



**VENTURA PORT
DISTRICT
BOARD OF PORT COMMISSIONERS**

Jim Friedman, Chairman
Everard Ashworth, Vice Chairman
Bruce E. Smith, Commissioner
Nikos Valance, Commissioner
Bruce Brennan, Commissioner

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

**PORT COMMISSION AGENDA
REGULAR MEETING
OCTOBER 5, 2016 AT 7:00PM
VENTURA PORT DISTRICT OFFICE
1603 ANCHORS WAY DRIVE, VENTURA, CA**

*The Board will convene in **Open Session** at the Port District Office located at 1603 Anchors Way Drive for its Regular Meeting at **7:00PM**.*

ADMINISTRATIVE AGENDA:

CALL TO ORDER: *By Chair Jim Friedman.*

PLEDGE OF ALLEGIANCE: *By Chair Jim Friedman.*

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

ADOPTION OF AGENDA (5 minutes)

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

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.

STANDARD AGENDA:

1) Approval of Lease of Parcels 15, 16, 18 to Portside Partners-Ventura Harbor, LLC

Recommended Action: Roll Call Vote.

That the Board of Port Commissioners:

1. Adopt Resolution No. 3318 taking the following actions:
 - a. Approving the assignment of the Option to Lease Parcels 15, 16 and 18, dated September 2, 2002 ("Option to Lease") from Sondermann Ring Partners – Ventura Harbor LLC, ("SRP/LLC") successor-in-interest to SRP/LP by operation of law, to Portside Partners – Ventura Harbor, LLC, a Delaware limited liability company ("PPVH"); and
 - b. Approving the Fifteenth Amendment to the Option to Lease, as previously amended, the focus of which is to (i) update to legal description for the premises subject to the option, (ii) delete obsolete provisions of the option, (iii) revise the closing process to conform to the form and method of financing for the development, (iv) amend and update the Schedule of Performance (Exhibit C) and the Schedule of Documents Proving/Constituting Satisfaction of the Conditions Precedent to Exercise of the Option (Exhibit F) and update the project description to conform to the actions and approvals from the California Coastal Commissions;
2. Adopt Resolution No. 3319 taking the following actions:
 - a. Approving the construction loan financing for the development, being the first part of the Initial Financing Event under the Ground Lease, and several related loan documents, between PPVH and PNC Bank, National Association ("PNC Bank") as the agent for CIT Bank, N.A., and PNC Bank (collectively "Lenders"), in the amount of \$71,700,000.00 to fund the cost of constructing the planned improvements on Parcels 15, 16 and 18; and
 - b. Authorizing the General Manager to execute on behalf of the District the Ground Lease Estoppel Certificate relating to the Initial Financing Event (not including the permanent take-out loan), a copy of which is attached to the Resolution and which identifies the other loan documents in Exhibit C to the Ground Lease Estoppel Certificate, all of which are approved by the District pursuant to Resolution No. 3319; and
3. Adopt Resolution No. 3320 authorizing the General Manager to execute on behalf of the Ventura Port District the Ground Lease attached as Exhibit B to the Option to Lease and a Memorandum of Lease, at such time as the General Manager and District General Counsel have confirmed that all conditions precedent to the proper exercise of the Option to Lease have been met and/or satisfied, and to sign escrow instructions and conditionally deposit the executed Ground Lease and certified copies of Resolution Nos. 3318, 3319 and 3320 with Commonwealth Title Company, as the escrow agent for PPVH, PNC Bank and the District relating to the concurrent closing of the construction loan portion of the Initial Financing Event between PPVH and PNC Bank, and the execution and effectiveness of the Ground Lease between PPVH and the District.

ADJOURNMENT

*This agenda was posted on Friday, September 30, 2016 at 5:00 p.m.
at the Port District Office and on the Internet - www.venturaharbor.com (Port Commission).*

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



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Established 1908

MEMORANDUM

To: Board of Port Commissioners

From: Lagerlof, Senecal, Gosney & Kruse, LLP

Date: September 22, 2016

Subject: **Proposed Lease of Parcels 15, 16 and 18 to Portside Partners-Ventura Harbor, LLC**

INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

After what has turned out to be a 14 year marathon of frustration and delays, our office as General Counsel to the District and District staff are pleased to report we are prepared to make certain specific recommendations to the Board of Port Commissioners ("Board") concerning the leasing of Parcels 15, 16 and 18 to a successor entity to the original Optionee, Sondermann Ring Partners, a California Limited Partnership ("SRP/LP"). Specifically and as explained in greater detail below, it is our and staff's recommendation that the Board take the following actions at the special meeting now scheduled for the evening of October 5, 2016:

1. Adopt Resolution No. 3318 in the form attached hereto, taking the following actions:
 - a. approving the assignment of the Option to Lease Parcels 15, 16 and 18, dated September 2, 2002 ("Option to Lease") from Sondermann Ring Partners – Ventura Harbor LLC ("SRP/LLC"), successor-in-interest to SRP/LP by operation of law, to Portside Partners – Ventura Harbor, LLC, a Delaware limited liability company ("PPVH"); and
 - b. approving the Fifteenth Amendment to the Option to Lease, as previously amended, the focus of which is to (i) update to legal description for the premises subject to the option, (ii) delete obsolete provisions of the option, (iii) revise the closing process to conform to the form and method of financing for the development, (iv) amend and update the Schedule of Performance (Exhibit C) and the Schedule of Documents Proving/Constituting Satisfaction of

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the Conditions Precedent to Exercise of the Option (Exhibit F) and update the project description to conform to the actions and approvals from the California Coastal Commissions;

2. Adopt Resolution No. 3319, in the form attached hereto, taking the following actions:

a. approving the construction loan financing for the development, being the first part of the Initial Financing Event under the Ground Lease, and several related loan documents, between PPVH and PNC Bank, National Association ("PNC Bank") as the agent for CIT Bank, N.A., and PNC Bank (collectively "Lenders"), in the amount of \$71,700,000.00 to fund the cost of constructing the planned improvements on Parcels 15, 16 and 18; and

b. authorizing the General Manager to execute on behalf of the District the Ground Lease Estoppel Certificate relating to the Initial Financing Event (not including the permanent take-out loan), a copy of which is attached to the Resolution and which identifies the other loan documents in Exhibit C to the Ground Lease Estoppel Certificate, all of which are approved by the District pursuant to Resolution No. 3319.

3. Adopt Resolution No. 3320, in the form attached hereto, authorizing the General Manager to execute on behalf of the District the Ground Lease attached as Exhibit B to the Option to Lease and a Memorandum of Lease, at such time as the General Manager and District General Counsel have confirmed that all conditions precedent to the proper exercise of the Option to Lease have been met and/or satisfied, and to sign escrow instructions and conditionally deposit the executed Ground Lease and certified copies of Resolution Nos. 3318, 3319 and 3320 with Commonwealth Title Company, as the escrow agent for PPVH, PNC Bank and the District relating to the concurrent closing of the construction loan portion of the Initial Financing Event between PPVH and PNC Bank, and the execution and effectiveness of the Ground Lease between PPVH and the District.

DISCUSSION AND ANALYSIS

A. Assignment of Option to Lease to PPVH

On August 11, 2016, SRP/LP converted to a limited liability company ("SRP/LLC") in accordance with procedures allowed by California law. SRP/LLC therefore succeeded to all interests of SRP/LP in the Option to Lease as the original optionee and intended/contemplated lessee of Parcels 15, 16 and 18. The ownership interests of the members of SRP/LLC are the

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same as under SRP/LP and the general partners of SRP/LP became the managing members of SRP/LLC: those being Sonderrmann Enterprises, Inc. "(SEI)" [controlled by Michael Sonderrmann] an DR16 Company, LLC [controlled by Doug Ring family interests].

However, in 2009, Doug Ring passed away unexpectedly and, though the Ring family continued to hold ownership and management positions in SRP/LP, now SRP/LLC, it has been known for some time that the Ring Family was not interested in continuing with the development and would either be bought out by the Sonderrmann side or a new equity partner acceptable to the Sonderrmann side would have to be found.

This expected buy-out of the Ring Family interests was finally clarified a few months ago when we were advised that SRP/LLC had reached agreement with Benedict Canyon Equities, Inc., a private equity firm ("BCE") controlled by Robert E. Hart and James A. Rosten, to form PPVH as a Delaware limited liability company, to, in effect, replace the Ring family interests and become an equal partner in the project. BCE is contributing \$21,000,000.00 to the venture to acquire that 50% in PPVH with SRP/LLC, which is now controlled by Mr. Sonderrmann through SEI. SEI and a new Delaware limited liability company known as BCE Portside Ventura Harbor Associates, LLC, which is owned and controlled by the Hart and Rosten families through a series of limited liability companies, are the managing members of PPVH. A diagram of the ownership interests of the entities constituting the Optionee/Lessee is attached to this memorandum.

In addition, as required by the Lenders, BCE has committed to make an additional \$4,000,000.00 available to the project through PPVH should the \$71,700,000.00 provided by the Lenders not cover the projected costs of the project. A copy of the Development Budget is attached hereto along with a five year pro forma showing projected revenues from the development, the estimated construction cost of which is nearly \$93,000,000.00

Documents have been provided to our office to show that all the BCE related entities have been properly formed and qualified to do business in California. Being newly created, those entities have no operating history, as they are mere "shells" currently; however the \$21,000,000.00 investment in the venture, and the additional \$4,000,000.00 to be made available by BCE if needed, shows an unwavering commitment to the project. When linked with the 16 year relationship and history SRP/LLC has developed with the District through Mr. Sonderrmann, these factors indicate this is a quality and financially committed team to undertake the development of Parcels 15, 6 and 18. In addition, neither member of PPVH can transfer its

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membership interest without the consent of the other member. Finally, the agreement gives both members the right or power to compel the sale of the project after 10 years.

Based on the foregoing, we recommend that the Board approve the assignment of the Option to Lease to PPVH, which is the first action contemplated by Resolution No. 3318 attached hereto.

B. Fifteenth Amendment to the Option to Lease

The Fifteenth Amendment to the Option to Lease, a copy of which is attached to this memorandum, is required for several reasons and, since it includes also changes to the Ground Lease (as explained in Section D, below), will be effective concurrently with all the other transactions, including the funding of the construction loan portion of the Initial Financing Event. Specifically, the Fifteenth Amendment attached hereto:

1. expands the legal description of the premises to include additional water area needed for development of the marina;
2. deletes obsolete option provisions relating to the City's Residential Growth Management Plan and other ineffective or superseded provisions of the Option to Lease;
3. updates the closing procedure by which the Option to Lease is to be exercised, the construction loan funded and the Ground Lease executed and becoming effective, but only after all the conditions precedent to the exercise of the Option to Lease have been met or satisfied;
4. updates both Exhibits C (Schedule of Performance) and F (Schedule of Documents Proving/Constituting Satisfaction of the Conditions Precedent to Exercise of the Option); and
5. updates the Project Description to conform to the actions and approvals of the Coastal Commission relative to the project.

Approval of the Fifteenth Amendment is the second portion of the action recommended to be taken by the Board in Resolution No. 3318.

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C. The PNC Bank Loan for \$71,700,000.00

On July 29, 2016, SPR/LP delivered, among other things, draft copies of various documents that had been negotiated with PNC Bank, acting as the agent for what turned out to be only 2 lending institutions: PNC Bank and CIT Bank. The loan documents include:

1. A Construction Loan Agreement;
2. Deed of Trust Notes for both banks;
3. A Leasehold Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing;
4. An Assignment of Rents, Leases and Profits;
5. An Environmental Indemnity Agreement;
6. An Assignment of Construction and Development Documents from PPVH to PNC Bank relating to the agreements with the project engineer, the project architect and the general contractor;
7. An Assignment and Subordination of Property Management Agreement; and
8. An Ground Lease Estoppel Certificate for the benefit of the Lenders.

Our office has reviewed each of these documents to confirm and ensure that their terms comply and are consistent with the terms of the Ground Lease. To the extent any inconsistencies or conflicts were noted, we engaged in discussions with Mr. Sondermann's legal counsel about changes we felt were necessary to make the loan documents conform to the requirements of the Ground Lease. After some back and forth discussions, all parties (PNC Bank as agent for the two Lenders, PPVH and the District) have agreed on a form of Ground Lease Estoppel Certificate which protects the interests of all parties. The "final" version of the Estoppel Certificate is attached hereto [please note that it varies from the form of certificate previously provided to the Board due to additional requirements and demands of the Lenders]. The changes requested have been approved and accepted by PPVH and PNC Bank, on behalf of the Lenders, therefor rendering all the Loan Documents to be acceptable to our office and District staff.

Please note that the Ground Lease Estoppel Certificate is the only financing related Loan Document to be signed by a District representative. Consequently, all conditions on the District approval are set forth in that document, which is the subject of Resolution No. 3319, and which we are recommending the Board approve and adopt on October 5, 2016.

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The essential terms of the Initial Financing Event are:

1. The total loan amount as indicated is \$71,700,000.00;
2. The term of the loan expires in 2020, but the borrower has the option to extend the term one time for up to 12 months upon Lender's satisfaction that certain extension conditions are met;
3. The borrower covenants to maintain its existence, pay its bills, insure the property and assets, comply with the terms of the Ground Lease, the agreements with contractors and vendors and all other related obligations connected with the development and its operation;
4. At the fortieth month after closing, the debt coverage ratio for the development will be not less than 1.05 to 1.00. If that ratio is not achieved, to avoid a default the borrower must make a non-refundable principal payment to the PNC Bank to reduce loan principal to achieve the required ratio;
5. Loan disbursements will be controlled by the PNC Bank based upon the Development Budget, a copy of which is attached, and the Borrower's submission of a disbursement request. The PNC Bank's agent will inspect the site and work to confirm all conditions for the disbursement are fulfilled. The disbursement request must include copies of invoices, payment receipts, lien releases and other information reasonably requested by Lenders' agent.
 - Note 1: As a condition of the loan, PPVH, as borrower, must expend the "Equity Contribution" (\$21,000,000.00) of BCE prior to any loan disbursements being made.
 - Note 2: Disbursements for development overhead and "soft costs" cannot exceed the amounts specified in the Development Budget, a copy of which is attached to this Memorandum.
6. The Initial Financing Event is broken into two parts: the construction loan and the permanent take-out loan. For purposes of the Closing, only the construction loan is involved. The permanent loan will come later and must comply with all the requirements of the Ground Lease (document review and approval by the District, etc.)

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7. In the event of a default by the borrower, the PNC Bank, as agent for the two lenders, retains the usual remedies of secured real estate lenders, including foreclosure, taking a deed in lieu of foreclosure, etc. The principals behind PPVH have personally guaranteed the obligations of PPVH to PNC Bank as well as provided a "Completion Guaranty" concerning construction of this project. If there is a foreclosure under the deed of trust, the lender is given the right to make a one-time consent free transfer of the Ground Lease to exit the development – this is a standard requirement in such transactions. After that transfer, however, any subsequent transfer must comply with the assignment provisions of Ground Lease, including District approval.

8. Under the estoppel certificate, the Lender is obligated to give the District written notice of any notice of default Lender may give the borrower and the Lenders acknowledge that their rights under the Deed of Trust are subordinate and subject to the Ground Lease.

9. Under the deed of trust, insurance, or condemnation proceeds are assigned to PNC Bank, which will have the authority to adjust, collect and compromise claims exceeding \$1,000,000.00. Any such proceeds are required to be controlled and disbursed by PNC Bank first to the reconstruction of the premises under the Ground Lease, providing certain conditions are met.

D. Changes to the Lease

As expected, the Lender and SRP came together to request various changes to the Ground Lease attached as Exhibit B to the original Option to Lease. A redlined copy of the Lease showing changes has already been provided to the Board via email. Briefly summarized, the most significant changes to the Ground Lease which have been agreed to between our office, District staff, SRP and the Lender, are as follows:

1. Percentage Rent on Marina: The Ground Lease initially provided that the lessee would receive 10 years of no percentage rent on the Marina. Recognizing that the marina will be the last of the improvements constructed (probably during the third year of the lease term), it has been agreed that the percentage rent on marina operations will not begin until 11 years after the "Completion Date." That date is defined as date the lessee receives the first Certificate of Occupancy for any landside improvements [presumably some apartments], which staff reasonably expects to be 18 months after the Ground Lease becomes effective.

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2. Renegotiation of Percentage Rents: Again recognizing the time it will take to construct the leasehold improvements, staff agreed to tie the negotiation of percentage rentals to the end of the Construction Period, rather than Effective Date of the Ground Lease. That period is the earlier of the third anniversary of Effective Date of the Lease or the date the District issues its "Final Completion Certificate," agreeing that all improvements have been constructed by the Lessee as required by the Ground Lease.

3. Foreclosure/No Net Proceeds Share: The Lender demanded and staff agreed that any transfer connected with a foreclosure or a financing event to take out the construction loan, will not give rise to an obligation of the Lender or the lessee to pay a "net proceeds share" – the equivalent of what we call "appreciation rent."

4. First Encumbrance Holder Right: As noted in the discussion of the Loan Documents, the Lender demanded, and staff agreed, that the Lender (or its nominee) after a foreclosure, would have the right to make a single one-time consent free transfer of the Ground Lease; but any subsequent transfer will be subject to approval process required under the assignment provisions of the Ground Lease. Staff also agreed to enter into a "new lease" with the "First Encumbrance Holder" [meaning the most senior encumbrance under the Ground Lease, not any approved but subordinate lender] on the same terms and conditions as the Ground Lease should the "First Encumbrance Holder" request the "new lease."

With these redlined changes, staff and our office believe that the Ground Lease is in acceptable form and should be approved for execution by General Manager at such time as the General Manager and legal counsel have confirmed and satisfied themselves that all of the conditions precedent to the exercise of the Option to Lease, including the funding of the Construction Loan, have been met or satisfied, as contemplated by Resolution No. 3320, attached hereto. In addition, the resolution also authorizes the General Manager to take all other such actions as may be necessary to carry out and accomplish the purpose and intent of the resolution. This last provision is recommended so that no further formal action by the Board will be necessary to get this long-awaited project off the ground.

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RESOLUTION NO. 3318

**RESOLUTION OF THE BOARD OF PORT COMMISSIONERS
OF VENTURA PORT DISTRICT CONDITIONALLY APPROVING THE ASSIGNMENT OF THE
OPTION TO LEASE PARCELS 15, 16 AND 18 IN VENTURA HARBOR FROM
SONDERMANN RING PARTNERS – VENTURA HARBOR, LLC, AS SUCCESSOR-IN-
INTEREST TO SONDERMANN RING PARTNERS, A LIMITED PARTNERSHIP, TO
PORTSIDE PARTNERS VENTURA HARBOR – LLC, A DELAWARE LIMITED LIABILITY
COMPANY, AND APPROVING THE FIFTEENTH AMENDMENT TO THE OPTION TO LEASE
PARCELS 15, 16 AND 18**

WHEREAS, on September 2, 2002, Ventura Port District ("District") and Sondermann Ring Partners, a limited partnership ("SRP/LP") entered into an Option to Lease Parcels 15, 16 and 18 in Ventura Harbor ("Option to Lease"); and

WHEREAS, the Option to Lease has been amended fourteen times in the intervening fourteen years to update the terms of the Option to Lease and to extend the term of the Option to Lease to allow the Optionee sufficient time and opportunity to obtain the entitlements necessary for the development and design the project;

WHEREAS, the general partners of SRP/LP initially were a corporation controlled by Michael Sondermann known as Sondermann Enterprises, Inc. ("SEI"), a California corporation, and a limited liability company known as DR16, LLC, a limited liability company, controlled by the Doug Ring family;

WHEREAS, in 2009, Doug Ring died unexpectedly and the two general partners of SRP/LP continued to work together in furtherance of designing and preparing for the development of Parcels 15, 16 and 18; however, it was recognized early on that the Ring family did not want to continue to be involved with the project and that either the Sondermann interests would acquire the Ring family interests in the development or a new equity partner would be secured to replace the Ring family interests and to assist the Sondermann interests in developing the project; and

WHEREAS, the Sondermann interests have reached a tentative agreement with Benedict Canyon Equities, Inc., a private equity firm controlled by Robert E. Hart and James A. Rosten ("BCE"), to form a new Delaware limited liability company to be known as Portside Partners Ventura Harbor, LLC ("PPVH") to become the Optionee under the Option to Lease and the ultimate Lessee of Parcels 15, 16 and 18; and

WHEREAS, the managing members of PPVH are SEI and another new limited liability company created by the BCE, BCE Portside Ventura Harbor Associates, LLC, with the Sondermann interests and the BCE interests each holding a 50% interest in PPVH;



WHEREAS, PPVH has been duly formed under Delaware law, and is qualified to do business in California; and,

WHEREAS, the BCE interests have agreed to make an equity contribution to the project of \$21,000,000.00 and, in addition, have agreed to make available an additional \$4,000,000.00 to fund the construction of the project on Parcels 15, 16 and 18, if needed; and

WHEREAS, the District and SRP/LLC have negotiated a further and final Fifteenth Amendment to the Option to Lease to prepare for the exercise of the Option by PPVH concurrently with or after approval of the Assignment of the Option to Lease from SRP/LLC to PPVH; and

WHEREAS, the proposed Fifteenth Amendment to the Option, a copy of which is attached hereto as Exhibit A to this Resolution, is necessary in order to update the legal description of the premises, to delete obsolete and ineffective provisions of the Option to Lease, to update the closing procedure by which the Option to Lease is to be exercised, the construction loan funded, and the Ground Lease executed, to update both Exhibits C and F to the Option to conform to the changes in the Schedule of Performance and the Proof Constituting Satisfaction of All Conditions Precedent to the Exercise of the Option based upon the changes necessitated by earlier Amendments to the Option and changing conditions arising from the entitlement process and, finally, to update the project description to conform to the approvals issued by the California Coastal Commission.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Port Commissioners of Ventura Port District hereby conditionally approves the Assignment of the Option to Lease Parcels 15, 16 and 18 from Sondermann Ring Partners, a California limited liability company, the successor-in-interest to Sondermann Ring Partners, a California limited partnership, to Portside Partners Ventura Harbor, LLC, a Delaware limited liability company.

BE IT FURTHER RESOLVED, that the Board of Port Commissioners of Ventura Port District hereby approves and authorizes the General Manager to execute on behalf of Ventura Port District the Fifteenth Amendment to the Option to Lease Parcels 15, 16 and 18, a copy of which is attached to this Resolution as Exhibit A.

BE IT FURTHER RESOLVED, that the actions set forth above are conditioned on the General Manager and District legal counsel confirming that all conditions precedent to the anticipated exercise of the Option to Lease have been met and satisfied;

BE IF FURTHER RESOLVED, that the Board of Port Commissioners of the Ventura Port District hereby authorizes and directs the General Manager and District staff to take such other and further actions, and to sign such additional documents, as may be appropriate or necessary in order to carry out and implement the purposes of this Resolution.

AYES:
NOES:
ABSENT:
ABSTAINED:

Jim Friedman, Chairman

ATTEST:

Secretary Oscar Peña

(Seal)

EXHIBIT A

FIFTEENTH AMENDMENT TO OPTION AGREEMENT

This Fifteenth Amendment to Option Agreement (this Amendment) is entered into and effective as of _____, 2016, by and between VENTURA PORT DISTRICT, a port district formed under and pursuant to Part 4 of the Harbors and Navigation Code of the State of California ("Port") and SONDERMANN RING PARTNERS-VENTURA HARBOR, LLC, a California limited liability company ("SRP").

RECITALS

A. Port and Sondermann Ring Partners-Ventura, a California limited partnership, SRP's predecessor in interest, previously entered into that certain Option to Lease (the "Option Agreement") dated September 5, 2002, relating to certain real property in the County of Ventura defined in the Option Agreement as the "Premises". (Any capitalized terms in this Amendment not otherwise defined herein shall have the meaning ascribed to such terms in the Option Agreement).

B. The Option Agreement has since been amended fourteen (14) times.

C. SRP and the Port mutually desire to amend the Option Agreement by modifying certain of the provisions set forth in the Option Agreement and the terms of the Lease Agreement attached to the Option Agreement as Exhibit "B", on the terms and conditions set forth herein.

AGREEMENTS

Port and SRP hereby agree as follows:

1. Assignment of SRP's Interests

- a. Concurrently with this Amendment, SRP has given notice to Port of the conversion of SRP from Sondermann Ring Partners – Ventura Harbor, a California limited partnership to Sondermann Ring Partners – Ventura Harbor, LLC, a California limited liability company.
- b. Port hereby approves, subject to and effective only upon the closing of the Construction Loan of the Initial Financing Event, as defined in the Lease Agreement (Lease) attached to the Option Agreement as Exhibit "B", the following: (i) the withdrawal from SRP of DR 16 Company LLC, the Ring-Miscikowski Trust and the Cynthia Miscikowski Living Trust, so that the remaining members of SRP shall be Sondermann Enterprises, Inc., the Sondermann Living Trust and the DiGiuseppe Family Trust; and (ii) a one-time transfer by SRP of all its rights, title, obligations and interests in this

EXHIBIT A

Option to PORTSIDE PARTNERS VENTURA HARBOR, LLC, a Delaware limited liability company ("Portside"), the managing members of which are: (X) Sondermann Ring Partners – Ventura Harbor, LLC, a California Limited Liability Company, whose sole manager is Sondermann Enterprises, Inc. (one of the general partners of Sondermann Ring Partners-Ventura, a California limited partnership, SRP's predecessor in interest); and (Y) BCE Portside-Ventura Harbor Associates, LLC, a Delaware limited liability company, which is managed by Benedict Canyon Equity Holdings, LLC, a California limited liability company, which is managed by Benedict Canyon Equities, Inc., a California corporation, which is controlled by the Robert and Cynthia Hart Living Trust and the Rosten Family Trust.

- c. The assignment and assumption of SRP's interests in this Option Agreement shall occur concurrently with the exercise of the Option, execution of the Lease and closing of the Construction Loan of the Initial Financing Event identified above, so that Portside shall be the original Lessee under the Lease.
- d. To effectuate the assignment and assumption of SRP's interests in this Option Agreement, the requirements of Exhibit F to the Option Agreement (Listing of Documents Proving/Constituting SRP's Satisfaction of Conditions Precedent to Exercise of Option), attached as Attachment No. 3 to this Amendment, and the form of the Lease to be executed by the parties at the Closing shall be revised appropriately to substitute Portside and its original members for SRP and its partners, and to reflect the actual method of Initial Financing proposed by Portside.

2. Change in Legal Description (Exhibit A)

The Legal Description set forth in Exhibit A to the Option Agreement and the Legal Description set forth in Exhibit A to the form of the Lease are hereby deleted in their entirety and both are replaced with the Legal Description attached to this Fifteenth Amendment as Attachment No. 1 (Legal Description).

3. Obsolete Provisions of Option: Residential Growth Management Plan.

- (1) The Option Agreement, as amended, is hereby amended by deleting therefrom Section 9.1.1 in its entirety (Residential Growth Management Plan).
- (2) Exhibit C to the Option Agreement (Amended Schedule of Performance) is hereby amended by deleting therefrom Paragraph b. to Section 6 (Application for Residential Growth Management Plan allocation).
- (3) Exhibit F to the Option Agreement (Listing of Documents Proving/Constituting SRP's Satisfaction of Conditions Precedent to Exercise of Option) is hereby amended by deleting therefrom Paragraph c.

EXHIBIT A

of Section 1 ("City approval and allocation of units necessary to support the Improvements under the Residential Growth Management Plan") and by replacing Exhibit F to the Option Agreement with Attachment No. 3 to this Amendment.

4. Amendment to Closing Procedure

a. The Option Agreement, as amended, is hereby further amended by revising clauses (a), (b) and (c) of Section 12.1 to read as follows, with all other clauses of Section 12.1 remaining unchanged:

"12.1 The Option shall be exercisable by SRP or its successor-in-interest only upon full and complete satisfaction of the following terms and conditions on or before the expiration of the Option Term:

- (a) SRP shall do the following: (i) notify Port in writing of its exercise of the Option pursuant to Section 18.3 hereof, which shall be effective upon the Closing, and accompany the notice with originals or hard copies of, or a compact disc containing in digital form, all documents identified in Exhibit "F" as amended by this Fifteenth Amendment and attached to this Fifteenth Amendment as Attachment No. 3; and (ii) deliver into the escrow opened by SRP and Portside in connection with the Initial Financing ("Escrow") duplicate counterparts of the final execution copy of the Lease and the Memorandum of Lease (in recordable form), in the form agreed to by SRP and the General Manager, executed by Portside Partners Ventura Harbor, LLC ("Portside");
- (b) Not later than thirty (30) days after receipt of the notice described in clause (a), above, the following shall occur: (i) Port shall execute the duplicate counterparts of the final execution copies of the Lease and Memorandum of Lease (in recordable form); and (ii) Portside shall instruct Escrow, among other things, to record the Memorandum of Lease and deliver the fully executed counterparts of the Lease to Port and Portside upon the Closing;
- (c) Upon the Closing, Portside shall deliver to Port, through Escrow, the Holding Fee equal to \$1,200,000 without deduction, and the \$100,000 security deposit specified in Article 7 of the Lease;"

b. The Option Agreement, as amended, is hereby further amended by:
(1) revising Section 12.2 to replace the words "Port shall execute and deliver the

EXHIBIT A

Lease to SRP" in the 5th line thereof with the words "Port and Portside shall each execute and deliver duplicate counterparts of the Lease and Memorandum of Lease into Escrow"; and (2) adding to the end thereof the following new sentence: "The parties shall instruct the Escrow holder to record the Memorandum of Lease and deliver fully executed counterparts of the Lease to each of the parties upon the Closing and provide such additional Escrow instructions as may be necessary to effectuate the provisions of Section 12.1 and this Section 12.2", with all other provisions of Section 12.2 remaining unchanged.

5. Clarification of Coastal Commission actions

Notwithstanding any provision to the contrary contained in the Option Agreement, as amended, SRP and Port hereby agree that the actions taken by the California Coastal Commission and the Ventura City Council with respect to the Project constitute full and complete satisfaction of all requirements in the Option Agreement, as amended, relating to Coastal Commission approval for the Project.

6. Amended Schedule of Performance (Exhibit C to Option).

Notwithstanding any provision to the contrary contained in the Option Agreement, as amended, SRP and Port hereby agree that all of the performance obligations set forth in the Amended Schedule of Performance attached to the Option Agreement as Exhibit C, have been satisfied, with the exception of Items No. 13 (Closing Documents) and 14 (Closing), which are hereby amended to read as follows:

"13. Closing Documents. SRP to submit to Port the Notice of Exercise of Option and all documents required to be submitted as a condition precedent to Closing pursuant to Section 11.2 and 12.1 of Option Agreement, or a Notice of Extension pursuant to Sections 6.6 or 6.7 of this Agreement.

Not later than thirty (30) days after Port Board approval of the 14th Amendment to Option Agreement.

14. Closing. Port to execute Lease, and Closing to occur.

As soon as practicable after Port Board approval of the 15th Amendment to Option Agreement, but not later than 30 days after submittal of Notice of Exercise of Option and documentation required by Section 12.1 of this Agreement."

EXHIBIT A

7. Amended project description.

The project description set forth in Section 6 of Exhibit D (Outline of Master Plan Process) is hereby deleted and replaced in its entirety with the following new project description:

"The Premises shall be used for the construction and operation of a mixed-use development containing 270 residential apartments, 30 live-work units, approximately 21,200 square feet of ground floor commercial area, a public promenade, project and public coastal access parking, and an approximately 2-acre waterfront view park, for vacant property encompassing Parcel Nos. 15, 16 and 18 located north of Navigator Drive and west of Anchors Way, and currently identified as Assessor's Parcel Numbers 080-0-240-125 and 080-0-240-245. The Premises shall also be used for the construction and operation of an approximately 44,400 square foot new public recreational marina, which shall include: installation of new piles, gangways and utilities for the berthing of 104 boats, ranging from 30 feet to 80 feet in length; construction of a new 90 foot public long dock for use by personal watercraft; designation of six new public transient boating spaces, one new non-profit boating space and one new water taxi stop. The development is within the coastal zone in Ventura County at Port District Parcels 15, 16 and 18 (Assessor's Parcel Numbers 080-0-240-125 and 080-0-240-245) in the Ventura Harbor, City of San Buenaventura, Ventura County."

8. Amended form of Lease attached to Option. The form of the Lease Agreement attached as Exhibit "B" to the Option Agreement, as amended, is hereby amended and replaced in its entirety with the revised form of Lease Agreement attached to this 15th Amendment.

9. Amended Schedule of Documents Proving/Constituting Satisfaction of the Conditions Precedent to Exercise of Option. The Schedule of Documents Proving/Constituting Satisfaction of the Conditions Precedent to Exercise of Option attached as Exhibit "F" to the Option Agreement is hereby amended and replaced in its entirety with the Amended Schedule of Documents Proving/Constituting Satisfaction of the Conditions Precedent to Exercise of Option attached to this 15th Amendment.

In the event of a conflict or inconsistency between the terms and provisions of this Fifteenth Amendment and the Option Agreement as previously amended, the terms and provisions of this Amendment shall govern and control.

[Signatures appear on next page]

EXHIBIT A

IN WITNESS WHEREOF, Port and SRP have entered into this FIFTEENTH AMENDMENT TO OPTION AGREEMENT as of the day and year first written above.

SONDERMANN RING PARTNERS-VENTURA, LLC, a California limited liability company

By: **Sondermann Enterprises, Inc.**
a California corporation, its Manager

By: _____
Michael B. Sondermann
President

VENTURA PORT DISTRICT,
a California Port District

By: _____
Oscar F. Peña
General Manager

EXHIBIT A

Attachments to this Fifteenth Amendment

1. Amended Legal Description (Exhibit "A" to Option Agreement and Lease)
2. Amended Lease Agreement (Exhibit "B" to Option Agreement)
3. Amended Schedule of Documents Proving/Constituting Satisfaction of the Conditions Precedent to Exercise of Option (Exhibit "F" to Option Agreement)

EXHIBIT "A"

Legal Description of Premises

All that certain real property situated in the County of Ventura, State of California, described as follows:

Parcel A:

That portion of Subdivision 7 of the West One-Half of Rancho San Miguel, in the City of San Buenaventura, County of Ventura, State of California, as per map recorded in Book 5 Page 42 of Miscellaneous Records (Maps), in the office of the County recorder of said County and Parcel 15 of Parcel Map filed in Book 25, Pages 52 through 54, inclusive of Parcel Maps of said Records, described as a whole as follows:

Beginning at the most Northerly corner of said Parcel 15; thence along the Northwesterly line of said Parcel 15, the following two courses;

1. South 61°53'31" West 74.73 feet;
2. South 25°17'51" West 352.10 feet; thence leaving said northwesterly line
3. South 84°52'31" West 531.67 feet; thence
4. South 05°07'29" East 92.38 feet; thence
5. South 84°52'31" West 63.63 feet; thence
6. South 09°26'05" East 320.33 feet to a point distant South 80°33'55" West 50.00 feet from the westerly terminus of that certain course in the generally southerly line of said Parcel 15 having a bearing and distance of North 58°49'58" East 128.00 feet; thence
7. North 80°33'55" East 50.00 feet to said most southerly corner of Parcel 15; thence along the generally southerly and northeasterly lines of said Parcel 15, the following seventeen courses:
8. North 58°49'58" East 128.00 feet; thence
9. North 07°36'53" East 98.00 feet; thence
10. South 80°12'19" East 213.61 feet; thence

11. South 41°23'30" East 126.17 feet; thence
12. North 43°30'20" East 148.02 feet; thence
13. South 46°29'40" East 31.00 feet; thence
14. North 43°30'20" East 43.00 feet to the beginning of a curve, concave to the southeast and having a radius of 134.50 feet; thence
15. Northeasterly 96.17 feet along said curve through a central angle of 40°58'00"; thence
16. North 84°28'20" East 99.60 feet to the beginning of a curve, concave to the northwest and having a radius of 65.50 feet; thence
17. Northeasterly 103.65 feet along said curve through a central angle of 90°40'04"; thence
18. North 06°11'44" West 40.73 feet; thence
19. North 83°48'16" East 341.77 feet; thence
20. North 11°29'20" West 165.54 feet to the beginning of a curve, concave to the southwest and having a radius of 120.00 feet; thence
21. Northwesterly 111.45 feet along said curve through a central angle of 53°12'49"; thence
22. North 64°42'09" West 209.90 feet to the beginning of a curve, concave to the northeast and having a radius of 280.00 feet; thence
23. Northwesterly 112.76 feet along said curve through a central angle of 23°04'26" to the beginning of a reverse curve, concave to the Southwest and having a radius of 220.00 feet; thence
24. Northwesterly 88.60 feet along said curve through a central angle of 23°04'26" to the most Northerly corner of said Parcel 15 and the point of beginning.

Except all minerals, oil, natural gas and other hydrocarbon substances lying in or under said property below a depth of 200 feet from the surface thereof, without, however, the right to enter upon or explore or drill through the surface of the top 200 feet measured from the surface of said land as reserved in the deed

recorded March 2, 1962, in Book 2115, Page 235, of Official Records, County of Ventura, State of California.

Parcel B:

That portion of Subdivision No. 7 of the West One-Half of Rancho Miguel, in the City of San Buenaventura, County of Ventura, State of California, as per map recorded in Book 5 Page 42, of Miscellaneous Records (Maps), in the office of the County recorder of said County and Parcel 18 of Parcel Map filed in Book 25, Pages 52 through 54, inclusive of Parcel Maps of said Records, described as a whole as follows:

Beginning at the most Northerly corner of said Parcel 18; thence along the Northwesterly line of said Parcel 18, the following twelve courses;

1. South 83°48'16" West 341.77 feet; thence
2. South 06°11'44" East 40.73 feet to the beginning of a curve, concave to the northwest and having a radius of 65.50 feet; thence
3. Southwesterly 103.65 feet along said curve through a central angle of 90°40'04"; thence
4. South 84°28'20" West 99.60 feet to the beginning of a curve, concave to the southeast and having a radius of 134.50 feet; thence
5. Southwesterly 96.17 feet along said curve through a central angle of 40°58'00"; thence
6. South 43°30'20" West 43.00 feet; thence
7. North 46°29'40" West 31.00 feet; thence
8. South 43°30'20" West 148.02 feet; thence
9. North 41°23'30" West 126.17 feet; thence
10. North 80°12'19" West 213.61 feet; thence
11. South 07°36'53" West 98.00 feet; thence
12. South 58°49'58" West 128.00 feet; thence leaving said Northwesterly line
13. South 80°33'55" West 50.00 feet; thence

14. South 09°26'05" East 331.87 feet; thence
15. North 80°33'55" East 22.62 feet to a point distant South 67°35'32" West 133.83 feet from the Westerly terminus of that certain course in the generally Southerly line of said Parcel 18 having a bearing and distance of South 77°01'51" West 178.00 feet; thence
16. North 67°35'32" East 133.83 feet to said Westerly terminus; thence along said generally southerly line and the Northeasterly line of said Parcel 18, the following twelve courses:
17. North 77°01'51" East 178.00 feet; thence
18. South 81°45'40" East 79.00 feet; thence
19. South 12°58'09" East 12.00 feet; thence
20. North 77°01'51" East 121.00 feet to the beginning of a curve, concave to the North and having a radius of 232.00 feet; thence
21. Easterly 10.39 feet along said curve through a central angle of 02°34'01"; thence
22. North 74°27'50" East 238.93 feet to the beginning of a curve, concave to the Northwest and having a radius of 232.00 feet; thence
23. Northeasterly 105.58 feet along said curve through a central angle of 26°04'24"; thence
24. North 48°23'26" East 30.00 feet to the beginning of a curve, concave to the South and having a radius of 268.00 feet; thence
25. Easterly 213.56 feet along said curve through a central angle of 45°39'24"; thence
26. South 85°57'10" East 107.93 feet to the beginning of a curve, concave to the Northwest and having a radius of 35.00 feet; thence
27. Northeasterly 64.47 feet along said curve through a central angle of 105°32'10"; thence
28. North 11°29'20" West 356.27 feet to the most Northerly corner of said Parcel 18 and the point of beginning.

Except all minerals, oil, natural gas and other hydrocarbon substances lying in or under said property below a depth of 200 feet from the

surface thereof, without, however, the right to enter upon or explore or drill through the surface of the top 200 feet measured from the surface of said land as reserved in the deed recorded March 2, 1962, in Book 2115, Page 235, of Official Records, County of Ventura, State of California.

Parcel C:

That 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, as per map recorded in book 5, Page 42 of Miscellaneous Records (Maps), in the office of the County recorder of said County and that portion of Parcel 16 of Parcel Map filed in Book 20, Page 83 of Parcel Maps of said Records, described as follows:

Beginning at the Northeasterly corner of said Parcel 16; thence along the Northerly line of said Parcel 16, the following four courses:

1. South 77°01'51" West 121.00 feet; thence
2. North 12°58'09" West 70.00 feet; thence
3. North 81°45'40" West 79.00 feet; thence
4. South 77°01'51" West 178.00 feet; thence leaving said Northerly line
5. South 67°35'32" West 133.83 feet; thence
6. South 12°26'05" East 428.50 feet; thence
7. North 77°33'55" East 40.09 feet; thence
8. South 12°26'05" East 83.00 feet; thence
9. North 77°33'55" East 20.50 feet; thence
10. South 12°26'05" East 35.56 feet; thence
11. North 82°33'55" East 364.93 feet; thence
12. North 03°19'51" West 513.41 feet to the Northeasterly corner of said Parcel 16 and the point of beginning.

Except all minerals, oil, natural gas and other hydrocarbon substances lying in or under said property below a depth of 200 feet from the surface thereof, without, however, the right to enter upon or explore or drill through the surface or the top 200 feet measured from the surface of said land as reserved in the deed recorded March 2, 1962, in Book

2115, Page 235, of Official Records, County of Ventura, State of California.

Assessor's Parcel No. 080-0-240-125, 080-0-240-245 (portion)

LEASE AGREEMENT

by and between

VENTURA PORT DISTRICT

and

PORTSIDE PARTNERS VENTURA HARBOR, LLC

(Lease No. ____)

Dated as of _____, 20__

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LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made and entered into as of _____, 2016 (the "Effective Date"), by and between the **VENTURA PORT DISTRICT**, a Port District formed under and pursuant to Part 4 of the Harbors and Navigation Code of the State of California ("Port"), and **PORTSIDE PARTNERS VENTURA HARBOR, LLC**, a Delaware limited liability company (together with its permitted successors and assigns, "Lessee").

RECITALS

A. Port is the owner of that certain land and water area within the City of San Buenaventura commonly known as Ventura Harbor, which Port is developing, improving and operating as a harbor.

B. In order to further develop and improve the Ventura Harbor and to provide housing and facilities for the accommodation of those using the harbor, Port and Sondermann Ring Partners - Ventura Harbor, a California limited partnership ("SRP") entered into that certain Option to Lease dated September 5, 2002, as amended from time to time (the "Option Agreement"), whereby Port granted to Lessee an option to lease (the "Option"), pursuant to applicable provisions of the Harbors and Navigation Code of the State of California, those parcels of land and water situated within Ventura Harbor, described as Parcels 15, 16 and 18, which are legally described in Exhibit "A" which is attached to this Lease and incorporated herein by this reference (the "Premises").

C. With the approval of Port, SRP has assigned the Option Agreement to Lessee.

D. Lessee has fully performed under and exercised the Option in accordance with the terms and provisions of the Option Agreement.

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions

set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto and each of them do agree as follows:

ARTICLE 1 BACKGROUND AND GENERAL.

1.1 Definitions. The defined terms in this Lease shall have the meanings as follows:

"Accounting Year" shall have the meaning set forth in Section 14.7.

"Actual Cost" shall mean, for purposes of this Lease, the reasonable out-of-pocket costs and expenses incurred by Port with respect to a particular activity or procedure, including without limitation, expenditures to third party legal counsel, consultants and advisors.

"Adjustment Dates" shall have the meaning set forth in Subsection 4.2.3.

"Administrative Charge" shall have the meaning set forth in Section 4.6.

"Affiliate" shall mean any person or entity which, directly or indirectly through one (1) or more intermediaries, controls or is controlled by or is under common control with another person or entity. The term "control" as used herein (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to (i) vote more than fifty percent (50%) of the outstanding voting securities of such person or entity, or (ii) otherwise direct management policies of such person by contract or otherwise.

"Aggregate Transfer" shall have the meaning set forth in Subsection 11.2.3.

"Alterations" shall have the meaning set forth in Section 5.2.

"Annual Minimum Rent" shall have the meaning set forth in Subsection 4.2.1.

"Applicable Laws" shall have the meaning set forth in Subsection 1.2.1.

"Applicable Rate" shall mean an annually compounded rate of interest equal to the lesser of (a) ten percent (10%) per annum or (b) the Prime Rate, as defined in Subsection 4.4.5., plus three percent (3%) per annum; however, the Applicable Rate shall in no event exceed the maximum rate of interest which may be charged pursuant to Applicable Laws. In the event that the Applicable Rate as determined by the first sentence of this definition exceeds such maximum rate of interest, then the Applicable Rate shall be deemed the maximum rate permissible under Applicable Laws notwithstanding the first sentence of this definition.

"Approved Apartment/Slip Lease" shall have the meaning set forth in Subsection 11.1.2.2(d).

"Assignment Standards" shall have the meaning set forth in 11.3.

"Beneficial Interest" shall have the meaning set forth in Subsection 11.2.4.

"Board" shall mean the Board of Port Commissioners of the Ventura Port District.

"Calculation Notice" shall have the meaning set forth in Subsection 4.8.1.

"Change of Ownership" shall have the meaning set forth in Subsection 11.2.1.

"Change of Control" shall have the meaning set forth in Subsection 11.2.1.1.

"City" shall mean the City of San Buenaventura, California.

"Completion Date" shall mean the date of receipt of the first Certificate of Occupancy (whether temporary or permanent) or other applicable governmental permit, certificate or approval for the legal occupancy of any landside improvements constructed on the Premises as part of the Development Work pursuant to Article 5 of this Lease.

"Construction Lender" shall mean the lender under the Construction Loan.

"Construction Loan" shall mean the construction loan obtained by Lessee and approved by Port to finance the construction of the Development Work on the Premises.

"Construction Period" shall mean the period commencing on the Effective Date and ending on the first to occur of (a) three (3) years after the Effective Date or (b) the date of the Final Completion Certificate.

"Consumer Price Index" shall mean the Consumer Price Index--All Urban Consumers for Los Angeles, as published from time to time by the United States Department of Labor or, in the event such index is no longer published or otherwise available, such replacement index as may be agreed upon by Port and Lessee.

"Day" means a calendar day, unless otherwise specified herein.

"Design Standards" shall have the meaning set forth in Section 3.7.

"Development Modifications" shall have the meaning set forth in Section 5.1.

"Development Work" shall have the meaning set forth in Section 5.1.

"Documented Transaction Costs" shall have the meaning set

forth in Subsection 4.8.5.2.

"Effective Date" shall mean the date set forth in the first preamble paragraph of this Lease, which shall be the date this Lease shall have been executed and delivered by both Port and Lessee.

"Encumbrance" shall have the meaning set forth in Subsection 12.1.1.

"Encumbrance Holder" shall have the meaning set forth in Subsection 12.1.1.

"ENR Index" shall mean the Engineering News Record (ENR) Construction Cost Index for the Los Angeles Area, or such substitute index as the parties may mutually agree upon if such index is no longer published or otherwise available.

"Entitlements" shall mean all discretionary planning and zoning land use entitlement approvals required for the construction of the Improvements by the City, the Coastal Commission, the State Lands Commission and any other governmental authority having jurisdiction over the Premises.

"Events of Default" shall have the meaning set forth in Section 13.1.

"Excess Percentage Rent Payment" shall have the meaning set forth in Subsection 4.2.2.4.

"Excluded Conditions" shall have the meaning set forth in Subsection 1.2.3.

"Excluded Defaults" means any existing Event of Default that (a) is an incurable non-monetary default, (b) is a non-monetary default that can only be cured by a prior lessee (or the existing lessee to the extent that the default might be subject to cure by its Encumbrance Holder), (c) is a non-monetary default that is not reasonably susceptible of being cured, or (d) relates to any obligation of a prior lessee to pay any Net Proceeds Share or Net

Refinancing Proceeds.

"Exempt Sublease" shall have the meaning set forth in Subsection 11.1.2.2.

"Fair Market Rental Value" shall have the meaning set forth in Subsection 4.4.1.

"Fair Market Value" shall mean the price at which a willing seller would sell and a willing buyer would buy, neither being under any compulsion to buy or sell, and both having full knowledge of all pertinent facts and circumstances.

"Final Alteration Plans and Specifications" shall have the meaning set forth in Subsection 5.2.3.

"Final Completion Certificate" shall mean the estoppel certificate issued by Port confirming the completion and acceptance of the Improvements on the Premises as set forth in Subsection 5.6.8.

"Final Development Work Plans and Specifications" shall have the meaning set forth in Section 5.1.

"Financing Documents" shall mean a complete set of all proposed transaction documents, in substantially final form, in connection with each proposed Financing Event subsequent to the Initial Financing Event, and other documents and information relating to such Subsequent Financing Event (as defined in Section 12.1) as the General Manager may reasonably require, including a complete copy of Lessee's loan application(s) to the proposed lender (which may be submitted under separate cover to Port's Counsel).

"Financing Event" shall have the meaning set forth in Section 12.1.

"First Adjustment Date" shall have the meaning set forth in Subsection 4.2.3.

"First Encumbrance Holder" shall mean the encumbrance holder 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.

"General Manager" shall mean the General Manager of the Ventura Port District or any successor Port officer responsible for the administration of this Lease.

"General Partner" shall mean a general partner of a partnership or any person or entity that solely owns or controls a general partner.

"Gross Receipts" shall have the meaning set forth in Subsection 4.2.2.3.

"Improvements" shall mean all buildings, structures, edifices, landscaping, boat slips and related items (including but not limited to the Park described in Exhibit "C" attached to this Lease), to be constructed on the Premises pursuant to this Lease.

"Improvement Costs" shall have the meaning set forth in Subsection 4.8.5.1.

"Initial Financing Event" shall mean (a) the Construction Loan, and (b) the initial permanent financing which takes out the Construction Loan ("Permanent Loan"), as long as such permanent financing is closed and funded within one (1) year following the date of the Final Completion Certificate, or (c) one loan which provides both construction and permanent financing.

"Initiating Party" shall have the meaning set forth in the first paragraph of Article 16.

"Institutional Lender" shall have the meaning set forth in Subsection 12.1.3.1

"Insurance Renegotiation Date" shall have the meaning set forth in Section 9.3.

"Late Fee" shall have the meaning set forth in Section 4.5.

"Lease" shall mean this Lease Agreement.

"Lease Year" shall have the meaning set forth in Section 2.1.

"Lessee" shall have the meaning set forth in the first paragraph of this Lease.

"Lessee Sale Price" shall have the meaning set forth in Subsection 11.3.4.

"Major Assignment" shall mean and include, except as otherwise provided in this Lease, any of the following: (a) a Change of Ownership (defined in Subsection 11.2.1); (b) a Major Sublease (defined in Subsection 11.1.3); and (c) a Financing Event (defined in Article 12).

"Major Sublease" shall have the meaning set forth in Subsection 11.1.3.

"Major Sublessee" shall have the meaning set forth in Subsection 11.1.3.2.

"Member" shall mean a member of a limited liability company or any person or entity that solely owns or controls a member.

"Monthly Minimum Rent" shall have the meaning set forth in Subsection 4.2.1.

"Net Proceeds Share" shall have the meaning set forth in Section 4.8.

"Net Refinancing Proceeds" shall have the meaning set forth in Subsection 4.8.9.

"Net Transfer Proceeds" shall have the meaning set forth in Subsection 4.8.5.

"Notice of Completion" shall have the meaning set forth in Subsection 5.6.7.

"Option Agreement" shall have the meaning set forth in Recital B of this Lease.

"Original Member" shall mean (a) Sondermann Ring Partners - Ventura Harbor, LLC, a California limited liability company and (b) BCE Portside - Ventura Harbor Associates, LLC, a Delaware limited liability company.

"Percentage Rent" shall have the meaning set forth in Subsection 4.2.2.

"Permits" shall mean such building, grading or other construction permits necessary for the Development Work.

"Permitted Uses" shall be those set forth in Exhibit "C" attached to this Lease, as modified by the Parties pursuant to Section 3.1 hereof.

"Port" shall have the meaning set forth in the first paragraph of this Lease.

"Port Option" shall have the meaning set forth in Subsection 11.3.4.

"Port Option Price" shall have the meaning set forth in Subsection 11.3.4.

"Port Removal Notice" shall have the meaning set forth in Subsection 2.4.1.

"Premises" shall have the meaning set forth in Recital B of this Lease, as more specifically described in Exhibit "A" hereto.

"Prime Rate" shall have the meaning set forth in Subsection 4.4.5.

"Proposed Transfer" shall have the meaning set forth in Subsection 11.2.4.

"Purchase Money Note" shall have the meaning set forth in Subsection 4.7.2.

"Renegotiation Dates" shall have the meaning set forth in Section 4.4.

"Reply" shall have the meaning set forth in Section 16.5.

"Residential Improvements" shall mean the new residential apartment buildings to be constructed by Lessee as a part of the Development Work.

"Responding Party" shall have the meaning set forth in the first paragraph of Article 16.

"Section" shall mean a section of this Lease.

"Security Deposit" shall have the meaning set forth in Section 7.1.

"Shall" and "Will" are mandatory and the word "May" is permissive.

"Slip Improvements" shall mean the new boat slips to be installed by Lessee as a part of the Development Work.

"Specified Maintenance Condition" shall have the meaning set forth in Section 10.1.

"State" shall mean the State of California.

"Statement of Position" shall have the meaning set forth in Section 16.6.

"Sublease" shall have the meaning set forth in Subsection

11.1.1.1.

"Sublessee" shall have the meaning set forth in Subsection 11.1.1.1.

"Subsection" shall mean a Subsection of a Section of this Lease.

"Term" shall have the meaning set forth in Section 2.1.

"Time of the Essence" shall have the meaning set forth in Section 15.2.

"Uninsured Loss" shall have the meaning set forth in Section 10.2.

"Written Appraisal Evidence" shall have the meaning set forth in Subsection 16.7.

1.2 Lease. For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Lease, Port hereby leases to Lessee, and Lessee hereby leases and hires from Port, an exclusive right to possess and use, as tenant, the Premises for the Term (as hereinafter defined) and upon the terms and conditions and subject to the requirements set forth herein.

1.2.1 As-Is. Lessee hereby represents that it has performed all investigations necessary, including without limitation soils and engineering inspections, in connection with its acceptance of the Premises "AS IS WITH ALL FAULTS". Lessee hereby accepts the Premises on an "AS IS WITH ALL FAULTS" basis and, except as expressly set forth in this Lease, Lessee is not relying on any representation or warranty of any kind whatsoever, express or implied, from Port or any other governmental authority or public agency, or their respective agents or employees, as to any matters concerning the Premises, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Premises, including, but not limited to, protections against ocean damage, erosion,

access, and the square footage of the land and water area, (ii) the quality, nature, adequacy and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Premises, (iv) the development potential of the Premises, and the use, habitability, merchantability or fitness, or the suitability, value or adequacy of the Premises for any particular purpose, (v) the zoning or other legal status or entitlement or lack thereof of the Premises or any other public or private restrictions on use of the Premises, (vi) the compliance of the Premises with any applicable codes, laws, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions of Port, City, State, the United States of America, the California Coastal Commission and/or any other governmental or quasi-governmental entity ("Applicable Laws") or of any other person or entity (including, without limitation, relevant provisions of the Americans with Disabilities Act, (vii) the presence of any underground storage tank or hazardous materials on, under or about the Premises or the adjoining or neighboring property and (viii) the condition of title to the Premises.

1.2.2 Title. Port represents that Port owns fee title to the Premises and that Port has authority to enter into this Lease. Lessee hereby acknowledges the title of Port and/or any other public entity or agency having jurisdiction thereover, in and to the Premises, and covenants and agrees never to contest or challenge the extent of said title, except as is necessary to ensure that Lessee may occupy, use and develop the Premises pursuant to the terms and conditions of this Lease.

1.2.3 Excluded Conditions. Notwithstanding anything to the contrary set forth herein, the terms and provisions of Subsection 1.2.1 shall not be applicable to any sewer, storm drain or other improvements which have been dedicated to (and such dedication has been accepted by) the Port or other public agency or governmental body which maintains public facilities ("Excluded Conditions"); provided, however, that this Lease (as opposed to any separate dedication acceptance or other contractual or legal obligation) shall not

create any obligation or liability on the part of Port with respect to such sewer, storm drain and other improvements.

1.2.4 Harbors and Navigation Code, Other Applicable Laws and Liens and Encumbrances. The leasing of the Premises pursuant to this Lease shall be subject to the provisions of the Harbors and Navigation Code as of the Effective Date, other Applicable Laws in effect as of the Effective Date, as they pertain to the Port, and liens and encumbrances of record or actually known to Lessee as of the Effective Date. Neither Port nor Lessee is aware of anything in this Lease which does not comply with the requirements of the Harbors and Navigation Code or any other Applicable Laws, as of the Effective Date.

1.2.5 Intention of the Parties. Port hereby represents and agrees that (a) this Lease is entered into by the Port and Lessee with the mutual objective of maximizing revenues from the operation of the Premises, and (b) Lessee shall be entitled to establish and charge market rate rentals to its subtenants and others for the operation and use of the Premises.

1.2.6. Subleases. Lessee shall include in all Subleases (whether residential, commercial or otherwise, including Exempt Subleases) provisions making the Subleases subject to: (a) this Lease; and (b) all applicable terms and conditions of the Harbors and Navigation Code and other Applicable Laws. At all times during the Term of this Lease, Lessee shall maintain on file with the Port a current version of Lessee's standard forms of Subleases for: (i) residential apartments, and (ii) boat slips, including all changes to such standard forms as may be instituted by Lessee from time to time. Port shall promptly notify Lessee in writing in the event any such standard forms fail to comply with the requirements of this Lease or any other Port requirements or other legal requirements, and, in the case of boat slip subleases, of any further processing required. Lessee shall submit to Port for its reasonable approval any Sublease with a term in excess of one (1) year.

ARTICLE 2 TERM.

2.1 Term. Unless terminated sooner in accordance with the provisions of this Lease, the term of this Lease shall be for the fifty (50)-year period commencing on _____, 2016 and expiring at 11:59 p.m. on _____, 2066 ("Term"). Each calendar year during the Term is referred to herein as a "Lease Year"; provided that the first Lease Year shall be a partial year commencing on _____, 2016 and ending on December 31, 2016 and the last Lease Year shall be a partial year commencing on January 1, 2066 and ending on _____, 2066.

2.1.1 Extension of Term. If, at any time during the Term, California Harbor and Navigation Code Section 6271 and/or Section 6304.1 is amended or other State law is enacted to permit the Port to lease the Premises for longer than fifty (50) years, the Port shall consider in good faith any application for an extension to the Term, consistent with such amendment or enactment, that may be proposed by Lessee. Provided that Port has not exercised its right to require removal of the Improvements pursuant to Section 2.4.1 of this Lease, any application for such an extension shall include: (a) agreement by Lessee to make a monetary payment in an appropriate amount to Port in consideration for such an extension; (b) the proposed rent to be paid to Port during the extension to the Term; (c) agreement by Lessee to update the administrative provisions of this Lease to conform to Port's then-current leasing practices; and (d) a proposal by Lessee regarding whether there is a need to modernize the Premises during the proposed extension of the Term, and, if so, to what extent. Arbitration of disputes arising under this Section 2.1.1 shall be limited to whether Port negotiated in good faith.

2.2 Intentionally Omitted.

2.3 Ownership of Improvements During Term. Subject to Section 2.4.5 of this Lease, until the expiration of the Term or sooner termination of this Lease and except as specifically provided herein, Lessee shall own all Improvements now existing and constructed by Lessee or its predecessors or hereafter

constructed by Lessee upon the Premises, and all alterations, additions, or betterments made thereto by Lessee.

2.4 Reversion of Improvements. Except in the case of an extension of the Term pursuant to Section 2.1.1, and to the extent consistent with the reversion requirements of California Harbor and Navigation Code Section 6304.1, upon the expiration of the Term or sooner termination of this Lease, whether by cancellation, forfeiture or otherwise, the following shall apply:

2.4.1 Duty to Remove. No later than ten (10) years prior to the expiration of the Term, Lessee shall deliver to Port a report prepared by a construction and demolition expert approved by Port, such approval not to be unreasonably withheld or delayed, which report details and estimates the cost of removing all Improvements on the Premises at the expiration of the Term. Port may give written notice (the "Port Removal Notice") at any time, no later than five (5) years prior to the expiration of the Term or concurrently upon any earlier termination, of Port's election to require Lessee to remove, at the sole cost and expense of Lessee, not later than the expiration of the Term or earlier termination of this Lease, all or any portion of the at grade, above grade and below grade structures, buildings and Improvements of any kind whatsoever placed or maintained on the Premises, reasonably designated by Port to be removed, whether placed thereon or maintained by Lessee or others, including, but not limited to, concrete foundations, pilings, structures and buildings (which election shall be subject to the City's permitting Lessee to remove such structures, buildings and Improvements); and if such structures are required to be removed by Lessee, then Lessee shall, upon the expiration or termination of this Lease, immediately restore and quit and peacefully surrender possession of the Premises to Port, with those portions of the Premises designated by Port for demolition in a condition such that no further demolition costs need to be incurred with respect to such structures as a condition precedent of subsequent development. If Port elects to require Lessee to remove Improvements hereunder pursuant to the Port Removal Notice, Lessee shall, no later than the date

which is thirty (30) Days after Lessee's receipt of the Port Removal Notice, provide Port with a written plan which sets forth Lessee's proposed method of securing the discharge of Lessee's removal and restoration obligations pursuant to this Subsection. Such security plan shall detail (i) the form of security proposed by Lessee, which security shall be either a letter of credit, bond, deposit of funds or other form of security in form and amount, and from an issuer, satisfactory to Port, and (ii) a schedule satisfactory to Port for the delivery by Lessee of the security described in clause (i) above, which schedule shall in all events provide for a full funding of the security not later than three (3) years following the date of the Port Removal Notice. The amount of the letter of credit, bond or other security or deposit shall be no less than the estimated costs to remove the Improvements set forth in the expert report described above, adjusted annually to reflect the increase or decrease, if any, in the ENR Index over the ENR Index as of the date of cost estimation set forth in such expert report; provided, however, that in no event shall such adjustment result in a letter of credit, bond or other security or deposit of an amount less than that set forth in the expert report. Any uncured failure by Lessee to deliver the removal and restoration security described in this Subsection 2.4.1 shall constitute an Event of Default. If Port fails to elect to require Lessee to remove any buildings, structures and Improvements on the Premises as provided above, then upon the expiration of the Term, or earlier termination of the Lease, Lessee shall turn over the Premises and remaining Improvements to Port in the Specified Maintenance Condition.

2.4.2 Port's Election to Receive Improvements. Except to the extent required to be removed by Lessee pursuant to Subsection 2.4.1, above, all structures, buildings, Improvements and all alterations, additions, and betterments thereto, and all other Improvements made to or upon the Premises shall remain upon and be surrendered with the Premises as part thereof and title thereto shall vest in Port without compensation therefor to Lessee. Nothing contained herein shall be construed to deny or abrogate the right of Lessee, prior to the expiration of the Term or termination of this Lease, to

receive any and all proceeds which are attributable to the condemnation of business installations, Improvements, structures and buildings belonging to Lessee immediately prior to the taking of possession by the condemnor as said rights are set forth in Article 6 of this Lease, or to remove any furniture or equipment not intended to be permanently affixed to, or reasonably necessary for the operation of, the Premises, any signage identifying Lessee (as opposed to other signage used in the operation of the Premises and associated Improvements), or any personal property, upon the expiration of the Term or earlier termination of this Lease or at any time during the Term, subject to Lessee's obligations under this Lease to use the Premises for the Permitted Uses.

2.4.3 Port's Right to Remove Improvements. Should Lessee fail to so remove said structures, buildings and Improvements and restore the Premises, Port may sell, remove or demolish the same, in event of which sale, removal or demolition Lessee shall reimburse Port for any cost or expense thereof in excess of any funds received by Port through the security above provided and any consideration received by Port as a result of such sale, removal or demolition.

2.4.4 Duty to Remove Equipment, Etc.

2.4.4.1 Not later than one (1) year before the expiration of the Term, Lessee and Port shall meet and confer regarding the disposition of furniture, equipment and personal property upon the expiration of the Term.

2.4.4.2 Not later than the expiration of the Term or sooner termination of this Lease, Lessee shall in any event remove at its cost and expense such furniture, equipment and personal property as are not firmly affixed to said structures, buildings and Improvements or reasonably necessary for the orderly operation of the Premises. Should Lessee fail to so remove said furniture, equipment and personal property within said period, and said failure continues for fourteen (14) Days after written notice from Port to Lessee, Lessee shall lose all right, title and interest in such furniture, equipment and

personal property, and Port may elect to keep the same upon the Premises or to sell, remove, or demolish the same, in event of which sale, removal, or demolition Lessee shall reimburse Port for its Actual Costs incurred in connection with such sale, removal or demolition in excess of any consideration received by Port as a result of said sale, removal or demolition.

2.4.5 Title to Certain Improvements Passes to Port; Lessee to Maintain. As between Port and Lessee, title to all utility lines, transformer vaults and all other utility facilities constructed or installed by Lessee upon the Premises shall vest in Port upon construction or installation to the extent that they are not owned by a utility. Notwithstanding the foregoing sentence, other than any sewer, storm drain or other utility systems which have been dedicated to and accepted by the Port pursuant to a dedication separate from this Lease, all utility lines, transformer vaults and all other utility facilities, shall be maintained, repaired, and replaced, if and as needed, by Lessee during the Term.

ARTICLE 3 USE OF PREMISES.

3.1 Specific Primary Use. The Premises shall be used by Lessee for the uses described on Exhibit "C" attached hereto, and such other related and incidental uses as are expressly requested by Lessee and specifically approved in writing by Port (collectively, the foregoing shall be referred to herein as the "Permitted Uses"). There shall be no additional uses permitted without the execution of an amendment to this Lease expressly permitting the use, and an agreement establishing the appropriate percentage rental rate for revenue derived from that use. No use will be permitted to be exclusive within the Harbor without the express written consent of the Port. No use which might interfere with commerce, navigation and fisheries shall be permitted. Port hereby represents that the uses described on Exhibit "C" attached hereto do not interfere with commerce, navigation and fisheries. Except as specifically provided herein, the Premises shall be used for no other purpose without the prior written consent of Port. Port makes no representation or warranty regarding the continued legality of the Permitted

Uses or any of them, and Lessee bears all risk of an adverse change in Applicable Laws.

3.2 Prohibited Uses. Notwithstanding the foregoing:

3.2.1 Nuisance. Lessee shall not conduct or permit to be conducted any private or public nuisance on or about the Premises, nor commit any waste thereon, nor take or permit any action with respect to the Premises which causes the loss of insurance coverage as required by this Lease. No rubbish, trash, waste, residue, brush, weeds or undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon any portion of the Premises, except in appropriate receptacles intended for such purposes, nor shall any portion of the Premises be maintained so as to render said Premises a fire hazard or unsanitary, unsightly, offensive, or detrimental to public health and safety. Lessee shall be permitted to perform the Development Work on the Premises, provided that such work is conducted in compliance with Article 5 of this Lease.

3.2.2 Restrictions and Prohibited Uses. Without expanding upon or enlarging the Permitted Uses of the Premises as set forth in this Lease, the following uses of the Premises are expressly prohibited:

3.2.2.1 The Premises shall not be used or developed in any way which is inconsistent with any applicable governmental or public agency requirements;

3.2.2.2 The Premises shall not be used or developed in any way in a manner inconsistent with the Permitted Uses. Without limiting the foregoing, no part of the Premises shall be used by any person for any adult entertainment purposes, as such term refers to graphic, explicit and/or obscene depictions of sexual activity;

3.2.2.3 No improvement on the Premises shall be permitted to fall into disrepair and all Improvements shall at all times be kept in good condition and repair consistent

with the requirements of Section 10.1 of this Lease;

3.2.2.4 No condition shall be permitted to exist upon the Premises which shall induce, breed or harbor infectious plant diseases, rodents, or noxious insects and Lessee shall take such measures as are appropriate to prevent any conditions from existing on the Premises which create a danger to the health or safety of any persons residing or working at, or persons patronizing, the Premises or other portions of Ventura Harbor;

3.2.2.5 Without the prior written approval of General Manager, no antennae or other device for the transmission or reception of television signals or any other form of electromagnetic radiation shall be erected, used or maintained by Lessee outdoors above ground on any portion of the Premises, whether attached to an improvement or otherwise; provided that the foregoing requirement to obtain General Manager's approval as to antennae and other transmission or reception devices shall be inapplicable to the extent that such requirement violates Applicable Law;

3.2.2.6 No tools, equipment, or other structure designed for use in boring for water, oil, gas or other subterranean minerals or other substances, or designed for use in any mining operation or exploration, shall hereafter be erected or placed upon or adjacent to the Premises, except (i) as is necessary to allow Lessee to perform its maintenance and repair obligations pursuant to this Lease, and (ii) for such boring or drilling as necessary to perform water testing or monitoring, or any dewatering program to relieve soil water pressure; and

3.2.2.7 Except for the Excluded Conditions, no adverse environmental condition in violation of Applicable Laws shall be permitted to exist on any portion of the Premises, nor shall any toxic or hazardous wastes be permitted to be generated, treated, stored, disposed of, or otherwise deposited in or on or allowed to emanate from the Premises or any portion thereof, including, without limitation, into the surface waters

and subsurface waters thereof; provided, however, that toxic or hazardous substances may be stored or used, so long as such storage and use is (a) ancillary to the ordinary course of business of an otherwise Permitted Use with the intent that such substances will be used in the ordinary course of business, and (b) conducted in compliance with all Applicable Laws.

3.3 Active Public Use. The parties acknowledge that the ultimate objective of this Lease is the complete and continuous use of the facilities and amenities located in Ventura Harbor by and for the benefit of the public, without discrimination on any basis prohibited by law, along with the generation and realization of revenue therefrom to provide Lessee a reasonable return on its investment in the Premises. Accordingly, Lessee agrees and covenants that:

- (a) Lessee will keep the Premises open to all on equal and reasonable terms;
- (b) Berthing charges imposed by Lessee for use of boating facilities on the Premises will be reasonable and not exorbitant;
- (c) Intentionally omitted.
- (d) Lessee will operate the Premises fully and continuously in light of the mutual objectives of the parties noted above, consistent with the Permitted Uses; and
- (e) Lessee will use commercially reasonable efforts to maximize revenues from the Premises for the benefit of both Port and Lessee.

In the event of any dispute or controversy relating hereto, this Lease shall be construed with due regard to the aforementioned objectives. So long as Lessee is operating the residential component of the Premises in accordance with this Section 3.3, Port shall deem Lessee to be in compliance with the requirement

set forth in Section 6304.1 of the Harbors and Navigation Code of the State of California that the land rental units constructed pursuant to this Lease shall be available to all persons on equal and reasonable terms. The parties further acknowledge that their mutual objectives described in this Section 3.3 would be frustrated and the value of the Premises would be diminished in the event Lessee is precluded from charging market rents as the result of the imposition of rent control or any other governmental restriction or order of a court of competent jurisdiction, which precludes Lessee from charging market rents. In that event, the parties agree that the rent renegotiation provisions of Section 4.4 shall be accelerated and rent renegotiations shall commence within thirty (30) Days.

3.4 Days of Operation. Visitor-serving commercial and retail uses shall be open during normal business hours on a year-round basis, with the exception of periodic and routine closures that are customary for such commercial and retail uses, such as for inventory. Any changes in the days and/or hours of operation of the visitor-serving commercial and retail uses shall be subject to the written approval of the General Manager.

3.5 Compliance with Regulations. Lessee shall comply with all Applicable Laws and shall pay for and maintain any and all licenses and permits related to or affecting the use, operation, maintenance, repair or improvement of the Premises.

3.6 Rules and Regulations. Lessee agrees to comply with such other commercially reasonable rules and regulations governing the use and occupancy of the Premises as may be promulgated by Port from time to time for general applicability on a non-discriminatory basis to other residential apartment and/or boat anchorage facilities in Ventura Harbor, and delivered in writing to Lessee. Any dispute as to whether Port has acted unreasonably in connection with the matters described in this Section 3.6 shall be submitted to arbitration pursuant to Article 16 of this Lease.

3.7 Design Standards. To the extent not otherwise

expressly addressed by the terms and conditions of this Lease, Lessee's development, alteration, operation, use and maintenance of the Premises shall be governed by all applicable City design standards for landside improvements, and all applicable State of California Department of Boating and Waterways ("DBAW") design standards for waterside improvements (collectively, the "Design Standards").

3.8 Reservations. Subject to the provisions of this Section 3.8 and Subsection 1.2.2 hereof, Lessee expressly agrees that this Lease and all rights hereunder shall be subject to all applicable provisions of law, including but not limited to the Harbors and Navigation Code, and all prior encumbrances, reservations, licenses, easements and rights of way existing as of the date hereof or otherwise referenced in this Lease in, to, over or affecting the Premises for any purpose whatsoever. Without limiting the foregoing, Lessee expressly agrees that this Lease and all rights hereunder shall be subject to all prior matters of record and all other unrecorded rights of Port or City disclosed or actually known to Lessee, as their interests may appear, to install, construct, maintain, service and operate sanitary sewers, public roads and sidewalks, fire access roads, storm drains, drainage facilities, electric power lines, telephone lines and access and utility easements across, upon or under the Premises, together with the right of Port or the City to convey such easements and transfer such rights to others.

ARTICLE 4 PAYMENTS TO PORT.

4.1 Net Lease. The parties acknowledge that the payments to be made by Lessee under this Lease are intended to be absolutely net to Port. The rent and other sums to be paid to Port hereunder are not subject to any demand, set-off or other withholding. Except as specifically set forth herein, Lessee shall be solely responsible for all capital costs (including, without limitation, all structural and roof repairs or replacements) and operating expenses attributable to the operation and maintenance of the Premises, including without limitation the parking areas included within the Premises.

4.1.1 Utilities. In addition to the rental charges as herein provided, Lessee shall pay, or cause to be paid, all applicable utility and service charges for furnishing water, power, sewage disposal, light, telephone service, garbage and trash collection, cable and Internet services and all other utilities and services, to said Premises.

4.1.2 Taxes and Assessments. Lessee agrees to pay before delinquency all lawful taxes, assessments, fees, or charges which at any time may be levied by the State, Port, City, County of Ventura or any other tax or assessment levying body upon any interest in this Lease or any possessory right which Lessee may have in or to the Premises covered hereby or to the Improvements thereon for any reason, as well as all taxes, assessments, fees, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by it in, on or about the Premises. Lessee's obligation to pay taxes and assessments hereunder shall include but is not limited to the obligation to pay any taxes and/or assessments, or increases in taxes and/or assessments arising as a result of the grant to Lessee of the Option or Lessee's exercise thereof. Lessee shall have the right to contest the amount of any assessment imposed against the Premises or the possessory interest therein; provided, however, the entire expense of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the responsibility of Lessee.

The parties acknowledge that the Premises are and shall continue to be subject to possessory interest taxes, and that such taxes shall be paid by Lessee. This statement is intended to comply with Section 107.6 of the Revenue and Taxation Code. Lessee shall include a statement in all Subleases to the effect that the interests created therein may also be subject to possessory interest taxes, and that the Sublessee shall be responsible for any and all possessory interest taxes on the Sublessee's interest; however, Lessee acknowledges that the payment of such possessory interest taxes is the ultimate responsibility of Lessee.

4.2 Rental Payments. Throughout the Term, for the possession and use of the Premises granted herein, Lessee shall pay Port, without abatement or offset (except as otherwise expressly provided in this Lease, including without limitation, Subsections 4.2.2.4 and 11.3.4 of this Lease), a monthly amount equal to the greater of (a) Monthly Minimum Rent or (b) Percentage Rent.

4.2.1 Annual Minimum Rent and Monthly Minimum Rent. As more specifically provided herein, the minimum rent payable to Port during each year of the Term ("Annual Minimum Rent") shall be the sum of Three Hundred Thousand Dollars (\$300,000.00), subject to adjustment as provided in Subsection 4.2.3 below. Annual Minimum Rent shall be payable by Lessee to Port on a monthly basis. "Monthly Minimum Rent" shall be computed by dividing Annual Minimum Rent by twelve (12). As of the date hereof Monthly Minimum Rent shall be sum of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) per month.

4.2.2 Percentage Rent. For the purposes of this Lease, "Percentage Rent" for any given month or year shall be defined as the sum of the amounts set forth in this Subsection 4.2.2. It is understood that Article 3 of this Lease provides for the Permitted Uses of the Premises and that the activities described in the percentage categories that follow are permitted revenue-generating activities that are consistent with the Permitted Uses. Gross Receipts (as defined herein) from each transaction, sale or activity of Lessee and/or any sublessee shall be reported under one or more of the following percentage categories, as applicable. The General Manager may interpret the percentage categories as set forth in this Subsection 4.2.2, with such determinations and interpretations to be a guideline in determining the appropriate categories. Any such interpretations or determinations shall be subject to arbitration pursuant to Article 16 of this Lease. Within twenty-one (21) Days after the close of each and every calendar month of the term hereof, Lessee shall file a report of Gross Receipts ("Monthly Report") and pay to Port a sum equal to the total of the following percentages for said previous month, less the amount of monthly installment of minimum rent paid for said

previous month as provided herein. Each Monthly Report shall be in the form attached to this Lease as Exhibit "D". The Percentage Rent categories are as follows:

(a) As set forth in Subsection 4.3.3, commencing eleven (11) years after the Completion Date, TWENTY FIVE PERCENT (25%) of Gross Receipts or other fees for the rental or use of boat slips, anchorages, moorings, dockside gear lockers, dockside storage space, and such other facilities and services ancillary thereto as are generally provided in common to tenants thereof ("Slip Improvements"), including receipts obtained from persons who live on their boats;

(b) TEN PERCENT (10%) of Gross Receipts from the rental or other fees charged for the use of dry storage facilities, landside gear lockers, landside storage space, boats, motors, tackle, recreational equipment, tools, equipment, launch and retrieving of small boats;

(c) For the first thirty-six (36) months after the Effective Date, TEN PERCENT (10%), and at all times thereafter, TEN AND ONE-HALF PERCENT (10.5%), of Gross Receipts or other fees charged for: (1) the occupancy of apartments; (2) the rental or use of land, water or other facilities for television, motion picture or other media filming purposes; (3) the occupancy of structures or other facilities utilized for restaurants, stores, shops or other commercial establishment not described in Subsections (d)(1) or (2) below; and (4) meeting rooms; provided that, except as provided in Subsection 4.2.2.5, Gross Receipts or other fees charged for the occupancy of restaurants, stores, shops or other commercial establishments shall not be included in the calculation of Percentage Rent under this Subsection (c) if the Gross Receipts from the operation of such businesses are required to be reported under other Subsections of this Section;

(d) TEN PERCENT (10%) of Gross Receipts or other fees charged for the occupancy of offices utilized for

internal clerical or administrative activities, business enterprises, real estate and insurance brokerage, legal, engineering, travel agencies or similar services;

(e) ONE PERCENT (1%) of Gross Receipts from the sale of new or used boats, boat trailers, house trailers and trailer cabanas including credits for used items taken in trade as part payment for new items, as reflected in the bill of sale (provided, however, that no house trailers or trailer cabanas shall be maintained, displayed or stored on the Premises). However, the trade-in allowance for such used item taken in trade may be deducted from the sale price of said used item, provided said used item is sold within one hundred twenty (120) Days of the date of the bill of sale which established said trade-in allowance;

(f) FIVE PERCENT (5%) of commissions or other fees earned from boat brokerage, car rental agencies, marine insurance commissions where the sale of insurance is conducted in conjunction with boat sales and/or boat brokerage, laundry and dry cleaning commissions and other similar activities where earnings are normally on a commission basis when said activity is approved in advance, in writing, by General Manager;

(g) FIVE PERCENT (5%) of Gross Receipts, commissions or fees received by Lessee, from service enterprises, including, without limitation, cable, Internet, satellite, telecommunication, telephone and other utility services (subject to the limitations of Subsection 4.2.2.3(4)(f)), and valet parking services. Provided, however, that no equipment installed in connection with such cable, Internet, satellite, telecommunication, telephone and other utility service shall extend more than fifteen (15) feet above the highest roof line of the Premises;

(h) SIX PERCENT (6%) of Gross Receipts, commissions or fees received by Lessee from commercial boating activities including, but not limited to, charter boat, bareboat charters and sportfishing boats;

(i) FIVE PERCENT (5%) of Gross Receipts, commissions or other fees received by Lessee for the installation and/or operation of coin-operated vending or service machines, including pay telephones;

(j) FIVE PERCENT (5%) of Gross Receipts from the operation of a bar, tavern, cocktail lounge, discotheque, night club or other facilities engaged in the on-premises sale of alcoholic beverages;

(k) THREE AND ONE-HALF PERCENT (3.5%) of Gross Receipts from the operation of restaurants, coffee shops, beach food facilities, except that Gross Receipts from facilities established and operated as a take-out food operation shall be reported under Subsection (p); a "take-out food operation" shall mean a restaurant or other food operation a majority of the Gross Receipts from which are derived from the sale of food or beverages to be consumed off-site (but shall not include in any event any "drive-through" facilities; Gross Receipts from the operation of a restaurant/bar combination shall be determined by applying the respective percentages set forth in Subsection (j) and this Subsection (k) to the source of such receipts, being alcoholic beverage related or food serve related.

(l) TEN PERCENT (10%) of Gross Receipts from club dues, initiation fees and assessments (except that dues, fees and assessments relating to nonprofit, community organizations devoted primarily to fostering boating uses shall not be included);

(m) FIVE PERCENT (5%) of Gross Receipts or other fees charged from the operation of sightseeing boats, tour boats or water taxis;

(n) THREE AND ONE-HALF PERCENT (3.5%) of Gross Receipts from cover charges or other fees charged for admission to day spas and related facilities;

(o) TWENTY PERCENT (20%) of Gross Receipts from

parking fees, except that (1) parking fees or charges which are collected in conjunction with any activity the Gross Receipts from which are required to be reported in a percentage category higher than twenty percent (20%) shall be included in Percentage Rent at such higher percentage; and (2) valet parking charges, fees and tips shall not be included in Percentage Rent under this Subsection, but instead shall be included in Percentage Rent under Subsection (g) above;

(p) TWO AND ONE-HALF PERCENT (2.5%) of Gross Receipts from the operation of all stores, shops or boutiques selling items at retail, or from the sale of miscellaneous goods and services consistent with the Permitted Uses but not specifically provided for elsewhere in this Subsection 4.2.2; and

(r) TEN AND ONE-HALF PERCENT (10.5%) of Gross Receipts from any other activity associated with Permitted Uses that are residential uses with respect to which a specific percentage in the foregoing schedule has not been provided, so long as the Gross Receipts from all such revenue sources does not exceed three percent (3%) of all Gross Receipts from apartment rentals.

4.2.2.1 Other Activities. If General Manager or Lessee determine that a percentage of Gross Receipts is not suitable or applicable for a particular activity not described above, although permitted hereunder, General Manager and Lessee shall mutually establish a minimum monthly payment to Port as payment for the privilege of engaging therein, which shall remain effective until the next Renegotiation Date. Said minimum monthly amount shall be reasonable in accordance with the revenue generated by such activity and shall be included in Percentage Rent, as determined hereunder, in lieu of a percentage of Gross Receipts therefor. Any dispute concerning the matters described in this subsection 4.2.2.1 shall be submitted to arbitration pursuant to Article 16 of this Lease.

4.2.2.2 Accounting Records and Procedures. Lessee agrees to and shall comply with, and shall cause all of

its sublessees, licensees, permittees and concessionaires to agree to and comply with, the recordkeeping and accounting procedures, as well as the inspection and audit rights granted to Port, set forth in Article 14 of this Lease.

4.2.2.3 Gross Receipts. Except as herein otherwise provided, the term "Gross Receipts" as used in this Lease means all money, cash receipts, or other things of value, including but not limited to gross charges, sales, rentals, common area maintenance payments, operating expense reimbursements, fees and commissions made or earned by Lessee and/or all its assignees, Sublessees, licensees, permittees or concessionaires, whether collected or accrued from any business, use, occupation or any combination thereof, originating, transacted, or performed in whole or in part, on the Premises or related to the activities conducted on the Premises, including but not limited to rentals, the rendering or supplying of services and the sale of goods, wares or merchandise.

(1) Except as otherwise set forth herein, there shall be no deduction from Gross Receipts for any overhead or cost or expense of operation, such as, without limitation, salaries, wages, costs of goods, interest, debt amortization, rent credit, collection costs, discounts from credit card operations, insurance and taxes.

(2) Gross Receipts shall not include direct taxes imposed upon the consumer and collected therefrom by Lessee such as, without limitation, retail sales taxes, excise taxes, or related direct taxes paid periodically by Lessee to a governmental agency accompanied by a tax return statement.

(3) Gross Receipts reported by Lessee and its Sublessees, assignees, licensees and permittees must include the usual charges for any services, goods, rentals or facilities provided by Lessee or its Sublessees, assignees, licensees,

concessionaires or permittees. Bona fide bad debts actually accrued by Lessee for amounts owed by Sublessees, assignees, licensees concessionaires or permittees may be deducted from Gross Receipts to the extent that such amounts have been previously reported as Gross Receipts; however, there shall be no deduction for bad debts based on past experience or transfer to a bad debt reserve. Subsequent collection of bad debts previously not reported as Gross Receipts shall be included in Gross Receipts at the time they are collected.

(4) Gross Receipts shall not include any of the following items:

a. goods returned to suppliers or which are delivered for resale (as opposed to delivery) to another retail location or to a warehouse or to any retailers without profit to Lessee, where such returns or deliveries are made solely for the convenient operation of the business of Lessee or sublessee and not for the purpose of consummating a sale made in, about or from the Premises;

b. an amount equal to the cash refunded or credit allowed on merchandise returned by customers and accepted by Lessee, or the amount of cash refunded or credit allowed thereon in lieu of Lessee's acceptance thereof, but only to the extent that the sales relating to such merchandise were made in, about or from the Premises; provided that whenever Lessee accepts a credit slip as payment for goods or services, the amount of credit shall be included in Gross Receipts;

c. sales of fixtures, equipment or property which are not Lessee's stock in trade;

d. receipts from insurance claims other than rental interruption or business interruption insurance;

e. interest earned by Lessee on funds arising from the Premises or the use thereof, deposited or maintained by Lessee in banks or similar financial institutions;

f. the Cost of any Sublessee's sub-metered utilities (including, but not limited to, electricity, gas and water), provided (1) each Sublessee's obligation to reimburse Lessee for such Sublessee's sub-metered utility charges is separate and apart from such Sublessee's obligation to pay rent for its occupancy of the Premises; (2) the reimbursed sum is in an amount equal to the Cost of the Sublessee's sub-metered utility; and, (3) the receipt is actually credited against the cost of the Sublessee's sub-metered utility. For the purpose of the foregoing sentence, the "Cost" of the Sublessee's sub-metered utility shall mean the actual costs incurred by Lessee, exclusive of overhead and general and administrative expenses, in paying the portion of the respective utility's sub-metered utility bill that is allocable to the Sublessee based on such Sublessee's sub-metered consumption of the sub-metered utility, and in paying the portion of any third party sub-meter reading and service charge to each sub-meter that is actually read and a direct allocation of the sub-meter service charge to each such sub-meter that is serviced. Port shall have the right to approve all sub-meters and to challenge the legitimacy or amount of any Cost, and all disputes regarding such Port approvals or challenges, if not resolved by the parties within thirty (30) Days after notice to Lessee of such disapproval or challenge, shall be resolved by arbitration pursuant to Article 16 of this Lease;

g. amounts received for services rendered by a Sublessee of an individual apartment unit in connection with the operation by such Sublessee of an in-home business in such apartment unit, as long as the primary purpose of Sublessee's use of the apartment unit is for residential occupancy and such in-home business is an incident to such residential use;

h. amounts paid to Lessee by a Sublessee solely for the cost of improvements made by Lessee (not including customary tenant improvements), but only to the extent such payment is designated as such at the time such payment is made;

i. Gross Receipts shall not include payments or portions of payments received by Lessee from Sublessees equal to fees or charges paid by Lessee to any financial institution, servicer or other vendor for the administration of electronic or digital payments by Sublessees to Lessee; and

j. Gross Receipts shall not include aggregate payments received by Lessee from Sublessees for the cost of cable television, internet, satellite, telecommunication and telephone or other similar services provided on a bulk basis to the Premises by the provider of such services, except to the extent such payments received by Lessee from Sublessees exceed the total cost of such services paid by Lessee to the provider of such services. The Percentage Rent payable by Lessee shall be FIVE PERCENT (5%) of any such excess bulk service payments.

4.2.2.4 Excess Payments Credit. If rent payments actually made by Lessee in a particular Lease Year exceed the total rentals actually due for that year as computed on an annual basis at the end of each Lease Year, Lessee shall be permitted to credit that excess amount ("Excess Percentage Rent Payment") against the succeeding monthly installments of Percentage Rent otherwise due under this Subsection 4.2.2 until

such time as the entire Excess Percentage Rent Payment has been recouped. If Lessee makes an Excess Percentage Rent Payment in the final Lease Year of the Term, Port shall refund such amount to Lessee within thirty (30) Days of its discovery and verification of such overpayment.

4.2.2.5 Effect of Sublessee, etc. Doing Business. Except as specifically provided to the contrary in this Lease, where a Sublessee, licensee, or permittee is conducting a business or engaged in any use or occupation or any combination thereof on Lessee's leasehold except for those uses or occupations delineated under Subsection 4.2.2(c), Lessee shall report whichever of the following results in the greater percentage rental: (1) the Gross Receipts of each Sublessee, licensee or permittee under one or more of the appropriate Subsections of Subsection 4.2.2; or (2) Lessee's receipts from each Sublessee, licensee or permittee under Subsection 4.2.2(c).

4.2.2.6 Interest; Etc. Interest, service or late charges collected in conjunction with a transaction, sale or activity of Lessee or Sublessee shall be reported in the same percentage category as the transaction, sale or activity is reported.

4.2.2.7 Percentage Rent Does Not Affect Permitted Uses. It is understood and acknowledged by the parties that Section 3.1 of this Lease sets forth the Permitted Uses of the Premises by Lessee and the Percentage Rent categories listed in Subsection 4.2.2 are permitted revenue-generating activities that are consistent with those Permitted Uses applicable to this Lease.

4.2.2.8 Interpretations. The General Manager may further interpret the definition of Gross Receipts, with such interpretations to be a guideline in implementing the foregoing Subsections of this Lease. The reasonableness of interpretations of the General Manager shall be subject to arbitration pursuant to Article 16 hereof.

4.2.2.9 Intentionally Omitted.

4.2.2.10 Intentionally Omitted.

4.2.3 Adjustments to Annual Minimum Rent. As of the third (3rd) anniversary of the Completion Date under this Lease (the "First Adjustment Date") and as of each third (3rd) anniversary of the First Adjustment Date thereafter (each an "Adjustment Date" and collectively the "Adjustment Dates"), the Annual Minimum Rent shall be adjusted. The Annual Minimum Rent shall be adjusted as of each Adjustment Date to the amount which equals seventy-five percent (75%) of the average of the scheduled total annual rent due (including Monthly Minimum Rent and Percentage Rent) from Lessee to Port under Section 4.2 of this Lease during the thirty-six (36) month period immediately preceding the Adjustment Date; provided, however, in no event shall the Annual Minimum Rent commencing on the First Adjustment Date be less than the \$300,000 Annual Minimum Rent set forth in Subsection 4.2.1 above.

4.2.4 Intentionally Omitted.

4.3 Commencement of Rent.

4.3.1 Subject to Subsection 4.3.3, Annual Minimum Rent shall commence upon the first to occur of the following (the "Annual Minimum Rent Commencement Date"): (a) the end of the three (3)-year Construction Period; (b) the fifth (5th) anniversary of the effective date of the Option Agreement, but not sooner than the execution of this Lease; or (c) the Completion Date.

4.3.2 Subject to Subsection 4.3.3., Percentage Rent shall commence upon the Effective Date of this Lease.

4.3.3 Notwithstanding Subsections 4.3.1 and 4.3.2, there shall be no Annual Minimum Rent or Percentage Rent due for the Slip Improvements for ten (10) years following the Completion Date. Annual Minimum Rent and Percentage Rent for the Slip Improvements specified in Subsection 4.2.2(a) and (b) shall commence eleven (11) years after the Completion Date.

4.4 Renegotiation of Percentage Rents. Effective on the tenth (10th) anniversary of the end of the Construction Period, and the twentieth (20th) and twenty-fifth (25th) anniversaries of the Completion Date and every five (5) years thereafter (each a "Renegotiation Date" and collectively, the "Renegotiation Dates"), and upon the occurrence of any event described in Section 3.3 of this Lease that accelerates the rent renegotiation provisions of this Section 4.4, the Percentage Rent shall be readjusted to the Fair Market Rental Value (as defined below) of the Premises.

4.4.1 Fair Market Rental Value. As used herein, "Fair Market Rental Value" shall mean, as of each Renegotiation Date, the fair market rent (including an annual minimum rent), expressed as respective percentages of Gross Receipts in accordance with the categories enumerated in Subsection 4.2.2, which the Premises (with any and all Improvements existing thereon deemed to be owned by Port as of the Renegotiation Date) would bring, on an absolute net basis, taking into account the Permitted Uses, all relevant and applicable Port policies and the terms of any rent control imposed on the Premises by a public body, and all of the other terms, conditions and covenants contained in this Lease, if the Premises were exposed for lease for a reasonable time on an open and competitive market to a lessee for the purpose of the Permitted Uses, where Port and the respective tenant are dealing at arms-length and neither is under abnormal pressure to consummate the transaction, together with all restrictions, franchise value, earning power and all other factors and data taken into account in accordance with California law applicable from time to time to eminent domain proceedings.

4.4.2 Renegotiation Period. Not more than one (1) year nor less than nine (9) months prior to the Renegotiation Date, Lessee shall deliver to Port written notice setting forth Lessee's determination of the Fair Market Rental Value of the Premises. Lessee's notice shall include a list of comparable properties and/or complete copies of any appraisals which it has utilized in its determination, together with such other

information regarding such comparable properties or the Premises as Lessee deems relevant or as may be reasonably requested by Port. Within four (4) months after receipt of Lessee's notice, if Port disagrees with Lessee's determination, Port shall deliver to Lessee written notice of such disagreement, together with Port's determination of Fair Market Rental Value and a list of comparable properties and/or complete copies of any appraisals which it has utilized in its determination, together with such other information regarding such comparable properties or the Premises as Port deems relevant or as may be reasonably requested by Lessee, to the extent available to Port. If Port fails to deliver to Lessee notice of its disagreement within the aforementioned period and such failure continues for twenty-one (21) Days after receipt of written notice from Lessee, then Lessee's determination of Fair Market Rental Value shall be binding on Port as of the Renegotiation Date; provided, however, that Lessee's notice to Port shall conspicuously state in boldfaced type that such determination of Fair Market Rental Value shall be binding on Port unless Port delivers notice of its disagreement within such twenty-one (21) Day period.

If Lessee fails to deliver the notice described in the first sentence of this Subsection, setting forth Lessee's determination of Fair Market Rental Value, and such failure continues for twenty-one (21) Days after receipt of written notice from Port, then Port shall submit its determination of Fair Market Rental Value to Lessee, and Lessee shall have twenty-one (21) Days to deliver to Port written notice of Lessee's agreement or disagreement with Port's determination. If Lessee fails to deliver notice of such disagreement, then Port's determination of Fair Market Rental Value shall be binding on Lessee as of the Renegotiation Date; provided, however, that Port's notice to Lessee shall conspicuously state in bold-faced type that such determination of Fair Market Rental Value shall be binding on Lessee unless Lessee delivers notice of its disagreement within such twenty-one (21) Day period.

4.4.3 Negotiation of Fair Market Rental Value. If Port (or Lessee, as the case may be) does so notify Lessee (or Port, as the case may be) of its disagreement as provided in

Subsection 4.4.2, Port and Lessee shall have sixty (60) Days from the end of the applicable response period in which to agree upon the Fair Market Rental Value for the Premises. Port and Lessee shall negotiate in good faith during said sixty (60) Day period. If the negotiators for the parties do so agree, the new rental terms shall be promptly presented to the Board of Port Commissioners for approval, and, upon such approval, they shall take effect upon the Renegotiation Date. During the period of negotiation, Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to the obligation to pay to Port Annual Minimum Rent and Percentage Rent at the level existing for the last year of the rental period then completed.

4.4.4 Arbitration. If Port and Lessee fail to reach agreement during the sixty (60) Day period set forth in Subsection 4.4.3, then, unless the parties agree otherwise, the Fair Market Rental Value of the Premises shall be determined by "baseball style" arbitration as set forth in Article 16 of this Lease and the parties shall execute an amendment to this Lease setting forth the Fair Market Rental Value as determined by arbitration. In order to determine the Fair Market Rental Value of the Premises, the arbitrator shall take into consideration all of the terms, conditions and covenants of this Lease, the earning power and all of the factors and data relating to such value required or proper to be considered in determining the fair rental value of leaseholds under the laws of eminent domain in the State of California. During the period of arbitration, Port and Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to Lessee's obligation to pay to Port Annual Minimum Rent and Percentage Rent at then existing levels.

4.4.5 Retroactivity. In the event that, pursuant to Subsections 4.4.3 or 4.4.4 hereof, the parties execute an amendment to this Lease setting forth the Fair Market Rental Value and the Annual Minimum Rent, such amendment, if executed prior to the Renegotiation Date, shall be effective as of the Renegotiation Date; if executed after the Renegotiation Date, such amendment shall be retroactive to the Renegotiation Date.

In the event that such amendment is executed after the Renegotiation Date, then, within seven (7) Days after such execution, Lessee shall pay to Port, or Port shall at its election either (i) pay to Lessee or (ii) credit against the next rental payments due (including interest until credited), the difference, if any, between (a) such Fair Market Rental Value for the Premises and (b) the actual Annual Minimum Rent and Percentage Rent paid by Lessee to Port, for the period of time from the Renegotiation Date until the date of such payment. Lessee (with respect to overpayments) or Port (with respect to underpayments) shall further be entitled to interest on each portion of such payment from each date on which the applicable rental payments were payable under this Lease to the date paid or credited, whichever is applicable, at the average prime rate of interest published in the Wall Street Journal (the "Prime Rate") plus one percent (1%) for the period between the date which is six (6) months after the Renegotiation Date and the date of payment.

4.5 Payment; Late Fees and Interest.

4.5.1 Payment. Monthly Minimum Rent shall be paid by Lessee in advance. Payments of Minimum Monthly Rent shall be received by Port on or before the first Day of each calendar month of the Term. Percentage Rent shall be paid by Lessee in arrears. Percentage Rent due, if any, for a given month of the Term shall be received by Port on or before the fifteenth Day of the calendar month following each month of the Term, calculated as follows: the Lessee shall calculate the total Percentage Rent owed to Port for the relevant month of the Term; it shall deduct from said amount the total Monthly Minimum Rent paid to Port for that same month; if the resulting amount is a positive number, Lessee shall pay that amount to Port; if that amount is a negative number, no Percentage Rent shall be paid to Port for that month but nevertheless the Monthly Minimum Rent shall be paid every month of the Term hereof. Percentage Rent payments shall be reconciled annually, not later than six (6) months after the end of each Lease Year, with any Excess Percentage Rent Payments credited as provided in Subsection 4.2.2.4. Payment may be made by check or draft issued and payable to

Ventura Port District. Lessee acknowledges that Port shall have no obligation to issue monthly rental statements, invoices or other demands for payment, and that the rental payments required herein shall be payable notwithstanding the fact that Lessee has received no such statement, invoice or demand.

4.5.2 Late Fees and Interest. In the event any payment is not received by Port by the date due, Lessee acknowledges that Port will experience additional management, administrative and other costs that are impracticable or extremely difficult to determine. Therefore, a fee ("Late Fee") of five percent (5%) of the unpaid amount shall be added to any amount unpaid when due and payable. Any unpaid rent due shall additionally bear interest at an annual rate equal to the Prime Rate plus two percent (2%), computed from the date when such amounts were due and payable, compounded monthly, until paid. Lessee acknowledges that such Late Fee and interest shall be applicable to all identified monetary deficiencies under this Lease, whether identified by audit or otherwise, and that interest on such amounts shall accrue from and after the date when such amounts were due and payable as provided herein (as opposed to the date when such deficiencies are identified by Port). Notwithstanding any contrary provision of this Section 4.5, no Late Fee shall be assessed during any Lease Year until Lessee shall have first been delinquent in the payment of one or more installments or payments of Minimum Monthly Rent, Percentage Rent or other sums due under this Lease for an aggregate of more than five (5) Days during such Lease Year. For example, if the first late payment by Lessee during a Lease Year involves the late payment by Lessee of a Monthly Minimum Rent installment which Lessee cures on the fourth (4th) Day following the due date for such Monthly Minimum Rent installment, and the second late payment by Lessee during such Lease Year involves the Lessee's failure to deliver a Percentage Rent payment by the due date therefor, then (i) no Late Fee shall be assessed as to the Monthly Minimum Rent late payment, (ii) a Late Fee shall be assessed with respect to the Percentage Rent late payment unless Lessee delivers such payment on the first Day following the due date therefor, and (iii) a Late Fee shall be assessed on any subsequent rent or other payment due

from Lessee during such Lease Year if not paid on or before the due date therefor. The foregoing aggregate five (5) Day per Lease Year grace period for application of Late Fees shall not be applicable to Lessee's obligation to pay interest on the late payment of any rent or other amounts to be paid by Lessee under this Lease.

4.6 Major Assignments. All Major Assignments shall be subject to the approval of Port. Except as otherwise provided in this Lease, each time Lessee proposes a Major Assignment, Port shall be paid (1) an Administrative Charge equal to the Actual Cost incurred by Port in connection with its review and processing of said Major Assignment ("Administrative Charge") and (2) a Net Proceeds Share, in the event Port approves such proposed Major Assignment and such transaction is consummated. Notwithstanding the foregoing, there shall be no Net Proceeds Share payable in connection with an Initial Financing Event. "Net Proceeds Share" shall mean the applicable amount determined pursuant to Section 4.8 of this Lease. Major Assignments are further subject to Port approval as provided in Articles 11 and 12 of this Lease.

4.7 Calculation and Payment of Administrative Fee.

4.7.1 Deposit. A deposit of Five Thousand and 00/100 Dollars (\$5,000) toward the Administrative Charge shall be due and payable upon Lessee's notification to Port of the proposed Major Assignment and request for Port's approval thereof. From time-to-time, Lessee shall replenish the full amount of the deposit, within thirty (30) Days after written notice from Port setting forth an accounting of Actual Costs incurred by Port in connection with its review and processing of any proposed Major Assignment (including supporting documentation).

4.7.1.1 If the transaction is approved, the balance of the Administrative Charge, if any, shall be due and payable concurrently with the consummation of the transaction constituting the Major Assignment giving rise to the obligation to pay such fee, regardless of whether or not money is

transferred by the parties in connection with such consummation.

4.7.1.2 If Port approves the proposed transaction, but the transaction is not consummated, then, within thirty (30) Days after Lessee delivers to Port a written notice that the transaction will not be consummated, Port shall deliver to Lessee a written notice setting forth the Administrative Charge (including supporting documentation), together with a refund of the amount, if any, of the deposit in excess of the Administrative Charge otherwise allowable under Section 4.7. In the event that the Administrative Charge exceeds the deposit, then Lessee shall pay Port the balance of the Administrative Charge otherwise allowable under Section 4.7. within thirty (30) Days after receipt of the notice from Port setting forth the Administrative Charge (with supporting documentation) and any additional supporting documentation reasonably requested by Lessee within seven (7) Days after its receipt of such notice (and initial supporting documentation).

4.7.1.3 If Port disapproves the proposed transaction then, within thirty (30) Days after notice of its disapproval, Port shall deliver to Lessee a written notice setting forth the Administrative Charge (including supporting documentation), together with a refund of the amount, if any, of the deposit in excess of the Administrative Charge otherwise allowable under Section 4.7. In the event that the Administrative Charge exceeds the deposit, then Lessee shall pay Port the balance of the Administrative Charge otherwise allowable under Section 4.7. within thirty (30) Days after receipt of the notice from Port setting forth the Administrative Charge (with supporting documentation) and any additional supporting documentation reasonably requested by Lessee within seven (7) Days after its receipt of such notice (and initial supporting documentation).

4.7.2 Obligation to Pay Administrative Charge.
With respect to a Major Assignment giving rise to an Administrative Charge, the obligation to pay the Administrative Charge shall be the joint and several obligation of the Lessee, the transferor (if the Lessee is not the transferor) and the

transferee. In the event that the Administrative Charge is not paid when due, then in addition to any other rights or remedies which Port may have at law or in equity, Port shall have the remedies set forth in Section 13.3 hereof. An Administrative Charge not paid when due hereunder shall bear interest at the Prime Rate plus three percent (3%).

4.8 Net Proceeds Share. In the event of a Change of Ownership or Major Sublease, the Net Proceeds Share shall be the amount by which (i) the greater of (A) five percent (5%) of the gross sale or transfer proceeds or other consideration given for the interests transferred (but in the case of a transfer to a party affiliated with or otherwise related to the transferor which constitutes a Change in Ownership, such consideration shall in no event be deemed to be less than the fair value of the interests transferred), or (B) twenty percent (20%) of the Net Transfer Proceeds from such transfer exceeds (ii) the Administrative Charge paid by Lessee to Port in connection with the transaction. With respect to a Financing Event, the Net Proceeds Share (if any) shall be the amount by which (i) eighteen and one half percent (18.5%) of the Net Refinancing Proceeds from such Financing Event exceeds (ii) the Administrative Charge paid by Lessee to Port in connection with the transaction (provided the Net Proceeds Share excludes any reinvestment in the leasehold).

4.8.1 Calculation of Net Proceeds Share. Together with its request for Port approval of a proposed Change of Ownership or Major Sublease, Lessee, a Major Sublessee or the holder of a beneficial interest in this Lease or a Major Sublease, whichever is appropriate, shall present to Port its calculation of the Net Proceeds Share (if any) anticipated to be derived therefrom, which shall include the adjustment to Improvement Costs, if any, which may result from the payment of such Net Proceeds Share ("Calculation Notice"). Each Calculation Notice shall contain such detail as shall be requested by Port to verify the calculation of the Net Proceeds Share. Within thirty (30) Days after the receipt of the Calculation Notice and all information or data reasonably necessary for Port to verify the calculations within the

Calculation Notice, Port shall notify the party giving the Calculation Notice as to Port's agreement or disagreement with the amount of the Net Proceeds Share set forth therein or the related adjustment of Improvement Costs, if any. Failure of Port to approve the Calculation Notice in writing within such thirty (30) Day period shall be deemed to constitute Port's disapproval thereof. Failing mutual agreement within thirty (30) Days after the expiration of said thirty (30) Day period, the dispute shall be resolved by arbitration as set forth in Article 16 of this Lease in the manner prescribed herein for the resolution of disputes concerning Fair Market Rental Value. In the event Port approves a Major Assignment but a dispute exists as to the Net Proceeds Share in respect thereof or the related adjustment, if any, in Improvement Costs, then the transaction may be consummated after Port has disapproved Lessee's Calculation Notice; provided, however, that (i) Lessee shall remit to Port as otherwise required hereunder the undisputed portion of the Net Proceeds Share and (ii) Lessee shall deposit the disputed portion of the Net Proceeds Share into an interest bearing escrow account at the closing of the transaction (or deliver to Port an irrevocable, unconditional letter of credit in a form acceptable to Port, or other security reasonably acceptable to Port, in the amount of the disputed portion), which portion shall be distributed in accordance with the arbitration of the dispute pursuant to Article 16 of this Lease, in the manner prescribed herein for the resolution of disputes concerning Fair Market Rental Value. An illustration of how the Net Proceeds Share is to be calculated is attached to this Lease as Exhibit "E".

4.8.2 Transfer of Less Than Entire Interest.

Where a Change of Ownership has occurred by reason of the transfer of less than all of an owner's beneficial interest in Lessee, this Lease or a Major Sublease, the Net Proceeds Share shall be due and payable with respect to those portions of such beneficial interest that have been acquired by the transferee since the latest of (a) the Effective Date, (b) the date of the execution of this Lease (or a Major Sublease) by Lessee, (c) the most recent event creating Lessee's obligation to pay a Net Proceeds Share (including without limitation an approval by Port

of a transfer at a price which falls below the threshold for paying a Net Proceeds Share) with respect to this Lease (or a Major Sublease), or (d) the date which is twelve (12) months prior to the transfer which constitutes the Change of Ownership.

4.8.3 Purchase Money Notes. If the transferor of an interest accepts a note made by the transferee of such interest in payment of all or a portion of the acquisition cost (a "Purchase Money Note"), such note shall be valued at its face amount; provided that if the interest rate on such Purchase Money Note is in excess of a market rate, then the value of such note shall be increased to reflect such above-market rate. Any disputes between Port and Lessee as to whether the interest rate on a Purchase Money Note is in excess of a market rate or with respect to the valuation of a Purchase Money Note with an above-market rate of interest, shall be settled by arbitration pursuant to Article 16 below.

4.8.4 Obligation to Pay Net Proceeds Share. Net Proceeds Share shall be due and payable concurrently with the transfer giving rise to the obligation to pay such share, and shall be the joint and several obligation of the transferee and transferor. No approval by Port of any transfer or refinancing giving rise to the obligation to pay a Net Proceeds Share shall be valid unless and until such Net Proceeds Share is paid to Port when and as due under this Section 4.8.4. Net Proceeds Share not paid when due shall be subject to a late fee of six percent (6%) of the amount due, together with interest on such Net Proceeds Share and late fee at the Applicable Rate from the date due until paid. In the event that the proceeds of the transaction giving rise to the obligation to pay Net Proceeds Share are comprised, in whole or in part, of assets other than cash, then the cash payment of the Net Proceeds Share shall reflect the fair market value of such non-cash assets as of the date of the Change of Ownership, which shall be set forth in the Calculation Notice. Notwithstanding the foregoing, in the case of a Major Sublease, the Net Proceeds Share shall be payable to Port as and when the Net Transfer Proceeds are received, with the Net Proceeds Share being equitably apportioned to the

payments derived by Lessee from said Change of Ownership (other than any payments passed through to Port under this Lease). With respect to a Change of Ownership or Major Sublease giving rise to a Net Proceeds Share, the obligation to pay the Net Proceeds Share shall be the joint and several obligation of the Lessee, the transferor (if the Lessee is not the transferor) and the transferee. In the event that the Net Proceeds Share is not paid when due, then in addition to any other rights or remedies which Port may have at law or in equity, Port shall have the remedies set forth in Section 13.3 hereof. A Net Proceeds Share not paid when due hereunder shall bear interest at the Prime Rate plus three percent (3%).

4.8.5 Transaction by Original Lessee. In the case of a transfer by Lessee (but not a successor or assignee of Lessee) constituting a Change of Ownership or Major Sublease, "Net Transfer Proceeds" shall mean the total cash and other consideration received (but in the case of a transfer to a party affiliated with or otherwise related to the transferor which constitutes a Change of Ownership or Major Sublease, such consideration shall in no event be deemed to be less than the fair value of the interests transferred), less the following costs with respect to Lessee (but not its successors or assignees):

4.8.5.1 The final actual costs paid by Lessee in connection with the Development Work, any initial tenant improvements actually paid for by Lessee, and any Alterations or other physical Improvements to the Premises in accordance with Article 5 herein (including all hard and soft costs, including developer fees incurred by Lessee, as long as such developer fees do not exceed five percent (5%) of the other development costs), which costs have been submitted to Port within thirty (30) Days after the final invoices are paid, but not later than six (6) months (or such later date as the General Manager may approve) after completion of the Development Work or other such Improvements, as the case may be, together with a written certification from Lessee (the "Cost Certification" to the effect that such costs ("Improvement Costs") are accurate and a written confirmation by Lessee's construction lender of

the amounts funded ("Lender's Funding Confirmation"). Port shall have sixty (60) Days after receipt of the Cost Certification and Lender's Funding Confirmation to challenge the Cost Certification by delivering to Lessee a written notice, specifying the specific Improvement Costs in question. Lessee and Port shall thereafter meet and confer reasonably in order to resolve the matter expeditiously. Either party may, after reasonable efforts to resolve the matter, refer any unresolved question under this Subsection 4.8.5.1 to Arbitration. In no event may Lessee include as part of the Improvement Costs for purposes of this Subsection 4.8.5.1 any other amounts paid to Lessee, including overhead costs of Lessee or its General Partners. Amounts paid to an Affiliate of Lessee shall not be recognized as third party costs unless Lessee itemizes such costs and represents that such costs do not exceed the market price for the applicable item of cost. The Cost Certification shall include a reconciliation of Improvement Costs to the limits described in this Subsection 4.8.5.1. If at any time Lessee shall receive from any payee a refund of all or any portion of the funds paid by Lessee to such payee and included in the Cost Certification as an Improvement Cost, Lessee shall revise the Cost Certification to reduce the Improvement Costs by the amount so refunded to Lessee and notify Port in writing of the revised Cost Certification.

4.8.5.2 Commissions, title and escrow costs, documentary transfer taxes, sales and use taxes, reasonable attorneys' fees and other bona fide closing costs actually paid to third parties and documented to the reasonable satisfaction of Port, which costs were directly attributable to the consummation of the particular transaction giving rise to the obligation to pay Port a Net Proceeds Share (collectively, "Documented Transaction Costs").

4.8.6 Transfer by Lessee's Successor. In the case of a transfer by a Lessee other than the original Lessee, "Net Transfer Proceeds" shall mean the total cash and other consideration received by that successor Lessee (but in the case of a transfer to a party affiliated with or otherwise related to the transferor which constitutes a Change of Ownership or Major

Sublease, such consideration shall in no event be deemed to be less than the fair value of the interests transferred), minus the following costs with respect to such successor Lessee:

4.8.6.1 The greater of (a) Improvement Costs incurred prior to such successor Lessee's acquisition of its leasehold interest in the Premises, (b) the purchase price such successor paid to Lessee or such successor's seller for the interest acquired or (c) the principal amount of any subsequent refinancing by Lessee in connection with which Port was paid a Net Proceeds Share;

4.8.6.2 Improvement Costs actually paid by such successor Lessee after such successor Lessee's acquisition of its leasehold interest in the Premises, and not subsequently repaid with Net Refinancing Proceeds, provided that such costs have been submitted to Port, with an appropriate lender and Lessee certification, to the extent provided in Subsection 4.8.5.1 with respect to Lessee, and are approved or deemed approved by Port; and,

4.8.6.3 Documented Transaction Costs with respect to the transfer of the interest by the successor.

4.8.7 Exclusion of Pass-Throughs. With respect to any Major Subleases or Changes of Ownership, Subsections 4.8.5 and 4.8.6 shall apply, except that any rents or other amounts received by Lessee in the subject transaction and passed through to Port under any provision of this Lease (other than payment of Net Proceeds Share) shall be disregarded in the computation of Net Transfer Proceeds.

4.8.8 Other Transfers. With respect to any Change of Ownership or Major Sublease not described in Subsections 4.8.5 and 4.8.6, Subsections 4.8.5 and 4.8.6 shall apply, except that in lieu of deducting the Improvement Costs in determining Net Transfer Proceeds, the cost to the transferor of the interest being transferred shall be deducted. Furthermore, in the event that any such Change of Ownership or Major Sublease produces a Net Proceeds Share, the then existing Improvement Costs shall be increased by an appropriate amount to reflect

such Net Transfer Proceeds, as if they had been realized by Lessee upon a transfer of a comparable interest in this Lease or in a Major Sublease, as appropriate.

4.8.9 Net Refinancing Proceeds. "Net Refinancing Proceeds" shall mean the gross principal amount of any Financing Event which occurs after the Effective Date (other than an Initial Financing Event), minus (i) the greater of (A) the principal amount of the financing encumbering the Premises as of the consummation of the last Initial Financing Event, or (B) the principal amount of any Subsequent Financing Event (as defined in Section 12.1) by Lessee in connection with which Port was paid a Net Proceeds Share, (ii) any portion of the proceeds of the Financing Event which shall be used for new Improvement Costs, (iii) all other Improvement Costs incurred by Lessee and not paid for or repaid with the proceeds of any Financing Event (including an Initial Financing Event), and (iv) Documented Transaction Costs with respect to such Financing Event.

4.8.10 Transfers to which Section 4.8 Applies. The provisions of this Section 4.8 hereof shall apply to all transfers of beneficial interests in this Lease or a Major Sublease which constitute a Change of Ownership or a Major Sublease, unless such transfers are otherwise excluded pursuant to this Lease. Furthermore, the provisions of this Section 4.8, and the principles set forth therein, shall apply to any transfer or series of transfers which Port can demonstrate was primarily structured for the purpose of avoiding the obligation to pay Net Proceeds Share set forth in this Section 4.8 and which, viewed together, would otherwise constitute a Change of Ownership.

4.8.11 Shareholder, Partner, Member, Trustee and Beneficiary List. On or before December 31 of each Lease Year during the Term and prior to and immediately following each Major Assignment, Lessee shall provide Port with an updated schedule listing the names and mailing addresses of: (i) all shareholders, partners, members and other holders of equity or beneficial interests in Lessee, this Lease or the Major Sublessee under any Major Sublease; (ii) all shareholders,

partners, members and other holders of equity or beneficial interests in any of the constituent shareholders, partners, members or other holders of equity or beneficial interests in Lessee or any Major Sublessee under any Major Sublease, if such interest exceeds a five percent (5%) or greater beneficial interest in Lessee, its constituent shareholders, partners, members or other interest holders, or the Major Sublessee under a Major Sublease; (iii) all persons with management authority or authority to bind Lessee; (iv) any intervening transfers of interests in Lessee, this Lease or any Major Sublessee that occurred during the preceding Lease Year; and (v) any interests known by Lessee to be held by any Affiliate of any entity described in clauses (i), (ii) and (iii). In the event that such shareholder, partner, member or other interest holder is a trust, Lessee shall include in such schedule the name and mailing address of each trustee of said trust, together with the names and mailing addresses of each beneficiary of said trust with greater than a five percent (5%) actuarial interest in distributions from, or the corpus of, said trust; provided, however, that to the extent that Lessee is prevented by Applicable Laws from obtaining such information regarding the beneficiaries of said trust(s), Lessee shall have complied with this provision if Lessee uses its best efforts to obtain such information voluntarily and provides Port with the opportunity to review any such information so obtained. Lessee agrees to use its best efforts to provide Port with any additional information reasonably requested by Port in order to determine the identities of the holders of five percent (5%) or greater beneficial interests in Lessee or its constituent shareholders, partners, members or other interest holders, this Lease or a Major Sublease.

ARTICLE 5 CONSTRUCTION OF IMPROVEMENTS.

5.1 Development Work. It is expressly understood and agreed that Lessee shall construct the Improvements in accordance with the Final Development Work Plans and Specifications (as defined in Subsection 9.3.4 of the Option)(the "Development Work"). The design, density, site coverage, layout and open space, view corridors, building

height, construction materials, landscaping, hardscaping and other improvement specifications pertaining to the Development Work to be constructed on the Premises shall be performed in accordance with the Final Development Work Plans and Specifications and all required Entitlements and Permits. Other than work described in Section 5.9 below, no Material Modification (as defined in Subsection 5.2.1.1) shall be made to the Final Development Work Plans and Specifications and/or the Improvements described therein (collectively, the "Development Modifications") without the prior written approval of the General Manager, which approval shall not be unreasonably withheld. The following shall be reasonable grounds for disapproval of Development Modifications: (a) the modifications are structurally unsound; (b) the modifications would materially and adversely affect the reasonable revenue expectations of the Port under this Lease; or (c) the modifications would result in the Improvements being inconsistent with the tenant mix being promoted by Port in connection with its development, improvement and operation of Ventura Harbor. Lessee shall be solely responsible for all costs and expenses incurred in connection with the design, entitlement and construction of the Development Work. Lessee shall comply with all time deadlines and schedules set forth in this Article 5 relating to the completion of the Development Work. Lessee's failure to do so shall, if not cured within the applicable cure period set forth in Subsection 13.1.2, constitute an Event of Default.

5.2 Alterations After Completion of Development Work. Other than any work described in Section 5.9 below, prior and as a condition precedent to the construction of any alterations or modifications to the Development Work constructed by Lessee pursuant to this Article 5, or the construction of any new Improvements after the Development Work is completed (collectively, "Alterations"), Lessee shall submit to General Manager, for General Manager's approval, the plans and specifications described in this Section 5.2 pertaining to such Alterations, accompanied by a plan review fee ("Alteration Plan Review Fee") equal to one percent (1%) of the estimated cost of the Alterations; provided, interior improvements shall not be deemed to be Alterations for purposes of this Lease unless

Lessee elects to add the cost of such interior improvements to the Improvement Costs as the basis for computing Net Proceeds Share as provided in Section 4.8.

5.2.1 Schematics and Narrative. Lessee shall submit to the General Manager six (6) sets of schematic plans together with a narrative description clearly delineating the nature, size, configuration and layout of the Alterations. Such plans shall, among other things, clearly delineate the architectural theme or motif of the Alterations and shall identify and illustrate all affected boundaries of the Premises and all affected rights-of-way or other areas reserved to Port or third parties which are located thereon. General Manager shall have thirty (30) Days within which to approve or disapprove such submission. Failure of General Manager to approve such submission in writing within said thirty (30) Day period shall be deemed disapproval of said submission. After approval of schematic plans (or subsequent approval of Preliminary or Approved Final Plans, Specifications and Costs, as defined herein) by General Manager, to the extent that changes in such plans are required by the City, its design review committee, the California Coastal Commission or other governmental agency having jurisdiction over the Alterations, Lessee shall promptly advise the General Manager in writing of such changes (unless such changes would not require the General Manager's consent pursuant to Section 5.9 of this Lease), identifying and describing any Material Modifications (as defined below). In that event, Lessee shall further explain in writing the projected or anticipated impact of such Material Modifications on the Alterations and Port=s rental income under the Lease. The General Manager shall not disapprove any such changes unless such changes are a Material Modification (any such governmental changes which are not subject to disapproval by General Manager pursuant to this provision are referred to as the "Approved Governmental Changes" and shall be deemed approved by the Port). Progressively more detailed drawings and specifications that are developed as a logical evolution of drawings or specifications theretofore approved shall not be considered a Material Modification, but copies of all such drawings and specifications shall nevertheless be submitted to

the General Manager within a reasonable time, but not later than the time they are resubmitted by Lessee to the City, the Coastal Commission or other governmental agency. Notwithstanding the preceding sentence, Lessee shall endeavor in good faith to afford Port a meaningful opportunity to review and comment upon and modify drawings or specifications before they are resubmitted by Lessee to the City, the Coastal Commission or other government agency.

5.2.1.1 Material Modification. For purposes of this Lease, a "Material Modification" shall mean a modification to the Improvements as to which either one of the following applies: (a) a reduction in the number of apartment units which results in a reduction in the amount of the scheduled total annual rent (including Monthly Minimum Rent and Percentage Rent) to an amount below Six Hundred Thousand Dollars (\$600,000) per year, measured at the time of initial stabilized occupancy, which shall not be more than one (1) year after the end of the Construction Period, adjusted by the percentage change in the Consumer Price Index from the Effective Date to the last month in the year immediately prior to the completion of the Material Modification; or (b) the modification is not in compliance with the Permitted Uses under this Lease.

5.2.2 Preliminary Plans and Specifications. After General Manager's approval of the materials submitted pursuant to Subsection 5.2.1, Lessee shall submit to General Manager six (6) sets of preliminary plans and outline specifications for the Alterations. The preliminary plans and outline specifications shall conform to, expand upon and reflect a natural evolution from the descriptions and estimates set forth in the approved schematic plans and narrative. Any Material Modifications of the Improvements from those described in the approved schematics and narrative shall be separately identified and described. General Manager shall have twenty-one (21) Days within which to approve or reasonably disapprove such submission, and General Manager may only disapprove said preliminary plans on the grounds that they are a Material Modification to the approved schematic plans, exclusive of any Approved Governmental Changes. Failure of General Manager to disapprove said preliminary plans

within twenty one (21) Days after General Manager's receipt thereof shall be deemed General Manager's approval thereof; provided, however, that in the event that the preliminary plans, outline specifications and construction cost estimates contain substantial changes from the approved schematics and narrative (other than any Approved Governmental Changes), then General Manager shall have thirty (30) Days in which to approve said submission, which approval shall be deemed withheld if not granted in writing within such thirty (30) Day period; and provided further, that together with the submission of the preliminary plans and outline specifications, Lessee must deliver to General Manager a transmittal letter containing the following text prominently displayed in bold faced type:

"PURSUANT TO SUBSECTION 5.2.2 OF THE LEASE, IF THESE MATERIALS CONTAIN NO MATERIAL MODIFICATIONS (OTHER THAN APPROVED GOVERNMENTAL CHANGES) FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU, YOU HAVE TWENTY-ONE (21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY-ONE (21) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM."

5.2.3 Final Plans and Specifications. After approval of the preliminary plans and outline specifications, Lessee shall submit for approval by General Manager six (6) complete sets of final plans and detailed specifications for the Alterations, together with one (1) set of appropriate structural computations, identical to those requested or required by the City incident to the issuance of building permits under the relevant provisions of any applicable building code. Lessee shall file duplicate copies of the final plans and detailed specifications required by this Subsection with the Port together with the necessary and appropriate applications for building permits. Any Material Modifications of the Alterations from those described in the approved preliminary plans and specifications shall be separately identified and described.

General Manager shall have twenty one (21) Days within

which to approve or disapprove such submission, and General Manager may only disapprove such submission on the grounds that they are a Material Modification from the approved preliminary plans, outline specifications, exclusive of any Approved Governmental Changes. Failure of General Manager to disapprove said preliminary plans within twenty one (21) Days after General Manager's receipt shall be deemed General Manager's approval thereof; provided, however, that in the event that the final plans and detailed specifications contain any Material Modifications from the preliminary plans and specifications (other than any Approved Governmental Changes), then General Manager shall have thirty (30) Days in which to approve said submission, which approval shall be deemed withheld if not granted in writing within such thirty (30) Day period; and provided further, that together with the submission of the final plans and detailed specifications, Lessee must deliver to General Manager a transmittal letter containing the following text prominently displayed in bold faced type:

"PURSUANT TO SUBSECTION 5.2.3 OF THE LEASE, IF THESE MATERIALS CONTAIN NO MATERIAL MODIFICATIONS (OTHER THAN ANY APPROVED GOVERNMENTAL CHANGES) FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU, YOU HAVE TWENTY-ONE (21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY-ONE (21) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM."

General Manager's approval shall not be unreasonably withheld; provided, however, that it shall be deemed reasonable to disapprove any Material Modifications, exclusive of any Approved Governmental Changes. Other than the work described in Section 5.9 hereof, no Material Modification shall be made to the Alterations described in the approved final plans and specifications (the "Final Alteration Plans and Specifications") without the prior written approval of General Manager, which shall not be unreasonably withheld.

5.3 Conditions Precedent to the Commencement of

Alterations. No Alterations shall be commenced until each and all of the following conditions have been satisfied:

5.3.1 Permits and Other Approvals. Lessee shall have received and furnished Port with copies of all Permits, licenses and other governmental approvals necessary for commencement of the Alterations. All Permits, licenses and other governmental approvals necessary for subsequent stages of the Alterations shall be furnished to the Port prior to commencement of such stages.

5.3.2 Copies of Construction Contracts. Lessee shall have furnished Port with copies of any contract(s) entered into between Lessee and any unaffiliated general contractor(s) employed for the purpose of constructing the Alterations.

5.3.3 Security. Prior to the commencement of any construction, obtain, at its own cost and expense, and deliver to the General Manager for review, any combination of the following: (a) a completion guaranty, in form and substance reasonably acceptable to Port, made by an individual or entity with a sufficient net worth and liquidity, in the sole discretion of General Manager, to comply with the terms of such guaranty in view of the potential financial responsibility involved, (b) a Certificate of Deposit, cash or United States governmental security, (c) an unconditional, irrevocable Letter of Credit, in a form reasonably acceptable to the General Manager, or (d) an unconditional, irrevocable Set Aside Letter from the applicable lender, in a form reasonably acceptable to the General Manager. The security described in clauses (b), (c) and (d) above shall be in an amount equal to one hundred percent (100%) of the construction contract price for hard costs, and shall permit Port to draw thereon to complete the construction of the Alterations, if same have not been completed by Lessee or if a material Event of Default has occurred under this Lease.

5.3.4 Evidence of Financing. Lessee shall have provided evidence satisfactory to Port of its having sufficient financial resources, as determined by General Manager, to complete the Alterations.

5.3.5 Work Schedule. Lessee shall have provided Port with a construction schedule which will result in the completion of the Alterations within a reasonable time.

5.4 Port Cooperation. In its proprietary capacity, the Port shall cooperate with and assist Lessee, to the extent reasonably requested by Lessee, in Lessee's efforts to obtain the appropriate governmental approvals, consents, permits or variances which may be required in connection with the performance by Lessee of the Development Work and Alterations. Such cooperative efforts may include the Port's joinder in any application for such approval, consent, permit or variance, where joinder therein by the Port is required or helpful; provided, however, that Lessee shall reimburse Port for the actual out-of-pocket costs incurred by the Port in connection with such joinder or cooperative efforts specifically requested by Lessee. Notwithstanding the foregoing, Lessee and Port acknowledge that the approvals given by Port under this Lease in no way release Lessee from obtaining, at Lessee's expense, all Permits, licenses and other approvals required by law for the construction of Improvements on the Premises and operation and other use of such Improvements on the Premises; and that the Port's duty to cooperate and Port's approvals under this Lease do not in any way modify or limit the exercise of Port's governmental functions or decisions as distinct from its proprietary functions pursuant to this Lease.

5.5 Intentionally Omitted.

5.6 Manner of Construction. The terms and provisions of this Section 5.6 shall be applicable to both the Development Work and any Alterations.

5.6.1 General Construction Standards. All construction, alteration, modification or repairs permitted herein shall be accomplished by Lessee with due diligence. Lessee shall take all reasonable steps to minimize any damage or disruption caused by such work and make adequate provisions for the safety of all persons affected thereby. Lessee shall repair, at its own cost and expense, any and all damage caused by such work, and shall restore the area upon which such work is performed to the condition which existed before such work was commenced. Additionally, Lessee shall pay or cause to be paid all costs and expenses associated therewith and shall indemnify, defend and hold Port harmless from and against all damages, costs, expenses, losses or claims arising out of or in connection with the performance of such work, including expenses and reasonable attorneys' fees incurred in defending against the same by an attorney selected by Lessee and reasonably satisfactory to Port, except to the extent Port's negligence or willful misconduct are determined by the arbitrator to have contributed to such damages, costs, expenses, losses or claims. Dust, noise and other effects of such work shall be controlled using accepted measures customarily utilized in order to control such deleterious effects associated with construction projects in well populated and developed areas of southern California.

5.6.2 Utility Work.

a. Any work performed by or on behalf of Lessee or any occupant of the Premises to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit, or any other utility service shall be performed in a manner that minimizes interference with the provision of such services to the Premises and other persons.

b. Lessee agrees that any authorized utility or communications company has the right, subject to the written approval of Port and Lessee, which shall not be unreasonably withheld, to place utility lines, cables, pipes, wires, poles, 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. Port shall consult with Lessee prior to authorizing any such utility or communications company to enter onto the Premises to install any such facilities. Port shall not be responsible for any loss suffered by Lessee or any subtenant or other occupant of the Premises as the result of the actions of such utility or communications company pursuant to this paragraph b., except to extent caused by the acts, omissions, or negligence of Port, its agents, officers, employees or contractors (not including such utility or communications company).

c. With the written consent of Lessee, Port shall grant such temporary easements as may be necessary from time-to-time for the development and operation of the Premises in accordance with this Lease.

5.6.3 Construction Safeguards. Lessee shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by or on behalf of Lessee, all necessary safeguards for the protection of workers and the public.

5.6.4 Compliance with Construction Documents and Laws; Issuance of Permits. All Improvements on the Premises shall be completed in substantial compliance with any construction documents approved by Port and also in compliance with all applicable local, state and federal laws and regulations. Lessee shall have the sole responsibility for obtaining all necessary permits and shall make application for such permits directly to the person or governmental agency having jurisdiction thereover.

5.6.5 Notice to General Manager; Damage to Port Improvements. Lessee further agrees to keep General Manager apprised of the progress of the work to the end that General Manager may, upon at least one Business day advance notice, timely inspect the Premises to assure proper safeguarding of any Port-owned improvements existing on or around the Premises, including but not limited to any underground conduits and

utility lines. If any such Port-owned improvement is damaged in connection with said construction activity by Lessee, Lessee agrees to repair such damage, at no cost or expense to Port, in accordance with this Subsection 5.6.5. If such damage was anticipated by Lessee, Lessee shall include the work necessary to repair such damage to the construction schedule for the Development Work, and shall perform such repair work in accordance with its work schedule. If such damage was accidental, Lessee shall perform such repair work promptly, in light of all the circumstances, as determined after reasonable consultation with Port, and add the work necessary to repair such damage to the construction schedule for the Development Work; provided that if any such damage to Port-owned improvements creates a threat to public health and safety or materially adversely affects the condition, appearance or operation of any Port-owned improvement or of any other property, then Lessee shall promptly complete such repair work. In the event that Lessee fails to effectuate such repair in accordance with the foregoing requirements, Port may enter upon the Premises to make such repairs, the Actual Cost of which shall be paid by Lessee within seven (7) Days after demand by Port. This Subsection 5.6.5 shall not be deemed to impose upon Lessee any obligation to repair damage to Port-owned improvements existing on or around the Premises if such damage was not incurred in connection with Lessee's construction activities. The cost of any repairs effectuated pursuant to this Section shall be included as part of the Improvement Costs pursuant to Subsection 4.8.5.1, to the extent they are paid by Lessee, and not paid for or reimbursed to Lessee by a contractor, subcontractor or insurance company.

5.6.6 Rights of Access. Representatives of the Port shall, upon reasonable notice and at reasonable times during normal business hours, have the right of entry to the Premises and the Improvements thereon without charges or fees, but at no cost or expense to Lessee, for the purpose of ascertaining compliance with the terms and conditions of this Lease, including but not limited to the inspection of the construction work being performed. For purposes of this Lease, reasonable notice shall mean not less than one (1) Business day

(subject to the last sentence of this Subsection 5.6.6, below). Such entry shall be reasonably calculated to minimize interference with Lessee's construction and/or operations, and Port shall comply with industry safety standards in connection with any such entry. Lessee shall have the right to have a representative present to accompany the representatives of the Port in connection with such entry. In the event of any emergency which is life-threatening or which involves the threat of potential substantial damage, Port shall have the right to enter the Premises immediately and without notice to or accompaniment by Lessee.

5.6.7 Notice of Completion. Upon completion of the Development Work or any Alterations, Lessee shall file or cause to be filed in the Official Records of the County of Ventura a Notice of Completion (the "Notice of Completion") with respect to the work, and Lessee shall deliver to Port, at no cost to Port, two (2) sets of reproducible final as-built plans and specifications of the affected Improvements.

5.6.8 Final Completion Certificate. Promptly after completion of the Development Work, Port shall execute and deliver to Lessee a final completion certificate (the "Final Completion Certificate"), which shall conclusively evidence the completion of the Development Work by Lessee in accordance with the terms of this Lease.

5.7 Use of Plans. Contracts between Lessee and any architect, design professional or licensed contractor in connection with the construction, alteration or modification of Improvements on the Premises shall provide, in form and content reasonably satisfactory to Port, for the assignment thereof to Port as security to Port for Lessee's performance hereunder, and Port shall be furnished with a copy of any such contract, together with the further agreement of the parties thereto, that if this Lease is terminated by Port due to Lessee's default, Port may, at its election, use any plans and specifications created by such architect, design professional or contractor in connection with the contract, upon the payment of any sums due to any party thereto. Port's right to elect to use plans and

specifications as described above shall not include the unauthorized right to use any trademarks, trade names or logos of Lessee or any such architect, design professional or contractor. The assignment to Port described in this Section 5.7 shall be effective until the Final Completion Certificate is issued, and shall be subordinate to the security interest, if any, of the Construction Lender in the assigned contract, which subordination shall be in a form reasonably acceptable to the Construction Lender.

5.8 Optional Modifications and Alterations. Lessee may, at its own expense, make or construct, or cause to be made or constructed, (a) Development Modifications prior to the completion of the Development Work, and (b) Alterations to the Improvements, including without limitation, the construction of additional Improvements, following the completion of the Development Work; provided, however, that all such Development Modifications and/or Alterations shall be (i) consistent with, and within the scope of, the Permitted Uses set forth in Article 3, (ii) first approved in writing by the General Manager, except as otherwise provided in Sections 5.2 and 5.9 of this Lease, and (iii) made in accordance and compliance with all terms and provisions set forth in Sections 5.2, 5.3, 5.4, 5.6, 5.7 and 5.11. The General Manager shall not unreasonably withhold, condition or delay his approval. Lessee acknowledges that all proposed Development Modifications and Alterations will also be subject to other governmental requirements and conditions, including those of the California Coastal Commission and other governmental authorities that may have jurisdiction.

5.9 Where General Manager Approval Not Required. Notwithstanding the foregoing, and notwithstanding anything to the contrary in this Lease, Lessee shall not be required to seek or obtain the approvals of General Manager described in this Article 5 (including those set forth in Section 5.2) with respect to Development Modifications and Alterations under the following circumstances; provided, however, that whenever Lessee makes or constructs or permits any Improvements in or to the Premises, Lessee shall (a) give written notice thereof (including a description of the work to be done and the permits

obtained for such work), and (b) furnish to Port a copy of "as-built" plans upon completion of such work:

5.9.1 Where all of the following conditions are satisfied (i.e. "Nondiscretionary Improvements"): (1) the total cost does not exceed Two Hundred Fifty Thousand Dollars (\$250,000), spent over any calendar year, adjusted by the percentage change in the Consumer Price Index from the Effective Date to the last month in the year immediately prior to the commencement of such Alterations, with respect to a single project that constitutes Alterations; (2) none of the proposed construction activity, modifications or changes are structural in nature or have a material effect on the exterior of any building on the Premises; (3) the Development Modifications and Alterations are in compliance with the Permitted Uses; (4) the Development Modifications and Alterations do not reduce the total number of apartment units or boat slips constructed on the Premises; and (5) the cost of the Development Modifications or Alterations is not included as part of the "Improvement Costs" for purposes of Subsection 4.8.5.1.

5.9.2 To the extent that Development Modifications and Alterations are required by the City, its design review committee, the California Coastal Commission or other governmental agency having jurisdiction over the Improvements and the Development Modifications and Alterations do not constitute a Material Modification. A "Material Modification" shall mean a modification to the Improvements as to which either one of the following applies: (a) subject to this Subsection 5.9.2, a reduction in the number of apartment units from the number set forth in Exhibit "C" which results in a reduction in the amount of the scheduled total annual rent (including Monthly Minimum Rent and Percentage Rent) to an amount below \$600,000, for at least three (3) years following the first anniversary of the Completion Date; or (b) the modification is not in compliance with the Permitted Uses described in Exhibit "C".

5.10 Interim Modernization.

5.10.1 Lessee shall, at its own expense, make or

construct, or cause to be made or constructed, the Alterations described in Subsection 5.10.3, below (the "Interim Modernization"); provided, however, that all such Interim Modernization shall be (i) consistent with, and within the scope of, the Permitted Uses set forth in Article 3, (ii) first approved in writing by the General Manager, and (iii) made in accordance and compliance with all terms and provisions set forth in Sections 5.2, 5.3, 5.4, 5.6, 5.7 and 5.11.

5.10.2 One (1) year after the end of the Construction Period, Lessee and Port shall select a real estate broker or consultant to identify a panel of not less than nine (9) competitive apartment complexes (the "Competitive Properties"). Lessee and Port shall record in the land records of Ventura County a memorandum of the relative positions of the project rent and the market rent for the Competitive Properties (the "Section 5.10 Memorandum"). Twenty-five (25) years after the end of the Construction Period, Lessee and Port shall select a real estate broker or consultant to conduct a similar survey, using the same panel of Competitive Properties, and compare the two surveys. Lessee and Port shall share equally the cost of the real estate brokers or consultants selected pursuant to this Section.

5.10.3 In the event that (a) the later survey demonstrates a material deterioration in the competitive rental position of the Improvements relative to those Competitive Properties having a period of time to amortize investment in interim modernization comparable to the Premises, or (b) in any event, if Port agrees to extend the Term pursuant to Subsection 2.1.1 of this Lease, Lessee shall, not later than a time, appropriate under all the circumstances, which shall be established after reasonable consultation with Port, make a substantial investment in Interim Modernization to rehabilitate, renovate and reposition the Improvements. For purposes of this Subsection 5.10.3, a "material deterioration" will be deemed to exist when two conditions apply: (1) the relative rank of the Improvements has declined by more than one (1) position (e.g., from fourth out of nine to sixth or worse out of nine; and (2) that there is at least a five percent (5%) disparity in weighted

average rent per square foot between the Improvements and the next better ranking project in the Competitive Survey (e.g., between the Improvements (6th ranking) and the 5th ranking unit in the example given above). Weighted average rent per square foot will be weighted by number of units of each type and based on rents quoted for currently vacant units or, in the absence of currently vacant units, on the rents actually obtained for units most recently rented.

5.10.4 For purposes of this Section 5.10, "substantial investment" shall mean an amount that is not less than five percent (5%), nor more than ten percent (10%) of the appraised value of the Improvements assuming they are achieving full market rent.

5.10.5 This Section 5.10 shall cease to apply to the Premises for any period of time during which rent control or any other governmental restriction or order of a court of competent jurisdiction has been imposed on the Premises, which precludes Lessee from charging market rents.

5.11 Protection of Port. Nothing in this Lease shall be construed as giving Lessee or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services, or the furnishing of any materials, in any such manner as would give rise to the filing of mechanics' liens or other claims against the Port's interest in the Premises.

5.11.1 Posting Notices. Port shall have the right at all reasonable times and places to post and, as appropriate, keep posted, on the Premises any notices which Port may deem necessary for the protection of the Port's interest in the Premises from mechanics' liens or other claims. Lessee shall give Port at least fourteen (14) Days prior written notice of the commencement of any work to be done on the Premises, in order to enable Port timely to post such notices.

5.11.2 Prompt Payment. Lessee shall make, or cause to be made, prompt payment of all monies due and owing to all

persons doing any work or furnishing any materials or supplies to Lessee or any of its contractors or subcontractors in connection with the Premises and the Improvements thereon. Lessee shall have the right to contest any such amount; provided, however, the entire expense of any such contest (including interest and penalties which may accrue) shall be the responsibility of Lessee.

5.11.3 Liens; Indemnity. Subject to Lessee's rights to contest the same prior to payment, Lessee shall keep the Premises and any Improvements thereon free and clear of all mechanics' liens and other liens arising out of or in connection with work done for Lessee and/or any parties claiming through Lessee. Lessee agrees to and shall indemnify, defend and hold Port harmless from and against any claim, liability, loss, damages, costs, expenses, attorneys' fees incurred in defending and all other expenses on account of claims of lien(s) of laborers or materialmen or others for work performed or materials or supplies furnished to Lessee or persons claiming under it.

In the event any lien is recorded, within seven (7) Days after demand by Port, Lessee shall furnish any one of the following, as determined by Lessee: (i) the bond described in California Civil Code Section 3143, or successor statute, which results in the removal of such lien from the Premises, (ii) a Set Aside Letter from the Construction Lender, in form and substance reasonably satisfactory to Port, setting aside sufficient funds in the Construction Loan for the satisfaction of such lien, or (iii) a title insurance policy or endorsement insuring Port against any loss or liability arising out of such lien together with any other evidence requested by Port to evidence that such claim will be paid, removed or discharged as a claim against the Premises and/or Port.

ARTICLE 6 CONDEMNATION.

6.1 Termination on a 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 Port, then this Lease shall terminate on the date that possession of the Premises is taken.

6.2 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 Port, 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 Port of its intention, within thirty (30) Days following the date that possession of such part of the Premises is taken.

6.3 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 Sections 6.1 or 6.2, above, then this Lease shall, as the part so taken, terminate as of the date that possession of such part is taken, and the minimum annual rental payable hereunder shall be abated in the proportion which the percentage rental applicable to the portion of the Premises so taken, payable hereunder for the full twelve (12) month period immediately preceding the month in which such part of the Premises is taken, bears to the total percentage rental payable hereunder for said twelve (12) month period. Pursuant to Article 5 hereof, 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 Port's prior approval (except as otherwise provided in Section 5.9). Any plans, designs or specifications for such work shall be promptly submitted to Port 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, Port or any other governmental authority with jurisdiction over said work. Further, in the carrying out of all such work, Lessee shall comply with and abide by all laws, ordinances, rules and regulations applicable thereto.

6.4 Allocation of Award. Port 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, as determined in the eminent domain proceeding, plus any amount specifically awarded for costs or losses, including loss of business goodwill, Lessee may sustain or incur as the result of the condemnation.

6.5 Proration of Rent and Repayment of Security Deposit. If this Lease is terminated pursuant to this Article 6, 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, Port shall repay to Lessee the security deposit under Article 7, and any refundable rent, fees and other refundable payments hereunder paid by Lessee for any period beyond the date of termination.

ARTICLE 7 SECURITY DEPOSIT.

7.1 Amount and Use. Concurrent with the execution of this Lease, Lessee shall deliver to Port a security deposit in the amount of One Hundred Thousand Dollars (\$100,000) (the "Security Deposit"). The Security Deposit shall be in the form of a certificate of deposit or other investment securities acceptable to Port, or an irrevocable Letter of Credit acceptable to Port with respect to form, content and issuer. The Security Deposit shall secure Lessee's obligations pursuant to this Lease, and may be drawn on by Port, in whole or in part, to cover delinquent rent not paid by Lessee within any applicable notice and cure period and any other Events of Default of Lessee under this Lease. The Security Deposit shall be applied at the discretion of Port.

7.2 Replacement. In the event that some or all of the Security Deposit is drawn against by Port and applied against any delinquent rent not paid by Lessee within any applicable notice or cure period, or against other Events of Default of Lessee hereunder, Lessee shall, within thirty (30) Days after receipt of written notice of the amount so applied and the reasons for such application, deposit sufficient additional funds with Port, or cause the issuer of the Letter of Credit to reinstate the letter of credit to its full face amount, so that at all times that this Lease is in effect (other than between the date of the application of funds by Port and the expiration of said thirty (30) Day period), the full amount of the Security Deposit shall be available to Port. Failure to maintain and replenish the Security Deposit, if not cured within the time period set forth in Subsection 13.1.3, shall constitute an Event of Default hereunder.

7.3 Renewal. Any Letter of Credit procured by Lessee and delivered to Port shall provide for notice to Port by the issuer thereof no less than sixty (60) Days prior to the expiration of the term of such Letter of Credit in the event that the issuer thereof is not irrevocably committed to renew the term of such Letter of Credit. In the event that, thirty (30) Days prior to the expiration of such Letter of Credit, Lessee has not provided Port with satisfactory evidence of its renewal or replacement, or has not provided Port with adequate

replacement security, Port may draw down upon the Letter of Credit and hold the funds as security for Lessee's obligations as set forth in this Lease and may apply the funds to cover delinquent rent not paid by Lessee within any applicable notice and cure period and/or any other Event of Default of Lessee under this Lease.

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ARTICLE 8 INDEMNITY.

8.1 Lessee's Indemnity. Except to the extent caused by the negligence or willful misconduct of any such indemnitee, Lessee shall at all times relieve, defend, indemnify, protect, and save harmless Port and its respective Boards, officers, agents, consultants, counsel, employees and volunteers from any and all claims, costs, losses, expenses or liability, including expenses and reasonable attorneys' fees incurred in defending against the same by an attorney selected by Lessee and reasonably satisfactory to Port, for the death of or injury to persons or damage to property, including property owned or controlled by or in the possession of Port or any of its Board, officers, agents, employees or volunteers, to the extent that such arises from or is caused by (a) the operation, maintenance, use, or occupation of the Premises by Lessee or its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, (b) the acts, omissions, or negligence of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees which occur on or about the Premises, or (c) the failure of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees to observe and abide by any of the terms or conditions of this Lease or any applicable law, ordinance, rule, or regulation relating to the Premises. The obligation of Lessee to so relieve, indemnify, protect, and save harmless Port and each of its respective Boards, officers, agents, consultants, counsel, employees and volunteers, shall cease upon the expiration of the Term or earlier termination of this Lease 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.

ARTICLE 9 INSURANCE.

Lessee shall maintain at all times during the Term of this Lease policies of liability, worker's compensation (if Lessee actually has employees) and property insurance from companies authorized to transact business in the State of California by the Insurance Commissioner thereof.

9.1 Property Insurance. The policy of property insurance shall provide fire insurance with extended coverage, insuring against loss or damage by fire, lightning and the additional perils included in the standard extended coverage endorsement, as well as those included in the "all risk" policy, and burglary, theft, flood and earthquake insurance (provided, however, that no earthquake insurance shall be required in the event the seismic "Probable Maximum Loss" (PML), or other comparable standardized seismic loss estimation that is generally recognized by the commercial real estate insurance industry, is determined to be less than twenty percent (20%) for the Premises), on the structures, Improvements, inventory, trade fixtures, furnishings and equipment used or to be used by Lessee on the Premises. Such insurance shall be in an amount sufficiently adequate to enable the resumption of the leasehold operations by Lessee following the occurrence of any of the risks covered by said insurance. The policy shall provide standard fire and extended coverage insurance, and shall cover vandalism, malicious mischief, and those risks ordinarily defined in "All-Risk coverage." The policy shall also contain "business interruption", "rental interruption" and/or continuous operation coverage payable to Port equal to one (1) year's Annual Minimum Rent. During periods of substantial construction on the Premises, Lessee or Lessee's contractor will provide completed value builder's risk insurance reasonably satisfactory to Port, together with (i) broad form liability and breach of warranty coverages by endorsement; and (ii) non owned, non-hired automotive liability coverage with a policy limit of Two Million and 00/100 Dollars (\$2,000,000). Such insurance shall be in an amount equal to one hundred percent (100%) of the full replacement value of said buildings, structures, equipment, and

Improvements (excluding non-combustible improvements), with a deductible not greater than five percent (5%) of such replacement value) (as such replacement value is determined by such insurance company and approved by Port's risk manager), and shall be placed and maintained with such insurance company or companies and in such form as shall be reasonably satisfactory to Port.

9.2 Form of Policy.

9.2.1 All such insurance policies, along with their endorsements, shall name the Major Sublessee, if any, Port and its Board members, and Port's officers, agents, employees and volunteers, as additional insureds and any Encumbrance Holder as loss payee. Subject to Section 12.6, upon the occurrence of any loss, the proceeds of such insurance shall be held by Port in trust for the named insureds as their interests appear, and shall be disbursed by Port on a monthly basis to pay for work completed in accordance with then-prevailing industry custom and practice; provided, however, that if the insurance proceeds received with respect to a loss are less than \$500,000 (as adjusted to reflect any increase in the ENR Index during the period from the Extension Date through the date of the loss), the Encumbrance Holder shall have the right to hold and disburse such proceeds to pay the renovation and repair of the Improvements in accordance with the terms of the Financing Documents. In the event of a loss, Lessee shall be obligated to rebuild or replace the destroyed or damaged buildings, structures, equipment, and Improvements, in accordance with the procedures set forth hereinabove for the initial construction, except as otherwise provided in Article 11 hereof. Any surplus or proceeds after said rebuilding or replacement shall be distributed to Lessee.

9.2.2 Subject to the immediately following grammatical paragraph, a duplicate policy or policies evidencing such insurance coverage, in such form as shall be reasonably acceptable to Port, shall be filed with General Manager no later than seven (7) Days after the Effective Date, and such policy or policies shall provide that such insurance coverage will not be

canceled or reduced without at least thirty (30) Days prior written notice to General Manager or fourteen (14) Days in case of cancellation for failure to pay the premium. At least fourteen (14) Days prior to the expiration of such policy, a certificate showing that such insurance coverage has been renewed shall be filed with General Manager.

9.2.3 In lieu of submitting a copy of the policy or policies evidencing the above insurance, Lessee may submit in a form reasonably acceptable to Port a certificate of insurance.

9.2.4 Any such policy may be issued in the form of a blanket policy insuring other properties, in form, amount and content reasonably satisfactory to Port, taking into account any additional protection that Port reasonably deems prudent to provide for losses related to such other properties.

9.3 Liability Insurance.

9.3.1 Lessee shall maintain in full force and effect during the Term of this Lease, comprehensive general liability insurance together with premises operations, products, completed operations, advertising, independent contractor and contractual liability coverages, including liquor liability (which coverage shall be either host or commercial coverage, depending on whether a commercial establishment which sells alcohol is located in the Premises). The insurance described in the immediately preceding sentence shall have a combined single limit of not less than \$5,000,000 and an annual aggregate limitation of not less than \$10,000,000. Lessee agrees that Port and its Board members, and Port's officers, agents, employees and volunteers, shall be named as additional insureds under the liability insurance policy or policies described in this Section 9.3.

9.3.2 Subject to Lessee's option to provide a certificate of insurance as set forth below, a duplicate policy or policies evidencing such insurance coverage shall be filed with General Manager no later than seven (7) Days after the Effective Date, and said policy shall provide that such

insurance coverage shall not be canceled or reduced without at least thirty (30) Days prior written notice to General Manager or fourteen (14) Days in case of cancellation for failure to pay the premium. At least ten (10) Days prior to the expiration of any such policy, a policy showing that such insurance coverage has been renewed or extended shall be filed with General Manager.

9.3.3 The amounts of liability insurance required by this Section required shall be subject to renegotiation as of each fifth (5th) anniversary of the Effective Date (each, an "Insurance Renegotiation Date"). If Port and Lessee cannot agree upon the amount of insurance by the sixtieth (60th) Day preceding an Insurance Renegotiation Date, the matter shall be resolved by binding arbitration in accordance with Article 16. In no event shall the amounts of liability insurance be decreased as a result of such renegotiation or arbitration. Following such renegotiation or arbitration, the parties shall execute an amendment to this Lease setting forth the renegotiated insurance provisions or the arbitration judgment, as appropriate.

9.3.4 In lieu of submitting a copy of the policy or policies evidencing the above insurance, Lessee may submit in a form reasonably acceptable to Port a certificate of insurance.

9.3.5 Any such policy may be issued in the form of a blanket policy insuring other properties, in form, amount and content reasonably satisfactory to Port, taking into account any additional protection that Port reasonably deems prudent to provide for losses related to such other properties.

9.3.6 Lessee shall maintain at Lessee's sole cost and expense marine liability insurance covering legal liability arising out of Lessee's or its sublessee's operations or activities on or near water, not covered by general liability insurance and for which a specific marine liability insurance policy applies. In addition, Lessee and any sublessee operating marinas shall maintain Marina Operator's Legal Liability insurance, or the equivalent, covering bodily injury or property

damage liability, including collision of vehicles arising out of sublessee's operations and covering legal liability for property in the care, custody or control of the sublessee and covering liability arising out of the use of the Premises, products, completed operations and liability assumed under contract. Limits shall be no less than \$1,000,000 per occurrence and aggregate.

9.4 Worker's Compensation Insurance. Lessee, if it has any employees, and Lessee's management agents, shall maintain in force during the Term of this Lease, Worker's 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 times during the Lease Term, insurance against liability arising from or related to the United States Longshoremen's and Harbor Worker's Act, hereafter "USL&H". If the USL&H exposure is incidental or only occasional, coverage may be endorsed on Lessee's worker's compensation policy on an "if any" basis.

9.5 Boiler and Machinery. Boiler and Machinery insurance with limits of not less than actual replacement cost for all property and improvements, encompassing explosion and breakdown.

9.6 Required Provisions. Lessee's insurance policies required by this Article 9 shall be for a term of not less than one year and shall additionally provide:

(a) that the full amount of any losses to the extent insurance proceeds are available shall be payable to additional insureds notwithstanding any act, omission or negligence of Lessee which might otherwise result in forfeiture of such insurance;

(b) in any property insurance policy, a waiver of all right of subrogation against Port and its Board members, and Port's officers, agents, employees and volunteers with respect to losses payable under such

policies;

(c) in any property insurance policy, that such policies shall not be invalidated should the insured waive, prior to a loss, any or all right of recovery against any party for losses covered by such policies;

(d) that the policies shall provide coverage on a "primary basis" with respect to the additional insureds, regardless of any other insurance or self-insurance that such additional insureds may elect to purchase or maintain;

(e) that losses, if any, shall be adjusted with and payable to Lessee, Port and Encumbrance Holders, if any, pursuant to a standard mortgagee clause;

(f) that such policies shall not be suspended, voided, canceled, reduced in coverage or in limits or materially changed without at least thirty (30) Days prior written notice to Port and all Encumbrance Holders or fourteen (14) Days in case of cancellation for failure to pay the premium;

(g) that the insurance shall apply separately to each insured against whom a claim is made, except with respect to the overall limits of said insurer's liability; and,

(h) that such policies shall contain no special limitations on the scope of protection afforded to the additional insureds, and no failure to comply with the reporting provisions of such policies shall affect the coverage afforded to such additional insureds.

9.7 Failure to Procure Insurance. Failure of Lessee to procure or renew the herein required insurance shall, if not cured within seven (7) Days after written notice from Port, constitute a default hereunder. In the event of such failure, in addition to the other rights and remedies provided hereunder, Port may, at its discretion, procure or renew such insurance and

pay any and all premiums in connection therewith and all monies so paid by Port shall be repaid by Lessee, with interest thereon at the Applicable Rate, to Port within five (5) Days after Lessee's receipt of written demand therefor.

ARTICLE 10 MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION.

10.1 Lessee's Maintenance and Repair Obligations. Lessee shall maintain the Premises, including paved or unpaved ground surfaces and Improvements thereon (excluding the Excluded Conditions), in conformance with the Design Standards and this Article 10. Without limiting the foregoing, at Lessee's sole cost and expense, but subject to the terms and conditions of this Lease, Lessee shall be responsible for (a) maintaining on-site revetments and dredging water areas within the Premises, subject to clear, written specifications of required design depth by Port, and (b) keeping and maintaining the Premises and all equipment, Improvements or physical structures of any kind which may exist or be erected, installed or made on the Premises (other than the Excluded Conditions) in the Specified Maintenance Condition set forth in this Section 10.1, and shall make all necessary repairs and replacements thereto, except as otherwise provided in this Article 10. For purposes of this Section 10.1, the "Specified Maintenance Condition" is that such improvements shall remain in a condition comparable to the Competitive Properties selected pursuant to Subsection 5.10.2 of this Lease (in the case of apartments), and/or other similarly situated business operations of the same general type or character (i.e., boat slips, marina retail, etc.) and of a similar age, which are conducted in marina areas of Southern California (but expressly not including the Esprit marina development in Marina del Rey). To carry out this provision, within thirty (30) Days after one (1) year after the end of the Construction Period, Lessee and Port shall select a real estate broker or consultant to identify three (3) or more competitive business operations of the same general type or character and of a similar age which are conducted in marina areas of Southern California (the "Competitive Marina Uses"). Lessee and Port shall record in the land records of Ventura County a memorandum of the relative positions of the project rent and the market

rent for the Competitive Properties (the "Section 10.1 Memorandum"). Lessee and Port shall share equally the cost of the real estate broker or consultant selected pursuant to this Section. Lessee shall undertake all such maintenance, repairs or replacements in compliance with Applicable Laws and the terms and provisions of this Article 10. Lessee shall maintain all Improvements on the Premises (other than the Excluded Conditions) in a safe, clean, wholesome and sanitary condition, in the commercially reasonable judgment of the General Manager, and in compliance with all Applicable Laws. Lessee shall, at its own cost and expense, install, maintain and replace landscaping between the streets and the building footprints on the Premises as is necessary in the commercially reasonable judgment of the General Manager to maintain the appearance of the Premises in a manner consistent with other properties in Ventura Harbor. Lessee specifically agrees to provide proper containers for trash and garbage which are screened from public view, to keep the Premises free and clear of rubbish and litter. Port in its proprietary capacity shall have the right to enter upon and inspect the Premises at any reasonable time for cleanliness, safety and compliance with this Section 10.1, as long as such entrance is not done in a manner which would unreasonably interfere with the operation of the Premises. The exclusion of the Excluded Conditions from Lessee's maintenance obligations under this Section 10.1 shall not relieve Lessee from the obligation to repair and restore any damage to the Excluded Conditions caused by Lessee, its agents, employees, subtenants or contractors, or by Improvements constructed by or on behalf of Lessee, and Lessee hereby agrees to perform such repair or restoration work at Lessee's sole cost and expense.

10.2 Option to Terminate for Uninsured Casualty. In the event of any damage to or destruction of the Premises, or any Improvements located thereon (other than the Excluded Conditions, except to the extent damage thereto is caused by the Lessee, its agents, employees, subtenants or contractors, or by Improvements constructed by or on behalf of Lessee), Lessee shall, except as otherwise expressly provided in this Section 10.2, promptly repair and/or restore such Improvements to their condition existing prior to the damage or destruction. Except

as otherwise expressly provided in this Section 10.2, such obligation to repair and restore is absolute, and is in no way dependent upon the existence or availability of insurance proceeds. Repair and restoration of any damage or destruction shall take place in accordance with the provisions of Article 5. Notwithstanding the foregoing, Lessee shall have the option to terminate this Lease and be relieved of the obligation to restore the Improvements on the Premises where all or substantially all of the Improvements on the Premises (other than the Excluded Conditions) are substantially damaged or destroyed and such damage or destruction resulted from a cause not required to be insured against by this Lease and not actually insured against (an "Uninsured Loss"), and where all of the following occur:

10.2.1 No more than one hundred (100) Days following the Uninsured Loss, Lessee shall notify Port of its election to terminate this Lease; to be effective, this notice must include both a copy of Lessee's notification to the Encumbrance Holder, if any, of Lessee's intention to exercise this option to terminate and Lessee's certification under penalty of perjury that Lessee has delivered or mailed such notification to the Encumbrance Holder in accordance with this Subsection 10.2.1. Port shall be entitled to rely upon the foregoing notice and certification as conclusive evidence that Lessee has notified the Encumbrance Holder regarding Lessee's desire to terminate this Lease.

10.2.2 No more than sixty (60) Days following the giving of the notice required by Subsection 10.2.1 or such longer time as may be reasonable under the circumstances, Lessee shall, at Lessee's expense: remove all debris and other rubble from the Premises; secure the Premises against trespassers; and, at Port's election, remove all remaining Improvements on the Premises.

10.2.3 No more than sixty (60) Days following the loss, Lessee delivers to Port a deed to the Premises in recordable form, in form and content satisfactory to Port and/or with such other documentation as may be reasonably requested by

Port or any title company on behalf of Port, terminating Lessee's interest in the Premises and reconveying such interest to Port free and clear of any and all Encumbrances and Subleases.

10.2.4 Within ten (10) Days following Port's receipt of the notice referred to in Subsection 10.2.1, Port has not received both written notice from the Encumbrance Holder, if any, objecting to such termination and an agreement containing an effective assignment of Lessee's interest in this Lease to such Encumbrance Holder whereby such Encumbrance Holder expressly assumes and agrees to be bound by and perform all of Lessee's obligations under this Lease.

10.3 No Option to Terminate for Insured Casualty. Lessee shall have no option to terminate this Lease or otherwise be relieved of its obligation to restore the Improvements on the Premises where the damage or destruction results from a cause required to be insured against by this Lease.

10.4 No Port Obligation to Make Repairs. Port shall have no obligation whatsoever to make any repairs or perform any maintenance on the Premises.

10.5 Repairs Not Performed by Lessee. If Lessee fails to make any repairs or replacements as required, General Manager may notify Lessee of said failure in writing, and should Lessee fail to cure said failure and make repairs or replacements within a reasonable time, Port may make such repairs or replacements and the cost thereof, including, but not limited to, the cost of labor, overhead, materials and equipment, shall be charged against Lessee as provided in Section 13.5. Any notice given by Port to Lessee pursuant to Section 13.5 shall be deemed to satisfy the requirement for notice pursuant to this Section 10.5.

10.6 Other Repairs to Port Facilities on the Premises. Although having no obligation to do so, Port may, at its own cost and at its sole discretion, perform or permit others to perform any necessary dredging, filling, grading or repair of

water systems, sewer facilities, roads, or other Port-owned facilities on or about the Premises. Any entry by Port onto the Premises pursuant to this Section 10.6 shall be made in accordance with the following requirements: (i) prior to entry onto the Premises Port shall cause each of its contractors to provide to Lessee evidence that such contractor has procured commercial general liability insurance coverage pertaining to such contractor's activities on the Premises, which insurance coverage shall be consistent with Port's insurance requirements generally applicable to Port contractors, and shall name Lessee as an additional insured; (ii) Port's contractors shall comply with industry standard safety requirements; and (iii) Port shall repair, or cause its contractors to repair, any damage to the Premises caused by the activities of Port and/or its contractors on the Premises pursuant to this Section 10.6. In any such extraordinary situation Port and Lessee agree to cooperate to define a work and/or access area that is reasonably acceptable to both parties.

10.7 Notice of Damage. Lessee shall give prompt notice to Port of any fire or material damage affecting the Premises from any cause whatsoever.

10.8 Waiver of Civil Code Sections. The parties' rights shall be governed by this Lease in the event of damage or destruction. The parties hereby waive the provisions of California Civil Code Section 1932 and any other provisions of law which provide for contrary or additional rights.

10.9 Maintenance District. Provided Lessee maintains the Premises as provided in Section 10.1, Lessee shall have no obligation to participate in the cost of any shared maintenance program or assessment district formed for the purpose of providing maintenance for properties within Ventura Harbor.

ARTICLE 11 ASSIGNMENT AND SUBLEASE.

11.1 Subleases.

11.1.1 Definition. The term "Sublease" shall mean any lease, license, permit, concession or other interest in the Premises, or a right to use the Premises or a portion thereof, which is conveyed or granted by Lessee to a third party, and which constitutes less than the unrestricted conveyance of the entire Lessee's interest under this Lease. "Sublessee" shall be the person or entity to whom such right to use is conveyed by a Sublease.

11.1.2 Approval Required.

11.1.2.1 At least thirty (30) Days prior to the proposed effective date of any Sublease that is not a Major Sublease or an Exempt Sublease, or of any amendment or assignment of such Sublease, Lessee shall submit a copy of such Sublease, amendment or assignment to General Manager for approval, which approval shall not be unreasonably withheld, conditioned or delayed. To the extent practical, General Manager shall approve or disapprove said proposed Sublease, amendment or assignment within thirty (30) Days after receipt thereof. In no event, however, shall any such Sublease, amendment or assignment be made or become effective without the prior approval of General Manager. Each such Sublease shall specifically provide that the Sublessee shall comply with all of the terms, covenants, and conditions of this Lease applicable to the portion of the Premises subject to the Sublease.

11.1.2.2 Notwithstanding any contrary provision of this Article 11, Lessee shall not be required to obtain Port's approval of any of the following subleases, having a term of one (1) year or less (referred to herein as an "Exempt Sublease"):

(a) Any Sublease which is limited to seasonal commercial use;

(b) Any Sublease which results from Lessee's recapture after a Sublessee default;

(c) Any holdover Sublease; or

(d) Any Sublease of an individual apartment or boat slip unit in the ordinary course (but not the master lease of multiple units) to a person or persons who will physically occupy the subleased unit, provided the term of such Sublease does not exceed one (1) year and the form of the Sublease is on file with Port (each, an "Approved Apartment/Slip Lease"). Upon request by Port, Lessee shall furnish Port with a current rent roll respecting the Approved Apartment/Slip Leases and a copy of all of such Approved Apartment/Slip Leases.

The terms and provisions of Sections 11.2 and 11.3 of this Lease shall not be applicable to any Exempt Subleases.

11.1.2.3 Port shall act reasonably in reviewing and granting or denying its approval of Subleases that are subject to Port's approval pursuant to this Lease; however, Port need not approve any Sublease if Lessee is in default under any provision of this Lease at the time Port's consent is requested or at the time the Sublease is to be or become effective, nor must Port approve any Sublease which does not, as a minimum, meet or conform to the following criteria:

(a) Lessee shall give Port advance written notice of the proposed Sublease as required by this Lease, providing appropriate documentation to Port as Port may reasonably require relating to the financial capacity and reputation of the proposed Sublessee (excluding limited partners and shareholders), including but not limited to a statement of pending litigation involving the proposed Sublessee, past employment and business history of Sublessee and its managing agents or officers, and a listing of felony convictions of Sublessee, or each separate entity or person making up Sublessee.

(b) Sublessee must acknowledge in

writing that Sublessee has had an opportunity to review and has reviewed the terms and provisions of this Lease.

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

(d) By consenting to the Sublease, regardless of whether or not the Sublease contains provisions for the renegotiation of the rental to be paid by Sublessee to Lessee/sublessor, Port shall not be deemed to have waived its right to renegotiation of rentals 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 Sublessee shall become subject to such revisions should they occur.

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

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

(g) The Sublessee must acknowledge in writing that Sublessee waives all claims against Port for damages to goods, wares, merchandise, buildings, installations or other improvements in, upon, or about the sublet portion of the Premises, and agrees that Sublessee shall indemnify and save harmless Port, its elected officials and representatives, officers, agents, attorneys and employees, from and against any and all claims, demands, loss or liability of any kind or nature which Port, its elected officials and representatives, officers, agents, attorneys and employees may sustain or incur or which may be imposed upon them or any of

them, except to the extent that such claims, demands, loss or liability are caused by Port, (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 Sublessee, its officers, agents, employees, contractors, concessionaires, licensees, patrons or visitors, and (ii) in connection with any and all liens for labor, services, supplies or materials arising out of the design, construction, repair, alteration or installation of structures, improvements, equipment or facilities within the Premises caused by Sublessee.

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

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

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

(k) Lessee shall not be required to pay any fee to Port for reviewing or processing any Sublease, unless Lessee proposes to enter into a Sublease (other than an Exempt Sublease) that fails to comply with the provisions of this Subsection 11.1.2.3, in which case Lessee shall pay a non-refundable fee to Port for processing each request in the amount of Two Thousand Five Hundred Dollars (\$2,500), plus Port'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, and the value of services provided by employees of Port, its elected officials and lease administrators. The payment of Port's out-of-pocket costs and overhead expenses shall be made within thirty (30) Days after Lessee receives an invoice from Port for said costs and expenses.

(l) Under the Sublease, Sublessee shall expressly agree in writing to maintain and make available for inspection by Port all records required by Article 4, above, in the manner set forth in that Article.

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

11.1.3 Major Subleases.

11.1.3.1 For purposes of this Lease, a "Major Sublease" is a Sublease characterized by each of the following criteria, but not including such a Sublease if the Sublessee is an Affiliate of Lessee or the General Partners of Lessee as of the Effective Date:

(a) the subleased property includes all or substantially all of the Residential Improvements;

(b) the Sublessee is responsible for capital improvements; and

(c) the Sublessee either has an option to acquire Lessee's interest in the subleased premises, or the term of the Sublease is co-terminus with this Lease.

11.1.3.2 The Sublessee under such agreement is sometimes referred to in this Lease as a "Major Sublessee".

11.1.3.3 Lessee shall enter into a Major Sublease only with a reputable owner or manager of comparable residential apartment and marina facilities such as exist on the Premises. In light of the inherent detailed nature of a Major Sublease, Lessee shall deliver to Port a copy of any proposed Major Sublease, or any sub-sublease or any other document pursuant to which an interest is proposed to be transferred in all or substantially all of the Premises, not less than sixty (60) Days prior to the proposed effective date of such proposed Major Sublease or other document, for Port's review and approval pursuant to the procedures and requirements specified in Section 11.3.

11.1.3.4 Notwithstanding any other provision of this Lease, any Sublease that is a Major Sublease shall be subject to payment of the Net Proceeds Share pursuant to Section 4.8 of this Lease, and any Sublease that is not a Major Sublease shall not be subject to payment of the Net Proceeds Share pursuant to Section 4.8, but, except as provided in the next sentence, shall be subject to Port's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding any provision of this Lease to the contrary, an Exempt Sublease shall not be subject to Port approval.

11.2 Change of Ownership.

11.2.1 "Change of Ownership" shall mean any of the following:

(a) Lessee's granting of a Major Sublease;

(b) any transaction or series of transactions affecting different ownership interests (as illustrated in Exhibit "E" attached to this Lease) which constitute an Aggregate Transfer of the beneficial interests in, or a Change of Control of, Lessee, this Lease or a Major Sublease;

(c) except as provided in Subsection 11.2.2, below, the addition of a new Member to Lessee as of the Effective Date;

or

(d) subject to Subsection 11.2.1.2, below, any change in the form, method or status of ownership of Lessee (for example, a change from a limited liability company to a limited partnership or corporation) and a transfer by Lessee of this Lease and the Premises to such new entity.

No Exempt Sublease shall be treated as a Change of Ownership for any purpose under this Lease.

11.2.1.1 For the purposes of this Lease, "Change of Control" shall refer to a transaction or series of transactions whereby the transferee acquires the right and ability, without further approval by any other person or entity, to control the day-to-day activities of Lessee and the management and operation of the Premises.

11.2.1.2 Lessee shall not execute a Change of Ownership, as defined in this Section 11.2, or assign this Lease and the Premises to any new entity as a result of a change in the form, method, or status of ownership interests in Lessee, without the prior written consent of Port, which shall not be unreasonably withheld, conditioned or delayed. It shall be reasonable for Port to condition its consent to such change and transfer on reasonable amendments to this Lease (except amendments to the economic terms of this Lease and amendments to Subsection 11.2.2, below) to the extent necessary to ensure that Port's rights to approve changes in control of the new entity are not adversely diminished by such change and transfer. Any dispute over the reasonableness of or necessity for such amendment shall be subject to arbitration pursuant to Article 16 hereof and no such transfer shall be effective until the completion of any such arbitration proceeding.

11.2.2 Excluded Transfers. Notwithstanding anything to the contrary contained in this Lease, Changes of Ownership resulting from the following transfers shall not be subject to the approval of Port nor shall they be deemed to create an obligation to pay Port a Net Proceeds Share:

11.2.2.1 a transfer by an Original Member of Lessee as of the Effective Date, to the other Original Member of Lessee as of the Effective Date.

11.2.2.2 any transfer, so long as one or more of the Original Members of Lessee as of the Effective Date retains the right and ability, without further approval by any other person or entity, to control the day-to-day activities of Lessee and the management and operation of the Premises.

11.2.2.3 a transfer to a spouse in connection with a property settlement agreement or decree of dissolution of marriage or legal separation, or a transfer by a partner directly to a spouse, sibling or descendant, by way of gift, devise, intestate succession or operation of law; provided, however, that Port shall have the right to reasonably approve the person or management company proposed to manage the Premises following such a transfer. Notwithstanding the foregoing, Lessee shall have the right, without the prior approval of Port, to retain E&S Ring Management Company, or another Affiliate of an Original Member of Lessee, as the property manager for the Property;

11.2.2.4 in the event of the death of any person who is a natural person who controls an Original Member, a transfer to any person or entity, by way of gift, devise, intestate succession or operation of law; provided, however, that Port shall have the right to reasonably approve the person or management company proposed to manage the Premises following such a transfer. Notwithstanding the foregoing, Lessee shall have the right, without the prior approval of Port, to retain E&S Ring Management Company, or another Affiliate of an Original Member of Lessee, as the property manager for the Property;

11.2.2.5 a transfer of the existing interests in Lessee held by any individual, directly to any living trust, by way of gift, devise, intestate succession or operation of law, where the transferee living trust's assets are substantially the same as the transferor, together with the

subsequent transfer of such interests to the beneficiaries of such trust upon the death of a person who controls an Original Member; provided, however, the parties acknowledge (a) that a subsequent dilution or transfer of any of said interests shall be subject to Port approval and fees as provided herein, and (b) Port shall have the right to reasonably approve the person or management company proposed to manage the Premises following such a transfer;

11.2.2.6 a transfer of a beneficial interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation whose stock is traded publicly on a national stock exchange or is traded in the over-the-counter market and whose price is regularly quoted in recognized national quotation services; provided, however, that this exclusion shall not apply to a single transaction or series of transactions whereby an Aggregate Transfer (as defined in Subsection 11.2.3 of this Lease) of the beneficial interest in this Lease has occurred, or which otherwise effects a Change of Control in such entity;

11.2.2.7 after the Completion Date, a mere change in the form, method or status of ownership (other than a transfer of beneficial interests between or among individuals and/or entities controlled by such individuals); provided that this exclusion shall not apply to a single transaction or series of related transactions whereby an Aggregate Transfer of the beneficial interests in Lessee, this Lease or a Major Sublease has occurred or which otherwise effects a Change of Control;

11.2.2.8 any transfer resulting from a Condemnation by Port;

11.2.2.9 any transfer of a security interest in connection with an Initial Financing Event; or

11.2.2.10 any Exempt Sublease.

11.2.3 Aggregate Transfer. "Aggregate Transfer" shall refer to the transfer of fifty percent (50%) or more of

the shares of stock, partnership interests, membership interests or any other equity interests (which constitute beneficial interests in Lessee, this Lease or a Major Sublease, as appropriate) in a transaction or series of transactions (other than those enumerated in Subsection 11.2.2) occurring since the latest to occur of: (a) the Effective Date; (b) the most recent Major Assignment; or (c) the date which is twenty (20) years prior to the transaction in question.

11.2.4 Beneficial Interest. As used in this Lease, the "beneficial interest," "beneficial interest in this Lease," or "beneficial interest in a Major Sublease" shall refer to the interests of the natural persons who comprise the ultimate owner or owners of Lessee's interest in this Lease or a Major Sublease, or a Major Sublessee's interest in a Major Sublease, whichever is appropriate, regardless of the form of such ownership and regardless of whether such interests are owned through corporations, trusts, partnerships, limited liability companies or layers thereof.

11.2.4.1 Interests Held By Entities. Except as otherwise provided herein, an interest in Lessee, this Lease or a Major Sublease held or owned by a partnership, limited liability company, corporation or other entity shall be treated as owned by the partners, members, shareholders or other equity holders of such entity in proportion to their respective equity interests, determined by reference to the relative values of the interests of all partners, members, shareholders or other equity holders in such entity. Where more than one layer of entities exists between Lessee or a Major Sublessee, as appropriate, and the ultimate owners, then the foregoing sentence shall be applied successively to each such entity in order to determine the ownership of the beneficial interests in Lessee, this Lease or a Major Sublease, as appropriate, and any transfers thereof.

11.2.4.2 Ownership of Multiple Assets. The proceeds of any event constituting or giving rise to a Change of Ownership shall be apportioned to this Lease or a Major Sublease, whichever is appropriate, and to any other assets transferred in the same transaction in proportion to the

relative Fair Market Values of the respective assets transferred. The Net Proceeds Share shall be calculated only by reference to the amount of such proceeds apportioned to this Lease, a Major Sublease or the beneficial interests therein, whichever is appropriate.

11.3 Approval of Assignments and Major Subleases. Except as specifically hereinbefore provided in this Article 11, Lessee shall not, without the prior written consent of Port, which shall be based upon factors described in Exhibit "B" hereto, which is incorporated herein by this reference ("Assignment Standards"), either directly or indirectly give, assign, hypothecate, encumber, transfer, or grant control of this Lease or any interest, right, or privilege therein (including without limitation the right to manage or otherwise operate the Improvements located from time to time on the Premises), or enter into a Major Sublease affecting the Premises, or license the use of all or substantially all of the Premises. Notwithstanding the foregoing, Lessee shall have the right, without the prior approval of Port, to retain E&S Ring Management Company, or another Affiliate of an Original Member of Lessee, as the property manager for the Property. Subject to Subsection 11.2.2, any Change of Ownership shall constitute an assignment of Lessee's interest under this Lease. In addition, for purposes of this provision, the following acts of Lessee shall require the prior written consent of Port to be effective, subject to Subsection 11.2.2: (1) the addition, removal or replacement of one or more General Partners or managing members in a Lessee which is a limited partnership or limited liability entity, except (a) by death, insolvency, incapacity, resignation (except for a sole General Partner, if any) or removal of a General Partner or managing member and his replacement by a vote of the limited partners, the remaining General Partners or remaining members, or (b) if any General Partner or managing member owning more than fifty percent (50%) of the interests of the partnership or limited liability entity acquires the interest of another General Partner or managing member owning fifteen percent (15%) or less of the interests in the partnership or limited liability entity; (2) the sale, assignment, or transfer of fifty-percent (50%) or more of the

stock in a corporation which owns or is a General Partner in a partnership owning an interest in this Lease. Lessee shall provide Port with any information reasonably requested by Port in order to determine whether or not to grant approval of the assignment as provided herein. These same limitations and approval requirements shall apply with respect to the Sublessee's interest under a Major Sublease.

11.3.1 Port's Use of Discretion and Limitation on Permissible Assignees. In exercising its discretion to approve assignments as provided in this Section 11.3, Port shall take into account the Assignment Standards and, if Port determines that such Assignment Standards are satisfied, Port shall not unreasonably withhold or delay its consent to any proposed assignment.

11.3.2 Involuntary Transfers Prohibited. Except as otherwise specifically provided in this Lease, neither this Lease nor any of the Lessee's interest in this Lease (as opposed to ownership interests in Lessee itself) shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Lessee, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Lessee, or by any process of law including proceedings under the Bankruptcy Act.

11.3.3 Procedure. Requests for approval of any proposed assignment shall be processed in accordance with the following procedures:

11.3.3.1 Prior to entering into any agreement requiring the approval of Port pursuant to this Sections 11.1 or 11.2, Lessee (or the entity seeking approval of such assignment) shall notify Port and deliver to Port all information and documents relevant to the proposed assignment, including without limitation any term sheets, letters of intent, Major Subleases in final form, any other documents which set forth any proposed agreement regarding the Premises and the information set forth in Subsection 11.3.3.5. Port will evaluate the information provided to it and Port may request

additional information as may be reasonably necessary to act on the request.

11.3.3.2 In completing its review of the proposal and granting or withholding its consent thereto, Port will not be bound by any deadline contained in any proposed assignments, Major Subleases, escrow instructions or other agreements to which Port is not a party.

11.3.3.3 Lessee acknowledges that the time needed for Port to review a proposed assignment depends on many factors, including without limitation the complexity of the proposed transaction, the financial and other information submitted for review, and the workload of Port's personnel. Notwithstanding the foregoing, Port shall use its best efforts to process and act upon a requested approval of an assignment of Lessee's interest under this Article 11 in a prompt and expeditious manner.

11.3.3.4 Lessee shall be required to reimburse Port for its Actual Costs incurred in connection with the proposed assignment, whether or not Port ultimately grants its approval to the proposed assignment. However, in the event that Port approves the proposed assignment, Lessee shall receive a credit toward those costs to the extent that an Administrative Charge is paid in connection with the assignment.

11.3.3.5 Lessee or the proposed assignee shall provide Port with sufficient information for Port to determine if the public interest will be served by approving the proposed transaction. The information that must be provided includes, but shall not be limited to, the following:

- (a) Nature of the Assignee. Full disclosure is required in accordance with this Lease and disclosure requirements of Port then in effect. Additionally, a flowchart identifying the chain of ownership of the assignee and its decision-making authority shall be provided to Port. Port shall be advised if the proposed assignee,

or any other person or entity for whom disclosure is required pursuant to Port's disclosure requirements then in effect, has had any leasehold or concessionaire's interest canceled or terminated by the landlord due to the tenant or Lessee's breach or default thereunder;

- (b) Financial Condition of Assignee. Port shall be provided with current, certified financial statements, including balance sheets and profit and loss statements, demonstrating the proposed assignee's financial condition for the preceding five (5) years, or such shorter period that assignee has been in existence. This requirement shall also apply to any related person or entity which will be responsible for or guarantee the obligations of the proposed assignee or provide any funds or credit to such proposed assignee.
- (c) Financial Analysis. Port shall be provided with the proposed assignee's financing plan for the operation of the Premises and for any contemplated improvement thereof, demonstrating such proposed assignee's financial capability to so operate the Premises and construct such improvements. Such financing plan shall include, but not be limited to, information detailing (1) equity capital; (2) sources and uses of funds; (3) terms of financing; (4) debt service coverage and ratio; and (5) loan to value ratio. The proposed assignee shall also provide Port with documentation demonstrating such proposed assignee's financial viability, such as letters of commitment from financial institutions which demonstrate the availability of sufficient funds to complete any proposed construction or improvements on the Premises. Further, such proposed assignee shall authorize

the release of financial information to Port from financial institutions relating to the proposed assignee or other information supplied in support of the proposed assignment.

- (d) Business Plan. Port shall be provided with the proposed assignee's business plan for the Premises, if applicable, including pro forma financial projections for the Premises for the five (5) year period beginning upon the commencement of the proposed assignment. Such pro forma projections will include capital costs, income and expenses, as well as debt service and all other payments to providers of debt and equity, and will be accompanied by a statement of basic assumptions and an identification of the sources of the data used in the production of such projections.
- (e) Assignor's Financial Statements. Port shall be provided with certified financial statements, including balance sheets and profits and loss statements, concerning the assignor Lessee and its operations for the three (3) most recent years prior to the proposed transaction.
- (f) Cure of Defaults. If an Event of Default has occurred and has not been cured prior to the request for approval of a voluntary assignment, Port shall be provided with the proposed assignee's specific plans to cure such Event of Default. Port shall not be required to approve a voluntary assignment if an Event of Default is pending. In the case of any involuntary transfer, Port shall be provided with the proposed assignee's specific plans to cure any pending Event of Default, before or after the date of the proposed assignment.
- (g) Prospectus Materials. Port shall be provided

with any materials distributed to third parties relating to the business of the proposed assignee to be conducted on, from or relating to the Premises.

- (h) Other Information. Port shall be provided with all pertinent documentation regarding the proposed assignment, including documentation of the terms and conditions of such assignment, a description of the proposed use of the Premises and any proposed alterations or improvements to the Premises. Additionally, Port shall be provided with any and all other information which it reasonably requests of Lessee in connection with its review of the proposed transaction, including without limitation materials pertinent to the issues noted in this Subsection to the extent that they exist, such as escrow instructions, security agreements, personal property schedules, appraisals, market reports, lien releases, UCC Statements, preliminary title reports, management agreements affecting the Premises, contracts in excess of \$25,000 affecting the Premises, schedules of pending or threatened litigation, and attorneys' closing opinions relating to Lessee, the proposed assignee or the Premises. Port shall endeavor to keep the foregoing materials confidential, subject to the Public Records Act and other Applicable Laws.

11.3.3.6 Nondisturbance and Estoppel. At the request of Lessee, Port shall agree to execute a nondisturbance and attornment agreement, and a lessor's estoppel, on commercially reasonable terms in favor of any Major Sublessee or commercial Sublessee.

11.3.3.7 Final Documents. Prior to granting its approval over any proposed assignment, Port shall be provided with an executed Assignment and Acceptance of

Assignment in form and content as approved or supplied by the Port. Ten (10) copies of each must be submitted to Port, of which five (5) shall be signed originals and properly acknowledged.

11.3.4 Port Right to Recapture.

If Lessee proposes to transfer this Lease, in whole but not in part, or enter into any Major Sublease affecting the Premises for a term which commences after the Construction Period (with either such proposed transaction referred to as a "Proposed Transfer"), it shall provide Port with written notice of such proposal and the sale price ("Lessee Sale Price") at which it is willing to consummate the Proposed Transfer. Within sixty (60) Days thereafter, Port shall provide Lessee with written notification as to whether it has elected to acquire an option to purchase the interest which is the subject of the Proposed Transfer. For purposes of this Subsection 11.3.4, a sale of the entity which owns the leasehold interest in the Premises or a Major Sublease shall be deemed to be a transfer of the Lease.

During said sixty (60) Day period, Lessee may continue to market the interest which is the subject of the Proposed Transfer, provided that such interest is offered subject to Port's rights as provided herein. In the event that, prior to the expiration of said sixty (60) Day period, Port has given notice to Lessee that it has elected to acquire said option, Lessee shall deliver to Port an assignable option to purchase the interest which is the subject of the Proposed Transfer ("Port Option") at the Lessee Sale Price. Such Port Option shall have a term of five (5) calendar months. During the term of the Port Option, Lessee shall make the Premises and its books and records reasonably available for inspection by Port and third parties as reasonably requested by Port. In the event that Port causes Lessee to grant the Port Option and subsequently Port fails to purchase the interest which is the subject of the Proposed Transfer at the Lessee Sale Price, Port shall pay to Lessee at the expiration of the Port Option period (or, at Port's election, credit to Lessee against the next applicable installment(s) of

Annual Minimum Rent and Percentage Rent), a sum (the "Port Option Price") which represents (i) three percent (3%) of the Lessee Sale Price, plus (ii) seven percent (7%) per annum on said three percent (3%) of the Lessee Sale Price, from the date Lessee received notice of Port's election to receive the Port Option through the date on which the Port Option Price, together with interest thereon, is paid or credited in full. If Port either (a) fails to elect to cause Lessee to grant the Port Option within said sixty (60) Day period or (b) gives notice that it has elected not to acquire the interest which is the subject of the Proposed Transfer, then Lessee shall be entitled to consummate the Proposed Transfer with a third party (subject to Port's approval rights as otherwise set forth in this Lease) during the ensuing nine (9) month period so long as the Proposed Transfer price is equal to or greater than the Lessee Sale Price last offered to Port and upon no more favorable material terms to the transferee. In the event that Port elects to recapture all or any portion of the Premises as provided herein, Lessee agrees to execute promptly a termination agreement and such other documentation as may be reasonably necessary to evidence the termination of this Lease, to set a termination date and to prorate rent and other charges with respect to the termination as to the applicable portion of the Premises. Port's rights pursuant to this Subsection 11.3.4 shall not apply to any Changes of Ownership or Financing Events or those events identified in Subsection 11.2.2 of this Lease.

11.3.5 Port Credits Toward Purchase Price. In the event that Port or its assignee elects to exercise the Port Option, it shall receive the following credits toward the Lessee Sale Price: (1) the Net Proceeds Share which would be payable to Port in the event that a third party were to purchase the interest offered at the Lessee Sale Price and (2) an amount which represents unpaid Annual Minimum Rent, Percentage Rent, and all other amounts payable under the Lease, if any, with late fees and interest as provided herein, from the end of the period most recently subject to Port audit through the date of the purchase of the interest by Port. In lieu of the credit described in (2) above, Lessee may provide Port with a letter of credit or other security satisfactory to Port to secure the payment of such unpaid amounts when finally determined by Port.

During the term of the Port Option, Lessee shall cause to be available to Port all books and records reasonably necessary in order to determine the amount of such unpaid Annual Minimum Rent, Percentage Rent, and other amounts payable under the Lease. In the event that Port or its assignee exercises the Port Option, but the transaction fails to close due to a failure of the parties to agree upon an appropriate allowance for such unpaid Annual Minimum Rent, Percentage Rent, and other amounts or appropriate security for the payment thereof, then Port shall have no obligation to pay or credit to Lessee the Port Option Price.

11.4 Terms Binding Upon Successors, Assigns and Sublessees. Except as otherwise specifically provided for herein, each and all of the provisions, agreements, terms, covenants, and conditions herein contained to be performed, fulfilled, observed, and kept by Lessee hereunder shall be binding upon the heirs, executors, administrators, successors, and assigns of Lessee, and all rights, privileges and benefits arising under this Lease in favor of Lessee shall be available in favor of its heirs, executors, administrators, successors, and assigns. Notwithstanding the foregoing, no assignment or subletting by or through Lessee in violation of the provisions of this Lease shall vest any rights in any such assignee or Sublessee. Any approved assignment of this Lease shall release the assignor of all liability arising due to actions or omissions on or after the effective date of such assignment, provided the assignee assumes all of such liability, including without limitation the obligation of assignee to cure any defaults and delinquencies under this Lease and to pay Port Percentage Rent and any other amounts attributable to the period prior to the assignment, but not discovered by Port or the assignee until after the assignment; provided, further, the assignor shall not be relieved of any liability for the payment of the Administrative Charge or the required portion of any Net Proceeds Share or Net Refinancing Proceeds which arise upon such assignment as provided herein.

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ARTICLE 12 ENCUMBRANCES.

12.1 Financing Events. Lessee may, with the prior written consent of General Manager, which shall not be unreasonably withheld, and subject to any specific conditions which may be reasonably imposed by General Manager, consummate one or more Financing Event(s) (as defined below). Port and Lessee hereby acknowledge that prior to the Effective Date, General Manager has approved the Construction Loan of the Initial Financing Event. Lessee shall submit to General Manager the deposit described in Subsection 4.7.1 and a complete set of all proposed transaction documents in connection with each proposed Financing Event that is (a) the Permanent Loan of the Initial Financing Event, or (b) any other Financing Event that is not the Initial Financing Event and occurring subsequent to the Initial Financing Event ("Subsequent Financing Event"). General Manager shall have sixty (60) Days from Port's receipt of the deposit and complete set of the proposed transaction documents, in which to grant or withhold approval of the Subsequent Financing Event. If not approved in writing within such sixty (60) Day period, the proposed Subsequent Financing Event shall be deemed disapproved by General Manager. Lessee shall reimburse Port for Port's Actual Cost incurred in connection with its review of the proposed Subsequent Financing Event in accordance with the procedure described in Subsection 4.7.1. For the purposes of this Lease, a "Financing Event" shall mean any financing or refinancing consummated by Lessee, whether with private or institutional investors or lenders, where such financing or refinancing is an Encumbrance (as defined below).

12.1.1 Encumbrances. As used in this Lease, an "Encumbrance" shall be any direct or indirect grant, assignment, transfer, mortgage, hypothecation, grant of control over, or other monetary encumbrance of all or any portion of Lessee's interest under this Lease and the estate so created, including without limitation a direct or indirect assignment of Lessee's right to receive rents from Sublessees, and a pledge of partnership interests or other beneficial ownership interests in Lessee by the principals of Lessee if a direct assignment of such partnership or ownership interests would have required

Port's consent under this Lease, to a lender in connection with consummation of the Construction Loan and/or Permanent Loan of the Initial Financing Event, or (upon Port approval of the Subsequent Financing Event), the consummation of the Subsequent Financing Event (the "Encumbrance Holder") on the security of Lessee's interest in the Lease and the Premises, the shares or interests of beneficial ownership in Lessee, or otherwise secured by Lessee's rights in and to the Premises. One (1) copy of any and all security devices or instruments as finally executed or recorded by the parties in connection with the Construction Loan of the Initial Financing Event shall be filed with General Manager not later than seven (7) Days after the Effective Date of this Lease, and one (1) copy of any and all security devices or instruments as finally executed or recorded by the parties in connection with the Permanent Loan of the Initial Financing Event and any approved Subsequent Financing Event shall be filed with General Manager not later than seven (7) Days after the effective date of such event. These same limitations and approval requirements shall apply with respect to the financing and the Encumbrance Holder of any Major Sublessee's interest pursuant to a Major Sublease.

12.1.2 Consent Not Required. The written consent of Port shall not be required in the case of:

12.1.2.1 Subject to Subsection 12.1.3.4 and Subsection 12.1.3.5, a transfer of this Lease or a Major Sublease at a foreclosure sale or at a judicial foreclosure or voluntary conveyance to the Encumbrance Holder, its nominee or an affiliate in lieu of such foreclosure ("Foreclosure Transfer" and the transferee in a Foreclosure Transfer is referred to herein as a "Foreclosure Transferee"); or

12.1.2.2 A single subsequent transfer of the Lease or a Major Sublease by an Encumbrance Holder or its nominee who was a purchaser at such foreclosure sale or transfer in lieu thereof, provided the transferee expressly agrees in writing in a form and manner reasonably acceptable to Lessor to assume and to perform all of the obligations under this Lease and, if applicable, a Major Sublease, except the Excluded

Defaults accruing prior to such transferee's period of ownership.

12.1.2.3 Intentionally Omitted.

12.1.3 Effect of Foreclosure. In the event of a transfer under Subsection 12.1.2, the Encumbrance Holder shall forthwith give notice to Port in writing of any such transfer setting forth the name and address of the transferee and the effective date of such transfer, together with a copy of the document by which such transfer was made.

12.1.3.1 Any transferee under the provisions of Subsection 12.1.2.1 which is a commercial bank, savings and loan institution, insurance company, pension fund, investment bank, opportunity fund, mortgage conduit, real estate investment trust or other similar financial institution which ordinarily engages in the business of making loans secured by collateral similar to the Premises, or an affiliate thereof (collectively, "Institutional Lender"), shall be liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults accruing prior to the date of transfer under Subsection 12.1.2.1 to the Institutional Lender) until a subsequent transfer of the Lease by the Institutional Lender permitted under Subsection 12.1.2.2, or any other transfer approved by written consent of Port.

12.1.3.2 A transferee under Subsection 12.1.2.1 which is not an Institutional Lender and any subsequent transferee under the provisions of Subsection 12.1.2.2 shall be liable to perform the full obligations of Lessee under this Lease whether accruing prior to, during or after such transferee's period of ownership, except the Excluded Defaults accruing prior to such transferee's period of ownership and as a condition to the completion of such transfer must cure, remedy, or correct any Event of Default (except for Excluded Defaults) existing at the time of such transfer or arising thereafter due to an event or occurrence before date of transfer.

12.1.3.3 Neither an Administrative Charge nor any Net Proceeds Share shall be payable with respect to or charged against any amount payable under the Encumbrance to or for the benefit of the Encumbrance Holder in connection with a transfer pursuant to Subsection 12.1.2.

12.1.3.4 Notwithstanding any provision of this Lease to the contrary, Port agrees that it will not terminate this Lease because of any default or breach hereunder on the part of Lessee if, prior to expiration of the foreclosure period, the Encumbrance Holder gives written notice to Port agreeing to cure all curable defaults under this Lease, and to assume all obligations of Lessee under this Lease during such period that the Encumbrance Holder, or a receiver appointed at the instance and request of the Encumbrance Holder, shall be in possession or entitled to possession of the Premises. If the Encumbrance Holder fails or refuses to comply with any or all of the terms of this Subsection 12.1.3.2, Port shall be released from the covenants of forbearance contained herein.

12.1.3.5 Notwithstanding the foregoing, the 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).

12.1.4 Loan to Value Ratio. Port shall have the right to disapprove any Subsequent Financing Event in which the principal amount of the indebtedness exceeds seventy-five percent (75%) of the value of the improved Premises, as determined by appraisal.

12.1.5 Encumbrances are Subject to this Lease. The mortgage and 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 Port, except as may be expressly provided in this Lease.

12.1.6 No Encumbrance of Fee Title. Lessee shall not place any Encumbrance upon the fee simple title to the Premises.

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

12.1.8 No Cross-Collateralization. The mortgage shall not be cross-defaulted with agreements relating to other property or transactions (except other portions of the Premises).

12.1.9 No Revisions without Consent of Port. 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 Port, which consent shall not be unreasonably withheld, conditioned or delayed.

12.1.10 Further Provisions. The mortgage shall expressly provide as follows:

(a) subject to the fulfillment of any conditions on such use contained in the Encumbrance Holder's Financing Documents as approved by the Port, 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; and

(b) the Encumbrance Holder, regardless of whether or not a request for notice shall have been recorded by

Port, shall give Port written notice of any default under the mortgage and related documents, which notice shall be given within twenty (20) Days after the Encumbrance Holder learns of the default.

12.1.11 Terminology. Whenever the words "mortgage" or "encumbrance" appear herein, the words "security instrument" may be substituted in their place.

12.2 Right of Encumbrance Holders and Major Sublessees to Cure Defaults. All Encumbrance Holders and Major Sublessees shall have the right, at any time during the term of its Encumbrance or Major Sublease, as applicable, but prior to the termination of this Lease, and as further provided in Section 12.4, to do any act or thing required of Lessee in order to prevent termination of Lessee's rights hereunder, and all such acts or things so done hereunder shall be treated by Port the same as if performed by Lessee.

12.3 No Subordination. Port's rights in the Premises and this Lease, including without limitation Port's right to receive Annual Minimum Rent and Percentage Rent, shall not be subordinated to the rights of any Encumbrance Holder. Notwithstanding the foregoing, an Encumbrance Holder shall have all of the rights set forth in the security instrument creating the Encumbrance, as approved by Port in accordance with Section 12.1, to the extent that such rights are not inconsistent with the terms of this Lease, including the right to commence an action against Lessee for the appointment of a receiver and to obtain possession of the Premises under and in accordance with the terms of said Encumbrance, provided that all obligations of Lessee hereunder shall be kept current, including but not limited to the payment of rent and curing of all defaults or Events of Default hereunder (except for Excluded Defaults).

12.4 Right of Notice to Encumbrance Holders and Major Sublessees. Port shall not exercise any remedy available to it upon the occurrence of an Event of Default, unless it first shall have given written notice of such default to each and every Major Sublessee and Encumbrance Holder, where the Event of

Default is one where notice is required to be given to Lessee pursuant to the terms of this Lease and the Encumbrance Holder and/or Major Sublessee have notified General Manager in writing of its interest in the Premises or this Lease and the addresses to which such notice should be delivered. Such notice shall be sent simultaneously with the notice or notices to Lessee. An Encumbrance Holder or Major Sublessee shall have the right and the power to cure the Event of Default specified in such notice in the manner prescribed below. If such Event or Events of Default are so cured, this Lease shall remain in full force and effect.

12.4.1 Manner of Curing Default. Events of Default may be cured by an Encumbrance Holder or Major Sublessee in the following manner:

(1) If the Event of Default is in the payment of rental, taxes, insurance premiums, utility charges or any other sum of money, an Encumbrance Holder or the Major Sublessee may pay the same, together with any Late Fee or interest payable thereon, to Port or other payee within thirty five (35) Days after mailing of the aforesaid notice of default to the Encumbrance Holder or the Major Sublessee. If, after such payment to Port, Lessee pays the same or any part thereof to Port, Port shall refund said payment (or portion thereof) to such Encumbrance Holder or Major Sublessee.

(2) If the Event of Default cannot be cured by the payment of money, but is otherwise curable, the default may be cured by an Encumbrance Holder or Major Sublessee as follows:

(a) If an Encumbrance Holder or Major Sublessee cures, remedies and corrects the default within thirty (30) Days after the end of Lessee's cure period as provided in Section 13.1 hereof; provided, however, if curing of such default requires activity over a longer period of time, such default may be cured if within said thirty (30) Day period, such Encumbrance Holder or Major Sublessee commences and thereafter continues to use due diligence to perform whatever acts may be required to cure

the particular default; in the event Lessee commences to cure the default within Lessee's applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the Encumbrance Holder's and Major Sublessee's thirty (30) Day period shall commence upon the later of the end of Lessee's cure period or the date upon which Port notifies the Encumbrance Holder and/or Major Sublessee that Lessee has failed or ceased to cure the default with due diligence.

(b) With respect to an Encumbrance Holder, but not a Major Sublessee, if before the expiration of said thirty (30) Day period, said Encumbrance Holder notifies Port of its intent to commence foreclosure of its interest, and within sixty (60) Days after the mailing of said notice, said Encumbrance Holder (i) actually commences foreclosure proceedings and prosecutes the same thereafter with due diligence, said sixty (60) Day period shall be extended by the time necessary to complete such foreclosure proceedings, or (ii) if said Encumbrance Holder is prevented from commencing foreclosure proceedings by any order, judgment or decree of any court or regulatory body of competent jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such order, judgment or decree, said sixty (60) Day period shall be extended by the time necessary to obtain such release or reversal and thereafter to complete such foreclosure proceedings. Within thirty five (35) Days after such foreclosure sale and the vesting of title in the purchaser thereat (whether or not such purchaser is the Encumbrance Holder), said purchaser shall, as a condition to the completion of such transfer, cure, remedy or correct the default, or commence and thereafter pursue with due diligence, the performance of the thing or acts required to be done to cure, correct and remedy said default.

12.5 New Lease.

12.5.1 Obligation to Enter Into New Lease with First Encumbrance Holder. In the event that this Lease is

terminated by reasons of bankruptcy, assignment for the benefit of creditors, insolvency or any similar proceedings, operation of law, an Excluded Default or other event beyond the reasonable ability of an Encumbrance Holder to cure or remedy, or if the Lease otherwise terminates for any reason, Port shall, upon the written request of the First Encumbrance Holder with respect to Lessee's entire leasehold estate under this Lease or all of the ownership interests in Lessee, enter into a new lease (which shall be effective as of the date of termination of this Lease) with the First Encumbrance Holder or an affiliate thereof for the then remaining Term of this Lease on the same terms and conditions as shall then be contained in this Lease, provided that the First Encumbrance Holder (i) cures all then existing monetary defaults under this Lease, and (ii) agrees to commence a cure of all then existing non-monetary Events of Default within sixty (60) days after the new lease is entered into, and thereafter diligently pursues such cure until completion. In no event, however, shall any Encumbrance Holder be obligated to cure any Excluded Defaults during or after the period of its ownership or control of Lessee's interest in the Lease. Port shall notify the First Encumbrance Holder of a termination described in this Section 12.5 within sixty (60) days after the occurrence of such termination, which notice shall state (i) that the Lease has terminated in accordance with Section 12.5 of this Lease, and (ii) that such First Encumbrance Holder has sixty (60) days following receipt of such notice within which to exercise its right to a new lease under this Section 12.5, or else it will lose such right. The First Encumbrance Holder's election shall be made by giving Port written notice of such election within sixty (60) days after such First Encumbrance Holder has received the above-described written notice from the Port. Within a reasonable period after request therefor, Port shall execute and return to the First Encumbrance Holder any and all documents reasonably necessary to secure or evidence the First Encumbrance Holder's interest in the new lease or the Premises. From and after the effective date of the new lease, the First Encumbrance Holder (or its affiliate) shall have the same rights to a single transfer that are provided in Subsection 12.1.2.2 above, and shall enjoy all of the other rights and protections that are provided to a Foreclosure Transferee in

this Article 12. Any other subsequent transfer or assignment of such new lease shall be subject to all of the requirements of Article 11 of this Lease. If there are multiple Encumbrance Holders, this right shall inure to only the First Encumbrance Holder. If the First Encumbrance Holder does not elect to accept the new lease within sixty (60) days of receipt of notice from Port, no other Encumbrance Holder shall possess the right to enter into a new lease.

12.5.2 Priority of New Lease. The new lease made pursuant to this Section 12.5 shall be prior to any mortgage or other lien, charge or encumbrance on Port's fee interest in the Premises, and any future fee mortgagee or other future holder of any lien on the fee interest in the Premises is hereby given notice of the provisions hereof.

12.6 Holding of Funds. Any Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the ownership interests in Lessee that is an Institutional Lender shall have the right to hold and control the disbursement of any insurance or condemnation proceeds to which Lessee is entitled under this Lease and that are required by the terms of this Lease to be applied to restoration of the Improvements on the Premises (provided that such funds shall be used for such restoration in accordance with the requirements of the Lease subject to the fulfillment of any conditions on such application contained in the Encumbrance Holder's Financing Documents as approved by the Port). If more than one such Encumbrance Holder desires to exercise the foregoing right, the most senior Encumbrance Holder shall have priority in the exercise of such right.

12.7 Participation in Certain Proceedings and Decisions. Any Encumbrance Holder shall have the right to intervene and become a party in any arbitration, litigation, condemnation or other proceeding affecting this Lease. Lessee's right to make any election or decision under this Lease with respect to any condemnation settlement, insurance settlement or restoration of the Premises following a casualty or condemnation shall be subject to the prior written approval of each then existing Encumbrance Holder.

12.8 Fee Mortgages and Encumbrances. Any mortgage, deed of trust or other similar encumbrance granted by Port upon its fee interest in the Premises shall be subject and subordinate to all of the provisions of this Lease and to all Encumbrances. Port shall require each such fee encumbrance holder to confirm the same in writing (in a form reasonably approved by each Encumbrance Holder or its title insurer) as a condition to granting such encumbrance, although the foregoing subordination shall be automatic and self-executing whether or not such written confirmation is obtained.

12.9 No Merger. Without the written consent of each Encumbrance Holder, the leasehold interest created by this Lease shall not merge with the fee interest in all or any portion of the Premises, notwithstanding that the fee and leasehold interests are held at any time by the same person or entity.

ARTICLE 13 DEFAULT.

13.1 Events of Default. Not by way of limitation, the following are deemed to be "Events of Default" hereunder:

13.1.1 Monetary Defaults. The failure of Lessee to pay the rentals due, or make any other monetary payments required under this Lease within five (5) Days after written notice that said payments are overdue. Lessee may cure such nonpayment by paying the amount overdue, with interest thereon and the applicable Late Fee (if any), within such five (5) Day period.

13.1.2 Failure to Comply with Construction Obligations. The failure of Lessee to comply with the obligations and timeframes set forth in Article 5 of this Lease if not cured within ten (10) Days after written notice of such failure, if no other notice of such failure is otherwise required hereunder.

13.1.3 Maintenance of Security Deposit. The failure of Lessee to maintain and/or replenish the Security Deposit required pursuant to Article 8 of this Lease if not

cured within five (5) Days after written notice of such failure.

13.1.4 Failure to Perform Other Obligations. The failure of Lessee to keep, perform, and observe any and all other promises, covenants, conditions and agreements set forth in this Lease, including without limitation the obligation to maintain adequate accounting and financial records, within thirty five (35) Days after written notice of Lessee's failure to perform from General Manager; provided, however, that where Lessee's performance of such covenant, condition or agreement is not reasonably susceptible of completion within such thirty five (35) Day period and Lessee has in good faith commenced and is continuing to perform the acts necessary to perform such covenant, condition or agreement within such thirty five (35) Day period, Port will not exercise any remedy available to it hereunder for so long as Lessee uses reasonable due diligence in continuing to pursue to completion the performance such covenant, condition or agreement and so completes performance within a reasonable time.

13.1.5 Non-use of Premises. The abandonment, vacation, or discontinuance of use of the Premises, or any substantial portion thereof, for a period of thirty five (35) Days following written notice thereof from the Port to the Lessee, except when prevented by Force Majeure or when closed for renovations or repairs required or permitted to be made under this Lease.

Any notice required to be given by Port pursuant to Subsections 13.1.1 through and including 13.1.5 shall be in addition to, and not in lieu of, any notice required under Section 1161 of the California Code of Civil Procedure.

13.2 Limitation on Events of Default. Lessee shall not be considered in default as to any provision of this Lease when such default is the result of or pursuant to, any process, order, or decree of any court or regulatory body of competent jurisdiction, or any other circumstances which are physically impossible to cure provided Lessee uses due diligence in pursuing whatever is required to obtain release from or reversal

of such process, order, or decree or is attempting to remedy such other circumstances preventing its performance.

13.3 Remedies. Upon the occurrence of an Event of Default, and subject to the rights of any Encumbrance Holder or Major Sublessee to cure such Event of Default as provided in Section 12.4 hereof, Port shall have, in addition to any other remedies in law or equity, the following remedies which are cumulative:

13.3.1 Terminate Lease. Port may terminate this Lease by giving Lessee written notice of termination. On the giving of the notice, all Lessee's rights in the Premises and in all Improvements shall terminate. Promptly after notice of termination, Lessee shall surrender and vacate the Premises and all Improvements in broom-clean condition, and Port may re-enter and take possession of the Premises and all remaining Improvements and, except as otherwise specifically provided in this Lease, eject all parties in possession or eject some and not others, or eject none. Termination under this Subsection shall not relieve Lessee from the payment of any sum then due to Port or from any claim for damages against Lessee as set forth in Subsection 13.4.3, or from Lessee's obligation to remove Improvements at Port's election in accordance with Article 2.

13.3.2 Keep Lease in Effect. Without terminating this Lease, so long as Port does not deprive Lessee of legal possession of the Premises and allows Lessee to assign or sublet subject only to Port's rights set forth herein, Port may continue this Lease in effect and bring suit from time to time for rent and other sums due, and for Lessee's breach of other covenants and agreements herein. No act by or on behalf of Port under this provision shall constitute a termination of this Lease unless Port gives Lessee written notice of termination. It is the intention of the parties to incorporate the provisions of California Civil Code Section 1951.4 by means of this provision.

13.3.3 Termination Following Continuance. Even though it may have kept this Lease in effect pursuant to

Subsection 13.3.2, thereafter Port may elect to terminate this Lease and all of Lessee's rights in or to the Premises unless prior to such termination Lessee shall have cured the Event of Default or shall have satisfied the provisions of Section 13.2, hereof.

13.4 Damages. Should Port elect to terminate this Lease under the provisions of the foregoing Section, Port shall be entitled to recover from Lessee as damages:

13.4.1 Unpaid Rent. The worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Lease;

13.4.2 Post-Termination Rent. The worth, at the time of the award, of the unpaid rent that would have been earned under this Lease after the date of termination of this Lease until the date Lessee surrenders possession of the Premises to Port; and

13.4.3 Other Amounts. The amounts necessary to compensate Port for the sums and other obligations which under the terms of this Lease become due prior to, upon or as a result of the expiration of the Term or sooner termination of this Lease, including without limitation, those amounts of unpaid taxes, insurance premiums and utilities for the time preceding surrender of possession, the cost of removal of rubble, debris and other above-ground Improvements, attorney's fees, court costs, and unpaid Administrative Charges, Net Proceeds Shares and Net Refinancing Proceeds.

13.5 Others' Right to Cure Lessee's Default. Port (and any Encumbrance Holder or Major Sublessee, as provided in the last sentence of this section), at any time after Lessee's failure to perform any covenant, condition or agreement contained herein beyond any applicable notice and cure period, may cure such failure at Lessee's cost and expense. If, after delivering to Lessee two (2) or more written notices with respect to any such default, Port at any time, by reason of

Lessee's continuing failure, pays or expends any sum, Lessee shall immediately pay to Port the lesser of the following amounts: (1) twice the amount expended by Port to cure such default and (2) the amount expended by Port to cure such default, plus one thousand dollars (\$1,000). To the extent practicable, Port shall give any Encumbrance Holders or Major Sublessee the reasonable opportunity to cure Lessee's default prior to Port's expenditure of any amounts thereon.

13.6 Default by Port. Port shall be in default in the performance of any obligation required to be performed by Port under this Lease if Port has failed to perform such obligation within thirty (30) Days after the receipt of written notice from Lessee specifying in detail Port's failure to perform; provided, however, that if the nature of Port's obligation is such that more than thirty (30) Days are required for its performance, Port shall not be deemed in default if it shall commence such performance within thirty (30) Days and thereafter diligently pursues the same to completion. Lessee shall have no rights as a result of any default by Port until Lessee gives thirty (30) Days' notice to any person having a recorded interest pertaining to Port's interest in this Lease or the Premises. Such person shall then have the right to cure such default, and Port shall not be deemed in default if such person cures such default within thirty (30) Days after receipt of notice of the default, or such longer time as may be reasonably necessary to cure the default.

13.7 No Consequential Damages. Under no circumstances shall Port or Lessee, or either of their successors-in-interest under this Lease, be liable to the other party, or its successors-in-interest hereunder, for consequential damages arising from any breach or default under this Lease.

ARTICLE 14 ACCOUNTING.

14.1 Maintenance of Records and Accounting Method. In order to determine the amount of and provide for the payment of the Annual Minimum Rent, Percentage Rent, Net Proceeds Share,

Net Refinancing Proceeds and other sums due under this Lease, Lessee and all Sublessees other than those whose Gross Receipts are reported under Subsection 4.2.2(c) hereof, if any, shall at all times during the Term of this Lease, and for thirty six (36) months thereafter, keep, or cause to be kept, locally, to the reasonable satisfaction of General Manager, true, accurate, and complete records and double-entry books of account for the current and five (5) prior Accounting Years, such records to show all transactions relative to the conduct of operations, and to be supported by data of original entry. Such records shall detail transactions conducted on or from the Premises separate and apart from those in connection with Lessee's (or sublessee's or licensee's, as appropriate) other business operations, if any. Lessee shall utilize the accrual method of accounting with respect to its preparation of the reports and maintenance of records required herein or, at its option, may utilize the cash method of accounting, provided Lessee reconciles its filings, records and reports to an accrual method to the extent requested by Port.

14.2 Cash Registers. To the extent retail sales are conducted on the Premises, or other cash or credit sales of goods or services are conducted, all such sales shall be recorded by means of cash registers or computers which automatically issue a customer's receipt or certify the amount recorded in a sales slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape (or other equivalent security mechanism) located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record.

Lessee shall cause to be implemented point of sale systems which can accurately verify all sales for audit purposes and customer review purposes, which system shall be submitted to the General Manager in advance of installation for his approval, which approval will not be unreasonably withheld.

Lessee's obligations set forth in this Section 14.2 include Lessee's obligation to insure that Lessee's sublessees, licensees, permittees, concessionaires and any other occupants of any portion of the Premises keep records sufficient to permit Port and Port's auditors to determine the proper levels of Annual Minimum Rent, Percentage Rent, Net Proceeds Share, Net Refinancing Proceeds and other sums due under this Lease.

14.3 Monthly Statement; Payment. No later than the fifteenth (15th) Day of each calendar month, Lessee shall render to Port a detailed monthly statement showing Gross Receipts during the preceding calendar month, together with its calculation of the amount payable to Port under Sections 4.2 through 4.8 inclusive, and shall accompany same with remittance of amount so shown to be due.

14.4 Availability of Records for Inspector's Audit. Books of account and records hereinabove required for the current and five (5) prior Accounting Years (but not including any period of time prior to the Completion Date), shall be kept or made available at the Premises or other location in Ventura County, and Port and other governmental authorities shall have the right at any reasonable times to examine and audit said books and records, without restriction, for the purpose of determining the accuracy thereof and of the monthly statements of Gross Receipts derived from occupancy of the Premises and the compliance of Lessee with the terms of this Lease and other governmental requirements. This Section 14.4 shall survive the expiration of the Term or other termination of this Lease for thirty six (36) months after such expiration or termination.

14.4.1 Entry by Port. Upon at least one (1) business day advance notice (except no notice shall be required in the case of an emergency), Port and its duly authorized representatives or agents may enter upon the Premises at any and all reasonable times during the Term of this Lease for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of Port.

14.5 Audit. In the event that, for any reason, Lessee does not make available its (or its sublessee's or licensee's) original records and books of account at the Premises or at another location in Ventura County, Lessee agrees to pay all expenses incurred by Port in conducting any audit at the location where said records and books of account are maintained. In the event that any audit discloses a discrepancy in Port's favor of greater than two percent (2%) of the revenue due Port for the period audited, then Lessee shall pay Port audit contract costs, together with the amount of any identified deficiency, with interest thereon and Late Fee provided by Section 4.5. In addition, Lessee shall implement promptly any reasonable recommendations for changes in record keeping made by an auditor as part of such audit.

14.6 Additional Accounting Methods. Port may require the installation of any additional accounting methods or machines which are typically used by major residential and/or boat anchorage management companies and which Port reasonably deems necessary if the system then being used by Lessee does not adequately verify sales for audit or customer receipt purposes.

14.7 Accounting Year. The term "Accounting Year" as used herein shall mean a period of twelve (12) consecutive calendar months, the first Accounting Year commencing January 1, ____ and ending on December 31, ____; thereafter the "Accounting Year" shall be each period of twelve (12) consecutive calendar months.

14.8 Annual Financial Statements. Within six (6) months after the end of each Accounting Year or, at Lessee's election, after the completion of Lessee's fiscal year, Lessee shall deliver to Port a set of audited and certified financial statements prepared by a Certified Public Accountant who is a member of the American Institute of Certified Public Accountants and is satisfactory to Port, setting forth Lessee's financial condition and the result of Lessee's operations for such Accounting Year and shall include a certification of and unqualified opinion concerning Lessee's Gross Receipts (including a breakdown by category). All financial statements

prepared by or on behalf of Lessee shall be prepared in a manner that permits Port to determine the financial results of operations in connection with Lessee's activities at, from or relating to the Premises, notwithstanding that Lessee may have income and expenses from other activities unrelated to its activities on the Premises.

14.9 Accounting Obligations of Sublessees. Lessee shall cause all sublessees, licensees, concessionaires and others conducting business operations on or from the Premises to comply with all terms of this Article 14 with respect to the maintenance, form, availability and methodology of accounting records and the delivery to Port of audited certified financial statements and unqualified opinions as to Gross Receipts.

14.10 Inadequacy of Records. In the event that Lessee or its sublessees, licensees or concessionaires, as appropriate, fails to keep the records required by this Article 14 such that a Certified Public Accountant is unable to issue an unqualified opinion as to Gross Receipts, such failure shall be deemed a breach of this Lease by Lessee. In addition to the other remedies available to Port at law or equity as a result of such breach (subject to the limitations of this Subsection with respect to a Sublessee Breach), Port may prepare a calculation of the Percentage Rent payable by Lessee during the period in which the accounting records were inadequately maintained. Such calculation may be based on the past Gross Receipts levels on or from the Premises, the past or present level of Gross Receipts experienced by tenants of comparable leaseholds in Ventura Harbor with comparable business operations (to the extent applicable), or, in Port's discretion, any other method as reasonably determined by General Manager and shall utilize such methodology as General Manager deems reasonable. Within five (5) Days after receipt of Port's determination of Percentage Rent due, if any, Lessee shall pay such Percentage Rent, together with a late fee of six percent (6%) and interest to the date of payment at the Applicable Rate from the date upon which each unpaid installment of Percentage Rent was due, together with Port's Actual Cost in connection with the attempted audit of the inadequate records and the reconstruction and estimation

of Gross Receipts and the calculation of Percentage Rent due. Lessee may cure the failure of any Sublessees, licensees or concessionaires to keep the records required by this Article 14 (a "Sublessee Breach") by paying to Port the amount of Port's estimate of Percentage Rent due as determined above, together with a late fee of six percent (6%) and interest to the date of payment at the Applicable Rate from the date upon which each unpaid installment of Percentage Rent was due, together with Port's Actual Cost in connection with the attempted audit and the reconstruction and estimation of Gross Receipts and the calculation of Percentage Rent due, within five (5) Days after receipt of Port's determination of such Percentage Rent due. As long as Lessee cures a Sublessee Breach as provided above, such cure shall be Port's sole remedy for the Sublessee Breach.

ARTICLE 15 MISCELLANEOUS.

15.1 Quiet Enjoyment. Lessee, upon performing its obligations hereunder, shall have the quiet and undisturbed possession of the Premises throughout the Term of this Lease, subject, however, to the terms and conditions of this Lease.

15.2 Time is of the Essence. Except as specifically otherwise provided for in this Lease, time is of the essence of this Lease and applies to all times, restrictions, conditions, and limitations contained herein.

15.3 Port Disclosure and Lessee's Waiver.

15.3.1 Disclosures and Waiver.

15.3.1.1 Lessee acknowledges that it may incur additional engineering and construction costs above and beyond those contemplated by either party to this Lease at the time of the execution hereof and Lessee agrees that, it will make no demands upon Port for any construction, alterations, or any kind of labor that may be necessitated in connection therewith.

15.3.1.2 Lessee hereby waives, withdraws,

releases, and relinquishes any and all claims, suits, causes of action (other than a right to terminate as otherwise provided in this Lease), rights of rescission, or charges against Port, its officers, agents, employees or volunteers which Lessee now has or may have or asserts in the future which are based upon any defects in the physical condition of the Premises and the soil thereon and thereunder, regardless of whether or not said conditions were known at the time of the execution of this instrument. The waiver and release set forth in this Subsection 15.3.1.2 shall not apply to the Excluded Conditions.

15.3.1.3 California Civil Code Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

By initialing this paragraph, Lessee acknowledges that it has read, is familiar with, and waives the provisions of California Civil Code Section 1542 set forth above, and agrees to all of the provisions of Subsection 15.3.1.3 above.

Lessee's Initials

15.3.2 Right of Offset. Lessee acknowledges that the rent provided for in this Lease has been agreed upon in light of Lessee's construction, maintenance and repair obligations set forth herein, and, notwithstanding anything to the contrary provided in this Lease or by applicable law, Lessee hereby waives any and all rights, if any, to make repairs at the expense of Port and to deduct or offset the cost of such repairs from the Annual Minimum Rent, Monthly Minimum Rent, Percentage Rent or any other sums due Port hereunder.

15.4 Intentionally Omitted.

15.5 Waiver of Conditions or Covenants. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms, and agreements of this Lease shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term, or agreement of this Lease, nor shall failure on the part of either party to require exact full and complete compliance with any of the covenants, conditions, terms, or agreements of this Lease be construed as in any manner changing the terms hereof or estopping that party from enforcing the full provisions hereof, nor shall the terms of this Lease be changed or altered in any manner whatsoever other than by written agreement of Port and Lessee. No delay, failure, or omission of Port to re-enter the Premises or of either party to exercise any right, power, privilege, or option, arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right. No notice to Lessee shall be required to restore or revive "time of the essence" after the waiver by Port of any default. Except as specifically provided in this Lease, no option, right, power, remedy, or privilege of either party shall be construed as being exhausted by the exercise thereof in one or more instances.

15.6 Remedies Cumulative. The rights, powers, options, and remedies given Port by this agreement shall be cumulative except as otherwise specifically provided for in this Lease.

15.7 Authorized Right of Entry. In any and all cases in which provision is made herein for termination of this Lease, or for exercise by Port of right of entry or re-entry upon the Premises in the case of an Event of Default, or in case of abandonment or vacation of the Premises by Lessee, Lessee hereby irrevocably authorizes Port to enter upon the Premises and remove any and all persons and property whatsoever situated upon the Premises and place all or any portion of said property, except such property as may be forfeited to Port, in storage for the account of and at the expense of Lessee.

Except to the extent arising out of or caused by the gross negligence or willful misconduct of Port, Lessee agrees to indemnify, defend and save harmless Port from any cost, expense, loss or damage arising out of or caused by any such entry or re-entry upon the Premises in the case of an Event of Default, including the removal of persons and property from the Premises and storage of such property by Port and its agents.

15.8 Place of Payment and Filing. All rentals shall be paid to and all statements and reports herein required and other items deliverable to Port hereunder shall be filed with or delivered to the Port. Checks, drafts, letters of credit and money orders shall be made payable to the Port.

15.9 Service of Written Notice or Process. Any notice required to be sent under this Lease shall be in compliance with and subject to this Section 15.9. Written notice addressed to Lessee at the addresses below-described, or to such other address that Lessee may in writing file with General Manager, shall be deemed sufficient if said notice is delivered personally, by telecopy or facsimile transmission or, provided in all cases there is a return receipt requested and postage or other delivery charges prepaid, by registered or certified mail, Federal Express or DHL, or such other services as Lessee and Port may mutually agree upon from time to time. Each notice shall be deemed received and the time period for which a response to any such notice must be given or any action taken with respect thereto (including cure of any prospective Event of Default) shall commence to run from the date of actual receipt of the notice by the addressee thereof in the case of personal delivery, telecopy or facsimile transmission if before 5:00 p.m. on regular business days, or upon the expiration of the third (3rd) business day in the case of such registered or certified mail as authorized in this Section.

Copies of any written notice to Lessee shall also be simultaneously mailed to any Encumbrance Holder and Major Sublessee of which Port has been given written notice and an address for service. Notice given to Lessee as provided for

herein shall be effective as to Lessee notwithstanding the failure to send a copy to such Encumbrance Holder or Major Sublessee.

As of the date of execution hereof, the persons authorized to receive notice on behalf of Port and Lessee are as follows:

Port:

General Manager
Ventura Port District
1603 Anchors Way Drive
Ventura, California 93001-4229
Phone: 805-642-8538
Fax: 805-658-2249

LESSEE:

Portside Partners Ventura Harbor,
LLC, a Delaware limited liability
company

c/o BCE Portside - Ventura Harbor
Associates, LLC, a Delaware limited
liability company, its Manager
c/o Benedict Canyon Equities, Inc.
12100 Wilshire Boulevard, Suite 250
Los Angeles, CA 90025
Attn: Robert E. Hart
Fax: 424-325-2751

c/o Sondermann Ring Partners -
Ventura Harbor, LLC, a California
limited liability company, its
Manager
c/o Sondermann Enterprises, Inc., a
California corporation
13910 Marquesas Way
Marina Del Rey, CA 90292
Attn: Michael B. Sondermann
Phone: 310-827-6714
Fax: 310-827-6514

15.10 Interest. In any situation where Port has advanced sums on behalf of Lessee pursuant to this Lease, such sums shall be due and payable within five (5) Days after Lessee's receipt of written demand, together with interest at the Applicable Rate (unless another rate is specifically provided herein) from the date such sums were first advanced, until the time payment is received. In the event that Lessee repays sums advanced by Port on Lessee's behalf with interest in excess of the maximum rate permitted by Applicable Laws, Port shall either refund such excess payment or credit it against subsequent installments of Annual Minimum Rent and Percentage Rent.

15.11 Characterization of Payments. All payments made by Lessee to Port pursuant to this Lease shall be deemed to be additional rent, whether or not characterized as such in this Lease.

15.12 Captions. The captions contained in this Lease are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Lease.

15.13 Attorneys' Fees. In the event of any action, proceeding or arbitration arising out of or in connection with this Lease, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees, including without limitation reasonable attorneys' fees for Port Counsel's services where Port is represented by the Port Counsel and is the prevailing party, and also including all fees, costs and expenses incurred in executing, perfecting, enforcing and collecting any judgment.

15.14 Amendments. This Lease may only be amended in writing executed by duly authorized officials of Lessee and Port. Notwithstanding the foregoing, General Manager shall have the power to execute such amendments to this Lease as are necessary to implement any arbitration judgment issued pursuant to this Lease.

15.15 Time For General Manager Approvals. Except where a different time period is specifically provided for in this Lease, whenever in this Lease the approval of General Manager is required, approval shall be deemed not given unless within thirty (30) Days after the date of the receipt of the written request for approval from Lessee, General Manager either (a) approves such request in writing, or (b) notifies Lessee that it is not reasonably possible to complete such review within the thirty (30)-Day period, provides a final date for approval or disapproval by General Manager (the "Extended Time") and approves such request in writing prior to such Extended Time. If General Manager does not approve such request in writing within such Extended Time, the request shall be deemed to be disapproved.

15.16 Time For Port Action. Notwithstanding anything to the contrary contained in this Lease, wherever General Manager determines that a Port action required hereunder necessitates approval from or an affirmative vote of one or more of Port's boards or commissions or Port's Board of Commissioners, the time period for Port performance of such action shall be extended as is reasonably necessary in order to secure such affirmative vote or approval and Port shall not be deemed to be in default hereunder in the event that it fails to perform such action within the time periods otherwise set forth herein.

15.17 Estoppel Certificates. Each party agrees to execute, within ten (10) Days after the receipt of a written request therefor from the other party, a certificate stating (i): that this Lease is in full force and effect and is unmodified (or stating otherwise, if true); (ii) that, to the best knowledge of such party, the other party is not then in default under the terms of this Lease (or stating the grounds for default if such be the case); and (iii) if requested, the amount of the Security Deposit, Annual Minimum Rent, Percentage Rent and other material economic terms and conditions of this Lease. Prospective purchasers, Major Sublessees, commercial Sublessees and lenders may rely on such statements.

15.18 Indemnity Obligations. Whenever in this Lease there

is an obligation to indemnify, hold harmless and/or defend, irrespective of whether or not the obligation so specifies, it shall include the obligation to defend and pay reasonable attorney's fees, reasonable expert fees and court costs.

15.19 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the Day of the act or event after which the designated period of time begins to run is not to be included and the last Day of the period so computed is to be included, unless the last Day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next Day which is neither a Saturday, Sunday or legal holiday. The last Day of any period of time described herein shall be deemed to end at 5 p.m., California time.

ARTICLE 16 ARBITRATION.

16.0 Binding Arbitration. All disputed matters arising under this Lease shall be resolved by binding arbitration pursuant to this Article 16. Except as otherwise provided by this Article 16, arbitrations between the parties pursuant to this Lease shall be conducted in accordance with the then existing provisions of the California Arbitration Act, which as of the date hereof is contained in Title 9 of Part III of the California Code of Civil Procedure, commencing with Section 1280. Such arbitrations shall occur in Ventura County unless otherwise agreed by the parties in writing.

16.0.1 Either party (the "Initiating Party") may initiate the arbitration process by sending written notice ("Request for Arbitration") to the other party (the "Responding Party") requesting initiation of the arbitration process and setting forth a brief description of the dispute or disputes to be resolved and the contention(s) of the Initiating Party. Within thirty (30) Days after service of the Request for Arbitration, the Responding Party shall file a "Response" setting forth the Responding Party's description of the dispute and the contention(s) of Responding Party. If Responding Party has any "Additional Disputes" such party shall follow the format

described for the Initiating Party. The Initiating Party will respond within thirty (30) Days after service of the Additional Disputes setting forth Initiating Party's description of the Additional Disputes and contentions regarding the Additional Disputes.

16.0.2 Notwithstanding anything to the contrary which may now or hereafter be contained in the California Arbitration Act, the parties agree that the following provisions shall apply to any and all arbitration proceedings conducted pursuant to this Lease:

16.1 Selection of Arbitrator. The parties shall attempt to agree upon an arbitrator who shall decide the matter. If, for any reason, the parties are unable to agree upon the arbitrator within ten (10) Days after filing of the Response to the Request for Arbitration or Additional Disputes, whichever is the later to occur, under Subsection 16.0.1, above, then at any time on or after such date either party may petition for the appointment of the arbitrator as provided in California Code of Civil Procedure Section 1281.6.

16.2 Arbitrator. The arbitrator shall be a retired judge of the California Superior Court, Court of Appeal or Supreme Court, or any United States District Court or Court of Appeals located within the State of California, who has agreed to resolve civil disputes.

16.3 Scope of Arbitration. Port and Lessee affirm that the mutual objective of such arbitration is to resolve the dispute finally and as expeditiously as possible. The arbitration process shall not apply or be used to determine issues other than (i) those presented to the arbitrator by the Initiating Party, (ii) Additional Disputes presented to the arbitrator by the Responding Party, and (iii) such related preliminary or procedural issues as are necessary to resolve (i) and/or (ii) above. The arbitrator shall render an award with a statement of decision and findings of fact and conclusions of law, explaining the arbitrator's reasoning which shall be in such detail as the arbitrator may determine. Unless otherwise

expressly agreed by the parties in writing, the award shall be made by the arbitrator no later than the sooner of six (6) months after the date on which the arbitrator is selected by mutual agreement or court order, whichever is applicable, or five (5) months after the date of a denial of a petition to disqualify a potential arbitrator for cause. Port and Lessee hereby instruct the arbitrator to take any and all actions deemed reasonably necessary, appropriate or prudent to ensure the issuance of an award within such period. Notwithstanding the foregoing, failure to complete the arbitration process within such period shall not render such arbitration or any determination made therein void or voidable; however, at any time after the expiration of the foregoing five (5) or six (6) month periods, as applicable, either party may deliver written notice to the arbitrator and the other party either terminating the arbitration or declaring such party's intent to terminate the arbitration if the award is not issued within a specified period (which shall not be less than thirty (30) Days) after delivery of such notice. If the arbitrator's award is not issued prior to the expiration of said specified period, the arbitration shall be terminated and the parties shall recommence arbitration proceedings pursuant to this Article 16.

16.4 Immunity. The parties hereto agree that the arbitrator shall have the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator pursuant to this Lease.

16.5 Section 1282.2. The provisions of Code of Civil Procedure Section 1282.2 shall apply to the arbitration proceedings except to the extent they are inconsistent with the following:

(1) Unless the parties otherwise agree, the arbitrator shall appoint a time and place for the hearing and shall cause notice thereof to be served as provided in said ' 1282.2 not less than ninety (90) Days before the hearing, regardless of the aggregate amount in controversy.

(2) No later than sixty (60) Days prior to the date

set for the hearing (unless, upon a showing of good cause by either party, the arbitrator establishes a different period), in lieu of the exchange and inspection authorized by Code of Civil Procedure ' 1282.2(a)(2)(A), (B) and (C), the parties shall simultaneously exchange the following documents by personal delivery to each other and to the arbitrator:

(a) a written Statement of Position, as further defined below, setting forth in detail that party's final position regarding the matter in dispute and specific numerical proposal for resolution of monetary disputes;

(b) a list of witnesses each party intends to call at the hearing, designating which witnesses will be called as expert witnesses and a summary of each witness's testimony;

(c) a list of the documents each intends to introduce at the hearing, together with complete and correct copies of all of such documents; and,

(d) if the issue involves Fair Market Rental Value or a valuation matter, a list of all Written Appraisal Evidence (as defined below) each intends to introduce at the hearing, together with complete and correct copies of all of such Written Appraisal Evidence.

(3) No later than twenty (20) Days prior to the date set for the hearing, each party may file a reply to the other party's Statement of Position ("Reply"). The Reply shall contain the following information:

(a) a written statement, to be limited to that party's rebuttal to the matters set forth in the other party's Statement of Position;

(b) a list of witnesses each party intends to call at the hearing to rebut the evidence to be presented by the other party, designating which witnesses will be called as expert witnesses;

(c) a list of the documents each intends to introduce at the hearing to rebut the evidence to be presented by the other party, together with complete and correct copies of all of such documents (unless, upon a showing of good cause by either party, the arbitrator establishes a different deadline for delivering true and correct copies of such documents);

(d) if the issue involves Fair Market Rental Value or a valuation matter, a list of all Written Appraisal Evidence, or written critiques of the other party's Written Appraisal Evidence if any, each intends to introduce at the hearing to rebut the evidence presented by the other party, together with complete and correct copies of all of such Written Appraisal Evidence (unless, upon a showing of good cause by either party, the arbitrator establishes a different deadline for delivering true and correct copies of such Written Appraisal Evidence); and

(e) Witnesses or documents to be used solely for impeachment of a witness need not be identified or produced.

(4) The arbitrator is not bound by the rules of evidence, but may not consider any evidence not presented at the hearing. The arbitrator may exclude evidence for any reason a court may exclude evidence or as provided in this Lease.

16.6 Statements of Position. The Statement of Position to be delivered by Section 16.5 shall comply with the following requirements:

(1) Where the dispute involves rent to be charged, market values, insurance levels or other monetary amounts, the Statements of Position shall numerically set forth the existing minimum rent, percentage rent, market value, insurance level and/or other monetary amounts in dispute, the party's proposed new minimum rent, percentage rent, market value, insurance level and/or other monetary amounts, and shall additionally set forth the facts supporting such party's position.

(2) If the dispute relates to Improvement Costs, the Statements of Position shall set forth the facts supporting such party's position and the amount of each cost which the party believes should be allowed or disallowed.

16.7 Written Appraisal Evidence. Neither party may, at any time during the proceedings, introduce any written report which expresses an opinion regarding Fair Market Rental Value or the Fair Market Value of the Premises, or any portion thereof, ("Written Appraisal Evidence") unless such Written Appraisal Evidence substantially complies with the following standards: it shall describe the Premises; identify the uses permitted thereon; describe or take into consideration the terms, conditions and restrictions of this Lease; correlate the appraisal method(s) applied; discuss the relevant factors and data considered; review rentals paid by lessees in Ventura Harbor and other marina locations within Southern California who are authorized to conduct similar activities on comparable leaseholds; and, describe the technique of analysis, limiting conditions and computations that were used in the formulation of the valuation opinion expressed. With respect to disputes regarding Fair Market Rental Value, such Written Appraisal Evidence shall express an opinion regarding the Fair Market Rental Value of the Premises as prescribed by Subsection 4.4.1. Written Appraisal Evidence shall be in material conformity and subject to the requirements of the Code of Professional Ethics and the Standards of Professional Practice of The Appraisal Institute or any successor entity.

16.8 Evidence. The provisions of Code of Civil Procedure Section 1282.2(a)(2)(E) shall not apply to the arbitration proceeding. The arbitrator shall have no discretion to allow a party to introduce witnesses, documents or Written Appraisal Evidence (other than impeachment testimony) unless such information was previously delivered to the other party in accordance with Section 16.5 and, in the case of Written Appraisal Evidence, substantially complies with the requirements of Section 16.7, or such evidence consists of a transcript or video tape of a deposition of an expert witness conducted pursuant to Section 16.9. Notwithstanding the foregoing, the

arbitrator may allow a party to introduce evidence which, in the exercise of reasonable diligence, could not have been delivered to the other party in accordance with Section 16.5, provided such evidence is otherwise permissible hereunder.

16.9 Discovery. The provisions of Code of Civil Procedure Section 1283.05 shall not apply to the arbitration proceedings except to the extent incorporated by other sections of the California Arbitration Act which apply to the arbitration proceedings. There shall be no pre-arbitration discovery except as provided in Section 16.5; provided, however, each party shall have the right, no later than seven (7) Days prior to the date first set for the hearing, to conduct a deposition, not to exceed three (3) hours in duration unless the arbitrator otherwise determines that good cause exists to justify a longer period, of each person identified by the other party as an expert witness pursuant to Sections 16.5 (2)(b) or 16.5 (3)(b).

16.10 Awards of Arbitrators.

16.10.1 Monetary Disputes. With respect to all monetary disputes submitted to arbitration pursuant to this Article 16 (including without limitation disputes regarding Percentage Rent, Fair Market Rental Value and the amount of coverage under the policies of insurance required pursuant to Article 9 of this Lease), the arbitrator shall have no right to propose a middle ground or any proposed modification of either Statement of Position. The arbitrator shall instead select whichever of the two Statements of Position is the closest to the monetary or numerical amount that the arbitrator determines to be the appropriate determination of the rent, expense, claim, cost, delay, coverage or other matter in dispute, and shall render an award consistent with such Statement of Position. For purposes of this Section 16.10, each dispute regarding Annual Minimum Rent, each category of Percentage Rent and the amount of required insurance coverage shall be considered a separate dispute (a "Separate Dispute"). While the arbitrator shall have no right to propose a middle ground or any proposed modification of either Statement of Position concerning a Separate Dispute, the arbitrator shall have the right, if the arbitrator so

chooses, to choose one party's Statement of Position on one or more of the Separate Disputes, while selecting the other party's Statement of Position on the remaining Separate Disputes. For example, if the parties are unable to agree on the Annual Minimum Rent and three Percentage Rent categories to be renegotiated pursuant to Section 4.4 and the amount of liability insurance coverage to be renegotiated pursuant to Section 9.3, then there shall be five Separate Disputes, and the arbitrator shall be permitted to select the Port's Statement of Position with respect to none, some or all of such five Separate Disputes and select the Lessee's Statement of Position on the balance, if any, of such five Separate Disputes. Upon the arbitrator's selection of a Statement of Position, pursuant to this Article 16, the Statement of Position so chosen and the award rendered by the arbitrator thereon shall be final and binding upon the parties.

16.10.2 Non-Monetary Disputes. With respect to all other disputes submitted to arbitration pursuant to this Article 16, the arbitrator shall render such award as the arbitrator shall determine is appropriate to determine the controversy in light of the circumstances.

16.10.3 Continuing Jurisdiction. The arbitrator shall have continuing jurisdiction to ensure implementation of the arbitrator's award by the Parties and to grant all appropriate relief, including, but not necessarily limited to relief available under law and/or under Sections 13.3 and 13.4 of this Lease. In the case of any arbitration where the arbitrator determines that Port is entitled to terminate this Lease, the arbitrator shall retain jurisdiction to enforce the award and order all appropriate relief, including but not limited to granting possession of the Premises to Port in a summary unlawful detainer proceeding.

16.11 Powers of Arbitrator. In rendering the award, the arbitrator shall have the power to consult or examine experts or authorities not disclosed by a party pursuant to Section 16.5(2) hereof, provided that each party is afforded the right to cross-examine such expert or rebut such authority.

16.12 Costs of Arbitration. Lessee and Port shall equally share the expenses and fees of the arbitrator, together with other expenses of arbitration incurred or approved by the arbitrator. Failure of either party to pay its share of expenses and fees constitutes a material breach of such party's obligations hereunder.

16.13 Amendment to Implement Award. Within seven (7) Days after any award by the arbitrator becomes final, the prevailing party will, if necessary, draft a proposed amendment to this Lease setting forth the relevant terms of such award. Within seven (7) Days after delivery of a copy of the amendment to the other party, such party shall sign the amendment and return a fully executed copy to the prevailing party or request relief or clarification from the arbitrator.

16.14 Finality of Arbitration Award. Subject to California Code of Civil Procedure Section 1286.2 (ACCP Section 1286.2"), any award by an arbitrator under this Article 16 shall be final and binding on the parties and shall be supported by written findings of fact and conclusions of law. The award shall not be appealable except upon allegations by either party that the arbitrator failed to properly apply California law to the facts in the dispute as determined by the arbitrator, or that the award is the result of a fraud perpetrated by the other party and/or the arbitrator, in which case the alleging party may appeal to the Superior Court of the County of Ventura, which court shall have exclusive jurisdiction solely and only to determine if there was a fraud which had a material impact on the award or if the arbitrator misapplied California law in a material way that affected the outcome of the arbitration proceeding. The party alleging the fraud or misapplication of California law shall have the burden of proof with respect to such issues. If such a finding is made by the Superior Court, the arbitration process shall commence again in accordance with this Article 16 and be conducted with a different arbitrator as expeditiously as reasonably possible. Nothing contained herein is intended to limit the grounds for vacation of any award which are set forth in CCP Section 1286.2.

ARTICLE 17 DEFINITION OF TERMS; INTERPRETATION.

17.1 Meanings of Words Not Specifically Defined. Words and phrases contained herein shall be construed according to the context and the approved usage of the English language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning by law, or are defined in Section 1.1, are to be construed according to such technical, peculiar, and appropriate meaning or definition.

17.2 Tense; Gender; Number; Person. Words used in this Lease in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter and the neuter includes the masculine and feminine; the singular number includes the plural and the plural the singular; the word "person" includes a corporation, partnership, limited liability company or similar entity, as well as a natural person.

17.3 Intentionally Omitted.

17.4 Parties Represented by Consultants, Counsel. Both Port and Lessee have entered this Lease following advice from independent financial consultants and legal counsel of their own choosing. This document is the result of combined efforts of both parties and their consultants and attorneys. Thus, any rule of law or construction which provides that ambiguity in a term or provision shall be construed against the draftsman shall not apply to this Lease.

17.5 Governing Law. This Lease shall be governed by and interpreted in accordance with the laws of the State of California.

17.6 Reasonableness Standard. Except where a different standard is specifically provided otherwise herein, whenever the consent of Port or Lessee is required under this Lease, such consent shall not be unreasonably withheld and whenever this Lease grants Port or Lessee the right to take action, exercise

discretion, establish rules and regulations or make allocations or other determinations, Port and Lessee shall act reasonably and in good faith. These provisions shall only apply to Port acting in its proprietary capacity.

17.7 Compliance with Code. Port and Lessee agree and acknowledge that this Lease satisfies the requirements of the California Harbors and Navigation Code as a result of various provisions contained herein.

17.8 Memorandum of Lease. The parties hereto shall execute and acknowledge this Lease or a Memorandum of Lease, in recordable form and otherwise satisfactory to the parties hereto, for recording as soon as is practicable on or following the Effective Date.

17.9 No Current Defaults. As of the Effective Date, each of Port and Lessee certifies that to the best of its knowledge the other party is not in breach or default of its obligations under this Lease, nor has any event occurred nor does any condition exist, which with the giving of notice and/or the lapse of time would constitute a default by the other party under this Lease.

IN WITNESS WHEREOF, Port has, by ordinance duly adopted by its Board of Port Commissions, caused this Lease to be subscribed by the Chairman of said Board and attested by the Clerk thereof, and Lessee has executed the same the Day and year first hereinabove written.

**PORTSIDE PARTNERS VENTURA HARBOR,
LLC, a Delaware limited liability
company**

**By: BCE Portside - Ventura Harbor
Associates, LLC, a Delaware limited
liability company, its Manager**

By: Benedict Canyon
Equities, Inc., a California
corporation

By: Benedict Canyon
Equity Holdings, LLC, a
California limited
liability company

By: _____
Robert E. Hart
Its Manager

[Signatures continue on next page]

By: Sondermann Ring Partners -
Ventura Harbor, LLC, a California
limited liability company, its
Manager

By: Sondermann Enterprises,
Inc., a California
corporation, its managing
member

By: _____
Michael B. Sondermann
Its President

[Signatures continue on next page]

VENTURA PORT DISTRICT,
a California Port District

By: _____
[Name]
Chairman

By: _____
[Name]
Secretary

EXHIBIT "A"

LEGAL DESCRIPTION OF PREMISES

[To be attached]

srp\lease68

9-7-16

EXHIBIT "A"

Legal Description of Premises

All that certain real property situated in the County of Ventura, State of California, described as follows:

Parcel A:

That portion of Subdivision 7 of the West One-Half of Rancho San Miguel, in the City of San Buenaventura, County of Ventura, State of California, as per map recorded in Book 5 Page 42 of Miscellaneous Records (Maps), in the office of the County recorder of said County and Parcel 15 of Parcel Map filed in Book 25, Pages 52 through 54, inclusive of Parcel Maps of said Records, described as a whole as follows:

Beginning at the most Northerly corner of said Parcel 15; thence along the Northwesterly line of said Parcel 15, the following two courses;

1. South 61°53'31" West 74.73 feet;
2. South 25°17'51" West 352.10 feet; thence leaving said northwesterly line
3. South 84°52'31" West 531.67 feet; thence
4. South 05°07'29" East 92.38 feet; thence
5. South 84°52'31" West 63.63 feet; thence
6. South 09°26'05" East 320.33 feet to a point distant South 80°33'55" West 50.00 feet from the westerly terminus of that certain course in the generally southerly line of said Parcel 15 having a bearing and distance of North 58°49'58" East 128.00 feet; thence
7. North 80°33'55" East 50.00 feet to said most southerly corner of Parcel 15; thence along the generally southerly and northeasterly lines of said Parcel 15, the following seventeen courses:
8. North 58°49'58" East 128.00 feet; thence
9. North 07°36'53" East 98.00 feet; thence
10. South 80°12'19" East 213.61 feet; thence

11. South 41°23'30" East 126.17 feet; thence
12. North 43°30'20" East 148.02 feet; thence
13. South 46°29'40" East 31.00 feet; thence
14. North 43°30'20" East 43.00 feet to the beginning of a curve, concave to the southeast and having a radius of 134.50 feet; thence
15. Northeasterly 96.17 feet along said curve through a central angle of 40°58'00"; thence
16. North 84°28'20" East 99.60 feet to the beginning of a curve, concave to the northwest and having a radius of 65.50 feet; thence
17. Northeasterly 103.65 feet along said curve through a central angle of 90°40'04"; thence
18. North 06°11'44" West 40.73 feet; thence
19. North 83°48'16" East 341.77 feet; thence
20. North 11°29'20" West 165.54 feet to the beginning of a curve, concave to the southwest and having a radius of 120.00 feet; thence
21. Northwesterly 111.45 feet along said curve through a central angle of 53°12'49"; thence
22. North 64°42'09" West 209.90 feet to the beginning of a curve, concave to the northeast and having a radius of 280.00 feet; thence
23. Northwesterly 112.76 feet along said curve through a central angle of 23°04'26" to the beginning of a reverse curve, concave to the Southwest and having a radius of 220.00 feet; thence
24. Northwesterly 88.60 feet along said curve through a central angle of 23°04'26" to the most Northerly corner of said Parcel 15 and the point of beginning.

Except all minerals, oil, natural gas and other hydrocarbon substances lying in or under said property below a depth of 200 feet from the surface thereof, without, however, the right to enter upon or explore or drill through the surface of the top 200 feet measured from the surface of said land as reserved in the deed

recorded March 2, 1962, in Book 2115, Page 235, of Official Records, County of Ventura, State of California.

Parcel B:

That portion of Subdivision No. 7 of the West One-Half of Rancho Miguel, in the City of San Buenaventura, County of Ventura, State of California, as per map recorded in Book 5 Page 42, of Miscellaneous Records (Maps), in the office of the County recorder of said County and Parcel 18 of Parcel Map filed in Book 25, Pages 52 through 54, inclusive of Parcel Maps of said Records, described as a whole as follows:

Beginning at the most Northerly corner of said Parcel 18; thence along the Northwesterly line of said Parcel 18, the following twelve courses;

1. South 83°48'16" West 341.77 feet; thence
2. South 06°11'44" East 40.73 feet to the beginning of a curve, concave to the northwest and having a radius of 65.50 feet; thence
3. Southwesterly 103.65 feet along said curve through a central angle of 90°40'04"; thence
4. South 84°28'20" West 99.60 feet to the beginning of a curve, concave to the southeast and having a radius of 134.50 feet; thence
5. Southwesterly 96.17 feet along said curve through a central angle of 40°58'00"; thence
6. South 43°30'20" West 43.00 feet; thence
7. North 46°29'40" West 31.00 feet; thence
8. South 43°30'20" West 148.02 feet; thence
9. North 41°23'30" West 126.17 feet; thence
10. North 80°12'19" West 213.61 feet; thence
11. South 07°36'53" West 98.00 feet; thence
12. South 58°49'58" West 128.00 feet; thence leaving said Northwesterly line
13. South 80°33'55" West 50.00 feet; thence

14. South 09°26'05" East 331.87 feet; thence
15. North 80°33'55" East 22.62 feet to a point distant South 67°35'32" West 133.83 feet from the Westerly terminus of that certain course in the generally Southerly line of said Parcel 18 having a bearing and distance of South 77°01'51" West 178.00 feet; thence
16. North 67°35'32" East 133.83 feet to said Westerly terminus; thence along said generally southerly line and the Northeasterly line of said Parcel 18, the following twelve courses:
17. North 77°01'51" East 178.00 feet; thence
18. South 81°45'40" East 79.00 feet; thence
19. South 12°58'09" East 12.00 feet; thence
20. North 77°01'51" East 121.00 feet to the beginning of a curve, concave to the North and having a radius of 232.00 feet; thence
21. Easterly 10.39 feet along said curve through a central angle of 02°34'01"; thence
22. North 74°27'50" East 238.93 feet to the beginning of a curve, concave to the Northwest and having a radius of 232.00 feet; thence
23. Northeasterly 105.58 feet along said curve through a central angle of 26°04'24"; thence
24. North 48°23'26" East 30.00 feet to the beginning of a curve, concave to the South and having a radius of 268.00 feet; thence
25. Easterly 213.56 feet along said curve through a central angle of 45°39'24"; thence
26. South 85°57'10" East 107.93 feet to the beginning of a curve, concave to the Northwest and having a radius of 35.00 feet; thence
27. Northeasterly 64.47 feet along said curve through a central angle of 105°32'10"; thence
28. North 11°29'20" West 356.27 feet to the most Northerly corner of said Parcel 18 and the point of beginning.

Except all minerals, oil, natural gas and other hydrocarbon substances lying in or under said property below a depth of 200 feet from the

surface thereof, without, however, the right to enter upon or explore or drill through the surface of the top 200 feet measured from the surface of said land as reserved in the deed recorded March 2, 1962, in Book 2115, Page 235, of Official Records, County of Ventura, State of California.

Parcel C:

That 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, as per map recorded in book 5, Page 42 of Miscellaneous Records (Maps), in the office of the County recorder of said County and that portion of Parcel 16 of Parcel Map filed in Book 20, Page 83 of Parcel Maps of said Records, described as follows:

Beginning at the Northeasterly corner of said Parcel 16; thence along the Northerly line of said Parcel 16, the following four courses:

1. South 77°01'51" West 121.00 feet; thence
2. North 12°58'09" West 70.00 feet; thence
3. North 81°45'40" West 79.00 feet; thence
4. South 77°01'51" West 178.00 feet; thence leaving said Northerly line
5. South 67°35'32" West 133.83 feet; thence
6. South 12°26'05" East 428.50 feet; thence
7. North 77°33'55" East 40.09 feet; thence
8. South 12°26'05" East 83.00 feet; thence
9. North 77°33'55" East 20.50 feet; thence
10. South 12°26'05" East 35.56 feet; thence
11. North 82°33'55" East 364.93 feet; thence
12. North 03°19'51" West 513.41 feet to the Northeasterly corner of said Parcel 16 and the point of beginning.

Except all minerals, oil, natural gas and other hydrocarbon substances lying in or under said property below a depth of 200 feet from the surface thereof, without, however, the right to enter upon or explore or drill through the surface or the top 200 feet measured from the surface of said land as reserved in the deed recorded March 2, 1962, in Book

2115, Page 235, of Official Records, County of Ventura, State of California.

Assessor's Parcel No. 080-0-240-125, 080-0-240-245 (portion)

EXHIBIT "B"

ASSIGNMENT STANDARDS

These standards are to apply to Proposed Transfers of this Lease, Lessee's leasehold estate in the Premises and to any Major Sublease. These standards and conditions are not to apply to (a) an assignment for the purpose of securing leasehold financing of the parcel by an Encumbrance Holder approved by Port, (b) the transfer of the leasehold in connection with a foreclosure or transfer in lieu of foreclosure by an approved lender, or (c) the first transfer by that Encumbrance Holder if it has acquired the leasehold through a foreclosure or a transfer in lieu of foreclosure.

- 1 The proposed transferee must have a net worth determined by the Port in the exercise of its reasonable judgment to be sufficient in relation to the financial obligations of the lessee pursuant to the specific lease involved. A letter of credit, cash deposit, guarantee from a parent entity or participating individual(s) having sufficient net worth or similar security satisfactory to the Port may be substituted for the net worth requirement. If the proposed transferee's net worth is materially less than the transferor's, Port may disapprove the assignment or require additional security such as that described in the previous sentence.

- 2 The proposed assignee must have significant experience in the construction (if contemplated), operation and management of the type(s) of Improvements existing on or to be constructed on the Premises, or provide evidence of contractual arrangements for these services with providers of such services satisfactory to the Port. Changes in the providers of such services and changes to the contractual arrangements must be approved by the Port. All approvals of the Port will not be unreasonably withheld or delayed.

- 3 The individual or individuals who will acquire Lessee's interest in this Lease or the Premises, or own entity which will so acquire Lessee's interest, irrespective of the tier at which individual ownership is held, must be of good character and reputation and, in any event, shall have neither a history of, nor a reputation for: (1) discriminatory employment practices which violate any federal, state or local law; or (2) non-compliance with environmental laws, or any other legal requirements or formally adopted ordinances or policies of the Port.
- 4 The price to be paid for the Proposed Transfer shall not result in a financing obligation of the proposed transferee which jeopardizes its ability to meet rental obligations to the Port. Market debt service coverage ratios and leasehold financial performance, at the time of the Proposed Transfer, will be used by Port in making this analysis.
- 5 If the proposed transferee is an entity, rather than an individual, the structure of the proposed transferee must be such that (or the assignee must agree that) the Port will have reasonable approval rights regarding any future direct or indirect transfers of interests in the entity or the applicable lease; provided however, that a transfer of ownership of a publicly held parent corporation of Lessee that is not done primarily as a transfer of this leasehold will not be subject to Port approval.
- 6 The terms of the proposed assignment will not detrimentally affect the efficient operation or management of the leasehold, the Premises or any Improvements thereon.
- 7 The proposed transferee does not have interests

which, when aggregated with all other interests granted by Port to such transferee, would violate any policy formally adopted by Port restricting the economic concentration of interests granted in the Ventura Harbor area, which is uniformly applicable to all Ventura Harbor lessees.

- 8 The transfer otherwise complies with the terms of all ordinances, policies and/or other statements of objectives which are formally adopted by Port and which are uniformly applicable to persons or entities with rights of occupancy in any portion of Ventura Harbor.
- 9 Lessee shall have given Port reasonable advance written notice of the proposed assignment sufficient to enable Port to conduct an investigation and review of the transaction and the proposed assignee.
- 10 Lessee shall have provided Port with such appropriate documentation as Port may require, including (a) 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, (b) 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, (c) 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, (d) evidence of the proposed assignee's business history, (e) current financial statement(s) for the proposed assignee(s), (f) the last three years' income tax returns for the proposed assignee(s) or general partners thereof, if the proposed assignee is a partnership, (g) the

business plan and financial projections of the proposed assignee(s), (h) 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, (i) 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, (j) copies of any management or operation agreements between the proposed assignee and its independent contractors which shall be subject to specific prior approval by Port, (k) such other information and material that evidences that proposed assignee has the experience, reputation, business background and financial capacity to reasonably ensure the continued prompt performance of the obligations of Lessee under this Lease after such assignment is to become effective and, (l) such other documents and information as may be required by Port to determine the commercial reasonableness of the proposed assignment.

- 11 The proposed assignee shall expressly agree in writing in a form acceptable to Port to be bound by all of the terms, covenants, conditions and agreements of this Lease.
- 12 Lessee is not in default.
- 13 The proposed assignee shall, in Port's reasonable business judgment, have sufficient business reputation and/or experience to operate a successful business of the type and quality permitted under this Lease.
- 14 The proposed assignee(s) shall provide to Port all funds necessary to replace, replenish, or increase any security deposit required to be made under Article 9 of this Lease.

- 15 Any assignment without Port's prior written consent shall be void and, at the option of Port, be grounds for terminating this Lease.

EXHIBIT "C" TO LEASE AGREEMENT

PERMITTED USES

A. General Description.

The Permitted Uses shall be as follows:

The Premises shall be used for the construction and operation of a mixed-use development containing 270 residential apartments, 30 live-work units, approximately 21,200 square feet of ground floor commercial area, a public promenade, project and public coastal access parking, and an approximately 2-acre waterfront view park, for vacant property encompassing Parcel Nos. 15, 16 and 18 located north of Navigator Drive and west of Anchors Way, and currently identified as Assessor's Parcel Numbers 080-0-240-125 and 080-0-240-245 (the "Project").

The Premises shall also be used for the construction and operation of an approximately 44,400 square foot new public recreational marina, which shall include: installation of new piles, gangways and utilities for the berthing of 104 boats, ranging from 30 feet to 80 feet in length; construction of a new 90 foot public long dock for use by personal watercraft; designation of six new public transient boating spaces, one new non-profit boating space and one new water taxi stop. The development is within the coastal zone in Ventura County at Port District Parcels 15, 16 and 18 (Assessor's Parcel Numbers 080-0-240-125 and 080-0-240-245) in the Ventura Harbor, City of San Buenaventura, Ventura County.

EXHIBIT "D"

FORM OF MONTHLY REPORT OF GROSS RECEIPTS

[BEHIND THIS PAGE]

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7-27-16

EXHIBIT D

VENTURA PORT DISTRICT MONTHLY REPORT OF GROSS RECEIPTS: Sondermann Ring Partners - Ventura Harbor

Parcel No. 15, 16, 18

Month: _____

Year: _____

CATEGORY DESCRIPTION		% RATE	GROSS SALES	AMOUNT
(A1)	Fees charged for Boat Slips and Anchorages			
(A2)	Moorings			
(A3)	Dockside Gear Lockers			
(A4)	Dockside Storage Space			
(A5)	Rental Receipts for Live Aboards	25.0%		
(B1)	Dry Storage Facilities			
(B2)	Landside Gear Lockers			
(B3)	Landside Storage Space			
(B4)	Small boat Rental Receipts	10.0%		
(C1)	Apartments	10.0%		
(C2)	Filming	10.0%		
(C3)	Meeting Rooms	10.0%		
(C4)	Occupancy of Other Structures	10.0%		
(D1)	Occupancy - Clerical or Administrative			
(D2)	Occupancy - Business Enterprise			
(D3)	Occupancy - Real Estate or Insurance Brokerage			
(D4)	Occupancy - Travel Agent			
(D5)	Occupancy - Engineer	10.0%		
(E)	New/Used Boat Sales	1.0%		
(F1)	Commissions - Boat Brokerage			
(F2)	Commission - Car Rental			
(F3)	Commission - Sale of Insurance			
(F4)	Commission - Telephone Service Charges			
(F5)	Commission - Laundry/Dry Cleaning	5.0%		
(G)	Commissions from Service Enterprises	5.0%		
(H1)	Commercial Boating Commissions			
(H2)	Commercial Boating Gross Receipts			
(I1)	Telephone Vending Commissions	5.0%		
(I2)	Telephone Vending Receipts	5.0%		
(J)	Restaurant, Bar, Tavern, Cocktail Lounge, Night Club	3.5%		
(L1)	Club Dues			
(L2)	Deemed Initiation Fee	10.0%		
(M1)	Sightseeing/Tour Boats			
(M2)	Sale of Live Bait	5.0%		
(N)	Day Spas	3.5%		
(O)	Parking Fees	20.0%		
(P1)	Miscellaneous Sales			
(P2)	Retail Sales	2.5%		
GRAND TOTALS				

EXHIBIT "E"

ILLUSTRATION OF CALCULATION OF NET PROCEEDS SHARE

[BEHIND THIS PAGE]

srp\lease6

7-27-16

EXHIBIT E

AS A CONSEQUENCE OF A MAJOR FINANCING EVENT OR A CHANGE IN OWNERSHIP

EVENT 1 - A MAJOR REFINANCING

Starting Basis	\$ 68,000	
Additional improvements approved prior to financing event	<u>\$ 3,000</u>	
Basis used in current calculation	\$ 71,000	
Amount of Proposed Major Financing	\$ 75,000	Case B (GrossTest) \$ 75,000
Less: Basis used for calculation	\$ (71,000)	\$ -
Less: loan fees, etc	\$ (2,250)	\$ (2,250)
Less: approved reinvestment in leasehold from financing proceeds	<u>\$ (1,000)</u>	<u>\$ (1,000)</u>
Net Refinancing Proceeds	\$ 750	\$ 71,750
Net Proceeds Test 18.5% of net amount	\$ 139	\$ -
Total Net Proceeds Share Due	\$ 139	\$ 40,000
Less: credit for administrative fees paid	<u>\$ (8)</u>	<u>\$ (8)</u>
Net Proceeds Share Due on Closing	\$ 131	\$ 39,992

EVENT 2 - A SALE OF THE ASSET (CHANGE IN OWNERSHIP 1)

Starting Basis	\$ 75,000	\$ 75,000
Additional improvements approved prior to sale	<u>\$ 2,000</u>	<u>\$ 2,000</u>
Basis used in current calculation	\$ 77,000	\$ 77,000
Sales Price in Change of Ownership	\$ 90,000	\$ -
Less: Basis used for calculation	\$ (77,000)	\$ (77,000)
Net Amount of Net Proceeds Subject to Sharing	\$ 13,000	
Net Proceeds Test 1 5% of gross	\$ 4,500	
Net Proceeds Test 2 20% of net	\$ 2,600	
Total Net Proceeds Share Due	\$ 4,500	
Less: credit for administrative fees paid	<u>\$ (12)</u>	
Net Proceeds Share Due on Closing	\$ 4,488	

EVENT 3 - CUMULATIVE SALES OF INTERESTS IN THE ASSET (CHANGE IN OWNERSHIP 2)

Assume that after the sale in Event 2 equity ownership is vested and changes as shown

			Investor A	Investor B	Investor C	Investor D	Investor E
Share of Ownership		100%	45%	40%	4%	5%	6%
Allocated Basis		\$ 90,000	\$ 40,500	\$ 36,000	\$ 3,600	\$ 4,500	\$ 5,400
1st partial sale	Price				\$ 6,000		
	Gain (5% of gross vs. 20% of net)				\$ 2,400		
	Net proceeds share accrued	\$ 480			\$ 480		
	Cumulative % Sold	4%			4%		
	Net proceeds share paid	\$ -			\$ -		
2nd partial sale	Price					\$ 10,000	
	Gain (5% of gross vs. 20% of net)					\$ 5,500	
	Net proceeds share accrued	\$ 1,580			\$ 480	\$ 1,100	
	Cumulative % Sold	9%			4%	5%	
	Net proceeds share paid	\$ -			\$ -	\$ -	
3rd partial sale	Price		\$ 50,000				
	Gain (5% of gross vs. 20% of net)		\$ 9,500				
	Net proceeds share accrued	\$ 4,080	\$ 2,500		\$ 480	\$ 1,100	
	Cumulative % Sold	54%	45%		4%	5%	
	Net proceeds share paid	\$ 4,080	\$ 2,500		\$ 480	\$ 1,100	

EXHIBIT E

EXAMPLE CALCULATIONS OF SHARE OF NET PROCEEDS DUE DISTRICT - PART 2 OF 2

AS A CONSEQUENCE OF A MAJOR SUBLEASE

With respect to a Major Sublease, Assume the Following	Case A (Net Test)	Case B (GrossTest)
Basis used in current calculation	\$ 90,000	\$ 90,000
Lease obligations to District and lenders assumed by Major Sublessee	all	all
Consideration Paid to Lessee by Major Sublessee		
Debt assumed at closing	\$ 75,000	\$ 75,000
Bonus payment at closing	\$ 50,000	\$ 40,000
Equivalent Gross Price	\$ 125,000	\$ 115,000
Less: Basis used for calculation	\$ (90,000)	\$ (90,000)
Net Amount of Net Proceeds Subject to Sharing	\$ 35,000	\$ 25,000
Net Proceeds Test 1 5% of gross	\$ 6,250	\$ 5,750
Net Proceeds Test 2 20% of net	\$ 7,000	\$ 5,000
Net Proceeds Share Due on Initial Closing	\$ 7,000	\$ 5,750
Calculation of Additional Net Proceeds Due if Net Rent is Paid Subsequent to Initial Closing		
Assume Major Sublease provides for ongoing annual net payments of to lessee of	\$ 200	\$ 200
Factor used to compute ongoing share depending on Initial calculation	20%	5%
• Additional Net Proceeds Due Annually	\$ 40	\$ 10

EVENT 3 - CUMULATIVE SALES OF INTERESTS IN THE ASSET (CHANGE IN OWNERSHIP 2)

Amended Exhibit "F"

Schedule of Documents Proving/Constituting Satisfaction of the Conditions Precedent to Exercise of Option as of 9/26/16

1. The Final Approval document(s) for every Entitlement, including, but not limited to, the following:

a. Certification of the Environmental Determination for the Improvements by the Lead Agency;

Status: Complete

See Document No. (1a-1) Mitigated Negative Declaration approved by the City of Ventura 1/22/07

See Document No. (1a-2) Mitigated Negative Declaration Addendum approved by the City of Ventura 7/13/13

b. A certificate of compliance, or the appropriate document, expanding the water area portion of the Premises as referred to in Section 6.4 (a (2));

Status: Complete

See Document No. (1b) Lot Line Adjustment (Certificate of Compliance) dated 7/23/15, recorded 4/20/16

c. City approval and allocation of units necessary to support the Improvements under the Residential Growth Management Plan;

Status: Complete (N/A)

d. Approval of the design of the Improvements by the City 's design review committee;

Status: Complete

See Document No. (1d-1a) Planning Commission Resolution No. CD-2013-25: Coastal Development Permit No. 5-13-16197 and Design Review Committee Approval No. 5-13-16196, dated 7/13/13.

See Document No. (1d-1b) Approved Regulating Plan, dated 6/19/13

See Document No. (1d-2) Design Review Committee Approval Minutes for Confirmation of Details from 3/18/15 meeting

See Document No. (1d-3) Design Review Committee Approval Minutes for Confirmation of Details from 7/1/15 meeting

See Document No. (1d-4) Design Review Committee Approval Minutes for Confirmation of Details from 3/2/16 meeting

e. Approval of the Improvements by the Planning Commission of the City;

Status: Complete

See Document No. (1d-1a) Planning Commission Resolution No. CD-2013-25: Coastal Development Permit No. 5-13-16197 and Design Review Committee Approval No. 5-13-16196, dated 7/13/13

See Document No. (1d-1b) Approved Regulating Plan, dated 6/19/13

f. Approval of the Improvements by the City Council;

Status: Complete

Final action for approval of the Improvements was completed by Planning Commission, and the Project was not appealed to Council or Coastal Commission. The City Council, however, did approve the Local Coastal Program Amendment associated with the Project.

See Document No. (1f) Local Coastal Program Amendment, certified 4/12/12

g. Issuance of a Coastal Development Permit from the City authorizing the Improvements;

Status: Complete

See Document No. (1d-1a) Planning Commission Resolution No. CD-2013-25; Coastal Development Permit No. 5-13-16197 and Design Review Committee Approval No. 5-13-16196, dated 7/13/13

See Document No. (1d-1b) Approved Regulating Plan, dated 6/19/13

h. Approval of the Coastal Development Permit by the State Coastal Commission or such documents as may constitute the Final Approval of the Improvements by said Commission; and

Status: Complete

The Coastal Development Permit for the landside improvements was issued by the City of Ventura, and was not appealed to Coastal Commission. The Coastal Development Permit for the waterside improvements (docks, etc.) was issued by the Coastal Commission.

See Document Nos.:

(1h-1) Coastal Development Permit No. 4-09-026 dated 4/18/16

(1h-2) CDP 4-09-026 Exhibit: Project Plans

(1h-3) CDP 4-09-026 Exhibit: Vessel Sewage Pump-out System

(1h-4a and 1h-4b) CDP 4-09-026 Exhibit: Clean Marina Plan and Handouts

(1h-5) CDP 4-09-026 Exhibit: Signage Program

(1h-6) CDP 4-09-026 Exhibit: Assumption of Risk

i. A list of all permits needed to complete the Improvements; documentation that all conditions to the issuance of grading, building and other permits required by the Initial Lender have been satisfied, except for payment of fees to be paid upon the closing.

Status: Pending; A letter from City Department of Public Works regarding readiness to issue grading permit and commence construction to be delivered to Port prior to Closing. Copies of all permits to be submitted to Port when issued by City.

See Document No. (1i-1) List of Permits Needed to Complete the Improvements dated 5/23/16.

For specific permits, see the following Document Nos.:

(1i-2) Applications for Building Permits, dated 7/20/15

(1i-3) Section 401 Water Quality Certification (WQC) from the Los Angeles Regional Water Quality Control Board dated 10/02/15

(1i-4) US Army Corps of Engineers Permit No. SPL-2015-00205-AJS, dated 5/11/16

2. Dismissal or other resolution of any and all litigation affecting SRP's successor-in-interest's right or ability to construct the Improvements.

Status: Pending.

Form litigation statement to be submitted to Port. Signed litigation statement to be delivered at the Closing.

3. Payment to the Port of the Holding Fee, plus any interest or late fees pursuant to Section 5.2, and any unpaid Actual Costs, at closing.

Status: Pending

Holding Fee is \$1,200,000. No interest or late fees are payable. Port to submit invoice for any unpaid Actual Costs. All fees and costs to be paid through Escrow at Closing.

4. Execution by SRP's successor-in-interest and Port of a mutual release of claims, relating to any and all claims either party may have or claim to have against the other party, its partners, directors, officers, agents, employees and attorneys, which arise out of this Agreement.

Status: Pending

Draft submitted to Port Counsel on 7/29/16. Signed mutual release to be provided at closing.

5. Confirmation of delivery of the Final Plans and structural calculations pursuant to Section 9.3.4 hereof.

Status: Substantially completed. Copies of all current Plans under review by the City have been submitted to the Port. "Permit Set" of Plans will be submitted to Port as soon as it is available to SRP. As-built Plans will be submitted to Port at the same time as they are submitted to the Construction Lender.

See the following Document Nos.:

- a. Architectural Plans prepared by TSM, Inc.
 1. Architectural Plans, dated 9/23/16
 2. Project Manual (Specifications), dated 3/28/16
- b. Structural Plans, prepared by JLA, Inc.
 1. Structural Plans, dated 9/23/16
 2. Structural Calculations for Bldgs 1-5, prepared by JLA, Inc., dated 6/1/15
 3. Structural Calculations for Bldgs 6-8, prepared by JLA, Inc., dated 6/1/15
 4. Structural Calculations for Bldgs 9-13, prepared by JLA, Inc., dated 6/1/15
 5. Structural Calculations for plan check response, prepared by JLA, Inc., dated 2/24/16
- c. Mechanical, prepared by TAD Consulting, Inc, dated 9/23/16
- d. Electrical, prepared by RVM Engineering, Inc, dated 9/23/16
- e. Plumbing, prepared by TAD Consulting, Inc, dated 9/23/16
- f. Civil Improvements – Offsite Improvements, prepared by B&E Engineers, dated 9/20/16
- g. Civil Improvements – Onsite Improvements (except sewer), prepared by B&E Engineers, dated 8/03/16
- h. Civil Improvements – Onsite Sewer, prepared by KPFF, dated 9/23/16
- i. Landscape, prepared by TGP, dated 9/23/16

- j. Overall Site Site Plan, prepared by TSM, Inc., dated 9/23/16
- k. Marina Dock Site Plan, prepared by Anchor QEA, dated 7/27/16
- l. Marina Dock Bid Drawing Set, prepared by Anchor QEA, dated 7/27/16
- m. Marina Dock Technical Specifications, prepared by Anchor QEA, dated 7/13/15

6. Delivery and approval by the General Manager of the construction security pursuant to Section 9.3.5 hereof.

Status: Pending

Form of Completion Guaranty has been submitted to the Port. Executed Completion Guaranty to be provided at the Closing.

7. Port's approval or deemed approval of the Initial Financing documents pursuant to Section 9.4 and other financial documents relating to SRP's successor-in-interest, including, but not limited to, the following:

- a. A pro forma statement of the capital structure of SRP's successor-in-interest, with projections of income and expense for the first five (5) years of operation under the Lease.**

Status: Complete.

Submitted to Port Counsel on 7/29/16.

- b. A copy of the entity formation documents for SRP's successor-in-interest;**

Status: Complete.

Submitted to Port Counsel on 7/29/16.

- c. A term sheet and substantially complete loan documents relating to the construction loan, for which the real property collateral shall only be SRP's successor-in-interest's leasehold interest in the Premises;**

Status: Complete.

Submitted to Port Counsel on 7/29/16, supplemented on 9/20/16.

- d. Identification of all sources of working capital projected in SRP's successor-in-interest's pro forma statement;**

Status: Complete.

Limited Liability Company Agreement for Portside Partners Ventura Harbor, LLC identifying equity capital, and Loan Documents identifying construction loan capital submitted to Port Counsel on 7/29/16.

- e. Intentionally omitted.**

- f. A statement of all pending litigation for SRP's successor-in-interest, its Original Members and any affiliates of SRP's successor-in-interest or its Original Members, involving individual claims of Fifty Thousand Dollars (\$50,000.00) or more, in the aggregate, or requests for injunctive or other relief.**

Status: Pending.

Form litigation statement to be submitted to Port. Signed litigation statement to be delivered at the Closing.

- 8. Copies of any executed contracts or other agreements SRP's successor-in-interest plans to enter into with any person or entity for the management and conduct of business operations on the Premises, specifically identifying those persons or entities which are affiliates of SRP or affiliates of any general or limited partner of SRP.**

Status: Complete. Form of Management Agreement with E&S Ring Company submitted to Port Counsel on 7/29/16. The executed property management agreement to be provided to Port when executed within the time required by Construction Lender.

See Document No. (8) Form of Property Management Agreement.

- 9. Copies of all insurance documentation required by the Lease to be in effect upon effectiveness of the Lease.**

Status: Pending

An insurance proforma was submitted to Port counsel on 9/21/16, and the insurance binder to be provided at closing.

See Document No. (9) Venbrook Insurance Proposal dated 6/23/16

- 10. Approval of the Lease by the Department of Boating and Waterways, the Attorney General and the State Lands Commission for the State of California.**

Status: Complete

This Item #10 has been completed by the Port.

- 11. Copy of an ordinance duly adopted by District authorizing the Lease.**

Status: Complete

See Document No. (11) Board of Port Commissioners of Ventura Port District Ordinance No. 41 dated 7/24/2002.



RESOLUTION NO. 3319

**RESOLUTION OF THE BOARD OF PORT COMMISSIONERS
OF VENTURA PORT DISTRICT CONDITIONALLY APPROVING THE CONSTRUCTION
LOAN FINANCING PORTION OF THE INITIAL FINANCING EVENT UNDER THE
OPTION TO LEASE PARCELS 15, 16 AND 18, AND THE GROUND LEASE THEREFORE,
BETWEEN PORTSIDE PARTNERS VENTURA HARBOR, LLC AND PNC BANK, A
NATIONAL ASSOCIATION, AS THE AGENT FOR PNC BANK AND CIT BANK, AS
LENDERS, IN THE AMOUNT OF \$71,700,000.00, AND AUTHORIZING THE GENERAL
MANAGER OF VENTURA PORT DISTRICT TO EXECUTE THE GROUND LEASE
ESTOPPEL CERTIFICATE RELATING TO THE CONSTRUCTION LOAN FINANCING
PORTION OF THE INITIAL FINANCING EVENT**

WHEREAS, concurrently herewith, the Option to Lease Parcels 15, 16 and 18 ("Option to Lease") in Ventura Harbor has been assigned with approval and consent of the Board of Port Commissioners of Ventura Port District ("Board") to Portside Partners Ventura Harbor, a Delaware limited liability company ("PPVH"); and

WHEREAS, under the Option to Lease with PPVH, the Optionee and prospective Lessee of the Ground Lease attached to the Option to Lease as Exhibit "B," among other things is obligated to design the improvements to be constructed on Parcels 15, 16 and 18, obtain the entitlements from all required government agencies with respect to said improvements, and to obtain the financing necessary to build those improvements, all as conditions precedent to the exercise of the Option to Lease to obtain the Ground Lease; and

WHEREAS, PPVH, and its predecessor-in-interest, have designed the improvements and obtained the necessary entitlements for the development of Parcels 15, 16 and 18, and provided the District with a series of documents ("Loan Documents") negotiated with PNC Bank, a National Association ("PNC Bank"), as the agent for PNC Bank and CIT Bank, N.A., a National Banking Association, (collectively Lenders), in order to provide the financing for the Option to Lease and construction of the proposed improvements on Parcels 15, 16 and 18 pursuant to the requirements of the Ground Lease; and

WHEREAS, the Loan Documents include a Construction Loan Agreement, Deed of Trust Notes with PNC Bank and CIT Bank, a Leasehold Construction Deed of Trust, an Assignment of Rents, Security Agreement and Fixture Filing, an Assignment of Rents, Leases and Profits, an Environmental Indemnity Agreement, an Assignment of Construction and Development Documents (Borrower to Agent), an Assignment and Subordination of Property Management Agreement, and a Ground Lease Estoppel Certificate to be approved and signed by the District, the Lenders and PPVH, for the benefit of the Lenders, PNC Bank and CIT Bank; and



WHEREAS, the Loan Documents have been reviewed to confirm that each such document is consistent with the requirements of the Ground Lease to be entered into concurrently with the effectiveness of the construction loan portion of the Initial Financing Event and the execution and effectiveness of the Ground Lease; and

WHEREAS, it appearing to be in the best interests of the public, PPVH, the Lenders and the District that the Loan Documents be approved by the District and that the Ground Lease Estoppel Certificate in the form attached to this Resolution as Exhibit "A" be executed by the General Manager of the District to further the process leading to the issuance and effectiveness of the Ground Lease for Parcels 15, 16 and 18.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Port Commissioners of the Ventura Port District hereby conditionally approves the construction loan financing portion of the Initial Financing Event under the Ground Lease for Parcels 15, 16 and 18, including the Construction Loan Agreement, the Deed of Trust Notes for PNC Bank and CIT Bank, the Leasehold Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, the Assignment of Rents, Leases and Profits, the Environmental Indemnity Agreement, the Assignment of Construction and Development Documents (Borrower to Agent), the Assignment and Subordination of Property Management Agreement, and the Ground Lease Estoppel Certificate for the benefit of the Lenders.

BE IT FURTHER RESOLVED, that the General Manager of the District is hereby authorized and directed to execute on behalf of the District the Ground Lease Estoppel Certificate relating to the construction loan financing portion of the Initial Financing Event, a copy of which is attached to this Resolution, and to conditionally deliver to Commonwealth Title Company, as the escrow agent for PPVH and the Lenders, relating to the construction loan portion of the Initial Financing Event, subject to confirmation by the General Manager and District legal counsel that all conditions precedent to the exercise of the Option to Lease Parcels 15, 16 and 18 have been met and satisfied; and

BE IT FURTHER RESOLVED, that the General Manager and District staff are hereby authorized and directed to take such other and further actions, and to sign such additional documents, as may be necessary or appropriate to carry out the purpose and intent of this Resolution.

AYES:
NOES:
ABSENT:
ABSTAINED:

Jim Friedman, Chairman

ATTEST:

Secretary Oscar Peña

(Seal)

This instrument prepared by and
after recording please return to:

BUCHANAN INGERSOLL & ROONEY LLP
One America Plaza
600 West Broadway, Suite 1100
San Diego, CA 92101
(619) 685-1902
Attn: Charles Knox

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GROUND LEASE ESTOPPEL CERTIFICATE

THIS GROUND LEASE ESTOPPEL CERTIFICATE (this "**Estoppel Certificate**") is made as of the ____ day of _____, 2016, by and among PNC BANK, NATIONAL ASSOCIATION, a national banking association ("**PNC**"), as administrative agent for itself and the Other Lenders (defined below) (in such capacity, together with its successors and assigns, the "**Lender**"), VENTURA PORT DISTRICT, a Port District formed under and pursuant to Part 4 of the Harbors and Navigation Code of the State of California ("**Lessor**"), and acknowledged by PORTSIDE PARTNERS VENTURA HARBOR, LLC, a Delaware limited liability company (the "**Lessee**"). The Lessor and Lessee are referred to herein as the "**Lease Parties**".

RECITALS

A. Lessor is the fee simple owner of that certain premises located in the City of San Buenaventura, California and more particularly described in Exhibit A attached hereto (the "**Property**"), which is the subject of that certain Lease Agreement between Lessor, as landlord, and Lessee, as tenant, dated as of _____, 2016, a memorandum of which was recorded on _____, 2016 among the land records of Ventura County, California (the "**Land Records**") as instrument number _____. (collectively, the "**Ground Lease**").

B. This Estoppel Certificate is being entered into in connection with a mortgage loan (the "**Loan**") from PNC and CIT Bank, N.A., a national banking association (together with its successors and assigns, the "**Other Lenders**") to Lessee to be evidenced by those certain Deed of Trust Notes dated the date hereof from Lessee to Lender (the "**Notes**") and, secured by, inter alia, that certain Leasehold Construction Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated the date hereof from Lessee to Commonwealth Land Title Insurance Company for the benefit of Lender (the "**Deed of Trust**") (the Notes, Deed of Trust and any other document executed and delivered in connection

with the Loan, as the same may from time to time be amended, restated or otherwise modified, are herein collectively, the "**Loan Documents**").

ESTOPPEL CERTIFICATE

For mutual consideration, including the mutual covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby represent, warrant and agree as follows:

1. Lessor represents that a complete and accurate copy of the Ground Lease is attached hereto as Exhibit B and is in full force and effect; there are no amendments or modifications (other than any amendments or modifications contained in this Estoppel Certificate) of any kind to the Ground Lease; there are no other promises, agreements, understandings or commitments between Lessor and Lessee relating to the Property other than the Ground Lease; and Lessee has not given Lessor any notice of termination thereunder.
2. Lessor represents that the Ground Lease constitutes the legal, valid and binding obligation and contract of Lessor and is enforceable against Lessor in accordance with its terms.
3. Lessor represents that no uncured default, event of default, or breach by Lessor or, to Lessor's knowledge, Lessee exists under the Ground Lease, and no facts or circumstances exist that, with the passage of time will or could constitute a default, event of default, or breach by Lessor or, to Lessor's knowledge, Lessee, under the Ground Lease. Lessor has made no claim against Lessee alleging Lessee's default under the Ground Lease.
4. Lessor represents that all rental payments have been paid through the Closing, and all other payments or additional rent due under the Ground Lease are current.
5. Lessor represents that the undersigned representative of Lessor is duly authorized and fully qualified to execute this Estoppel Certificate on behalf of Lessor thereby binding Lessor, and the Lessee represents that the undersigned representative of Lessee is duly authorized and fully qualified to execute the Acknowledgment to this Estoppel Certificate on behalf of Lessee thereby binding Lessee.
6. Lessor represents that Lessor has not assigned, encumbered or otherwise transferred its interest under the Ground Lease.
7. Lessor represents that the term of the Ground Lease commenced on _____, the remainder of the term continues until _____, and Lessee has no right to extend the term of the Ground Lease except as provided in Section 2.1.1 of the Ground Lease.
8. Lessor represents (a) that Lessor has approved of, and consented to, the making of the Loan to Lessee, the conveyance made by the Deed of Trust for the benefit of Lenders, (b) that Lessor has received, reviewed and approved the Loan Documents listed on Exhibit C attached hereto, and Estoppel Certificate, and (c) that the Loan shall constitute an

Initial Financing Event (as defined in the Ground Lease). Lessor agrees that Lender shall be included within the terms "Encumbrance Holder" and "encumbrance holder" as used in the Ground Lease, and that Lender, in each case for the benefit of the Other Lenders, shall be entitled to the rights and benefits afforded to, and subject to any conditions and obligations applicable to, an "Encumbrance Holder" or a "encumbrance holder" under the terms of the Ground Lease to the extent that such rights, benefits, conditions, or obligations do not conflict with the terms of Estoppel Certificate.

9. Lessor agrees that, without the prior written consent of Lender, Lessor shall have no right to (1) enter into any agreement amending, modifying, or waiving any provision of the Ground Lease, or (2) cancel or terminate or agree to a cancellation, termination or surrender of the Ground Lease, including in connection with a condemnation or an uninsured casualty pursuant to Sections 6.2 and 10.2, respectively, under the Ground Lease (except in the event of default by Lessee under the Ground Lease, subject to the notice and cure rights provided to an Encumbrance Holder under the Ground Lease, and in the event of the expiration of the Ground Lease at the end of the Term of the Ground Lease).

10. Lessor agrees that if the Property is sold to Lender or its nominee at a foreclosure sale or Lender or its nominee acquires title to the Property, Lender or its nominee shall automatically succeed to all rights of Lessee in and to any proceeds resulting from any damage to the Property prior to such sale or acquisition, subject to the applicable terms and provisions of the Ground Lease and of this Estoppel Certificate.

11. Notwithstanding anything in the Ground Lease to the contrary,

a. during such time as Lender or its nominee is the owner of the leasehold interest in the Property, the Lender's or its nominee's obligations under Section 3.3(e) of the Ground Lease shall be limited to using commercially reasonable efforts to maximize revenues from the operation of the Property as are consistent with the efforts utilized by Institutional Lenders as defined in Section 12.1.3.1 of the Ground Lease, in the operation of commercial properties acquired by foreclosure or a deed in lieu of foreclosure;

b. Lender and Lessee shall have the right, without the prior written consent of Lessor, to modify, extend, renew or otherwise revise the Loan Documents, provided that the consent of the Lessor shall be required with respect to any such modification, extension, renewal or revision with respect to (i) the provisions of the Loan Documents governing restoration of the Property or the use of insurance proceeds following a casualty, (ii) the provisions of the Loan Documents governing the restoration of the Property or the use of condemnation proceeds following a condemnation of a portion of the Property, or (iii) the pledging of the collateral for the Loan as security for any obligation unrelated to the Property, and provided further that no such modification, extension, renewal or revision shall waive, diminish or otherwise limit the obligation of the Lessee under the Ground Lease to keep rent and its other obligations current. To the extent that the consent of the Lessor shall be required for any such modification, extension, renewal or revision pursuant to the foregoing, such consent shall not be unreasonably withheld or delayed;

c. Lender shall provide to Lessor a copy of each written notice of default under the Loan Documents provided by Lender to the Lessee within twenty (20) days after the Lender sends such written notice to the Lessee and in accordance with Section 15.9 of the Ground Lease, provided, however, failure of Lender to provide a copy of any such notice shall not affect Lender's rights and remedies under the Loan Documents, or give rise to any liability or obligation by Lender to the Lessor.

12. The Lender acknowledges that the Deed of Trust is under, subject and subordinate to the provisions of the Ground Lease in all particulars, except as otherwise expressly provided in this Estoppel Certificate.

13. For purposes of clarification, the Lessor agrees that no Administrative Charge and no Net Proceeds Share shall be due in connection with a foreclosure or transfer in lieu of foreclosure by Lender, or the first transfer by Lender or its nominee if it has acquired the leasehold through a foreclosure or a transfer in lieu of foreclosure, or any assignment of an interest in the Loan by PNC and/or the Other Lenders.

14. Lessor agrees that Lender shall be entitled to receive payment of any condemnation award to which Lessee is entitled to receive pursuant to the Ground Lease. Notwithstanding anything to the contrary in the Ground Lease, in the event of a casualty, Lessor and Lessee agree that the proceeds of insurance shall be held by Lender or an insurance trustee acceptable to Lender and Lessor to be disbursed in accordance with the terms of the Loan Documents for the purpose of restoration of the Property, or, in the alternative, at the election of the Lender but only to the extent that the conditions to the disbursement of such proceeds for the purpose of restoration of the Property contained in the Loan Documents have not been satisfied, in accordance with the Loan Documents for application to the amounts due with respect to the Loan.

15. Lessor represents that it has not mortgaged, conveyed, hypothecated or otherwise encumbered its fee simple interest in the Property, and Lessor agrees that Lessor shall have no right to mortgage, convey, hypothecate or otherwise encumber its fee simple interest in the Property unless such mortgage, conveyance, hypothecation, or other encumbrance is subordinated to Lessee's interest under the Ground Lease.

16. Lessor hereby represents that Lessee has made the following payments and deposits to Lessor:

a. The Holding Fee required by the Option Agreement in the amount of \$1,200,000, paid at Closing.

b. A security deposit in the amount of \$100,000, delivered at Closing.

c. First month's rent in the amount of \$25,000, delivered at Closing.

d. Lease Extension Fees and Option Payments pursuant to the Option Agreement in the aggregate amount of \$ _____.

e. Lessor's out-of-pocket administrative costs and expenses in the aggregate amount of \$ _____.

17. Lessor agrees that no foreclosure sale or deed in lieu of foreclosure shall be deemed to constitute a Proposed Transfer (as defined in the Ground Lease) and that, following any acquisition by Lender or its nominee of the leasehold interest in the Property, it or its nominee may sell, assign and convey such leasehold interest without complying with the provisions contained in Subsections 11.3.4 and 11.3.5 of the Ground Lease. At all times the rights of the Lessor under Subsections 11.3.4 and 11.3.5 of the Ground Lease, including, without limitation, Lessor's rights under any Port Option (as defined in the Ground Lease) delivered pursuant thereto, shall be under, subject and subordinate in all respects to the Deed of Trust, as the same may from time to time be amended, restated or otherwise modified.

18. Lessor agrees that (i) any notice required to be given to Lessee pursuant to the Ground Lease subsequent to the date the Lessee's leasehold interest in the Property is encumbered by the Deed of Trust shall be simultaneously given to Lender, and (ii) any notice to be given to an "Encumbrance Holder" pursuant to the Ground Lease shall be given to Lender; at the following addresses:

PNC Bank, National Association
201 East Fifth Street
Cincinnati, OH 45202
Attention: Rich Trzybinski
Senior Vice President

With a copy to:

Midland Loan Services, a PNC Real Estate business
10851 Mastin Blvd., Ste 300
Overland Park, KS 66210
Attention: Jennifer C. Howell
Senior Asset Manager

David Plantz, Esq.
Buchanan Ingersoll & Rooney LLP
600 West Broadway, Suite 1100
San Diego, CA 92101

or at such other address as Lender may provide to Lessor in writing.

19. This Estoppel Certificate shall be governed by the laws of the State of California. To the extent any conflict exists between the Ground Lease and this Estoppel Certificate, this Estoppel Certificate shall govern. In case any one or more of the provisions contained in this Estoppel Certificate should be deemed invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or therein shall in no way be affected or impaired thereby and shall be enforceable to the maximum extent permitted by law. This Estoppel Certificate may be executed in two or more counterparts,

each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same document. Any term used herein and not otherwise defined, shall have the meaning ascribed in the Ground Lease. This Estoppel Certificate shall be binding upon and inure to the benefit of the Lender, the Lenders, and their respective successors and assigns, and Lessor and Lessee.

20. Lessor hereby agrees to enter into an agreement substantially similar to this Estoppel Certificate with any lender approved by Lessor pursuant to the Ground Lease which provides financing for the purpose of refinancing the Loan, so long as such refinancing loan is consistent with the Ground Lease, at the request of such lender, it being understood that such agreement will differ from this Estoppel Certificate to reflect the actual terms of such refinancing loan.

This Estoppel Certificate is entered into with the understanding that it will be relied upon by the Lender and Lenders in making the Loan to Lessee. Lender, Lenders and any subsequent holder of the Notes may rely on this Estoppel Certificate and the representations, warranties and agreements contained herein.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned parties hereunder have caused this Estoppel Certificate to be executed by their duly authorized officers or representatives as of the date hereof.

LENDER:

PNC BANK, NATIONAL ASSOCIATION,
a national banking association

By: _____ (SEAL)

Name:

Title:

[ACKNOWLEDGMENT APPEARS ON THE FOLLOWING PAGE]

ACKNOWLEDGMENT

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

State of California)
)
County of _____)

On _____, 2016, 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.

Signature _____

LESSOR:

**VENTURA PORT DISTRICT,
a Port District formed under and pursuant to Part 4
of the Harbors and Navigation Code of the State of
California**

By: _____ (SEAL)

Name:

Title:

[ACKNOWLEDGMENT APPEARS ON THE FOLLOWING PAGE]

ACKNOWLEDGMENT

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

State of California)
)
County of _____)

On _____, 2016, 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.

Signature _____

The undersigned Lessee, Portside Partners Ventura Harbor, LLC, hereby acknowledges the terms and provisions of the foregoing Ground Lease Estoppel Certificate.

LESSEE:

PORTSIDE PARTNERS VENTURA HARBOR, LLC, a Delaware limited liability company

By: BCE Portside-Ventura Harbor Associates, LLC, a Delaware limited liability company, its Manager

By: Benedict Canyon Equity Holdings, LLC, a California limited liability company, its manager

By: Benedict Canyon Equities, Inc., a California corporation, its manager

By: _____
Robert E. Hart
Its Manager

By: SONDERMANN RING PARTNERS – VENTURA HARBOR, LLC, a California limited liability company, its Member

By: Sondermann Enterprises, Inc.,
a California corporation, its managing member

By: _____
Michael B. Sondermann
Its President

[ACKNOWLEDGMENT APPEARS ON THE FOLLOWING PAGE]

ACKNOWLEDGMENT

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

State of California)
)
County of _____)

On _____, 2016, 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.

Signature _____

EXHIBIT A
Description of Land

A-1

EXHIBIT "A"

Legal Description of Premises

All that certain real property situated in the County of Ventura, State of California, described as follows:

Parcel A:

That portion of Subdivision 7 of the West One-Half of Rancho San Miguel, in the City of San Buenaventura, County of Ventura, State of California, as per map recorded in Book 5 Page 42 of Miscellaneous Records (Maps), in the office of the County recorder of said County and Parcel 15 of Parcel Map filed in Book 25, Pages 52 through 54, inclusive of Parcel Maps of said Records, described as a whole as follows:

Beginning at the most Northerly corner of said Parcel 15; thence along the Northwesterly line of said Parcel 15, the following two courses;

1. South 61°53'31" West 74.73 feet;
2. South 25°17'51" West 352.10 feet; thence leaving said northwesterly line
3. South 84°52'31" West 531.67 feet; thence
4. South 05°07'29" East 92.38 feet; thence
5. South 84°52'31" West 63.63 feet; thence
6. South 09°26'05" East 320.33 feet to a point distant South 80°33'55" West 50.00 feet from the westerly terminus of that certain course in the generally southerly line of said Parcel 15 having a bearing and distance of North 58°49'58" East 128.00 feet; thence
7. North 80°33'55" East 50.00 feet to said most southerly corner of Parcel 15; thence along the generally southerly and northeasterly lines of said Parcel 15, the following seventeen courses:
 8. North 58°49'58" East 128.00 feet; thence
 9. North 07°36'53" East 98.00 feet; thence
 10. South 80°12'19" East 213.61 feet; thence

11. South 41°23'30" East 126.17 feet; thence
12. North 43°30'20" East 148.02 feet; thence
13. South 46°29'40" East 31.00 feet; thence
14. North 43°30'20" East 43.00 feet to the beginning of a curve, concave to the southeast and having a radius of 134.50 feet; thence
15. Northeasterly 96.17 feet along said curve through a central angle of 40°58'00"; thence
16. North 84°28'20" East 99.60 feet to the beginning of a curve, concave to the northwest and having a radius of 65.50 feet; thence
17. Northeasterly 103.65 feet along said curve through a central angle of 90°40'04"; thence
18. North 06°11'44" West 40.73 feet; thence
19. North 83°48'16" East 341.77 feet; thence
20. North 11°29'20" West 165.54 feet to the beginning of a curve, concave to the southwest and having a radius of 120.00 feet; thence
21. Northwesterly 111.45 feet along said curve through a central angle of 53°12'49"; thence
22. North 64°42'09" West 209.90 feet to the beginning of a curve, concave to the northeast and having a radius of 280.00 feet; thence
23. Northwesterly 112.76 feet along said curve through a central angle of 23°04'26" to the beginning of a reverse curve, concave to the Southwest and having a radius of 220.00 feet; thence
24. Northwesterly 88.60 feet along said curve through a central angle of 23°04'26" to the most Northerly corner of said Parcel 15 and the point of beginning.

Except all minerals, oil, natural gas and other hydrocarbon substances lying in or under said property below a depth of 200 feet from the surface thereof, without, however, the right to enter upon or explore or drill through the surface of the top 200 feet measured from the surface of said land as reserved in the deed

recorded March 2, 1962, in Book 2115, Page 235, of Official Records, County of Ventura, State of California.

Parcel B:

That portion of Subdivision No. 7 of the West One-Half of Rancho Miguel, in the City of San Buenaventura, County of Ventura, State of California, as per map recorded in Book 5 Page 42, of Miscellaneous Records (Maps), in the office of the County recorder of said County and Parcel 18 of Parcel Map filed in Book 25, Pages 52 through 54, inclusive of Parcel Maps of said Records, described as a whole as follows:

Beginning at the most Northerly corner of said Parcel 18; thence along the Northwesterly line of said Parcel 18, the following twelve courses;

1. South 83°48'16" West 341.77 feet; thence
2. South 06°11'44" East 40.73 feet to the beginning of a curve, concave to the northwest and having a radius of 65.50 feet; thence
3. Southwesterly 103.65 feet along said curve through a central angle of 90°40'04"; thence
4. South 84°28'20" West 99.60 feet to the beginning of a curve, concave to the southeast and having a radius of 134.50 feet; thence
5. Southwesterly 96.17 feet along said curve through a central angle of 40°58'00"; thence
6. South 43°30'20" West 43.00 feet; thence
7. North 46°29'40" West 31.00 feet; thence
8. South 43°30'20" West 148.02 feet; thence
9. North 41°23'30" West 126.17 feet; thence
10. North 80°12'19" West 213.61 feet; thence
11. South 07°36'53" West 98.00 feet; thence
12. South 58°49'58" West 128.00 feet; thence leaving said Northwesterly line
13. South 80°33'55" West 50.00 feet; thence

14. South 09°26'05" East 331.87 feet; thence
15. North 80°33'55" East 22.62 feet to a point distant South 67°35'32" West 133.83 feet from the Westerly terminus of that certain course in the generally Southerly line of said Parcel 18 having a bearing and distance of South 77°01'51" West 178.00 feet; thence
16. North 67°35'32" East 133.83 feet to said Westerly terminus; thence along said generally southerly line and the Northeasterly line of said Parcel 18, the following twelve courses:
17. North 77°01'51" East 178.00 feet; thence
18. South 81°45'40" East 79.00 feet; thence
19. South 12°58'09" East 12.00 feet; thence
20. North 77°01'51" East 121.00 feet to the beginning of a curve, concave to the North and having a radius of 232.00 feet; thence
21. Easterly 10.39 feet along said curve through a central angle of 02°34'01"; thence
22. North 74°27'50" East 238.93 feet to the beginning of a curve, concave to the Northwest and having a radius of 232.00 feet; thence
23. Northeasterly 105.58 feet along said curve through a central angle of 26°04'24"; thence
24. North 48°23'26" East 30.00 feet to the beginning of a curve, concave to the South and having a radius of 268.00 feet; thence
25. Easterly 213.56 feet along said curve through a central angle of 45°39'24"; thence
26. South 85°57'10" East 107.93 feet to the beginning of a curve, concave to the Northwest and having a radius of 35.00 feet; thence
27. Northeasterly 64.47 feet along said curve through a central angle of 105°32'10"; thence
28. North 11°29'20" West 356.27 feet to the most Northerly corner of said Parcel 18 and the point of beginning.

Except all minerals, oil, natural gas and other hydrocarbon substances lying in or under said property below a depth of 200 feet from the

surface thereof, without, however, the right to enter upon or explore or drill through the surface of the top 200 feet measured from the surface of said land as reserved in the deed recorded March 2, 1962, in Book 2115, Page 235, of Official Records, County of Ventura, State of California.

Parcel C:

That 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, as per map recorded in book 5, Page 42 of Miscellaneous Records (Maps), in the office of the County recorder of said County and that portion of Parcel 16 of Parcel Map filed in Book 20, Page 83 of Parcel Maps of said Records, described as follows:

Beginning at the Northeasterly corner of said Parcel 16; thence along the Northerly line of said Parcel 16, the following four courses:

1. South 77°01'51" West 121.00 feet; thence
2. North 12°58'09" West 70.00 feet; thence
3. North 81°45'40" West 79.00 feet; thence
4. South 77°01'51" West 178.00 feet; thence leaving said Northerly line
5. South 67°35'32" West 133.83 feet; thence
6. South 12°26'05" East 428.50 feet; thence
7. North 77°33'55" East 40.09 feet; thence
8. South 12°26'05" East 83.00 feet; thence
9. North 77°33'55" East 20.50 feet; thence
10. South 12°26'05" East 35.56 feet; thence
11. North 82°33'55" East 364.93 feet; thence
12. North 03°19'51" West 513.41 feet to the Northeasterly corner of said Parcel 16 and the point of beginning.

Except all minerals, oil, natural gas and other hydrocarbon substances lying in or under said property below a depth of 200 feet from the surface thereof, without, however, the right to enter upon or explore or drill through the surface or the top 200 feet measured from the surface of said land as reserved in the deed recorded March 2, 1962, in Book

2115, Page 235, of Official Records, County of Ventura, State of California.

Assessor's Parcel No. 080-0-240-125, 080-0-240-245 (portion)

EXHIBIT B

Ground Lease

The Ground Lease is attached to Resolution No. 3318
Exhibit A Fifteenth Amendment to the Option Agreement.

EXHIBIT C

Loan Documents

1. Construction Loan Agreement
2. Deed of Trust Notes
 - (a) PNC Bank, National Association
 - (b) CIT Bank, N.A.
3. Leasehold Construction Deed of Trust, Assignment Rents, Security Agreement and Fixture Filing
4. Assignment of Rents, Leases and Profits
5. Environmental Indemnity Agreement
6. Assignment of Construction and Development Documents (Borrower to Agent)
7. Assignment and Subordination of Property Management Agreement



RESOLUTION NO. 3320

**RESOLUTION OF THE BOARD OF PORT COMMISSIONERS
OF VENTURA PORT DISTRICT CONDITIONALLY APPROVING THE GROUND LEASE FOR
PARCELS 15, 16 AND 18 IN VENTURA HARBOR, AND AUTHORIZING THE GENERAL
MANAGER TO EXECUTE THE GROUND LEASE AND MEMORANDUM OF LEASE UPON
CONFIRMATION THAT ALL CONDITIONS PRECEDENT TO THE EXERCISE OF THE
OPTION TO LEASE HAVE BEEN MET AND SATISFIED, AND TO SIGN ESCROW
INSTRUCTIONS AND CONDITIONALLY DELIVER THE EXECUTED GROUND LEASE,
MEMORANDUM OF LEASE AND CERTIFIED COPIES OF RESOLUTION NOS. 3318, 3319
AND 3320 TO COMMONWEALTH TITLE, AS THE ESCROW AGENT FOR PORTSIDE
PARTNERS VENTURA HARBOR, LLC, PNC BANK AS AGENT FOR PNC BANK, AND CIT
BANK, RELATING TO THE CONCURRENT CLOSING OF THE CONSTRUCTION LOAN
PORTION OF THE INITIAL FINANCING EVENT UNDER THE GROUND LEASE AND THE
EXECUTION AND EFFECTIVENESS OF THE GROUND LEASE BETWEEN PORTSIDE
PARTNERS VENTURA HARBOR, LLC AND VENTURA PORT DISTRICT**

WHEREAS, concurrently herewith, the Board of Port Commissioners of Ventura Port District ("Board") has approved the Assignment of the Option to Lease Parcels 15, 16 and 18 ("Option to Lease") in Ventura Harbor to Portside Partners Ventura Harbor, LLC, a Delaware limited liability company ("PPVH") and the Fifteenth Amendment to the Option to Lease updating the terms and provisions of the Option to Lease to conform to the process and procedures which the District and PPVH have established for the proper exercise the Option to Lease to obtain the Ground Lease for Parcels 15, 16 and 18 ("Ground Lease"); and

WHEREAS, the General Manager, with the assistance of District legal counsel, has reviewed Exhibit "F" to the Option to Lease and identified the conditions precedent required for the exercise of the Option to Lease, and execution and issuance of the Ground Lease; and

WHEREAS, the General Manager and District legal counsel have reviewed the Loan Documents negotiated by PPVH with PNC Bank, as the agent for PNC Bank and CIT Bank (collectively "Lenders"), in order to provide the financing to construct the improvements on Parcels 15, 16 and 18 and confirmed they are consistent with the Ground Lease; and

WHEREAS, the General Manager, District staff and District legal counsel must confirm (i) that all conditions precedent to the proper exercise of the Option to Lease have been met and/or satisfied, (ii) that the Option to Lease is in a condition to be exercised by PPVH, and (iii) that PPVH has given the District proper written notice of its exercise of the Option to Lease.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Port Commissioners of Ventura Port District hereby authorizes the General Manager to execute the Ground Lease on



behalf of the District and the Memorandum of Lease, copies of which are attached hereto, at such time as the General Manager and District legal counsel have confirmed that all conditions precedent to the exercise of the Option to Lease have been met and satisfied.

BE IT FURTHER RESOLVED, that the General Manager is hereby authorized the directed to sign such appropriate Escrow Instructions and to conditionally deposit the executed Ground Lease, and the Memorandum of Lease and Certified Copies of Resolution Nos. 3318, 3319 and 3320 with Commonwealth Title Escrow Company, as the escrow agent for PPVH, the Lenders and the District, relating to the concurrent closing of the Assignment of the Option to Lease to PPVH, the Effectiveness of the Fifteenth Amendment to the Option to Lease, Approval of the Construction Loan Financing as part of the Initial Financing Event under the Ground Lease, and other related Loan Documents, and to sign appropriate Escrow Instructions, pending confirmation that all conditions precedent to the exercise of the Option to Lease have been met and satisfied.

BE IT FURTHER RESOLVED, that the General Manager and District staff are hereby authorized and directed to take such other and further actions, and to sign such additional documents, as may be necessary or appropriate to carry out the purpose and intent of this Resolution.

AYES:

NOES:

ABSENT:

ABSTAINED:

Jim Friedman, Chairman

ATTEST:

Secretary

Oscar Peña

(Seal)

Ground Lease

The Ground Lease is attached to Resolution No. 3318
Exhibit A Fifteenth Amendment to the Option Agreement.

OFFICIAL BUSINESS

Document entitled to free
recording per Government
Code Section 6103

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

When Recorded Return to:
Lagerlof, Senecal, Bradley
Gosney & Kruse
301 N. Lake Avenue, 10th Floor
Pasadena, CA 91101-4108
Attn: Timothy J. Gosney

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MEMORANDUM OF LEASE

This Memorandum of Lease (the "Memorandum") is made as of _____, 2016, by and between VENTURA PORT DISTRICT ("Port") and PORTSIDE PARTNERS VENTURA HARBOR, LLC ("Lessee"), who agree as follows:

1. Concurrently herewith, Port and Lessee have entered into that certain Lease Agreement (the "Lease") with respect to the real property (the "Property") described as set forth in Exhibit "A" attached hereto and incorporated herein by this reference. Pursuant to the Lease, Port hereby leases the Property to Lessee and Lessee hereby accepts tenancy of the Property from Port.

2. The provisions of the Lease to be performed by Lessee, whether affirmative or negative in nature, are intended to and shall bind Lessee and its successors and assigns at any time, and shall inure to the benefit of Port and its successors and assigns.

3. The provisions of the Lease to be performed by Port, whether affirmative or negative in nature, are intended to and shall bind Port

5-18-16

and its successors and assigns at any time, and shall inure to the benefit of Lessee and its successors and assigns.

4. This Memorandum is prepared for the purpose of recordation only and it in no way modifies the provisions of the Lease.

5. Reference is hereby made to the entire Lease for any and all purposes. A true copy of the Lease is on file in the office of the Port, at its offices located at the following address: 1603 Anchors Way Drive, Ventura, California 93001-4229.

**PORTSIDE PARTNERS VENTURA HARBOR, LLC, a
Delaware limited liability company**

**By: BCE Portside - Ventura Harbor
Associates, LLC, a Delaware limited
liability company, its Manager**

**By: Benedict Canyon
Equities, Inc., a California
corporation, its Manager**

**By: Benedict Canyon
Equity Holdings, LLC, a
California limited
liability company**

**By: _____
Robert E. Hart
Its Manager**

**By: Sondermann Ring Partners -
Ventura Harbor, LLC, a California
limited liability company, its Manager**

**By: Sondermann Enterprises,
Inc., a California corporation,
its managing member**

**By: _____
Michael B. Sondermann**

Its President

5-18-16

Page 3 of 3

VENTURA PORT DISTRICT, a California Port
District

By: _____
Name
Chairman

By: _____
Name
Secretary

Exhibit "A"

LEGAL DESCRIPTION

EXHIBIT "A"

Legal Description of Premises

All that certain real property situated in the County of Ventura, State of California, described as follows:

Parcel A:

That portion of Subdivision 7 of the West One-Half of Rancho San Miguel, in the City of San Buenaventura, County of Ventura, State of California, as per map recorded in Book 5 Page 42 of Miscellaneous Records (Maps), in the office of the County recorder of said County and Parcel 15 of Parcel Map filed in Book 25, Pages 52 through 54, inclusive of Parcel Maps of said Records, described as a whole as follows:

Beginning at the most Northerly corner of said Parcel 15; thence along the Northwesterly line of said Parcel 15, the following two courses;

1. South 61°53'31" West 74.73 feet;
2. South 25°17'51" West 352.10 feet; thence leaving said northwesterly line
3. South 84°52'31" West 531.67 feet; thence
4. South 05°07'29" East 92.38 feet; thence
5. South 84°52'31" West 63.63 feet; thence
6. South 09°26'05" East 320.33 feet to a point distant South 80°33'55" West 50.00 feet from the westerly terminus of that certain course in the generally southerly line of said Parcel 15 having a bearing and distance of North 58°49'58" East 128.00 feet; thence
7. North 80°33'55" East 50.00 feet to said most southerly corner of Parcel 15; thence along the generally southerly and northeasterly lines of said Parcel 15, the following seventeen courses:
8. North 58°49'58" East 128.00 feet; thence
9. North 07°36'53" East 98.00 feet; thence
10. South 80°12'19" East 213.61 feet; thence

11. South 41°23'30" East 126.17 feet; thence
12. North 43°30'20" East 148.02 feet; thence
13. South 46°29'40" East 31.00 feet; thence
14. North 43°30'20" East 43.00 feet to the beginning of a curve, concave to the southeast and having a radius of 134.50 feet; thence
15. Northeasterly 96.17 feet along said curve through a central angle of 40°58'00"; thence
16. North 84°28'20" East 99.60 feet to the beginning of a curve, concave to the northwest and having a radius of 65.50 feet; thence
17. Northeasterly 103.65 feet along said curve through a central angle of 90°40'04"; thence
18. North 06°11'44" West 40.73 feet; thence
19. North 83°48'16" East 341.77 feet; thence
20. North 11°29'20" West 165.54 feet to the beginning of a curve, concave to the southwest and having a radius of 120.00 feet; thence
21. Northwesterly 111.45 feet along said curve through a central angle of 53°12'49"; thence
22. North 64°42'09" West 209.90 feet to the beginning of a curve, concave to the northeast and having a radius of 280.00 feet; thence
23. Northwesterly 112.76 feet along said curve through a central angle of 23°04'26" to the beginning of a reverse curve, concave to the Southwest and having a radius of 220.00 feet; thence
24. Northwesterly 88.60 feet along said curve through a central angle of 23°04'26" to the most Northerly corner of said Parcel 15 and the point of beginning.

Except all minerals, oil, natural gas and other hydrocarbon substances lying in or under said property below a depth of 200 feet from the surface thereof, without, however, the right to enter upon or explore or drill through the surface of the top 200 feet measured from the surface of said land as reserved in the deed

recorded March 2, 1962, in Book 2115, Page 235, of Official Records, County of Ventura, State of California.

Parcel B:

That portion of Subdivision No. 7 of the West One-Half of Rancho Miguel, in the City of San Buenaventura, County of Ventura, State of California, as per map recorded in Book 5 Page 42, of Miscellaneous Records (Maps), in the office of the County recorder of said County and Parcel 18 of Parcel Map filed in Book 25, Pages 52 through 54, inclusive of Parcel Maps of said Records, described as a whole as follows:

Beginning at the most Northerly corner of said Parcel 18; thence along the Northwesterly line of said Parcel 18, the following twelve courses;

1. South 83°48'16" West 341.77 feet; thence
2. South 06°11'44" East 40.73 feet to the beginning of a curve, concave to the northwest and having a radius of 65.50 feet; thence
3. Southwesterly 103.65 feet along said curve through a central angle of 90°40'04"; thence
4. South 84°28'20" West 99.60 feet to the beginning of a curve, concave to the southeast and having a radius of 134.50 feet; thence
5. Southwesterly 96.17 feet along said curve through a central angle of 40°58'00"; thence
6. South 43°30'20" West 43.00 feet; thence
7. North 46°29'40" West 31.00 feet; thence
8. South 43°30'20" West 148.02 feet; thence
9. North 41°23'30" West 126.17 feet; thence
10. North 80°12'19" West 213.61 feet; thence
11. South 07°36'53" West 98.00 feet; thence
12. South 58°49'58" West 128.00 feet; thence leaving said Northwesterly line
13. South 80°33'55" West 50.00 feet; thence

14. South 09°26'05" East 331.87 feet; thence
15. North 80°33'55" East 22.62 feet to a point distant South 67°35'32" West 133.83 feet from the Westerly terminus of that certain course in the generally Southerly line of said Parcel 18 having a bearing and distance of South 77°01'51" West 178.00 feet; thence
16. North 67°35'32" East 133.83 feet to said Westerly terminus; thence along said generally southerly line and the Northeasterly line of said Parcel 18, the following twelve courses:
17. North 77°01'51" East 178.00 feet; thence
18. South 81°45'40" East 79.00 feet; thence
19. South 12°58'09" East 12.00 feet; thence
20. North 77°01'51" East 121.00 feet to the beginning of a curve, concave to the North and having a radius of 232.00 feet; thence
21. Easterly 10.39 feet along said curve through a central angle of 02°34'01"; thence
22. North 74°27'50" East 238.93 feet to the beginning of a curve, concave to the Northwest and having a radius of 232.00 feet; thence
23. Northeasterly 105.58 feet along said curve through a central angle of 26°04'24"; thence
24. North 48°23'26" East 30.00 feet to the beginning of a curve, concave to the South and having a radius of 268.00 feet; thence
25. Easterly 213.56 feet along said curve through a central angle of 45°39'24"; thence
26. South 85°57'10" East 107.93 feet to the beginning of a curve, concave to the Northwest and having a radius of 35.00 feet; thence
27. Northeasterly 64.47 feet along said curve through a central angle of 105°32'10"; thence
28. North 11°29'20" West 356.27 feet to the most Northerly corner of said Parcel 18 and the point of beginning.

Except all minerals, oil, natural gas and other hydrocarbon substances lying in or under said property below a depth of 200 feet from the

surface thereof, without, however, the right to enter upon or explore or drill through the surface of the top 200 feet measured from the surface of said land as reserved in the deed recorded March 2, 1962, in Book 2115, Page 235, of Official Records, County of Ventura, State of California.

Parcel C:

That 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, as per map recorded in book 5, Page 42 of Miscellaneous Records (Maps), in the office of the County recorder of said County and that portion of Parcel 16 of Parcel Map filed in Book 20, Page 83 of Parcel Maps of said Records, described as follows:

Beginning at the Northeasterly corner of said Parcel 16; thence along the Northerly line of said Parcel 16, the following four courses:

1. South 77°01'51" West 121.00 feet; thence
2. North 12°58'09" West 70.00 feet; thence
3. North 81°45'40" West 79.00 feet; thence
4. South 77°01'51" West 178.00 feet; thence leaving said Northerly line
5. South 67°35'32" West 133.83 feet; thence
6. South 12°26'05" East 428.50 feet; thence
7. North 77°33'55" East 40.09 feet; thence
8. South 12°26'05" East 83.00 feet; thence
9. North 77°33'55" East 20.50 feet; thence
10. South 12°26'05" East 35.56 feet; thence
11. North 82°33'55" East 364.93 feet; thence
12. North 03°19'51" West 513.41 feet to the Northeasterly corner of said Parcel 16 and the point of beginning.

Except all minerals, oil, natural gas and other hydrocarbon substances lying in or under said property below a depth of 200 feet from the surface thereof, without, however, the right to enter upon or explore or drill through the surface or the top 200 feet measured from the surface of said land as reserved in the deed recorded March 2, 1962, in Book

2115, Page 235, of Official Records, County of Ventura, State of California.

Assessor's Parcel No. 080-0-240-125, 080-0-240-245 (portion)