Ventura Isle Marina, whale watching, Wearing is Caring campaign for masks, Channel Islands National Park Volunteers Receive National Recognition. plus the below...

Ventura Harbor @VenturaHarbor · Aug 4  
Monthly kayak storage now available at Ventura Port District Dry Boat Storage. Only a few spots left!

Fill out an application today [venturaharbor.com/directory/vent...](https://venturaharbor.com/directory/vent...)



KAYAK SPACE AVAILABLE  
IN VPD DRY STORAGE LOT

Ventura Harbor @VenturaHarbor · Aug 5  
Congratulations to VPD Commissioner & Vice-Chairman, Brian Brennan, for his reappointment by Ventura City Council for a 4-year term with the Ventura Port District.

Thank you Commissioner Brennan for your continued dedication & service to Ventura Harbor.  
[venturaharbor.com/port-commissio...](https://venturaharbor.com/port-commissio...)



COMMISSIONERS  
REPOINTMENT

Ventura Harbor @VenturaHarbor · Aug 17  
Finishing touches have been completed on the Ventura Harbor Village Commercial Dock Replacement Project. Bellingham Marine Industries replaced power pedestals at all of the older docks in July.

Read the full @TheLogNewspaper update here [bit.ly/3158zAc](https://bit.ly/3158zAc)



LOG ARTICLE ON DOCK  
REPLACEMENT COMPLETION

### BLOGS & NEWSLETTERS

August 7th  
1,414 opens | 213 clicks



AUGUST 12TH  
1,286 opens | 120 clicks



AUGUST 15TH  
1,239 opens | 87 clicks



AUGUST 22nd  
1,246 opens | 77 clicks



SEASIDE OLYMPIC GAMES

AUGUST 26th  
1,419 opens | 100 clicks



VIRTUAL EDUCATIONAL EXPERIENCES

### AUGUST SOCIAL MEDIA STORIES

Total Stories Posted: **12 videos** | Total Impressions: **8.1k**

Topics: **Social Distanced Promenade Stroll** | **Streaming Music** | **National Dog Day** | **Shark Week Themed Chocolate** | **Lost in Socks Merch** | **Tagged Visitor Posts**

### AUGUST PAID SOCIAL ADS

**Whale Watching Video:** 65,471 Reach | 8,994 Link Clicks | \$250 Spend  
**Patio Dining:** 57,360 Reach | 3,951 Link Clicks | \$350 Spend  
**Day-Cation Getaway:** 24,792 Reach | \$150 Spend | 591 Link Clicks

Best  
performing ad  
of summer!



# AUGUST MARKETING REPORT

## Earned Media & Tourism

### EV CHARGING STATION COVERAGE

Content appeared in the following media outlets to date:



**VCReporter**

**Amigos805**  
Bringing cultures together by sharing information

**theLog**  
California's Boating & Fishing News

**EINPRESSWIRE**

**2NEWS**  
COVERAGE YOU CAN COUNT ON

*Girls on the Air*  
Real Women in Real Estate  
KVTA 1590 AM

**News Break**

BUSINESS GOVERNMENT LOCAL NEWS

**Ventura Harbor Increases Sustainability and Ventures into New EV Charging Stations from SemaConnect** Five new electric vehicle charging stations support EV drivers at Harbor Cove Beach and Ventura Harbor Village

by Community Contributor • August 10, 2020 • Comments Off

**VENTURA** — The Ventura Port District has installed five new SemaConnect charging stations for Ventura Harbor visitors. The new Series 6 charging stations replace a pair of charging stations previously installed at Island Packers and are open to all plug-in EV drivers that visit the harbor.



*"Sustainability is a major initiative at Ventura Harbor."*

**Ventura Harbor increases sustainability**



### RECOVERY MESSAGING

Marketing continues to meet with Visit California, Central Coast Tourism, and LA Tourism on webinars and conference calls, along with reviewing weekly updates on **consumer sentiment & data** regarding travel and apply to the efforts of with the Port District. Visitor data on travel was shared with Village tenants in August.

### EV CHARGING STATIONS

Working with PR team at SemaConnect (national send out) & Somerville Associates (more localized CA coverage) to promote **5 new EV Charging Stations** in Ventura Harbor, Harbor Cove Beach, and near the Island Packers offices with the release of a joint press release. Total media distribution of more than 500+. Coverage to date has included: Front page of the Ventura Breeze, VC Reporter, Newsbreak.com, Ohio Radio Station News Website, KVTN in Reno, Nevada, KVTA Talk Radio in Ventura, and upcoming coverage in September by The Log newspaper & online. Featured editorial, shared on social feeds, & provided info to public on both harbor websites.

*"Sustainability is a major initiative at Ventura Harbor," said Brian Pendleton, general manager at Ventura Harbor. "We've seen an increase in visitors with electric vehicles in the last few years, and we're excited about the addition of our new SemaConnect stations.."*

*"SemaConnect is honored to be the Ventura Port District's choice for electric vehicle charging stations," said Georgette Cardona, national sales director at SemaConnect.*

### MASK CAMPAIGN CO-OP

Via a request by Visit Ventura to share visiting Ventura safely, the Marketing team shared a content call to produce 10 second video wearing masks to share with potential visitors to the area. Five businesses participated: Ventura Boat Rentals / Lemon & Lei / Top This Chocolate / Casa de Regalos / Ventura Potters Gallery. Shared on social by Visit Ventura to spread our "Seaside Safely" campaign.



# DEPARTMENTAL STAFF REPORTS

## PROPERTY

### **LONG-TERM GOALS:**

#### Goal 3: Economic Vitality

Increase economic development, vitality, and diversity of the District through effective leasing and marketing strategies.

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Build respectful, productive, and mutually beneficial business relationships with our tenants, public agencies, elected officials, and the community.

#### Goal 5: Public Service

Provide exceptional public service and transparency at all levels within the organization through effective leadership, training, mentoring, and oversight. This promotes accountability, increased public trust, and a more efficient, effective, and public focused organization.

### **5-YEAR OBJECTIVES:**

#### Objective E: Public and Civic Engagement Plan

Strengthen communication and further develop close working relationships with stakeholders, business partners, and civic leaders

- 1: Collaborate with business partners and stakeholders through increased engagement, communication, and participation.

#### Objective V: Harbor Village

Maintain and improve Harbor Village infrastructure and enhance the overall visitor experience

- 1: Complete Harbor Village refresh programs
- 2: Leasing/Property Management Action Plan



## **VENTURA PORT DISTRICT**

### **DEPARTMENTAL STAFF REPORT**

Meeting Date: September 16, 2020

TO: Board of Port Commissioners  
FROM: Robin Baer, Property Manager  
SUBJECT: August 2020 Property Manager Report

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### **CURRENT TENANT REPORT**

- 1) Harbor Businesses seeking COVID-19 Ventura Harbor Rental Abatement and Deferment Program, Resolution Number 3387 (for the month of August)
  - Staff continues to work with tenants on their qualification for this new plan and/or the City Ordinance
- 2) *Sugar Lab – 1575 Spinnaker #105A/B*
  - Tenant has received City of Ventura permit and started construction on August 27<sup>th</sup>. Estimated completion by December holiday
- 3) *Frenchies Nail Salon – 1583 Spinnaker Drive #105* –Tenant has opened her business and is working with District staff, City of Ventura, Fire Marshall and Health Department. She is still struggling due to the Health Order closures/demands causing reduced customers and staff.

### **CURRENT AVAILABILITY REPORT**

- *1567 Spinnaker Drive #100 –*
  - Staff has received a proposal and is currently reviewing the contents.
    - Staff is coordinating a meeting with the prospective tenant to review and discuss their proposal.
- *1591 Spinnaker #207 (office).* This space is being advertised on our leasing outreach programs listed below.
- *1591 Spinnaker Drive #114 & 115.* This space is being advertised on our leasing outreach programs listed below.
  - Staff had several meetings with a prospective tenant that submitted a complete business proposal for the two remaining spaces. At this time, this prospective tenant is unable to commit to a lease due to some mitigating issues caused by COVID-19. Staff continues to actively market the space(s)

### **LEASING OUTREACH**

- A) Leasing Outreach – Daily exposure with our ads online via LoopNet/CoStar which covers the following:
- Listed on Ventura Harbor Village and Ventura Harbor websites, along with window leasing signage on available properties
  - Top three commercial real estate marketplaces:
    - Craigslist advertisements;
    - LoopNet, City Feet and Showcase;
    - Email Networking blasts from interested parties
    - 150 plus online newspaper websites including Wall Street Journal
    - 24 Million visitors to these sites /200,000 real estate professionals use CoStar

## OCCUPANCY LEVELS AT HARBOR VILLAGE

August 2020

CATEGORY	TOTAL Square Footage	Harbor Vacancy Sq Ft	Harbor Vacancy %	Harbor Available Sq Ft	Harbor Available %	City *	City *
						Vacancy %	Available %
Office	19,759	1,420	7%	2,703	14%	22%	45%
Retail	22,518	0	0%	13,075	58%	26%	39%
Restaurant	32,197	1,537	5%	3,927	12%	42%	42%
<b>&gt; Harbor Vacancy --- No tenant or lease</b>							
Office ----		1591 -- Hawkridge Systems					
Retail ---		N/A					
Restaurant ---		1591 -- BS Taproom					
<b>&gt; Harbor Available --- Tenant on MTM lease, including Harbor Vacancy numbers</b>							
Office ----		1591 -- Custom Embroidery, Hawkridge Systems, Martin/Gray					
Retail ---		1559 -- Comedy Club					
		1567 -- Carousel , HV Gallery, Treasure Cove, Potters Guild					
		1583 -- Lemon & Lei					
		1591 -- Ultimate Escape Rooms					
Restaurant ---		1575 -- 805 Bar/Copa Cubana					
		1591 #114/#115 -- Blackbeard's					
<b>* City --- Based on comparable square footage within Ventura 93001 area</b>							
<b>** Occupancy Levels for Office -- tend to be lower due to shorter lease terms</b>							
<b>*** City Restaurant vacancy/available as reported by CoStar Program</b>							
<b>**** Definition of available includes MTM status but the District is not taking action to replace tenants on MTM during the pandemic.</b>							

## SALES REPORTS

The attached summary for June and July provides sales for three categories: restaurants, retail, and charters. The reports compare the monthly sales for 2019 and 2020. They also include year-to-date comparisons. The year-to-date overall sales for Harbor Village Tenants in June were 31.26% down and July were down 29.55% from the same time last year.

## ATTACHMENTS:

Attachment 1 – June 2020 Sales Report

Attachment 2 – July 2020 Sales Report

# ATTACHMENT 1

## Ventura Harbor Village Tenant Sales Summary

Month of  
06/2020

	<u>June-2020</u>	<u>June-2019</u>	<u>% Change</u>
Restaurants	\$ 1,563,461	\$ 1,680,449	-6.96%
Retail	\$ 466,141	\$ 472,945	-1.44%
Charters	\$ 298,758	\$ 742,192	-59.75%
Total	\$ 2,328,360	\$ 2,895,586	-19.59%

Year-to-date through June 2020

	<u>June-2020</u>	<u>June-2019</u>	<u>% Change</u>
Restaurants	\$ 6,006,232	\$ 7,750,549	-22.51%
Retail	\$ 1,514,742	\$ 2,005,250	-24.46%
Charters	\$ 1,108,748	\$ 2,797,625	-60.37%
Total	\$ 8,629,722	\$ 12,553,424	-31.26%

## ATTACHMENT 2

### Ventura Harbor Village Tenant Sales Summary

Month of  
07/2020

	<u>July-2020</u>	<u>July-2019</u>	<u>% Change</u>
Restaurants	\$ 1,601,819	\$ 1,992,494	-19.61%
Retail	\$ 557,627	\$ 593,971	-6.12%
Charters	\$ 455,782	\$ 883,705	-48.42%
Total	\$ 2,615,228	\$ 3,470,170	-24.64%

Year-to-date through July 2020

	<u>July-2020</u>	<u>July-2019</u>	<u>% Change</u>
Restaurants	\$ 7,636,977	\$ 9,743,044	-21.62%
Retail	\$ 2,087,367	\$ 2,599,222	-19.69%
Charters	\$ 1,564,530	\$ 3,681,329	-57.50%
Total	\$ 11,288,874	\$ 16,023,595	-29.55%

# DEPARTMENTAL STAFF REPORTS

## TREASURER

### LONG-TERM GOALS:

#### Goal 3: Economic Vitality

Increase economic development, vitality, and diversity of the District through effective leasing and marketing strategies.

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#### Goal 5: Public Service

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### 5-YEAR OBJECTIVES:

#### Objective E: Public and Civic Engagement Plan

Strengthen communication and further develop close working relationships with stakeholders, business partners, and civic leaders

- 1: Collaborate with business partners and stakeholders through increased engagement, communication, and participation.

**VENTURA PORT DISTRICT**  
**DEPARTMENTAL STAFF REPORT**

Meeting Date: September 16, 2020

---

TO: Board of Port Commissioners  
CC: Brian D. Pendleton, General Manager  
FROM: Gloria Adkins, Accounting Manager  
SUBJECT: Quarterly Treasurers Report

---

As of June 30, 2020, the District held cash and investments with a market value of \$12,013,164. Funds held in investments represent those not needed for general operating activities.

Local Agency Investment Fund (LAIF) holds 95% of the June 30, 2020 fund balance:

Enterprise (Operating) Fund	\$4,094,337
Dredging Reserve Fund	3,000,000
Capital Improvement Fund	3,977,543
Capital Improvement –Fisheries Fund	178,221
Project Fund-Village Marina	<u>160,392</u>
Total Funds	\$11,410,493

The Investment Portfolio Report for June 30, 2020 attached herewith includes all of the District's Funds.

Submitted by:   
Gloria Adkins  
Accounting Manager

Date: August 19, 2020

**ATTACHMENTS:**

Attachment 1 – Investment Portfolio Report for June 30, 2020  
Attachment 2 – LAIF Performance Report for June 30, 2020



# ATTACHMENT 1

## Ventura Port District Investment Portfolio Report Quarter Ending 6/30/2020

<u>Security Type</u>	<u>Issuer</u>	<u>CUSIP Number</u>	<u>Maturity Date</u>	<u>Interest Rate</u>	<u>Par Value</u>	<u>Book Value</u>	<u>Percent of Portfolio</u>	<u>Market Value</u>	<u>Market Value Source</u>
<b><u>Cash Investments</u></b>									
State Pool (LAIF)	LAIF-State Treasury		On Demand	1.47%	11,410,493	11,410,493	95%	11,466,551	LAIF
<b>Total Cash Investments LAIF</b>						<b>\$ 11,410,493</b>	<b>95%</b>	<b>\$ 11,466,551</b>	
<b><u>Cash Deposits</u></b>									
<b>Demand Deposits-</b>									
Main checking	Wells Fargo		On Demand	N/A	N/A	285,949	2%	285,949	Wells Fargo
Grant Fund checking	Wells Fargo		On Demand	N/A	N/A	179,307	1.5%	179,307	Wells Fargo
Project Fund checking	Wells Fargo		On Demand	N/A	N/A	61,404	0.5%	61,404	Wells Fargo
Petty Cash	Ventura Port District		On Demand	N/A	N/A	1,514	0.01%	1,514	Ventura Port District
<b>Total Cash Deposits</b>						<b>\$ 528,173</b>	<b>4%</b>	<b>\$ 528,173</b>	
<b><u>Cash in County Treasurer's Pooled Investment Program</u></b>									
County Treasurer's Pool	Ventura County Treasury		On Demand	1.50%	18,439	18,439	0.2%	18,439	Ventura County Treasury
<b>Total Cash in County Treasury</b>				Estimated*		<b>\$ 18,439</b>	<b>0.2%</b>	<b>\$ 18,439</b>	
<b>TOTAL ALL FUNDS</b>						<b>\$ 11,957,106</b>	<b>100%</b>	<b>\$ 12,013,164</b>	

### Notes:

I certify that this report accurately reflects all of the Districts investments, and is in conformance with the adopted District Investment Policy.  
Furthermore, I certify to the best of my knowledge, sufficient investment liquidity and anticipated revenues are available to the meet the District's budgeted expenditure requirements for the next six months.

8/19/2020

Submitted by: Sadya



## PMIA/LAIF Performance Report as of 07/15/20



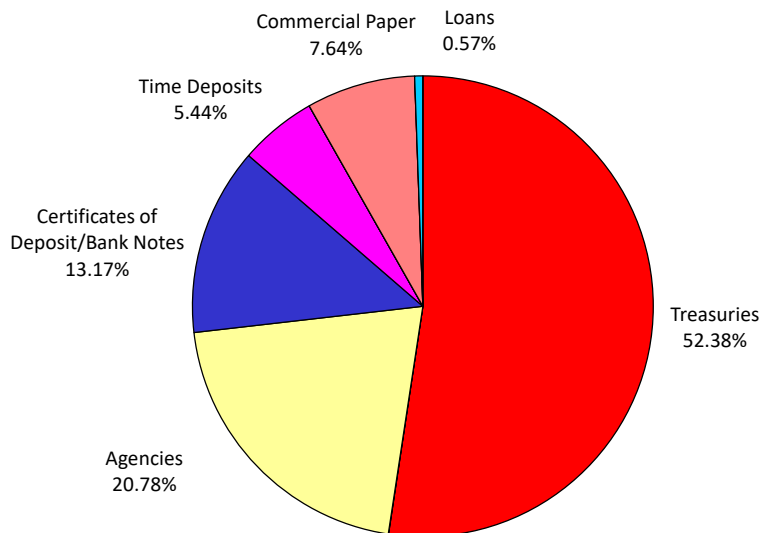
### PMIA Average Monthly Effective Yields<sup>(1)</sup>

Jun	1.217
May	1.363
Apr	1.648

### Quarterly Performance Quarter Ended 06/30/20

LAIF Apportionment Rate <sup>(2)</sup> :	1.36
LAIF Earnings Ratio <sup>(2)</sup> :	0.000037106682614
LAIF Fair Value Factor <sup>(1)</sup> :	1.004912795
PMIA Daily <sup>(1)</sup> :	1.08%
PMIA Quarter to Date <sup>(1)</sup> :	1.41%
PMIA Average Life <sup>(1)</sup> :	191

### Pooled Money Investment Account Monthly Portfolio Composition <sup>(1)</sup> 06/30/20 \$101.0 billion



Percentages may not total 100% due to rounding

Daily rates are now available here. [View PMIA Daily Rates](#)

Notes: The apportionment rate includes interest earned on the CalPERS Supplemental Pension Payment pursuant to Government Code 20825 (c)(1) and interest earned on the Wildfire Fund loan pursuant to Public Utility Code 3288 (a).

Source:

<sup>(1)</sup> State of California, Office of the Treasurer

<sup>(2)</sup> State of California, Office of the Controller



BOARD OF PORT COMMISSIONERS

SEPTEMBER 16, 2020

CONSENT AGENDA ITEM A

AUTHORIZATION OF SPECTRUM PACIFIC  
WEST, LLC FIBER OPTIC INSTALLATION  
AND MAINTENANCE AGREEMENT

**VENTURA PORT DISTRICT**  
**BOARD COMMUNICATION**

**CONSENT AGENDA ITEM A**  
Meeting Date: September 16, 2020

---

TO: Board of Port Commissioners  
FROM: Brian D. Pendleton, General Manager  
Todd Mitchell, Business Operations Manager  
SUBJECT: Authorization of Spectrum Pacific West, LLC Fiber Optic Installation and Maintenance Agreement

---

**RECOMMENDATION:**

That the Board of Port Commissioners authorize the General Manager to sign the Spectrum Fiber Optic Installation and Maintenance Agreement with Spectrum Pacific West, LLC (Spectrum), its successors and grants a non-exclusive easement and right of way to construct, use, maintain, operate, alter, add to, repair, replace, reconstruct, inspect and remove at any time and from time to time an underground fiber optics system (Utilities) along Anchors Point Way to Schooner Drive connect to the Harbortown Point Resort for Spectrum services.

**SUMMARY:**

This Grant of Easement is necessary for Harbortown Point Resort to receive fiber optic services in conjunction with the improvements already implemented within the resort to use these services. Staff has worked with the District's Legal counsel and with Charter Spectrum's project manager and legal department to produce the easement agreement.

**LONG-TERM GOALS:**

- Goal 3: Economic Vitality
  - Increase economic development, vitality, and diversity of the District through effective leasing and marketing strategies.

**5-YEAR OBJECTIVES:**

- Objective M: Master Tenants
  - Collaborate with existing and future Master Tenants to maintain, improve, and develop the Harbor.
    - 1: Engagement and support of Master Tenants for successful business operations at the Harbor.

**BACKGROUND:**

On October 22, 2019, Harbortown Point Marina Resort & Club Owner's Association entered into a non-exclusive installation and service agreement for Spectrum Pacific West to provide above-ground and underground cables, fiber, and associated systems to provide the resort with multi-channel video and audio programming, internet access, and voice services. Construction for those improvements have been progressing throughout the resort during the first half of 2020.

In February of 2020, Carolyn Abul-Haj, the General Manager of Harbortown Point contacted Staff to request that the District work with Spectrum regarding connection to the parcel. At that time, staff determined that although the Utilities proposed will principally be located within the City of Ventura's property, some components were likely to partially encroach into Ventura Port District property.

Over the following months, staff worked with Spectrum to produce obtain plan drawings of the Utility and an easement agreement that is acceptable to both parties and in particular requires that Spectrum maintain the District premises to the reasonable satisfaction of the District. Pre-

construction, the plans show only two vaults within District property with all other facilities planned within the City of Ventura.

**FISCAL IMPACTS:**

None.

**ATTACHMENT:**

None.



BOARD OF PORT COMMISSIONERS

SEPTEMBER 16, 2020

CONSENT AGENDA ITEM B

ACCEPTANCE OF 12-MONTH NO-COST  
EXTENSION TO 2018 CALIFORNIA  
SHELLFISH GRANT



**VENTURA PORT DISTRICT**  
BOARD COMMUNICATION

**CONSENT AGENDA ITEM B**  
Meeting Date: September 16, 2020

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TO: Board of Port Commissioners  
FROM: Brian D. Pendleton, General Manager  
SUBJECT: Acceptance of 12-Month No-Cost Extension to 2018 California Sea Grant

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**RECOMMENDATION:**

That the Board of Port Commissioners authorize the General Manager to execute a 12-month extension to the *Cost Reimbursement Research Subaward Agreement* for the Ventura Shellfish Enterprise (VSE) project.

**SUMMARY:**

The 2018 CA Sea Grant is a two-year period on a one-plus-one yearly basis. The Year 1 grant period was from September 1, 2018 to August 31, 2019 and the VPD received \$169,860, which the Board approved on November 14, 2018. The Year 2 grant period is from September 1, 2019 to August 31, 2020 and the VPD received \$96,800 which the Board approved on November 20, 2019. The total two-year sub-award is \$266,660. The VPD has requested a 1-year, no-cost extension to complete the tasks.

The two-year grant period ended August 31, 2020. The California Sea Grant as grant awardee (the District is sub-awardee) approved the routine 1-year extension allowing for a total of three years to complete Tasks 4-8. The 12-month extension covers the period from September 1, 2020 through August 31, 2021.

**LONG-TERM GOALS:**

- Goal 1: Safety & Navigation
  - Maintain and enhance a safe and navigable harbor
    - a: Securing funding for dredging the Harbor entrance through the Army Corps of Engineers in coordination with agencies and our elected officials
- Goal 2: Commercial & Recreational Boating & Fishing
  - Support and promote commercial and recreational boating and fishing

**5-YEAR OBJECTIVES:**

- Objective F: Commercial Fishing
  - Support current commercial fishing industry central to Ventura's premier working waterfront through: stakeholder engagement, diversification, and infrastructure improvements
    - 3: VSE Project Grant Utilization
- Objective D: Harbor Dredging
  - Ensure that annual dredging occurs at the federal Harbor entrance and as needed in the inner Harbor
    - 1: Support and advocate for congressional funding to the Army Corps of Engineers in support of the Harbor's annual dredging program

**BACKGROUND:**

The VSE project is an initiative proposed by the Port District with support from project volunteers that seeks to permit twenty 100-acre plots for growing the naturalized Mediterranean mussel (*Mytilus galloprovincialis*), in California coastal waters via submerged long lines within the Santa Barbara Channel near Ventura Harbor. Increasing the supply of safe, sustainably produced

domestic seafood is a priority of the State Legislature, NOAA and the U.S. Department of Commerce.

The VSE project objectives include:

- To increase the supply of safe, sustainably produced, and locally grown shellfish while minimizing potential negative environmental impacts;
- To enhance and sustain Ventura Harbor as a major west coast fishing port and support the local economy;
- To provide economies of scale, pre-approved sub-permit area, and technical support to include small local producers who would not otherwise be able to participate in shellfish aquaculture;
- To provide an entitlement and permitting template for aquaculture projects state-wide;
- To enhance public knowledge and understanding of sustainable shellfish farming practices and promote community collaboration in achieving VSE objectives; and,
- To advance scientific knowledge and state of the art aquaculture practices through research and innovation.

The project's origins, goals and project funding are extensively discussed in a project status report to the Board on July 17, 2019. The VSE Annual Status Report was provided to the Commission and stakeholders at the July 15, 2020 Board meeting with the following deliverables:

Task 4 - Permit Assignment Strategy

Task 5 - Environmental Review

Task 6 - Shellfish Sanitation

Task 7 - Grower/Producer Compliance Training Program and Information Dissemination

Task 8 - Project Summary

**FISCAL IMPACT:**

There is no fiscal impact associated with this informational report. The 2018 CA Sea Grant sub-award is \$266,660, of which \$30,184.41 is remaining. The District's required cost match for the 2018 CA Sea Grant is \$272,210. This cost match is achieved through volunteer contributions of time by Ashworth Leininger Group (ALG), Coastal Marine Biolabs (CMB), The Cultured Abalone (TCA) and District staff plus direct costs incurred by the District. The accounting of these costs and volunteer hours are documented through quarterly financial reports prepared for Board consideration and approval.

Additionally, the Port District has contracted Illuminas Consulting to prepare a project economic and fiscal impact analysis that was presented in draft form to the Board on September 2, alongside the Preliminary Operations Plan.

**ATTACHMENT:**

None.



# BOARD OF PORT COMMISSIONERS

SEPTEMBER 16, 2020

## STANDARD AGENDA ITEM 1

APPROVAL OF NOTICE OF PROPOSED  
ORDINANCE FOR THE ASSIGNMENT OF THE  
EXISTING PARCEL 20 MASTER LEASE AND AN  
OPTION AGREEMENT BETWEEN THE VENTURA  
PORT DISTRICT AND DERECKTOR MARINE  
HOLDINGS FOR A NEW 50-YEAR MASTER  
LEASE

**VENTURA PORT DISTRICT  
BOARD COMMUNICATION**

**STANDARD AGENDA ITEM 1**  
Meeting Date: September 16, 2020

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TO: Board of Port Commissioners  
FROM: Brian D. Pendleton, General Manager  
Todd Mitchell, Business Operations Manager  
SUBJECT: Approval of Notice of Proposed Ordinance for the Assignment of the Existing Parcel 20 Master Lease and an Option Agreement Between the Ventura Port District and Derecktor Marine Holdings for a New 50-Year Master Lease

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**RECOMMENDATION:**

That the Board of Port Commissioners adopt Resolution No. 3397 authorizing the Ventura Port District to publish a Notice of Proposed Ordinance for the (1) Assignment of the Existing Parcel 20 Master Lease and (2) Option Agreement between Derecktor Marine Holdings and the District for a New 50-year Master Lease in a newspaper of general circulation.

**SUMMARY:**

The current master tenant of Parcel 20 is Ventura Harbor Marine Associates, LLC (VHMA). VHMA seeks to sell the remaining leasehold and has identified a potential buyer Derecktor Marine Holdings (DMH). As such VHMA has submitted a formal request to the District for assignment to DMH. DMH additionally seeks an option for a 50-year lease (30-year lease with a 20-year option) and has communicated a goal of implementing a new development plan for Parcel 20. This would be based in part on a plan submitted by VHMA and approved by the Board in November 2015. The plan was described as the Ventura Harbor Marina and Yacht Yard (VHMY) Expansion project. The assignment has been reviewed by District legal counsel and the request for 30-year lease with 20-year option has been the subject of negotiation with the District's management team. Separately, DMH seeks to purchase the boatyard business VHMY. The District must approve subleases and/or change of ownership involving subleases.

**LONG-TERM GOALS:**

- Goal 3: Economic Vitality
  - Increase economic development, vitality, and diversity of the District through effective leasing and marketing strategies.
- Goal 5: Relationships
  - Build respectful, productive, and mutually beneficial business relationships with our tenants, public agencies, elected officials and the community.

**5-YEAR OBJECTIVES:**

- Objective M: Master Tenants
  - Collaborate with existing and future Master Tenants to maintain, improve, and develop the Harbor.
    - 1: Engagement and support of Master Tenants for successful business operations at the Harbor.

**BACKGROUND:**

On November 18, 2015:

- The Board Adopted Resolution No. 3289 certifying the Mitigated Negative Declaration and Mitigation Monitoring Program for the VHMY Expansion project;
- Approved the Project by Resolution No. 3289, with conditions as depicted in the Final Initial Study- Mitigated Negative Declaration (IS-MND); and,
- Authorized the General Manager to File the Notice of Determination (NOD) with the State Office of Planning and Research and the Ventura County Clerk.

The VHMYY Expansion project generally included:

- Expansion and improvements of the existing VHMYY to increase the number of boat slips from 40 to 80 (40 new boat slips).
- The proposed expansion involved removing the existing dock structure, concrete ramps, a portion of the existing pier, and fuel docks;
- Construction of an expanded dock structure;
- Relocation of the fuel dock;
- Onshore parking improvements; and,
- Other related facility improvements including a new American with Disabilities Act (ADA) ramp and new 2-story marine building with added restroom/shower facilities.

Tom Derecktor and Leonora Valvo have provided background information regarding their experience and have demonstrated financial capability to qualify for the assignment to the District's satisfaction.

Mr. Derecktor and Ms. Valvo presented DMH's proposal for their vision for redevelopment of Parcel 20 through the period following the assignment and extending into the 50-year lease option (30-year lease with a 20-year option) during the Board of Commissioners meeting on August 19, 2020. They have reviewed the previously proposed VHMYY Expansion project to determine what changes may be appropriate and mutually beneficial for DMH and the District. A revised VHMYY Expansion project or updated development plan will need project approvals from the District and other regulatory bodies including but not limited to the California Coastal Commission, U.S. Army Corps of Engineers, Los Angeles Regional Water Quality Control Board and the City of Ventura. These approvals or "entitlements" are typically a multi-year process and a condition for execution of the option.

The Assignment and Option Agreement generally provides that:

- DMH will assume the existing lease with a remaining term through 2029.
- Concurrently, DMH will receive a 5-year option with the ability to extend for 1 additional year and pay the Port District a total of \$100,000 over the 5-year period for the option.
- During the option period, DMH will prepare plans for development of a new marina to be approved by the Port District, City, Coastal Commission and other regulatory agencies as necessary.
- Allowable uses include:
  - Marina
  - Boat yard
  - Boat construction
  - Boat storage
  - Boat brokerage/sales
  - Marina fuel and oil sales
  - Marina Charters including sportfishing and parasailing
  - Restaurant
  - Retail sales
  - Office rentals
  - Parking
  - Additional uses identified in the percentage rent schedule
- Generally, once the project is fully entitled and project financing is secured, DMH can exercise the option for the 30-year lease. DMH will pay the Port District \$100,000 to exercise the option.
- DMH agrees to invest a minimum of \$3.5M in capital improvements in Parcel 20 generally consistent with the VHMYY Expansion Project within 36 months of execution of the 30-year lease.
- By the end of the 30-year lease, DMH will complete modernization improvements and pay the Port District \$200,000 in order to exercise the 20-year option.

- DMH will pay the Port District minimum monthly rent. Total rent will be the greater of the minimum monthly rent or percentage rent achieved through sales occurring on Parcel 20.

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.

If the Board of Port Commissioners adopt Resolution No. 3397 authorizing the Ventura Port District to publish a Notice of Proposed Ordinance for the Parcel 20 Lease Assignment and Option Agreement for 50-Year Lease (30-Year Lease with 20-Year Option) in a newspaper of general circulation the Board may then adopt the Ordinance on October 7, 2020 and the Option will become effective immediately.

**FISCAL IMPACT:**

The Port District will continue to receive rent from DMH after it assumes the master lease for Parcel 20. DMH will pay the Port District a total of \$100,000 over a 5-year period to receive an option for a new 30-year lease. DMH will pay the Port District \$100,000 when they exercise the option and will invest a minimum of \$3.5M in capital improvements within 36 months of the new 30-year lease. DMH will complete modernization improvement before the end of the 30-year lease and pay the Port District \$200,000 to exercise the remaining 20-year option.

**ATTACHMENTS:**

Attachment 1 – Resolution No. 3397





**RESOLUTION NO. 3397**

**RESOLUTION OF THE BOARD OF PORT COMMISSIONERS  
OF THE VENTURA PORT DISTRICT TO APPROVE  
(1) ASSIGNMENT OF THE EXISTING PARCEL 20 MASTER LEASE, AND  
(2) AN OPTION AGREEMENT BETWEEN THE VENTURA PORT DISTRICT AND  
DERECKTOR MARINE HOLDINGS FOR A NEW 50-YEAR MASTER LEASE**

WHEREAS, the Ventura Port District ("District") is considering entering into an Option Agreement with Derecktor Marine Holdings (DMH), with a commencement date of October 8, 2020 ("Option"), which option will entitle DMH to a new fifty (50) lease ("Lease") upon the meeting of certain conditions, as set forth in the Option;

WHEREAS, the Lease is for a period of fifty (50) 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 Option 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 16th day of September 2020, adopted by the following vote:

AYES:

NOES:

Absent:

Abstain:

\_\_\_\_\_  
Chairman

Attest:

\_\_\_\_\_  
Secretary

**EXHIBIT A**

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

(California Harbors and Navigation Code section 6270)

NOTICE IS HEREBY GIVEN that on October 7, at 7:00PM, 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 and via Zoom meeting.

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. 53”

AN ORDINANCE OF THE BOARD OF PORT COMMISSIONERS  
OF VENTURA PORT DISTRICT APPROVING  
(1) ASSIGNMENT OF THE EXISTING PARCEL 20 MASTER LEASE, AND 2) AN OPTION  
AGREEMENT BETWEEN THE DISTRICT AND  
DEREKTOR MARINE HOLDINGS FOR A NEW 50-YEAR MASTER LEASE  
(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 Option Agreement between Ventura Port District, and Derektor Marine Holdings, with a commencement date of October 8, 2020.”

A copy of the proposed option 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 immediately after final passage.

This Notice is published at the direction of the Board of Port Commissioners pursuant to Resolution No. 3397 duly adopted at the regular meeting of the Board of Port Commissioners of the Ventura Port District held on September 16, 2020.

Brian D. Pendleton, General Manager  
Ventura Port District

EXHIBIT B

**ASSIGNMENT AND OPTION TO LEASE**

**PARCEL 20**

**AMONG**

**VENTURA PORT DISTRICT**

**DERECKTOR MARINE HOLDINGS LLC AND**

**VENTURA HARBOR MARINE ASSOCIATES, LLC**

**EXHIBIT B****TABLE OF CONTENTS**

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**EXHIBITS**

Exhibit A	Premises
Exhibit B	Lease
Exhibit C	Quitclaim Deed of Option

## EXHIBIT B

ASSIGNMENT AND OPTION TO LEASE1. IDENTIFICATION

This Assignment and Option to Lease (“Option to Lease”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and among VENTURA PORT DISTRICT, a port district formed under and pursuant to Part 4 of the California Harbors and Navigation Code of the State of California, hereafter “Optionor,” DERECKTOR MARINE HOLDINGS LLC, a Delaware limited liability company, hereafter “Optionee,” and VENTURA HARBOR MARINE ASSOCIATES, LLC, a California limited liability company, hereafter “Assignor.”

2. RECITALS

2.1 Optionor is the owner of certain land and water area within the City of San Buenaventura (hereafter “City”) which Optionor is developing, improving and operating as a harbor (hereafter “Ventura Harbor”).

2.2 Assignor is the holder of the interests of Lessee under that certain Ground Lease dated August 1, 1989, as amended (“Ground Lease”), and of Licensee under that certain License Agreement dated September 30, 1987, as amended (“License”), by and among Assignor and its predecessors in interest as Lessee and Licensee and Optionor as Lessor and Licensor.

2.3 In connection with that certain Asset Purchase Agreement dated \_\_\_\_\_, 2020, entered into by and between Assignor and Optionee, Assignor desires to assign its interest in and to the Ground Lease and License, and has requested Optionor to consent to such assignment.

2.4 In order to further develop and improve Ventura Harbor and to provide facilities for the accommodation of those using the harbor, Optionor and Optionee desire to enter into a lease for a certain portion of Ventura Harbor known as Parcel 20 (hereafter referred to as the

## EXHIBIT B

“Premises”) and more particularly described in Exhibit “A” attached hereto, initialed by Optionor and Optionee and by this reference incorporated herein.

2.5 Pending the actual leasing of the Premises by Optionee, Optionor desires to grant to Optionee, and Optionee desires to secure from Optionor, the right and option to lease the Premises under the terms and conditions set forth herein.

2.6 Optionor and Optionee acknowledge that before a lease of said Premises can be entered into, Optionee must expend certain sums for the planning and design of improvements to be constructed on the Premises, for securing permits and approvals required for said construction, and for obtaining the financing to construct the improvements.

2.7 Optionor and Optionee acknowledge that the full performance of the obligations required to be performed by Optionee under this Option to Lease forms a material part of the consideration for the subsequent lease between Optionor and Optionee, the form of which is attached hereto as Exhibit “B” (hereinafter the “Lease”), and Optionor and Optionee agree that said performance is a condition precedent to the execution of said Lease and a condition precedent to the acquisition by Optionee of any real property interest in and to the Premises, except for the interest Optionee acquires hereunder by Assignor’s assignment of its interests in the Ground Lease and License.

2.8 Optionee understands that this Option to Lease contains provisions which, by their terms, and upon their being effective, will result in the automatic forfeiture and termination of this Option to Lease and all interests of Optionee hereunder and in the Premises. Optionee acknowledges that the effectiveness of such provisions is a material part of the consideration bargained for by Optionor under this Option to Lease and that, if such provisions are rendered unenforceable for any reason, this Option to Lease would not be just and reasonable nor would

## EXHIBIT B

Optionor have received adequate consideration for this Option to Lease. Nothing contained herein shall give Optionor the right to automatically terminate this Option to Lease except pursuant to Article 13.1 below.

3. ASSIGNMENT OF GROUND LEASE AND LICENSE

3.1 Assignor does hereby assign all of its rights, title and interest in and to the Ground Lease and the License to Optionee. Assignor represents and warrants that it has full rights, power and authority to assign the entire Ground Lease and License to Optionee.

3.2 Optionee does hereby assume all of Assignor's rights title and interest in and to the Ground Lease and License, expressly assumes all duties and obligations of Assignor thereunder, and agrees to make all of the payments and to perform all of the terms, covenants, and conditions of the Ground Lease and License.

3.3 In consideration of the foregoing, Optionor consents to Assignor's assignment of all of its rights, title and interest in and to the Ground Lease and License to Optionee.

4. GRANT OF OPTION

Optionor grants to Optionee the right, privilege and option to lease from Optionor the Premises on the terms and conditions set forth in the Lease attached as Exhibit "B" hereto, subject to:

(i) Optionee's full and complete performance of all duties and obligations set forth in this Option to Lease; and (ii) the full and complete performance by Optionee of all duties and obligations under the Ground Lease and License.

5. OPTION TERM

5.1 The term of this Option to Lease shall commence on the date set forth in Article 1 above and shall expire sixty (60) months from the date indicated therein ("Option Term"), unless sooner terminated or extended as provided herein.



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5.2 Optionor hereby grants to Optionee the option to extend the Option Term for an additional period of twelve (12) months. To exercise said option, Optionee shall (i) give Optionor written notice of its intent to extend the Option Term no later than sixty (60) calendar days before the expiration of the Option Term, and no earlier than one hundred twenty (120) calendar days before the expiration of the Option Term; and (ii) pay to Optionor a non-refundable fee of Twenty Thousand Dollars (\$20,000), which shall be paid before or contemporaneously with Optionee's delivery of the aforementioned notice in this Article 5.2.

5.3 If Optionee fails or is unable to exercise the option granted in Article 4 during the Option Term, then this Option to Lease shall automatically terminate as to the Premises in accordance with Article 13.1 below.

6. PAYMENTS FOR OPTION

6.1 In part consideration for this Option to Lease, Optionee agrees to pay to Optionor a non-refundable fee of Fifty Thousand Dollars (\$50,000), which shall be paid contemporaneously with the execution of this Option to Lease.

6.2 In addition to the fee provided for in Article 6.1, Optionee agrees to pay Optionor a non-refundable fee of Fifty Thousand Dollars (\$50,000), which shall be paid in sixty (60) monthly installments. The first fifty-nine (59) installments shall be in the amount of Eight Hundred Thirty-Three Dollars and Thirty-Three Cents (\$833.33) and the sixtieth (60<sup>th</sup>) installment shall be in the amount of Eight Hundred Thirty-Three Dollars and Fifty-Three Cents (\$833.53). Except for the first installment, which shall be paid contemporaneously with the execution of this Option to Lease, Optionee shall pay to Optionor each installment provided for in this Article 6.2 on or before the first day of each calendar month.

## EXHIBIT B

6.3 To exercise the option granted in Article 4, Optionee shall pay to Optionor a fee of One Hundred Thousand Dollars (\$100,000), which shall be paid before or contemporaneously with Optionee's written notice to Optionor that it is exercising said option, as provided in Article 12.1.

7. IMPROVEMENTS TO BE DESIGNED AND CONSTRUCTED BY OPTIONEE

7.1 As additional consideration for this Option to Lease, Optionee shall, at its sole expense, plan and design, within the time periods provided in Article 8 below, the required improvements identified in this Article 7.1, including ancillary improvements and infrastructure:

Waterside and landside improvements substantially similar in scope and magnitude to the project approved by the Board of Commissioners and for which a Mitigated Negative Declaration was adopted via Resolution 3289 on November 18, 2015, with a minimum value of \$3,500,000.

7.2 As additional consideration for this Option to Lease, and if necessary or appropriate by reason of the nature of the design of the proposed improvements by Optionee, Optionee shall, at its sole cost and expense, prepare all plans and designs necessary for the relocation of public utility facilities currently existing on or across the Premises, if any. All of said design and planning work shall be subject to the reasonable prior approval of Optionor and such other governmental agencies and private entities as may have jurisdiction or authority over such work.

8. SUBMISSION AND APPROVAL OF DESIGNS, PLANS, DRAWINGS,  
CONSTRUCTION SCHEDULES AND COST ESTIMATES

8.1 All plans, specifications or other designs, including all required environmental impact reports for any and all buildings, installations or other improvements to be constructed, renovated, upgraded and expanded on the Premises by Optionee shall be submitted to Optionor for review, rejection or approval by Optionor, prior to Optionee applying for any other governmental or

## EXHIBIT B

other approval thereof, or for the issuance of any building or other permit whatsoever. Further, Optionor shall have the continuing authority to review, reject, or approve all subsequent iterations of any plans, specifications or other designs, including all required environmental impact reports for any and all buildings, installations or other improvements to be constructed on the Premises by Optionee, prior to the submission of any of these subsequent iterations for any governmental or other approval. Optionor shall review all plans, specifications, or other designs in a timely manner and shall not cause unreasonably delay.

8.2 Plans, specifications and other designs submitted to Optionor shall be reviewed by Optionor and Optionor shall approve, reject or request modification, revision or correction of the plans, specifications or other designs within sixty (60) calendar days after the date of submission. The action of Optionor shall be forthwith communicated to Optionee in writing pursuant to Article 17. The failure of Optionor to respond within said sixty (60) day period shall be deemed to be approval of said submittal. In the event such plans, specifications or other designs are rejected or requested to be modified by Optionor, the reasons for such rejection or required modification shall also be communicated in writing by Optionor to Optionee pursuant to Article 17. In the event Optionor requests revision, modification or correction of the plans, specifications, or other designs so submitted, Optionee shall have sixty (60) calendar days from the date Optionee receives, or is deemed to have received, notice from Optionor under Article 17, within which to submit a revised, modified or corrected plan, specification or other design, as the case may be. Any approval of plans, specifications or other designs under this Article 8 shall in no event be considered as approval of an application for any building or other permit. In addition, any provision in this Option to Lease to the contrary notwithstanding, Optionee shall apply for and secure any and all permits and approvals required by Optionor or by any other government or governmental agency for the conduct of any

## EXHIBIT B

work or the construction of any building, installation or other improvement on the Premises, in the joint name of Optionee and Optionor as co-applicants or co-owners, and Optionor (by its General Manager or other designee) shall sign any and all such permits or approvals before submission.

8.3 In its review of, and decision on any plan, specification, drawing or other design submitted pursuant to the terms hereof, Optionor shall be guided by the provisions of this Option to Lease as well as the architectural and construction standards of the City applicable to developments on the Premises, as such standards may now exist or as they may be amended from time to time.

8.4 The procedure and timing for submission and completion of the designs, plans, drawings, construction schedules and cost estimates relating to the improvements identified in Article 7.1 and utility relocation in Article 7.2 shall be as set forth in this Article 8.4:

<b>Deadline</b>	<b>Action</b>
4 months after date set forth in Article 1	<u>Optionee</u> : engage a qualified architect and/or engineer to conduct a review of the Premises and begin work on plan for the required improvements
1 year after date set forth in Article 1	<u>Optionee</u> : submit proposed final plan for the required improvements to Optionor
2 months after submission of proposed final plan	<u>Optionor</u> : review, comment and schedule for preliminary review and comments of Board of Commissioners
2 months after preliminary review of proposed final plan by Optionor	<u>Optionee</u> : adjust plans and resubmit to Optionor (as necessary) <u>Optionor</u> : select and retain a qualified environmental planner to perform a CEQA review at Optionee's cost. Optionor will obtain a minimum of three proposals and will evaluate costs as part of the selection process.
2 months after completion of the CEQA review	<u>Optionor</u> : provide final approval of plan for the required improvements (as necessary)
5 years after date set forth in Article 1	<u>Optionee</u> : complete and obtain all necessary permitting and entitlements for the required improvements; demonstrate adequate financing to complete the required improvements

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8.5 Concurrently with the submittals of schematic plans required under Article 8.1 above, Optionee shall submit such additional documentation, if any, as may be reasonably necessary to assist Optionor in determining whether the environmental impacts of said development exceed those addressed in the CEQA document which pertains to the project, to enable Optionor to comply with the requirements of CEQA. If Optionor determines that the impacts of the proposed improvements, renovations and expansion exceed those addressed in the CEQA document, or that the contemplated work will or may have environmental impacts which were not addressed in the CEQA document, then Optionor may require Optionee to promptly submit draft supplemental or subsequent CEQA documents to address those impacts required under the CEQA. Optionee shall promptly comply with the local CEQA Guidelines of Optionor and all other governmental entities and agencies with jurisdiction over the environmental aspects of the proposed development, including, but not limited to, the City and the California Coastal Commission.

8.6 In addition to all submittals to be made and approvals to be obtained by Optionee as provided in this Article 8, and prior to service of its written notice of intention to exercise the option granted in Article 4, above, as set forth in Article 12 below, Optionee shall have secured all necessary permits and approvals from any and all governmental entities and agencies with jurisdiction over the planning, design and construction of the improvements identified in Article 7. Such entities and agencies may include, but are not necessarily limited to the California Coastal Commission, the Army Corps of Engineers and various boards and commissions of the City (e.g., Planning Commission, Design Review Board).

8.7 In all instances in this Article 8 where Optionor has authority to approve, reject, disapprove, request modification, revision or correction of plans, specifications, designs and assessments submitted by Optionee, Optionor agrees to act reasonably and cooperatively, but

## EXHIBIT B

Optionor shall not be obligated to incur or pay any cost or expense related to the planning, designing and permitting process, the payment of which shall be the sole obligation of Optionee. Optionee shall reimburse Optionor for all of Optionor's out-of-pocket costs and expenses, including but not limited to legal fees and the cost of engineers and design consultants retained by Optionor to review Optionee's submittals related to the planning, designing and permitting process. Such payment shall be made to Optionor within fifteen (15) calendar days after Optionee receives Optionor's statement therefor pursuant to Article 17, below. Optionor shall not disapprove any submittal made by Optionee under this Article 8 which is consistent with the mutually understood evolution of documents previously submitted to and approved by Optionor during the planning process. Optionor and Optionee also acknowledge and understand that uncertainty exists as to the length of time that may be required for Optionee to complete preparation of all the plans, specifications, design and assessments, to obtain the necessary governmental approvals thereof, and to obtain the financing necessary to fund the construction and installation of all improvements on the Premises, and that such time period might extend beyond the initial Option Term set forth in Article 5.1, above. Despite this possibility, Optionee expressly agrees that the Option Term shall not be extended because more time is required to complete all such tasks, and that this Option to Lease will automatically expire at the end of sixty (60) months from the date set forth in Article 1, above, thereby extinguishing all rights of Optionee herein without Optionee being able to exercise the option granted herein, unless the Option Term is extended per Article 5.2, above.

8.8 Throughout the Option Term, Optionee shall report to Optionor every ninety (90) days with a written status report on the progress of the tasks contemplated in Articles 7 and 8, above. Upon Optionor's request, Optionee shall meet with the General Manager of Optionor, or designee, to discuss the items in said progress reports.

## EXHIBIT B

8.9 A copy of any approved permits, entitlements, or other approvals, obtained by Optionee ( for Optionee and Optionor as co-applicants) from any and all governmental or regulatory agencies with jurisdiction over the planning, design and construction of the improvements identified in Article 7, or any plans, reports, or studies prepared or obtained by Optionee, shall be provided to Optionor within thirty (30) days of Optionee's receipt or preparation thereof.

9. NEGATION OF WARRANTIES, OPTIONEE WAIVERS, QUITCLAIM DEEDS AND TITLE TO PLANS, SPECIFICATIONS AND DESIGNS

9.1 Optionor and Optionee recognize and agree that the process to design, entitle and obtain financing for the work required of Optionee during the Option Term contains elements of risk with respect to the ability of Optionee to obtain approvals, permits and financing. Optionee acknowledges and agrees: (i) that this risk shall be borne by Optionee alone; (ii) that Optionor does not guarantee permits or approvals will be secured from required agencies; and (iii) that Optionor does not warrant or guarantee financeable title, financing or feasibility, except for those specific agreements made by Optionor herein, except that Optionor covenants and agrees that it has not and will not voluntarily encumber or place any cloud on the title to the Premises.

9.2 Optionee acknowledges that Optionor 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 Optionor to act are governed by said Code and other applicable laws and regulations of the State of California and the City, and Optionee accepts this Option to Lease, and the Lease attached hereto as Exhibit "B," 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.

## EXHIBIT B

9.3 Optionor and Optionee acknowledge and agree that the proposed development of the Premises is subject to compliance with CEQA and the California Coastal Act.

9.4 Optionor and Optionee hereby agree that in the event of a breach of this Option to Lease by Optionor, the remedy of Optionee shall be limited to an action at law for damages actually and demonstrably incurred by Optionee by reason of said breach. In the event of such breach by Optionor, Optionee waives all right to claim any interest in the Premises in any judicial proceeding, including, but not limited to, a claim for specific performance, quiet title, declaratory relief, equitable lien or constructive or resulting trust.

9.5 As further security for the performance of the obligations of Optionee specified in this Option to Lease, Optionee shall contemporaneously with the execution of this Option to Lease, execute and deliver to Optionor a quitclaim deed in substantially the same form as appears in Exhibit "C" attached hereto and by this reference made a part hereof, which deed shall be held or recorded by Optionor in accordance with the terms of said deed.

9.6 Should this Option to Lease expire, automatically terminate or be terminated during the Option Term, then in that event, title to any and all plans, specifications, designs, renderings and other documents developed by Optionee pursuant to Article 8 of this Option to Lease, and all permits and other entitlements obtained by Optionee relating to the Premises, shall automatically pass to Optionor, at no cost to Optionor. Optionee shall pay all amounts owing for the preparation of said documents. Optionee shall execute such documents as may be necessary to effectuate the transfer of title to all said documents, and all interest of Optionee therein, to Optionor and to hold Optionor free and harmless from any and all claims, demands and actions of third parties arising out of or related to the non-payment of amounts owing for development or preparation of said plans, specifications, designs, renderings and environmental assessments.



## EXHIBIT B

10. PRELIMINARY TITLE REPORT

Within thirty (30) calendar days of Optionee having validly and properly exercised the Option to Lease granted in Article 4 above, Optionor shall provide a current preliminary title report for the Premises setting forth all liens, encumbrances, easements, restrictions, covenants, conditions, pending litigation, judgments, administrative proceedings, and other matters affecting Optionor's title to the Premises (the "Preliminary Report") together with copies of all documents relating to the title exceptions referred to in the Preliminary Report. Optionee shall approve or disapprove each exception shown on the Preliminary Report or any other matter that materially or adversely affects title to the Premises (each an "Exception") within fifteen (15) calendar days following the receipt of the Preliminary Report. Optionee's approval or disapproval shall be set forth in a written notice given to Optionor under Article 17. Optionee's failure to object within the fifteen (15) day period shall be deemed to be an approval of the Exceptions. If any Exception is disapproved ("Disapproved Exception"), Optionor may within sixty (60) calendar days following expiration of said fifteen (15) day period, attempt to cause each Disapproved Exception to be discharged, satisfied, released, or terminated, as the case may be, of record and in a form that is reasonably satisfactory to Optionee, all at Optionor's sole cost and expense. In the event Optionor does not intend to discharge, satisfy, release, or terminate any Disapproved Exception, Optionor shall within said sixty (60) calendar day period give written notice to Optionee of its refusal to take such action. If Optionor is unable to obtain a discharge, satisfaction, release, or termination within the period specified above, Optionee shall have the right to (i) waive the effect of the Disapproved Exception or (ii) terminate this Option to Lease. Optionor shall pay all charges for the Preliminary Report in connection with this Option to Lease, and, except as otherwise provided in this Option to Lease, both Optionee and Optionor shall be relieved of all further obligations to each other under this Option to Lease. For the purposes of

## EXHIBIT B

this section, an “approved exception” shall mean those affirmatively approved by Optionee, those approved by Optionee’s failure to object within the prescribed time limit, and those Disapproved Exceptions which have been waived by Optionee.

11. ASSIGNMENT

Optionee shall not assign this Option to Lease, or any interest herein. The only exception to the foregoing shall be an assignment to a related entity whose ownership interest or composition is substantially the same as that of Optionee. Notwithstanding the foregoing, Optionor shall have total and absolute discretion in granting or denying any proposed assignment. Any assignment or attempted assignment without Optionor’s consent shall be void and at the option of Optionor, be grounds for termination of this Option to Lease.

12. EXERCISE OF OPTION AND EXECUTION OF LEASE

12.1 If this Option to Lease has not been terminated pursuant to Article 13 below, and after issuance of the requisite building permit or permits therefor by the governmental agencies required to issue permits for the construction of the improvements called for in Article 7 above, Optionee may at any time prior to expiration of the Option Term serve upon Optionor, in the manner provided herein, written notice of its intention to exercise the option granted in Article 4 above to execute the Lease. Prior to the giving of said notice, Optionee shall provide to Optionor, in accordance with the requirements of Article 12.2 below, evidence reasonably satisfactory to Optionor that adequate financing is not only available for the construction of the improvements specified in Article 7, but that such financing will be available at such a time as to ensure that construction of said improvements will be commenced within the time provided in the construction schedule for the improvements submitted to and approved by Optionor under Article 8. In the event evidence of financing or loan documents submitted by Optionee under Article 12.2 below is not reasonably

## EXHIBIT B

acceptable to Optionor, Optionee shall, within fourteen (14) calendar days after receipt of notice from Optionor that said evidence or documents are unacceptable to Optionor, either cure said deficiency or within twenty (20) calendar days after receipt of said notice provide to Optionor security for compliance with the commencement, development and completion of the construction of the improvements required to be constructed under Article 7 above, as said security is required under Article 12.4 below. If said evidence of financing is not acceptable to Optionor and Optionee fails to provide the security required under Article 12.4 below, then Optionor may, at its option, record the quitclaim deed provided by Optionee under Article 9.5 (including Exhibit "C" to this Option to Lease) above, terminating this Option to Lease and all of Optionee's interest thereunder and in the Premises.

12.2 The evidence of financing required to be submitted to Optionor under Article 12.1 above, shall include, but not be limited to, the following:

(a) A pro forma statement showing the capital structure of Optionee, including the amount of capital, if any, to be invested by Optionee, and the principals of Optionee, in the development and the income/expense projections for the first five (5) years of operation under the Lease;

(b) A firm commitment for a construction loan or loans in a form or forms acceptable to Optionor and in such amount or amounts which, when added to Optionee's invested capital, if any, (excluding any payments to Optionor under this Option to Lease), is reasonably determined by Optionor to be sufficient to cover the estimated cost of construction of the required improvements on the Premises;

(c) A firm commitment for permanent financing in a form acceptable to Optionor, the debt service and expense projections on which can be carried by the income

## EXHIBIT B

projections of the proposed improvements on the Premises as reasonably determined by Optionor;

(d) A certified statement identifying all sources of working capital projected in the pro forma statement submitted under subparagraph (a), above;

(e) A financial statement of Optionee or each separate entity or person making up the business venture of Optionee (excluding limited partners or shareholders if Optionee is a limited partnership or a corporation), prepared by a certified public accountant within ninety (90) calendar days prior to its submittal. Optionor reserves the right to require additional financial information to be provided by Optionee upon request, and Optionee, and each entity or person whose financial statement or other information has been submitted to Optionor hereunder, shall provide Optionor with a written statement effective as of the date the Lease is executed that there has been no material change in the financial condition of Optionee and each such entity or person since the preparation of the initial statement and information submitted;

(f) A statement of all pending litigation involving Optionee or each separate entity or person making up the business venture of Optionee (excluding limited partners or shareholders if Optionee is a limited partnership or a corporation);

(g) A statement of other projects planned or in progress by Optionee, including projected investments for each project; and

(h) Three (3) financial references.

12.3 If Optionee plans to hypothecate the leasehold estate as security for any loan or loans to obtain funds to construct improvements on the Premises, Optionee shall submit concurrently with the evidence of financing all documents proposed to be entered into in connection with said loan

## EXHIBIT B

transaction for Optionor's review and approval. Optionor agrees to process and review the first submittal of evidence of financing and loan documents relating to the construction of the improvements without charge to Optionee. However, as to all other or subsequent submittals of evidence of financing or loan documents made at any time during the term hereof, Optionee shall pay Optionor concurrently with each submittal and request for approval thereof, a non-refundable processing fee in the amount of Five Hundred Dollars (\$500.00) , plus Optionor's out-of-pocket costs and overhead expense that may be incurred in connection with the processing of said request for approval, including but not limited to the cost of retaining legal, financial and accounting consultants to assist Optionor in said process.

12.4 Optionee shall furnish, or cause to be furnished, to Optionor as part of the consideration for this Option to Lease at least one of the following forms of security: (i) an unconditional written personal or corporate guaranty that the improvements to be constructed under Articles 7 and 8 hereof will be completed as required (provided the guarantor is in a Control relationship with Lessee and has a liquid net worth, in excess of five (5) times the total amount of the construction contract, documented to the reasonable satisfaction of Lessor); (ii) a bond of a responsible surety company approved in advance by Optionor and licensed to do business in California, in an amount not less than one hundred twenty-five percent (125%) of the estimated total cost of construction of the improvements to be constructed under Articles 7 and 8 hereof; (iii) an unconditional irrevocable letter of credit in a form approved by Optionor, in an amount not less than one hundred twenty-five percent (125%) of the estimated total cost of construction of the improvements to be constructed under Articles 7 and 8 hereof; (iv) a binding and acceptable loan agreement from the lender in a form approved by Optionor, in an amount not less than one hundred twenty-five percent (125%) of the estimated total cost of construction of the improvements to be

## EXHIBIT B

constructed under Articles 7 and 8 hereof; or (v) such other security as may be approved in writing by Optionor in its sole discretion. If Optionee provides a bond or letter of credit under options (ii) or (iii) above, it shall remain in effect until the entire cost of the work has been paid in full and the improvements shall have been insured as required under the 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 further state that the construction work shall be affected by Optionee, its general contractor, or in the event of default, by the surety. Said bond shall also provide that in the event of default of such completion and payment, such part of the amount of the bond as shall be required to complete the work shall be paid to Optionor as liquidated damages for the non-performance of Optionee's agreements, it being agreed and understood that, due to the circumstances of the case, it would be impractical or extremely difficult to fix Optionor's actual damage arising from such non-performance. In addition, said bond shall provide that the surety will defend and indemnify Optionor against all loss, cost, damages, expenses and liabilities arising out of or in connection with the construction of said improvements.

12.5 If this Option to Lease has not been terminated and, provided Optionee has complied with all of the terms and conditions of this Option to Lease relating to the improvements, then at any time during the remainder of the Option Term set forth in Article 5, Optionee may require that Optionor execute the Lease covering the Premises in the form attached hereto as Exhibit "B."

13. DEFAULT AND TERMINATION OF OPTION

13.1 Optionee acknowledges and understands that, by entering into this Option to Lease and agreeing to perform the various obligations required of it hereunder, a unique relationship between the parties has been created, especially with respect to the expectations of Optionor relating to the planning, design and, ultimately, the construction of the improvements required under Articles

## EXHIBIT B

7 and 8 above. Optionee understands that the benefits Optionor has bargained for hereunder are not only the option payment and other monetary commitments of Optionee under the Option to Lease, but also the periodic performance of the obligations set forth in Articles 8 and 12, such that the orderly improvement and expansion of the Premises can proceed immediately upon execution of the Lease attached as Exhibit "B." Because of the limited period within which Optionee must complete performance of said obligations, and the fact that each separate act to be performed by Optionee constitutes a material part of the consideration bargained for by Optionor under this Option to Lease, the Optionor and Optionee have agreed that certain acts in breach of this Option to Lease or failures to perform by Optionee shall operate to automatically terminate this Option to Lease, thereby resulting in forfeiture, cancellation and annulment of all rights and interests of Optionee hereunder, except for the interest Optionee acquires hereunder by Assignor's assignment of its interest in the Ground Lease and License. Such termination shall be automatic upon the passage of ten (10) calendar days after written notice to Optionee of such breach or failure to perform and without the performance of any further act by Optionor provided Optionee has not cured such breach or failure to perform during said ten (10) day period. Such automatic termination shall occur upon the happening of any of the following events, unless specifically and expressly waived in writing by Optionor:

(a) Failure to submit schematic plans, preliminary plans, working drawings, cost estimates, construction schedules, environmental assessments or draft supplemental or subsequent CEQA documents to Optionor or to the City, California Coastal Commission, or any other applicable government entity with jurisdiction over the development, as the case may be, within the time periods specified in Article 8 above.

(b) Failure to submit evidence of financing within the time period specified in Article 12 above.



## EXHIBIT B

(c) The actual or attempted assignment, transfer or encumbrance of Optionee's interest in this Option to Lease, or any portion thereof, without the prior written consent of Optionor.

(d) The filing of a voluntary petition in bankruptcy or for reorganization or for an arrangement by Optionee, or any of its general partners if Optionee is a partnership or limited partnership, or any of its managing member(s) if Optionee is a limited liability company, or adjudication of Optionee as a bankrupt or insolvent, or appointment of a receiver of the business or of the assets of Optionee unless discharged within thirty (30) calendar days (except a receiver appointed at the instance or request of Optionor), or a general assignment by Optionee, or an assignment for the benefit of its creditors.

(e) As to the option granted in Article 4 the passage of sixty (60) months from the date set forth in Article 1 of this Option to Lease, or longer in accordance with any extension of the Option Term granted under Article 4.2, above.

(f) Recordation of the quitclaim deed provided for in Article 9 above and identified as Exhibit "C," pursuant to its terms.

13.2 In addition to the events which automatically terminate this Option to Lease as set forth in Article 13.1 above, this Option shall, at the election of Optionor, terminate and all rights and interests of Optionee hereunder be canceled and annulled, if Optionee fails within thirty (30) calendar days of receipt of written notice from Optionor to cure or remedy any other breach, default or failure to perform on its part under this Option to Lease. If Optionor elects to terminate this Option to Lease under this Article 13.2, Optionor shall give Optionee written notice of such election ("Election Notice"), together with an explanation of the basis of such election.

## EXHIBIT B

13.3 In the event of the termination of this Option to Lease, as provided in Articles 13.1 and 13.2 above, then, in addition to any other remedy Optionor may have by agreement or by operation of law, Optionor shall have the right or option, without further demand or notice and in all cases where this Option to Lease has automatically terminated under Article 13.1 above, to (a) declare this Option to Lease at an end, in which event all rights, interests and options granted to Optionee hereunder shall cease and terminate, except for the interest Optionee acquires hereunder by Assignor's assignment of its interests in the Ground Lease and License; and (b) immediately record the quitclaim deed deposited with Optionor pursuant to Article 9.5 above, which shall be conclusive evidence of the termination of this Option and all of Optionee's interest hereunder and in the Premises, except for the interest Optionee acquires hereunder by Assignor's assignment of its interests in the Ground Lease and License.

13.4 In the event of the bringing of any action by any party hereto against another by reason of the breach of any covenant or condition on the part of the other party, or otherwise arising out of this Option to Lease, then, and in that event, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party reasonable attorneys' fees and costs to be fixed by the court wherein such judgment shall be entered.

13.5 In the event of a default or threatened default by Optionee of any terms, covenants or conditions of this Option to Lease, Optionor shall have the right of injunction and the right to invoke any remedy allowed by law or in equity as if re-entry or other remedies were not herein provided; however, Optionor shall not be entitled to recover money damages from Optionee on account or arising out of any alleged breach, default or failure to perform any obligation required to be performed by Optionee under Article 8 above, or in connection with any termination of this Option to Lease under or pursuant to Article 13.1 above. Mention in this Option to Lease of any particular

## EXHIBIT B

remedy shall not preclude Optionor from any other remedy, at law or in equity. The terms and provisions of this Article 13.5 shall be effective and apply to any termination of this Option to Lease.

13.6 Upon expiration or any termination of this Option to Lease, all plans, drawings, designs, renderings, and similar documents, submitted to Optionor by Optionee or prepared by or for Optionee, pursuant to this Option to Lease, shall become and remain the sole and exclusive property of Optionor at no cost to Optionor. In such event, Optionee agrees to relinquish all right, title or interest therein and to execute any and all documents necessary to effectuate said transfer of ownership. The terms and provisions of this Article 13.6 shall be effective and applicable to any termination of this Option to Lease.

13.7 Upon any termination of this Option to Lease, all permits and/or approvals secured by Optionee from the City pursuant to its Local Coastal Program, or otherwise, or the California Coastal Commission, for the proposed improvements to be constructed or installed on the Premises shall be released and relinquished by Optionee to Optionor and automatically assigned, to the extent assignable by law, and transferred by Optionee to Optionor, and, in such event, Optionee agrees to execute any and all documents necessary to effectuate said assignment and transfer. If Optionee fails or refuses to execute any documents contemplated in this Section 13.7, Optionee hereby appoints Optionor's General Manager or designee, as Optionee's attorney-in-fact to execute any and all such documents on Optionee's behalf.

14. WAIVER OF BREACH

The waiver by Optionor of any breach of any one or more of the covenants, conditions, or agreements of this Option to Lease shall not be construed to be a waiver of any subsequent or other breach of said covenants, conditions or agreements, or of any other covenant, condition or agreement of this Option to lease. Nor shall any failure on the part of Optionor to

## EXHIBIT B

require or exact full and complete compliance with any of the covenants, conditions or agreements of this Option to Lease be construed as in any manner changing the terms hereof or as to preclude Optionor from enforcing the full provisions hereof.

15. COMPLIANCE WITH THE LAW

15.1 At all times during the term of this Option to Lease and in all activities of Optionee on or in connection with the Premises, and in all uses thereof, and in the performance of all other acts by Optionee required under this Option to Lease, Optionee shall abide by and conform to all rules and regulations prescribed by Optionor, and ordinances of Optionor and any applicable federal or state statutes or other municipal laws now in force or which may hereafter be in force.

15.2 The judgment of any court of competent jurisdiction or the admission by Optionee in any action or proceeding against Optionee, whether Optionee is a party thereto or not, that Optionee has violated such ordinances, statutes, or other law in the use of the Premises, shall be conclusive of such fact as between Optionor and Optionee.

16. EXECUTION IN COUNTERPARTS

This Option to Lease may be executed in two (2) or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

17. NOTICES

Any and all notices or demands by or from Optionor to Optionee, or Optionee to Optionor, shall be in writing and shall be served either personally or by registered or certified mail. If personally served, service shall be conclusively deemed made at the time of service. If served by registered or certified mail, service shall be conclusively deemed made 48 hours after 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.

## EXHIBIT B

Any notice or demand to Optionor may be given to it at 1603 Anchors Way Drive, Ventura, California 93001.

Any notice or demand to Optionee may be given to it at 4 Calder Drive, Warren, Rhode Island 02885.

Any notice or demand to Assignor may be given to it at 1644 Anchors Way Drive, Ventura, California 93001.

18. SUCCESSORS

Subject to the provisions of Article 11 hereof, each and all of the terms, conditions and agreements contained herein 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.

19. CAPTIONS

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

20. TIME

Time is of the essence of this Option to Lease.

21. GENDER AND NUMBER

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

22. ENTIRE AGREEMENT

This Option to Lease sets forth all of the agreements and understandings of the parties

## EXHIBIT B

and any change or modifications must be in writing and signed by the parties affected by such change or modification.

23. CONTROLLING LAW

This Option to Lease shall be governed by and construed in accordance with the laws of the State of California.

24. SEVERABILITY

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

25. NO BROKER

Each party represents that it has not dealt with or through a broker or other agent with respect to the negotiation and entering into this Option to Lease, and that no party is aware of any such person or entity who claims or is entitled to a finder's fee or commission arising out of this Option to Lease. Each party agrees to defend and indemnify the other party against claims by a broker or other agent seeking to recover a finder's fee or commission or other type of relief based on any commitment, statement or representations of such party or alleged agreements with such party.

26. AUTHORITY

If Optionee is a corporation or limited liability company, those persons executing this Option to Lease for and on behalf of Optionee represent that they have been authorized and directed to execute this Option to Lease for and on behalf of such corporation or limited liability company by a resolution duly adopted by the Board of Directors of said corporation or managing member(s) of said limited liability company at a properly noticed and conducted meeting of said board or governing body. If Optionee is a partnership, Optionee will provide Optionor with a copy of the currently

## EXHIBIT B

effective Partnership Agreement and Statement of Partnership for the partnership within ten (10) calendar days of the execution of this Option to Lease, which shall confirm that the persons signing the Option to Lease have authority to do so and to bind said partnership. If Optionee is a limited liability company, Optionee will provide Optionor with a copy of the currently effective Operating Agreement and Articles of Organization for such entity within ten (10) calendar days of execution of this Option to Lease. In addition, during the term of this Option to Lease, Optionee shall provide Optionor with sixty (60) calendar days prior written notice of any amendment to such Partnership Agreement or Operating Agreement or Statement of Partnership or Articles of Organization.

27. RECORDATION OF MEMORANDUM OF OPTION

This Option to Lease need not be recorded. In the event this Option to Lease is not recorded, the parties agree to execute a memorandum or abstract of the option portion of this Option to Lease in the form required by any title company insuring Optionee's interest.

*[signature page follows]*



EXHIBIT B

OPTIONOR

VENTURA PORT DISTRICT

By: \_\_\_\_\_  
\_\_\_\_\_, Chairman

By: \_\_\_\_\_  
\_\_\_\_\_, Secretary

OPTIONEE

DEREKTOR MARINE HOLDINGS, LLC

By: \_\_\_\_\_  
DocuSigned by:  
*Leonora Valvo*  
D2DD5FE0C7BA4F5...

By: \_\_\_\_\_  
DocuSigned by:  
*Tom DEREKTOR*  
B1453738276B48F...

ASSIGNOR

VENTURA HARBOR MARINE  
ASSOCIATES, LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

EXHIBIT B

OPTIONOR

VENTURA PORT DISTRICT

By: \_\_\_\_\_  
\_\_\_\_\_, Chairman

By: \_\_\_\_\_  
\_\_\_\_\_, Secretary

OPTIONEE

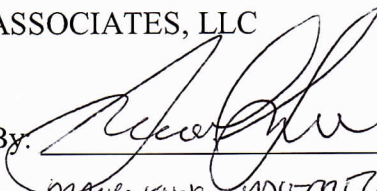
DEREKTOR MARINE HOLDINGS, LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

ASSIGNOR

VENTURA HARBOR MARINE  
ASSOCIATES, LLC

By:   
\_\_\_\_\_  
DEREKTOR MARINE HOLDINGS, LLC

By: \_\_\_\_\_

## EXHIBIT B

## EXHIBIT "A"

PREMISESLEGAL DESCRIPTION  
VENTURA PORT DISTRICT  
PARCEL 20

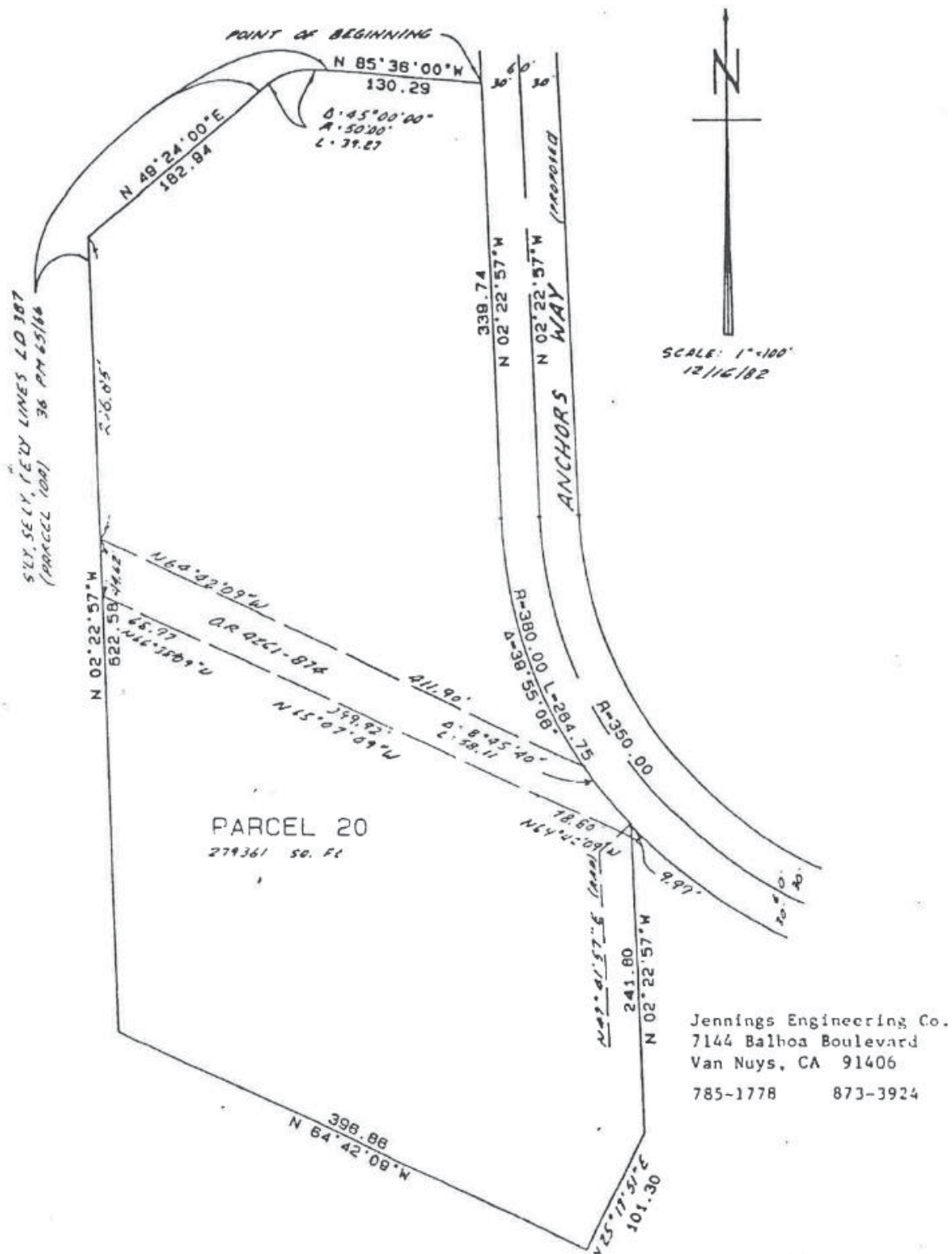
BEING A PORTION OF SUBDIVISION NO. 7 OF THE WEST ONE-HALF OF RANCHO SAN MIGUEL IN THE CITY OF SAN BUENAVENTURA, COUNTY OF VENTURA, STATE OF CALIFORNIA PER MAP RECORDED IN BOOK 5 PAGE 42 OF MISCELLANEOUS RECORDS, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF PARCEL 10A, LD 387 PER MAP FILED IN BOOK 36 PAGES 65 AND 66 OF PARCEL MAPS, RECORDS OF SAID COUNTY; SAID CORNER BEING THE EASTERLY TERMINUS OF THAT CERTAIN LINE SHOWN AS "N.  $85^{\circ}36'00''$  W. 130.29' " ON SAID MAP LD 387; THENCE ALONG THE SOUTHERLY, SOUTHEASTERLY AND EASTERLY LINES OF SAID PARCEL 10A, LD 387, NORTH  $85^{\circ}36'00''$  WEST 130.29 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE OF  $45^{\circ}00'00''$ , THENCE SOUTHWESTERLY ALONG SAID CURVE 39.27 FEET; THENCE ALONG A TANGENT LINE SOUTH  $49^{\circ}24'00''$  WEST 182.94 FEET; THENCE SOUTH  $2^{\circ}22'57''$  EAST 622.58 FEET; THENCE LEAVING THE EASTERLY LINE OF SAID LD 387, SOUTH  $64^{\circ}42'09''$  EAST 396.86 FEET; THENCE NORTH  $25^{\circ}17'51''$  EAST 101.30 FEET; THENCE NORTH  $2^{\circ}22'57''$  WEST 241.80 FEET TO A POINT IN THE PROPOSED SOUTHWESTERLY LINE OF ANCHORS WAY 60 FEET WIDE SAID LINE BEING A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 380.00 FEET AND A CENTRAL ANGLE OF  $39^{\circ}55'06''$ , THENCE NORTHWESTERLY 264.75 FEET ALONG SAID CURVE; THENCE ALONG A TANGENT LINE NORTH  $2^{\circ}22'57''$  WEST 339.74 FEET TO THE POINT OF BEGINNING.

AREA: 279361 S.F.

6.4132 ACRES

## EXHIBIT B





## EXHIBIT B

LEGAL DESCRIPTION  
VENTURA PORT DISTRICT  
PARCEL 20 LICENSE AREAS

AREA 1 - SLIPS

BEING A PORTION OF SUBDIVISION NO. 7 OF THE WEST ONE-HALF OF RANCHO SAN MIGUEL IN THE CITY OF SAN BUENAVENTURA, COUNTY OF VENTURA, STATE OF CALIFORNIA, PER MAP RECORDED IN BOOK 5, PAGE 42 OF MISCELLANEOUS RECORDS, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS;

BEGINNING AT THE MOST EASTERLY CORNER OF PARCEL 10A, LD 387, PER MAP FILED IN BOOK 36, PAGES 65 AND 66 OF PARCEL MAPS, RECORDS OF SAID COUNTY, AT THE EASTERLY TERMINUS OF THAT CERTAIN LINE SHOWN ON SAID MAP LD 387 AS "NORTH 85°36'00" WEST, 130.29'"; THENCE ALONG THE EASTERLY BOUNDARY OF SAID PARCEL 10A THE FOLLOWING FOUR (4) COURSES; NORTH 85°36'00" WEST, 130.29 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 50.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 45°00'00" AN ARC LENGTH OF 39.27 FEET; THENCE TANGENT TO SAID CURVE SOUTH 49°24'00" WEST, 182.49 FEET; THENCE SOUTH 2°22'57" EAST, 622.58 FEET; THENCE LEAVING SAID EASTERLY BOUNDARY SOUTH 64°42'09" EAST, 396.86 FEET; THENCE AT RIGHT ANGLES NORTH 25°17'51" EAST, 40.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING

1ST: NORTH 25°17'51" EAST, 61.30 FEET; THENCE

2ND: NORTH 2°22'57" WEST, 32.41 FEET TO A POINT IN A LINE THAT IS PARALLEL WITH AND DISTANT NORTHEASTERLY 130.00 FEET MEASURED AT RIGHT ANGLES FROM THAT COURSE DESCRIBED ABOVE AS HAVING A BEARING AND LENGTH OF SOUTH 64°42'09" EAST, 396.86 FEET; THENCE ALONG SAID PARALLEL LINE

3RD: SOUTH 64°42'09" EAST, 140.06 FEET TO A POINT IN A LINE THAT IS PARALLEL WITH AND DISTANT SOUTHEASTERLY 125.00 FEET MEASURED AT RIGHT ANGLES FROM THE 1ST COURSE ABOVE DESCRIBED; THENCE ALONG SAID PARALLEL LINE

4TH: SOUTH 25°17'51" WEST, 90.00 FEET TO A LINE THAT BEARS SOUTH 64°42'09" EAST FROM THE TRUE POINT OF BEGINNING; THENCE ALONG SAID LINE

5TH: NORTH 64°42'09" WEST, 125.00 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED AREA 1 CONTAINS 11466 SQUARE FEET (0.2632 ACRES).

## EXHIBIT B

AREA 2 - BAIT-RECEIVER

BEING A PORTION OF SUBDIVISION NO. 7 OF THE WEST ONE-HALF OF RANCHO SAN MIGUEL IN THE CITY OF SAN BUENAVENTURA, COUNTY OF VENTURA, STATE OF CALIFORNIA, PER MAP RECORDED IN BOOK 5, PAGE 42 OF MISCELLANEOUS RECORDS, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS;

BEGINNING AT THE MOST EASTERLY CORNER OF PARCEL 10A, LD 387, PER MAP FILED IN BOOK 36, PAGES 65 AND 66 OF PARCEL MAPS, RECORDS OF SAID COUNTY, AT THE EASTERLY TERMINUS OF THAT CERTAIN LINE SHOWN ON SAID MAP LD 387 AS "NORTH 85°36'00" WEST, 130.29'"; THENCE ALONG THE EASTERLY BOUNDARY OF SAID PARCEL 10A THE FOLLOWING FOUR (4) COURSES; NORTH 85°36'00" WEST, 130.29 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 50.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 45°00'00" AN ARC LENGTH OF 39.27 FEET; THENCE TANGENT TO SAID CURVE SOUTH 49°24'00" WEST, 182.49 FEET; THENCE SOUTH 2°22'57" EAST, 622.58 FEET; THENCE LEAVING SAID EASTERLY BOUNDARY SOUTH 64°42'09" EAST, 157.36 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING

1ST: SOUTH 64°42'09" EAST, 25.00 FEET; THENCE AT RIGHT ANGLES

2ND: SOUTH 25°17'51" WEST, 40.00 FEET; THENCE AT RIGHT ANGLES

3RD: NORTH 64°42'09" WEST, 25.00 FEET; THENCE AT RIGHT ANGLES

4TH: NORTH 25°17'51" EAST, 40.00 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED AREA 2 CONTAINS 1000 SQUARE FEET (0.0230 ACRES).



## EXHIBIT B

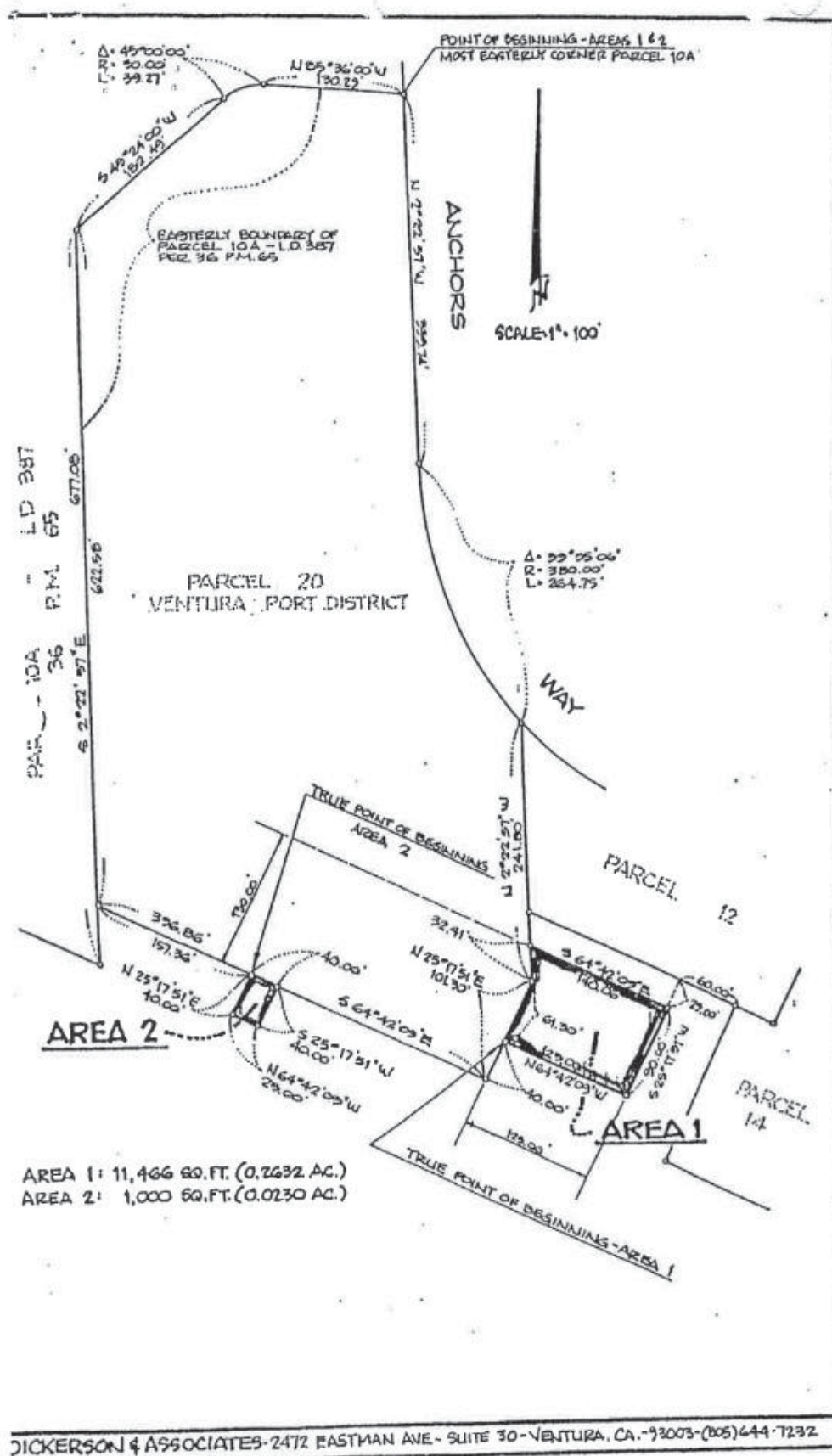




EXHIBIT B

EXHIBIT “B”

LEASE

**EXHIBIT B**

**LEASE**

**BETWEEN**

**VENTURA PORT DISTRICT**

**AND**

**DERECKTOR MARINE HOLDINGS, LLC.**

**LEASE  
BETWEEN  
VENTURA PORT DISTRICT  
AND  
DERECKTOR MARINE HOLDINGS, LLC.**

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LEASE

**1. Identification.**

This Lease, hereafter the “Lease,” is made, entered into and effective as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between VENTURA PORT DISTRICT, a California port district, hereafter “Lessor,” and DERECKTOR MARINE HOLDINGS, LLC., a Delaware limited liability company, hereafter “Lessee.” Lessor and Lessee are sometimes referred to individually hereafter as a Party or collectively as the Parties.

**2. Recitals.**

- 2.1. Lessor is the owner of certain land and water area within the City of San Buenaventura (hereafter “City”), County of Ventura, which Lessor is developing, improving and operating as a harbor known as “Ventura Harbor.”
- 2.2. A portion of the area within said harbor known as Parcel 20, consisting of approximately 6.94 acres (including 0.3 acre increase to water space accounting for plan proposed in 2015 MND Plan).
- 2.3. Lessee desires to lease Parcel 20 as more particularly described herein, for commercial development of a mixed-use marina and boatyard (sometimes hereinafter referred to as the “marina”).
- 2.4. Lessor and Lessee previously entered into that certain Assignment and Option to Lease dated \_\_\_\_\_, \_\_\_\_\_ (the “Option to Lease”), wherein the Parties agreed to, among other things, certain provisions concerning the planning and design of the marina on Parcel 20 over an approximately five (5) year span, and contemplated the execution of this Lease to commence immediately after the termination of the Option to Lease.
- 2.5. Lessor is willing to lease Parcel 20 to Lessee on the terms, provisions and conditions set forth herein and, for that reason, the parties are entering into this Lease.

**3. Definitions.**

For purposes of this Lease, and unless Lessor and Lessee otherwise agree in writing, all capitalized words and terms used herein shall have the meanings and definitions specified in Exhibit “A” attached hereto, or as defined in this Lease.

**4. Lease of Premises.**

Lessor hereby leases to Lessee, and Lessee takes and leases from Lessor, for the period of time and upon the terms and conditions set forth herein, Parcel 20 and portions of adjacent water

space, hereafter referred to as the “Premises,” as legally described in Exhibit “B” attached hereto, initialed by the parties and by this reference incorporated herein. This Lease and all rights and privileges granted to Lessee in the Premises are subject to all covenants, conditions, restrictions and exceptions of record or apparent, and any and all applicable laws, ordinances, codes and regulations including those of the City and California Coastal Commission, as well as any applicable provisions of the California Harbors and Navigation Code.

**5. Term.**

**5.1. Lease Term.**

Unless sooner terminated or extended as hereinafter provided, the term of this Lease, hereafter “Lease Term,” shall expire upon the passage of thirty (30) years commencing on the date indicated in Article 1, above, and ending thirty (30) years from such date.

**5.2. Option to Extend Lease Term.**

Lessor hereby grants to Lessee an option to extend the Lease Term for an additional period of twenty (20) years, commencing on the thirtieth (30<sup>th</sup>) anniversary of the date indicated in Article 1, on the same terms, covenants and conditions as are contained in this Lease, except as provided otherwise in this Article 5.2. This option to extend the Lease Term shall only be exercisable if all of the following conditions are met:

- (a) Lessee provides written notice to Lessor no less than twenty-four (24) months before the thirtieth (30<sup>th</sup>) anniversary of the date indicated in Article 1 that Lessee is exercising this option to extend the Lease Term;
- (b) Lessee is in full compliance with all terms and conditions of this Lease at the time Lessee exercises this option to extend the Lease Term and at the thirtieth (30<sup>th</sup>) anniversary of the date indicated in Article 1.
- (c) Lessee completes the Modernization Plan as provided in Article 10; and
- (d) Lessee pays to Lessor a one-time extension fee of Two Hundred Thousand Dollars (\$200,000).

**6. Rent.**

**6.1. Minimum Annual Rent Paid Monthly.**

During the entirety of the Lease Term, Lessee shall pay a minimum annual rent in monthly installments as set forth herein.

- (a) During the first forty-eight (48) months of the Lease Term, Lessee shall to pay to Lessor in advance on or before the first day of each calendar month, at the office of the Lessor, without deduction or offset, and without abatement except as expressly provided in

Articles 20 and 21, below, a minimum annual rent of Five Thousand Dollars (\$5,000), paid in equal monthly installments.

(b) Beginning with the forty-ninth (49th) month of the Lease Term, Lessee shall pay to Lessor in advance on or before the first day of each calendar month, at the office of the Lessor, without deduction or offset, and without abatement except as expressly provided in Articles 20 and 21, below, a minimum annual rent of Fifteen Thousand Dollars (\$15,000), paid in equal monthly installments.

(c) Beginning with the one hundred twenty-first (121st) month of the Lease Term, and after every sixty (60) month period of the Lease Term thereafter, the minimum annual rent shall be adjusted pursuant to Section 6.8, below.

**6.2. Percentage Rent.**

During the Lease Term, Lessee shall also pay to Lessor, at the times and in the manner hereinafter specified, without deduction or offset, an amount equal to the total of the percentages of the Gross Revenue, in, upon or derived from the Premises, or from activities conducted on or connected with the Premises, including from any property described in paragraph (d) of the definition of "Excess Proceeds" set forth in Exhibit "A", during each year of the Lease Term on a monthly basis, to the extent that such amount exceeds the minimum annual rent paid by Lessee for that year. The percentages of Gross Revenue which Lessee agrees to pay to Lessor are as set forth in Exhibit "C" attached hereto, initialed by the parties and by this reference incorporated herein. The percentage rent rates set forth on Exhibit "C" are subject to adjustment as provided in Article 6.9, below.

**6.3. Appreciation Rent.**

In addition to the rents specified in Articles 6.1 and 6.2 above, Lessee shall pay to Lessor, without deduction or offset, such amount or amounts as may be calculated and determined to be due as and for Appreciation Rent pursuant to and at the times and in the manner specified in Article 19, below.

**6.4. Penalties and Late Charges.**

If Lessee fails to make any payment to Lessor of any sum of money due under this Lease, whether rent, a fee, assessment or charge of any type or nature, or taxes, such payment shall be deemed to be and treated for purposes of this Lease to be additional rent, and if such delinquency continues for ten (10) calendar days following the due date thereof, there shall be imposed a late charge equal to ten percent (6%) of said payment which shall be added to the amount due and the total sum shall become immediately due and payable to Lessor. An interest charge equal to ten percent (6%) or the maximum rate allowed by law, whichever rate is less, of the total amount due and unpaid, (including interest previously assessed), shall be added for each month, or portion thereof, that said amount remains unpaid; however, the total interest charges shall not exceed the maximum amount permitted by law. All payments required under this Lease

shall be tendered in United States currency by check or electronic transfer/debit as may be accepted by Lessor.

**6.5. Maintenance of Records.**

(a) Lessee shall at all times during the term of this Lease, keep or cause to be kept, full, true, complete, accurate and proper books, records and accounts of Gross Revenue and all financial transactions for all business and commercial activities of whatever nature conducted on or connected with the Premises pursuant to the rights granted herein (hereafter "Records") including all transactions of Lessee and any of its Subtenants. Said Records must be supported by original source documents such as cash register tapes, computerized sales records, purchase invoices, or other pertinent documents, including contracts and agreements related to the financial transactions.

(b) All retail sales and charges shall be recorded by means of cash registers, point-of-sale computers or other comparable devices which display to the customer the amount of the transaction and automatically issue a sales receipt. The registers shall be equipped with devices which lock in sales totals and other transaction records, or with counters which are not resettable and which record transaction numbers and sales details. Totals registered shall be recorded at the beginning and end of each day. If point-of-sale computers are used, the software must not permit modification of transactions once they are recorded. Systems must provide for accessible back-up copies of computer-readable storage, whether physically on-site, remotely off-site, or via cloud storage.

(c) In the event of admission charges or fees, Lessee shall issue serially numbered tickets for each such admission or fee and shall keep an adequate and accurate record of said tickets, both issued and unissued.

(d) All Records related to this Lease or to business operations conducted on, from, or connected with the Premises, including such books, accounts and records of Lessee and its Subtenants, shall be kept and made available at one location within the limits of the County of Ventura. Lessor shall, through its duly authorized agents or representatives, have the right to examine and audit said Records upon five (5) calendar days' advance written notice for the purpose of determining the accuracy thereof, and of the monthly and annual statements of sales made and monies received. Lessor may disclose such information, data and documents provided and made available to Lessor for any reasonable commercial purpose, or as may be required by law. Lessee shall keep, or cause to be kept, full, complete, accurate and proper books, records and accounts of the Gross Revenue of each separate business operated at any time on the Premises by Lessee and/or its Subtenants. Said books, records and accounts, including any sales tax reports that Lessee and its Subtenants 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 upon five (5) calendar days' advance written notice during business hours.

**6.6. Monthly and Annual Statements by Lessee, Verification of Records, Computation, Payment and Correction of Percentage Rent.**

(a) Within twenty (20) calendar 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 sets forth the Gross Revenue of each separate business of Lessee and its Subtenants operating on the Premises for the month just concluded. Concurrently with delivery of each statement to Lessor, Lessee shall pay Lessor the amount of percentage rent due, if any, based on the application of percentages set forth in Exhibit "C" to said Gross Revenue, as shown in said statement, taking into account the minimum annual rent already paid pursuant to Article 6.1.

(b) Within sixty (90) calendar days after the end of each calendar year during the Lease Term, Lessee shall prepare and submit to Lessor a balance sheet, income and other financial statements prepared or audited by an independent certified public accountant, reflecting all business transacted on or from the Premises by Lessee and its Subtenants during the preceding calendar year. In such submittal, the certified public accountant, retained at Lessee's sole cost and expense, shall attest that the balance sheet, 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 as to the total Gross Revenue derived from the Premises for the calendar year for all business conducted on, from, or connected with the Premises during said calendar year. Further, Lessee shall separately identify each source of Gross Revenue by business name (including Lessee and any of its Subtenants conducting any business activities whatsoever on the Premises), or other appropriate identification, specifying the exact amount of Gross Revenue derived from that source during said calendar year. The statement shall also specify all amounts received by Lessee from any Subtenants, including a separate specification of all amounts paid as deposits, fees, rents, common area charges, monetary equivalents, pass through rents or other considerations with a monetary equivalent.

(d) In the event such annual statement discloses that the percentage rent based on the annual Gross Revenue from the Premises for the preceding calendar year exceeds the total amount of minimum annual and percentage rents paid to Lessor by Lessee during said period, Lessee shall pay the amount of such deficiency in percentage rent to Lessor concurrently with the submission of said statement to Lessor. Should the annual statement disclose an overpayment of percentage rent for the preceding calendar year, the amount of such overpayment shall be retained by Lessor, bear no interest, and be credited against future percentage rents under this Lease as and when such percentage rent becomes payable to Lessor.

(e) If upon audit by Lessor it is disclosed that the Gross Revenue reported by Lessee for any calendar month or as set forth in the certified annual statement was understated by three percent (3%) or more, Lessee shall pay, in addition to making payment of the 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 on demand. 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.

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

#### **6.7. Acceptance Not Waiver; Retention of Records.**

(a) The acceptance by Lessor of any monies paid to Lessor by Lessee as rent for the Premises, whether shown by any statement furnished by Lessee or otherwise specified in this Lease, shall not constitute an admission of the accuracy or the sufficiency of the amount of said rent payment, but Lessor shall be entitled at any time within three (3) years after the receipt of any such rental payment to question the sufficiency of the amount thereof and/or the accuracy of any statement or statements furnished by Lessee.

(b) For the purpose of enabling Lessor to check the accuracy of any statement or statements submitted by Lessee under this Article 6, and the sufficiency of any additional percentage rent payment made in accordance therewith, or as otherwise specified in this Lease, Lessee shall keep or cause to be kept safe and intact for said period of five (5) years after submission to Lessor of any such statement, all of Lessee's Records which in any way bear upon or are required to establish in detail the Gross Revenue derived from or in connection with activities conducted on or in connection with the Premises 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 five (5) year period. Lessee shall require that all its Subtenants so keep, maintain and retain records of their business activities conducted on the Premises for such five (5) year period, which records shall be made available to Lessor, Lessor's auditor, or other authorized representative or agent of Lessor for inspection and copying upon five (5) calendar days' advance written notice by Lessor to Lessee or directly to any Subtenant of Lessee.

(c) Lessee shall cooperate and make available all information requested by Lessor, an arbitrator, or a mediator in connection with the adjustment and renegotiation of rents provided for in this Lease, including any and all information regarding costs, expenses, earnings and profits of Lessee or its Subtenants.

#### **6.8. Adjustment of Minimum Annual Rent.**

(a) At the expiration of the initial one hundred twenty (120) months of the Lease Term, and each succeeding sixty (60) month period of the Lease Term thereafter, the minimum annual rent provided for in Article 6.1 shall be adjusted. Said adjustment shall be effected as follows:

(i) Within thirty (30) calendar days after expiration of said initial one hundred twenty (120) month period of the Lease Term, the average of the combined minimum annual and percentage rents payable during the immediately preceding sixty (60) months of the Lease Term shall be calculated. The minimum annual rent to be paid in equal monthly installments for the sixty (60) month period next succeeding the initial one hundred twenty (120) month period shall be an amount equal to seventy-five percent (75%) of said average total rent, but in no event shall the minimum annual rent ever decrease.

(b) At the expiration of each succeeding sixty (60) month period of the Lease Term, the minimum annual rent will be adjusted pursuant to and in the same manner as set forth in paragraph (a)(i) of this Article 6.8 using the average total rents paid during the immediately preceding sixty (60) month period.

#### **6.9. Adjustment of Percentage Rent.**

(a) At the expiration of the initial sixty (60) months of the Lease Term, and each succeeding sixty (60) month period of the Lease Term thereafter, Lessor and Lessee agree to negotiate adjustments to the percentage rent rates provided for in Article 6.2 and set forth in Exhibit "C", except for the percentage rent rate for boat slips, which is explicitly provided for otherwise in Exhibit "C". Such negotiation shall be conducted in accordance with the following procedure:

(i) Within thirty (30) calendar days after the expiration of the initial sixty (60) month period of the Lease Term and each succeeding sixty (60) month period of the Lease Term, Lessor and Lessee shall each submit to the other party in writing, pursuant to the notice provisions of Article 33, below, its proposed adjustment, if any, to the percentage rent rates provided for in Article 6.2 and set forth in Exhibit "C." Within seven (7) calendar days after receipt of said written proposal, the party receiving the proposed adjustment shall accept or reject such proposal. The failure of Lessee to respond in writing to Lessor within such time shall be deemed an approval of Lessor's written proposal, whereas a failure of Lessor to respond in writing to Lessee within such period shall be deemed a rejection of Lessee's written proposal. Except as to a deemed approval or rejection pursuant to the preceding sentence, any response must be in writing and shall be communicated to the other party pursuant to the notice provisions set forth in Article 33, below. In the event either of said proposals is rejected, the party submitting the same shall have seven (7) calendar days from the date of written notice of said rejection, or deemed rejection, to submit a revised or modified proposal. The party receiving said revised or modified proposal shall then have seven (7) calendar days within which to accept or reject the same. Lessor and Lessee shall enter into such negotiations in good faith and shall not unreasonably withhold their consent to or approval of any reasonable proposal of the other party.

(ii) In the event that the parties are unable to reach an agreement on any adjustments to the percentage rent rates, the adjustment to any such percentage rent rate in dispute shall be determined by arbitration as hereinafter set forth.



(b) Arbitration of Percentage Rent.

(i) Within thirty (30) calendar days after the last rejection of a proposal in Article 6.9(a)(i), Lessor and Lessee shall jointly appoint a single neutral arbitrator to determine the percentage rent rate(s) to be charged by Lessor and paid by Lessee for the uses, activities and operations conducted by Lessee and its Subtenants on, from, or connected with the Premises. 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) calendar days, each party shall appoint one arbitrator and the two arbitrators together shall then determine the percentage rent rate(s) to be paid by Lessee. Each party shall pay the fees of the arbitrator appointed by that party.

(ii) If, within sixty (60) calendar days of their appointment, the two (2) arbitrators so appointed are unable to agree on the applicable percentage rent rate(s), then they shall, in writing, immediately appoint a third arbitrator and the third arbitrator so appointed shall determine the percentage rent rate(s) in the manner provided in subparagraph (iii) of this paragraph (b) of Article 6.10, below, within sixty (60) calendar days of the appointment of the third arbitrator. The fees of the third arbitrator shall be divided equally between the parties.

(iii) In the event that the percentage rent rate(s) are to be determined by the third arbitrator so appointed, the arbitrators appointed by the separate parties shall jointly prepare a statement of the percentage rent rate(s) to be determined and the final offer by each party with respect to each percentage rent rate in dispute. The third arbitrator, after conducting such hearing as he or she may determine to be necessary or appropriate, shall fix and determine the percentage rent rate(s) in dispute, but, in so doing, may only select the final offer of either Lessee or Lessor as to the applicable percentage rent rate in dispute, and no other alternative or compromise percentage rent rate may be selected, unless the parties otherwise agree in writing that such a determination shall be within the power and authority of the arbitrator to make. The arbitrator shall deliver to each of the parties a statement of that decision.

(iv) Upon making a determination on the percentage rent rate(s) in dispute, the arbitrator(s) shall reduce the decision to writing and deliver a copy of such decision to each of the parties. The arbitrator(s) 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 6.9, Lessor and Lessee shall jointly hold said arbitrator(s) harmless and indemnify said arbitrator(s) against any and all costs and expenses incurred in said proceedings.

**(v) 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 RENT” 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 RENT” 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 RENT” PROVISION TO NEUTRAL ARBITRATION.**

\_\_\_\_\_  
Lessor's Initials

\_\_\_\_\_  
Lessee's Initials

(vi) The determination of the percentage rent rate(s) pursuant to this Article 6.9 shall be final and conclusive and shall apply as of the first day of the period for which the adjustment in said rent has been made and shall continue in force until the expiration of the applicable sixty (60) month period of the Lease Term. Lessee agrees to pay percentage rent at the prior rates until the new percentage rent rate(s) are determined, at which time the parties will make a retroactive cash adjustment in the amount paid to reflect the new percentage rent rate(s).

**6.10. Lessee's Covenant of Best Efforts.**

Lessee shall use its best efforts to maximize the Gross Revenue derived from all activities and uses conducted or permitted to be conducted on the Premises.

**6.11. Negation of Partnership.**

Nothing in this Lease, including the provisions of Article 19 relating to Appreciation Rent, 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 party to act as agent for the other, except as may be otherwise expressly provided in this Lease.

## 7. **Uses.**

### 7.1. **Permitted Uses.**

Subject to the provisions of Article 15.3, below, and except as otherwise provided in Article 7.2, below, Lessee shall not use, or permit the Premises, or any part thereof, to be used for any purpose or purposes, other than the purpose or purposes, and on the conditions, if any, set forth in Exhibit "D" attached hereto, initialed by the parties and by this reference incorporated herein. The permitted uses for the Premises as set forth in Exhibit "D," or as may hereafter be allowed pursuant to Article 7.2, below, are non-exclusive as to Ventura Harbor and Lessor reserves the right in its sole discretion to permit Lessee to conduct any particular activity on the Premises or any portion thereof, and to permit other lessees in the harbor to conduct or permit the same or similar uses on property leased from Lessor in Ventura Harbor. Any provision contained in this Lease to the contrary notwithstanding, the Premises shall not be used for any purpose which shall interfere with commerce, navigation or fisheries within or without the Ventura harbor. Should Lessee use, or permit the Premises, or any part thereof to be used for any purpose or purposes in violation of this Article 7.1, then Lessee shall be in default under this Lease and Lessor shall have all rights and remedies afforded to it under this Lease and applicable law, including the right to terminate this Lease.

### 7.2. **Other Uses.**

Lessee may, with Lessor's prior written consent, use the Premises for any other lawful purposes in addition to or in place of those enumerated above as specified in Exhibit "D"; provided, however, that prior to the commencement of such use by Lessee, the parties shall have agreed in writing to permit such use or activity to be conducted on the Premises and, if applicable, set a percentage rent rate for such use or activity, which agreement shall be in the form 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 and shall take into account, among other things, whether any particular use is already being offered or in use at Ventura Harbor by other lessees.

## 8. **Improvements to the Premises.**

### 8.1. **Required Improvements and Landscaping.**

(a) As a material part of the consideration for this Lease, Lessee shall construct certain required improvements and landscaping on the Premises as specified in Article 7.1 of the Option to Lease

(b) Lessor and Lessee acknowledge and agree that the prompt, full and complete construction of said required improvements and landscaping is a critical factor in the anticipated financial success of the business operations to be conducted by Lessee and any of its Subtenants on or from the Premises. Lessee further acknowledges and agrees that Lessor would not have entered into this Lease without first obtaining Lessee's unqualified commitment to perform the obligations required of Lessee under this Article 8.1.

(c) The required improvements to be constructed are specified in the plans set forth as Exhibit “E” attached hereto and by this reference made a part hereof, which are the same plans approved by Lessor under the Option to Lease. Within the initial thirty-six (36) months of the 30 Year Lease Term, Lessee shall have invested a minimum of Three Million Five Hundred Thousand Dollars (\$3,500,000) in the construction of said required improvements. Construction of said required improvements and landscaping must be substantially completed to the satisfaction of Lessor within forty-eight (48) months after the date indicated in Article 1 of this Lease. Failure to meet the aforementioned obligations—namely, the minimum investment in, and substantial completion of, the required improvements—shall be deemed to be an incurable default by Lessee and, in that event, Lessor shall have available to it all rights and remedies allowed by law and by this Lease, including the right to terminate this Lease. Notwithstanding the foregoing, Lessee shall not be deemed to have defaulted under or breached this Lease by failing to timely meet the investment and construction obligations in this Section 8.1(c) if, but only to the extent, such failure or delay is caused by or results from one or more of the following force majeure events (each, a “Force Majeure Event”): (i) acts of God; (ii) flood, fire, earthquake, or other natural disasters; (iii) war, invasion, terrorists threats or acts, riots or other civil unrest; (iv) government order, law, or action; or (v) national or regional emergency. In the event of any such excused delay in performance, the time for performing of such obligations shall be extended for a period of time equal to the time lost by reason of the delay. As soon as reasonably practicable after the occurrence of any Force Majeure Event, Lessee shall provide written notice to Lessor of the nature and extent of any such Force Majeure Event, and shall use commercially reasonable efforts to overcome the Force Majeure Event and resume performance of its obligations.

## **8.2. Planning, Design and Construction of Additional Improvements.**

(a) In the event Lessee wishes to construct other improvements on the Premises during the Lease Term in addition to those specified in Exhibit “E” and those currently existing on the Premises, if any, Lessee shall first submit a written request for conceptual approval of said improvements by Lessor, the proposed use and location thereof in relation to the particular portion of the Premises upon which Lessee proposes to construct said improvements, and pay Lessor a non-refundable processing fee of Five Hundred Dollars (\$500), plus Lessor’s out-of-pocket costs and overhead expense that may be incurred in connection with the processing of said request for approval, including but not limited to the cost of retaining planning, engineering and design consultants to assist Lessor in said process. If required, Lessee shall apply to the City and/or the California Coastal Commission for appropriate approval of the proposed improvements within one hundred twenty (120) calendar days after conceptual approval by the Lessor, which shall be given with all due practicable speed by written notice from Lessor to Lessee pursuant to Article 33, below.

(b) Any approval by Lessor of plans, specifications or other designs under this Article 8 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 on any plan, specification or other design submitted pursuant to the terms of this Lease, Lessor shall be guided by the provisions of this Lease and the policies of Lessor then in effect as to the Ventura Harbor. In the event of an

inconsistency or conflict between the terms and provisions of this Lease and the Building Code of the City, the requirements of the California Coastal Commission, or any other applicable laws or regulations, the strictest and most stringent provisions relating to the conflicting terms shall control.

(c) In addition to all submittals to be made and approvals to be obtained by Lessee as required in this Article 8, Lessee must secure, at Lessee's sole cost and expense, all necessary permits and approvals from any and all other governmental entities and agencies with jurisdiction over the planning, design and construction of said additional improvements.

(d) In all instances in this Article 8 where Lessor has authority to approve, reject, disapprove, request modification, revision or correction of plans, specifications, designs and assessments submitted by Lessee (hereinafter the "Plans" for the purposes of this subsection), Lessor agrees to act reasonably and cooperatively and shall communicate its action with respect to such review pursuant to Article 33, below. In the event such Plans 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 event Lessor requests revision, modification, or correction of the Plans, Lessee shall have thirty (30) working days from the date of action by Lessor to submit revised, modified, or corrected Plans, as the case may be. In the event such revised, modified, or corrected Plans are neither approved nor rejected by Lessor within thirty (30) working days after submission to Lessor, they shall be deemed to have been approved by Lessor. Should Lessee fail or refuse to submit a revised, modified or corrected Plans 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.

(e) In the event Lessee withdraws, or is deemed to have withdrawn its request for approval under this Article 8.2, or if this Lease is terminated pursuant to its terms while a request for approval hereunder is pending, Lessor shall have the right to retain copies of all tests, studies, inspections, plans, blueprints, 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, at no cost or expense to Lessor.

### **8.3. 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 except in accordance with plans, specifications or other designs previously submitted to and approved in writing by Lessor in the manner provided in this Lease, and only after appropriate permits and approvals from any and all other governmental entities or agencies with jurisdiction over the conduct of such work shall have been obtained.

### **8.4. Utilities.**

(a) Lessee agrees that any authorized utility or communications company has the right, subject to Lessor's written approval, to place utility lines, cables, pipes, wires,

conduits, or ductwork where necessary or desirable, through or on the Premises in any 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 and its Subtenants for loss or damage as a result of any negligent act or omission of a utility or communications 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 or communications facilities provided on or to the Premises to its facilities, and to furnish, install and maintain, at its own expense, all necessary ducts, pipes, wires, cables, lines 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.

#### **8.5. 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 under this Lease, 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, permits and governmental approvals.

#### **8.6. Signs.**

Neither Lessee nor any of its Subtenants acting under any authority of Lessee, shall construct, maintain, or allow any sign upon the Premises without the prior written approval of Lessor and such other governmental agencies as may have jurisdiction over said work.

### **9. Security.**

#### **9.1. Security Deposit.**

(a) Contemporaneously with the execution of this Lease, Lessee has deposited with Lessor the sum of Ten Thousand Dollars (\$10,000). This sum shall be held by Lessor as a deposit to secure Lessee's obligations under this Lease pursuant to Section 1950.7 of the California Civil Code. 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 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 independent accountants, attorneys and other consultants.

(b) 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 to restore said deposit to the original sum set forth in paragraph (a) of this Article 9.1, above. Such payment shall be made to Lessor within ten (10) calendar days after Lessee receives Lessor's written demand therefor pursuant to Article 33, below.

(c) Should Lessee comply with all of said terms, covenants, and conditions and promptly pay all rent, fees, charges and assessments as they come due, and all other sums payable by Lessee to Lessor hereunder, the deposit, subject to Article 12.3 below, shall be returned to Lessee at the end of the Lease term.

(d) 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.

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

(a) Unless expressly waived by written instrument signed by Lessor, Lessee shall provide to Lessor prior to commencement of construction of any improvements on the Premises at least one of the following forms of security: (i) an unconditional written personal or corporate guaranty that said construction will be completed as required (provided the guarantor is in a Control relationship with Lessee and has a liquid net worth, in excess of five (5) times the total amount of the construction contract, documented to the reasonable satisfaction of Lessor); (ii) a bond of a responsible surety company approved in advance by Lessor and licensed to do business in California, in an amount not less than one hundred twenty-five percent (125%) of the estimated cost of constructing said improvements; (iii) an unconditional irrevocable letter of credit in a form approved by Lessor, in an amount not less than one hundred twenty-five percent (125%) of the estimated cost of constructing said improvements; (iv) a binding and acceptable loan agreement from the lender in a form approved by Lessor, in an amount not less than one hundred twenty-five percent (125%) of the estimated cost of constructing said improvements; or (v) such other security as may be approved in writing by Lessor in its sole discretion. If Lessee provides a bond or letter of credit under options (ii) or (iii) above, it 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, designers, mechanics, laborers and materialmen. Said bond shall state that the construction work shall be affected 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 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 hold Lessor harmless from all claims for design, 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. Lessee further shall carry, or cause to be carried by its contractor or contractors, sufficient and appropriate coverage in Workers' Compensation and Longshoremen and Harbor Workers' Compensation Insurance (if required) 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 on 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, Lessee shall be in default of this Lease and Lessor shall have available to it all rights and remedies afforded to it under this Lease and applicable law, including the right to terminate this Lease.

(d) The providing of the security and insurance under this Article 9.2 shall not be construed to limit Lessee's liability hereunder, nor to fulfill the indemnification provision and requirements of this Lease. Notwithstanding the provision of any bond or guaranty, 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 and Subtenants connected with this Lease or with the use or occupancy of the Premises.

### **9.3. Quitclaim Deed.**

As further security for the performance of the obligations of Lessee specified in this Lease and to ensure the clearing of title to the Premises upon a termination of this Lease, Lessee shall, prior to or contemporaneously with the execution of this Lease, and 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 only in the event of a default of Lessee and subsequent termination of this Lease by Lessor. Upon recordation, said deed shall constitute conclusive evidence of the termination of this Lease and all rights of Lessee, or those claiming under Lessee, in and to the Premises.

### **9.4. Negation of Warranties, Lessee Waivers, Litigation Limitations and Stipulation.**

(a) The parties recognize and agree that this Lease, the limited development process and construction of improvements on the Premises 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 financeable title, financing or feasibility, except for any specific express 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, other applicable laws and regulations of the State of California, including 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.

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

(iii) That, in the event of a breach of this Lease by Lessor, the remedy of Lessee shall be limited to an action at law for damages actually and demonstrably incurred by Lessee by reason of said breach. In the event of such breach by Lessor, Lessee waives all right to claim any interest in the Premises in any judicial proceeding, including, but not limited to a claim for specific performance, quiet title, declaratory relief, equitable lien or constructive or resulting trust.

## **10. Lessee's Obligation to Maintain and Repair.**

### **10.1. Normal Repairs.**

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 any revetted slopes, bulkheads, piers, wharves, pilings or docks within or underlying improvements associated with the use and occupancy of the Premises, in First-Class condition and in accordance with and conformity to all applicable laws, rules, ordinances, orders and regulations relating to any part of the Premises or the improvements thereon, and shall make all necessary repairs and alterations thereto. Lessee shall so keep, maintain and repair the Premises and improvements such that they will remain in First-Class condition comparable to other similarly situated business operations of the same type or character conducted in Southern California which are open to the public. Lessee further shall provide proper containers for trash

and garbage and keep the Premises at all times free and clear of rubbish, debris and litter. Lessee shall not assign the obligations set forth in this Article 10.1 to any Subtenant without the prior written consent of Lessor.

## **10.2. Interim Modernization of Leasehold Improvements.**

(a) A major modernization, renovation and refurbishing program to bring all improvements on the Premises, including all slips, docks, wharves, piers, pilings, revetted slopes, fuel dispensing facilities, bulkheads, parking areas and the exterior, including landscaping, and interior of all buildings and structures, up to First-Class condition and competitive quality and prevailing standards for the uses authorized, shall be scheduled to occur and be completed to Lessor's reasonable satisfaction between the twenty-fifth (25<sup>th</sup>) and the thirtieth (30<sup>th</sup>) years of the Lease Term.

(b) The modernization, renovation and refurbishing plan of the Lessee at that time shall upgrade all improvements on the Premises to comply with then effective and applicable codes, satisfy Lessor that all such improvements will retain attractiveness as a harbor facility, will remain structurally sound and provide First-Class facilities for use or rental, thus assuring a satisfactory income stream to both Lessor and Lessee during the remainder of the Lease Term.

(c) A minimum modernization program will include renovation, repair and, if necessary, replacement of waterside improvements (slips, docks, pilings, etc.), reconditioning of building exteriors by repainting, replacement of exterior material with like materials, re-roofing with equivalent material, and replacement of landscaping materials to original equivalent, as needed. Interior modernization will include painting, replacement of carpeting or other floor covering, replacement or refinishing of cabinets, hardware and bathroom fixtures, and repair or replacement of climate or temperature control, plumbing and electrical systems. If other interior furnishings are supplied by the Lessee, refinishing or replacement of such items will be included.

(d) The interim modernization plan developed by Lessee, and specific means or program Lessee proposes to use to finance the cost of the interim modernization plan (the "Modernization Plan"), shall be submitted to and approved by Lessor before commencement of work. Lessee shall submit the Modernization Plan to Lessor for approval sometime during the six (6) months immediately preceding the start of the twenty-fifth (25<sup>th</sup>) year of the Lease Term. Lessor's approval or disapproval of the Modernization Plan shall be based on the criteria set forth in paragraphs (a), (b) and (c) of this Article 10.2, above, and on standards of commercial reasonableness. In the event Lessor disapproves of the Modernization Plan, Lessor shall specify in writing the reason or reasons for any disapproval, and Lessor and Lessee agree that they will meet and confer for a period of up to ninety (90) days in good faith in an effort to resolve any disputes related to this modernization plan before Lessor can exercise its right to terminate this Lease.

(e) The essence of this modernization provision is to retain First-Class high quality facilities which equal or exceed the quality level of other similarly situated business

operations in Southern California and which are compatible with the harbor environment of Ventura Harbor for the full Lease Term, and beyond.

(f) All work required under the Modernization Plan shall be subject to the approval of Lessor and any other agency or governmental authority which has jurisdiction over said work and Lessee shall secure, at its own expense, all permits and other approvals required for 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.

#### **10.3. Security for Modernization.**

The provisions of Article 9.2 regarding security for completion of improvements on the Premises shall apply to all modernization work required to be performed by Lessee under this Article 10.

#### **10.4. Planning, Design and Construction Process for Modernization Work.**

If required, the designs, plans, drawings and other documents for the modernization work required under this Article 10 shall be submitted for approval by Lessor, and/or other governmental entities, and such submission shall be made under and pursuant to the same procedure, terms and conditions set forth in Article 8.2, above. The initial submission of schematic plans shall be made within sixty (60) calendar days after Lessor's approval of the Modernization Plan and financing program proposed by Lessee, together with a non-refundable fee of Five Hundred Dollars (\$500.00), plus Lessor's out-of-pocket costs and overhead expense that may be incurred in connection with the processing, shall be paid by Lessee to Lessor. Thereafter, the submission and review process specified in Article 8.2 shall apply to the planning, design and construction of the modernization work.

#### **10.5. Removal of Water Area Obstructions.**

In the event Lessee becomes aware of an obstruction in the water area of the Premises, Lessee shall notify Lessor and Harbor Patrol within twenty-four (24) hours of it becoming aware of such obstruction. Furthermore, Lessee shall, at its sole cost and expense, and in addition to all other obligations imposed on Lessee under this Article 10, remove all obstructions from the water area of the Premises that may impede water traffic or otherwise interfere with the use of any land or water area leased hereunder or within the Ventura Harbor. If Lessee fails to commence the removal of such obstructions within fifteen (15) calendar days after receipt of written notice thereof from Lessor pursuant to Article 33, below, or thereafter fails to prosecute diligently said removal to completion, Lessor may remove the obstructions and commit so much of the security deposit referred to in Article 9, above, up to the whole thereof, as is necessary to cover the costs of removing such obstructions.

## 11. **Maintenance and Repair by Lessor.**

### 11.1. **Lessor's Right of Entry for Purposes of Repair.**

(a) Lessor shall not be required to maintain or repair any improvements 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 a seawall, pier, wharf, pilings, bulkhead, or revetted slopes, conducting dredging operations, 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 the Ventura Harbor. Further, Lessor reserves the right to enter upon the Premises 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, unless it is an emergency condition requiring immediate entry, Lessor shall provide Lessee with a minimum of forty-eight (48) hours advance written notice and utilize its best efforts not to unreasonably disrupt Lessee or its Subtenants in their use or occupation of the Premises. 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 Subtenant, nor any other person claiming under or through Lessee, shall be entitled to any consequential damages allegedly 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 and provide a reasonable amount of time as determined in Lessor's sole discretion, for Lessee to make the requisite repairs or replacements. Should Lessee fail to make said repairs or replacements within said time provided by Lessor in said notice, Lessor may make such repairs and replacements and the cost thereof, including but not limited to the cost of design, labor, material, equipment, the value of services provided by employees of Lessor and the cost of professional services such as attorneys, accountants or its contractors and other consultants as may be reasonably incurred 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, Subtenants and the patrons or visitors of Lessee or its Subtenants.

### 11.2. **Limitations on Lessor's Obligation to Repair.**

Lessor shall have no duty, obligation or liability whatever to care for or maintain the Premises. In the event that, by any express provision of this Lease, Lessor agrees to care for or maintain any part of the Premises, 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 or its Subtenants or patrons by reason thereof unless Lessor fails to commence performance of such obligation with reasonable diligence after receipt of a written notice from Lessee pursuant to Article 33, below, 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 its Subtenants, nor any person claiming under or through Lessee, shall be entitled to consequential damages allegedly arising therefrom.

### **11.3 Fairway Water Depth.**

The parties acknowledge that a portion of the water area within the Premises may be subject to a shoaling condition that can affect water depth. This condition arises through a natural process. The condition can also impact adjacent water areas not included in any ground lease ("fairways"). Lessor agrees to take such action at its sole expense and discretion as may be reasonably necessary and commercially reasonable and prudent to maintain the fairways in the vicinity of the Premises at a reasonable depth, taking into account the cost of such action and Lessor's fiscal limitations, governmental requirements, including but not limited to permits, foreseeable weather conditions, the foreseeable impact on all operations in Ventura Harbor, including the business operations of Lessee and its Subtenants, and the responsibilities and obligations of Lessor with respect to all of the foregoing. Likewise, Lessee shall be solely responsible at its expense to maintain appropriate water depth throughout any water area within the Premises. Lessor shall in no event be obligated to maintain the water depth in the fairways at a deeper level than other lessees in Ventura Harbor. The parties agree to cooperate in good faith to coordinate their efforts in maintaining adequate water depth in their respective areas of responsibility as described above so as to minimize the water depth maintenance costs each will incur and, also to minimize the disruption of operations within Ventura Harbor. Nevertheless, Lessor's obligation and potential liability for maintaining appropriate water depth in the fairways shall be limited to the cost and expense of performing the obligation described in this Article 11.3, and neither Lessee, nor any person or party claiming through Lessee, shall be entitled to consequential damages allegedly arising therefrom.

## **12. Surrender of Premises.**

### **12.1. 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 the Premises to Lessor along with any and all buildings, structures, installations and other improvements thereon, except trade fixtures owned or installed by Lessee or its Subtenants, in good and clean condition so as to leave the Premises and said buildings, structures, installations and other improvements in substantially the same condition as when first occupied by Lessee after construction, subsequent alteration or modification, or after interim modernization of the improvements on the Premises, whichever event is the last to occur, 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 of any kind, either previously existing or placed on the Premises by Lessee or its Subtenants, except trade fixtures owned or installed by Lessee or its Subtenants, 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 to Lessor and hereby appoints Lessor as its attorney-in-fact to execute said documents on its behalf.

### **12.2. Ownership of Trade Fixtures upon Expiration or Termination.**

All trade fixtures owned or installed in or about the Premises by Lessee or its Subtenants may, at the option of Lessee or its Subtenants, be removed within thirty (30) calendar days following the expiration or termination of this Lease, whichever occurs first; provided, however, that Lessee shall pay Lessor a sum of money equal to two (2) times the monthly installment of the minimum annual rent rate in effect at the expiration or termination of this Lease for said thirty (30) day period, and 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 thirty (30) day period shall automatically 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 free and clear of all encumbrances and hereby appoints Lessor as its attorney-in-fact to execute said documents on its behalf.

### **12.3. Security for Surrender of Premises.**

The deposit specified in Article 9 shall be retained by Lessor for a reasonable time 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 and modernization as required or allowed by this Lease. In the event Lessee does not return the Premises in substantially the same condition, Lessor may apply so much of the deposits as may be necessary to restore the Premises to the condition specified in this Article. Should such restoration costs exceed the amount of the deposit, Lessee shall, within thirty (30) calendar days after receiving a written statement from Lessor specifically identifying the remaining costs required for restoration, pay Lessor such amount to restore the Premises to said condition with thirty (30) days thereof. The rights and obligations set forth in this Section 12.3 shall survive the termination of this Lease.

## **13. Title and Warranties.**

### **13.1. Disclaimer of Warranties.**

Lessee acknowledges that the Premises are subject to covenants, conditions, easements and restrictions of record. Lessor warrants that it has the authority to lease the Premises to Lessee in accordance with the terms of this Lease. 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 13.

**13.2. Lessee's Quiet Possession.**

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 payment of all sums payable to Lessor or others by Lessee, Lessor shall secure to Lessee during the Lease Term the quiet and peaceful possession of the Premises against all persons, which shall mean solely the legal right to the use and possession of the Premises. Lessor shall, upon acquiring actual knowledge of the actions or claims of any such person(s), which actions or claims actually (as opposed to constructively) disturb or interfere with the quiet, peaceful and lawful possession of the Premises by Lessee, at Lessor's own cost and expense and with reasonable diligence, file such proceedings and take such actions as may be reasonably necessary to remove the action or claim of such person(s) and the actual interference and disturbance caused thereby. Aside therefrom, neither Lessee nor its Subtenants, nor any other person claiming under or through Lessee, shall have any claim against Lessor for any damages, whether consequential, incidental or compensatory, nor shall Lessee be released or discharged from any of its obligations, liabilities, or indebtedness hereunder.

**13.3. Lessee Acknowledgments and Waiver.**

Subject to Article 11.1, Lessee understands that from time to time during the term of the Lease, and at such times and intervals as may be determined by Lessor in its sole discretion, construction, rehabilitation, replacement, repair and restoration activities may be conducted by or under the authority of Lessor within Ventura Harbor. Lessee acknowledges that said activities and related operations, including the staging, storage, fishing, dredging and docking activities on other parcels in and around Ventura Harbor are necessary and for the benefit of Lessee, its Subtenants, other lessees and the public, and that the conduct of such activities shall be deemed never to have disturbed or interfered with the possession and use of the Premises by Lessee or its Subtenants, nor anyone claiming under Lessee or its Subtenants, nor to have caused Lessee or its Subtenants to be evicted, either actually or constructively, from the Premises, and shall, under no circumstances, entitle Lessee, its Subtenants or others claiming under or through Lessee, to claim or recover incidental or consequential damages from Lessor on account of such activities. In addition to the foregoing, Lessor warrants and agrees that:

(i) Lessor holds, or prior to the date indicated in Article 1, 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 and will cause good and marketable title to the Premises to be transferred to Lessee;

(ii) To the best of Lessor's knowledge, there is no undisclosed physical condition of the Premises, or limitation on the title thereto, which is known to Lessor and unknown to Lessee which would restrict or prevent Lessee from using the Premises as set forth in Article 7, above;

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(iii) To the best of Lessor's knowledge, except as permitted under this Lease, there are no Hazardous Materials on the Premises, as that term is defined in Article 15.3, below; and

(iv) There are no agreements, covenants, conditions, restrictions or other matters known to Lessor that will affect Lessee's use of the Premises pursuant to this Lease.

Lessee acknowledges that it has reviewed and understands the rights Lessee has or may have under California Code of Civil Procedure Section 1179 and California Civil Code Sections 1950.7(c), 1954.05 and 3275 in relation 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, and Lessee hereby expressly waives any and all such rights granted to Lessee or its successors-in-interest under Civil Code Sections 1950.7(c), 1954.05 and 3275. 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.

### 14. **Encumbrance of Leasehold.**

#### 14.1. **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, Lessee shall, subject to the terms and provisions of this Article 14, have the right to subject Lessee's leasehold estate in the Premises, and any and all improvements on the Premises, to one or more mortgages as security for a loan or loans from an Institutional Lender, upon such terms as may be reasonably satisfactory to Lessor, including:

(i) The 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 the 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 eighty percent (80%) of the fair market value of Lessee's interest in this Lease and the improvements on the Premises,



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and Lessee's net operating income derived from all operations conducted on or from the Premises during each calendar year of the Lease Term shall be in excess of one hundred twenty-five percent (125%) of all debt service (including all costs and expenses related to the debt service) payable by Lessee during such calendar year for all mortgages encumbering Lessee's interest in this Lease, and the improvements on the Premises. For purposes of this subparagraph (iii) of paragraph (a) of Article 14.1, the fair market value of Lessee's interest in this Lease and the improvements on the Premises, shall be 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 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;

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

(vi) 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;

(vii) 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

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

A. 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;

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

C. 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

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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

D. 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 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) For purposes of this Article 14, the extension or renewal of existing financing, unless explicitly provided for in the original financing documents, shall be considered a new loan or encumbrance, subject to all criteria set forth in this Article 14.1 and Lessor's approval thereof pursuant to Article 14.2, below. Further, in such event, Lessor shall have the right to require that Lessee invest additional capital and equity to bring the loan or encumbrance within the debt service coverage standards set forth in subparagraph (iii) of paragraph (a) of this Article 14.1, above.

(c) Whenever the words "mortgage" or "encumbrance" appear herein, the words "security instrument" may be substituted in their place.

### **14.2. Lessor's Approval of Encumbrance and Processing Fee.**

Prior to the making of any such lien or encumbrance allowed hereunder, 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 Lessor shall have the right of approval of such encumbrance. A non-refundable fee of Two Thousand Five Hundred Dollars (\$2,500.00), plus Lessor's out-of-pocket costs and overhead expense that may be incurred in connection with the processing, shall be paid by Lessee to Lessor 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. The payment of Lessor's out-of-pocket costs and overhead expenses shall be made within thirty (30) calendar days after Lessee receives an invoice from Lessor for said costs and expenses. 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, acting in good faith, Lessor determines that the proposed encumbrance is not commercially reasonable. 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. Lessee waives any right to terminate this Lease in the event it is determined that Lessor unreasonably withheld its consent to approval 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.

**14.3. Lessor's Option to Permit Refinancing.**

During the Lease Term, but only with Lessor's prior written consent, Lessee may refinance the existing debt structure 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. Such refinancing shall only be on such terms as may be satisfactory to and approved in writing by Lessor. Lessor reserves the right to consent or withhold its consent to any such refinancing as Lessor shall determine, in its sole discretion. Further, as a condition of any such refinancing, Lessee shall comply with each and every term and condition of encumbrancing set forth in Articles 14.1 and 14.2, above, and pay all Appreciation Rent, if any, due under Article 19, below.

**14.4. 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 14.1 or 14.3, 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, 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 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 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

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provisions of Article 16, below. In the event of any transfer, the transferor shall forthwith give written notice to Lessor of such transfer, including the name and address of the transferee and the effective date of such transfer.

(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 thirty (30) calendar days after service of written notice from Lessor of its intention to terminate this Lease for such default or breach (or within 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 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 10 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.

(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 Three Hundred Thousand Dollars (\$300,000), 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 14.4, 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 17 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 as defined in paragraph (d) of this Article 14.4, 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 14.4, 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 thirty (30) 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.

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 14.4 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 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 paragraph (h) of Article 14.4.

(i) Any notice to the encumbrance holder provided for in this Lease may be given contemporaneously with any notice to Lessee.

(j) 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 therefor 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.

(k) 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.

(l) 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 14.4, 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.

## **15. Indemnification, Hold Harmless and Insurance.**

### **15.1. Indemnification.**

Lessee shall defend, protect, indemnify and hold harmless Lessor, its officers, elected officials, agents, consultants, attorneys, employees and volunteers (collectively the "Indemnified Parties" or individually an "Indemnified Party" for the purposes of this Article 15), from and against any and all claims, costs, demands, loss or liability of any kind or nature, including expenses and reasonable attorneys' fees, which an Indemnified Party 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, arising out of, or in any manner connected with this Lease or with the occupancy and use of the Premises by Lessee, its officers, agents, employees, Subtenants, patrons, visitors, or trespassers except such claims and actions caused by Lessor's gross negligence or willful misconduct. If any action or proceeding is brought against an Indemnified Party as provided in the preceding sentence, Lessee shall, upon notice from Lessor, defend the claim at Lessee's sole expense with counsel of Lessee's choosing that is reasonably satisfactory to Lessor. The obligation of Lessee hereunder to the Indemnified Parties shall cease upon the expiration of this Lease or the earlier termination thereof, or any period of holding over, except to the extent the act or event giving rise to such obligation occurred prior to the expiration of the Term or earlier termination of the Lease or any period of holding over.

### **15.2. 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 improvements in, upon, or about the Premises and for injuries to Lessee, its Subtenants 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 gross negligence or willful misconduct of Lessor or the failure by Lessor to perform an affirmative duty imposed under this Lease or by applicable law.

### 15.3. Hazardous Materials and Environmental Indemnity.

(a) The term “Environmental Law” shall mean, (i) any federal statute, law, code, rule, regulation, ordinance, order, standard, permit, license or requirement (including consent decrees, judicial decisions and administrative orders) together with all related amendments, implementing preservation, conservation or regulation of the environment, regulations and reauthorizations, pertaining to the protection, preservation, conservation or regulation of human health or the environment including but not limited to: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq. (“CERCLA”); the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (“RCRA”); the Toxic Substances Control Act, 15 U.S.C. §2601 et seq. (“TOSCA”); the Clean Air Act, 42 U.S.C. §7401 et seq.; and Clean Water Act, 33 U.S.C. §1251 et seq.; (ii) any state or local statute, law, code, rule regulation, ordinance, order, standard, permit, license or requirement (including consent decrees, judicial decisions and administrative orders) together with all reauthorizations, pertaining to the protection, preservation, conservation or regulation of human health or the environment, including but not limited to soil, groundwater and indoor and ambient air conditions, including, but not limited to, the applicable provisions of the California Health and Safety Code; (iii) any federal, state or local legislation enacted in the future pertaining to the protection, preservation, conservation or regulation of the environment, and all related amendments, implementing regulations and reauthorizations.

(b) The term “Hazardous Material” shall mean, (i) “hazardous substances,” as defined by CERCLA, and shall include, but is not limited to any substance, the presence of which on the Premises is either: potentially injurious to the public health, safety or welfare, the environment or the Premises; regulated or monitored by any governmental authority; a potential basis for liability of Lessor to any governmental agency or third party; or a potential basis for cancellation of any insurance policy covering the Premises; (ii) “hazardous waste,” as defined by RCRA; (iii) any pollutant or contaminant, or hazardous, dangerous or toxic chemical, waste or substance (“pollutant”) within the meaning of the Environmental Laws, which Environmental Laws, prohibit, limit or otherwise regulate the use, exposure, release, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, disposal or recycling or such pollutant; (iv) petroleum, crude oil or any fraction or petroleum or crude oil; (v) any radioactive material, including any source, special nuclear or by-production material; (vi) asbestos-containing materials in any form or condition; (vii) polychlorinated biphenyls; and methane gas or any related substance.

(c) The term “Environmental Actions” shall mean, (i) any notice of violation, complaint, claim (including but not limited to claims based on negligence, trespass, strict liability, nuisance, ultra hazardous activity, toxic-tort or detriment to human health or welfare), citation, demand, inquiry or inquiries, action, assertion of potential responsibility, lien, encumbrance, or legal or administrative proceeding regarding the Premises, whether formal or informal, absolute or contingent, matured or unmatured, brought or issued by any governmental unit, agency, body, or any person or entity respecting: Environmental Laws; public health risks; the environmental condition of the Premises, or any portion thereof, or any property contiguous to the Premises (to the extent caused by the Lessee or the presence of the Hazardous Materials on the Premises), including actual or alleged damage or injury to wildlife, biota, air, surface or subsurface soil or water, or other natural resources; or the use, exposure, release, generation,

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manufacture, transportation to or from, handling, storage, treatment, recycling, reclamation, reuse, disposal or presence of Hazardous Material either on the Premises or transported offsite for sale, treatment storage, recycling, reclamation, reuse or disposal; (ii) any violation or claim of violation of any Environmental Laws by Lessee; (iii) any lien for damages caused by, or the recovery of any costs incurred for investigation, remediation or clean-up of any release or threatened release of Hazardous Material; or (iv) the destruction or loss of all or any portion of the Premises, or the injury, illness or death of any officer, director, employee, agent, representative, Subtenant or invitee of Lessee or any other person arising from or caused by the environmental condition of the Premises.

(d) Lessee shall not engage in any use of Hazardous Materials (except de minimus quantities of common chemicals which are used, stored, present or handled in the ordinary course of Lessee's business, or the business of any Subtenant, and are in compliance with all applicable Environmental Laws) 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. Lessor may condition its consent upon Lessee giving Lessor such additional assurances as Lessor, in its sole and reasonable discretion, deems necessary to protect Lessor, the public, the Premises, Ventura Harbor, and the environment against damage, contamination, injury or liability, including, without limitation, the deposit or additional security under Article 9, above.

(e) Lessee shall comply with all Environmental Laws and cause the Premises to comply with all Environmental Laws. Lessee shall satisfy all requirements of applicable Environmental Laws for the registration, operation, maintenance and removal of all underground storage tanks on the Premises, if any.

(f) Lessee hereby represents that it has conducted all testing, inspection and analysis Lessee deems reasonably necessary with regard to the condition of the Premises. Lessee therefore takes possession of the Premises, and its leasehold interest in the Premises and any improvements now existing on the Premises, in their "as-is" condition and with all faults and Lessee hereby specifically waives any rights Lessee may have against Lessor with regard to the condition of the Premises including, but not limited to soils, toxic or Hazardous Materials, fill material, compaction, geologic constraints and faults.

(g) If Lessee knows, or has reasonable cause to believe, that a Hazardous Material, or a condition involving or resulting from a Hazardous Material, is present on, under, or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice pursuant to Article 33 below of such fact to Lessor, together with copies of all reports or notifications to or from governmental agencies or private parties concerning the same.

(h) 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 the Premises and Ventura Harbor.



(i) 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 and the value of services provided by employees of Lessor, its officers, elected officials, and lease administrators. Such payment shall be made to Lessor within thirty (30) calendar days after Lessee receives Lessor's written demand therefor pursuant to Article 33, below. Nothing under this Article 15.3 shall give or be construed as giving Lessor the right to direct or control Lessee's actions in complying with Environmental Laws.

(j) Lessor is entitled to rely upon Lessee's representations, warranties and covenants contained under Article 15.3 despite any independent investigations by Lessor or its consultants. Lessee shall take all necessary actions to determine for itself, and to remain apprised of, the environmental condition of the Premises. Lessee shall have no right to rely upon any independent investigations or findings of Lessor or Lessor's consultants.

(k) Lessee shall indemnify, protect, defend (at trial and appellate levels and with counsel, experts and consultants reasonably satisfactory to Lessor) and hold harmless the Indemnified Parties 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) which might arise or be asserted against Lessor for a claimed violation of any and all present and future federal, state and local laws (whether under common law, statute, rule, regulation or otherwise), including, without limitation, the 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 Material, activity or substance connected with the condition of the Premises. If any Environmental Action or proceeding is brought against an Indemnified Party, Lessee, upon notice from Lessor, shall defend the claim at Lessee's sole expense with counsel of Lessee's choosing that is reasonably satisfactory to Lessor. Lessee's obligations under this paragraph (k) of Article 15.3 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. Further, 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 (k) of Article 15.3, unless specifically stated in writing in the agreement and signed by Lessor.

#### 15.4. **Insurance.**

In addition to and independently of all other provisions of this Lease and at all times during the Lease term, Lessee shall maintain at Lessee's sole cost and expense:

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(a) Lessee's Improvements and Betterments insurance coverage to be provided on a property insurance form insuring against all risks of loss (including earthquake and tsunami if reasonably available, which may be covered under a separate form) to any tenant improvements or betterments now existing or hereafter constructed or installed on or within the Premises by Lessee, any predecessor-in-interest of Lessee, or any Subtenant or assignee of Lessee. Coverage shall be at least as broad as that provided by Insurance Services Office Form CP 10 30 (Causes of Loss – Special Form). Coverage shall be written for full replacement value with no coinsurance penalty provision. Limits shall be for the full value of tenant improvements and betterments. Lessor shall be included as an insured and shall be named as “co-loss payee” with any encumbered holder approved by Lessor. The insurer shall waive all rights of recovery against the Lessor. Lessor and Lessee agree that such proceeds may be placed in trust with a trustee acceptable to Lessor and Lessee for the purpose of securing the restoration and replacement of said improvements.

(b) Rental insurance in the form of business income, business interruption, extra expense or similar coverage as part of a commercial property insurance policy or under a separate policy form sufficient to cover all rent payments under this Lease in the event of a business interruption for a period of two (2) years. In no event shall Lessor be liable for any business interruption or other consequential loss sustained by Lessee, whether or not it is insured, even if such loss is caused by the negligence of Lessor, its employees, officers, directors, or agents. Rent shall not abate as a result of any damage to or destruction of the Premises other than as set forth in Article 21.5, below. Any rent insurance proceeds received by Lessor by reason of such damage or destruction of the Premises shall be applied by Lessor to the payment of rent, but this shall not relieve Lessee of any obligation under this Lease including the obligation to pay rent.

(c) Boiler & Machinery insurance with limits of not less than actual replacement cost for all property and improvements, encompassing explosion and breakdown. Lessee shall obtain and deliver to Lessor, along with copies of all policies of insurance required hereunder, a joint loss endorsement for property and boiler and machinery policies. The Lessor is to be added as insured to boiler and machinery coverage.

(d) Builder's all-risk insurance using an inland marine form during the period of any major alteration or improvement, using the broadest form of coverage available. Lessor shall be named as loss payee. Lessor and Lessee agree that such proceeds may be placed in trust with a trustee acceptable to Lessor and Lessee for the purpose of securing the restoration and replacement of said improvements.

(e) Commercial general liability insurance using Insurance Services Office “Commercial General Liability” policy from CG 00 001 or the exact equivalent. Defense costs must be paid in addition to limits, including defense for additional insureds. Limits shall be no less than two Million Dollars (\$2,000,000) per occurrence for all covered losses and no less than Two Million Dollars (\$2,000,000) general aggregate. If the policy aggregate limit is not twice the per occurrence limit, a separate aggregate limit of liability applicable only to the Premises shall be endorsed on the policy using Insurance Services Office form CG 25 04 or its equivalent. An umbrella policy of no less than Ten Million (\$10,000,000) shall also be required.

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(f) Workers' compensation insurance on a state-approved policy form providing statutory benefits as required by California law with employer's liability limits no less than One Million Dollars (\$1,000,000) per accident for all covered losses. Lessee shall also procure and maintain, at all time during the Lease Term, insurance against liability arising from or related to the United States Longshoremen's and Harbor Workers' Act, hereafter "USL&H." If the USL&H exposure is incidental or only occasional, coverage may be endorsed on Lessee's workers' compensation policy on an "if any" basis.

(g) The following conditions shall apply to the foregoing insurance requirements of this Section 15.4:

(i) All policies of insurance shall be issued by insurance companies licensed to do business in the State of California and rated not less than A-: VII by A. M. Best's, 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.

(ii) Lessee agrees to endorse the third party general liability coverage required herein to include as additional insureds Lessor, its officials, employees and agents, using standard ISO endorsement No. CG 20 10 with an edition date of 1985. Lessee also agrees to require all Subtenants, vendors or other parties frequently on the Premises to do likewise.

(iii) Any waiver of subrogation express or implied on the part of Lessor to any party involved in this Lease, or related documents or transactions, applies only to the extent of insurance proceeds actually paid. Lessor, having required that it be named as an additional insured to all insurance coverage required herein, expressly retains the right to subrogate against any party for sums not paid by insurance. For its part, Lessee agrees to waive subrogation rights against Lessor regardless of the applicability of any insurance proceeds, and to require the same of all of its Subtenants.

(iv) All insurance coverage maintained or procured by Lessee or required of others by Lessee pursuant to this Article 15.4 shall be endorsed to delete the subrogation condition as to Lessor, or to specifically allow Lessee or others providing insurance herein to waive subrogation prior to a loss. This endorsement shall be obtained regardless of existing policy wording that may appear to allow such waivers.

(v) All insurance coverage provided pursuant to Article 15.4 or any other agreement (express or implied) between Lessor and Lessee or any Subtenants or in any way relating to Lessor, is intended to apply to the full extent of the policies involved. Nothing referred to herein or contained in this Lease or any agreement involving Lessor in relation to the improvements contemplated by this Lease is intended to be construed to limit the application of insurance coverage in any way.

(vi) None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind unless Lessee has requested approval in writing by Lessor. Lessor shall respond within thirty (30) days of receipt of written request approving or disapproving the limiting endorsements of the policy.

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(vii) All coverage types and limits required are subject to approval, modification and additional requirements by Lessor, as the need arises. Lessee shall not make any reductions in scope of coverage (e.g., elimination of contractual liability or reduction of discovery period) that may affect Lessor's protection without Lessor's prior written consent.

(viii) Proof of compliance with these insurance requirements, consisting of endorsements and certificates of insurance shall be delivered to Lessor at or prior to the execution of this Lease. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, Lessor has the right, but not the duty, to obtain any such replacement insurance to protect its interests under this Lease and to pay the premium or to terminate this Lease. Any premium so paid by Lessor shall be charged to and paid by Lessee within ten (10) calendar days after receiving Lessor's statement therefor.

(ix) Lessee agrees to endorse, and to require others to endorse, the insurance provided pursuant to these requirements, to require thirty (30) days' written notice to Lessor prior to cancellation of any such coverage and notice of any material alteration or non-renewal of any such coverage, and to require the same of any of Lessee's Subtenants.

(x) It is acknowledged by the parties to this Lease that all insurance coverage required to be provided by Lessee or any Subtenants is intended to apply first and on a primary non-contributing basis in relation to any other insurance or self-insurance available to Lessor.

(xi) Lessee shall ensure that its Subtenants provide the same minimum insurance coverage required of Lessee. Lessee shall obtain additional insured endorsements benefiting Lessor on all such Subtenant policies. Lessee agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Article 15.4. Lessee agrees that upon advance written request, all insurance agreements with its Subtenants, if separate from its subleases, will be submitted to Lessor for review.

(xii) Lessee agrees that all layers of third party liability coverage required herein, primary, umbrella and excess, will have the same starting and expiration date.

(xiii) Lessee shall not self-insure or use any self-insured retentions or deductibles on any portion of the insurance required herein and, further, will not allow any Subtenant to self-insure its obligations to Lessor.

(xiv) For purposes of applying insurance only, all contracts pertaining to improvements contemplated by this Lease will be deemed to be executed when finalized and any activity commences in furtherance of performance under this Lease.

(xv) Lessee acknowledges and agrees that any actual or alleged failure on the part of Lessor to inform Lessee of non-compliance with any insurance requirement

in no way imposes any additional obligations on Lessor, nor does it waive any rights of Lessor hereunder, in this or any other regard.

(xvi) The required coverages will be renewed annually by Lessee as long as Lessor, or its employees or agents face an exposure from operations of any type pursuant to this Lease. This obligation applies whether or not the Lease is canceled or terminated for any reason. Termination of this obligation is not effective until Lessor executes a written statement to that effect.

(xvii) Lessee agrees not to use, as a defense to avoid its obligations to Lessor under this Lease, any statutory immunity under any workers' compensation statute or similar statute.

(xviii) Requirements of specific coverage features are not intended as limitations on other requirements or as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be all-inclusive.

## **16. Assignment and Subletting.**

### **16.1. Restrictions on Assignment.**

(a) Except as otherwise permitted in connection with assignments as security for an encumbrance under Article 14, above, Lessee shall not assign, transfer, convey or otherwise sell this Lease, or Lessee's interest in this Lease or in the Premises, or any portion thereof, 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 paragraph (b) of this Article 16.1, Lessor shall act in a commercially reasonable manner in granting or denying its approval of any proposed assignment. Lessee acknowledges and understands that Lessor has entered this Lease after having conducted ample due diligence as to Lessee's ability and experience to further develop, improve and operate the proposed businesses on the Premises, thereby improving the collective public perception and operations of both Lessee and Lessor. Accordingly, Lessee waives any right to terminate this Lease in the event Lessor is found to have unreasonably withheld 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 have given Lessor reasonable advance written notice, which shall not be less than ninety (90) calendar days, of the proposed assignment sufficient to enable Lessor to conduct an investigation and review of the transaction and the proposed assignee and to reasonably determine whether to exercise its rights under paragraph (b) of this Article 16.1.

(ii) Lessee shall have provided Lessor with such appropriate documentation as Lessor may require to evaluate any proposed assignment, including (1) all transaction, 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) if the proposed assignee is a corporation, but not a Publicly Traded Corporation or a limited liability company, the name and address of each shareholder or member and his or her shareholding or membership interest in the proposed assignee, (3) if the proposed assignee is a partnership or joint venture, the name and address of each general partner or joint venturer, and a statement of his or her equity interest in the proposed assignee, (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) or general partners thereof, if the proposed assignee is a partnership, (7) the business plan and financial projections of the proposed assignee(s) for, at a minimum, the next five years, (8) a statement of any litigation affecting the proposed assignee(s), member(s) or general partners thereof, if the proposed assignee is a partnership or limited liability company, (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 comparable to Lessee in the industry, 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 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 Two Thousand Five Hundred Dollars (\$2,500), which fee shall accompany any such request. Lessee shall also pay Lessor's out-of-pocket costs and overhead expense, if any, 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 expenses shall be made within thirty (30) calendar days after Lessee receives an invoice from Lessor for said costs and expenses.

(vi) The proposed assignee shall, in Lessor's reasonable business judgment, have sufficient business reputation comparable to Lessee in the industry 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 Exhibits "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 9 of this Lease.

(ix) The Lessee shall pay Lessor all sums due as "Appreciation Rent" for an assignment of this Lease, if any, under and pursuant to Article 19, below.

(x) If the proposed assignee is not a Publicly Traded Corporation, the principal shareholders of the corporation or members of a limited liability company (whose combined stockholding interests shall be at least equal to seventy-five percent (75%) of all the issued and outstanding voting stock of the corporation or seventy-five percent (75%) of the equity interests of all members of a limited liability company, as the case may be) shall each individually and separately execute and deliver to Lessor their Personal Guaranty of this Lease in the form attached hereto as Exhibit "H" and as required under Article 45, below.

(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 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 16.1. Lessor shall then have the right and option, to be exercised by a written notice to Lessee pursuant to Article 33, 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 from Lessee and Lessor's receipt of all documents required under paragraph (a) of this Article 16.1. 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 16.1, a proposed sublease of a majority of the income producing square footage of the Premises for eighty percent (80%) or more of the remainder of the Lease Term shall constitute an assignment hereunder, and Lessor shall have all rights specified herein with respect to such proposed sublease.

(c) If Lessee is a corporation, a limited liability company or 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 16, whichever event is the last to occur, shall constitute an assignment for purposes of this Article 16. If Lessee is a corporation, 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, 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 thirty (30) 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 16. If Lessee is a limited liability company, a partnership, joint venture or unincorporated association, Lessee shall concurrently with the execution of this Lease deliver to Lessor a list of all members, partners, joint venturers or owners constituting Lessee, specifying the type of member or partner and percentage ownership interest of each member, partner, joint venturer or owner, which list shall be certified to be true and correct by at least one general partner or managing owner or member of Lessee. Further, if any proposed transferee is a limited liability company, a partnership, joint venture or unincorporated association, a similar certified list of members, 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 stipulates.

#### **16.2. Assignments Pursuant to the Bankruptcy Code.**

The restrictions on assignments of this Lease and other terms and conditions set forth in Article 16.1, above, and the provisions relating to Appreciation Rent set forth in Article 19, below, 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.

(d) The lease of real property set forth herein is a lease in a shopping center within the meaning of the Bankruptcy Code. The factors upon which the parties rely in making this agreement include, but are not limited to, the common interests served by the controls on hours of business operations for Subtenants, limitations on uses between leaseholds so as to ensure a compatible mix of business activity throughout Ventura Harbor, marketing and promotional programs for Ventura Harbor as a whole, and for the benefit of all lessees and common parking facilities.

### **16.3. Restrictions on Subletting.**

Lessee acknowledges and understands that Lessor has entered this Lease after having conducted ample due diligence as to Lessee's ability and experience to operate the proposed businesses on the Premises, thereby improving the collective public perception and operations of both Lessee and Lessor. Lessee shall therefore 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, 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 16.3; however, Lessor need not consider approval of 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 16.1, 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 of the proposed sublease, providing appropriate documentation to Lessor as Lessor may reasonably require relating to the financial capacity and reputation of the proposed Subtenant (excluding limited partners and shareholders), including, but not limited to, a statement of pending litigation involving the proposed Subtenant, past employment and business history of Subtenant and its managing agents or officers, and a listing of any felony convictions of Subtenant, or each separate entity or person making up Subtenant.

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

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

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(d) By consenting to the sublease, regardless of whether or not the sublease contains provisions for the renegotiation of the rent to be paid by Subtenant to Lessee/sublessor, Lessor shall not be deemed to have waived its right to renegotiation of rents under this Lease and Lessee/sublessor shall be bound by all rent renegotiation provisions of this Lease. All subleases entered into by Lessee shall provide that Subtenant shall become subject to such revisions should they occur.

(e) If the business activities of the proposed Subtenant to be conducted on the sublet portion of the Premises will generate Gross Revenue as that term is defined in this Lease, the sublease shall contain an express provision obligating the proposed Subtenant to conduct its business activities as a continuous operation during all normal business hours as required by Article 25, below.

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

(g) The Subtenant must acknowledge in writing that Subtenant 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 Subtenant shall indemnify and hold harmless Lessor, its elected officials and representatives, officers, agents, attorneys, employees and volunteers (the "Indemnified Parties" for the purposes of this subsection), from and against any and all claims, demands, loss or liability of any kind or nature which the Indemnified Parties 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 any manner connected with the sublease or with the occupancy and use of any portion of the Premises by Subtenant, 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 Subtenant.

(h) Subtenant 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 Subtenant 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 Two Thousand Five Hundred Dollars (\$2,500), 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, if any. The payment of Lessor's out-of-pocket costs and overhead expenses shall be made within thirty (30) calendar days after Lessee receives an invoice from Lessor for said costs and expenses.

(l) Under the sublease, Subtenant shall expressly agree in writing to maintain and make available for inspection by Lessor all records required by Article 6, above, in the manner set forth in that Article.

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

(n) The sublease shall expressly obligate the Subtenant to conduct its business operations in compliance with the schedules, price lists and procedures therefor approved by the General Manager of Lessor as required by Articles 25 and 26, below.

#### **16.4 Lessor's Discretion.**

(a) In granting its consent to any sublease or related encumbrancing, Lessor shall have the right to impose upon the proposed Subtenant, as a condition to its consent, compliance with all terms, covenants, conditions and agreements in this Lease. Any subletting of a subleasehold estate by a Subtenant, or by Lessee as sublessor, without such consent, shall be considered a material default under this Lease, and shall, at the option of Lessor, be grounds for terminating this Lease. Lessee waives any right to terminate this Lease in the event Lessor is found to have unreasonably withheld its approval of any proposed sublease.

#### **16.5 Sublease Income.**

Lessee shall remain responsible for the minimum annual rent and percentage rent for all Gross Revenue generated on the Premises for and by any and all subleases and sublessees in the same manner as was due by Lessee to Lessor pursuant to Article 6 of this Lease.

#### **16.6 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 Subtenant 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 Subtenant under the sublease, but shall only be responsible to any Subtenant for such security and/or deposits actually received by Lessor. Lessor agrees to be bound by the terms of said subleases so long as Subtenants 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 or otherwise as Lessor deems necessary.

#### **16.7 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 16.

**16.8 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.

**17. Default.**

**17.1 Definition of Default.**

Not by way of limitation, the following shall be deemed a default by Lessee and, subject to Article 17.2, a material breach of this Lease:

- (a) Failure to pay any rent due under this Lease, including minimum annual rent, percentage rent, and Appreciation 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, assessment or liquidated damages specified under this Lease to be paid by Lessee to Lessor, including any amounts due from an approved sublessee;
- (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 furnish any monthly or annual statements of Gross Revenue pursuant to Article 6.6, above, within the time required;
- (d) Failure to reimburse Lessor within the time required for the cost of auditing any monthly or annual statement pursuant to paragraph (e) of Article 6.5, above;
- (e) Failure to adopt or implement accounting or recordkeeping procedures as requested by the lease auditor under paragraph (f) of Article 6.6, above;
- (f) Permitting the Premises, or any portion thereof, to be used for any purpose or purposes not authorized by or in violation of Article 7, above;
- (g) Failure to complete construction of the required improvements to be constructed on the Premises pursuant to Article 8.1, above, within the time required;
- (h) Failure to replenish or increase the deposit serving as security for Lessee's obligations under this Lease pursuant to Article 9.1, above, within the time required;
- (i) Failure to provide any construction, payment, performance or lien release bond required to be provided by Lessee under Article 9.2, above, according to all terms, provisions and conditions specified therein;

## EXHIBIT B

(j) Failure to submit schematics, preliminary plans, working drawings, environmental assessments or draft supplemental or subsequent environmental impact reports for the interim modernization programs pursuant to Article 10.2 above, within the time required;

(k) Failure to complete construction or implementation of the interim modernization program pursuant to Article 10.2, above, within the time required. Provided however, the time required to complete such interim modernization programs shall be extended if, but only to the extent, the failure to complete interim modernization programs is caused by or results from: (i) acts of God; (ii) flood, fire, earthquake, or other natural disasters; (iii) war, invasion, terrorists threats or acts, riots or other civil unrest; (iv) government order, law, or action; or (v) national or regional emergency;

(l) Failure to pay Lessor for the cost of repairs and replacements made by Lessor pursuant to paragraph (b) of Article 11.1, above, within the time required;

(m) 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 14, above;

(n) Failure to reimburse Lessor for all costs associated with a Hazardous Material contamination of the Premises caused or contributed to by Lessee, or its Subtenants, pursuant to paragraph (i) of Article 15.3, above, within the time required;

(o) Failure to maintain required insurance or insurance coverages, or to implement changes in such insurance or insurance coverages, pursuant to Article 15, above;

(p) Failure to reimburse Lessor for any insurance premium paid by Lessor, pursuant to Article 15.4, above, within the time required;

(q) Voluntarily assigning or subleasing, or attempting to voluntarily assign or sublease, Lessee's interest under this Lease in the Premises, or any part thereof, or improvements thereon, without first obtaining Lessor's prior written consent pursuant to Article 16.1, above;

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

(s) 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 21.6, below;

(t) Failure of Lessee or its Subtenants to conduct business operations on the Premises in full compliance with the effective schedules and procedures therefor, pursuant to Article 25, below;

## EXHIBIT B

(u) Failure to maintain a schedule of prices approved by the General Manager of Lessor, or changing or attempting to change said schedule without Lessor's prior written consent, pursuant to Article 26, below;

(v) 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;

(w) Submission by Lessee to Lessor of any financial statement, balance sheet, income statement or other financial information including, without limitation, any schedule of aged accounts payable, containing any intentionally misleading or materially false information;

(x) 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;

(y) 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;

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

(aa) Appointment of a receiver of the business or assets of Lessee, or of a member or partner of Lessee, if Lessee is a limited liability company or 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

(bb) The making of a general assignment or an assignment for the benefit of creditors, whether voluntarily or involuntarily, by Lessee, by a managing member or partner of Lessee, if Lessee is a limited liability company, 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."

### **17.2 Lessee's Right to Cure a Default.**

(a) As to any default identified in Article 17.1, 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 33, below, to remedy or cure such default.

(b) As to any default identified in Article 17.1, above, which cannot be cured by the payment of money, and excluding the events of default identified in paragraphs (z), (aa) and (bb) of Article 17.1, 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 33, below.

(c) As to any default identified in paragraph (z) of Article 17.1, 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.

(d) As to any default identified in paragraph (aa) of Article 17.1, 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 33, above, to remedy or cure such default.

### 17.3 Lessor Remedies.

(a) In the event Lessee fails, refuses or neglects to cure a default within the time specified in Article 17.2, 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, the reasonable value of services provided by Lessor's employees and 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 rent in excess of the rent stipulated to in this Lease in previous or subsequent months, and Lessor may therefor bring an action 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 under such reletting; 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 provided in this subsection (a), Lessor may, but is not required to, give written notice of termination of this Lease to Lessee pursuant to Article 33, below, which notice shall be effective as therein set forth. Lessor may also record the quitclaim deed referred to in Article 9.3.

(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.

#### **17.4 Right of Re-entry.**

The exercise of any right of re-entry by Lessor under Article 17.3, above, shall be allowed by Lessee without hindrance, and Lessor shall not be liable in damages to Lessee or its Subtenants for any such re-entry, or be guilty of trespass or forcible entry.

#### **17.5 Percentage Rent upon Default.**

For purposes of this Article 17, the percentage rent for any period after default by Lessee shall be at a monthly rate, equal to the average monthly percentage rent which Lessee was obligated to pay Lessor during the twelve (12) months immediately preceding the month during which such default occurs (taking into account monthly payments of minimum annual rent paid by Lessee during said period) or the actual percentage rent due hereunder, whichever amount is greater.

#### **17.6 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.

#### **17.7 Attorneys' Fees.**

In the event of the bringing of any action or other legal type proceeding 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, the prevailing party in whose favor final judgment shall be entered shall be entitled to recover reasonable attorneys' fees.

#### **17.8 Right to Legal and Equitable Remedies, Waiver and Judicial Reference.**

(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 (and waives the right to interpose if any such right exists) any counterclaim in any such proceeding. 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 Article 6.9, above, and this paragraph (b) of this Article 17.8, shall be heard by a referee ordered by a court of competent jurisdiction pursuant to Section 638, et seq. of the Code of Civil Procedure of the State of California and the venue for all such proceedings shall be in the County of Ventura, State of California.

#### **17.9 Rights of Subtenant.**

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

#### **17.10 No Lessee Rights After Termination.**

Should Lessor exercise rights available to it by law, specifically granted to it under this Article 17 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 12.2, 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.

18. **[reserved]**

19. **Appreciation Rent.**

19.1 **Payable Upon Refinancing.**

In the event Lessee refinances the debt structure secured by this Lease pursuant to Article 14.3 above, and in addition to all other sums payable by Lessee to Lessor under this Lease, Lessee shall pay Lessor a non-refundable amount equal to eighteen (18%) of the Excess Proceeds derived from the refinancing as Appreciation Rent. Said Appreciation Rent shall be paid upon the close of escrow or escrows established in connection with said refinancing.

19.2 **Payable Upon Assignment.**

In the event Lessee assigns its interest in this Lease pursuant to Article 16.1, above, and in addition to all other sums payable by Lessee to Lessor under this Lease, Lessee shall pay Lessor as Appreciation Rent a non-refundable amount equal to four percent (4%) of the Gross Price paid by the assignee to or for the benefit of Lessee as consideration for said assignment, without deduction or offset. Said Appreciation Rent shall be paid upon the close of escrow or escrows established in connection with said assignment.

20. **Condemnation.**

20.1 **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.

20.2 **Termination on Partial Taking.**

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, within thirty (30) calendar days following the date that possession of such part of the Premises is taken.

20.3 **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 Articles 20.1 or 20.2, above, 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 annual rent payable hereunder shall be abated in the proportion which the percentage rent 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 rent payable hereunder for said twelve (12) month period. Pursuant to Article 10.1, above, Lessee shall make all 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 the City, Lessor 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.

#### **20.4 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 loss of use of those improvements which Lessee constructed pursuant to this Lease for the remainder of the Lease Term, plus any amount specifically awarded for costs or losses Lessee may sustain or incur in the relocation or removal of Lessee's trade fixtures. The amount allocated to Lessee for the loss of use of improvements as above provided shall not exceed the actual cost of improvements constructed by Lessee, reduced in the percentage that the proportion of the expired Lease Term bears to the original Lease Term.

#### **20.5 Proration of Rent and Repayment of Security Deposit.**

If this Lease is terminated pursuant to this Article 20, 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 under Article 9.1 and any refundable rent, fees and other refundable payments hereunder paid by Lessee for any period beyond the date of termination.

### **21. Destruction**

#### **21.1 Destruction by Non-Insurable Peril.**

In the event of the destruction, whether total or partial, of any building, structure or other improvement on the Premises, which destruction results from a peril for which Lessee is not required to secure and maintain insurance under the provisions of Article 15, 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.

### **21.2 Destruction of Lessor Owned, Controlled or Maintained Improvement.**

In the event of the destruction of a Lessor owned, controlled or maintained improvement or facility, of which the Premises or improvements on the Premises are a part, and which results in the destruction of the Premises, or all or a portion of any building, structure or other improvement on the Premises, Lessor shall be under no obligation to repair, construct, reconstruct, rebuild, or restore its improvement or facility. If Lessor elects not to rebuild or restore its improvements, then, for purposes of this Article 21, the destruction applicable to the Premises shall be deemed to have been caused by a non-insurable peril. Conversely, if Lessor elects to rebuild or restore its improvements and gives written notice of its intention to do so pursuant to Article 33, below, within ninety (90) calendar days from the date of such destruction and, further, provided that the destruction applicable to the Premises was as a result of a peril for which Lessee has insurance or for which Lessee is required to secure and maintain insurance under Article 15, above, then the destruction as to the Premises, whether total or partial, shall be deemed to be by an insurable peril subject to Article 21.6, below.

### **21.3 Termination or Destruction by Non-Insurable Peril.**

In the event the Premises are destroyed as a result of a non-insurable peril to such an extent 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 of its intention pursuant to Article 33, below. Such notice must be given, if at all, within fifteen (15) calendar days following the date on which such destruction occurs.

### **21.4 Proration of Rent and Repayment of Security Deposit on Termination.**

If this Lease is terminated pursuant to the provisions of Article 21.3 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 any refundable rent and other refundable payments to Lessor hereunder paid by Lessee for any period beyond the date of termination.

### **21.5 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 this Article 21, then this Lease shall, as to the part so destroyed, terminate as of the date of such destruction and the minimum annual rent payable hereunder shall be abated in the proportion which the percentage rent 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 rent 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, promptly 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.

#### **21.6 Destruction by Insurable Peril.**

Subject to Article 21.7, below, in the event of the destruction, whether total or partial, of any building, structure or improvements on the Premises as a result of a peril for which Lessee has insurance or for which Lessee is required to secure and maintain insurance under Article 15, above, Lessee, within thirty (30) calendar days from the date of such destruction, or within thirty (30) calendar days from the date Lessor substantially completes its restoration or rebuilding work if the provisions of Article 21.2 are applicable to the destruction, shall 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 the City and Lessor pursuant to procedures set forth in Article 8.2, above, and for which Lessee shall have obtained all necessary permits and governmental approvals. Any such destruction, whether total or partial, shall in no way annul or void this Lease, except that Lessee may be entitled to a reduction of the monthly payments of minimum annual rent from the date of such destruction and continuing to the completion of such repair, construction, reconstruction or restoration, not to exceed thirty-six (36) months. Such 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 the rent reduction, if any, in its sole discretion, taking into account all rent insurance benefits connected with the Premises and payable to the parties. In the event the rent insurance required under Article 15.4(b), above, is not in effect at the time of such destruction for any reason whatsoever, Lessee shall not be entitled to any rent reduction under this Article 21.6.

#### **21.7 Lessor's Reversionary Option.**

In the event of a total destruction of the Premises, or a partial destruction of the Premises or any improvements thereon to the extent that it is economically infeasible for Lessee to continue to operate and use the remaining portion of the Premises pursuant to this Lease, which occurs within the final thirty-six (36) months of the Lease Term, within sixty (60) calendar days from the date of such destruction, Lessor may declare a reversion of the leasehold by delivering written notice thereof to Lessee pursuant to Article 33, below. Should a reversion be declared pursuant to the preceding sentence, Lessor shall be entitled to the immediate possession and control of the entire Premises, subject to Lessee's right to remove its trade fixtures pursuant to Article 12.2, above. Further, this Lease shall cancel and terminate upon transfer of possession or entitlement to possession of the Premises to Lessor and the parties agree that all insurance proceeds payable to either party arising out of or connected with the destruction shall belong to and be the property and entitlement of Lessor. Lessee shall thereafter be excused from any further performance under this Lease except for cooperating with and assisting Lessor in taking such action as may be necessary or appropriate to obtain prompt and timely payment of the insurance proceeds due as a result of the destruction.

## 21.8 **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.

## 22. **Abandonment.**

Lessee shall not abandon the Premises at any time during the Lease Term. If Lessee abandons the Premises or is 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 previously existing or 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 disposing of such property, including attorneys' fees.

## 23. **Waiver of Breach.**

No waiver of any default by Lessor 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 Lessor shall give Lessee any contractual right by custom, estoppel or otherwise. The subsequent acceptance of rent or any other payment 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 rent or other payment so accepted, regardless of Lessor's knowledge of the preceding breach at the time of accepting said payment. 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.

## 24. **Compliance with the Law.**

### 24.1 **Rules, Statutes and Ordinances.**

Lessee and all of its Subtenants shall, in all activities on or in connection with the Premises and in all uses thereof, including the making of any improvements, alterations or changes and the installation of any equipment, abide by and conform to all rules and regulations prescribed by Lessor, any ordinances of Lessor, City, and Coastal Commission, any general rules and policies of Lessor, and any applicable federal or state statutes or municipal laws now in force or which may hereafter be in force. Further, in the event a violation of any such rule, policy, regulation, ordinance, statute or other law is attributable to actions or conduct of any Subtenant 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 Subtenant.

## 24.2 **Judicial Decrees.**

The final judgment of any court of competent jurisdiction, or the admission of Lessee in any action or proceeding, including arbitrations or administrative proceedings to which Lessee is a party, whether Lessor is a party thereto or not, that Lessee has violated such rules, policies 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.

## 25. **Operating Hours and Operating Procedures.**

### 25.1 **Continuous Operation.**

Lessee and its Subtenants shall continuously conduct 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 character along the Pacific Coast of the western United States, but, in no event, shall such business operations be less than eight (8) hours per day, six (6) days per week. All businesses conducted on the Premises shall maintain adequate stocks of merchandise and shall employ sufficient personnel on the Premises to operate all businesses in accordance with sound business practices.

### 25.2 **Public Purpose.**

In implementing this Article 25, the General Manager shall give primary consideration to the public purposes for which Ventura Harbor was established and is maintained.

### 25.3 **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 First-Class 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.

## 26. **[reserved]**

## 27. **Controlled Prices.**

Lessee shall at all times maintain a schedule of the prices charged for the use by the public of the facilities on the Premises, whether the same are supplied by Lessee or by its Subtenants, and shall make said schedule available to the General Manager of Lessor, or its designated representative. Said prices shall be fair and reasonable, based upon the following considerations:

## EXHIBIT B

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

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

(c) Consistent with (a) and (b) above, Lessee shall utilize its most diligent and best efforts to maximize revenues from the Premises for the mutual benefit of both Lessor and Lessee.

### 28. **Taxes.**

Lessee 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 or its Subtenants, or by reason of the business or other activities of Lessee or its Subtenants upon or in connection with the Premises, including possessory interest taxes. 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 or its Subtenants upon or in connection with the Premises or under this Lease. Lessor states and Lessee acknowledges that the interest created in favor of Lessee under this Lease may be a possessory interest subject to taxation under the California Revenue and Taxation Code.

### 29. **Waste.**

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

### 30. **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, without the prior written consent of Lessor, shall be construed to be a tenancy from month to month, at a monthly rental equal to three (3) times the monthly payment of the minimum annual rent then in effect at the expiration of this Lease plus percentage rent, 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 as provided in Article 12.2 for such removal. Any holding over by Lessee after expiration of the Lease Term shall not constitute a renewal or extension of this Lease or give Lessee rights in or to the Premises, except as otherwise expressly provided in this Lease.

### 31. **Non-Discrimination.**

Lessee shall not discriminate against any person or class of persons by reason of sex, race, color, religion, creed, national origin, ancestry, age, disability, physical handicap, sexual orientation, medical condition or marital status. Lessee shall make its accommodations, services and facilities available to the public on fair and reasonable terms.



### 32. **Coastal Permits.**

Upon surrender, expiration or termination of this Lease, Lessee shall assign to Lessor all of Lessee's right and interest in and to any coastal permits issued in connection with the Premises and shall execute any and all documents required by Lessor or any other governmental entity to complete said assignment at Lessor's expense upon Lease expiration and a Lessee's expense in the event of early termination.

### 33. **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 United States mail. If personally, 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. Written notices shall be addressed as follows:

To Lessor:

Ventura Port District  
Attn: General Manager  
1603 Anchors Way Drive  
Ventura, California 93001-4229

To Lessee:

Derecktor Marine Holdings, LLC.  
4 Calder Drive  
Warren, Rhode Island 02885

(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.

### 34. **Reservations to Lessor.**

(a) The Premises are accepted by Lessee subject to any and all existing easements, encumbrances, trusts, covenants and restrictions of record. Lessor reserves the right to install, lay, construct, maintain, repair and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes and connections; water pipelines; telephone, fiberoptic, digital, 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, including all rights to air space above the Premises.

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

(c) Lessor reserves to itself, for the benefit of the public, an easement over any walkways, bikeways, roadways, waterways, parking areas and other portions of the Premises which must be open and accessible to the public in order to facilitate and promote the public's use and patronage of the Premises and Ventura Harbor.

35. **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.

36. **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.

37. **Time.**

Time is of the essence of this Lease.

38. **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.

39. **Savings Clause.**

If 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.

40. **Recordation of Memorandum of Lease.**

This Lease need not be recorded. A Memorandum of Lease may be recorded in lieu of the recordation of the entire Lease. In the event the Lease is not recorded, the parties agree to execute a Memorandum of Lease in the form attached hereto as Exhibit "G," or as the parties may otherwise agree, which may be recorded at any time during the Lease Term by Lessor.

41. **Estoppel Certificate.**

Within fourteen (14) calendar days after notice from Lessor, Lessee 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. The certificate shall also include any modifications by Lessee, if

any, to this Lease, a statement regarding all other agreements between Lessor and Lessee, and a statement as to whether Lessee claims any default or breach of this Lease on the part of Lessor. The certificate shall also state the amount of minimum annual rent then in effect, the dates to which the monthly payments of minimum annual rent and percentage rent have been paid, the amount of any security deposits or prepaid rent paid to Lessor, and the fact that percentage rent payments are subject to audit under Article 6.7, above. If Lessee fails to deliver the certificate within fourteen (14) calendar days, it shall be conclusively presumed for the benefit of Lessor 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.

**42. Amendments.**

This Lease sets forth all of the agreements and understandings of the parties and supersedes any and all prior agreements between the parties concerning the Premises. Any amendments must be written and signed by the parties and Lessor reserves the right to require that Lessee reimburse Lessor for all costs and expenses incurred in connection with the processing of any amendment to this Lease, including any professional consultant and legal fees.

**43. Execution in Counterparts.**

This Lease may be executed in two (2) or more counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

**44. Interpretation.**

This Lease has been prepared by Lessor and its professional advisors and reviewed by Lessee and its professional advisors. The parties and their advisors believe this Lease is the product of all of their efforts, that it expresses their agreements and that it should not be interpreted in favor of either Lessor or Lessee merely because of their efforts in preparing it. The laws of the State of California shall govern the validity, interpretation, performance and enforcement of this Lease.

**45. [reserved]**

**46. Payments as Additional Rent.**

All fees, payments, assessments, charges, damages 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. The failure to make payment of any such sum when due shall be a default under paragraph (a) of Article 17.1, above, in addition to being a breach of the provision of this Lease wherein the obligation to make said payment is 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 after a cure period of thirty (30) days.

47. **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 execution of this Lease, and that neither party is aware of any such person or entity who claims or is entitled to a finder's fee or commission arising out of this Lease. Each party agrees to defend and indemnify the other party against claims by a broker or other agent seeking to recover a finder's fee or commission or other type of relief based on commitment, statement or representations of such party or alleged agreements with such party.

48. **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, company or partnership.

IN WITNESS WHEREOF, the parties to this Lease have caused this Lease to be executed by their authorized agents, effective as specified in Article 1, above.

**LESSOR**

VENTURA PORT DISTRICT,  
a California Port District

By \_\_\_\_\_  
Chairman

By \_\_\_\_\_  
Secretary

**LESSEE**

DERECKTOR MARINE HOLDINGS, INC.

By \_\_\_\_\_

Its \_\_\_\_\_

EXHIBIT B

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

STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF VENTURA                )

On \_\_\_\_\_, 2020, before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

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

STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF VENTURA                )

On \_\_\_\_\_, 2020, before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

**EXHIBIT "A"**

**DEFINITIONS**

The initial capitalized word(s) or term(s) used but not defined in the Lease shall, unless the context otherwise requires, have the meaning and definitions indicated below:

1. **Control or Controlled:** the possession, whether direct or indirect, of the power to direct or cause the direction of the management and policies of the controlled person or entity. The ownership, directly or indirectly, of at least twenty-five percent (25%) of the voting or ownership interests of, or the possession of the right to vote or direct the vote of at least twenty-five percent (25%) of the voting interest in, any person or entity shall be presumed to constitute Control.

2. **Deductible Expenses:** customary and usual expenses, in reasonable amounts, actually paid by Lessee to third parties (other than persons or entities which Control Lessee or are Controlled by Lessee) in connection with an or financing or assignment under Articles 14 and 16 of this Lease, including without limitation real estate sales or mortgage brokerage commissions, legal fees, title insurance and survey fees, escrow fees, transfer and recording taxes and fees, loan commitment fees, points or prepayment penalties; provided, however, that with respect to any given sale, assignment or financing, Deductible Expenses shall not exceed ten percent (10%) of the Gross Price or Excess Proceeds generated by such sale or financing.

3. **Excess Proceeds:** with respect to any financing pursuant to Articles 14 of this Lease, an amount equal to the total loan proceeds, less the sum of:

- (a) Deductible Expenses related to the financing;
- (b) That portion of the loan proceeds to be used for payment of Total Project Cost of any capital improvements on or modernization of the Premises pursuant to Articles 8.1, 8.2 or 10.2 of this Lease;
- (c) The outstanding amount of all encumbrances previously approved by Lessor pursuant to Article 14 of this Lease; and
- (d) That portion of the loan proceeds (up to a maximum of 25% of the total loan proceeds) used for the payment for other real property, equipment, or other property located or used in the City that directly and demonstrably relates to and benefits the Premises or Ventura Harbor.

4. **Fair Market Value:** the highest price estimated in terms of money which the buildings, structures, installations, and other improvements constructed by Lessee would bring if offered for sale in the open market, under the conditions prevailing as of the date of valuation, with a reasonable time allowed in which to find a purchaser or purchasers buying with knowledge of all the uses and purposes to which the buildings, structures, installations, and other

## EXHIBIT B

improvements are adaptable and for which they are available, the seller being willing to sell, but under no particular or urgent necessity for so doing, nor obligated to sell, and the buyer being ready, willing and able to buy, but under no particular or urgent necessity for so doing. This definition of Fair Market Value presupposes that both parties are familiar with the buildings, structures, installations, and other improvements and their adaptability and uses on the Premises.

5. **First-Class:** a condition of the improvements, facilities and amenities on the Premises such that they would be regarded as being of the highest quality and most superior grade or kind, displaying no signs of deterioration or excessive wear and tear, free from any defects or maintenance deficiencies 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.

6. **Gross Revenue:**

(a) all revenue generated from the Premises, or from activities conducted on or connected with the Premises, including, but not limited to:

i) The sale or lease price, before any trade-in allowance, of all goods, wares, merchandise or products sold or leased on or from the Premises, whether sold or leased by Lessee or its Subtenants, or whether for cash or on credit.

ii) All charges made by Lessee or its Subtenants for the sale, occupancy, rent, lease or other rendition on or from the Premises of services of any nature or kind whatsoever, whether for cash or on credit.

iii) All rent, admission, entry and other fees and charges relating to use or activity on the Premises of any nature or kind charged to others by Lessee or its Subtenants, or charged by Lessee to its Subtenants, except percentage rent paid to Lessee by its Subtenants.

iv) All revenue and other income of Lessee and its Subtenants from any operations in, at, upon, from or related to the Premises which are neither included in nor excluded from Gross Revenue by other provisions of this Lease.

v) All non-refundable and forfeited deposits received by Lessee or its Subtenants in connection with any transaction or activity conducted on, at, upon, from or in connection with the Premises.

vi) Any amount received as proceeds under any rent insurance policy with respect to the Premises required to be maintained under Article 15.4(b) of this Lease.

vii) All charges, revenue, income or receipts of Lessee or its Subtenants based on orders taken on, from, or related to the Premises to be filled or paid for elsewhere, or vice versa, whether for cash or credit.

## EXHIBIT B

viii) All rentals and other fees or charges of any kind or nature, including common area charges and pass-throughs of percentage rent charged by Lessee to its Subtenants when the activities of such Subtenants do not generate Gross Revenue.

ix) The fair market value of all consideration passing to Lessee from its Subtenants other than rent from its Subtenants based on sales or volume of business.

x) The fair rent value of facilities used by Lessee or its Subtenants for purposes other than the business purposes for which the Premises are leased, except for promotional or other similar uses consistent with standards of the industry.

xi) Gross receipts from coin-operated or other vending devices on the Premises, including telephones, video games, etc.

(b) For purposes of this definition of Gross Revenue, any transaction, sale, charge, fee, deposit or amount received based upon a credit transaction or installment payments shall be treated as a transaction for the full price in the month and year in which that transaction or sale is made, irrespective of whether or not payment is made during that month or within that year, and regardless of whether payment is actually made or not.

(c) The following sums or amounts shall be excluded from Gross Revenue or subtracted therefrom, if previously included:

(i) 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, levied by any governmental agency to be collected from consumers and paid by Lessee or its Subtenants.

(ii) Merchandise transferred or exchanged between other stores or warehouses owned by or affiliated with Lessee or its Subtenants 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.

(iii) Merchandise returned to shippers or manufacturers.

(iv) All credits, cash refunds and refundable deposits made on any sale that took place on or from the Premises, provided the sales price was previously included in Gross Revenue.



## EXHIBIT B

(v) All cash or credit received in settlement of any claims for loss of or damage to merchandise or insurance proceeds received on account of damages to the Premises.

(vi) Bulk sales made by Lessee or its Subtenants not in the ordinary course of business.

(vii) Any income, revenue 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 the investment by Lessee or its Subtenants of any funds not invested in (1) the Premises or (2) the operation of Lessee's business or the business of any of its Subtenants within the Premises.

(viii) That portion of the Gross Revenue of all coin-operated devices that Lessee or its Subtenants must, by contract concerning them, turn over to a person, firm, or corporation in which Lessee or its Subtenants have no direct or indirect financial interest.

(ix) Any charges or monies received by Lessee from any of its Subtenants as and for rentals to be paid by such Subtenants to Lessee, except with respect to any such Subtenants who conduct no business activity resulting in Gross Revenue for which percentage rent is payable.

(x) The amounts of tips or gratuities included in credit charges made by Lessee or its Subtenants to customers of any permitted restaurant and bar.

(xi) Income of Lessee's Subtenants resulting from business activities not within a revenue source category specified on Exhibit "C" attached to this Lease, such as income from general office uses.

(xii) Any refundable deposits received by Lessee or its Subtenants provided, however, that in the event Lessee or its Subtenants become entitled to any or all of said deposits by reason of any act of the depositor, the amounts to which Lessee or its Subtenants become entitled shall be included in Gross Revenue.

Notwithstanding any provision of this definition 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 Revenue the amount of any charge made by Lessee against its reserve for bad debts for amounts theretofore included in Gross Revenue, or sums paid to a credit card issuer by Lessee or its Subtenants on account of credit card sales.

8. **Gross Price:** any and all proceeds, credits, offsets, allowances or other consideration directly or indirectly received by or allowed to Lessee, or any person or entity with an equity interest or ownership in Lessee or Controlled by Lessee, or any other person or entity having any direct or indirect beneficial interest in Lessee, from or by any source in any way,

## EXHIBIT B

manner or respect relating to any assignment under Article 16.1 of this Lease, including without limitation any indebtedness which is assumed by the transferee or to which the interest being transferred remains subject after the assignment (whether recourse or non-recourse), the proceeds of any purchase money financing provided by Lessee, any title insurance proceeds received by Lessee in respect of the Premises or Lessee's interest therein, and the fair market value of any real estate, right, option or other property or consideration of any nature whatsoever, given in exchange for any interest being transferred, all as determined by Lessor.

9. **Institutional Lender:** (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 with 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).

10. **Publicly Traded Corporation:** a corporation formed or qualified to do business in the State of California, the voting stock of which is available for purchase or sale by the public through the New York Stock Exchange (NYSE), National Association of Securities Dealers Automated Quotation System (NASDAQ) or American Stock Exchange (AMEX).

11. **Soft Costs:** all indirect costs, whether or not reimbursed to Lessee, in reasonable amounts paid by or on behalf of Lessee for construction and development of improvements on the Premises, or any portion thereof, pursuant to Article 8 of this Lease, which either: (a) (i) are not properly categorized as capital expenditures in accordance with generally accepted accounting principles, consistently applied, and (ii) either (yy) if Lessee has an Institutional Lender which has approved a construction budget for the particular construction, in writing, then such costs as are included under the heading of "Soft Costs" in such construction budget, or (zz) if there is no Institutional Lender or the Institutional Lender has not approved the construction budget, such costs as may be reasonably and customarily characterized as soft costs; or (b) Lessee otherwise demonstrates to Lessor's reasonable satisfaction would normally be considered to be "soft costs" for the construction (as used in this Subsection (b) of this definition, the term "construction" shall include without limitation, demolition and removal of existing improvements, grading, site preparation and remodeling performed in connection with the development of the Premises pursuant to Article 8 of this Lease). Subject to the foregoing, Soft Costs shall include, without limitation, fees paid to attorneys, architects, engineers, accountants, consultants and other professionals, and salaries for employees at the construction site or employed by Lessee solely to work on the construction or modernization of improvements on the Premises, or any portion thereof (but not including salaries of any employee of Lessee who works part time on the construction of improvements on the Premises and part-time on other projects of Lessee, unless Lessee demonstrates to Lessor's reasonable satisfaction that the

## EXHIBIT B

allocation of such employee's salary between the construction of improvements on the Premises, and such other projects, is reasonable). To the extent that any Soft Cost represents payment made to Lessee or any entity or person which Controls or is Controlled by Lessee, the amount of such payment must not exceed the amount which would have reasonably been paid to an unrelated third party in an arms' length transaction, with no Control relationship with Lessee. Soft Costs shall not include any cost or expense incurred by Lessee for or in connection with routine maintenance, repair or replacement of worn equipment (even if such equipment is upgraded in the process), or other upkeep or modernization of all or any portion of the Premises, or improvements thereon, which Lessee would have been likely to incur with or without the construction.

12. **Subtenant(s):** all agents, sublessees, concessionaires, contractors and licensees of Lessee doing or conducting business or other activities on the Premises under and pursuant to authority from Lessee.

13. **Total Project Cost:** the total of all unreimbursed or unreimbursable payments demonstrated by Lessee to Lessor's commercially reasonable satisfaction as having been incurred and paid by or for the account of Lessee in connection with the construction of any required or additional improvements approved by Lessor pursuant to Article 8 and Article 10 of this Lease, excluding Soft Costs.

EXHIBIT "B"

LEGAL DESCRIPTION OF PREMISES

LEGAL DESCRIPTION  
VENTURA PORT DISTRICT  
PARCEL 20

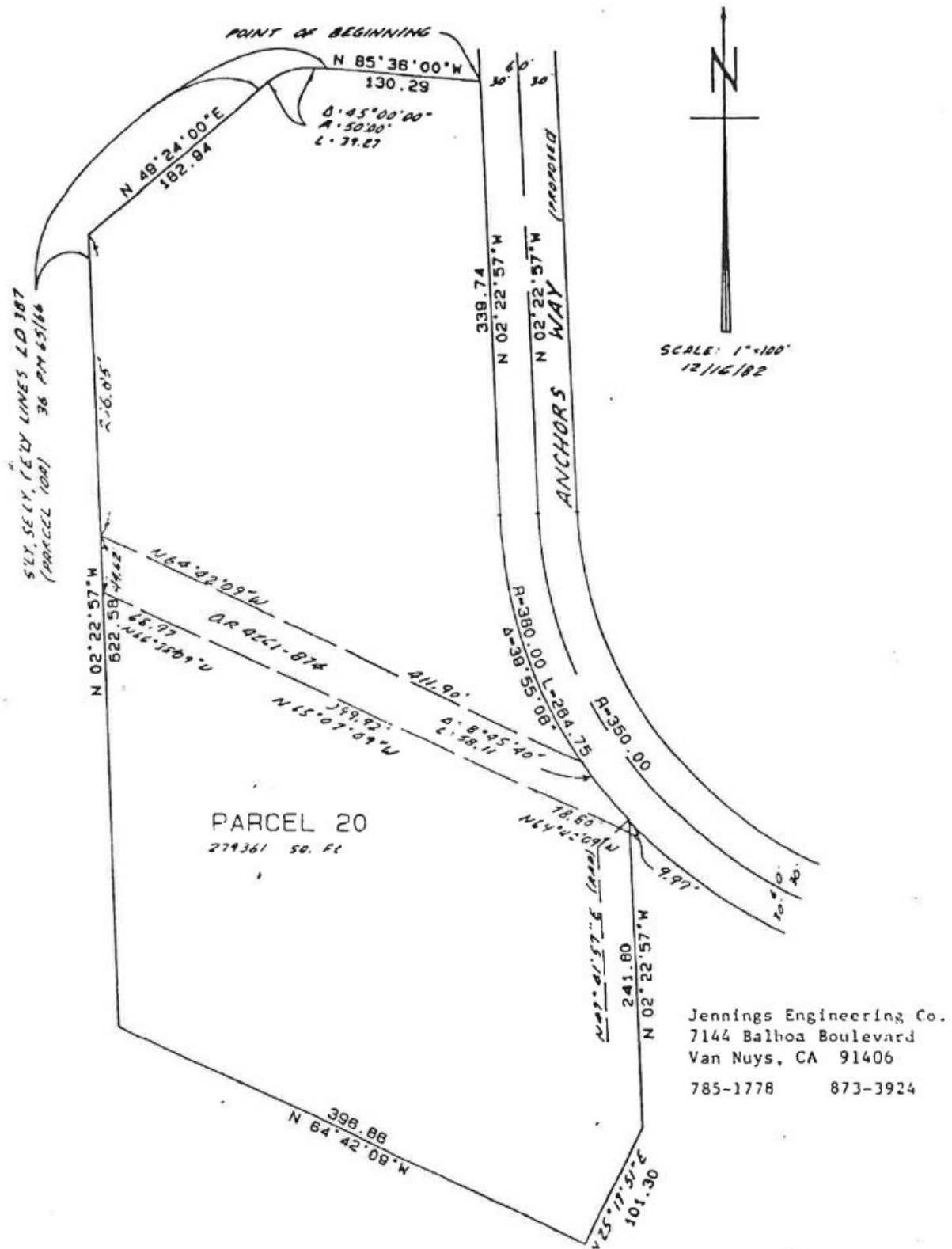
BEING A PORTION OF SUBDIVISION NO. 7 OF THE WEST ONE-HALF OF RANCHO SAN MIGUEL IN THE CITY OF SAN BUENAVENTURA, COUNTY OF VENTURA, STATE OF CALIFORNIA PER MAP RECORDED IN BOOK 5 PAGE 42 OF MISCELLANEOUS RECORDS, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

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AREA: 279361 S.F.

6.4132 ACRES

## EXHIBIT B



LEGAL DESCRIPTION  
VENTURA PORT DISTRICT  
PARCEL 20 LICENSE AREAS

AREA 1 - SLIPS

BEING A PORTION OF SUBDIVISION NO. 7 OF THE WEST ONE-HALF OF RANCHO SAN MIGUEL IN THE CITY OF SAN BUENAVENTURA, COUNTY OF VENTURA, STATE OF CALIFORNIA, PER MAP RECORDED IN BOOK 5, PAGE 42 OF MISCELLANEOUS RECORDS, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS;

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1ST: NORTH  $25^{\circ}17'51''$  EAST, 61.30 FEET; THENCE

2ND: NORTH  $2^{\circ}22'57''$  WEST, 32.41 FEET TO A POINT IN A LINE THAT IS PARALLEL WITH AND DISTANT NORTHEASTERLY 130.00 FEET MEASURED AT RIGHT ANGLES FROM THAT COURSE DESCRIBED ABOVE AS HAVING A BEARING AND LENGTH OF SOUTH  $64^{\circ}42'09''$  EAST, 396.86 FEET; THENCE ALONG SAID PARALLEL LINE

3RD: SOUTH  $64^{\circ}42'09''$  EAST, 140.06 FEET TO A POINT IN A LINE THAT IS PARALLEL WITH AND DISTANT SOUTHEASTERLY 125.00 FEET MEASURED AT RIGHT ANGLES FROM THE 1ST COURSE ABOVE DESCRIBED; THENCE ALONG SAID PARALLEL LINE

4TH: SOUTH  $25^{\circ}17'51''$  WEST, 90.00 FEET TO A LINE THAT BEARS SOUTH  $64^{\circ}42'09''$  EAST FROM THE TRUE POINT OF BEGINNING; THENCE ALONG SAID LINE

5TH: NORTH  $64^{\circ}42'09''$  WEST, 125.00 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED AREA 1 CONTAINS 11466 SQUARE FEET (0.2632 ACRES).

AREA 2 - BAIT-RECEIVER

BEING A PORTION OF SUBDIVISION NO. 7 OF THE WEST ONE-HALF OF RANCHO SAN MIGUEL IN THE CITY OF SAN BUENAVENTURA, COUNTY OF VENTURA, STATE OF CALIFORNIA, PER MAP RECORDED IN BOOK 5, PAGE 42 OF MISCELLANEOUS RECORDS, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS;

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1ST: SOUTH  $64^{\circ}42'09''$  EAST, 25.00 FEET; THENCE AT RIGHT ANGLES

2ND: SOUTH  $25^{\circ}17'51''$  WEST, 40.00 FEET; THENCE AT RIGHT ANGLES

3RD: NORTH  $64^{\circ}42'09''$  WEST, 25.00 FEET; THENCE AT RIGHT ANGLES

4TH: NORTH  $25^{\circ}17'51''$  EAST, 40.00 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED AREA 2 CONTAINS 1000 SQUARE FEET (0.0230 ACRES).

POINT OF BEGINNING - AREAS 1 & 2  
MOST EASTERLY CORNER PARCEL 10A

ANCHORS

SCALE: 1" = 100'

PARCEL 20  
VENTURA PORT DISTRICT

WAY

PARCEL 10A

PARCEL 12

PARCEL 14

AREA 1

AREA 2

TRUE POINT OF BEGINNING - AREA 2

TRUE POINT OF BEGINNING - AREA 1

AREA 1: 11,466 SQ. FT. (0.2632 AC.)  
AREA 2: 1,000 SQ. FT. (0.0230 AC.)

DICKERSON & ASSOCIATES-2472 EASTMAN AVE. SUITE 30-VENTURA, CA. 93003 (805) 644-7232

Lessee's Initials



**EXHIBIT “C”****PERCENTAGE RENT**

<b>Rate Category</b>	<b>Percentage Rent Rate</b>
<b>Boat – Trailer Day Sail Rent</b>	5.25%
<b>Boat Brokerage</b>	10%
<b>Boat Club</b>	5%
<b>Boat Launching</b>	10%
<b>Boat Rentals</b>	3%
<b>Boat Repairs – Labor</b>	5%
<b>Boat Repairs – Materials</b>	3.5%
<b>Boat Sales – New</b>	2%
<b>Boat Sales – Used</b>	1%
<b>Boat Slips</b>	22% *
<b>Boat Storage – On Grade</b>	5.25%
<b>Boat Storage – Stacked</b>	10%
<b>Chandlery (not retail)</b>	3.5%
<b>Charters/Sportfishing</b>	6%
<b>Dry Storage</b>	10%
<b>Equipment Rental</b>	5%
<b>Food – Restaurant Sales</b>	3.5%
<b>Food/Liquor Off-Sale/To-Go</b>	3.5%
<b>Fuel Sales – Diesel (in gallons)</b>	\$0.030/gallon
<b>Fuel Sales – Gas (in gallons)</b>	\$0.018/gallon
<b>Ice Machine</b>	10%
<b>Insurance Commissions</b>	10%
<b>Lube Oil Sales</b>	5%
<b>Office Rental</b>	10%
<b>Parking</b>	25%
<b>Retail Sales</b>	3%
<b>Service Space Rental</b>	5.25%
<b>Vending Machines</b>	10%

\* Percentage rent for boat slips will be set at 15% for the first thirty-six (36) months immediately following completion of the new marina. Completion of the new marina shall be deemed to be the date of the first lease of the first newly constructed boat slip. After this thirty-six (36) month period, the percentage rent for boat slips will be set at 22%. Notwithstanding the foregoing, beginning on the one hundred twenty-first (121st) month of the Lease Term, percentage rent for boat slips will be set at 25% for the remainder of the Lease Term.

EXHIBIT B

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Lessor's Initials

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Lessee's Initials

EXHIBIT B

**EXHIBIT “D”**

PERMITTED USES

Marina  
Boat yard  
Boat construction  
Boat storage  
Boat brokerage/sales  
Marine fuel and oil sales  
Marine charters including sport fishing and parasailing  
Restaurant  
Retail sales  
Office rentals  
Parking  
Additional uses as identified in the percentage rent schedule on Exhibit “C”

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Lessor’s Initials

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Lessee’s Initials

EXHIBIT B

**EXHIBIT “E”**

**REQUIRED IMPROVEMENTS**

Lessee shall, at its own expense, construct the required improvements identified and as specified below:

Waterside and landside improvements substantially similar in scope and magnitude to the project approved by the Board and for which a Mitigated Negative Declaration was adopted via Resolution 3289 on November 18, 2015, with a minimum value of \$3,500,000 to be fully constructed with thirty-six (36) months of commencement of this Lease, and as approved by Lessor/Optionor pursuant to the Assignment and Option Agreement dated \_\_\_\_\_, 2020.

EXHIBIT B

**EXHIBIT "F"**

QUITCLAIM DEED

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, \_\_\_\_\_ ("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:

SEE LEGAL DESCRIPTION ATTACHED

to which LESSEE was granted rights by the VENTURA PORT DISTRICT under a Lease dated \_\_\_\_\_.

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.

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: \_\_\_\_\_

EXHIBIT B

Legal Description

LEGAL DESCRIPTION  
VENTURA PORT DISTRICT  
PARCEL 20

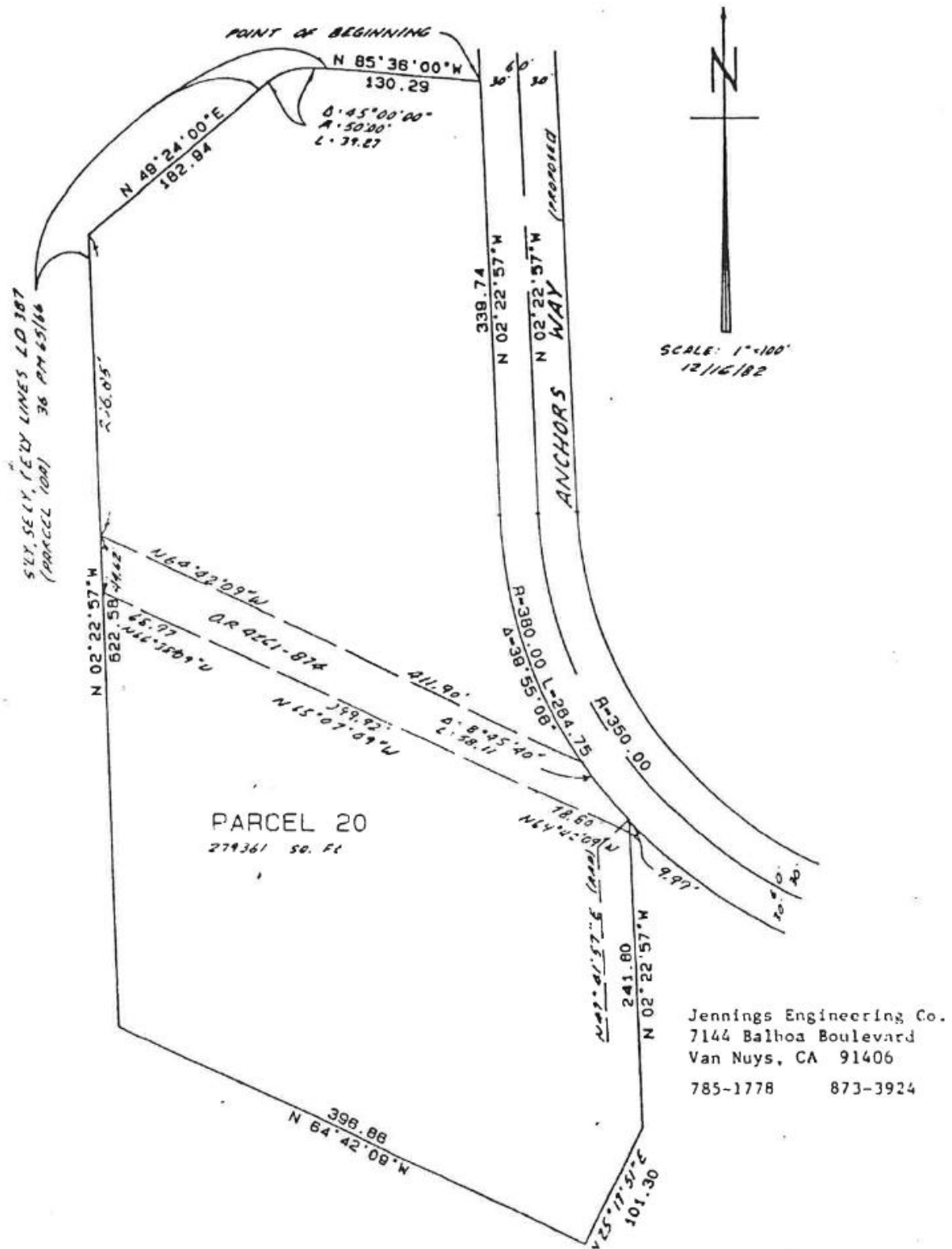
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AREA: 279361 S.F.

6.4132 ACRES

## EXHIBIT B



LEGAL DESCRIPTION  
VENTURA PORT DISTRICT  
PARCEL 20 LICENSE AREAS

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5TH: NORTH  $64^{\circ}42'09''$  WEST, 125.00 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED AREA 1 CONTAINS 11466 SQUARE FEET (0.2632 ACRES).



AREA 2 - BAIT-RECEIVER

BEING A PORTION OF SUBDIVISION NO. 7 OF THE WEST ONE-HALF OF RANCHO SAN MIGUEL IN THE CITY OF SAN BUENAVENTURA, COUNTY OF VENTURA, STATE OF CALIFORNIA, PER MAP RECORDED IN BOOK 5, PAGE 42 OF MISCELLANEOUS RECORDS, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS;

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1ST: SOUTH 64°42'09" EAST, 25.00 FEET; THENCE AT RIGHT ANGLES

2ND: SOUTH 25°17'51" WEST, 40.00 FEET; THENCE AT RIGHT ANGLES

3RD: NORTH 64°42'09" WEST, 25.00 FEET; THENCE AT RIGHT ANGLES

4TH: NORTH 25°17'51" EAST, 40.00 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED AREA 2 CONTAINS 1000 SQUARE FEET (0.0230 ACRES).

# EXHIBIT B

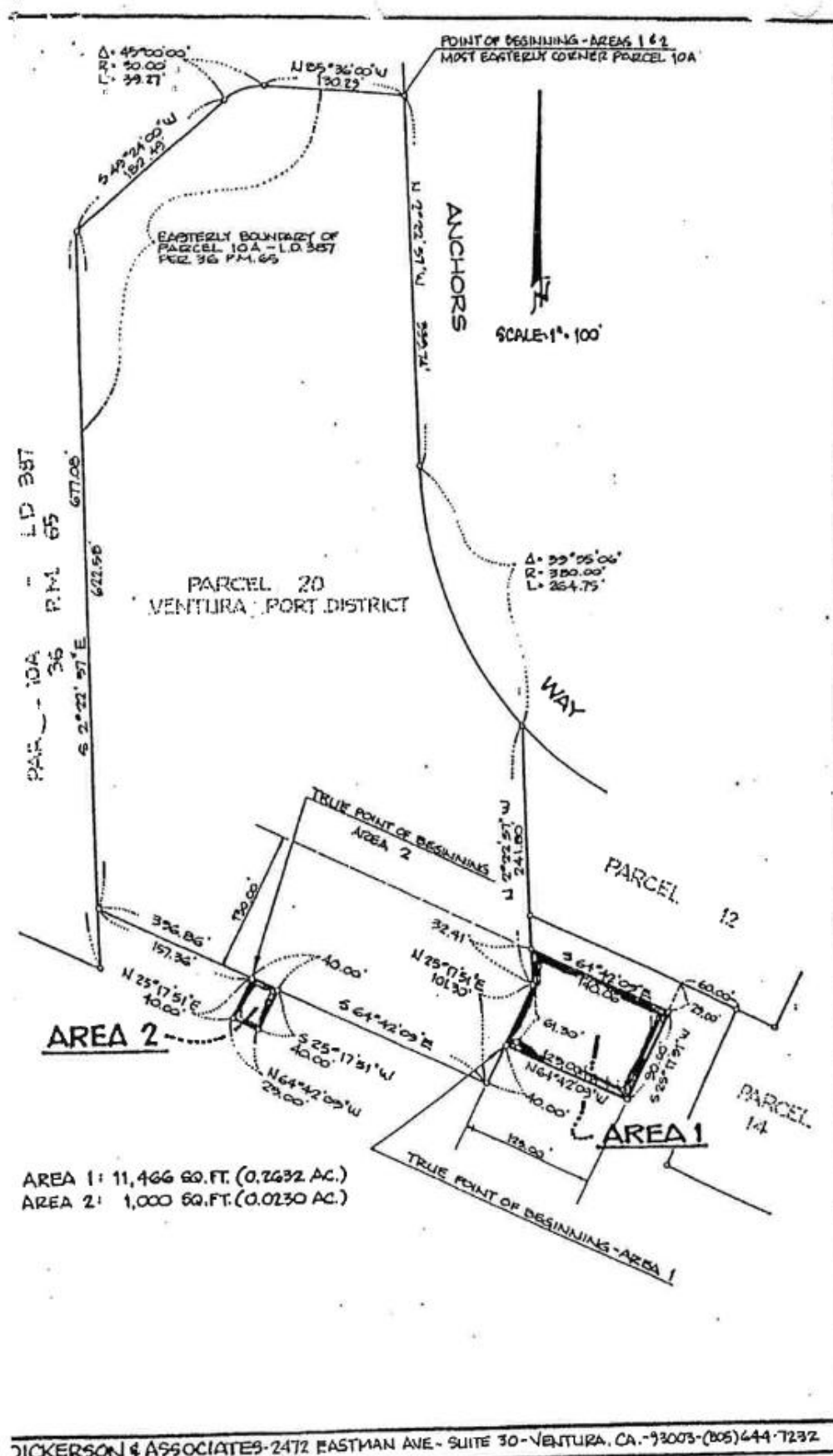


EXHIBIT B

EXHIBIT "G"

MEMORANDUM OF LEASE

For good and valuable consideration, VENTURA PORT DISTRICT leases the premises legally described in the attachment hereto, to \_\_\_\_\_, and \_\_\_\_\_ 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 \_\_\_\_\_, \_\_\_\_\_, which is incorporated herein by this reference.

The term of the Lease is \_\_\_\_ (#) years, commencing on \_\_\_\_\_, \_\_\_\_\_, and ending on \_\_\_\_\_, \_\_\_\_\_. 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: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print name

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print name

## EXHIBIT B

### Legal Description

**EXHIBIT "H"**

PERSONAL GUARANTY

PERSONAL GUARANTY

The purpose of this Guaranty is to memorialize the parties' understanding that if DERECKTOR MARINE HOLDINGS, LLC. ("Lessee") does not fully perform its obligations under the Lease between VENTURA PORT DISTRICT ("District") and Lessee dated \_\_\_\_\_ ("Lease"), the undersigned Guarantor will and does hereby agree to unconditionally, promptly, fully and completely pay and perform each, every and all obligations of Lessee under the Lease.

Guarantor acknowledges that he will benefit from the Lease, and in order to induce the District to enter into said Lease, has agreed to and hereby executes and delivers this Personal Guaranty to District with the express understanding that doing so is a condition precedent to the District executing the Lease.

The Guarantor confirms and warrants that:

(a) Lessee is a limited liability company formed under and currently existing in accordance and compliance with all the laws of the State of Delaware and is qualified to do business in the State of California;

(b) Guarantor is a member of Lessee and holds or controls an ownership interest in Lessee equivalent to \_\_\_\_\_ percent (\_\_\_\_%) of the equity and control of Lessee;

(c) Guarantor is the \_\_\_\_\_ of \_\_\_\_\_ and has personal knowledge of and is familiar with the business affairs, books and records of Lessee;

(d) Guarantor individually has the ability to participate in and influence the decision-making process of Lessee; and

(e) Lessee is in sound financial condition and in a position to perform obligations required of it under and in accordance with the terms and conditions of the Lease.

Guarantor acknowledges that the District is relying upon Guarantor's covenants and warranties hereinabove set forth in executing the Lease and in undertaking to perform the obligations required of District under the Lease promptly and in good faith.

Guarantor agrees that each of his obligations under this Personal Guaranty is independent of the obligations under the Lease, and if Lessee does not perform under the Lease and make all payments required thereunder when due, District, in its sole discretion, may proceed directly

## EXHIBIT B

against Guarantor under this Personal Guaranty without first proceeding against Lessee or exhausting any other remedies against Lessee available to District.

Guarantor further agrees that, in lieu of any right to indemnification that Guarantor might have against Lessee, which right is hereby waived, Guarantor shall be subrogated to the rights of District against Lessee, to the extent that Guarantor fully satisfies and discharges the obligations of Lessee under the Lease. This right of subrogation shall be the sole and exclusive remedy of Guarantor against Lessee.

Guarantor hereby waives any and all notices of default, non-performance or demand upon Lessee and further consents to any extensions of time or changes in the manner of payment or performance of any of the terms or conditions of the Lease which District or its successors, may grant to Lessee and, further, consents to any assignment, or successive assignments, of the Lease by District, and any extensions, renewals or other modifications of the Lease, all without notice to Guarantor. Guarantor further agrees that District may, without notice, assign this Personal Guaranty in whole or in part and that Guarantor expressly waives the provisions of California Civil Code Section 2845, a copy of which is attached hereto and initialed by Guarantor and Guarantor's attorney, whom Guarantor has consulted about the purpose, meaning and effect of this Personal Guaranty and the rights Guarantor has or may have under said statute.

Guarantor also agrees as follows:

1. Each covenant, warranty, obligation and other statement of the Guarantor hereunder shall be the individual, sole and independent obligation of Guarantor, separate and apart from all other similar rights District has or may have to enforce such covenants, warranties and obligations against Lessee or other guarantors;
2. The written acknowledgment by Lessee, a decision in an arbitration proceeding or a judgment of any court, that Lessee has defaulted in performance of any of the provisions of the Lease shall, in every respect, bind and be conclusive against Guarantor;
3. To pay all costs, expenses and reasonable attorneys' fees which District or its assigns and successors, may incur in enforcing this Personal Guaranty;
4. This Personal Guaranty is to be an open Guaranty and is to continue in full force, notwithstanding the acceptance by District, or its assigns or successors, of any compromise offered by Lessee, or its assigns or successors, without obtaining the consent of Guarantor. Said acceptance by District, or its assigns or successors, shall not in any manner operate as a release of liability of Guarantor hereunder;
5. Neither the obligations of Guarantor to perform in accordance with the terms of this Personal Guaranty, nor any remedy for the enforcement thereof, shall be impaired, modified, changed, released or limited in any manner whatsoever by any impairment, modification, change, release, or limitation of the liability of Lessee, or its estate in bankruptcy, or any remedy for the enforcement thereof, resulting from the operation of any present or future provision of the

EXHIBIT B

National Bankruptcy Act or other statute, or from any decision in an arbitration proceeding or any court;

6. This Personal Guaranty and the rights and obligations of the Guarantor shall be construed and enforced in accordance with the laws of the State of California;

7. District may institute suit in the courts of the County of Ventura, State of California, to recover under the terms of this Personal Guaranty, and Guarantor hereby consents to and submits himself to the jurisdiction of the State of California and agrees that District shall be entitled to judgment in and enforcement by the courts of the State of California for the amount which Guarantor may be adjudged to pay to District and/or any other relief granted to District against Guarantor, by any such court of the State of California, including interest, attorneys' fees, and reasonable costs; Guarantor designates, without power of revocation, \_\_\_\_\_ as his agent for service of process within the State of California with respect to any such suit;

8. Guarantor agrees that any controversy, dispute or claim arising under the Lease or this Guaranty may be determined by a reference in accordance with California Code of Civil Procedure §§638 et seq.; and

9. This Guaranty shall bind the assigns, successors and personal representatives of Guarantor and is and shall in every particular be available to District, its assigns and successors.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_, California, and effective as of \_\_\_\_\_.

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

**COPY OF CC SECTION 2845**

2845. A surety may require the creditor, subject to Section 996.440 of the Code of Civil Procedure, to proceed against the principal, or to pursue any other remedy in the creditor's power which the surety cannot pursue, and which would lighten the surety's burden; and if the creditor neglects to do so, the surety is exonerated to the extent to which the surety is thereby prejudiced.

Initials \_\_\_\_\_  
Guarantor

Initials \_\_\_\_\_  
Guarantor's Attorney



EXHIBIT B

EXHIBIT "C"

QUITCLAIM DEED OF OPTION

## EXHIBIT B

QUITCLAIM DEED OF OPTION

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, DERECKTOR MARINE HOLDINGS LLC, a Delaware limited liability company (hereafter "Optionee") hereby remises, releases and forever quitclaims to VENTURA PORT DISTRICT (hereafter "Optionor"), 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 in the City of San Buenaventura, County of Ventura, State of California, more particularly described in the Legal Description attached hereto as Exhibit "1" to which Optionee was granted rights by Optionor under an Option to Lease dated \_\_\_\_\_.

It is understood and agreed that this Quitclaim Deed is executed and delivered, and is to be held by Optionor in accordance with the terms of said Option to Lease and will be recorded only in the event said Option to Lease is automatically terminated according to its terms or if Optionee fails to comply with the terms of said Option to Lease and Optionor terminates the rights of the Optionee thereunder; and only after Optionee's interests in that certain ground lease dated August 1, 1989 and that certain license agreement dated September 30, 1987 are terminated. Upon recording of said Quitclaim Deed, all rights of Optionee under the Option to Lease shall terminate and said Option to Lease shall no longer be of any force or effect.

In the event Optionee complies with all of those terms, conditions, covenants, and agreements in the Option to Lease, Optionor shall forthwith return this Quitclaim Deed without recordation to Optionee.

EXHIBIT B

\_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

(Acknowledgments)

## EXHIBIT B

## Exhibit "1" to Quitclaim Deed

Legal DescriptionLEGAL DESCRIPTION  
VENTURA PORT DISTRICT  
PARCEL 20

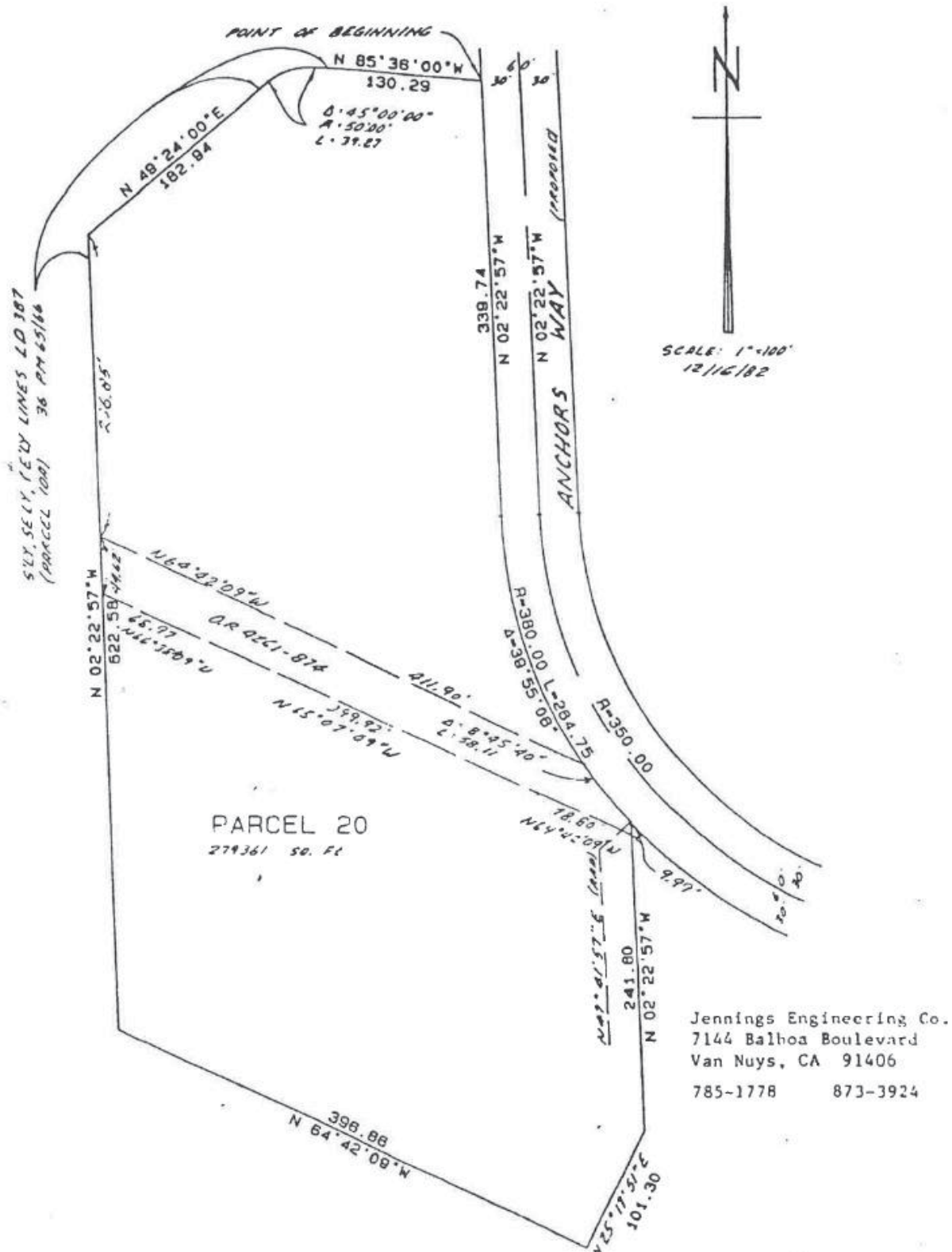
BEING A PORTION OF SUBDIVISION NO. 7 OF THE WEST ONE-HALF OF RANCHO SAN MIGUEL IN THE CITY OF SAN BUENAVENTURA, COUNTY OF VENTURA, STATE OF CALIFORNIA PER MAP RECORDED IN BOOK 5 PAGE 42 OF MISCELLANEOUS RECORDS, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF PARCEL 10A, LD 387 PER MAP FILED IN BOOK 36 PAGES 65 AND 66 OF PARCEL MAPS, RECORDS OF SAID COUNTY; SAID CORNER BEING THE EASTERLY TERMINUS OF THAT CERTAIN LINE SHOWN AS "N.  $85^{\circ}36'00''$  W. 130.29' " ON SAID MAP LD 387; THENCE ALONG THE SOUTHERLY, SOUTHEASTERLY AND EASTERLY LINES OF SAID PARCEL 10A, LD 387, NORTH  $85^{\circ}36'00''$  WEST 130.29 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE OF  $45^{\circ}00'00''$ , THENCE SOUTHWESTERLY ALONG SAID CURVE 39.27 FEET; THENCE ALONG A TANGENT LINE SOUTH  $49^{\circ}24'00''$  WEST 182.94 FEET; THENCE SOUTH  $2^{\circ}22'57''$  EAST 622.58 FEET; THENCE LEAVING THE EASTERLY LINE OF SAID LD 387, SOUTH  $64^{\circ}42'09''$  EAST 396.86 FEET; THENCE NORTH  $25^{\circ}17'51''$  EAST 101.30 FEET; THENCE NORTH  $2^{\circ}22'57''$  WEST 241.80 FEET TO A POINT IN THE PROPOSED SOUTHWESTERLY LINE OF ANCHORS WAY 60 FEET WIDE SAID LINE BEING A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 380.00 FEET AND A CENTRAL ANGLE OF  $39^{\circ}55'06''$ , THENCE NORTHWESTERLY 264.75 FEET ALONG SAID CURVE; THENCE ALONG A TANGENT LINE NORTH  $2^{\circ}22'57''$  WEST 339.74 FEET TO THE POINT OF BEGINNING.

AREA: 279361 S.F.

6.4132 ACRES

## EXHIBIT B





## EXHIBIT B

**LEGAL DESCRIPTION  
VENTURA PORT DISTRICT  
PARCEL 20 LICENSE AREAS**

**AREA 1 - SLIPS**

BEING A PORTION OF SUBDIVISION NO. 7 OF THE WEST ONE-HALF OF RANCHO SAN MIGUEL IN THE CITY OF SAN BUENAVENTURA, COUNTY OF VENTURA, STATE OF CALIFORNIA, PER MAP RECORDED IN BOOK 5, PAGE 42 OF MISCELLANEOUS RECORDS, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS;

BEGINNING AT THE MOST EASTERLY CORNER OF PARCEL 10A, LD 387, PER MAP FILED IN BOOK 36, PAGES 65 AND 66 OF PARCEL MAPS, RECORDS OF SAID COUNTY, AT THE EASTERLY TERMINUS OF THAT CERTAIN LINE SHOWN ON SAID MAP LD 387 AS "NORTH 85°36'00" WEST, 130.29'"; THENCE ALONG THE EASTERLY BOUNDARY OF SAID PARCEL 10A THE FOLLOWING FOUR (4) COURSES; NORTH 85°36'00" WEST, 130.29 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 50.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 45°00'00" AN ARC LENGTH OF 39.27 FEET; THENCE TANGENT TO SAID CURVE SOUTH 49°24'00" WEST, 182.49 FEET; THENCE SOUTH 2°22'57" EAST, 622.58 FEET; THENCE LEAVING SAID EASTERLY BOUNDARY SOUTH 64°42'09" EAST, 396.86 FEET; THENCE AT RIGHT ANGLES NORTH 25°17'51" EAST, 40.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING

1ST: NORTH 25°17'51" EAST, 61.30 FEET; THENCE

2ND: NORTH 2°22'57" WEST, 32.41 FEET TO A POINT IN A LINE THAT IS PARALLEL WITH AND DISTANT NORTHEASTERLY 130.00 FEET MEASURED AT RIGHT ANGLES FROM THAT COURSE DESCRIBED ABOVE AS HAVING A BEARING AND LENGTH OF SOUTH 64°42'09" EAST, 396.86 FEET; THENCE ALONG SAID PARALLEL LINE

3RD: SOUTH 64°42'09" EAST, 140.06 FEET TO A POINT IN A LINE THAT IS PARALLEL WITH AND DISTANT SOUTHEASTERLY 125.00 FEET MEASURED AT RIGHT ANGLES FROM THE 1ST COURSE ABOVE DESCRIBED; THENCE ALONG SAID PARALLEL LINE

4TH: SOUTH 25°17'51" WEST, 90.00 FEET TO A LINE THAT BEARS SOUTH 64°42'09" EAST FROM THE TRUE POINT OF BEGINNING; THENCE ALONG SAID LINE

5TH: NORTH 64°42'09" WEST, 125.00 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED AREA 1 CONTAINS 11466 SQUARE FEET (0.2632 ACRES).

## EXHIBIT B

AREA 2 - BAIT-RECEIVER

BEING A PORTION OF SUBDIVISION NO. 7 OF THE WEST ONE-HALF OF RANCHO SAN MIGUEL IN THE CITY OF SAN BUENAVENTURA, COUNTY OF VENTURA, STATE OF CALIFORNIA, PER MAP RECORDED IN BOOK 5, PAGE 42 OF MISCELLANEOUS RECORDS, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS;

BEGINNING AT THE MOST EASTERLY CORNER OF PARCEL 10A, LD 387, PER MAP FILED IN BOOK 36, PAGES 65 AND 66 OF PARCEL MAPS, RECORDS OF SAID COUNTY, AT THE EASTERLY TERMINUS OF THAT CERTAIN LINE SHOWN ON SAID MAP LD 387 AS "NORTH 85°36'00" WEST, 130.29'"; THENCE ALONG THE EASTERLY BOUNDARY OF SAID PARCEL 10A THE FOLLOWING FOUR (4) COURSES; NORTH 85°36'00" WEST, 130.29 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 50.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 45°00'00" AN ARC LENGTH OF 39.27 FEET; THENCE TANGENT TO SAID CURVE SOUTH 49°24'00" WEST, 182.49 FEET; THENCE SOUTH 2°22'57" EAST, 622.58 FEET; THENCE LEAVING SAID EASTERLY BOUNDARY SOUTH 64°42'09" EAST, 157.36 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING

1ST: SOUTH 64°42'09" EAST, 25.00 FEET; THENCE AT RIGHT ANGLES

2ND: SOUTH 25°17'51" WEST, 40.00 FEET; THENCE AT RIGHT ANGLES

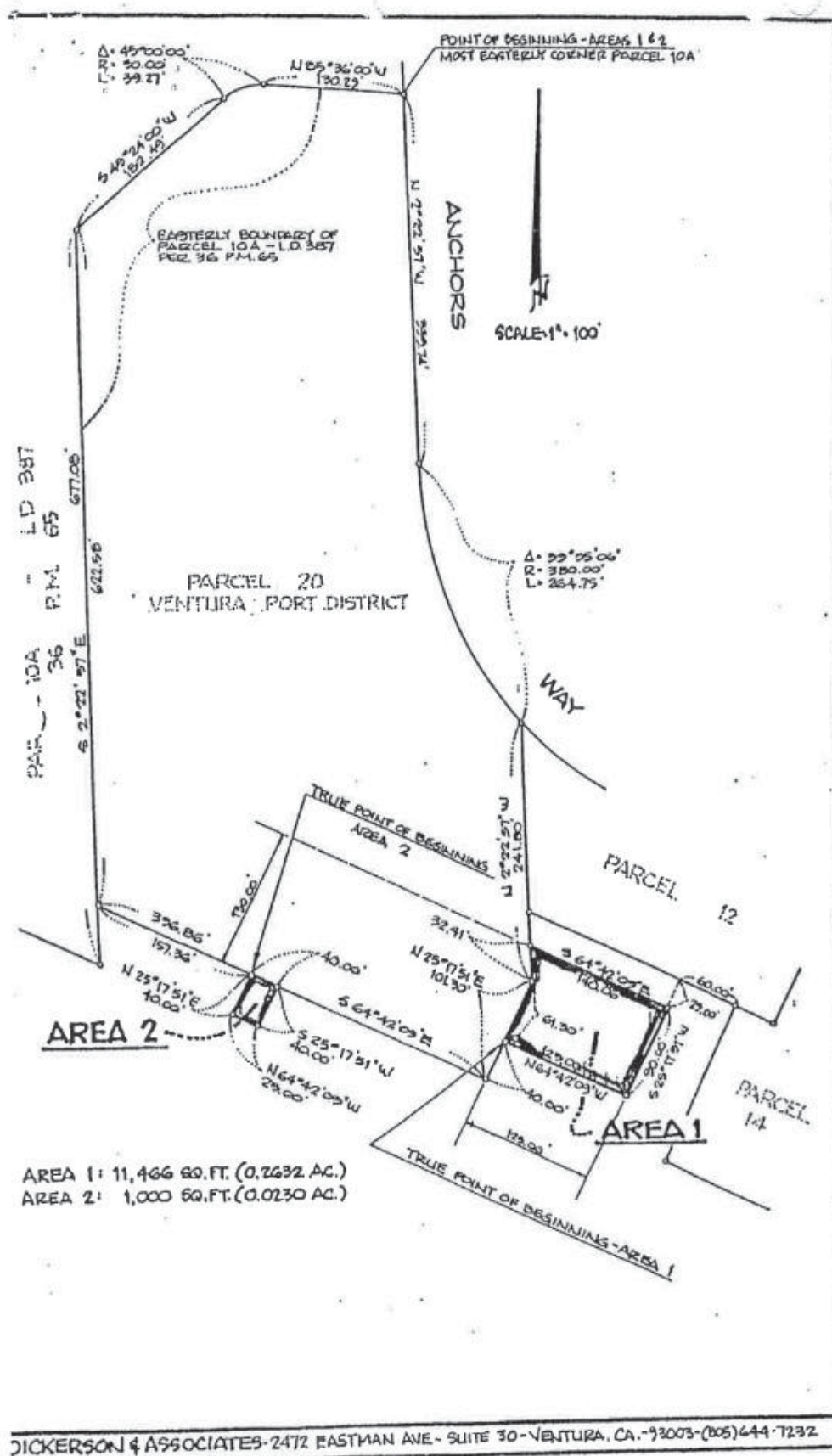
3RD: NORTH 64°42'09" WEST, 25.00 FEET; THENCE AT RIGHT ANGLES

4TH: NORTH 25°17'51" EAST, 40.00 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED AREA 2 CONTAINS 1000 SQUARE FEET (0.0230 ACRES).



## EXHIBIT B







BOARD OF PORT COMMISSIONERS

SEPTEMBER 16, 2020

STANDARD AGENDA ITEM 2

ADOPTION OF RESOLUTION No.  
3395 EXTENDING THE COVID-19  
VENTURA HARBOR RENTAL  
ABATEMENT AND DEFERMENT  
PROGRAM

**VENTURA PORT DISTRICT**  
**BOARD COMMUNICATION**

**STANDARD AGENDA ITEM 2**  
Meeting Date: September 16, 2020

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TO: Board of Port Commissioners  
FROM: Brian D. Pendleton, General Manager  
Todd Mitchell, Business Operations Manager  
Gloria Adkins, Accounting Manager  
SUBJECT: Adoption of Resolution No. 3398 Extending COVID-19 Ventura Harbor Rental Abatement and Deferment Program

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**RECOMMENDATION:**

That the Board of Port Commissioners adopt Resolution No. 3398 further extending the COVID-19 Ventura Harbor Rental Abatement and Deferment Program until December 31, 2020, which will allow for the abatement or deferment of all rental payments for those Harbor Master Tenants and Harbor Village Tenants who have been directly impacted by the COVID-19 Pandemic on a monthly basis for repayment of deferred rents within six months after all applicable government emergency orders are rescinded, no sooner than May 12, 2021.

**SUMMARY**

Ventura Harbor has been severely impacted by the COVID-19 Pandemic. Many Harbor businesses have been closed by Governmental Order or in response to lost business resulting from the COVID-19 Pandemic. This may lead to the permanent closure of businesses, loss of employment and loss of rental revenue to the District, which is its primary source of operating revenue. Because of the symbiotic relationship of the businesses and the District, in order to help owners avoid permanent business closures, further loss of employment and long-term impacts to the Port District, staff recommends extension of the COVID-19 Ventura Harbor Rental Abatement and Deferment Program.

**LONG-TERM GOALS:**

- Goal 3: Economic Vitality
  - Increase economic development, vitality, and diversity of the District through effective leasing and marketing strategies.
- Goal 5: Relationships
  - Build respectful, productive, and mutually beneficial business relationships with our tenants, public agencies, elected officials and the community.

**5-YEAR OBJECTIVES:**

- Objective M: Master Tenants
  - Collaborate with existing and future Master Tenants to maintain, improve, and develop the Harbor.
    - 1: Engagement and support of Master Tenants for successful business operations at the Harbor.
- Objective V: Harbor Village
  - Maintain and improve Harbor Village infrastructure and enhance the overall visitor experience
    - 2: Leasing/Property Management Action Plan

**BACKGROUND**

**COVID-19 Ventura Harbor Rental Abatement and Deferment Program**

The Port District will abate or defer all rental payments for those Harbor Master Tenants and Harbor Village Tenants who have been directly impacted by the COVID-19 Pandemic on a monthly basis for the period of April through December 2020. At this time, the City of Ventura's Ordinance 2020-014 ("Temporary Eviction Moratorium") was extended by the City Council for residential tenants

on Tuesday, September 8, but is under further review for commercial tenants. The City Council has requested this issue be returned for further consideration, tentatively scheduled for September 28<sup>th</sup>. Staff will implement the City's ordinance as applicable and return to the Board as necessary.

#### COVID-19 Ventura Harbor Rental Abatement and Deferment Program Qualifications:

##### **April through June 2020 (Initial Period)**

- Master Tenant or Harbor Village Tenant (i.e. direct commercial tenant of VPD);
- And:
  - Business is closed by Government Order; or
  - Business has lost 50% or more of typical monthly revenue pre-COVID-19.

##### **July through September 2020 (First Extended Period)**

- Master Tenant or Harbor Village Tenant (i.e. direct commercial tenant of VPD);
- And:
  - Business is closed due to Government Order; or
  - Business has reopened but has lost 20% or more of typical monthly revenue pre-COVID-19; or
  - Business has been open for less than 1 year but certifies it has lost 20% or more of projected monthly revenue pre-COVID.

##### **October through December 2020 (Proposed Second Extended Period)**

- Master Tenant or Harbor Village Tenant (i.e. direct commercial tenant of VPD);
- And:
  - Business is closed due to Government Order; or
  - Business has reopened but has lost 20% or more of typical monthly revenue pre-COVID-19; or
  - Business has been open for less than 1 year but certifies it has lost 20% or more of projected monthly revenue pre-COVID.

#### Conditions:

- All Tenants must abide by the orders of the City, County, and State business practices in response to the COVID-19 pandemic.
- All Master, Village, and Village Marina Charter Tenants must notify the Leasing Manager by the 10<sup>th</sup> of each month of their need to continue with the program.
  - Master Tenants, Village Tenants, and Village Marina Charter Tenants who report sales, will continue to report sales as currently required, to determine the total deferred rental amount, even if these sales are \$0 due to closure.
  - Tenants are not required to provide sales reports to the District must provide demonstration of loss as part of their notification.
- Master Tenants who qualify must provide the same monthly deferment to all sub-tenants.
- Harbor Village Tenants and Village Marina Charter Tenants who qualify, and who also pay the District a promotional fee for marketing, shall have the promotional fee waived for each month rent is deferred.
- Harbor Village Tenants and Village Marina Charter Tenants who qualify, and who also pay the District a common area maintenance (CAM) fee, shall have one-half the CAM fee waived for each month rent is deferred.
- Master Tenants and Village Tenants will seek COVID-19 federal or other governmental business assistance (if eligible) and pursue business interruption insurance (if eligible).

Deferments for May through September 2020 will require demonstration of pursuit of both or documentation of ineligibility.

- Repayment of all deferred rent (base rents, one-half CAM fees, percentage rent, etc.) shall occur within six months after all applicable government emergency orders are rescinded, no sooner than March 2021. No interest or late fees will apply to the deferred rent during this time period but shall be applicable as per the lease terms if not paid in full by this date.
- Any outstanding rent owed by Master Tenants and Village Tenants to the District, prior to April 2020, is not eligible for the COVID-19 Ventura Harbor Rental Abatement and Deferment Program.

The General Manager will have the authority to implement the Program, receive applications and approve documentation of the qualifications and conditions above to ensure timely processing and approval of monthly rental abatements and deferments. Approval for Program participation will be on a monthly basis during the 3-month extension period.

Tenants who do not qualify for the Program may be eligible for rental deferment as provided by in the City of Ventura Emergency Ordinance #2020-014 "Temporary Eviction Moratorium". Tenants may consult a District leasing team representative for additional information as the Emergency Ordinance is under further review by the City of Ventura as discussed above.

#### **FISCAL IMPACT**

Staff estimates that the direct fiscal impact to the Port District due to the COVID-19 Pandemic from the onset of business closures through the end of July 2020 (period of time data is available) is a reduction of earned revenues estimated to be \$524,164 based on year over year sales figures with additional revenue reductions estimated at approximately \$100,000 per month based on impacts to date. Staff expects earned revenue reductions to continue past the end of the pandemic for some business categories.

The amount of deferred rent accumulated in total since the onset of the Pandemic is \$378,030 as of August 31, 2020.

The General Manager began implementing reductions in expenditures to partially offset revenue losses for promotional and CAM fees beginning in April. Fiscal impacts caused by COVID-19 requires ongoing evaluation of Port District operational, capital and tenant improvement expenses against the FY20-21 Budget.

#### **ATTACHMENTS:**

Attachment 1 – Resolution No. 3398



**RESOLUTION NO. 3398**

**RESOLUTION OF THE BOARD OF PORT COMMISSIONERS  
OF THE VENTURA PORT DISTRICT EXTENDING THE COVID-19  
VENTURA HARBOR RENTAL ABATEMENT AND DEFERMENT PROGRAM**

**WHEREAS**, on March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19;

**WHEREAS**, on March 12, 2020, the County of Ventura declared a State of Emergency to exist in Ventura County as a result of the threat of COVID-19.

**WHEREAS**, on March 17, 2020, the County of Ventura Health Officer issued an Order for the control of COVID-19 directing vulnerable individuals to shelter at their place of residence and issued restrictions of certain businesses.

**WHEREAS**, on March 19, 2020, Governor Gavin Newsom issued Executive Order N-33-20 for the preservation of public health and safety throughout the entire State of California to head the State public health directives from the Department of Public Health that, in order to protect public health, all individuals living in California must stay in their home or place of residence unless needed to maintain continuity of operations of critical infrastructure sectors.

**WHEREAS**, Executive Order N-33-20 identified 16 critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered to be essential. All other businesses were directed to close.

**WHEREAS**, on March 20, 2020, the County of Ventura Health Officer issued an Order directing persons living in Ventura County to stay in their place of residence and restricting non-essential activities in response to COVID-19. Essential activities include only activities and tasks essential to health and safety of themselves, family, or household members, to obtain services or supplies, outdoor activities, to perform work for an essential business, or to care for a family member or pet in another household.

**WHEREAS**, on April 7, 2020, the City of Ventura passed and adopted Ordinance No. 2020-014, an emergency ordinance amending Section 6.1020.020 "Temporary Eviction Moratorium" for the City of Ventura which provides city residents and businesses impacted by COVID-19 the ability to defer rent payment up to six months after the expiration of the City's Declaration of Local Health Emergency.

**WHEREAS**, on April 28, 2020, Governor Gavin Newsom announced four "Resilience Roadmap Stages" that California would use to guide its gradual reopening process. The four

stages are: Stage 1- Safety and Preparedness; Stage 2- Lower Risk Workplaces; Stage 3- Higher Risk Workplaces; and Stage 4- End of Stay at Home Order. California has been in Stage 1 since the statewide Stay at Home Order, which took effect on March 16, 2020. California is currently in early Stage 2, which began on May 8, 2020.

**WHEREAS**, on June 11, 2020, the County of Ventura Health Officer issued an Order for the control of COVID-19 directing businesses to establish, implement and enforce COVID-19 prevention plans and observe other capacity restrictions.

**WHEREAS**, the City of Ventura's Ordinance 2020-014 ("Temporary Eviction Moratorium") was extended by the City Council for residential tenants on Tuesday, September 8, but is under further review for commercial tenants. The City Council has requested this issue be returned for further consideration, tentatively scheduled for September 28<sup>th</sup>. District Staff will implement the City's ordinance as applicable and return to the Board, as necessary.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Port Commissioners, by adoption of this Resolution No. 3398 hereby authorizes the extension of the COVID-19 Ventura Harbor Rental Abatement and Deferment Program, as follows:

The Ventura Port District hereby extends the COVID-19 Ventura Harbor Rental Abatement and Deferment Program ("Program") that will defer all rental payments for those Harbor Master Tenants and Harbor Village Business Tenants who have been directly impacted by the COVID-19 Pandemic on a monthly basis from April through December 2020;

From April through June 2020, the COVID-19 Ventura Harbor Rental Abatement and Deferment Program qualifications are:

- Businesses must be a Master Tenant, Harbor Village Tenant (i.e. direct commercial tenant of the Ventura Port District), or a Village Marina Recreational Charter Business;
- And:
  - Business is closed by Government Order; or
  - Business has lost 50% or more of typical monthly revenue in the month prior to rent due

From July through September 2020 (First Extended Period), the COVID-19 Ventura Harbor Rental Abatement and Deferment Program qualifications are:

- Businesses must be a Master Tenant, Harbor Village Tenant (i.e. direct commercial tenant of VPD), or a Village Marina Recreational Charter Business;
- And:
  - Business is closed due to Government Order; or
  - Business has reopened but has lost 20% or more of typical monthly revenue pre-COVID-19; or
  - Business has been open for less than 1 year but certifies it has lost 20% or more of projected monthly revenue pre-COVID.

From October through December 2020 (Second Extended Period), the COVID-19 Ventura Harbor Rental Abatement and Deferment Program qualifications are:

- Businesses must be a Master Tenant, Harbor Village Tenant (i.e. direct commercial tenant of VPD), or a Village Marina Recreational Charter Business;
- And:

## ATTACHMENT 1

- Business is closed due to Government Order; or
- Business has reopened but has lost 20% or more of typical monthly revenue pre-COVID-19; or
- Business has been open for less than 1 year but certifies it has lost 20% or more of projected monthly revenue pre-COVID.

The conditions of the COVID-19 Ventura Harbor Rental Deferment Program are:

- Tenants must abide by the orders of the City, County, and State business practices in response to the COVID-19 pandemic.
- Master Tenants who qualify must provide the same monthly deferment to all sub-tenants.
- Harbor Village Tenants and Village Marina Recreational Charter Businesses who qualify and who also pay the District a promotional fee for marketing, shall have the promotional fee waived for each month rent is deferred.
- Harbor Village Tenants and Village Marina Recreational Charter Businesses who qualify, and who also pay the District a common area maintenance (CAM) fee, shall have one-half the CAM fee waived for each month rent is deferred.
- Master Tenants, Village Tenants, and Village Marina Recreational Charter Businesses who report sales, will continue to report sales as currently required, even if these sales are \$0.
- Master Tenants, Village Tenants, and Village Marina Recreational Charter Businesses will seek COVID-19 federal or other governmental business assistance (if eligible) and pursue business interruption insurance (if eligible). Deferments for May through September 2020 will require demonstration of pursuit of both or documentation of ineligibility.
- Repayment of all deferred rent (base rents, one-half CAM fees, percentage rent, etc.) shall occur within six months after government emergency orders are rescinded, no sooner than May 12, 2021, or commensurate with prevailing government orders, whichever is later. No interest or late fees will apply to the deferred rent during this time period but shall be applicable as per the lease terms if not paid in full by the conclusion of the repayment period.
- Any outstanding rent owed by Master Tenants, Village Tenants, and Village Marina Recreational Charter Businesses to the District, prior to April 2020, is not eligible for the COVID-19 Ventura Harbor Rental Abatement and Deferment Program.
- All other terms, obligations, and requirements in both Master Tenant, Village Tenant, and Village Marina Recreational Charter Business lease agreements remain in full force and effect.

**BE IT FURTHER RESOLVED** that the Board of Port Commissioners, by adoption of this Resolution hereby authorizes General Manager, Brian D. Pendleton, to have the authority to extend the program, receive applications and approve documentation of the qualifications and conditions to ensure timely processing and approval of monthly rental abatements and deferments.

**PASSED, APPROVED AND ADOPTED** by the Board of Port Commissioners, this 16th day of September, 2020.

ATTACHMENT 1

---

Chairman

Attest:

---

Secretary



**STATE OF CALIFORNIA                    )**  
**COUNTY OF VENTURA                ) ss.**  
**CITY OF SAN BUENAVENTURA    )**

I, Jackie Gardina, Secretary of the Ventura Port District, a public corporation, do hereby certify that the above and foregoing Resolution No. 3398 was duly passed and adopted by the Board of Port Commissioners of said District at a regular meeting thereof held on the 1st day of July 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said District this 16th day of September 2020.

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Secretary