

RESOLUTION NUMBER R- 106786
DATE OF FINAL PASSAGE MAY 16 2011

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING A FIVE-YEAR LEASE
AGREEMENT WITH DRISCOLL MARINA, LTD., AS
SUBLESSOR, AND THE CITY, AS SUBLESSEE, ON
BEHALF OF THE ENVIRONMENTAL MONITORING
AND TECHNICAL SERVICES DIVISION OF THE
PUBLIC UTILITIES DEPARTMENT.

WHEREAS, the Environmental Monitoring and Technical Services Division of the
City's Public Utilities Department [Division] wants to sublease from Driscoll Marina, Ltd., a
California limited partnership, a portion of the property commonly known as "Driscoll's Wharf"
and owned by the San Diego Unified Port District, consisting of office suites 105 and 107 and
boat slips 15 and 16 of Pier 5, located at 4918 North Harbor Drive [Premises]; and

WHEREAS, the Division will use the Premises for general commercial office, storage,
and water-testing laboratory purposes; NOW, THEREFORE,

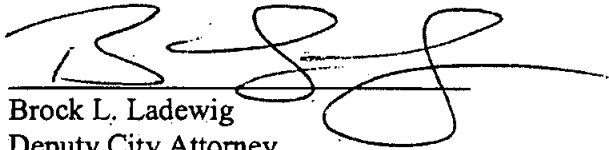
BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor or his
designee is authorized to execute and deliver a Sublease Agreement between the City, as lessee,
and Driscoll Marina, Ltd., a California limited partnership, as lessor, for for general commercial
office, storage, and water-testing laboratory purposes located at 4918 North Harbor Drive, under
the terms and conditions set forth in the Sublease Agreement on file in the Office of the City
Clerk as Document No. RR- 106786 ("Lease"); and

BE IT FURTHER RESOLVED, the Chief Financial Officer is authorized to pay rent as
required under the terms of the Lease; and

BE IT FURTHER RESOLVED, the Mayor or his designee shall seek and obtain the Council's approval prior to exercising any option to extend the term of the Lease.

APPROVED: JAN I. GOLDSMITH, City Attorney

By


Brock L. Ladewig
Deputy City Attorney

BLL:mcm

04/13/2011

Or.Dept:Real Estate Assets Dept.

PL#2010-02081

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAY 3 2011.

ELIZABETH S. MALAND
City Clerk

By


Deputy City Clerk

Approved:

5.16.11
(date)


JERRY SANDERS, Mayor

Vetoed:

(date)

JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego on MAY 03 2011, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	☒	☐	☐	☐
Kevin Faulconer	☒	☐	☐	☐
Todd Gloria	☒	☐	☐	☐
Anthony Young	☐	☐	☒	☐
Carl DeMaio	☒	☐	☐	☐
Lorie Zapf	☒	☐	☐	☐
Marti Emerald	☒	☐	☐	☐
David Alvarez	☒	☐	☐	☐

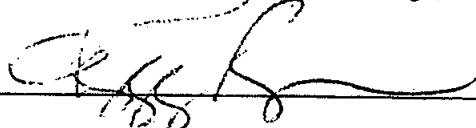
Date of final passage MAY 16 2011

AUTHENTICATED BY:

JERRY SANDERS
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California

106786

Resolution Number R-_____

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT ("Sublease") is entered into by and between DRISCOLL MARINA, LTD., a California limited partnership ("DRISCOLL"), as sublessor, and THE CITY OF SAN DIEGO, a California municipal corporation ("SUBLESSEE"), as sublessee, to be effective as of **MARCH 1, 2011** (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

RECITALS

- A. DRISCOLL is the successor-in-interest to NORTH HARBOR LANDING LIMITED, a California limited partnership, as the "Lessee" under that certain LEASE dated May 17, 1983 (the "Master Lease," attached hereto as **Exhibit A: Master Lease**), with the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, as "Lessor," for certain real property (the "Master Lease Premises") located on North Harbor Drive, San Diego, California, commonly known as "Driscoll's Wharf," and more particularly described in the Master Lease.
- B. SUBLESSEE wants to sublease from DRISCOLL a portion of the Master Lease Premises consisting of suites 106 and 107 and slips 15 and 16 of Pier 5, located at 4918 North Harbor Drive, San Diego, California, (collectively, the "Sublease Premises"), comprising approximately 1,669 rentable square feet as shown in **Exhibit B: Sublease Premises**, attached hereto.

FOR VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. **Sublease.** DRISCOLL leases the Sublease Premises to SUBLESSEE and SUBLESSEE leases the Sublease Premises from DRISCOLL under the terms and conditions of this Sublease.
- 2. **Subordination.** This Sublease shall be subject to and subordinate to the terms, covenants, and conditions of the Master Lease. All terms and conditions of the Master Lease shall control and supersede each provision of this Sublease that is or becomes contrary to or in conflict with the Master Lease.
- 3. **Quiet Possession.** SUBLESSEE, performing its obligations under this Sublease, shall at all times during the term of this Sublease peaceably and quietly have, hold, and enjoy the Sublease Premises.
- 4. **Consents, Approvals.** Unless otherwise expressly provided herein, each consent or approval required by this Sublease must be in writing and may not be unreasonably withheld or delayed.
- 5. **Term.** The term of this Sublease ("Term") shall be five (5) years, commencing on the Effective Date.

6. Option to Extend. Provided SUBLESSEE is not then in default of this Sublease, SUBLESSEE shall have an option to extend the Term once only for an additional five (5) years by giving notice to DRISCOLL at least six (6) months, but not more than one (1) year, before the expiration of the Term; and provided further, that such extension of the Term shall be null and void if SUBLESSEE is in default of this Sublease on the original expiration date of this Sublease.
7. Holdover. Any holding over by SUBLESSEE after the expiration or earlier termination of this Sublease shall not be considered a renewal or extension of this Sublease. SUBLESSEE'S occupancy of the Sublease Premises after the expiration or earlier termination of this Sublease shall constitute a month-to-month tenancy subject to the Master Lease, and all other terms and conditions of this Sublease shall continue in full force and effect.
8. Rent. SUBLESSEE shall pay to DRISCOLL rent (the "Sublease Rent") as follows:

Months 1-12: Three Thousand Eight Hundred Twenty-Three Dollars and Eighty Five Cents (\$3,823.85) per month
Months 13-24: Three Thousand Nine Hundred Dollars and Thirty Two Cents (\$3,900.32) per month
Months 25-36: Three Thousand Nine Hundred Seventy-Eight Dollars and Thirty-Three Cents (\$3,978.33) per month
Months 37-48: Four Thousand Fifty Seven Dollars and Ninety Cents (\$4,057.90) per month
Months 49-60: Four Thousand One Hundred Thirty Nine Dollars and Five Cents (\$4,139.05) per month
9. Extended-Term Rent. Sublease Rent for any extended Term shall be increased two percent (2%) as of the first day of the extended Term, and as of the first day of each Lease year thereafter.
10. Time and Place of Payment. Rent shall be due and payable monthly in advance on or before the first day of each calendar month during the Term. Checks should be made payable to "Driscoll Marina, Ltd." and mailed to:

DRISCOLL MARINA, LTD.
Attention: J. Gerald Driscoll
4918 North Harbor Drive, Suite 203
San Diego, California 92106
11. Use. SUBLESSEE shall use the Sublease Premises solely for general commercial office, storage (as to Suite 107 only), and water-testing laboratory purposes and for no other purpose whatsoever without DRISCOLL'S consent in each instance.

12. Parking. SUBLESSEE shall be allowed nonexclusive use of a reasonable number of parking spaces within the Master Lease Premises.
13. Utilities. DRISCOLL shall order, obtain, and pay for reasonable quantities of water, sewer, gas, electricity, and trash removal as required by SUBLESSEE'S use of the Sublease Premises. SUBLESSEE shall order, obtain, and pay for all telephone and any other utilities and services and installation charges in connection with its use of the Sublease Premises.
14. Maintenance. SUBLESSEE shall, at its sole expense, maintain the Sublease Premises in good order and repair and in a safe, healthy, and sanitary condition at all times during the Term. Upon expiration or earlier termination of this Sublease, SUBLESSEE shall surrender and vacate the Sublease Premises in broom-clean, good condition to DRISCOLL'S reasonable satisfaction, normal wear and tear excepted. DRISCOLL shall perform major maintenance and repair to the structural components of the Sublease Premises, including without limitation interior walls, ceilings, exterior walls, roofs, floors, external structures, and electrical, plumbing, and heating, ventilating, and air-conditioning systems.
15. Compliance with Laws. SUBLESSEE shall comply with all rules, regulations, and laws, and all direction by competent authority, which now or hereafter pertain to SUBLESSEE'S use and occupancy of the Sublease Premises.
16. Encumbrances. SUBLESSEE shall keep the Sublease Premises free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with SUBLESSEE'S use and occupancy of the Sublease Premises.
17. Improvements/Alterations. SUBLESSEE shall not construct any improvements, structures, or installations on the Sublease Premises, and shall not alter the Sublease Premises without DRISCOLL'S consent. SUBLESSEE shall not make any major structural or architectural design alterations to approved improvements, structures, or installations on the Sublease Premises without DRISCOLL'S consent.
18. Entry and Inspection. DRISCOLL may, but shall not be obligated to, enter the Sublease Premises after reasonable prior notice to SUBLESSEE for the purpose of viewing and ascertaining the condition of the Sublease Premises, to protect its interests in the Sublease Premises, or to inspect the operations conducted on the Sublease Premises.
19. Signs. SUBLESSEE shall only post signs which are required by federal, state, or local regulations, or otherwise approved by DRISCOLL.
20. Insurance. DRISCOLL shall obtain and maintain insurance for the Master Lease Premises, as required by the Master Lease. SUBLESSEE is self insured for its own risk and shall not be required to obtain or maintain any insurance policy.

21. Assignment and Subleasing. SUBLESSEE shall not assign this Sublease or any of its obligations hereunder, or sublet any part of the Sublease Premises without DRISCOLL'S consent.
22. Indemnification & Hold Harmless.
- a. SUBLESSEE shall protect, defend, indemnify, and hold DRISCOLL and its officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to SUBLESSEE'S officers, employees, invitees, guests, agents, or contractors, which are caused by SUBLESSEE'S use and occupancy of the Sublease Premises, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that SUBLESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the negligence or intentional misconduct of DRISCOLL and its officers, employees, representatives, and agents.
 - b. DRISCOLL shall protect, defend, indemnify, and hold SUBLESSEE and its officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to DRISCOLL'S officers, employees, invitees, guests, agents, or contractors, which are caused by DRISCOLL'S use and occupancy of the Master Lease Premises, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that DRISCOLL'S duty to indemnify and hold harmless shall not include any claims or liability arising from the negligence or intentional misconduct of SUBLESSEE and its officers, employees, representatives, and agents.
23. Hazardous Substances. SUBLESSEE shall not allow the installation, storage, utilization, generation, sale or release of hazardous or otherwise regulated substances in, on, under, or from the Sublease Premises. SUBLESSEE and SUBLESSEE'S agents and contractors shall not install, store, utilize, generate, or sell any hazardous substance on the Sublease Premises without DRISCOLL'S consent. "Hazardous substances" shall mean any hazardous liquid, solid, or gaseous material substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents.
24. Default. SUBLESSEE shall be in default of this Sublease if: (a) SUBLESSEE fails to make any payment required by this Sublease when due; or (b) SUBLESSEE breaches any of its non-monetary obligations under this Sublease and fails to cure the breach within thirty (30) days following written notice thereof from DRISCOLL, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion.
25. Remedies. Upon SUBLESSEE'S default, DRISCOLL may, at its option, give SUBLESSEE, or any person claiming rights through SUBLESSEE, a written "Three Day

Notice to Pay or Quit", or DRISCOLL may terminate this Sublease and all rights of SUBLESSEE, and all persons claiming rights through SUBLESSEE, to the Sublease Premises or to possession of the Sublease Premises. Upon termination, DRISCOLL may enter and take possession of the Sublease Premises, and may recover from SUBLESSEE the sum of:

- a. the worth at the time of award of any unpaid rent that was due at the time of termination;
- b. the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that SUBLESSEE affirmatively proves could have been reasonably avoided;
- 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 rental loss, if any, that SUBLESSEE affirmatively proves could be reasonably avoided;
- d. any other amount necessary to compensate DRISCOLL for all the detriment proximately caused by SUBLESSEE'S breach and default, or that in the ordinary course of things, would be likely to result; and
- e. all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses (a) and (b), above, the "worth at the time of award" is computed by allowing interest at the rate of seven percent (7%) per annum. As used in clause (c), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this Remedies Section, the term "rent" shall include rent and any other amounts payable by SUBLESSEE under this Sublease.

26. Abandonment by SUBLESSEE. If SUBLESSEE abandons the Sublease Premises, this Sublease shall continue in effect as long as DRISCOLL does not terminate this Sublease, and DRISCOLL may enforce all of its rights and remedies under this Sublease, including without limitation the right to recover rent as it becomes due, plus damages.
27. Legal Proceedings. If any party brings an action or proceeding against another party under this Sublease, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation reasonable attorney fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.
28. Survival. Any obligation which accrues under this Sublease prior to its expiration or termination shall survive such expiration or termination.
29. No Affiliation. Nothing contained in this Sublease shall be deemed or construed to create a

partnership, joint venture, or other affiliation between DRISCOLL and SUBLESSEE.

30. Entire Understanding. This Sublease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to this Sublease and SUBLESSEE'S use and occupancy of the Sublease Premises. Any modification, alteration, or amendment of this Sublease shall be in writing and signed by all the parties hereto.
31. Successors and Assigns. Except as otherwise provided in this Sublease, all of the terms, covenants, and conditions of this Sublease shall apply to, benefit, and jointly and severally bind the successors and assigns of the respective parties.
32. Notices. Any notice required or permitted to be given under this Sublease shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed as follows:

DRISCOLL MARINA, LTD.
Attention: J. Gerald Driscoll
4918 North Harbor Drive, Suite 203
San Diego, California 92106

THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

With a copy by First Class Mail to: San Diego City Attorney
Attn: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

33. Taxes. SUBLESSEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon SUBLESSEE or the Sublease Premises by reason of SUBLESSEE'S use and occupancy of the Sublease Premises.
34. Partial Invalidity. If any term, covenant, condition, or provision of this Sublease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
35. Time is of the Essence. Time is of the essence for each of the terms, covenants, and conditions of this Sublease.
36. Governing Law. This Sublease shall be governed, construed, and enforced in accordance with the laws of the State of California.

37. Counterparts. This Sublease may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.
38. Authority to Contract. Each individual executing this Sublease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Sublease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing Sublease, and that this Sublease is binding upon such person or entity in accordance with its terms. Each person executing this Sublease on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Sublease is executed to be effective as of the Effective Date.

Date: 2/10/11

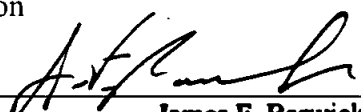
DRISCOLL MARINA, LTD., a California limited partnership

BY: DRISCOLL MANAGEMENT, INC., a California corporation, its General Partner

By: 
Name: CATHERINE DRISCOLL
Title: VICE PRESIDENT

Date: 7/12/11

THE CITY OF SAN DIEGO, a California municipal corporation

BY: 
Name: James F. Barwick, CCIM
Title: Director, Real Estate Assets

Approved as to Form and Legality:

JAN I. GOLDSMITH, City Attorney

BY: 
Name: Brock Ladewig
Title: Deputy City Attorney

Exhibit A: Master Lease
Exhibit B: Sublease Premises

San Diego Unified Port District

Document No. 15918

Filed _____

Microfilm No. _____

Office of the Clerk

EXHIBIT A

LEASE

THIS LEASE, made and entered into this 17th day of May, 1983, between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter called "Lessor," and NORTH HARBOR LANDING LIMITED, a California limited partnership, hereinafter called "Lessee," WITNESSETH:

Lessor, for the consideration hereinafter set forth, hereby leases to Lessee for the term and upon the conditions hereinafter set forth, a portion of those lands conveyed to the San Diego Unified Port District by that certain Act of the Legislature of the State of California entitled "San Diego Unified Port District Act," Stats. 1962, 1st Ex. Sess., c. 67, as amended, which lands are more particularly described as follows:

Approximately 395,777 square feet of tideland area in the City of San Diego, California, more particularly described in a two-parcel legal description and delineated on Drawing No. 2467-B revised January 24, 1983, attached hereto as Exhibits "A" and "B" and by this reference made a part hereof together with the right of ingress and egress for pedestrians and motor vehicles over a paved driveway to be maintained by Lessor to and from Harbor Drive across Lessor's adjacent property. The driveway shall be located within the area more particularly delineated on Drawing No. 2468-B, dated January 26, 1983, attached hereto as Exhibit "C" and by this reference made a part hereof. The location and size of said paved driveway within the above delineated parcel may be changed from time to time by Lessor at Lessor's expense but shall never be less than twenty-four (24) feet in width.

TO HAVE AND TO HOLD said leased premises for the term of this lease and upon the conditions as follows:

1. TERM: The term of the lease shall be for a period of forty (40) years commencing on May 1, 1983, and ending on April 30, 2023, unless sooner terminated as herein provided.

2. RENTAL: Lessee agrees to pay to Lessor rent in accordance with the following schedules and procedures:

- (a) During the first rental period of this lease, a minimum of Thirty-One Thousand Dollars (\$31,000) per year, from May 1, 1983, through April 30, 1984; a minimum of Fifty Thousand Dollars (\$50,000) per year from May 1, 1984, through April 30, 1985; and a minimum of Seventy Thousand Dollars (\$70,000) per year from May 1, 1985, through April 30, 1988, or the cumulative total of the percentage and flat rents per year as provided in (b) below, whichever is greater.
- (b) Percentage rents shall be calculated on a monthly basis and shall be based on the following percentages of the gross income of the operations and businesses conducted on or from the leased premises.
 - (1) 3% of the gross income from food sold from restaurants, snack bars and delicatessens.
 - (2) 5% of the gross income from on-sale alcoholic and nonalcoholic beverage sales.
 - (3) 3% of the gross income from off-sale alcoholic and nonalcoholic beverage sales.
 - (4) 5% of the gross income from the sale of gifts, novelties, souvenirs, clothing, luggage, jewelry, cigars, cigarettes, candy, sundries and incidentals of any kind.
 - (5) 25% of any commission or other compensation paid to Lessee for the right to install or operate coin-operated vending or service machines or devices, including telephones, or 5% of the gross income of any such coin-operated machines or devices owned, rented or leased by Lessee or his sublessee.
 - (6) 20% of the gross income from the rental of boat berths, dock lockers, dinghy racks, dry storage spaces and the services of boat launching and retrieving.
 - (7) 5% of the gross income from ship chandlery sales.

- (8) 10% of the gross income from vehicle parking and fishing gear storage spaces.
- (9) 10% of the gross income from office space rentals to maritime-oriented sublessees.
- (10) Sixty-Two Dollars (\$62) per month for the sale of new and used fishing boats, which sum is in lieu of percentage rent on fishing boat sales.
- (11) One Hundred Forty-Three Dollars (\$143) per month for wholesale fish sales, which sum is in lieu of percentage rent on wholesale fish sales.
- (12) Three Hundred Seventy Dollars (\$370) per month for marine electronic sales, which sum is in lieu of percentage rent on marine electronic sales.
- (13) 3% of the gross income from retail fish sales.
- (14) 3% of the gross income from grocery sales.
- (15) 5% of the gross income from the rendering of boat service and labor including boat repair, painting, cleaning and similar activities.
- (16) 10% of the gross income from any and all activities and businesses allowed under this lease and not otherwise provided for in this paragraph.

(c) The term of this lease shall be divided into a series of rentals periods, each consisting of sixty (60) months, the first such period to begin on the commencement date of this lease. The rent for each successive rental period of this lease shall be mutually agreed upon by Lessor and Lessee. Each successive rental period shall commence at the expiration of the immediately preceding rental period. The last rental period shall be reduced in term in order to coincide with the expiration of this lease. It is specifically agreed that the yearly minimum rental during each succeeding rental period shall be not less than 75% of the average percentage rental paid during the last three accounting years of the previous

rental period.

- (d) In the event the parties cannot agree to the rent for a rental period, the controversy as to rent for said period shall be determined by three arbitrators. After notice by either party to the other requesting arbitration, one arbitrator shall be appointed by each party. Notice of the appointment shall be given by each party to the other when made. The two arbitrators shall immediately choose a third arbitrator to act with them. If they fail to select a third arbitrator, on application by either party, the third arbitrator shall be promptly appointed by the then presiding judge of the Superior Court of the State of California, County of San Diego, acting in his individual capacity. The party making the application shall give the other party notice of his application. All of the arbitrators shall be qualified real estate appraisers. Each party shall bear the expenses of its own appointed arbitrator and shall bear other expenses pursuant to Section 1284.2 of the Code of Civil Procedures of California. Hearings shall be held in the City of San Diego, California. The award shall be the decision of not less than two of the arbitrators. Said award shall be the rent which Lessor could derive from Lessor's property if it were vacant and made available on the open market for new leasing purposes at the commencement of the rental period under arbitration. For the purpose of this arbitration procedure, the arbitrators shall assume that the Lessor has a fee simple absolute estate. In determining what rent Lessor could derive from said property if it were made available on the open market for new leasing purposes, the arbitrators shall consider the property as if it were available to be leased for commercial uses. In determining the rates, returns, rents and/or percentage rentals for said use and/or uses, the arbitrators shall use and analyze only that rental data that is found in the open marketplace, such as is demanded and received by other Lessors for the same or similar uses. In all cases the award shall be based upon recognized real estate appraisal principles and methods. The award determined by the arbitrators shall be effective and retroactive to the first day of the rental period under arbitration. The award shall be in writing in the form of a report that is in accordance with the powers of

the arbitrators herein, supported by facts and analysis and in accordance with law. The arbitrators shall make copies of their report available to any ethical practice committee of any recognized professional real estate organization. The arbitration shall be conducted under and subject to Section 1280 through 1294.2 of the Code of Civil Procedure of California.

- (a) On or before the 20th day of each month Lessee shall render to Lessor, in a form prescribed by Lessor, a detailed report of gross income for that portion of the accounting year which ends with and includes the last day of the previous calendar month. The accounting year shall be 12 full calendar months. The first accounting year shall begin on the first day of the first month during which the percentage rentals described in this lease become effective. Subsequent accounting years shall begin upon each anniversary of that date during the lease term or any extension thereof. Each report shall be signed by Lessee or his responsible agent under penalty of perjury and shall include the following:

- (1) The total gross income for said portion of the accounting year, itemized as to each of the business categories for which a separate percentage rental rate is established.
- (2) The related itemized amounts of percentage rental computed as herein provided and the total thereof;
- (3) The total rental previously paid by Lessee for the accounting year within which the preceding month falls.

Concurrently with the rendering of each monthly statement, Lessee shall pay the greater of the following two amounts:

- (1) The total percentage rental computed for that portion of the accounting year ending with and including the last day of the preceding month (Item (2) above), less total rentals previously paid for the accounting year (Item (3) above), or
- (2) One-twelfth (1/12th) of the annual

minimum rental, multiplied by the number of months from the beginning of the accounting year to and including the preceding month, less total rentals previously paid for the accounting year (Item (3) above).

- (f) Rentals shall be delivered to and statements required in clause (e) above shall be filed with the Treasurer of the San Diego Unified Port District at P. O. Box 488, San Diego, California 92112. The designated place of payment and filing may be changed at any time by Lessor upon ten (10) days written notice to Lessee.
- (g) In the event Lessee is delinquent in rendering to Lessor an accounting of rent due or in remitting the rent due in accordance with the rental provisions of this lease, then the rent not paid when due shall bear interest at the rate of Ten Per Cent (10%) per annum from the date due until paid. Provided, however, that the Port Director of Lessor shall have the right to waive for good cause any interest payment upon written application of Lessee for any such delinquency period.
- (h) Lessee shall, at all times during the term of this lease, keep or cause to be kept accurate and complete records and double entry books of account of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted herein. The records must be supported by source documents of original entry such as sales invoices, cash register tapes, purchase invoices, or other pertinent documents.

All retail sales shall be recorded by means of cash registers which display to the customer the amount of the transaction and automatically issue a receipt. All cash registers shall be equipped with sales totalizer counters for all sales categories, as herein provided, and a sequential transaction counter, which counters are locked in, constantly accumulating, and which cannot be reset.

Said registers shall further contain tapes upon which sales details and sequential transaction numbers are imprinted. Beginning and ending sales totalizer readings shall be made a matter of daily record. In addition to the above, in the event of admission, cover charges, or rentals, Lessee shall also issue serially numbered tickets for each such admission, cover, or rental charge and shall keep an adequate record of said tickets, both issued and unissued.

All Lessee's books of account, records and documentation related to this lease or to business operations conducted within or from the leased premises shall be kept either at the leased premises or at such other locations as are acceptable to Lessor, and Lessor shall have the right at any and all reasonable times to examine and audit said books and records without restriction for the purpose of determining the accuracy thereof and of the monthly statements of gross income submitted and of the rental paid to the Lessor. The Port Director of Lessor shall have the discretion to require the installation of any additional accounting methods or controls he may deem necessary. In the event the Lessee does not make available the original records and books of account at the leased premises or within the limits of San Diego County, Lessee agrees to pay all necessary expenses incurred by Lessor in conducting an audit at the location where said records and books of account are maintained. The cost of said audit shall be borne by Lessor unless the audit reveals a discrepancy of more than five per cent (5%) between the rent due as reported by Lessee in accordance with this lease and the rent due as determined by this audit. In the event of a greater discrepancy, the cost of the audit, as determined by the Port Director of Lessor, shall be paid by Lessee.

- (i) Gross income, upon which the percentage rentals are to be based, shall include all income resulting from occupancy or use of the premises in any manner whether by Lessee, his sublessees or concessionaires or parties operating through Lessee, his sublessees or concessionaires, from whatever source derived and whether for cash or credit.

Gross income shall include any manufacturer's or

importer's excise tax included in the prices of the goods sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge.

Gross income, however, shall not include any sales or excise taxes payable by Lessee to any governmental agency as a direct result of operations under this lease. The amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained. Refunds for goods returned shall be deducted from current gross income upon their return. Bad debt losses shall not be deducted from gross income.

3. USE: Lessee agrees that the leased premises shall be used only and exclusively for mooring of fishing boats; storage of fishing gear; wholesale and retail fish sales; restaurant and cocktail lounge; retail sales of merchandise related to the fishing industry; mini-mart/deli; boat sales; and offices for maritime-oriented businesses and for no other purposes whatsoever without the written consent of Lessor, evidenced by resolution, first had and obtained. Lessee further agrees that only bona fide active fishing boats shall be permitted to moor on the leased premises. A bona fide active fishing boat is (a) a boat that is used in fishing and produces a minimum of Ten Thousand Dollars (\$10,000) per year (which amount can be increased by resolution from time to time by Lessor) in California Department of Fish and Game tickets or (b) a boat that is involved in at least sixty (60) actual days of fishing in a bona fide commercial fishery or (c) a boat that meets Lessor's definition which may be established from time to time for this Lease by Lessor but shall not be more stringent than the definition that Lessor uses for boats utilizing Lessor's G Street Mole fishing boat facilities. Lessee may, however, permit a maximum of ten percent (10%) of its berths to be occupied by fishing boats that are not active for one fishing season because they are undergoing extensive repairs. Lessee also agrees that a minimum of 5,083 linear feet of mooring space shall be available at all times for mooring bona fide active fishing boats; a minimum of 19,800 square feet of paved area shall be available at all times for fishing net repair and other fishermen activities; and a minimum of sixty (60) automobile parking spaces shall be available at all times for fishing boat owners and employees through reserved parking spaces, permit parking and/or exclusive gate-controlled area.

4. CONSTRUCTION OF IMPROVEMENTS:

- (a) On or before the first day of December, 1983, Lessee shall commence the construction and diligently proceed to completion of one and two-story buildings containing floor areas totaling not less than 30,000 square feet nor more than 43,000 square feet; a minimum of 200 parking spaces, a minimum of 5,000 square feet of landscaped area; a minimum of 13,000 square feet of paved walkways; and refurbish the existing piers and mooring pilings all as shown conceptually in the proposal of Lessee, a copy of which is on file in the office of the District Clerk as Document No. 15554, which document is by this reference made a part hereof. Said refurbishing of the existing piers and mooring pilings shall be completed by no later than February 29, 1984, and all other construction shall be completed by no later than February 28, 1985. In the event of any inconsistency between the proposal and the terms and conditions of this lease agreement, the terms and conditions of this lease agreement shall prevail.
- (b) No construction of any improvement upon the leased premises shall commence without the prior approval of the Port Director of Lessor, as evidenced in writing, and all such construction shall be in accordance with plans and specifications which must be submitted to and approved by the Port Director in writing prior to the commencement of any such construction.
- (c) When required by Lessor, Lessee shall pave or plant ground cover, at its own cost and expense, over the entire area of the leased premises not covered by buildings. All paving or ground cover shall be in accordance with plans and specifications approved by the Port Director in writing prior to the commencement of any such paving or planting.
- (d) Lessee shall, as partial consideration and as a condition of this lease, make an investment for improvements in an amount which shall exceed Two Million Three Hundred Ninety Thousand Dollars (\$2,390,000), said investment to include Two Million Thirty Thousand Dollars (\$2,030,000) or more for the improvements to be constructed in this paragraph excluding refurbishing the existing piers and mooring pilings; Two Hundred Fifty Thousand Dollars (\$250,000) or more for refurbishing the existing piers and mooring

pilings; and One Hundred Ten Thousand Dollars (\$110,000) required to be paid by Lessee to Lessor for the purchase of improvements described in Paragraph 40 of this Lease. It is agreed that the cost of improvements made on the lease premises prior to the commencement of this Lease, but subsequent to September 1, 1982, shall be included and calculated towards satisfying the investment requirements of constructing new improvements under this Lease.

- (e) Within sixty (60) days following completion of any substantial improvement within the leased premises, Lessee shall furnish Lessor an itemized statement of actual construction cost of such improvement. The statement of cost shall be sworn to and signed by Lessee or his responsible agent under penalty of perjury.

5. IMPROVEMENTS: Lessee may, at its own expense, make any alterations or changes in the leased premises or cause to be built, made or installed thereon any structures, machines, appliances, utilities, signs or other improvements necessary or desirable for the use of said premises and may alter and repair any such structures, machines or other improvements; provided, however, that no alterations and changes shall be made and no structures, machines, appliances, utilities, signs or other improvements shall be made, built or installed, and no major repairs thereto shall be made except in accordance with plans and specifications previously submitted to the Port Director of Lessor and approved in writing by him.

Lessee further agrees that no banners, pennants, flags, eye-catching spinners or other advertising devices, nor any temporary signs shall be permitted to be flown, installed, placed, or erected on the premises without written consent of the Port Director of Lessor.

6. TITLE TO IMPROVEMENTS: Structures, installations or improvements of any kind now existing or hereafter placed on the leased premises by Lessee shall at the option of Lessor be removed by Lessee. Lessor may exercise said option as to any or all of the structures, installations and improvements either before or after the expiration or sooner termination of this lease. If Lessor exercises such option, Lessee shall remove such structures, installations or improvements within sixty (60) days after the expiration of the term of this lease or sooner termination thereof. If Lessee fails to remove such structures, installations or improvements within said sixty (60) days, the Lessor shall have the right

to have such structures, installations or improvements removed at the expense of Lessee. As to any or all structures, installations or improvements that Lessor does not exercise said option for removal, title thereto shall vest in the Lessor without cost to Lessor and without any payment to Lessee.

Machines, appliances, equipment and trade fixtures of any kind now existing or hereafter placed on the leased premises by Lessee shall be removed by Lessee within sixty (60) days after the expiration of the term of this lease or sooner termination thereof; provided, however, Lessee agrees to repair any and all damage occasioned by the removal thereof. If any such machines, appliances, equipment and trade fixtures are not removed within sixty (60) days after the termination of this lease, the same may be considered abandoned and shall thereupon become the property of Lessor without cost to the Lessor and without any payment to Lessee; except that Lessor shall have the right to have the same removed at the expense of Lessee.

During any period of time employed by Lessee under this paragraph to remove structures, installations, improvements, machines, appliances, equipment and trade fixtures, Lessee shall pay rent to Lessor in accordance with the lease which said rent shall be prorated daily.

7. LIENS: Lessee agrees that it will at all times save Lessor free and harmless and indemnify it against all claims for labor or materials in connection with improvements, repairs, or alterations on the leased premises, and the costs of defending against such claims, including reasonable attorney's fees.

In the event that any lien or levy of any nature whatsoever is filed against the lease premises or the leasehold interests of the Lessee therein, the Lessee shall, upon written request of Lessor, deposit with Lessor a bond conditioned for the payment in full of all claims upon which said lien or levy has been filed. Such bond shall be acknowledged by Lessee as principal and by a corporation, licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company, as surety. Lessor shall have the right to declare this lease in default in the event the bond required by this paragraph has not been deposited with the Lessor within ten (10) days after written request has been delivered to Lessee.

8. LEASE ENCUMBRANCE: Lessee understands and agrees that it cannot encumber the lease, leasehold estate and the

improvements thereon by a deed of trust, mortgage or other security instrument to assure the payment of the promissory note of Lessee without the prior express written consent by resolution of Lessor in each instance. If any deed of trust, mortgage or other security instrument that encumbers the lease, leasehold estate and the improvements thereon is entered into by Lessee without Lessor's prior express written consent, Lessor shall have the right to declare this lease in default.

If a deed of trust, mortgage, or other security instrument which Lessor has consented to by resolution, should at any time be in default, before Lessee's interest under said lease may be sold as part of any foreclosure or trustee's sale or be assigned in lieu of foreclosure, the prior express written consent by resolution of Lessor shall be obtained in each instance. However, the original beneficiary of the deed of trust, the original mortgagee of the mortgage, and the original holder of the security instrument which the Lessor has consented to by resolution may purchase the Lessee's interest at a foreclosure or trustee's sale or accept assignment of the lease in lieu of foreclosure, without the requirement of any further consent on the part of Lessor provided said party, as an express condition precedent, agrees in writing to assume each and every obligation under the lease. Furthermore, before any said original beneficiary, mortgagee, or holder of a security instrument, or any other consented-to assignee or purchaser may subsequently assign or sublet any of the leasehold or Lessee's interest, it shall obtain the Lessor's prior express written consent by resolution. The decision of the Board of Port Commissioners of Lessor as to such assignee, purchaser, or subtenant shall be final.

9. ASSIGNMENT-SUBLEASE: Lessee shall not assign or transfer the whole or any part of this lease or any interest therein, nor sublease the whole or any part of the leased premises or any right or privilege appurtenant thereto, nor contract for the management or operation of the whole or any part of the leased premises, nor permit the occupancy of any part thereof by any other person or entity, nor permit transfer of the lease or possession of the leased premises by any changes in the respective interests of any of the existing partners of Lessee, including without limitation, any withdrawal, admittance or change of the partnership interests, or dissolution of the partnership, whether voluntary, involuntary, by operation of law, or otherwise, without the consent of Lessor, evidenced by resolution, first had and obtained in each instance. It is mutually agreed that the qualifications of the partners are a part of the consideration of the granting of this lease and the

partners do hereby agree to maintain active control and supervision of the operations conducted on the leased premises. Any such assignment, transfer, hypothecation, withdrawal, admittance, dissolution, or change, in whole or in part, including without limitation as a result of an election or action by the partners, whether voluntary or involuntary, by operation of law or otherwise, of the lease or any interest therein, or any sublease, or any management or operating contract, or, including without limitation, changes in the respective partnership interests of any of the partners, shall be deemed an assignment or sublease prohibited hereby and shall not be valid or effective without the prior express written consent of Lessor, first had and obtained in each instance; provided, however, nothing herein contained shall be construed to prevent the occupancy of said premises by an employee or business invitee of Lessee.

10. DEFAULT: It is mutually understood and agreed that if any default be made in the payment of rental herein provided or in the performance of the covenants, conditions, or agreements herein (any covenant or agreement shall be construed and considered as a condition), or should Lessee fail to fulfill in any manner the uses and purposes for which said premises are leased as above stated, and such default shall not be cured within five (5) days after written notice thereof if default is in the submittal of a report of gross income if required in this lease or ten (10) days after written notice thereof if default is in the performance of the failure to use provisions pursuant to paragraph 14 of this lease, or thirty (30) days after written notice thereof if default is in the payment of rent, or sixty (60) days after written notice thereof if default is in the performance of any other covenant, condition and agreements (any covenant or agreement shall be construed and considered as a condition), Lessor shall have the right to immediately terminate this lease; and that in the event of such termination, Lessee shall have no further rights hereunder and Lessee shall thereupon forthwith remove from said premises and shall have no further right to claim thereto, and Lessor shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the leased premises. Lessor shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Lessee in the amount necessary to compensate the Lessor for all the detriment proximately caused by the Lessee's failure to perform his obligations under the lease or which in the ordinary course of things would be likely to result therefrom.

In the event Lessor consents to an encumbrance of the Lease for security purposes in accordance with paragraph 8 of this lease, it is understood and agreed that Lessor shall furnish copies of all notices of defaults to the beneficiary or mortgagee under said encumbrance by certified mail contemporaneously with the furnishing of such notices to Lessee, and in the event Lessee shall fail to cure such default or defaults within the time allowed above, said beneficiary or mortgagee shall be afforded the right to cure such default at any time within fifteen (15) days following the expiration of the period within which Lessee may cure such default, provided, however, Lessor shall not be required to furnish any further notice of default to said beneficiary or mortgagee. #

In the event of the termination of this lease pursuant to the provisions of this paragraph, Lessor shall have any rights to which it would be entitled in the event of the expiration or sooner termination of this lease under the provisions of paragraph 6.

11. BANKRUPTCY: In the event Lessee becomes insolvent, makes an assignment for the benefit of creditors, becomes the subject of a bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceedings, or in the event of any judicial sale of Lessee's interest under this lease, Lessor shall have the right to declare this lease in default.

The conditions of this paragraph shall not be applicable or binding on Lessee or the beneficiary in any deed of trust, mortgage, or other security instrument on the demised premises which is of record with Lessor and has been consented to by resolution of Lessor, or to said beneficiary's successors in interest consented to by resolution of Lessor, as long as there remains any monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided that such beneficiary or its successors in interest, continuously pay to the Lessor all rent due or coming due under the provisions of this lease and the premises are continuously and actively used in accordance with paragraph 14 of this lease.

12. EMINENT DOMAIN: If the whole or a substantial part of the premises hereby leased shall be taken by any public authority under the power of eminent domain, then the term of this lease shall cease as to the part so taken, from the day the possession of that part shall be taken for any public purpose, and the rent shall be paid up to that day, and from that day Lessee shall have the right either to cancel this lease and declare the same null and void or to

continue in the possession of the remainder of the same under the terms herein provided, except that the minimum rent shall be reduced in proportion to the amount of the premises taken. All damages awarded for such taking shall belong to and be the property of Lessor whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the premises herein leased; provided, however, that Lessor shall not be entitled to any award made for the taking of any installations or improvements on the leased premises belonging to Lessee.

13. SUPERSEDURE: This lease upon becoming effective shall supersede and annul any and all permits, leases or rental agreements heretofore made or issued for the leased premises between Lessor and Lessee, and any such permits, leases or rental agreements shall hereafter be void and of no effect except as to any rentals and/or fees which may have accrued thereunder.

14. USE OBLIGATION: It is mutually agreed that a condition for the granting of this lease is the active and continuous use of the premises by Lessee, except for failure of use caused by reason of wars, strikes, riots, civil commotion, acts of public enemies, and acts of God, for the purposes herein described, in that said use enhances the value of the tidelands, provides needed public service, provides additional employment, taxes, and other benefits to the general economy of the area.

15. MAINTENANCE AND REPAIR: As part of the consideration for the leasing thereof, Lessee shall maintain and repair the leased premises; all improvements of any kind which have been or may be erected, installed or made thereon; and the sewage pump station and sewer lines on the adjacent property which serve the leased premises in good and substantial repair and condition, including without limitation the painting thereof, and shall make all necessary repairs and alterations thereto hereby waiving all right to make repairs at the expense of Lessor as provided in Section 1942 of the California Civil Code and all rights provided by Section 1941 of said Code. Lessor shall not be required at any time to maintain or to make any improvements or repairs whatsoever on or for the benefit of the leased premises. Lessee shall, as further consideration for the leasing thereof, keep the premises in a clean and sanitary condition and provide proper containers for and keep the demised premises free and clear of rubbish, garbage, and other waste. Lessor shall at all times during ordinary business hours have the right to enter upon and inspect the leased premises and any improvements thereon.

16. PERFORMANCE BOND: No major construction shall be commenced upon the demised premises by Lessee until Lessee has secured and submitted to Lessor performance bonds in the amount of the total estimated construction cost of improvements to be constructed by Lessee. In lieu of said performance bonds, the Port Director of Lessor may at his sole discretion accept the performance and labor and material bonds supplied by Lessee's contractor or subcontractors, or performance guarantees, or other satisfactory evidence that said construction will be timely completed. Said bonds must be issued by a company qualified to do business in the State of California and be in a form acceptable to Lessor.

17. TAXES AND UTILITIES: This lease may result in a taxable possessory interest and be subject to the payment of property taxes. Lessee agrees to and shall pay before delinquency all taxes and assessments of any kind assessed or levied upon Lessee or the leased premises by reason of this lease or of any buildings, machines, or other improvements of any nature whatsoever erected, installed or maintained by Lessee or by reason of the business or other activities of Lessee upon or in connection with the leased premises. Lessee shall also pay any fees imposed by law for licenses or permits for any business or activities of Lessee upon the leased premises or under this lease, and shall pay before delinquency any and all charges for utilities at or on the leased premises.

18. CONFORMANCE WITH RULES AND REGULATIONS: Lessee agrees that in all activities on or in connection with the leased premises and in all uses thereof, including the making of any alterations or changes and the installation of any machines or other improvements, it will abide by and conform to all rules and regulations prescribed by the San Diego Unified Port District Act, any ordinances of the City in which the leased land is located, including the Building Code thereof, and any ordinances and general rules of the Lessor, including tariffs, and any applicable laws of the State of California and Federal Government, as any of the same now exist or may hereafter be adopted or amended.

19. NON-DISCRIMINATION: Lessee agrees not to discriminate against any person or class of persons by reason of sex, color, race, religion, or national origin. If the use provided for in this lease allows the lessee to offer accommodations or services to the public, such accommodations or services shall be offered by the Lessee to the public on fair and reasonable terms.

20. PARTIAL INVALIDITY: If any term, covenant, condition, or provision of this lease is held by a court of competent

jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

21. **HOLD HARMLESS:** Lessee shall defend, indemnify, and hold harmless Lessor, its officers and employees against causes of action, liability, damage, and expense, including reasonable attorney's fees, for judicial relief of any kind, for damage to property of any kind whatsoever and to whom-ever belonging, including without limitation Lessee or its employees, or injury or death of any person or persons, including without limitation Lessee or its employees, resulting directly or indirectly from granting and performance of this lease or arising from the use and operation of the leased premises or any defect in any part thereof.

22. **SUCCESSORS IN INTEREST:** Unless otherwise provided in this lease, the terms, covenants and conditions herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

23. **EASEMENTS:** This lease and all rights given hereunder shall be subject to all easements and rights-of-way now existing or heretofore granted or reserved by Lessor in, to or over the leased premises for any purpose whatsoever, and shall be subject to such rights-of-way for reasonable access, sewers, pipelines, conduits and such telephone, cable television, telegraph, light, heat, or power lines as may from time to time be determined by Lessor to be in the best interests of the development of the tidelands.

Lessor agrees that such easements and rights-of-way shall be so located and installed as to produce a minimum amount of interference to the business of Lessee.

24. **TITLE OF LESSOR:** Lessor's title is derived from the provisions of the San Diego Unified Port District Act, Appendix 1, Harbors & Navigation Code, and is subject to the provisions of said Act. This lease is granted subject to the terms and conditions of said Act.

25. **INSURANCE:** Lessee shall maintain insurance acceptable to Lessor in full force and effect throughout the term of this lease. The policies for said insurance shall, as a minimum, provide the following forms of coverage:

- A. Comprehensive Public Liability (covering premises and operations)

1. Five Hundred Thousand Dollars (\$500,000) bodily injury, each person;
2. One Million Dollars (\$1,000,000) bodily injury, each occurrence; and
3. One Hundred Thousand Dollars (\$100,000) property damage.

B. Fire and Extended Coverage, including water damage and debris cleanup provisions in an amount not less than ninety percent (90%) of full replacement value of all improvements located within the leased premises. The fire and extended coverage policies shall provide that any insurance proceeds in excess of \$5,000 resulting from a loss under said policies shall be payable jointly to Lessor and Lessee in order that said proceeds will be reinvested in rebuilding and/or repairing the damaged portions of the leased premises; provided, however, that within the period during which there is in existence a mortgage or deed of trust upon the leasehold given by Lessee with the prior consent of Lessor, then and for that period all fire and extended coverage policies shall be made payable jointly to the mortgagee or beneficiary and Lessee, and any proceeds collected therefrom shall be held by said mortgagee or beneficiary for the following purposes:

- (1) As a trust fund to pay for the reconstruction, repair, or replacement of the damaged or destroyed improvements in kind and scope in progress payments as the work is performed with any excess remaining after completion of said work to be retained by said mortgagee or beneficiary and applied to reduction of the debt secured by such mortgage or deed of trust and with any excess remaining after full payment of said debt to be paid over to Lessee; or
- (2) In the event that this lease is terminated with consent of both Lessor and mortgagee or beneficiary and said improvements are not reconstructed, repaired, or replaced, the insurance proceeds shall be retained by said mortgagee or beneficiary to the extent necessary to fully discharge the debt

secured by said mortgage or deed of trust and said mortgagee or beneficiary shall hold the balance thereof without liability to restore the premises to a neat and clean condition and then for Lessor and Lessee as their interests may appear.

C. Blanket Contractual Coverage

The Comprehensive Public Liability insurance shall be in force the first day of the term of this lease. The Fire insurance shall be in force upon the date of completion of construction of each major insurable improvement by Lessee.

Certificates in a form acceptable to Lessor evidencing the existence of the necessary insurance policies shall be kept on file with Lessor during the entire term of this lease.

Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of Lessor, the insurance provisions in this lease do not provide adequate protection for Lessor and/or for members of the public using the leased premises, Lessor may require Lessee to obtain an insurance sufficient in coverage, form and amount to provide adequate protection. Lessor's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of risk which exist at the time a change in insurance is required.

Lessor shall notify Lessee in writing of changes in the insurance requirements and, if Lessee does not deposit certificates evidencing acceptable insurance policies with Lessor incorporating such changes within sixty (60) days of receipt of such notice, this lease shall be in default without further notice to Lessee, and Lessor shall be entitled to all legal remedies.

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

26. POLICY OF LESSOR: It is the policy of the Lessor that prevailing wage rates shall be paid all persons who are employed by Lessee on the tidelands of Lessor.

27. WARRANTIES-GUARANTEES-COVENANTS: Lessor makes no warranty, guarantee, covenant, including but not limited to covenants of title and quiet enjoyment, or averment of any nature whatsoever concerning the condition of the leased premises, including the physical condition thereof, or any condition which may affect the leased premises, and it is agreed that Lessor will not be responsible for any loss, damage or costs which may be incurred by Lessee by reason of any such condition or conditions.

28. DAMAGE TO OR DESTRUCTION OF PREMISES: In the event of damage to or destruction by fire, the elements, acts of God, or any other cause, of Lessee-constructed improvements located within the demised premises or in the event Lessee-constructed improvements located within the demised premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, Lessee shall, within ninety (90) days, commence and diligently pursue to completion the repair, replacement, or reconstruction of improvements necessary to permit full use and occupancy of the demised premises for the purposes required by this lease. Repair, replacement or reconstruction of improvements within the demised premises shall be accomplished in a manner and according to plans approved by Lessor; provided, however, Lessee shall not be obligated to repair, reconstruct or replace the improvements following their destruction in whole or substantial part except to the extent the loss is covered by insurance required to be carried by Lessee pursuant to paragraph 25 of this Lease (or would be covered whether or not such required insurance is actually in effect). If Lessee elects not to restore, repair or reconstruct as herein provided, then the Lease shall terminate and Lessor shall have any rights to which it would be entitled under the provisions of paragraph 6.

29. QUITCLAIM OF LESSEE'S INTEREST UPON TERMINATION: Upon termination of this lease for any reason, including but not limited to termination because of default by Lessee, Lessee shall execute, acknowledge and deliver to Lessor within thirty (30) days after receipt of written demand therefor a good and sufficient deed whereby all right, title and interest of Lessee in the demised premises is quitclaimed to Lessor. Should Lessee fail or refuse to deliver the required deed to Lessor, Lessor may prepare and record a notice reciting the failure of Lessee to execute, acknowledge and deliver such deed and said notice shall be conclusive evidence of the termination of this lease and of all right of Lessee or those claiming under Lessee in and to the demised premises.

30. PEACEABLE SURRENDER: Upon the expiration of this lease or the earlier termination or cancellation thereof, as herein provided, Lessee will peaceably surrender said premises to Lessor in as good condition as said premises were at the date of this lease, ordinary wear and tear excepted.

31. WAIVER: Any waiver by Lessor of any breach by Lessee of any one or more of the covenants, conditions, or agreements of this lease shall not be nor be construed to be a waiver of any subsequent or other breach of the same or any other covenant, condition or agreement of this lease, nor shall any failure on the part of Lessor to require or exact full and complete compliance by Lessee with any of the covenants, conditions, or agreements of this lease be construed as in any manner changing the terms hereof or to prevent Lessor from enforcing the full provisions hereof. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant, or condition of this lease, other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

32. HOLD OVER: This lease shall terminate without further notice at expiration of the term. Any holding over by Lessee after either expiration or termination shall not constitute a renewal or extension or give Lessee any rights in or to the leased premises. If Lessee, with Lessor's consent, remains in possession of the leased premises after expiration or termination of the term or after the date in any notice given by Lessor to Lessee terminating this lease, such possession by Lessee shall be deemed to be a month-to-month tenancy terminable on thirty (30) days notice given at any time by either party. During any such month-to-month tenancy, Lessee shall pay all rent required by this lease, and if percentage rent is required by the lease, it shall be paid monthly on or before the tenth (10th) day of each month.

All provisions of this lease, except those pertaining to term, shall apply to the month-to-month tenancy.

33. SECTION HEADINGS: The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

34. ENTIRE UNDERSTANDING: This lease contains the entire and only understanding and agreement of the parties, and Lessee, by accepting the same, acknowledges that there is no other written or oral understanding or agreement between the

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

35. TIME IS OF THE ESSENCE: Time is of the essence of each and all of the terms and provisions of this lease and this lease shall inure to the benefit of and be binding upon the parties hereto and any successors of Lessee as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this lease shall extend to and bind any assigns and sublessees of Lessee.

36. ATTORNEY'S FEES: In the event any suit is commenced by Lessor against Lessee to enforce the payment of any rent due or to enforce any of the terms and conditions hereof, or in case Lessor shall commence summary action under the laws of the State of California relating to the unlawful detention of property, for the forfeit of this Lease, and the possession of said premises, provided Lessor effects a recovery, Lessee shall pay Lessor all costs expended in any such action, together with a reasonable attorney's fee to be fixed by the Court.

37. NOTICES: Notices given or to be given by Lessor or Lessee to the other may be personally served upon Lessor or Lessee or any person hereafter authorized by either in writing to receive such notice or may be served by certified letter addressed to the appropriate address hereinafter set forth or to such other address as Lessor and Lessee may hereafter designate by written notice.

To Lessor

Port Director
San Diego Unified Port District
Post Office Box 488
San Diego, California 92112

To Lessee

General Partner
North Harbor Landing Limited
225 Broadway, Suite 900
San Diego, CA 92101

Said notices shall also be served by certified letter to the beneficiary of any deed of trust, mortgage, or other security instrument of record with Lessor and consented to by resolution of Lessor who has notified Lessor in writing of its desire to receive said notice.

38. REMOVAL OF MATERIALS: Lessee hereby agrees that upon the expiration of this lease or the sooner termination as herein provided, it will remove within sixty (60) days all ships, vessels, barges, hulls, debris, surplus and salvage materials from the land and water area forming a part of or adjacent to the leased premises, so as to leave the same in as good condition as when first occupied by Lessee; provided, however, that if any said ships, vessels, barges, hulls, debris, surplus and salvage materials shall not be so removed within sixty (60) days by the Lessee, Lessor may remove, sell and destroy the same at the expense of Lessee and Lessee hereby agrees to pay to Lessor the reasonable cost of such removal, sale or destruction; or at the option of Lessor, the title to said ships, vessels, barges, hulls, debris, surplus and salvage materials not removed shall become the property of Lessor without cost to Lessor and without any payment to Lessee.

During any period of time employed by Lessee under this paragraph to remove ships, vessels, barges, hulls, debris, surplus and salvage materials, Lessee shall continue to pay the full rental to Lessor in accordance with this lease which said rental shall be prorated daily.

39. EQUAL EMPLOYMENT OPPORTUNITY: Lessee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin and shall take affirmative action to assure applicants are employed and that employees are treated during employment without regard to race, color, religion, sex or national origin. Except during the time Lessee is exempt pursuant to written policy of Lessor, Lessee shall submit to Lessor for review and approval a written affirmative action program to attain improved employment for racial and ethnic minorities and women and during the term of this lease shall further make available employment records to Lessor upon request. Lessee shall certify in writing to Lessor that Lessee is in compliance and throughout the term of this lease will comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal, State, and local law, regulation and policy (including without limitation those adopted by Lessor) relating to equal employment opportunity and affirmative action programs, including any such law, regulation, and policy hereinafter enacted.

Compliance and performance by Lessee of the equal employment opportunity and affirmative action program provision of this lease is an express condition hereof and any failure by Lessee to so comply and perform shall be a default as provided in said lease and Lessor may exercise any right as provided therein and as otherwise provided by law.

40. PURCHASE OF IMPROVEMENTS: Lessee shall pay Lessor the total amount of One Hundred Ten Thousand Dollars (\$110,000) for the purchase of all of Lessor's right, title, and interest in the improvements located on the leased premises. These improvements consist primarily of five (5) piers of 2,730 square feet; 2,765 square feet; 3,075 square feet; 3,085 square feet, and 2,785 square feet. Lessee agrees to demolish the existing small office building and asphalt paving by no later than January 31, 1985. Said total purchase price of One Hundred Ten Thousand Dollars (\$110,000) shall be paid as follows:

- (a) The sum of Eleven Thousand Dollars (\$11,000) cash to be paid on or before the commencement date of this lease.
- (b) The principal sum of Ninety-Nine Thousand Dollars (\$99,000) together with interest thereon from the commencement date of this lease at the rate of thirteen percent (13%) per annum on the deferred balances until paid; said principal and interest shall be paid in monthly installments of not less than One Thousand Two Hundred Fifty-Two Dollars and Fifty-Nine Cents (\$1,252.59) each; the first said installment shall be paid on or before the tenth day of the second month of this lease and thereafter on the tenth day of each and every month until paid.

Said payments shall be credited first to the payment of accrued interest, and the balance of such payment in excess of said interest shall be credited upon the principal, and thereafter interest shall be charged only upon the remaining unpaid part of the principal. Said payments to continue until the aggregate amount paid on principal shall equal the total principal sum due Lessor herein.

In the event Lessee fails to timely make payment of any sum or of any installment payment as required herein, Lessor shall have the right to declare this lease in default in accordance with the provisions of Paragraph 10, "Default" and terminate said lease; provided, however, in the event said sum and installment payments are timely made and the

total purchase price of One Hundred Ten Thousand Dollars (\$110,000) is fully paid by Lessee to Lessor, all of Lessor's right, title and interest in said improvements shall vest in Lessee. Nevertheless and in any event, from the commencement date of this lease, said improvements are and shall be considered improvements subject to the provisions of Paragraph 6, "Title to Improvements".

Lessee acknowledges prior inspection of said improvements and the conditions thereof and agrees that no representations as to condition or adequacy of the improvements have been made by or on the behalf of Lessor. Said improvements are sold "as is" without representation, warranty or guaranty as to quality, character, size, or kind, or that the same are in condition or fit to be used for the purposes for which intended.

Lessor has not collected any sales, transfer, or similar taxes from the Lessee covering the purchase of said improvements. In the event that it is determined that the sale of said improvements is subject to tax, Lessee shall immediately pay said tax (under protest or otherwise). If paid under protest, Lessee may pursue at its sole expense any legal remedy available to recover said payment from the taxing authority.

41. MOORING SPACE RENTS: Lessee shall publish prior to December 1 of each year a schedule of mooring space rents for boat berthing (the rate schedule) that will be charged to mooring space occupants for the succeeding 12-month period commencing December 1. The rate schedule also includes the use by the mooring space occupants of Lessee's fishermen activities area and also the automobile parking spaces required in paragraph 3 of this lease. Lessee shall not charge any fee for the use of such areas and spaces. At the commencement of this lease, Lessee's rate schedule for the 5,083 linear feet of mooring space existing on Parcel No. 2 totals One Hundred Fifty-Seven Thousand Five Hundred Seventy-Three Dollars (\$157,573). Commencing in 1983, Lessee shall have the annual opportunity to adjust its rate schedule. The rate schedule shall be adjusted upward or downward on December 1 (the adjustment date) of each year so that the total of the mooring space rents under the rate schedule shall correspond to the following computation: "The base figure for computing the adjustment is the monthly index figure for July of the prior year, as shown in the Consumer Price Index for All Urban Consumers for San Diego, California, All Items based on the period 1967 = 1.00 as published by the United States Department of Labor's Bureau of Labor Statistics. The index figure for the adjustment date is the monthly index figure for July of said Consumer Price

Index for All Urban Consumers immediately preceding the adjustment date.

"The one-year increase or decrease between the base figure and the index figure shall be computed and 40% of the increase or decrease shall be added in the case of an increase or subtracted in the case of a decrease from 100% to arrive at the percentage to be applied to the rate schedule total currently in effect. For example, assuming the base figure is 110 and the index figure for the adjustment date is 121, the percentage increase would be $121 - 110 = 11 \div 110 = 10\%$. Forty percent of the 10% increase would be 4% and adding 100% would equal 104%.

"The percentage calculated shall be applied to the rate schedule total in effect on December 1 of the prior year. The new rate schedule total shall be the maximum amount for all mooring spaces that Lessee can charge for the succeeding annual period of December 1 - November 30. Lessee shall have the discretion on a fair, nondiscriminatory and equitable basis to adjust the rents for the individual mooring spaces as long as the total rents do not exceed the rate schedule total as calculated herein.

"In the event the Consumer Price Index for All Urban Consumers for San Diego, California, All Items is no longer published, the index for the adjustment date shall be the one reported in the U. S. Department of Labor's comprehensive official index most nearly answering the foregoing description of the index. If an index is calculated from a base different from the base period 1967 = 100, the base figure used for calculating the adjustment percentage shall first be converted under a formula supplied by the Bureau.

"If the above-described Department of Labor indices are no longer published, another index generally recognized as authoritative shall be substituted by agreement of the parties. If they are unable to agree within 60 days after demand by either party, a substitute index will be selected by the Chief Officer of the San Francisco Regional Office of the Bureau of Labor Statistics or its successor.

"Notwithstanding the publication dates of the index, the effective date of the rent adjustment is on December 1 of each year. Until said rate schedule adjustment can be reasonably determined by index publication, Lessee shall continue to charge mooring space rent at the same rate schedule in effect at the then existing annual period. Because of this provision, overpayment of mooring space rents may result which shall be credited to the mooring space occupant's account and underpayments of mooring space rent may result

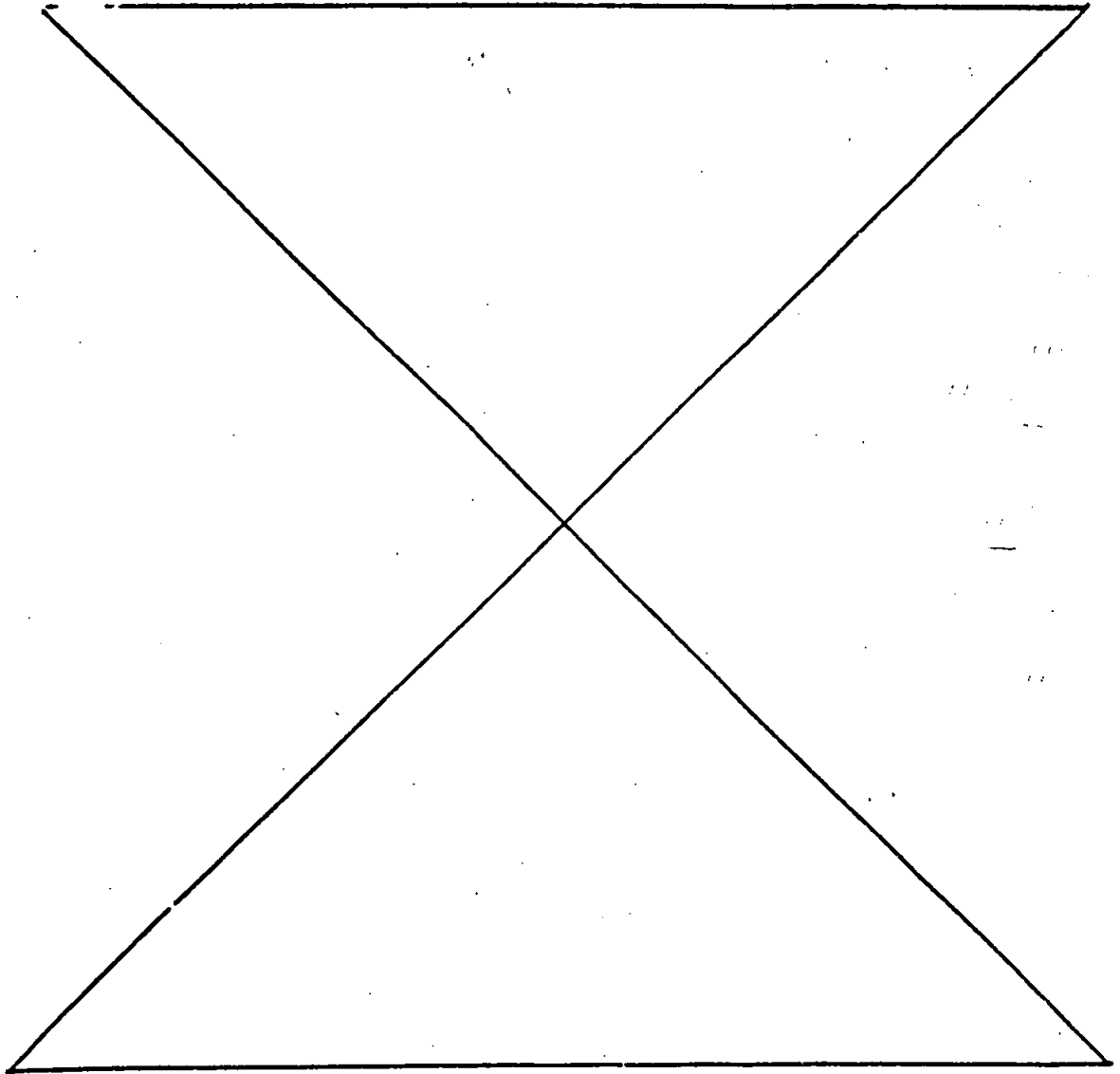
which can be immediately required from the mooring space occupants by Lessee."

As provided in paragraph 2 of this Lease, Lessee shall initially pay Lessor rent equal to 20% of the gross income from the rental of boat berths and dock lockers. Notwithstanding anything in this lease to the contrary, if at any time Lessor's percentage rent for boat berths and dock lockers increases or decreases, Lessee shall have the opportunity to adjust in the case of percentage rent increases and must adjust in the case of percentage rent decreases its rate schedule so that the rate schedule will reflect the amount of increase or decrease in percentage rent to be paid by Lessee to Lessor. This adjustment is separate and apart from the Consumer Price Index adjustment described above and must be made effective on the same date that the adjustment in the Lessee's percentage rent it pays the Lessor is effective.

Lessee may, at its own discretion, charge the mooring space occupants for use of electricity. This charge will be separate from the mooring space rent charged under the rate schedule. The charges for electricity shall be based on actual or estimated usage of electricity by each mooring space occupant. The total charges for electricity levied by Lessee to the mooring space occupants shall not exceed Lessee's total cost of electricity that is billed to Lessee by the electric utility company for the Lessee's mooring spaces. Notwithstanding anything in this Lease to the contrary, on the date Lessee commences to separately charge the mooring space occupants for electricity, the rate schedule shall be reduced by Lessee by the estimated cost for electricity that was included as part of the mooring space rents in the rate schedule. The reduction in the rate schedule should be such an amount that during the first month that Lessee commences to levy separate charges for electricity, the reduced mooring space rent for all mooring spaces plus the total of the electric charges for all mooring spaces should be approximately equal to the mooring space rent during the prior month that included electricity.

Thirty (30) days prior to the Lessee making any adjustments to its rate schedule, Lessee shall submit to Lessor its new rate schedule and supporting data showing that the new rate schedule complies with the provisions of this paragraph. This information shall be in a form acceptable to the Port Director of Lessor. In the event of any dispute between Lessor and Lessee over the computation of the amount of the mooring space rent that Lessee may charge under the rate schedule, the decision of the Port Director of Lessor shall be final.

42. ADDITIONAL MOORING SPACE RENT DUE: Lessor and North Harbor Landing were parties to a lease dated March 29, 1977, which is on file in the Office of the Clerk of Lessor, bearing Document No. 10099. The March 29, 1977, lease covered the same lease premises as the premises covered by this lease. In addition to all other rent due under this lease, Lessee agrees to pay to Lessor the remaining mooring space rent due under said March 29, 1977, lease, which amounts to Sixteen Thousand Eight Hundred Twenty Dollars (\$16,820). Specifically, Lessee shall pay Lessor the sum of Two Thousand Seven Hundred Forty-Nine Dollars (\$2,749) per month for five (5) months commencing June 10, 1983, with a final payment of Three Thousand Seventy-Five Dollars (\$3,075) due and payable on or before November 10, 1983.



43. ABSTRACT OF LEASE: This is the final paragraph and abstract of the lease dated May 17, 1983, between SAN DIEGO UNIFIED PORT DISTRICT, Lessor, and NORTH HARBOR LANDING LIMITED, Lessee, concerning the premises described in Exhibits "A" and "B", attached hereto and by this reference made a part hereof.

For good and adequate consideration, Lessor leases the premises to Lessee, and Lessee hires them from Lessor, for the term and on the provisions contained in the lease, including without limitation provisions prohibiting assignment, subleasing, and encumbering said lease without the express written consent of Lessor in each instance, all as more specifically set forth in said lease, which said lease is incorporated in this abstract by this reference.

The term is forty (40) years, beginning May 1, 1983, and ending April 30, 2023.

This abstract is not a complete summary of the lease. Provisions in the abstract shall not be used in interpreting the lease provisions. In the event of conflict between the abstract and other parts of the lease, the other parts shall control. Execution hereof constitutes execution of the lease itself.

APPROVED as to form
and legality

SAN DIEGO UNIFIED PORT DISTRICT

MAY 17, 1983

By Philip Bellum
ASSISTANT Port Director

Port Attorney

NORTH HARBOR LANDING LIMITED

Joseph D. Patello
JOSEPH D. PATELLO
Port Attorney

By Mahmoud Badii
Mahmoud Badii
General Partner

By Movavar T. Badii
Movavar T. Badii
General Partner

Movavar T. Badii
by Chushiravan Badii HER ATOR
IN FACT

AGREEMENT FOR AMENDMENT OF LEASE
AMENDMENT NO. 1

THIS AGREEMENT, made and entered into this ____ day of _____, 198__, by and between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter called "Lessor," and SAN DIEGO FISHERMAN'S MARINA, hereinafter called "Lessee," WITNESSETH:

WHEREAS, Lessor and North Harbor Landing, Ltd., heretofore on the 17th day of May, 1983, entered into a Lease of certain tidelands in the City of San Diego, California, which Lease is on file in the Office of the Clerk of Lessor bearing Document No. 15918; and

WHEREAS, North Harbor Landing, Ltd. assigned its interest in said lease for security purposes to Westlands Bank on the 6th day of May, which Assignment of Lessee's Interest in Lease for Security Purposes is on file in the Office of the Clerk of Lessor bearing Document No. 15919; and

WHEREAS, North Harbor Landing, Ltd., changed its name to San Diego Fisherman's Marina on August 5, 1983, which name change document is on file in the Office of the Clerk of San Diego County bearing Document No. 83-277940; and

WHEREAS, Lessor and Lessee are mutually desirous of amending said lease;

NOW THEREFORE, for valuable consideration, said lease is hereby amended in the following respects and no others:

A. Paragraph 3 of said lease is amended by adding the following sentence at the end of the paragraph:

The restaurant and cocktail lounge shall not contain more than 150 seats and no open-air seating shall be allowed.

B. ABSTRACT OF LEASE AMENDMENT NO. 1: This is the final paragraph and abstract of Lease Amendment No. 1, dated _____, between SAN DIEGO UNIFIED PORT DISTRICT, Lessor, and SAN DIEGO FISHERMAN'S MARINA, Lessee, concerning the premises described in Exhibits "A" and "B", attached hereto and by this reference made a part hereof.

For good and adequate consideration, Lessor leases the premises to Lessee, and Lessee hires them from Lessor, for the term and on the provisions contained in the lease as amended by this Lease Amendment No. 1, including without limitation provisions prohibiting assignment, subleasing, and encumbering the leasehold without the express written consent of Lessor in each instance, all as more specifically set forth in the lease as amended by this Lease Amendment No. 1, which said lease and lease amendment are incorporated in this abstract by this reference.

The term is 40 years beginning May 1, 1983, and ending April 30, 2023. This Lease Amendment No. 1 shall become effective as of October 1, 1984.

This abstract is not a complete summary of the lease and lease amendment. Provisions in the abstract shall not be used in interpreting the lease and lease amendment provisions. In the event of conflict between the abstract and other parts of the lease and lease amendment, the other parts shall control. Execution hereof constitutes execution of the lease amendment itself.

APPROVED as to form
and legality

SAN DIEGO UNIFIED PORT DISTRICT

JUL 25
_____, 1984

By _____
Port Director

Port Attorney

JOSEPH D. PATELLO
Port Attorney

By _____
Title:

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss.

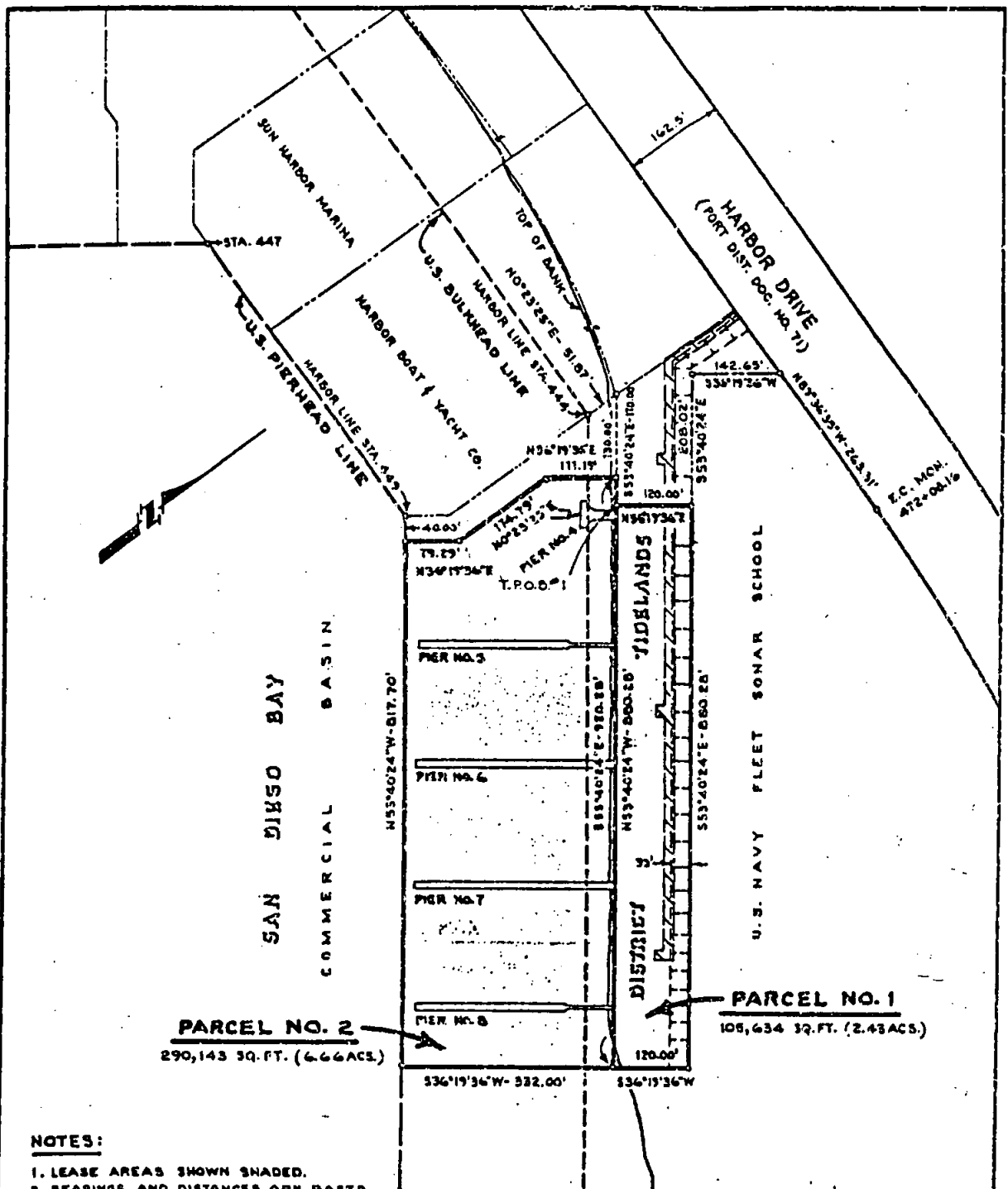
On this _____ day of _____, 1984, before me, the undersigned Notary Public, personally appeared _____

_____ personally known to me
_____ proved to me on the basis of satisfactory evidence
to be the person who executed this instrument as _____

of the San Diego Unified Port District, a public corporation, and acknowledged to me that the public corporation executed it.

WITNESS my hand and official seal.

EXHIBIT 20 A " PAGE 32 OF 34



NOTES:

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

GRAPHIC SCALE IN FEET: 1" = 200'

0 100 200 400 600

EXHIBIT "A" PAGE 34 OF 34

FROM 2266-B, 24 JAN. 1963, BY R.C., APPROVED BY CHIEF ENGINEER *[Signature]*
 REVISED FROM 2129-B, 17 JUNE '61, BY G.B., APPROVED BY CHIEF ENGINEER *[Signature]*

DRAWN ANDRECHT
 CHECKED JOHNSON
 REVIEWED KLA

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

DATE 2 JANUARY 1960
 SCALE 1" = 200'
 REF. 1727-B; 7E-3

APPROVED
[Signature]
 CHIEF ENGINEER

NORTH HARBOR LANDING LIMITED

DRAWING NO.
 2467-B

PARCEL NO. 1

Commencing at Harbor Line Station No. 444 on the U.S. Bulkhead Line, as said Harbor Lines are now established for the Bay of San Diego, and delineated on Map entitled "Harbor Lines, San Diego Bay, California, File No. (D.O. Series) 425.1", approved by the Secretary of the Army, August 18, 1965, and filed in the Office of the District Engineering, Los Angeles, California; thence north $0^{\circ} 23' 25''$ east a distance of 51.87 feet; thence south $53^{\circ} 40' 24''$ east a distance of 170.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 1; thence north $36^{\circ} 19' 36''$ east a distance of 120.00 feet; thence south $53^{\circ} 40' 24''$ east a distance of 860.28 feet; thence south $36^{\circ} 19' 36''$ west a distance of 120.00 feet; thence north $53^{\circ} 40' 24''$ west a distance of 880.28 feet to the TRUE POINT OF BEGINNING of Parcel No. 1, containing 105,634 square feet or 2.43 acres of tideland area including therein a fire lane 30.00 feet in width the northeasterly side of which lies along the northeasterly property line of the above described parcel.

PARCEL NO. 2

Commencing at the above described Harbor Line Station No. 444 on the said U.S. Bulkhead Line; thence north $0^{\circ} 23' 25''$ east a distance of 51.87 feet; thence south $53^{\circ} 40' 24''$ east a distance of 130.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 2; thence continuing south $53^{\circ} 40' 24''$ east a distance of 920.28 feet; thence south $36^{\circ} 19' 36''$ west a distance of 332.00 feet to a point on the U.S. Pierhead Line as said U.S. Pierhead Line is now established for the Bay of San Diego and as delineated on the above described Harbor Lines Map, said point lying south $53^{\circ} 40' 24''$ east a distance of 857.70 feet from Harbor Line Station No. 449; thence north $53^{\circ} 40' 24''$ west along said U.S. Pierhead Line a distance of 817.70 feet; thence leaving said U.S. Pierhead Line north $36^{\circ} 19' 36''$ east a distance of 79.29 feet; thence north $0^{\circ} 23' 25''$ east a distance of 174.79 feet; thence north $36^{\circ} 19' 36''$ east a distance of 111.19 feet to the TRUE POINT OF BEGINNING of Parcel No. 2, containing 290,143 square feet or 6.66 acres of water covered area in the Commercial Basin, Bay of San Diego, including therein those piers commonly known as and numbered 4, 5, 6, 7, and 8.

The above described areas are those delineated on Drawing No. 2467-B, dated 24 January 1983, as revised, and made a part of this agreement.

EXHIBIT 4 PAGE 33 OF 34

REVISED:

DRAWN RWJ.kh
CHECKED BOUNKE
REVIEWED W. G. B. W.

APPROVED

John C. Swisher
CHIEF ENGINEER

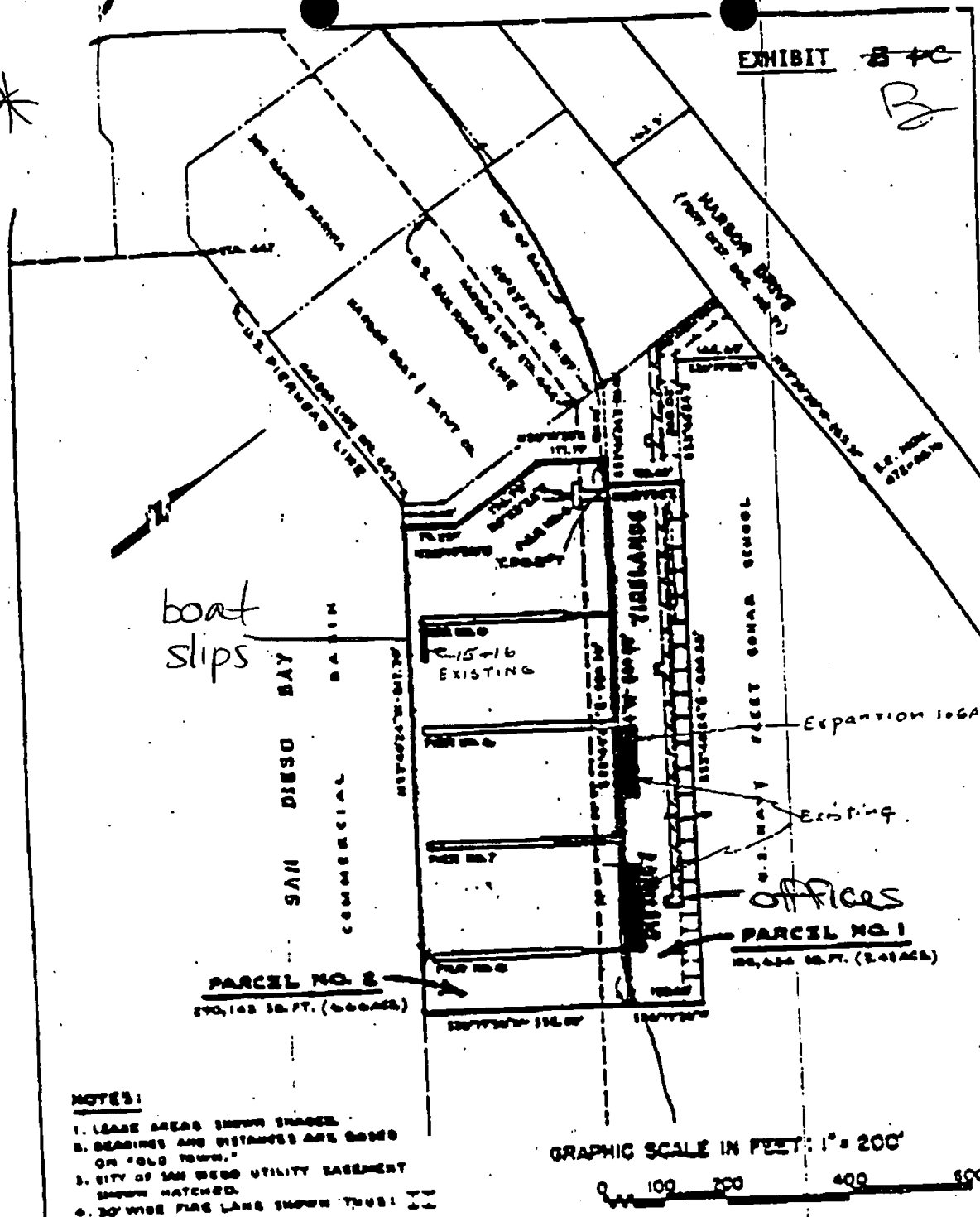
SAN DIEGO UNIFIED PORT DISTRICT
Tideland Lease
Within Corporate Limits of San Diego
NORTH HARBOR LANDING LIMITED

DATE 24 Jan. 1983
SCALE _____
REF. _____

DRAWING NO.
2467-B

EXHIBIT B + C

B



NOTES:

1. LEASE AREAS SHOWN SHADDED.
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'

0 100 200 400 600

FROM 2200-B, 14 JAN. 1983, BY R.J., APPROVED BY CHIEF ENGINEER *[Signature]*
 REVISED FROM 2200-B, 17 JAN. 81, BY R.J., APPROVED BY CHIEF ENGINEER *[Signature]*

DRAWN AND CHECKED
 CHECKED JAMISON
 REVIEWED JCA

APPROVED
[Signature]
 CHIEF ENGINEER

SAN DIEGO UNIFIED PORT DISTRICT
 TIDELANDS LEASE
 WITHIN COMBINED LIMITS OF SAN DIEGO

NORTH HARBOR LANDING LIMITED

DATE: 1 JANUARY 1983
 SCALE: 1" = 200'
 REF: 2200-B

DRAWING NO.

2467-B

REDUCED DRAWING - DO NOT SCALE

EXHIBIT B + C

18301