

SUBLEASE

between

DRISCOLL MARINA, LTD.,
a California limited partnership,

as Landlord,

and

THE CITY OF SAN DIEGO,
a California municipal corporation,

as Tenant,

for a portion of
Driscoll's Wharf
4918 North Harbor Drive
San Diego, California

dated September 8, 1997

DOCUMENT NO. RR-289140

FILED SEP 08 1997
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Summary of Contents

<u>Article</u>		<u>Page</u>
1.	Sublease.	1
2.	Term	2
3.	Rent.	2
4.	[Intentionally Omitted]	4
5.	[Intentionally Omitted]	4
6.	Use.	4
7.	Common Areas.	5
8.	Condition of Subleased Premises.	6
9.	Utilities and Services.	7
10.	Repairs and Maintenance.	7
11.	Alterations.	9
12.	Liens.	10
13.	Indemnification and Exculpation.	11
14.	Insurance.	12
15.	Damage or Destruction.	12
16.	Eminent Domain.	14
17.	Defaults and Remedies.	14
18.	Assignment or Subletting.	18
19.	Bankruptcy.	19
20.	Subordination and Attornment.	20
21.	Surrender.	20
22.	Holding Over.	21
23.	Taxes on Subtenant's Property.	21
24.	Hazardous Materials.	21
25.	Miscellaneous.	24
26.	Consent of San Diego Unified Port District	28
27.	Master Lease	29

EXHIBITS:

- A Master Lease
- B Site Plan
- C Construction Exhibit

SUBLEASE

THIS SUBLEASE ("Sublease"), dated for reference purposes only as of September 8, 1997, is entered into by and between DRISCOLL MARINA, LTD., a California limited partnership, ("Sublandlord") and THE CITY OF SAN DIEGO, a California municipal corporation ("Subtenant"), with reference to the following facts:

Recitals

A. **Master Lease.** Sublandlord is the successor "Lessee" under that certain Lease dated May 17, 1983, between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation ("Port District"), as Lessor, and NORTH HARBOR LANDING LIMITED, a California limited partnership, as Lessee, ~~a copy of which is attached hereto as Exhibit A and incorporated herein by reference~~ (as amended from time to time, the "Master Lease"), for certain leased premises at 4918 North Harbor Drive, San Diego, California, commonly known as "Driscoll's Wharf" and more particularly described in the Master Lease (the "Master Premises").

B. **Existing Subleases.** Sublandlord (and Sublandlord's predecessors in title) and Subtenant are parties to several different sublease agreements (the "Existing Subleases") for portions of the Master Premises. Pursuant to the Existing Subleases, Sublandlord is leasing to Subtenant the following portions of the Master Premises: Suites 101, 102, 105, 106, 107, 201, 202, 204A and 204B; and Slips 15 and 16 of Pier 5, as depicted on **Exhibit B** attached (the "Initial Premises"). The suites described above consist of approximately 11,692 square feet (of which Suite 107 is a storage space consisting of approximately 709 square feet) and are located in a single building (the "Building") on the Master Premises.

C. ***Premises* New Sublease.** Sublandlord and Subtenant would like to combine the Existing Subleases into a single sublease agreement and to expand the subleased premises to include Suites 106A, 205D and 205E, consisting of approximately 1,087 square feet as depicted on **Exhibit B** attached (the "Expansion Premises"). The Initial Premises and the Expansion Premises together consist of approximately 12,779 square feet and shall be collectively referred to as the "Subleased Premises". Subtenant has independently confirmed and agrees to the approximate measurements of the Initial Premises and the Expansion Premises. Sublandlord desires to sublease the Subleased Premises to Subtenant, and Subtenant desires to sublease the Subleased Premises from Sublandlord, on the terms and conditions provided in this Sublease. The parties intend that the Existing Subleases be terminated and replaced in their entirety with this Sublease, effective on the Commencement Date (defined below).

NOW, THEREFORE, in consideration of the foregoing and the agreements contained herein, Sublandlord and Subtenant agree as follows:

1. Sublease.

1.1 Effective as of September 15, 1997 (the "Commencement Date"), the Existing Subleases shall be terminated and this Sublease shall immediately commence; however, such termination shall not relieve the Subtenant of its obligations to pay rent for the period prior to, and any other monetary or non-monetary obligations arising prior to, such termination.

1.2 Sublandlord hereby subleases the Subleased Premises to Subtenant, and Subtenant hires and takes the Subleased Premises from Sublandlord, on the terms and conditions set forth in this Sublease. Sublandlord also grants to Subtenant, subject to the terms of this Sublease and on all the terms and conditions set forth herein, nonexclusive rights to use the driveways, parking areas and other common areas of the Master Premises (the "Common Areas").

1.3 Sublandlord shall make certain improvements to the Expansion Premises, as described in the Construction Exhibit which is attached hereto as **Exhibit C** (the "Construction Exhibit").

2. Term.

2.1 Primary Term. The primary term of this Sublease (the "Term") shall commence on the Commencement Date, and shall expire five (5) years thereafter, at midnight September 14, 2002 (the "Expiration Date"), subject to earlier termination as provided in this Sublease.

2.2 Option To Extend Term. Subtenant is given the option to extend the Term on all the provisions contained in this Sublease, except for Basic Rent, for a five (5) year period (the "Extended Term") following expiration of the Term, by giving notice of exercise of the option ("Option Notice") to Sublandlord at least six (6) months but not more than (1) one year before the expiration of the term. Provided that, if Subtenant is in default on the date of giving the Option Notice, the Option Notice shall be totally ineffective, or if Subtenant is in default on the date the Extended Term is to commence, the Extended Term shall not commence and this Sublease shall expire at the end of the Term. Subtenant shall have no other right to extend the Term beyond the Extended Term.

3. Rent.

3.1 Basic Rent. Subtenant agrees to pay Sublandlord monthly rent according to the following schedule, commencing on the Commencement Date, and continuing monthly in advance thereafter, on the first day of each month, payable each and every month thereafter during the term of this Sublease. Basic Rent for the first and last month of the Term shall payable on the Commencement Date.

Months 1-12:	\$18,350.15 per month
Months 13-24: 9-15-98 to 9-14-99	\$18,853.89 per month
Months 25-36: 9-15-99 to 9-14-00	\$19,371.89 per month
Months 37-48: 9-15-00 to 9-14-01	\$19,905.86 per month
Months 49-60: 9-15-01 to 9-14-02	\$20,455.85 per month

3.2 Additional Rent. In addition to Basic Rent, Subtenant agrees to pay to Sublandlord as additional rent ("Additional Rent") at times hereinafter specified in this Sublease any other amounts that Subtenant assumes or agrees to pay under the provisions of this Sublease that are owed to Sublandlord, including, without limitation, any and all other sums that may become due by reason of any default of Subtenant or Subtenant's failure to comply with the agreements, terms, covenants and conditions of this Sublease to be performed by Subtenant.

3.3 Extended Term. Basic Rent for the Extended Term (if any) shall be set in the following manner:

(a) The Consumer Price Index [All Urban Consumers] (base year 1982-1984 = 100) for San Diego MSA published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is published most immediately preceding the date the extended term commences ("Extension Index"), shall be compared with the Index published most immediately preceding the date the Term commences ("Beginning Index").

(b) If the Extension Index has increased over the Beginning Index, the Basic Rent payable during the Extended Term shall be set by multiplying the Basic Rent for the last month of the Term set forth in Section 3.1 by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. For example, if the Beginning Index is 100 and the Extension Index is 104, the Basic Rent payable during the Extended Term would be $(\$20,455.85) \times (1.04)$, or \$21,274.08. As soon as the Basic Rent for the Extended Term is set, Sublandlord shall give Subtenant notice of the amount of Basic Rent for the Extended Term.

(c) If the Index is changed so that the base year differs from that used as of the month most immediately preceding the date the Term commences, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

3.4 Rent. Basic Rent and Additional Rent shall together be denominated "Rent". Rent shall be paid to Sublandlord, without abatement, deduction or offset, in lawful money of the United States of America at the office of Sublandlord or to such other person or at such other place as Sublandlord may from time to time designate in writing.

3.5 Proration. In the event that Rent commences with respect to the Premises on a day other than the first day of a calendar month, Rent shall be prorated with respect thereto on the basis of a thirty (30) day month and shall be due and payable for such prorated portion of the month on the date that Rent commences.

3.6 Rent Independent. All Rent and other monetary obligations shall be paid by Subtenant without notice or demand and without set-off, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction or defense.

4. [Intentionally Omitted].

5. [Intentionally Omitted].

6. Use.

6.1 Use. Subtenant shall use the Subleased Premises for general commercial office and water testing laboratory purposes (with respect to all of the suites except Suite 107) storage purposes (with respect to Suite 107) and boat docking facilities (with respect to the slips) and shall not use the Subleased Premises, or permit or suffer the Subleased Premises to be used, for any other purpose without the prior written consent of Sublandlord.

6.2 Compliance with Law. Subtenant shall use the Subleased Premises in compliance with all current or future federal, state and local laws and regulations, and all covenants, conditions and restrictions applicable to the Master Premises. Subtenant shall not use or occupy the Subleased Premises in violation of any law, regulation or covenant, condition or restriction applicable to the Master Premises, or the certificate of occupancy issued for the Building and shall, upon five (5) days' written notice from Sublandlord, discontinue any use of the Subleased Premises which is declared by any governmental authority having jurisdiction to be a violation of law or of said certificate of occupancy. Subtenant shall, at its expense, comply with any direction of any governmental authority having jurisdiction which shall, by reason of the nature of Subtenant's use or occupancy of the Subleased Premises, impose any duty upon Subtenant or Sublandlord with respect to the Subleased Premises or with respect to the use or occupation thereof.

6.3 Insurance Requirements. Subtenant shall not do or permit to be done anything which will invalidate or increase the cost of any fire, extended coverage or any other insurance policy covering the Master Premises. Subtenant shall comply with all rules, orders, regulations and requirements of the insurers of the Master Premises. Subtenant shall promptly, upon demand, reimburse Sublandlord for any additional premium charged for any policy by reason of Subtenant's failure to comply with the provisions of this Section.

6.4 Key to Subleased Premises. Subtenant shall make available to Sublandlord on a twenty-four (24) hour per day basis keys to locks to doors in the Subleased Premises for the purpose of emergency access. Additionally, if requested by Sublandlord, or required by a governmental agency, Subtenant agrees to such keys being maintained in a fire department controlled lock box located on the Subleased Premises.

6.5 Exterior Changes. Subtenant shall make no changes to the exterior of the Building without the prior written approval of Sublandlord, which approval may be withheld in Sublandlord's sole and unfettered discretion.

6.6 Signs. No sign, advertisement or notice which is visible outside the building shall be exhibited, painted or affixed by Subtenant or any part of the Subleased Premises, or on any part of the exterior of the Building, without the prior written consent of Sublandlord. All such signage shall be in compliance with applicable laws. Such signs shall be installed at Subtenant's sole

cost, and the cost of removing such signs and repairing the Building at the end of the term of the Sublease shall be paid by Subtenant.

6.7 Load Rating. No equipment weighing in excess of the load per square foot which such floor was designed to carry, or which is allowed by law, shall be placed upon the Subleased Premises.

6.8 Unlawful Purpose. Subtenant shall not allow the Subleased Premises to be used for unlawful purposes, nor shall Subtenant cause, maintain or permit any nuisance or waste in or on the Subleased Premises.

7. Common Areas.

7.1 Common Areas - Definition. The term "Common Areas" is defined as all areas and facilities outside the Subleased Premises and any other tenant's premises and within the exterior boundary line of the Master Premises that are provided and designated by Sublandlord from time to time for the general nonexclusive use of Sublandlord, Subtenant and other tenant(s) and their respective employees, suppliers, shippers, customers and invitees, including but not limited to common entrances, lobbies, corridors, stairways and stairwells, public restrooms, elevators, mechanical and electrical rooms, parking areas to the extent not otherwise prohibited by this Sublease, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, ramps, driveways, landscaped areas and decorative walls. Sublandlord shall have the right to exclude any portion of the Building and Master Premises other than the Subleased Premises from the Common Areas under this Sublease; provided, however that no such action shall materially adversely affect Subtenant's use and enjoyment of the Subleased Premises or the Project.

7.2 Common Areas - Rules and Regulations. Subtenant agrees to abide by and conform to the rules and regulations adopted by Sublandlord from time to time with respect to the Building and Common Areas, and to cause its employees, suppliers, shippers, customers, and invitees to so abide and conform. Sublandlord or such other person(s) as Sublandlord may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to modify, amend and enforce said rules and regulations. Sublandlord shall not be responsible to Subtenant for the non-compliance with said rules and regulations by other sublessees of the Master Premises, their agents, employees and invitees.

7.3 Common Areas - Changes. Sublandlord shall have the right, in Sublandlord's sole discretion, from time to time:

(a) To make changes to the Building interior and exterior and Common Areas, including, without limitation, changes in the location, size, shape, number, and appearance thereof, including but not limited to the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, decorative walls, landscaped areas and walkways; provided, however, Sublandlord shall at all times provide the parking facilities required hereunder.

(b) To close temporarily any of the Common Areas for maintenance and repair and replacement purposes so long as reasonable access to the Subleased Premises remains available;

(c) To add additional improvements to the Common Areas;

(d) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Master Premises, or any portion thereof;

(e) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas as Sublandlord may, in the exercise of sound business judgment, deem to be appropriate.

7.4 Parking. Subtenant shall be entitled to the nonexclusive use of the vehicle parking spaces, on an unreserved and unassigned basis, on those portions of the Common Areas designated by Sublandlord for parking purposes from time to time. Subtenant shall not use more parking spaces than allotted to Subtenant hereunder. Said parking spaces shall be used only for parking by vehicles no larger than full size passenger automobiles or pickup trucks. Subtenant shall not permit or allow any vehicles that belong to or that are controlled by Subtenant or Subtenant's employees, suppliers, shippers, customers or invitees to be loaded, unloaded or parked in areas other than those designated by Sublandlord for such activities. If Subtenant permits or allows any such activities other than in the spaces designated for the same, then Sublandlord shall have the right, without notice, and in addition to such other rights and remedies that it might have under this Sublease or at law, to remove or tow away the vehicle involved and charge the cost thereof to Subtenant, which cost shall be immediately payable upon demand by Sublandlord as Additional Rent.

8. Condition of Subleased Premises.

8.1 No Representation. Subtenant acknowledges that it is in possession of the Initial Premises and is thoroughly familiar with their condition. Subtenant acknowledges that, except as expressly set forth in the Construction Exhibit, neither Sublandlord nor any agent of Sublandlord has made any representations or warranties, express or implied, with respect to (i) the condition of the Subleased Premises, the Building or the Master Premises, (ii) the suitability of the Subleased Premises for Subtenant's purposes (iii) the location, use, design, merchantability, fitness for use for a particular purpose, condition or durability thereof, (iv) the existence of Hazardous Materials (as defined in Section 24.6), (v) the quality of the material or workmanship therein; and all risks incidental to the Subleased Premises shall be borne by Subtenant. Except as expressly provided herein, IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE PREMISES OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, LANDLORD SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS SECTION HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ALL WARRANTIES BY LANDLORD, EXPRESS OR IMPLIED. This Section 8.1 shall not affect Sublandlord's obligations under Section 10.

8.2 Walk Through Inspection. On or before the Commencement Date, Sublandlord and Subtenant shall conduct a walk through inspection of the work performed by Sublandlord to the Expansion Premises and prepare a punch list of those items which require remedial action. The taking of possession of the Expansion Premises and each portion thereof by Subtenant shall establish conclusively that such portion of the Expansion Premises and the Building existed at such time in good, sanitary and satisfactory condition and repair, except for punch list items to be corrected by Sublandlord.

9. **Utilities and Services.**

9.1 Utilities Provided. Sublandlord shall furnish to the Subleased Premises reasonable quantities of water, sewer, gas, electricity and trash removal as required for Subtenant's use.

9.2 Utilities and Services Not Provided. Subtenant shall arrange, and pay the supplier directly, for all telephone and (except as provided in **Section 9.1**) all other utilities and services supplied to the Subleased Premises, together with any connection charges and taxes thereon.

9.3 No Liability. Sublandlord shall not be liable for, nor shall any eviction of Subtenant result from, the failure of any such utility or service to be furnished to the Subleased Premises, whether such failure is caused by accident, breakage, repairs, strikes, lockouts or other labor disturbances or labor disputes of any character, governmental regulation, moratorium or other governmental action. In the event of such failure, Subtenant shall not be entitled to any abatement or reduction of Rent, nor shall Subtenant be relieved from the operation of any covenant or agreement of this Sublease.

9.4 No Increase in Requirements. Subtenant shall not, without the prior written consent of Sublandlord, use any device in the Subleased Premises, including without limitation special equipment or machines, which will in any way unreasonably increase the amount of electricity or water available to the Subleased Premises over that initially provided. Subtenant shall pay to Sublandlord as Additional Rent an amount equal to all costs incurred by Sublandlord to provide such excess services and utilities, which payment shall be made within thirty (30) days after Subtenant is notified that Sublandlord has incurred said costs.

10. **Repairs and Maintenance.**

10.1 Common Areas. Sublandlord shall maintain the Common Areas in good condition, ordinary wear and tear excepted.

10.2 Structural and Mechanical Elements. Sublandlord shall repair and maintain the exterior of the Building, the Building's foundation, the Building's mechanical elements (i.e., the heating, ventilating, and air-conditioning systems servicing the Subleased Premises, and the unexposed electrical, plumbing, and sewage systems), the structural components of the exterior walls and the structural components of the roof of the Building.

10.3 Subtenant's Sole Cost. Except for Sublandlord's obligations pursuant to **Section 10.2** above, Subtenant shall, at Subtenant's sole cost and expense, keep the Subleased Premises and every part thereof (structural and nonstructural, whether or not such portion of the Subleased Premises needing repairs, or the means of repairing the same, are reasonably or readily accessible to Subtenant, and whether or not the need for such repairs occurs as a result of Subtenant's use, any prior use, the elements or the age of such portion of the Subleased Premises) in a good condition, ordinary wear and tear excepted. Subtenant shall, upon the expiration or sooner termination of the term hereof, surrender the Subleased Premises to Sublandlord in the same condition as when received, ordinary wear and tear excepted. Subtenant's obligations shall include restorations, replacements or renewals; including capital expenditures for restorations, replacements or renewals which will have a useful life beyond the term of this Sublease, when necessary to keep the Subleased Premises and all improvements thereon or a part thereof in good order, condition and repair and in compliance with all applicable laws. Except as expressly set forth in this Sublease, it is intended by the parties hereto that Sublandlord shall have no obligation, in any manner whatsoever, to repair or maintain the Subleased Premises, the improvements located thereof or the equipment therein, whether structural or nonstructural, all of which obligations are intended to be the expense of Subtenant, whether or not such repairs, maintenance or restoration shall have a useful life extending beyond the term of this Sublease. Subtenant shall further be responsible for the cost of all alterations to the Subleased Premises required by law, which alterations shall become the property of Sublandlord upon the expiration of this Sublease.

10.4 Notice and Sublandlord's Right to Repair Building. Prior to making any material repair to the Building, Subtenant shall give to Sublandlord notice of the need for such repair. Sublandlord shall have the right, but not the duty, to make all necessary repairs to the Building. If Sublandlord elects to make repairs which are otherwise the responsibility of Subtenant under this Sublease, Sublandlord's costs in making such repairs shall be payable by Subtenant as Additional Rent, within thirty (30) days of completion of the repairs. If Sublandlord does not elect to make such repairs to the Building within a reasonable time of notice thereof, Subtenant shall make such repair at its own cost and expense. Subtenant shall not make any repairs in a manner which will defeat any warranty for the Subleased Premises.

10.5 No Liability. Sublandlord shall not be liable for any failure to make any repairs or to perform any maintenance which is an obligation of Sublandlord unless such failure shall persist for an unreasonable time after written notice of the need of such repairs or maintenance is given to Sublandlord by Subtenant. There shall be no abatement of Rent and no liability of Sublandlord by reason of any injury to or interference with Subtenant's operations arising from the making of any repairs, alterations or improvements in or to any portion of the Building or the Subleased Premises or in or to fixtures, appurtenances and equipment therein unless such injury or interference is unreasonable. Subtenant waives any rights under §§ 1941 and 1942 of the California CIVIL CODE or under any law, statute or ordinance now or hereafter in effect to make repairs at Sublandlord's expense.

10.6 Damage or Destruction. Notwithstanding any of the foregoing, in the event of fire, earthquake, flood, war or similar cause of damage or destruction, this **Article 10** shall not be applicable and the provisions of **Article 15** entitled "Damage or Destruction" shall apply and control.

11. Alterations.

11.1 No Alterations. Without Sublandlord's prior written consent, which consent shall not be unreasonably withheld, Subtenant shall make no alterations, additions or improvements in or to the Subleased Premises. All such alterations, additions or improvements shall be made only by licensed and qualified contractors or mechanics. Subtenant's contractor for performing any alterations, additions or improvements shall be subject to Sublandlord's reasonable approval and shall maintain appropriate insurance as reasonably required and approved by Sublandlord.

11.2 Service Facilities. Subtenant agrees that there shall be no construction of partitions or other obstructions which might interfere with free access to mechanical installations or service facilities of the Building or interfere with the moving of Sublandlord's equipment to or from the enclosures containing said installations or facilities. Furthermore, any work by Subtenant shall be accomplished in such a manner as to permit any fire sprinkler system and fire water supply lines to remain fully operable at all times.

11.3 Compliance With Law. Subtenant covenants and agrees that all work done by Subtenant shall be performed in full compliance with all laws, rules, orders, ordinances, directions, regulations and requirements of all governmental agencies, offices, departments, bureaus and boards having jurisdiction and in full compliance with the rules, orders, directions, regulations and requirements of any applicable fire rating bureau. Subtenant shall provide Sublandlord with "as-built" plans showing any material changes in the Subleased Premises.

11.4 Prior Notice. Before commencing any material work, Subtenant shall give Sublandlord at least fifteen (15) days' prior written notice of the proposed commencement of such work.

11.5 Property of Sublandlord. All alterations, decorations, fixtures, equipment, additions and improvements attached to or built into the Subleased Premises, made by either party, shall, unless Sublandlord elects otherwise at the time consent for such alteration or an election by Sublandlord is obtained (or at the end of the term of this Sublease, if consent is not obtained or an election by Sublandlord is not earlier requested), become the property of Sublandlord upon the expiration or earlier termination of the term of this Sublease and shall remain upon and be surrendered with the Subleased Premises as a part thereof. If Sublandlord elects to have such alterations removed, Subtenant shall do so and shall repair and restore the Subleased Premises to the condition they were in prior to such alterations, all at Subtenant's sole cost.

11.6 Removal. Subtenant shall repair any damage to the Subleased Premises caused by Subtenant's removal of any property from the Subleased Premises; and Subtenant shall only be entitled to remove property from the Subleased Premises as expressly provided in this Sublease. During any such restoration period, Subtenant shall pay Rent to Sublandlord as provided herein as if said space were otherwise occupied by Subtenant.

11.7 Personal Property. All articles of Subtenant's personal property, detachable machinery and equipment, furniture and movable partitions which are owned by Subtenant and installed by Subtenant at its own expense in the Subleased Premises shall be and remain the property

of Subtenant and may be removed by Subtenant at any time during the term of this Sublease when Subtenant is not in default hereunder. If Subtenant shall fail to remove all of its effects from the Subleased Premises upon the termination of this Sublease, then Sublandlord may, at its option, remove the same in any manner that Sublandlord may remove and store said effects without liability to Subtenant for loss thereof or damage thereto, and Subtenant agrees to pay Sublandlord upon demand any expenses incurred in such removal and storage or Sublandlord may, at its option, without notice, sell said property or any of the same, at private sale and without legal process, for such price as Sublandlord may obtain; and Sublandlord may apply the proceeds of such sale against any amounts due under this Sublease from Subtenant to Sublandlord and against any expenses incident to the removal, storage and sale of said personal property, with any balance of the sales proceeds to be delivered to Subtenant.

12. **Liens.**

12.1 No Liens. Subtenant shall keep the Subleased Premises free from any liens arising out of work performed, materials furnished and obligations incurred by Subtenant. Subtenant covenants and agrees that any mechanic's lien filed against the Subleased Premises for work claimed to have been done for, or materials claimed to have been furnished to Subtenant, will be discharged by Subtenant, by bond or otherwise, within thirty (30) days after the filing thereof, at the cost and expense of Subtenant.

12.2 Advance by Sublandlord. Should Subtenant fail to discharge any such lien, Sublandlord may, at Sublandlord's election, pay such claim or post a bond or otherwise provide security to eliminate the lien as a claim against title, and the cost thereof shall be immediately due from Subtenant as Additional Rent.

12.3 Financing Statements. In the event Subtenant shall lease or finance the acquisition of equipment, furnishings or other personal property of a removable nature utilized by Subtenant, Subtenant warrants that any UNIFORM COMMERCIAL CODE Financing Statement executed by Subtenant will, upon its face or by exhibit thereto, indicate that such Financing Statement is located within the Subleased Premises, the acquisition of which was financed by Subtenant pursuant to said Financing Statement. In no event shall the address of the Building be furnished on the statement without qualifying language as to applicability of the lien only to removable personal property therein. Should any holder of a Financing Statement executed by Subtenant record or place of record a Financing Statement which appears to constitute a lien against any interest of Sublandlord or against equipment which may be located other than within the Subleased Premises, Subtenant shall, within ten (10) days after filing such Financing Statement, cause (i) copies of the Security Agreement or other documents to which the Financing Statement pertains to be furnished to Sublandlord to show that such lien is not applicable to Sublandlord's interest, and (ii) its lender to amend documents of record so as to clarify that such lien is not applicable to any interest of Sublandlord in the Subleased Premises. Sublandlord shall execute such documents as are reasonably required by Subtenant or Subtenant's lenders or equipment lessors provided the same do not in any way alter the rights of Sublandlord under this Sublease.

13. Indemnification and Exculpation.

13.1 Indemnification by Subtenant. Subtenant, agrees to indemnify Sublandlord and its lenders, partners, members, shareholders, directors, officers, managers, agents and employees (collectively "Sublandlord's Agents") against, and to protect, defend and save them harmless from, all liability, demands, claims, causes of action or judgments, and all reasonable expenses incurred in investigating or resisting the same (including reasonable professional fees, including without limitation, fees for attorneys, architects, engineers, and environmental consultants), arising out of Subtenant's failure to fully perform under this Sublease or for death of, or injury to, any person or damage to property (i) occurring in, upon or about the Subleased Premises, (ii) arising from or out of Subtenant's use and occupancy of the Subleased Premises, or (iii) arising from or out of any act or omission of Subtenant, its agents, contractors, employees, servants and tenants ("Subtenant's Agents"), except if such death or injury, or damage to property is caused by the willful act or gross negligence of Sublandlord or Sublandlord's Agents.

13.2 Indemnification by Sublandlord. Except as otherwise provided in this Article, Sublandlord agrees to indemnify Subtenant and its shareholders, directors, officers, agents and employees (collectively "Subtenant's Agents") against, and to protect, defend and save them harmless from all liability, demands, claims, causes of action or judgments, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), for death of, or injury to, any person or damage to property occurring in, upon, or about the Subleased Premises during the term of this Sublease caused by the willful acts or gross negligence of Sublandlord or Sublandlord's Agents.

13.3 No Liability of Sublandlord. Notwithstanding any provision of Sections 13.1 and 13.2 to the contrary, Sublandlord shall not be liable to Subtenant or any other party, and Subtenant assumes all risk of damage to personal property, including loss of records kept within the Subleased Premises. Subtenant further waives any claim for injury to Subtenant's operations or loss of income relating to any such damage or destruction of personal property, including any loss of records.

13.4 Assumption of Risk. Additionally, Sublandlord shall not be liable to Subtenant or any other party, and Subtenant assumes all risk of damage and liability (other than as may be covered by insurance or by a third party), resulting from any defect or malfunction of any Building system or component of a Building system (such as HVAC, mechanical, plumbing, electrical, waste disposal, or sewer) other than as set forth in Section 10.2 above.

13.5 Security Devices. Security devices and services provided for the Building and Master Premises, while intended to deter crime, may not in given instances prevent theft or other criminal acts, and it is agreed that Sublandlord shall not be liable for injuries or losses caused by criminal acts of third parties. The risk that any security device may malfunction or otherwise be circumvented by a criminal is assumed by Subtenant. Subtenant shall, at Subtenant's cost, obtain applicable insurance coverages to the extent Subtenant desires protection against such criminal acts.

14. Insurance.

14.1 Insurance on Building. Sublandlord shall carry insurance upon the Building and its improvements as required by the Master Lease.

14.2 Fixtures and Other Items. Subtenant assumes the risk of damage to any fixtures, goods inventory, merchandise, equipment and personal property of any kind. Sublandlord shall not be liable for injury to Subtenant's operations or any loss of income therefore relative to damage to such items, all as more particularly set forth herein. Subtenant, at Subtenant's cost, shall carry such insurance as Subtenant desires for Subtenant's protection with respect to such items, business interruption or loss of income. Subtenant, a municipal corporation, shall not be required to obtain any insurance.

15. Damage or Destruction.

15.1 Destruction Due to Risk Covered by Insurance.

(a) If, during the term, the Subleased Premises or the Building are totally or partially destroyed from a risk covered by the insurance described in **Section 14.1**, rendering the premises totally or partially inaccessible or unusable, Sublandlord shall restore the Subleased Premises or the Building to substantially the same condition as they were in immediately before destruction. Such destruction shall not terminate this Sublease. If the existing laws do not permit the restoration, either party can terminate this lease immediately by giving notice to the other party.

(b) If the cost of the restoration exceeds the amount of proceeds received from the insurance required under **Section 14.1**, Sublandlord can elect to terminate this Sublease by giving notice to Subtenant within fifteen (15) days after determining that the restoration cost will exceed the insurance proceeds. In the case of destruction to the Subleased Premises only, if Sublandlord elects to terminate this Sublease, Subtenant, within fifteen (15) days after receiving Sublandlord's notice to terminate, can elect to pay to Sublandlord, at the time Subtenant notifies Sublandlord of its election, the difference between the amount of insurance proceeds and the cost of restoration, in which case Sublandlord shall restore the Subleased Premises. Sublandlord shall give Subtenant satisfactory evidence that all sums contributed by Subtenant as provided in this **Section 15.1** have been expended by Sublandlord in paying the cost of restoration.

(c) If Sublandlord elects to terminate this Sublease and Subtenant does not elect to contribute toward the cost of restoration as provided in this **Section 15.1**, this Sublease shall terminate.

15.2 Destruction Due to Risk Not Covered by Insurance.

(a) If, during the Term, the Subleased Premises or the Building are totally or partially destroyed from a risk not covered by the insurance described in **Section 15.1**, rendering the Subleased Premises totally or partially inaccessible or unusable, Sublandlord

shall restore the Subleased Premises or the Building to substantially the same condition as they were in immediately before destruction. Such destruction shall not terminate this Sublease. If the existing laws do not permit the restoration, either party can terminate this Sublease immediately by giving notice to the other party.

(b) If the cost of restoration exceeds five percent (5%) of the then replacement value of the Subleased Premises or the Building that are destroyed, Sublandlord can elect to terminate this Sublease by giving notice to Subtenant within fifteen (15) days after determining the restoration cost and replacement value.

(c) In the case of destruction to the Subleased Premises only, if Sublandlord elects to terminate this Sublease Subtenant, within fifteen (15) days after receiving Sublandlord's notice to terminate, can elect to pay to Sublandlord, at the time Subtenant notifies Sublandlord of its election, the difference between five percent (5%) of the then replacement value of the Subleased Premises and the actual cost of restoration, in which case Sublandlord shall restore the Subleased Premises. Sublandlord shall give Subtenant satisfactory evidence that all sums contributed by Subtenant as provided in this Section 15.2 have been expended by Sublandlord in paying the cost of restoration.

(d) If Sublandlord elects to terminate this Sublease and Subtenant does not elect to perform the restoration or contribute toward the cost of restoration as provided in this Section 15.2, this Sublease shall terminate.

15.3 Extent of Sublandlord's Obligation To Restore. If Sublandlord is obligated to or elects to repair or restore as herein provided, Sublandlord shall be obligated to repair or restore only those portions of the Building and the Subleased Premises which were originally provided at Sublandlord's expense or for which insurance proceeds are available to pay the costs to repair or restore; the repair and restoration of Subtenant's special tenant improvements for which no insurance proceeds are available shall be the obligation of Subtenant.

15.4 Release. Upon any termination of this Sublease under any of the provisions of this Article, the parties each shall be released thereby without further obligation to the other from the date of damage or destruction, except for any liabilities or obligations theretofore incurred or arising from matters which have theretofore occurred (including any liability related to the damage or destruction).

15.5 Abatement of Rent. In the event of repair, reconstruction or restoration as herein provided, Basic Rent to be paid under this Sublease shall be abated as of the date of damage or destruction until the completion of the repairs and the restoration, but only to the extent to which Subtenant's use of the Subleased Premises is impaired during the period of such repair, reconstruction or restoration. If Sublandlord provides Subtenant with other space during the period of repair which is reasonably suitable for the temporary conduct of Subtenant's operations, then Basic Rent shall not be abated. Subtenant shall not be entitled to any compensation or damages from Sublandlord occasioned by any such damage, repair, reconstruction or restoration.

15.6 Damage at End of Term. Notwithstanding anything to the contrary contained in this Article, Sublandlord shall have no obligation whatsoever to repair, reconstruct or restore the Subleased Premises when the damage resulting from any casualty covered under this Article occurs during the last twelve (12) months of the Term of this Sublease. In the event Sublandlord elects not to repair, reconstruct or restore the Subleased Premises when the damage resulting from any casualty covered under this Article occurs during the last twelve (12) months of the term of this Sublease, Subtenant may, by written notice delivered to Sublandlord within ten (10) days after receipt by Subtenant of Sublandlord's notice of its election not to repair, reconstruct or restore the Subleased Premises, elect to terminate this Sublease.

16. **Eminent Domain.**

16.1 Taking. In the event the whole of the Subleased Premises, or such critical and essential parts thereof as shall deprive Subtenant of the usefulness of the Subleased Premises, be taken for any public or quasi-public purpose by any lawful power or authority by exercise of the right of appropriation, condemnation or eminent domain, or sold to prevent such taking, Subtenant or Sublandlord may terminate this Sublease effective as of the date possession is required to be surrendered to said authority.

16.2 Restoration. Upon any taking, if this Sublease is not terminated pursuant to Section 16.1 above, then Sublandlord promptly shall proceed to restore the Subleased Premises to substantially their same condition, to the extent reasonably Possible, prior to such partial taking. If such restoration has been completed, thereafter Basic Annual Rent shall be abated proportionately based on the percentage of the rental value of the Subleased Premises after such taking as compared to the rental value of the Subleased Premises prior to such taking.

16.3 Award. Subtenant shall be entitled to any award which is specifically awarded as compensation for the taking of Subtenant's personal property and fixtures, including excess tenant improvements which were installed at Subtenant's expense and for costs of Subtenant moving to a new location. All other compensation awarded for such taking shall belong to Sublandlord.

17. **Defaults and Remedies.**

17.1 Late Payment. Late payment by Subtenant to Sublandlord of Rent or other sums due will cause Sublandlord to incur costs not contemplated by this Sublease, the exact amount of which is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, attorneys' charges, late payment charges on a mortgage, and so forth. In the event that Subtenant shall be in default for late payment under Section 17.4(a) hereof for more than three (3) days after notice from Sublandlord, the amount unpaid shall bear interest at Bank of America's "reference rate" plus three (3) percent per annum. Such interest shall be calculated from the date such amount was due and payable until the same shall have been fully paid.

17.2 No Waiver. No payment by Subtenant or receipt by Sublandlord of a lesser amount than that due shall be deemed to be other than on account of the amount due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Sublandlord may accept such check or payment without prejudice

to Sublandlord's right to recover the balance or pursue any other remedy provided. If at any time a dispute shall arise as to any amount or sum of money to be paid by Subtenant to Sublandlord, Subtenant shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and Subtenant shall have the right to institute suit for recovery of the payment paid under protest.

17.3 Performance by Sublandlord. If Subtenant fails to perform any other act on its part to be performed hereunder, Sublandlord may, without waiving or releasing Subtenant from any obligations of Subtenant, perform such act on behalf of Subtenant.

17.4 Events of Default. The occurrence of any one or more of the following events shall constitute a "Default" hereunder by Subtenant:

- (a) The failure by Subtenant to make any payment of Rent, as and when due;
- (b) The failure by Subtenant to observe or perform any obligation other than described in **Section 17.4(a)** above, to be performed by Subtenant where such failure shall continue for a period of thirty (30) days after written notice thereof from Sublandlord to Subtenant. Such notice shall be in lieu of, and not in addition to, any notice required under California CODE OF CIVIL PROCEDURE § 1161; provided that, if the nature of Subtenant's default is such that it reasonably requires more than thirty (30) days to cure, then Subtenant shall not be deemed to be in default if Subtenant shall commence such cure within said thirty (30) day period and thereafter diligently prosecute the same to completion;
- (c) Subtenant makes an assignment for the benefit of creditors;
- (d) Subtenant files a voluntary petition under any chapter of the BANKRUPTCY CODE;
- (e) Subtenant makes a voluntary assignment for the benefit of creditors;
- (f) A receiver, trustee or custodian is appointed to, or does, take title, possession or control of all, or substantially all, of Subtenant's assets, or any involuntary petition if filed against the Subtenant under any chapter of the BANKRUPTCY CODE, and such petition or receiver, trustee or custodian is not dismissed within thirty (30) days;
- (g) Subtenant's interest in this Sublease is attached, executed upon or otherwise judicially seized and such action is not released within thirty (30) days of the action;
- (h) Subtenant fails to comply fully with all provisions in **Article 24** concerning Hazardous Materials; or

Notices given under this Section shall specify the alleged default and shall demand that Subtenant perform the provisions of this Sublease within the applicable period of time, or quit

the Subleased Premises. No such notice shall be deemed a forfeiture or a termination of this Sublease unless Sublandlord elects otherwise in such notice.

17.5 Remedies. In the event of a Default by Subtenant, and at any time thereafter, with or without notice or demand and without limiting Sublandlord in the exercise of any right or remedy which Sublandlord may have, Sublandlord shall be entitled to terminate Subtenant's right to possession of the Subleased Premises by any lawful means, in which case this Sublease shall terminate and Subtenant shall immediately surrender possession of the Subleased Premises to Sublandlord. In such event, Sublandlord shall have the immediate right to re-enter and remove all persons and property, and such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Subtenant, all without service of notice or resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. In the event that Sublandlord shall elect to so terminate this Sublease, then Sublandlord shall be entitled to recover from Subtenant all damages incurred by Sublandlord by reason of Subtenant's default, including:

(a) The worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(b) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds that portion of such rental loss which Subtenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss which Subtenant proves could have been reasonably avoided; plus

(d) Any other amount necessary to compensate Sublandlord for all the detriment proximately caused by Subtenant's failure to perform its obligations under this Sublease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of restoring the Subleased Premises to the condition required under the terms of this Sublease; plus

(e) At Sublandlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

As used in Sections 17.5(a) and 17.5(b) above, "worth at the time of award" shall be computed by allowing interest at the rate specified in Section 17.1 above. As used in Section 17.5(c) above, the "worth at the time of award" shall be computed by determining the present value of such amount using the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percentage point.

17.6 Right of Re-Entry. In the event of a Default by Subtenant, and at any time thereafter, with or without terminating this Sublease, and with or without notice or demand and without limiting Sublandlord in the exercise of any right or remedy which Sublandlord may have, Sublandlord shall have the immediate right to re-enter and remove all persons and property, and such

property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Subtenant, all without service of notice or resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. No such re-entry shall be considered or construed to be a forcible entry by Sublandlord. If Sublandlord does not elect to terminate this Sublease as provided in this Section, then Sublandlord may, from time to time, recover all Rent as it becomes due under this Sublease pursuant to California CIVIL CODE § 1951.4. At any time thereafter, Sublandlord may elect to terminate this Sublease and to recover damages to which Sublandlord is entitled.

17.7 Proceeds of Reletting. In the event Sublandlord elects to terminate this Sublease and relet the Subleased Premises, it may execute any new lease in its own name. Subtenant hereunder shall have no right or authority whatsoever to collect any rent or other sums from such tenant. The proceeds of any such reletting shall be applied as follows:

(a) First, to the payment of any indebtedness other than Rent due hereunder from Subtenant to Sublandlord, including but not limited to storage charges or brokerage commissions owing from Subtenant to Sublandlord as the result of such reletting;

(b) Second, to the payment of the costs and expenses of reletting the Subleased Premises, including alterations and repairs which Sublandlord deems reasonably necessary and advisable, and reasonable attorneys' fees incurred by Sublandlord in connection with the retaking of the Subleased Premises and such reletting;

(c) Third, to the payment of Rent and other charges due and unpaid hereunder; and

(d) Fourth, to the payment of future Rent and other damages payable by Subtenant under this Sublease.

17.8 Non-Exclusive. All rights, options and remedies of Sublandlord contained in this Sublease shall be construed and held to be nonexclusive and cumulative. Sublandlord shall have the right to pursue any or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Sublease. No waiver of any default of Subtenant hereunder shall be implied from the acceptance by Sublandlord of any Rent or other payments due hereunder or any omission by Sublandlord to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in said waiver.

17.9 No Relief. Termination of this Sublease or Subtenant's right to possession by Sublandlord shall not relieve Subtenant from any liability to Sublandlord which has theretofore accrued or shall arise based upon events which occurred prior to the later of (i) the date of Sublease termination, or (ii) the date possession of Subleased Premises is surrendered to Sublandlord.

17.10 Right to Cure. Sublandlord shall not be in default hereunder unless Sublandlord fails to perform an obligation required of Sublandlord within a reasonable time, but in no event later than thirty (30) days after written notice by Subtenant specifically identifying the

obligation Sublandlord has failed to perform; provided, however, that if the nature of Sublandlord's obligation is such that more than thirty (30) days are required for performance, then Sublandlord shall not be in default if Sublandlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

17.11 Lender's Right to Cure. In the event of any default on the part of Sublandlord, Subtenant shall give notice, by registered or certified mail, at any address provided to Subtenant, to any beneficiary of a deed of trust or mortgagee of a mortgage covering the Building or Subleased Premises whose address shall have been furnished to Subtenant and Subtenant shall offer such beneficiary or mortgagee a reasonable opportunity to cure the default, not to exceed Sublandlord's cure period plus thirty (30) days.

18. Assignment or Subletting.

18.1 Assignment or Subletting. Except as hereinafter provided, Subtenant shall not, either voluntarily or by operation of law, assign, sell, hypothecate or transfer this Sublease, or sublet the Subleased Premises or any part hereof, or permit or suffer the Subleased Premises or any part thereof to be used or occupied as work space, storage space, mailing privileges, concession or otherwise by anyone other than Subtenant, Subtenant's members or Subtenant's employees, without the prior written consent of Sublandlord in each instance, which consent may be withheld by Sublandlord in its sole and absolute discretion. A transfer of more than fifty percent (50%) of the equity ownership of Subtenant during any two-year period to a party (or to an affiliated group of parties) shall constitute a prohibited assignment; provided, however, this provision shall not be applicable if such transfers occurred on a public stock exchange.

18.2 Excess Rent. In the event Subtenant assigns or subleases the Subleased Premises or any portion thereof, Subtenant shall pay to Sublandlord, at the time Subtenant receives the same, one-half (1/2) of all sums received by Subtenant from any such assignee or sublessee in excess of the Rent to be paid by Subtenant to Sublandlord for such portion of the Subleased Premises so assigned or sublet.

18.3 Notice. In the event Subtenant desires to assign, sublease, hypothecate or otherwise transfer this Sublease or sublet the Subleased Premises, or part thereof, then at least forty-five (45) days, but not more than ninety (90) days, prior to the date when Subtenant desires the assignment or sublease to be effective (the "Assignment Date"), Subtenant shall give Sublandlord written notice ("the Assignment Notice") which shall set forth the name, address and business of the proposed assignee or sublessee, information (including references) concerning the character of the proposed assignee or sublessee, the Assignment Date, any ownership or commercial relationship between Subtenant and the proposed assignee or sublessee, and the consideration and all other material terms and conditions of the proposed assignment or sublease, all in such detail as Sublandlord shall reasonably require. Additionally, Subtenant shall furnish to Sublandlord a copy of the audited financial statements for the most recently past fiscal year, as well as the most recent unaudited quarterly financial statements for the proposed assignee or sublessee.

18.4 Transfer Void. Any sale, assignment, hypothecation or transfer of this Sublease or subletting of Subleased Premises, or part thereof, that is not in compliance with the

provisions of this Article shall be void, and shall, at the option of Sublandlord, be a breach of this Sublease.

18.5 Further Assignment. The consent by Sublandlord to an assignment or subletting shall not relieve Subtenant or any assignee of this Sublease or sublessee of the Subleased Premises from obtaining the consent of Sublandlord to any further assignment or release Subtenant or any assignee or sublessee of Subtenant from full and primary liability.

18.6 Security. If Subtenant shall sublet the Subleased Premises, or any part thereof, Subtenant hereby immediately and irrevocably assigns to Sublandlord, as security for Subtenant's obligations under this Sublease, all rent from any such subletting, and Sublandlord, as assignee and as attorney-in-fact for Subtenant, or a receiver for Subtenant appointed on Sublandlord's application, may collect such rent and apply it toward Subtenant's obligations under this Sublease; except that, until the occurrence of an act of default by Subtenant, Subtenant shall have the right to collect such rent from the sublessee subject to the obligations of **Section 18.2** above.

18.7 No Waiver. Notwithstanding any subletting or assignment, Subtenant shall remain fully and primarily liable for the payment of all Rent and other sums due, or to become due, hereunder, and for the full performance of all other terms, conditions and covenants to be kept and performed by Subtenant hereunder. The acceptance of Rent or any other sum due hereunder, or the acceptance of performance of any other term, covenant or condition hereof, from any other person or entity shall not be deemed to be a waiver of any of the provisions of this Sublease or a consent to any subletting or assignment of the Subleased Premises.

19. **Bankruptcy**. In the event a debtor, trustee or debtor-in-possession under the BANKRUPTCY CODE, or other person with similar rights, duties and powers under any other law, proposes to cure any default of Subtenant under this Sublease or to assume or assign this Sublease and is obliged to provide adequate assurance to Sublandlord that (i) a default will be cured, (ii) Sublandlord will be compensated for its damages arising from any breach of this Sublease, or (iii) future performance under this Sublease will occur, then adequate assurance shall include any or all of the following, as determined by Sublandlord:

19.1 Those acts specified in the BANKRUPTCY CODE or other laws as included within the meaning of adequate assurance, even if this Sublease does not concern a facility described in such laws;

19.2 A prompt cash payment to compensate Sublandlord for any monetary defaults or damages arising from a breach of this Sublease;

19.3 A cash deposit in an amount at least equal to the Security Deposit, if any, originally required at time of execution of this Sublease;

19.4 The creditworthiness and desirability, as a tenant, of the person assuming this Sublease or receiving an assignment of this Sublease, at least equal to Sublandlord's customary and usual creditworthiness requirements and desirability standards in effect at the time of the assumption or assignment; and

19.5 The assumption or assignment of all of Subtenant's interest and obligations under this Sublease.

20. Subordination and Attornment.

20.1 Subordination. This Sublease shall be subject and subordinate to the lien of any mortgage, deed of trust or lease in which Sublandlord is tenant, now or hereafter in force against the Subleased Premises, and to all advances made or hereafter to be made upon the security thereof without the necessity of the execution and delivery of any further instruments on the part of Subtenant to effectuate such subordination; provided the holder of any such mortgage, deed of trust or lease executes, acknowledges and delivers to Subtenant a non-disturbance agreement providing that so long as Subtenant performs all of its obligations under the Sublease, Subtenant's quiet enjoyment and use of the Subleased Premises shall not be disturbed.

20.2 Additional Instruments. Notwithstanding the foregoing, Subtenant shall execute and deliver upon demand a subordination agreement or such further instrument or instruments evidencing such subordination of this Sublease to the lien of any such mortgages, deeds of trust or leases in which Sublandlord is tenant as may be required by Sublandlord. However, if any such mortgagee, beneficiary or landlord under a lease wherein Sublandlord is tenant so elects, this Sublease shall be deemed prior in lien to any such lease, mortgage or deed of trust upon or including the Subleased Premises, regardless of date, and Subtenant shall execute a statement in writing to such effect at Sublandlord's request.

20.3 Attornment. In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust covering the Subleased Premises, Subtenant shall, at the election of purchaser at such foreclosure or sale, attorn to such purchaser and recognize such purchaser as the Sublandlord under this Sublease.

20.4 Amendment. If Sublandlord obtains a loan commitment from a lender for the financing or refinancing of the Subleased Premises, and said loan commitment requires some amendments to this Sublease, then Subtenant shall cooperate with Sublandlord in executing said amendments, so long as the amendments do not materially adversely affect any of the material rights or obligations of Subtenant under this Sublease.

21. Surrender.

21.1 No Release. No surrender of possession of any part of the Subleased Premises shall release Subtenant from any of its obligations hereunder unless accepted by Sublandlord.

21.2 Assignment. The voluntary or other surrender of this Sublease by Subtenant shall not work a merger, unless Sublandlord consents, and shall, at the option of Sublandlord, operate as an assignment to it of any or all subleases or subtenancies.

21.3 No Merger. The voluntary or other surrender of any ground or underlying lease that now exists or may hereafter be executed affecting the Building or Subleased Premises, or

a mutual cancellation thereof or of Sublandlord's interest therein, shall not work a merger and shall, at the option of the successor of Sublandlord's interest in the Building or Subleased Premises, operate as an assignment of this Sublease.

22. Holding Over.

22.1 Holding Over with Consent. If Subtenant remains in possession of all or any part of the Subleased Premises after the expiration or earlier termination of this Sublease, with Sublandlord's prior written consent, Subtenant shall be deemed a month-to-month tenant upon the date of such expiration or earlier termination and, in such case, Subtenant shall continue to pay the Basic Rent (as adjusted from time to time as set forth in this Sublease) and any other amount of Rent due Sublandlord pursuant to the terms of this Sublease, and such month-to-month tenancy shall be subject to every other term, covenant and agreement contained herein.

22.2 Holding Over without Consent. If Subtenant remains in possession of the Subleased Premises after the expiration or earlier termination of the Term hereof without the express written consent of Sublandlord, Subtenant shall become a tenant at sufferance upon all the terms of this Sublease applicable to a tenant at sufferance, except that the monthly installments of Basic Rent shall be equal to one hundred ten percent (110 %) of the monthly installment of the Basic Rent in effect during the immediately preceding thirty (30) days.

22.3 No Renewal. Acceptance by Sublandlord of Rent after such expiration or earlier termination of this Sublease shall not result in a renewal or reinstatement of this Sublease.

22.4 No Waiver. The foregoing provisions of this Article are in addition to and do not affect Sublandlord's right to re-entry or any other rights of Sublandlord hereunder or as otherwise provided by law.

23. Taxes on Subtenant's Property.

23.1 Payment of Taxes. Subtenant shall pay not less than ten (10) days before delinquency, all taxes levied against any personal property or trade fixtures in or about the Subleased Premises.

23.2 Advance by Sublandlord. If any such taxes on Subtenant's personal property or trade fixtures are levied against Sublandlord or Sublandlord's property or, if the assessed valuation of the Building is increased by the inclusion therein of a value attributable to Subtenant's personal property or trade fixtures, and if Sublandlord, after written notice to Subtenant, elects to pay the taxes based upon such increase in assessed value, then Subtenant shall, upon demand, repay to Sublandlord the taxes so levied against Sublandlord.

24. Hazardous Materials.

24.1 Prohibition/Compliance. Subtenant, at its sole cost, shall comply with all federal, state and local laws, statutes, ordinances, codes, regulations and orders relating to the receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge,

release and disposal of any Hazardous Material as defined in this Article in or about the Subleased Premises or the Building. Subtenant shall not cause or permit any Hazardous Material (as hereinafter defined) to be brought upon, kept or used in or about the Subleased Premises by Subtenant, its agents, employees, contractors or invitees in a manner or for a purpose prohibited by any federal, state or local law, rule or regulation. The disposal of Hazardous Material shall be in approved containers and removed from the Subleased Premises by duly licensed carriers. Subtenant shall immediately provide Sublandlord with telephonic notice, which shall promptly be confirmed by written notice, of any and all spillage, discharge, release and disposal of Hazardous Materials onto or within the Subleased Premises or the Building, which by law must be reported to any federal, state or local agency, and any injuries or damages resulting directly or indirectly therefrom. A failure of Subtenant to give to Sublandlord the notices required in this **Section 24.1** shall constitute a default under this Sublease. Further, Subtenant shall deliver to Sublandlord each and every notice or order received from any federal, state or local agency concerning Hazardous Materials and the possession, use and/or disposal thereof promptly upon receipt of each such notice or order. Subtenant shall be responsible for and shall indemnify, protect, defend and hold harmless Sublandlord and its agents, employees, representatives, directors and officers from any and all claims, costs, penalties, fines, liability and losses, including without limitation, (i) temporary or permanent diminution in value of the Subleased Premises or the Building, (ii) damages for the temporary or permanent loss or restriction on use of rentable or usable space or of any amenity of the Subleased Premises or the Building, and (iii) sums paid in settlement of claims, consultant fees and expert fees, liabilities, attorneys' fees, damages, injuries, causes of action, judgments and expenses, which arise during or after the Term of this Sublease and which (a) result from Subtenant's use and occupancy of the Subleased Premises, or (b) result from Subtenant's receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release or disposal of Hazardous Materials in, upon or about the Subleased Premises or the Building. The indemnifications of Sublandlord and indemnities by Subtenant above include, to the extent Subtenant is responsible for such costs and expenses under the provisions above, without limiting the generalities thereof, reasonable costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work lawfully required by any federal, state or local governmental agency or political subdivision because of any Hazardous Materials present in the soil, subsoil, ground water, or elsewhere at, on or under the Subleased Premises or the Building.

24.2 Termination of Sublease. Notwithstanding the provisions of this Article, Sublandlord shall have the right to terminate the Sublease in this event that (i) Subtenant uses the Subleased Premises for the generation, storage, use, treatment or disposal of Hazardous Material in a manner or for a purpose prohibited by applicable law (unless Subtenant is diligently pursuing compliance therewith), (ii) Subtenant has been required by any governmental authority to take remedial action in connection with Hazardous Material contaminating the Subleased Premises or the Building if the contamination resulted from Subtenant's action or use of the Subleased Premises and such remedial action has a material adverse effect on Sublandlord, the Subleased Premises or the Building, or (iii) Subtenant is subject to an enforcement order issued by any governmental authority in connection with the use, disposal or storage of a Hazardous Material on the Subleased Premises and such enforcement order has a material adverse effect on Sublandlord, the Subleased Premises or the Building. Each of the foregoing events shall be deemed to be a material default by Subtenant under this Sublease.

24.3 Assignment and Subletting. Notwithstanding the provisions of Article 18 above, if (i) any anticipated use of the Subleased Premises by any proposed assignee or sublessee involves the generation or storage, use, treatment or disposal of Hazardous Material in any manner or for a purpose prohibited hereunder or by any applicable law, (ii) the proposed assignee or sublessee has been required by any governmental authority to take remedial action in connection with a Hazardous Material if the contamination resulted from such party's action or use of the property in question and has failed to take such action, or (iii) the proposed assignee or sublessee is subject to an enforcement order issued by any governmental authority in connection with the use, disposal or storage of a Hazardous Material of a type such proposed assignee or sublessee intends to use in, on or at the Subleased Premises and the proposed assignee or sublessee has failed to fully comply with such enforcement order, it shall not be unreasonable for Sublandlord to withhold its consent to an assignment or subletting to such proposed assignee or sublessee.

24.4 Perform Tests.

(a) At any time prior to the expiration of the Term of this Sublease, Sublandlord shall have the right to enter upon the Subleased Premises at all reasonable times, and at reasonable intervals, upon forty-eight (48) hours' prior notice, and accompanied by an authorized representative of Subtenant, if Subtenant so elects, in order to conduct appropriate tests to determine whether contamination in excess of permissible levels has occurred as a result of Subtenant's use of the Subleased Premises. Sublandlord shall deliver to Subtenant written notice of the results of such tests. Subtenant shall pay the reasonable costs of any test conducted pursuant to this Section which demonstrates that contamination in excess of legally permissible levels has occurred and such contamination was caused by Subtenant's use of the Subleased Premises. Additionally, Subtenant shall pay for all costs necessary to clean up or remedy any contamination caused by Subtenant's use of the Subleased Premises.

(b) Upon the expiration or upon any early termination of this Sublease, Subtenant shall furnish to Sublandlord, at Subtenant's sole cost, a report and certification from a qualified environmental engineer, verifying that the Subleased Premises are free from any Hazardous Materials or contamination in excess of legally permissible levels. If said report indicates that there are any impermissible levels of Hazardous Materials on the Subleased Premises, then Subtenant shall pay for all costs necessary to clean up and remedy said impermissible levels of Hazardous Materials; and Subtenant shall also continue to pay Rent for the Subleased Premises until such time as the impermissible levels of Hazardous Materials are cleaned up and remedied.

24.5 Subtenant's Obligations. Subtenant's obligations under this Article shall survive the termination of this Sublease. During any period of time employed by Subtenant after the termination of this Sublease to complete the removal from the Subleased Premises or the Building of any such Hazardous Materials, Subtenant shall continue to pay the full Rent in accordance with this Sublease.

24.6 Definition of "Hazardous Material". As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The

term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under §§ 25115, 25117 or 25122.7 or listed pursuant to § 25140 of the California HEALTH AND SAFETY CODE, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under § 25316 of the California HEALTH AND SAFETY CODE, Division 2, Chapter 6.8 (Carpenter-Presly-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance" or "hazardous waste" under § 25501 of the California HEALTH AND SAFETY CODE, Division 20, Chapter 6.95 (Hazardous Substances); (v) petroleum; (vi) asbestos; (vii) listed under Article 9 and defined as hazardous or extremely hazardous pursuant to Article 11 of Title 22 of the California ADMINISTRATIVE CODE, Division 4, Chapter 20; (viii) designated as a "hazardous substance" pursuant to § 311 of the FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1317); (ix) defined as a "hazardous waste" pursuant to § 1004 of the FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, 42 U.S.C. § 6901, *et seq.* (42 U.S.C. § 6903); or (x) defined as a "hazardous substance" pursuant to § 101 of the COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION LIABILITY ACT, 42 U.S.C. § 9601, *et seq.* (42 U.S.C. § 9601).

25. Miscellaneous.

25.1 Terms and Headings. Where applicable in this Sublease, the singular includes the plural and the masculine or neuter includes the masculine, feminine and neuter. The headings used in this Sublease are not a part hereof and shall have no effect upon the construction or interpretation of any part hereof.

25.2 Examination of Sublease. Submission of this Sublease for examination or signature by Subtenant does not constitute a reservation of, or option for, sublease, nor is it effective as a sublease or otherwise until execution by, and delivery to, both Sublandlord and Subtenant.

25.3 Time. Time is of the essence with respect to the performance of every provision of this Sublease in which time of performance is a factor.

25.4 Covenants and Conditions. Each provision of this Sublease performable by Sublandlord or Subtenant shall be deemed both a covenant and a condition.

25.5 Consents. Whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval, except as may be expressly set forth to the contrary.

25.6 Entire Agreement. This Sublease (together with its Exhibits) is intended by the parties as a final expression of their agreement with respect to the terms as are included herein, and all prior agreements, understandings, representations and statements, oral or written, are merged herein, excepting only for written agreements signed contemporaneously with or after the signing of this Sublease.

25.7 Severability. Any provision of this Sublease which shall be deemed or prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and all such other provisions shall remain in full force and effect.

25.8 Impartial Construction. The language in all parts of this Sublease shall be in all cases construed as a whole according to its fair meaning and not strictly for or against either Sublandlord or Subtenant. As both parties participated in the drafting and review of this Sublease, any ambiguity in the language will not be constructed against either Party as the drafter of that language.

25.9 Inurement. Each of the covenants, conditions and agreements herein contained shall inure to the benefit of and shall apply to and be binding upon the parties hereto and their respective heirs, legatees, devisees, executors, administrators, successors, assigns, sublessees or any person who may come into possession of said Subleased Premises or any part thereof in any manner whatsoever. Nothing contained in this Section shall in any way alter the provisions against assignment or subletting provided in this Sublease.

25.10 Force Majeure. If Sublandlord cannot perform any of its obligations hereunder due to events beyond Sublandlord's control, the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events. Events beyond Sublandlord's control include, but are not limited to, acts of God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of labor or material, government regulation or restriction and weather conditions.

25.11 Notices. Any notice, consent, demand, bill, statement or other communication required or permitted to be given hereunder shall be in writing and shall be deemed duly delivered upon personal delivery, or as of the second business day after mailing by United States mail, postage prepaid, return receipt requested, or upon the next business day if delivered by overnight courier or similar overnight delivery system, addressed to Subtenant at the Subleased Premises or to Subtenant or Sublandlord at the following addresses:

for Rent Payment and Notices to Sublandlord:

Driscoll Marina, Ltd.
Attn: J. Gerald Driscoll
North Harbor Drive, Suite 203
San Diego, California 92106

for Notices to Subtenant:

The City of San Diego
Real Estate Assets Department
Attn: Ms. Diana M. Lozano
200 Third Avenue, Suite 1700
San Diego, California 92101

with a copy to:

The City of San Diego
Metropolitan Waste Water Department
[at the Subleased Premises]

Either party may, by notice to the other given pursuant to this Section, specify additional or different addresses for notice purposes.

25.12 Exhibits. All exhibits and schedules referred to herein and attached hereto are a part hereof, and incorporated herein by this reference.

25.13 Waiver and Modification. No provision of this Sublease may be modified, amended or added to except by an agreement in writing executed by Sublandlord and Subtenant. The waiver by Sublandlord or Subtenant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

25.14 Periods of Time. All periods of time referred to in this Sublease shall include all Saturdays, Sundays and state or United States holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice with respect to this Sublease shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

25.15 Choice of Law. This Sublease shall be construed and enforced in accordance with the laws of the State of California, and venue for any legal action under this Sublease shall be Riverside County, California.

25.16 Merger. There shall be no merger of the leasehold estate created by this Sublease with the fee interest in any of the Subleased Premises by reason of the fact that the same person may acquire or hold or own, directly or indirectly, (a) the leasehold estate created hereby or any part thereof or interest therein, and (b) the fee estate in any of the Subleased Premises or any part thereof or interest therein.

25.17 Real Estate Brokers; Finders. Subtenant and Sublandlord each represent to the other that they have not entered into any agreement or incurred any obligation in connection with this transaction that might result in the obligation to pay a brokerage commission or finder's fee to any broker, finder or other person other than the Irving Hughes Group, Inc. ("Broker"). Sublandlord shall pay any commissions or fees that are payable to Broker with respect to this Sublease in accordance with the provisions of a separate commission contract between Sublandlord and Broker. Each party agrees to indemnify and hold the other party harmless from and against any liability, damages, claim or demand by any other broker or other person for bringing about this Sublease who claims to have dealt with such indemnifying party, including any expenses (including reasonable attorney fees) incurred in defending any such claim or demand.

25.18 Attorneys' Fees. If either party hereto becomes a party to any litigation concerning this Sublease (including any bankruptcy proceeding), the Subleased Premises, or the Building, by reason of any act or omission of the other party or its authorized representatives, and not by any act or omission of the party that becomes a party to that litigation or any act or omission of its authorized representatives, the party that causes the other party to become involved in the litigation shall be liable to that party for reasonable attorneys' fees and court costs incurred by it in the litigation. If either party hereto commences an action against the other party arising out of or in connection with this Sublease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

25.19 Waiver of Jury Trial and Counterclaims. The parties hereto shall and do hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Sublease, the relationship of Sublandlord and Subtenant, Subtenant's use or occupancy of the Subleased Premises or any claim of injury or damage.

25.20 Joint and Several Obligations. If more than one person executes this Sublease as Subtenant, (a) each of them is jointly and severally liable for the keeping, observing and performing all of the terms, covenants, conditions, provisions and agreements of this Sublease to be kept, observed and performed by Subtenant; and (b) the term "Subtenant" shall mean and include each of them jointly and severally. The act of, notice from, notice to, refund to or the signature of any one or more of them, with respect to this Sublease, including but not limited to any renewal, extension, expiration, termination or modification of this Sublease, shall be binding upon each and all of the persons executing this Sublease as Subtenant with the same force and effect as if each and all of them had so acted, so given or received such notice or refund or so signed.

25.21 Definition of Sublandlord. The term "Sublandlord" as used in this Sublease, so far as covenants or obligations on the part of Sublandlord are concerned, shall be limited to mean and include only Sublandlord or the successor-in-interest of Sublandlord under this Sublease at the time in question. In the event of any transfer, assignment or the conveyance of Sublandlord's title or leasehold, the Sublandlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer, assignment or conveyance of all liability for the performance of any covenants or obligations contained in this Sublease thereafter to be performed by Sublandlord and, without further agreement, the transferee of such title or leasehold shall be deemed to have assumed and agreed to observe and perform any and all obligations of Sublandlord hereunder during its ownership or ground lease of the Subleased Premises. Sublandlord may transfer its interest in the Subleased Premises or this Sublease without the consent of Subtenant, and such transfer, or a subsequent transfer shall not be deemed a violation on the part of Sublandlord or the then grantor of any of the terms or conditions of this Sublease.

25.22 Limitation of Sublandlord's Liability. If Sublandlord is a limited partnership or joint venture, the limited partners of such partnership shall not be personally liable and no limited partner of Sublandlord shall be sued individually or named individually as a party in any suit or action or service of process be made against any limited partner of Sublandlord. If Sublandlord is a corporation or limited liability company, the shareholders, members, directors, officers, managers,

employees and/or agents of such corporation shall not be personally liable and no shareholder, member, director, officer, manager, employee or agent of Sublandlord shall be sued or named as a party in any suit or action or service of process be made against any shareholder, member, director, officer, officer, manager, employee or agent of Sublandlord. No limited partner, shareholder, director, employee or agent of Sublandlord shall be required to answer or otherwise plead to any service of process and no judgment will be taken or writ of execution levied against any limited partner, shareholder, member, director, officer, manager, employee or agent of Sublandlord. Each of the covenants and agreements of this **Section 25.22** shall be applicable to any covenant or agreement either expressly contained in this Sublease or imposed by statute or by common law.

25.23 Subleased Premises Control by Sublandlord. Sublandlord reserves full control over the Building and Subleased Premises to the extent not inconsistent with Subtenant's quiet enjoyment and use of Subleased Premises. This reservation includes but is not limited to right of Sublandlord to grant easements and licenses to others, provided any grant of an easement by Sublandlord does not interfere with Subtenant's quiet enjoyment and use of the Subleased Premises, except to the extent the grant of any such easement is approved by Subtenant, required by law, or permitted pursuant to the terms of this Sublease.

25.24 Quiet Enjoyment. So long as Subtenant is not in default hereunder, Sublandlord covenants that Sublandlord or anyone acting through or under Sublandlord will not disturb Subtenant's occupancy of the Subleased Premises, except as permitted by the provisions of this Sublease. Subtenant acknowledges that the Subleased Premises are a portion of the Master Premises described under the Master Lease and that the Master Premises are used for a multitude of business operations including marine repair, equipment storage, and are adjacent to maintenance areas, docking, loading and other facilities which can cause nuisances and otherwise disturb the quiet enjoyment of Subtenant on the Subleased Premises.

25.25 Quitclaim Deed. Subtenant shall execute and deliver to Sublandlord on the expiration or termination of this Sublease, immediately upon Sublandlord's request, a quitclaim deed to the Subleased Premises or other document in recordable form suitable to evidence of record termination of this Sublease.

25.26 Estoppel Certificate. From time to time as reasonably requested by Sublandlord, Subtenant shall, within fifteen (15) days of written notice from Sublandlord, execute, acknowledge and deliver to Sublandlord a statement in writing in a form reasonably requested by a proposed lender or purchaser (i) certifying that this Sublease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Sublease as so modified is in full force and effect) and the dates to which the Rent and other charges are paid in advance, if any, (ii) acknowledging that there are not, to Subtenant's knowledge, any uncured defaults on the part of Sublandlord hereunder or specifying such defaults if any are claimed, and (iii) setting forth such further reasonable information with respect to this Sublease or the Subleased Premises as may be requested thereon. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Subleased Premises.

26. **Consent of San Diego Unified Port District.** This Sublease and the tenancy of Subtenant is subject to the consent of the Port District. If this Sublease is not consented to by the Port District, this Sublease shall be void and of no force or effect.

27. **Master Lease.** This Sublease shall be, and remain, subject and subordinate to the terms, covenants, and conditions of the Master Lease, and furthermore, in the event of any conflict or inconsistency between the Sublease and the Master Lease, the provisions of the Master Lease shall govern and prevail. If the Master Lease should terminate for any reason, this Sublease shall likewise terminate. Subtenant and Sublandlord agree that the terms and conditions of the Master Lease are incorporated herein by reference, and shall, as between Sublandlord and Subtenant constitute the terms, covenants, conditions, and provisions of this Sublease, except to the extent that they are inapplicable to, inconsistent with, or modified by the provisions of this Sublease. Subtenant shall strictly comply with each term and condition of the Master Lease. Any breach by Subtenant under the Master Lease shall be deemed breach under this Sublease.

IN WITNESS WHEREOF, the parties hereto have executed this Sublease as of the dates set forth below next to their respective signatures.

Date of execution:

Sublandlord:

Sept. 11, 1997, 1997

DRISCOLL MARINA, LTD.,
a California limited partnership

By: DRISCOLL MANAGEMENT, INC.,
Its General Partner

By: [Signature]
Its: General Partner

Date of execution:

SEP 08 1997, 1997

Subtenant:

THE CITY OF SAN DIEGO
a California municipal corporation

By:

Jane E. Vickers
Jane E. Vickers, Deputy Director,
Real Estate Assets Department

APPROVED as to form and legality this 11th day of September 1997.

CASEY GWINN, City Attorney

By:

William T. Griffith
William T. Griffith, Deputy City Attorney

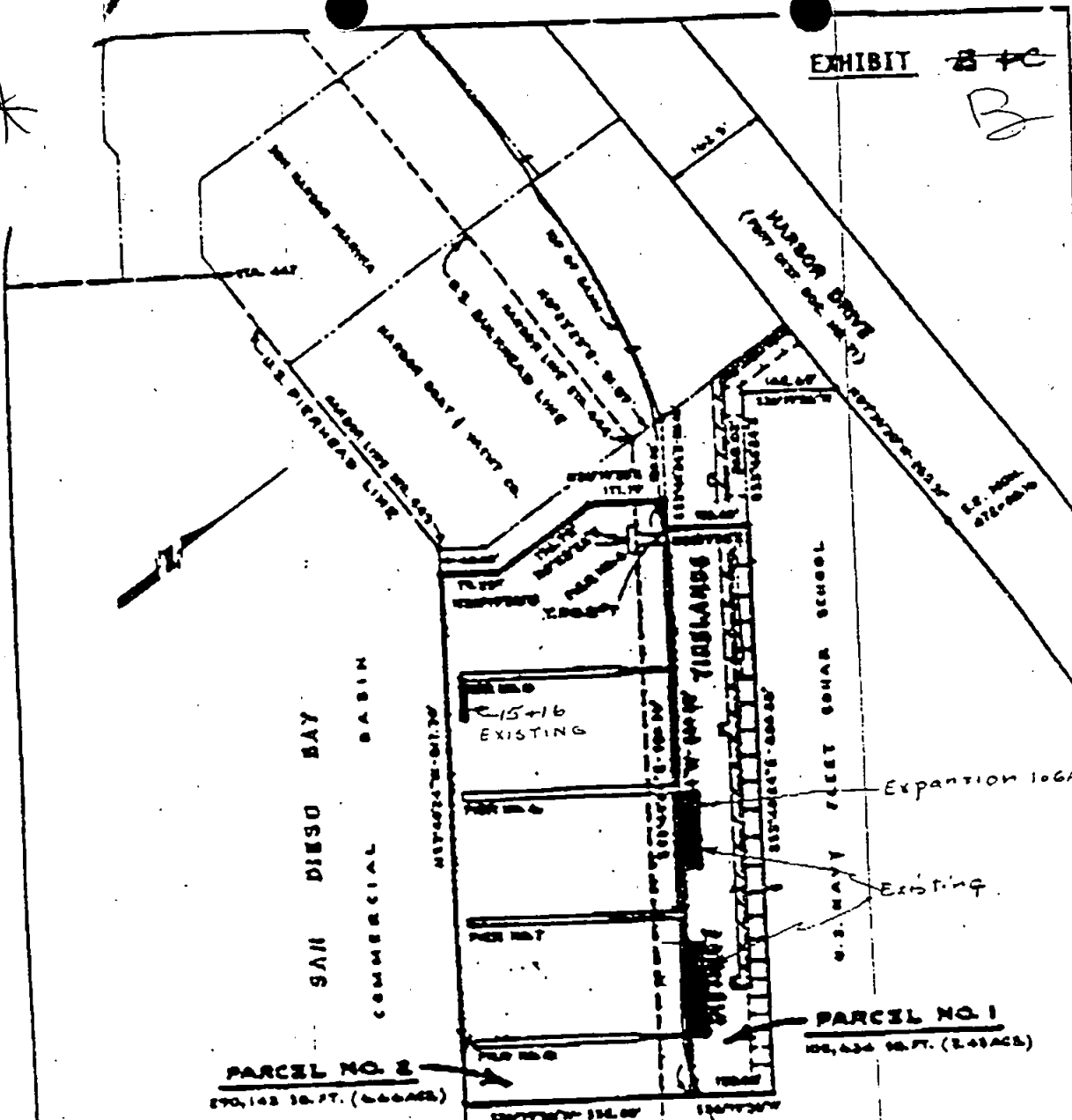
Exhibit B

Site Plan

[to be attached]

EXHIBIT B+C

B



NOTES:

1. LEASE AREAS SHOWN SHADE.
2. BEARINGS AND DISTANCES ARE BASED ON "OLD TOWN."
3. CITY OF SAN DIEGO UTILITY EASEMENT SHOWN HATCHED.
4. 30' WIDE FIRE LANE SHOWN THICK LINE.

GRAPHIC SCALE IN FEET: 1" = 200'



FROM 2206-B, 24 JAN. 1980, BY R.J., APPROVED BY CHIEF ENGINEER, *[Signature]*
 REVISED FROM 2206-B, 17 JAN. '81, BY R.J., APPROVED BY CHIEF ENGINEER, *[Signature]*

DRAWN ANDRECHT
 CHECKED JOHNSON
 REVIEWED JEA

SAN DIEGO UNIFIED PORT DISTRICT
 TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF SAN DIEGO

APPROVED
[Signature]
 CHIEF ENGINEER

NORTH HARBOR LANDING LIMITED

DATE: 2 JANUARY 1980
 SCALE: 1" = 200'
 REF: 2206-B

DRAWING NO.
 2467-B

REDUCED DRAWING - DO NOT SCALE

EXHIBIT B+C

18301

Exhibit C

Construction Exhibit

[to be attached]

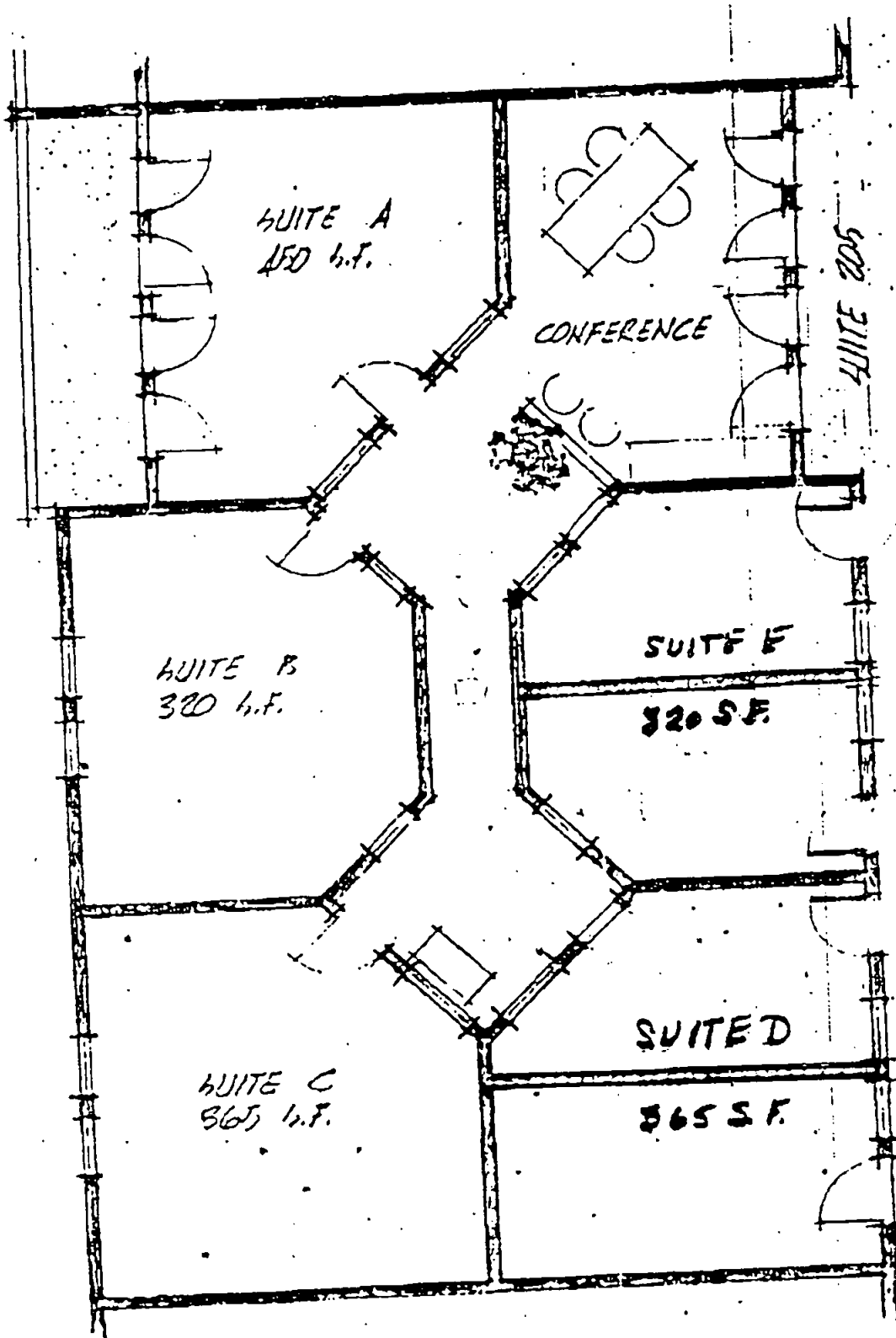
nt by: KENAI CONSTRUCTION

619 889 8833;

07/29/97 2:19PM; Jettax #830; Page 2/3

KENAI CONSTRUCTION CO., INC.
7578 TRADE ST.
SAN DIEGO, CA. 92121-2412

Exhibit D-1



WHITE

DATE 1997

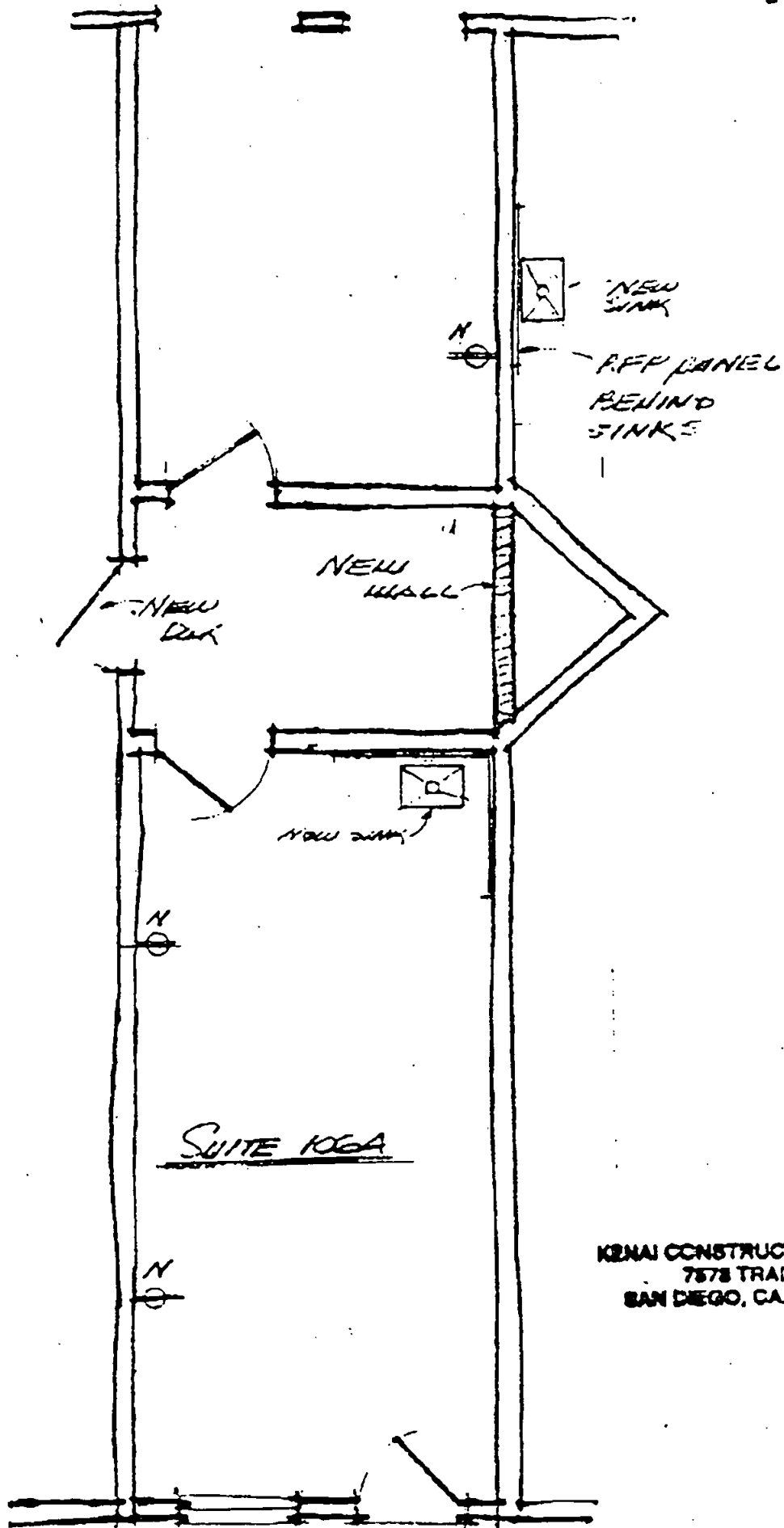
SHEET 1 OF 2

nt by: KENAI CONSTRUCTION

619 889 8833;

07/29/97 1:19PM; JettFax #830; Page 3 of 3

Exhibit D-2



KENAI CONSTRUCTION CO., INC.
7878 TRADE ST.
SAN DIEGO, CA 92121-2412

Kiana

(R-98-181)

RESOLUTION NUMBER R- 289140

ADOPTED ON SEP 08 1997

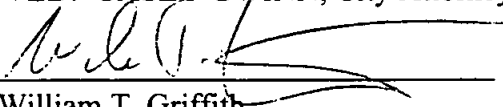
WHEREAS, Metropolitan Wastewater Department Water District desires to renew and expand by 950 square feet, its existing sublease for a water testing lab at 4518 N. Harbor Drive;
NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager be and is hereby authorized to execute a Sublease with the sublessor, Driscoll Marina, Ltd., for a term of five years from September 1, 1997 to ^{SEP 14 2001} ~~August 31~~, 2002, consisting of 12,642 ^{779 sqm} square feet located at 4518 North Harbor Drive, at a monthly rent of \$1.43 per square foot, with fixed annual increases of 3% as more particularly described in said lease agreement on file in the office of the City Clerk as Document No. RR- 289140.

BE IT FURTHER RESOLVED, that the Auditor and Comptroller be and is hereby authorized to expend an amount not to exceed 217,916.64 from Fund No. 41508 for this purpose.

APPROVED: CASEY GWINN, City Attorney

By


William T. Griffith
Deputy City Attorney

WTG:cdk:mr
08/28/97
Or.Dept:REA
R-98-181

Passed and adopted by the Council of San Diego on

SEP 08 1997

by the following vote:

YEAS: MATHIS, WEAR, KEHOE, STEVENS, WARDEN, STALLINGS,

MCCARTY, MAYOR GOLDING.

NAYS: NONE.

NOT PRESENT: VARGAS.

AUTHENTICATED BY:

SUSAN GOLDING

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

By: Lori A. Witzel, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. R- 289140, passed and adopted by the Council of The City of San Diego, California on **SEP 08 1997**.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: *Lori A. Witzel*, Deputy