

CONSENT TO SUBLEASE AGREEMENT

THIS CONSENT TO SUBLEASE AGREEMENT ("Consent") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), DRISCOLL MISSION BAY, LLC, a California limited liability company ("DRISCOLL"), and MICHAEL THOMPSON, an individual doing business as "Six Pac, a California company" ("SIX PAC"), to be effective upon execution by CITY (the "Effective Date") and approval by the San Diego Attorney, as follows:

RECITALS

- A. DRISCOLL is the "LESSEE", by assignment, under that certain PERCENTAGE LEASE dated March 5, 1979 (as amended by that certain FIRST AMENDMENT TO LEASE dated June 2, 1986, the "Master Lease"), by and between CITY, as lessor, and MISSION BAY MARINA, a limited partnership, as lessee, relating to certain real property ("Master Lease Property") described as Lots 25, 26, 27, and 28 of Quivira Basin, Mission Bay Park, together with the water areas adjacent thereto, located in San Diego, California, and more particularly described in the Master Lease, attached hereto as Exhibit A.
- B. The Master Lease requires CITY'S consent to any sublease of the Master Lease Property.
- C. DRISCOLL and SIX PAC have executed that certain SUBLEASE ("Six Pac Sublease") dated May 1, 2007, whereby, subject to CITY'S consent, DRISCOLL subleases to SIX PAC and SIX PAC subleases from DRISCOLL a portion of the Master Lease Property ("Sublease Premises") consisting of a 116 square foot office located in a building on the Master Lease Property and more fully described in the Six Pac Sublease, attached hereto as Exhibit B.
- D. Under the terms of this Consent, CITY will consent to the Six Pac Sublease.

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

- 1. Subordination. The Six Pac Sublease is and shall be subordinate to the Master Lease. CITY shall not be bound by any term or condition in the Sublease, which in any way conflicts with CITY'S rights or increase CITY'S obligations under the Master Lease. Any conflict between the Master Lease and the Sublease shall be construed or resolved in favor of the Master Lease. SIX PAC acknowledges and agrees that his rights and obligations as "Subtenant" under the Six Pac Sublease are subject and subordinate to the terms and conditions of this Consent and the Master Lease.
- 2. Master Lease Provisions. Without releasing DRISCOLL of any obligation, SIX PAC additionally assumes and shall perform the obligations of "LESSEE" under the Master Lease as and to the extent, such obligations are applicable to the Sublease Premises or SIX PAC'S use of any common area within the Master Lease Property.

3. Use. SIX PAC'S use shall be limited to boat repair and office space rental within the Master Lease Property and shall comply at all times to the Master Lease.
4. Rent. DRISCOLL shall pay the following to CITY as rent defined under the Master Lease:
 - (a) Four percent (4%) of gross income from repair and painting of boats, repair of motors, sale of boats and motor parts, accessories and marine hardware, and for boat launching, haul out , and lay days (as defined in Master Lease);
 - (b) Twenty percent (20%) of gross income from dry storage;
 - (c) Seven percent (7%) of gross income from usage of office space;
 - (d) Ten percent (10%) of all gross income from all other sales, services, or operations conducted on Master Lease Property.
5. Indemnification. DRISCOLL and SIX PAC, jointly and severally, shall defend, indemnify, protect, and hold CITY, its elected officials, officers, representatives, agents and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including without limitation any injury to DRISCOLL'S or SIX PAC'S officers, employees, agents, invitees, guests, subtenants or licensees, which arise out of or are in any manner directly or indirectly connected with the Six Pac Sublease, SIX PAC'S use of or operations on the Master Lease Property, the condition of the Sublease Premises, or form any act or omission of SIX PAC or any of its employees, agents, invitees, guest, subtenants or licensees; provided, however, this duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents or employees.
6. Subsequent Sublease. This Consent does not constitute consent to any subsequent subletting of any portion of the Master Lease Property, and does not relieve DRISCOLL, SIX PAC, or any person claiming under or through either of them of the obligation to obtain CITY'S consent to any future sublease.
7. Brokerage Commission. CITY shall not be liable for any brokerage commission or finder's fee in connection with the consummation of the Six Pac Sublease or this Consent. DRISCOLL and SIX PAC shall jointly and severally protect, defend, indemnify, and hold CITY harmless from and against any claim for any brokerage commission or finder's fee related to the consummation of the Six Pac Sublease or this Consent, and from and against any cost or expense (including without limitation attorney fees) incurred by CITY in resisting any claim for any such brokerage commission or finder's fee.
8. San Diego's Strong Mayor Form of Governance. The Master Lease shall be amended by adding the following section:

All references to "City Manager" in this lease and all subsequent amendments to this lease shall be deemed to refer to "Mayor". This section became effective on January 1, 2006, and shall remain in effect for the duration the City operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the City of San Diego City Charter.

9. No Further Modification of Master Lease or Sublease. Except as provided herein, this Consent shall not be deemed or construed to modify, waive, impair, or affect any of the terms or conditions of the Master Lease or the Six Pac Sublease.
10. Controlling Law. The terms and conditions of this Consent shall be construed in accordance with the laws of the State of California.
11. Captions. Captions to the sections of this Consent are included for convenience only and do not modify any of the terms of this Consent.
12. Entire Agreement. This Consent constitutes the entire statement of the agreement of the parties pertaining to the amendment of the Master Lease and CITY'S consent to the Six Pac Sublease, and is binding on and inures to the benefit of the parties' respective heirs, representatives, successors and assigns. No party has been induced to enter into this Consent by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Consent. No modification of the terms or conditions of the Consent shall be effective unless made in writing that expressly states that it modifies this Consent, and signed by the parties hereto.
13. Attorney Fees. If any party commences litigation against any other party for the specific performance of this Consent, for damages for the breach of the terms and conditions of this Consent, or otherwise for any remedy and the enforcement thereof, the prevailing party shall be entitled to recover from the non-prevailing party its costs and reasonable attorney fees incurred.
14. Notice. Any notice required or permitted to be given to any party hereto shall be given in accordance with the provisions of the Master Lease, and if to SIX PAC, addressed to:

Six Pac
Attn: Mike Thompson
1500 Quivira Way, Box 8
San Diego, CA 92109
15. Authority. Each individual executing this Consent on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Consent 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 agreement, and that this Consent is binding upon such person or entity in accordance with its terms. Each person executing this Consent on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to the City Manager, that such authority is

valid and that 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.

16. CITY'S Consent. Subject to the terms and conditions of the Consent, CITY hereby consents to the Six Pac Sublease.

IN WITNESS WHEREOF, the parties hereto execute this Consent, to be effective as of the Effective Date.

Date: 10/30/07

DRISCOLL MISSION BAY, LLC,
A California limited liability company

BY: [Signature]

Name: Thomas A. Driscoll

Title: a Member

Date: 10/29/2007

[Signature]
MICHAEL THOMPSON, an individual doing
business as Six Pac, a California company

Effective Date: 11/3/07

THE CITY OF SAN DIEGO,
a California municipal corporation

BY: [Signature]

Name: JAMES F. BARWICK

Title: DIRECTOR, REAL ESTATE ASSETS DEPT.

APPROVED AS TO FORM AND LEGALITY:

Date: 11-13-07

MICHAEL J. AGUIRRE, San Diego City Attorney

BY: [Signature]

Todd Bradley, Deputy City Attorney

VB/nb

10/9/2007

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~~EXHIBIT B~~

SUBLEASE

between

DRISCOLL MISSION BAY LLC,
a California limited liability company,

as Landlord,

and

Six Pac,
a California Company,

as Tenant,

for a portion of
MISSION BAY MARINA
San Diego, California

dated May 1, 2007

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EXHIBITS:

- A Master Lease
- B Description of the Subleased Premises and Site Plan

SUBLEASE

THIS SUBLEASE ("**Sublease**"), dated for reference purposes only as of May 1, 2007, is entered into by and between DRISCOLL MISSION BAY LLC, a California limited liability company, ("**Sublandlord**") and Six Pac, a California Company ("**Subtenant**"), with reference to the following facts:

A. Master Lease. Sublandlord is the successor "Lessee" under that certain Lease dated March 5, 1979, between the CITY OF SAN DIEGO, a municipal corporation ("**City**"), as Lessor, and MISSION BAY MARINA, a California limited partnership, as Lessee, a copy of which is attached hereto as Exhibit A and incorporated herein by reference (as amended from time to time, the "**Master Lease**"), for certain leased premises in Quivira Basin at Mission Bay Park, San Diego, California, commonly known as "Mission Bay Marina" and more particularly described in the Master Lease (the "**Master Premises**").

B. Sublease. Sublandlord desires to sublease to Subtenant that portion of the Master Premises described on Exhibit B (the "**Subleased Premises**") and Subtenant desires to sublease the Subleased Premises from Sublandlord, on the terms and conditions provided in this Sublease. The Subleased Premises is located in a building ("**Building**") located on the Master Premises.

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

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

2. Term.

2.1 Primary Term. The term of this Sublease (the "**Term**") shall commence on May 1, 2007 (the "**Commencement Date**") and shall expire at midnight two (2) years thereafter, on April 30, 2009 (the "**Expiration Date**"), subject to earlier termination as provided in this Sublease.

2.2 Option to Extend. In the event this Sublease is in full force and effect, Subtenant has the option to extend the initial Term of this Sublease for four (4) extension periods of one (1) year each. Each one year extension period, if exercised, is referred to in this Sublease as an "**Option Term**." Each Option Term shall be subject to all the terms and provisions of this Sublease except for a change in the Base Rent. In the event that Subtenant elects to exercise its option to extend the initial Term or any Option Term, Subtenant shall provide written notice (the "**Exercise Notice**") to Sublandlord no later than three (3) months prior to the Expiration Date or, if exercised during an Option Term, three (3) months prior to the end of the then current Option Term. For the purpose of this Section 2.2, the phrase "in full force and effect" shall mean the following: (i) the Sublease has only been modified by the written mutual agreement of the parties and not by court order or as a part of a bankruptcy or other debtor-related procedure or proceeding; (ii) Subtenant has not unilaterally repudiated any terms of the Sublease; (iii) Subtenant is not then in Default under the Sublease (and will not be in Default on the last day of the initial Term or any Option Term); and (iv) Sublandlord has not given a notice of a Default to Subtenant on more than three (3) occasions since the Commencement Date. Subtenant's options to extend

are personal to Subtenant and cannot be exercised by any other party. Subtenant shall have no right to extend the Term or any Option Term except as set forth in this Section 2.2.

2.3 Increase in Base Rent During Option Term(s). The Base Rent for each Option Term shall be increased by ten percent (10%) over the Base Rent in effect during the last month of the initial Term or the then-existing Option Term, as the case may be. Unless the context of the reference clearly requires a different interpretation, any reference to the word "Term" shall include any Option Term for which Subtenant has properly exercised its rights to extend as set forth in Section 2.2, above.

3. **Rent.**

3.1 Base Rent. Subtenant agrees to pay Sublandlord monthly rent ("**Base Rent**") in advance according to the following schedule, beginning on the Commencement Date, and continuing on the first day of every month thereafter, during the initial Term of this Sublease.

Months 1-24

\$273.90 per month

3.2 Percentage Rent. In addition to Base Rent, Subtenant agrees to pay to Sublandlord monthly percentage rent ("**Percentage Rent**") in amounts calculated as set forth below. Percentage Rent shall be paid on or before the 20th day of each month during the Term based on Subtenant's Gross Income for the immediately preceding month.

Percentage Rent shall be calculated in the same manner and at the same rates as set forth in the Master Lease and as adjusted from time to time under the provisions of the Master Lease, the provisions of which relating to Percentage Rent are incorporated herein by reference. For the purposes of this Sublease, the term "**Gross Income**" shall have the same meaning as attributed to that term in the Master Lease, the provisions of which are incorporated herein by reference.

Subtenant acknowledges receipt of a copy of the provisions of the Master Lease currently in effect dealing with Percentage Rent and Gross Income.

3.3 Additional Rent. In addition to Base Rent and Percentage Rent, Subtenant agrees to pay to Sublandlord as additional rent ("**Additional Rent**"), at times specified in this Sublease: (i) the Common Area Expenses payable as provided in Article 5, and (ii) any other amounts that Subtenant assumes or agrees to pay under the provisions of this Sublease that are owed to Sublandlord, including, without limitation, any and all other sums that may become due by reason of any Default of Subtenant or Subtenant's failure to comply with the agreements, terms, covenants and conditions of this Sublease to be performed by Subtenant.

3.4 Increase in Base Rent Resulting from Increase in Percentage Rental under Master Lease. All Rent (as that term is defined below) received by Sublandlord under this Sublease is included in "gross income" as that term is defined in the Master Lease. Sublandlord is required to pay percentage rent to the City under the Master Lease based on Sublandlord's gross income generated by business conducted on the Master Premises. In the event Master Landlord increases the percentage rent payable under the Master Lease attributable to Rent paid under this Sublease, the Base Rent under this Sublease shall be increased by that amount required for Sublandlord to receive the same net Base Rent after the increase in percentage rent as it received immediately prior to the increase in percentage rent by the City.

3.5 Rent. Base Rent, Percentage Rent and Additional Rent shall together be referred to in this Sublease as "**Rent.**" Rent shall be paid to Sublandlord in lawful money of the United States of America at the office of Sublandlord or to such other person or at such other place as Sublandlord may from time to time designate in writing. All Rent and other monetary obligations shall be paid by Subtenant without notice or demand and without set-off, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction or defense.

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

4. **Security Deposit.** On execution of this Sublease, Subtenant shall deposit with Sublandlord a cash "**Security Deposit**" in the amount of Two Hundred Seventy-Three and 90/100 Dollars (\$273.90). The Security Deposit shall be held by Sublandlord as security for the timely and faithful performance by Subtenant of all of Subtenant's obligations under this Sublease. Sublandlord may apply all or part of the Security Deposit to any unpaid Rent or other charges due from Subtenant, to cure any other Subtenant Default(s) after expiration of any applicable cure period, or to clean or repair damages to the Subleased Premises upon expiration or earlier termination of this Sublease. If Sublandlord uses any part of the Security Deposit, Subtenant shall restore the Security Deposit to its full amount within ten (10) days after Sublandlord's written request. No interest shall be paid on the Security Deposit. Sublandlord shall not be required to keep the Security Deposit separate from its other accounts, and no trust relationship is created with respect to the Security Deposit. After both (a) the termination of this Sublease and (b) Subtenant's vacation of the Subleased Premises, Sublandlord, within a reasonable time, shall refund or credit to Subtenant (or Subtenant's successor) the unused portion of the Security Deposit and any advance Rent or other advance payments made by Subtenant to Sublandlord after deduction for any purposes permitted by this Section 4.

5. **Common Area Expenses.**

5.1 Payment of Subtenant's Share of Common Area Expenses. Each month during the Term, Subtenant shall pay to Sublandlord, as Additional Rent, one-twelfth (1/12th) of an amount reasonably estimated by Sublandlord to be Subtenant's Pro Rata Share (as defined below) of the total annual Common Area Expenses. Subtenant's "**Pro Rata Share**" is ten per cent (10%), which percentage has been determined by dividing the approximate rentable square footage of the Subleased Premises by the total approximate square footage of all of the buildings in the Master Premises. It is understood and agreed that the square footage figures used to make these calculations may not be strictly calculated pursuant to BOMA standards and are approximations which Sublandlord and Subtenant agree are reasonable and shall not be subject to revision. Sublandlord may adjust its estimate of such expenses at the end of any calendar quarter on the basis of Sublandlord's experience and reasonably anticipated costs.

Following the end of each calendar year (and also after the date of expiration or sooner termination of this Sublease), Sublandlord shall furnish to Subtenant a statement showing in reasonable detail the Common Area Expenses during such calendar year (or portion thereof prior to the expiration or sooner termination of this Sublease). If Subtenant's share of such costs exceeds Subtenant's payments made during the prior calendar year, Subtenant shall pay Sublandlord the deficiency within twenty (20) days after receipt of such statement. If Subtenant's payments of Common Area Expenses during the prior calendar year exceed its actual Pro Rate Share, Subtenant shall be entitled to credit the excess to its next monthly payment(s) of the Pro Rata Share until the credit is exhausted.

5.2 Definition of Common Area Expenses. As used in this Sublease, the term "Common Area Expenses" shall include, without limitation, all amounts paid by Sublandlord for the maintenance, repair, replacement, operation and management of the Common Area, together with an administrative fee equal to ten percent (10%) of all such amounts. In addition to those expenses specifically mentioned in Sections 9.1, 10.1, 10.2 and 14.1, below, Common Area Expenses shall include, without limitation, the costs of gardening; landscaping; repaving, resurfacing, and restriping of all parking areas; maintenance of all walkways and stairways; property management; exterior building painting; lighting and other utilities; cleaning; common area trash removal; depreciation and replacement of equipment; insurance on the Common Area; and all real property taxes and/or assessments levied against the Master Premises.

6. Use.

6.1 Use. Subtenant shall use the Subleased Premises for Boat Repair, and shall not use the Subleased Premises, or permit or suffer the Subleased Premises to be used, for any other purpose without the prior written consent of Sublandlord, which consent may be withheld in Sublandlord's sole and unfettered discretion.

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

6.3 Insurance Requirements. The insurance to be initially carried by Sublandlord and Subtenant pursuant to the provisions of Article 14 shall be consistent with the actual use of the Subleased Premises. Thereafter, if the use of the Subleased Premises changes to another use permitted under Section 6.1 such insurance shall, to the extent available, be consistent with such changed use. Subtenant shall not do or permit to be done anything which will invalidate or increase the cost of any fire, extended coverage or any other insurance policy covering the Master Premises. Subtenant shall comply with all rules, orders, regulations and requirements of the insurers of the Master Premises. Subtenant shall promptly, upon demand, reimburse Sublandlord for any additional premium charged for any policy by reason of Subtenant's failure to comply with the provisions of this Section.

6.4 Key to Subleased Premises. Subtenant shall deliver to Sublandlord all keys to locks to doors in the Subleased Premises for the purpose of emergency access. Additionally, if requested by Sublandlord, or required by a government agency, Subtenant agrees to maintain a duplicate set of keys in a fire department controlled lock box located on the Subleased Premises or at a central location on the Master Premises as directed by Sublandlord.

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

6.6 Signs. No sign, advertisement or notice which is visible outside the Subleased Premises shall be exhibited, painted or affixed by Subtenant or any part of the Subleased Premises, or on any part of the exterior of the Building, without the prior written consent of Sublandlord, which consent may be withheld in Sublandlord's sole and unfettered discretion. All such signage shall be in compliance with applicable laws. Such signs shall be installed at Subtenant's sole cost, and the cost of removing such signs and repairing the Building at the end of the term of the Sublease shall be paid by Subtenant.

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

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

7. Common Area.

7.1 Common Area - Definition. The term "Common Area" is defined as all areas and facilities outside the Subleased Premises and any other sub-tenant's premises and within the exterior boundary line of the Master Premises that are provided and designated by Sublandlord from time to time for the general nonexclusive use of Sublandlord, Subtenant and other subtenant(s) and their respective employees, suppliers, shippers, customers and invitees, including but not limited to common entrances, corridors, stairways and stairwells, public restrooms, mechanical and electrical rooms, parking areas to the extent not otherwise prohibited by this Sublease, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, ramps, driveways, landscaped areas and decorative walls. Sublandlord shall have the right to exclude any portion of the Building and Master Premises other than the Subleased Premises from the Common Area under this Sublease.

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

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

(a) To make changes to the interior and exterior of the Building and to the Common Area, including, without limitation, changes in the location of structures in Common Area, construction of additional buildings and other structures in the Common Area and changes to the size, shape, and appearance of the Common Area, including but not limited to the driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, decorative walls, landscaped areas and walkways; provided, however, Sublandlord shall at all times provide the parking facilities required under this Sublease.

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

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

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

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

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

8. Condition of Subleased Premises.

8.1 No Representation. Subtenant acknowledges that neither Sublandlord nor any agent of Sublandlord has made any representations or warranties, express or implied with respect to (i) the condition of the Subleased Premises, the Building or the Master Premises, (ii) the suitability of the Subleased Premises for Subtenant's purposes (iii) the location, use, design, merchantability, fitness for use for a particular purpose, condition or durability of the Subleased Premises or the Building, (iv) the prospect or ability to make a profit in the operation of a business in the Subleased Premises, (v) the existence of Hazardous Materials (as defined in Section 24.6) in, on or adjoining the Building or the Master Premises, (vi) the quality of the material or workmanship in the Building or the Subleased Premises, (vii) the future use or uses of the Building or the Master Premises, and/or (viii) the continuation of any current business or the prospect for new or additional businesses in the Building, in the Master Premises, or on properties adjacent to or near the Master Premises. All risks incidental to the condition and use of the Subleased Premises shall be borne by Subtenant. Except as expressly provided in this Sublease, **IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE SUBLEASED PREMISES OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, LANDLORD SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.**

SUBTENANT AGREES THAT IT IS TAKING THE SUBLEASED PREMISES IN AN "AS-IS, WHERE-IS" CONDITION WITH ALL FAULTS AND WITH ABSOLUTELY NO REPRESENTATIONS AND WARRANTIES.

8.2 Walk-Through Inspection. Subtenant acknowledges and agrees that at or before the signing of this Sublease, he inspected the Subleased Premises and, as set forth in Section 8.1, above, accepted the Subleased Premises in their then existing condition. On or before the Commencement Date, Sublandlord and Subtenant shall conduct a walk-through inspection of the Premises and prepare a list of those items relating to the Subleased Premises which are not then in substantially the same condition as

existed at the time of the signing of the Sublease. The taking of possession of the Subleased Premises by Subtenant shall establish conclusively that the Subleased Premises existed on the Commencement Date in substantially the same condition as of the date of the signing of the Sublease, except for list items set forth in this list. Sublandlord shall promptly perform such maintenance and repairs as are required to bring the items on the list to a condition substantially the same as existed at the time of the signing of the Sublease.

9. Utilities and Services.

9.1 Utilities Provided. Sublandlord shall furnish to the Subleased Premises reasonable quantities of water, sewer, gas, electricity and trash removal as required for Subtenant's use. The cost of these utilities shall be Common Area Expenses.

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

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

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

10. Repairs and Maintenance.

10.1 Common Area. Sublandlord shall maintain the Common Area in good condition, ordinary wear and tear excepted. The costs for said repair and maintenance shall be a Common Area Expense.

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

10.3 Subtenant's Maintenance Obligations. Except for Sublandlord's obligations pursuant to Section 10.2 above, Subtenant shall, at Subtenant's sole cost and expense, keep the Subleased Premises and every part of the Subleased Premises in good order, condition and repair, and in compliance with all applicable laws, ordinary wear and tear excepted and regardless of the condition of the Subleased Premises on the Commencement Date (except for Sublandlord's obligations to repair under Section 8.2, above, if any). Subtenant shall, upon the expiration or sooner termination of the Term, surrender the Subleased Premises to Sublandlord in good order, condition and repair and in compliance with all

applicable laws. Subtenant's obligations shall include restorations, replacements or renewals, including capital expenditures for restorations, replacements or renewals which will have a useful life beyond the expiration of the Term, when necessary to keep the Subleased Premises and all improvements thereon or a part thereof in good order, condition and repair and in compliance with all applicable laws. Except as expressly set forth in this Sublease, it is intended by the parties hereto that Sublandlord shall have no obligation, in any manner whatsoever, to repair or maintain the Subleased Premises, including the improvements or equipment located therein, whether structural or nonstructural, all of which obligations are intended to be the sole expense of Subtenant, whether or not such repairs, maintenance or restoration shall have a useful life extending beyond the expiration of the Term. Subtenant shall further be responsible for the cost of all alterations and/or repairs to the Subleased Premises required to bring the Subleased Premises into compliance with any law, ordinance or regulation, including, without limitation, the Americans with Disabilities Act. Any such repairs and alterations shall become the property of Sublandlord upon the expiration or earlier termination of this Sublease.

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

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

11. **Alterations.**

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

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

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

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

11.5 Property of Sublandlord. All alterations, decorations, fixtures, equipment, additions and improvements attached to or built into the Subleased Premises, made by either party, shall, unless Sublandlord elects otherwise at the expiration or earlier termination of the Term, become the property of Sublandlord. If Sublandlord elects to have such alterations removed, Subtenant shall do so and shall repair and restore the Subleased Premises to the condition they were in prior to such alterations, all at Subtenant's sole cost.

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

11.7 Personal Property. All articles of Subtenant's personal property, including, but not limited to, detachable machinery and equipment, furniture, fixtures and movable partitions, which are owned by Subtenant and installed by Subtenant at its own expense in the Subleased Premises, shall be and remain the property of Subtenant and may be removed by Subtenant at any time during the term of this Sublease when Subtenant is not in Default hereunder. If Subtenant shall fail to remove all of its personal property from the Subleased Premises at the expiration or earlier termination of the Term, then Sublandlord may, at its option, remove the same in any manner that Sublandlord may deem appropriate and store this personal property without liability to Subtenant for loss thereof or damage thereto. Subtenant agrees to pay Sublandlord, upon demand, any expenses incurred in such removal and storage or Sublandlord may, at its option, without notice, sell this personal property or any of it, at a public or private sale and without legal process, for such price as Sublandlord may obtain; and Sublandlord may apply the proceeds of such sale against any amounts due under this Sublease from Subtenant to Sublandlord and against any expenses incident to the removal, storage and sale of this personal property, with any balance of the sales proceeds delivered to Subtenant. Subtenant agrees that this Sublease constitutes a "security agreement" under the provisions of Section 9203 of the Uniform Commercial Code – Secured Transactions, or any successor statute and, as such, Subtenant grants to Sublandlord a security interest in all Subtenant's personal property described in this Section 11.7, as well as all tenant improvements made to the Subleased Premises pursuant to this Article 11.

12. **Liens.**

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

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

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

13. Indemnification and Exculpation.

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

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

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

13.4 Assumption of Risk. Additionally, Sublandlord shall not be liable to Subtenant or any other party, and Subtenant assumes all risk of damage and liability (other than as may be covered by insurance or by a third party), resulting from any defect or malfunction of any Building system or

component of a Building system (such as HVAC, mechanical, plumbing, electrical, waste disposal, or sewer).

13.5 Security Devices. Security devices and services provided for the Building and Master Premises, if any, while intended to deter crime, may not in given instances prevent theft or other criminal acts, and it is agreed that Sublandlord shall not be liable for injuries or losses caused by criminal acts of third parties. The risk that any security device may malfunction or otherwise be circumvented by a criminal is assumed by Subtenant. Subtenant shall, at Subtenant's cost, obtain applicable insurance coverages to the extent Subtenant desires protection against such criminal acts. Sublandlord shall have no continuing obligation to repair, maintain or replace any existing security devices, if any, and may remove any such existing security devices, if any, at any time. Subtenant shall be solely responsible, at its sole expense, to provide a safe and secure environment within the Subleased Premises for its employees, customers, invitees and guests.

14. **Insurance.**

14.1 Insurance on Building. Sublandlord shall carry insurance on the Building, including the Subleased Premises and its improvements, to the extent such is insurable as part of the Building (excluding improvements made to the Subleased Premises made by Subtenant), in an amount equal to full replacement cost (without reference to depreciation taken by Sublandlord upon its books or tax returns), or such greater insurance coverage as Sublandlord's mortgage lender requires Sublandlord to maintain. Such insurance shall provide protection against any peril generally included within the classification "Fire and Extended Coverage," together with insurance against sprinkler damage (if applicable), vandalism and malicious mischief. Sublandlord shall also obtain rental loss insurance for a period of up to one year. Sublandlord, subject to availability thereof at a reasonable premium, may, but is not required to, further insure, as Sublandlord or its lender deems appropriate, against flood and/or earthquake, loss or failure of building equipment, hazardous materials risks, rental loss during the period to repair or rebuild, worker's compensation insurance and fidelity bonds for employees employed to perform services. The deductible limits of the "Fire and Extended Coverage" policy shall not exceed Five Thousand Dollars (\$5,000). Sublandlord shall furnish to Subtenant upon request a copy of said insurance policy. The cost of all such insurance policies shall be Common Area Expenses.

14.2 Liability Insurance. Subtenant, at its own cost, shall procure and continue in effect, from the Commencement Date or the at such time as Subtenant occupies the Subleased Premises, whichever first occurs, and continuing throughout the Term and thereafter until Subtenant has fully and finally surrendered the Subleased Premises to Sublandlord, comprehensive public liability insurance with limits of not less than Three Million Dollars (\$3,000,000) per occurrence for death, bodily injury or property damage with respect to the Subleased Premises and insurance on all of its personal property. The deductible amounts of such policy of insurance shall not exceed Five Thousand Dollars (\$5,000).

14.3 Additional Insureds. The aforesaid insurance required of Subtenant shall name as additional insureds the City, Sublandlord, their officers, directors, shareholders, partners, members and lenders, and Sublandlord's property manager, agents and representatives for the Subleased Premises. Said insurance shall be with companies having a policyholder rating of not less than A+ and financial category rating of Class IX in "Best's Insurance Guide." Subtenant shall cause any insurance companies issuing policies to Subtenant to furnish certificates evidencing such coverage to Sublandlord. No such policies shall be cancelable or subject to reduction of coverage or other modification or cancellation except after thirty (30) days prior written notice to Sublandlord from the insurer. All such policies shall be written as primary policies, not contributing with and not in excess of the coverage which Sublandlord may carry. Any of Subtenant's policies may be in the nature of a "blanket policy" which specifically provides that the amount of insurance shall not be prejudiced by other losses covered by the policy. Subtenant shall, at

least twenty (20) days prior to the expiration of any such policies, furnish Sublandlord with renewals or binders. Subtenant agrees that if Subtenant fails to procure and maintain such insurance, Sublandlord may (but shall not be required to) procure said insurance on Subtenant's behalf and charge Subtenant the premiums for any such policies, together with a ten percent (10%) handling charge, payable upon demand.

14.4 Fixtures and Other Items. Subtenant assumes the risk of damage to improvements made to the Subleased Premises by Subtenant (even if made with the consent and approval of Sublandlord), as well as any fixtures, goods inventory, merchandise, equipment, and personal property of any kind owned or leased by Subtenant and maintained in the Subleased Premises. Sublandlord shall not be liable for injury to Subtenant's operations or any loss of income therefrom relative to damage to such items, all as more particularly set forth herein. Subtenant, at Subtenant's cost, shall carry such insurance as Subtenant desires for Subtenant's protection with respect to the foregoing personal property and tenant improvements, as well as business interruption losses and other loss of income.

14.5 Lender and Others. If any policy of insurance is to name Sublandlord as additional insured, Subtenant shall, upon written request of Sublandlord, also designate as an additional insured, and furnish certificates evidencing Sublandlord as an additional insured to, (i) any lender to Sublandlord holding a security interest in the Building and/or (ii) the City.

14.6 Waiver of Subrogation. Sublandlord and Subtenant each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, on account of loss or damage occasioned to such waiving party or its property or the property of others under its control to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which either party may have in force at the time of such loss or damage, such waivers to continue as long as their respective insurers to permit. Any termination of such a waiver shall be by written notice of circumstances as hereinafter set forth. Sublandlord and Subtenant, upon obtaining the policies of insurance required or permitted under this Sublease, shall give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Sublease. If such policies are unobtainable with such waiver or obtainable only at a premium over that chargeable without such waiver, the party seeking such policy shall notify the other thereof, and the latter shall have ten (10) days thereafter to either (i) procure such insurance in companies reasonably satisfactory to the other party or (ii) agree to pay such additional premium. If neither (i) nor (ii) are done, this Section 14.6 shall have no effect during such time as such policies are unobtainable or the party in whose favor a waiver of subrogation is desired shall refuse to pay the additional premium. If such policies shall at any time be unobtainable, but subsequently shall be obtainable, neither party shall be subsequently liable for a failure to obtain such insurance until a reasonable time after notification thereof by the other party. If the release of either Sublandlord or Subtenant, as set forth in the first sentence of this Section 14.6 shall contravene any law with respect to exculpatory agreements, the liability of the party in questions shall be deemed not released but shall be secondary to the other's insurer.

14.7 Increases in Insurance. At reasonable times, Sublandlord may require insurance policy limits to be raised to conform with reasonable requirements of Sublandlord's lender and/or the Port Authority, or to bring coverage limits to the level then being required of similar tenants of similar properties; provided, however, that Sublandlord may, in any event, require insurance policy limits to be increased in proportion to any increase in the Consumer Price Index from the date of this Sublease to the date of the requested adjustments.

15. Damage or Destruction.

15.1 Destruction Due to Risk covered by Insurance.

(a) If, during the Term, the Subleased Premises or the Building are totally or partially destroyed from a risk covered by the insurance described in Section 14.1, rendering the Subleased Premises totally or partially inaccessible or unusable, Sublandlord shall restore the Subleased Premises or the Building to substantially the same condition as they were in immediately before destruction, but not including any leasehold improvements made by Subtenant. Such destruction shall not terminate this Sublease. If the existing laws do not permit restoration and repair of the Building or the Subleased Premises, either party can terminate this Sublease immediately by giving notice to the other party.

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

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

15.2 Destruction Due to Risk Not Covered by Insurance.

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

(b) The provisions of Section 15.2(a) notwithstanding, if the cost of restoration exceeds five percent (5%) of the then replacement value of the Subleased Premises or the Building that are destroyed, Sublandlord can elect to terminate this Sublease by giving notice to the Subtenant within fifteen (15) days after determining the restoration cost and replacement value.

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

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

15.3 Extent of Sublandlord's Obligation to Restore. If Sublandlord is obligated to or elects to repair or restore as herein provided, Sublandlord shall be obligated to repair or restore only those portions of the Building and the Subleased Premises as existed on the Commencement Date and for which insurance proceeds are available to pay the costs to repair or restore; the repair and restoration of Subtenant's special tenant improvements or tenant's personal property shall be the obligation and sole expense of Subtenant.

15.4 Release. Upon any termination of this Sublease under any of the provisions of this Article 15, the parties each shall be released from further obligation to the other under this Sublease for Rent and other claims arising from and after the date of termination. However, termination of this Sublease shall not relieve either party from any obligation to the other existing prior to the date of termination, which obligations shall remain in full force and effect.

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

15.6 Damage at End of Term. Notwithstanding anything to the contrary contained in this Article 15, Sublandlord shall have no obligation whatsoever to repair, reconstruct or restore the Subleased Premises when the damage resulting from any casualty covered under this Article occurs during the last twelve (12) months of the Term. In the event Sublandlord elects not to repair, reconstruct or restore the Subleased Premises when the damage resulting from any casualty covered under this Article occurs during the last twelve (12) months of the term of this Sublease, Subtenant may, by written notice delivered to Sublandlord within ten (10) days after receipt by Subtenant of Sublandlord's notice of its election not to repair, reconstruct or restore the Subleased Premises, elect to terminate this Sublease.

16. Eminent Domain.

16.1 Taking. If the Subleased Premises or any material portion of the Subleased Premises are taken under the power of eminent domain or similar governmental action, either party may terminate this Sublease effective as of the date possession is required to be surrendered to the condemning authority.

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

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

17. Defaults and Remedies.

17.1 Late Charge. Late payment by Subtenant to Sublandlord of Rent or other sums due will cause Sublandlord to incur costs not contemplated by this Sublease, the exact amount of which is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, attorneys' charges, late payment charges on a mortgage, and so forth. In the event that Subtenant shall be in Default for late payment under Section 17.4(a) hereof for more than three (3) days after notice from Sublandlord, subtenant shall pay to Sublandlord a late charge in an amount equal to ten percent (10%) of the unpaid Rent for each month that an installment of Rent remains unpaid, which Sublandlord and Subtenant agree is not a penalty but is a reasonable estimate of the expenses Sublandlord may incur as a result of such late payment. In the event of any such late payment, in addition to the foregoing late charge, the amount unpaid shall bear interest at Bank of America's "reference rate" plus three percent (3%) per annum. Such interest shall be calculated from the date such amount was due and payable until the same shall have been fully paid.

17.2 No Waiver. No payment by Subtenant or receipt by Sublandlord of a lesser amount than that due shall be deemed to be other than on account of the amount due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Sublandlord may accept such check or payment without prejudice to Sublandlord's right to recover the balance or pursue any other remedy provided. If at any time a dispute shall arise as to any amount or sum of money to be paid by Subtenant to Sublandlord, Subtenant shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and Subtenant shall have the right to institute suit for recovery of the payment paid under protest.

17.3 Performance by Sublandlord. If Subtenant fails to perform any other act on its part to be performed hereunder, Sublandlord may, without waiving or releasing Subtenant from any obligations of Subtenant, perform such act on behalf of Subtenant. Any costs incurred by Sublandlord in performing the obligations of Subtenant under this Section 17.3 shall be paid by Subtenant as Additional Rent within ten (10) days of the date of an invoice for such costs.

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

- (a) The failure by Subtenant to make any payment of Rent, as and when due;
- (b) The failure by Subtenant to observe or perform any obligation other than described in Section 17.4(a) above, to be performed by Subtenant where such failure shall continue for a period of thirty (30) days after written notice thereof from Sublandlord to Subtenant. Such notice shall be in lieu of, and not in addition to, any notice required under California Code Of Civil Procedure 1161; provided that, if the nature of Subtenant's Default is such that it reasonably requires more than thirty (30) days to cure, then Subtenant shall not be deemed to be in Default if Subtenant shall commence such cure within said thirty (30) day period and thereafter diligently prosecute the same to completion;
- (c) Subtenant files a voluntary petition under any section of the Bankruptcy Code of the United States;
- (d) Subtenant makes a voluntary assignment for the benefit of creditors;
- (e) A receiver, trustee or custodian is appointed to, or does, take title, possession or control of all, or substantially all, of Subtenant's assets, or any involuntary petition is filed

against the Subtenant under any chapter of the Bankruptcy Code of the United States, and such petition or receiver, trustee or custodian is not dismissed within thirty (30) days;

(f) Subtenant's interest in this Sublease is attached, executed upon or otherwise judicially seized and such action is not released within thirty (30) days of the action;

(g) Subtenant fails to comply fully with all provisions of Article 24, below, concerning Hazardous Materials; or

(h) Subtenant fails to pay Rent, fails to pay any other monetary obligation arising under this Sublease, or fails to perform any obligation or duty under the Existing Subleases which arose prior to the Commencement Date.

Notices given under this Section 17.4 shall specify the alleged Default and shall demand that Subtenant perform the provisions of this Sublease within the applicable period of time, or quit the Subleased Premises. No such notice shall be deemed a forfeiture or a termination of this Sublease unless Sublandlord elects otherwise in such notice.

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

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

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

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

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

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

As used in Sections 17.5(a) and 17.5(b) above, "worth at the time of award" shall be computed by allowing interest at the rate specified in Section 17.1 above. As used in Section 17.5(c)

above, the "worth at the time of award" shall be computed by determining the present value of such amount using the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percentage point.

17.6 Right of Re-Entry. In the event of a Default by Subtenant, and at any time thereafter, with or without terminating this sublease, and with or without notice or demand and without limiting Sublandlord in the exercise of any right or remedy which Sublandlord may have, Sublandlord shall have the immediate right to re-enter and remove all persons and property, and such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Subtenant, all without service of notice or resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. No such re-entry shall be considered or construed to be a forcible entry by Sublandlord. If Sublandlord does not elect to terminate this Sublease as provided in this Section, then Sublandlord may, from time to time, recover all Rent as it becomes due under this Sublease pursuant to California Civil Code 1951.4. At any time thereafter, Sublandlord may elect to terminate this Sublease and to recover damages to which Sublandlord is entitled.

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

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

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

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

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

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

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

17.10 Right to Cure. Sublandlord shall not be in default hereunder unless Sublandlord fails to perform an obligation required of Sublandlord within a reasonable time, but in no event later than

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

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

18. Assignment or Subletting.

18.1 Assignment. Except as provided in this Article 18, Subtenant shall not, either voluntarily or by operation of law, assign, sell, hypothecate or transfer this Sublease or permit all or any part of the Subleased Premises to be used or occupied as work space, storage space, mailing privileges, concession or otherwise by anyone other than Subtenant, Subtenant's members or Subtenant's employees (all of these events collectively referred to as an "Assignment"), without the prior written consent of Sublandlord in each instance, which consent may be withheld by Sublandlord in its sole and absolute discretion. A transfer of more than fifty percent (50%) of the equity ownership of Subtenant during any two-year period to a party (or to an affiliated group of parties) shall also constitute a prohibited Assignment; provided, however, this provision shall not be applicable if such transfers occurred on a public stock exchange. If Sublandlord consents to an Assignment, Subtenant and its successors and assigns, and any guarantors of Subtenant's obligations under this Sublease, shall not be released from liability under this Sublease. Subtenant acknowledges that an Assignment must be approved by the City, as evidenced by formal resolution.

As a condition of Sublandlord's consent to an Assignment, the assignee and Subtenant shall execute an agreement in favor of Sublandlord and in a form acceptable to Sublandlord, pursuant to which the assignee shall agree to faithfully perform and assume and be bound by all of the terms, covenants, conditions, provisions and agreements of this Sublease. As used in this Article 18, the term "assignee" shall include the person or entity who is the transferee in any form of Assignment, as defined above. In addition, Subtenant and the assignee shall, upon not less than three (3) days prior written notice from Sublandlord, execute, acknowledge and deliver to Sublandlord a statement in writing (a) certifying that this Sublease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Sublease as so modified is in full force and effect), and the date to which the Rent and other charges are paid in advance, if any; (b) acknowledging that there are not, to Subtenant's and the assignee's knowledge, any uncured defaults under this Sublease on the part of Sublandlord or Subtenant, or specifying such defaults if any are claimed; (c) setting forth the Commencement Date and Expiration Date; and (d) certifying as to such other matters as Sublandlord may reasonably request. Any guarantor of this Sublease shall execute a reaffirmation of such guarantee in a form reasonably acceptable to Sublandlord agreeing to continue to be a guarantor of the terms and conditions of this Sublease following an Assignment.

18.2 Transfer Premium. As a reasonable condition to Sublandlord's consent to any Assignment, Subtenant shall pay to Sublandlord fifty percent (50%) of any Transfer Premium, as defined in subsection 18.2.1, below.

18.2.1 Definition of Transfer Premium. “**Transfer Premium**” means all Rent and other consideration actually received by Subtenant from the assignee (including key money and bonus money and any payment in excess of fair market value for services rendered by Subtenant to the assignee, or assets, fixtures, inventory, equipment, or furniture transferred by Subtenant to the assignee in connection with the Assignment (collectively, the “**Assignment Rent**”), after deducting:

a. The Rent payable by Subtenant under this Lease (excluding the Transfer Premium) for the Subleased Premises;

b. Reasonable leasing commissions paid by Subtenant; and,

c. Other reasonable out-of-pocket costs paid by Subtenant (including attorneys’ fees, advertising costs, and expenses of readying the Subleased Premises for occupancy by the assignee).

The costs referred to in subparagraphs (a) through (d) are referred to as the “**Transfer Costs.**”

18.2.2 Monthly Payment of Transfer Premium. Subtenant shall pay the Transfer Premium to Sublandlord on a monthly basis, as Additional Rent under this Sublease.

18.2.3 Audit of Transfer Premium. Subtenant shall allow Sublandlord to review and audit Subtenant’s books and records for the purpose of verifying Subtenant’s calculation of the Transfer Premium, Assignment Rent, and Transfer Costs.

18.3 Notice of Proposed Assignment. In the event Subtenant desires Landlord to review and approve an Assignment, then at least forty-five (45) days, but not more than ninety (90) days, prior to the date when Subtenant desires the Assignment to be effective (the “**Assignment Date**”), Subtenant shall give Sublandlord written notice (the “**Assignment Notice**”) which shall set forth the name, address and business of the proposed assignee, information (including references) concerning the business experience, financial reputation and character of the proposed assignee, the Assignment Date, any ownership or commercial relationship between Subtenant and the proposed assignee or sublessee, and the consideration paid for the Assignment, and all other material terms and conditions of the proposed Assignment, all in such detail as Sublandlord shall reasonably require. Additionally, Subtenant shall furnish to Sublandlord a copy of the audited financial statements for the most recently past fiscal year, as well as the most recent unaudited quarterly financial statements for both Subtenant and the proposed assignee.

18.4 Unapproved Transfer Void. Any Assignment not in compliance with the provisions of this Article 18 shall be void, and shall, at the option of Sublandlord, be a breach of this Sublease.

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

18.6 No Waiver. Notwithstanding any Assignment, Subtenant shall remain fully and primarily liable for the payment of all Rent and other sums due, or to become due, hereunder, and for the full performance of all other terms, conditions and covenants to be kept and performed by Subtenant hereunder. The acceptance of Rent or any other sum due hereunder, or the acceptance of performance of

any other term, covenant or condition hereof, from any other person or entity shall not be deemed to be a waiver of any of the provisions of this Sublease or a consent to any Assignment of the Subleased Premises.

18.7 Assignment Fee. The Assignment Notice shall be accompanied by a “**Transfer Fee**” in the amount of \$1,000.00 payable to Sublandlord.

18.8 Sublandlord’s Option to Recapture the Space. Despite any other provision of this Article 18, Sublandlord has the option to recapture the Subleased Premises, by written notice to Subtenant (“**Recapture Notice**”) within ten (10) days after receiving an Assignment Notice from Subtenant. A timely Recapture Notice terminates this Sublease and Subtenant’s obligations regarding the Subleased Premises for the remaining Term and as of the Assignment Date. The Recapture Notice shall be void, however, if Subtenant notifies Sublandlord, within ten (10) days after receipt of the Recapture Notice, that Subtenant withdraws the Assignment Notice. If Sublandlord declines or fails timely to elect to recapture the Subleased Premises, Sublandlord shall have no further right to the Subleased Premises under this Section 18.9 unless it becomes available again in connection with any subsequently proposed Assignment.

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

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

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

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

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

e. The assumption or assignment of all of Subtenant’s interest and obligations under this Sublease.

20. **Subordination and Attornment.**

20.1 Subordination. This Sublease shall be subject and subordinate to the lien of any mortgage, deed of trust or lease in which Sublandlord is tenant, now or hereafter in force against the Subleased Premises, and to all advances made or hereafter to be made upon the security thereof without the necessity of the execution and delivery of any further instruments on the part of Subtenant to effectuate such subordination; provided, however, that for the lien of any mortgage, deed of trust or lease executed by Sublandlord after the date of this Sublease to be subordinate to this Sublease, the holder of

any such mortgage, deed of trust or lease shall execute, acknowledge and deliver to Subtenant a non-disturbance agreement providing that so long as Subtenant performs all of its obligations under the Sublease, Subtenant's quiet enjoyment and use of the Subleased Premises shall not be disturbed.

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

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

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

21. **Surrender.**

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

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

21.3 No Merger. The voluntary or other surrender of any ground or underlying lease that now exists or may hereafter be executed affecting the Building or Subleased Premises or a mutual cancellation thereof or of Sublandlord's interest therein, shall not work a merger and shall, at the option of the successor of Sublandlord's interest in the Building or Subleased Premises, operate as an assignment of this Sublease.

22. **Holding Over.**

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

22.2 Holding Over without Consent. If Subtenant remains in possession of the Subleased Premises after the expiration or earlier termination of the Term hereof without the express

written consent of Sublandlord, Subtenant shall become a tenant at sufferance upon all the terms of this Sublease applicable to a tenant at sufferance, except that the monthly installments of Base Rent shall be equal to one hundred fifty percent (150%) of the monthly installment of the Base Rent in effect during the immediately preceding thirty (30) days.

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

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

23. **Taxes on Subtenant's Property.**

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

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

24. **Hazardous Materials.**

24.1 Prohibition/Compliance. Subtenant, at its sole cost, shall comply with all federal, state and local laws, statutes, ordinances, codes, regulations and orders relating to the receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release and disposal of any Hazardous Material as defined in this Article 24 in or about the Subleased Premises or the Building. Subtenant shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept or used in or about the Subleased Premises by Subtenant, its agents, employees, contractors or invitees in a manner or for a purpose prohibited by any federal, state or local law, rule or regulation. The disposal of Hazardous Material shall be in approved containers and removed from the Subleased Premises by duly licensed carriers. Subtenant shall immediately provide Sublandlord with telephonic notice, which shall promptly be confirmed by written notice, of any and all spillage, discharge, release and disposal of Hazardous Materials onto or within the Subleased Premises or the Building, which by law must be reported to any federal, state or local agency, and any injuries or damages resulting directly or indirectly therefrom. A failure of Subtenant to give to Sublandlord the notices required in this Section 24.1 shall constitute a Default under this Sublease. Further, Subtenant shall deliver to Sublandlord each and every notice or order received from any federal, state or local agency concerning Hazardous Materials and the possession, use and/or disposal thereof promptly upon receipt of each such notice or order. Subtenant shall be responsible for and shall indemnify, protect, defend, and hold harmless Sublandlord and its agents, employees, representatives, directors and officers from any and all claims, costs, penalties, fines, liability and losses, including without limitation, (i) temporary or permanent diminution in value of the Subleased Premises or the Building, (ii) damages for the temporary or permanent loss of restriction on use of rentable or usable space or of any amenity of the Subleased Premises or the Building, and (iii) sums paid in settlement of claims, consultant fees and expert fees, liabilities, attorneys' fees, damages, injuries, causes of action, judgments and expenses, which arise during or after the Term of this Sublease and which (a) result from Subtenant's use and occupancy of the Subleased Premises, or (b) result from

Subtenant's receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release or disposal of Hazardous Materials in, upon or about the Subleased Premises or the Building. The indemnifications of Sublandlord and indemnities by Subtenant above include, to the extent Subtenant is responsible for such costs and expenses under the provisions above, without limiting the generalities thereof, reasonable costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work lawfully required by any federal, state or local governmental agency or political subdivision because of any Hazardous Materials present in the soil, subsoil, ground water, or elsewhere at, on or under the Subleased Premises or the Building.

24.2 Termination of Sublease. Notwithstanding the provisions of this Article 24, Sublandlord shall have the right to terminate the Sublease in the event that (i) Subtenant uses the Subleased Premises for the generation, storage, use, treatment or disposal of Hazardous Material in a manner or for a purpose prohibited by applicable law (unless Subtenant is diligently pursuing compliance therewith), (ii) Subtenant has been required by any governmental authority to take remedial action in connection with Hazardous Material contaminating the Subleased Premises or the Building if the contamination resulted from Subtenant's action or use of the Subleased Premises and such remedial action has a material adverse effect on Sublandlord, the Subleased Premises or the Building, or (iii) Subtenant is subject to an enforcement order issued by any governmental authority in connection with the use, disposal or storage of a Hazardous Material on the Subleased Premises and such enforcement order has a material adverse effect on Sublandlord, the Subleased Premises or the Building. Each of the foregoing events shall be deemed to be a material Default by Subtenant under this Sublease.

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

24.4 Sublandlord's Right to Perform Tests.

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

24.4.2 Upon the expiration or upon any early termination of this Sublease, Subtenant shall furnish to Sublandlord, at Subtenant's sole cost, a report and certification from a qualified environmental engineer, verifying that the Subleased Premises are free from any Hazardous Materials or

contamination in excess of legally permissible levels. If said report indicates that there are any impermissible levels of Hazardous Materials on the Subleased Premises, then Subtenant shall pay for all costs necessary to clean up and remedy said impermissible levels of Hazardous Materials; and Subtenant shall also continue to pay Rent for the Subleased Premises until such time as the impermissible levels of Hazardous Materials are cleaned up and remedied.

24.5 Survival of Subtenant's Obligations. Subtenant's obligations under this Article 24 shall survive the termination of this Sublease. During any period of time employed by Subtenant after the termination of this Sublease to complete the removal from the Subleased Premises or the Building of any such Hazardous Materials, Subtenant shall continue to pay the full Rent in accordance with this Sublease.

24.6 Definition of "Hazardous Material". As used herein, the term "**Hazardous Material**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States of America. The term "Hazardous Materials" shall also mean toxic or hazardous substances, including without limitation, asbestos or any substance containing asbestos and deemed hazardous under any Hazardous Material Law (defined below), the group of organic compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, chemicals known to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions or related materials and any items included in the definition of hazardous or toxic waste, materials or substances under any law relating to environmental conditions and industrial hygiene, including without limitation, the Resource Conservation and Recovery Act of 1976 ("**RCRA**"), 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**"), 42 U.S.C. §§ 9601 - 9657, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("**SARA**"); the Hazardous Materials Transportation Act, 49 U.S.C. § 6901, et seq., the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 741 et seq., the Clean Water Act, 33 U.S.C. § 7401, et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 - 2629; the Safe Drinking Water Act, 42 U.S.C. §§ 300f - 300j; the Carpenter-Presley-Tanner Hazardous Substances Account Act; the Hazardous Waste Control Act; the Porter-Cologne Water Quality Control Act; and all similar federal, state and local environmental statutes, ordinances, and the regulations, orders, decrees now or hereafter promulgated thereunder (collectively the "**Hazardous Material Laws**").

24.7. Article Binding on Parties Related to Subtenant. For the purposes of this Article 24, the term "Subtenant" shall include Subtenant and its shareholders, members, partners, directors, officers, agents, employees, invitees, sub-subtenants, assigns, and guests, as well as their successors and assigns.

25. **Miscellaneous.**

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

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

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

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

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

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

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

25.8 Independent Counsel. Subtenant and Sublandlord each acknowledge that: (i) they have had the opportunity to be represented by independent counsel in connection with this Sublease; and (ii) this Sublease is the result of negotiations between Sublandlord and Subtenant and the advice and assistance of their respective counsel. The fact that this Sublease was prepared by Sublandlord's counsel as a matter of convenience shall have no impact or significance. Any uncertainty or ambiguity in this Sublease shall not be construed against Sublandlord because Sublandlord's counsel prepared this Sublease in its final form.

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

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

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

For Rent Payment and Notices to Sublandlord:

Driscoll Mission Bay
Attn: Ms. Mary-Carol Driscoll

1500 Quivira Way
San Diego, California 92109

For Notices to Subtenant:

Six Pac
Attn: Mike Thompson
1500 Quivira Way, Box 8
San Diego, CA 92109

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

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

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

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

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

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

25.17 Real Estate Brokers; Finders. Subtenant and Sublandlord each represent to the other that they have not entered into any agreement or incurred any obligation in connection with this transaction that might result in the obligation to pay a brokerage commission or finder's fee to any broker, finder or other person. Each party agrees to defend, indemnify and hold the other party harmless from and against any liability, damages, claim or demand by any other broker or other person for bringing about this Sublease who claims to have dealt with such indemnifying party, including any expenses (including reasonable attorney fees) incurred in defending any such claim or demand.

25.18 Attorneys' Fees. If either party hereto becomes a party to any litigation concerning this Sublease (including any bankruptcy proceeding), the Subleased Premises, or the Building, by reason of any act or omission of the other party or its authorized representatives, and not by any act or omission of the party that becomes a party to that litigation or any act or omission of its authorized representatives, the party that causes the other party to become involved in the litigation shall be liable to

that party for reasonable attorneys' fees and court costs incurred by it in the litigation. If either party hereto commences an action against the other party arising out of or in connection with this Sublease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

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

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

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

25.22 Limitation of Sublandlord's Liability. If Sublandlord is a limited partnership or joint venture, the limited partners of such partnership shall not be personally liable and no limited partner of Sublandlord shall be sued individually or named individually as a party in any suit or action or service or process be made against any limited partner of Sublandlord. If Sublandlord is a corporation or limited liability company, the shareholders, members, directors, officers, managers, employees and/or agents of such corporation shall not be personally liable and no shareholder, member, director, officer, manager, employee or agent of Sublandlord shall be sued or named as a party in any suit or action or service or process be made against any shareholder, member, director, officer, manager, employee or agent of Sublandlord. No limited partner, shareholder, director, employee or agent of Sublandlord shall be required to answer or otherwise plead to any service of process and no judgment will be taken or writ of execution levied against any limited partner, shareholder, member, director, officer, manager, employee or agent of Sublandlord. Each of the covenants and agreements of this Section 25.22 shall be applicable to any covenant or agreement either expressly contained in this Sublease or imposed by statute or by common law.

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

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

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

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

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

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

28. **Right To Terminate.** Notwithstanding anything in this Sublease to the contrary, Sublandlord and/or Subtenant shall have the right to terminate this Sublease before expiration of the Term

by giving written notice of termination to Subtenant and/or Sublandlord not less than thirty (30) days before the effective date of the termination (the "Termination Date"). The Termination Date shall be specified in Sublandlord's and/or Subtenant's termination notice. In the event that the Termination Date is other than the last day of a calendar month, Rent for the partial last month shall be prorated on the basis of a thirty (30) day month and shall be due and payable on the first day of such month.

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

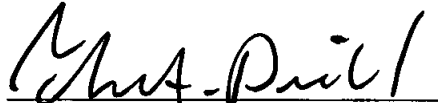
Date of execution:

4/30, 2007

Sublandlord:

DRISCOLL MISSION BAY LLC,
a California limited liability company

By:



Thomas A. Driscoll, a Member

Date of execution:

4/25, 2007

Subtenant:

Six Pac
a California Company

By: Michael Thompson

Its: Owner

Exhibit A

Master Lease

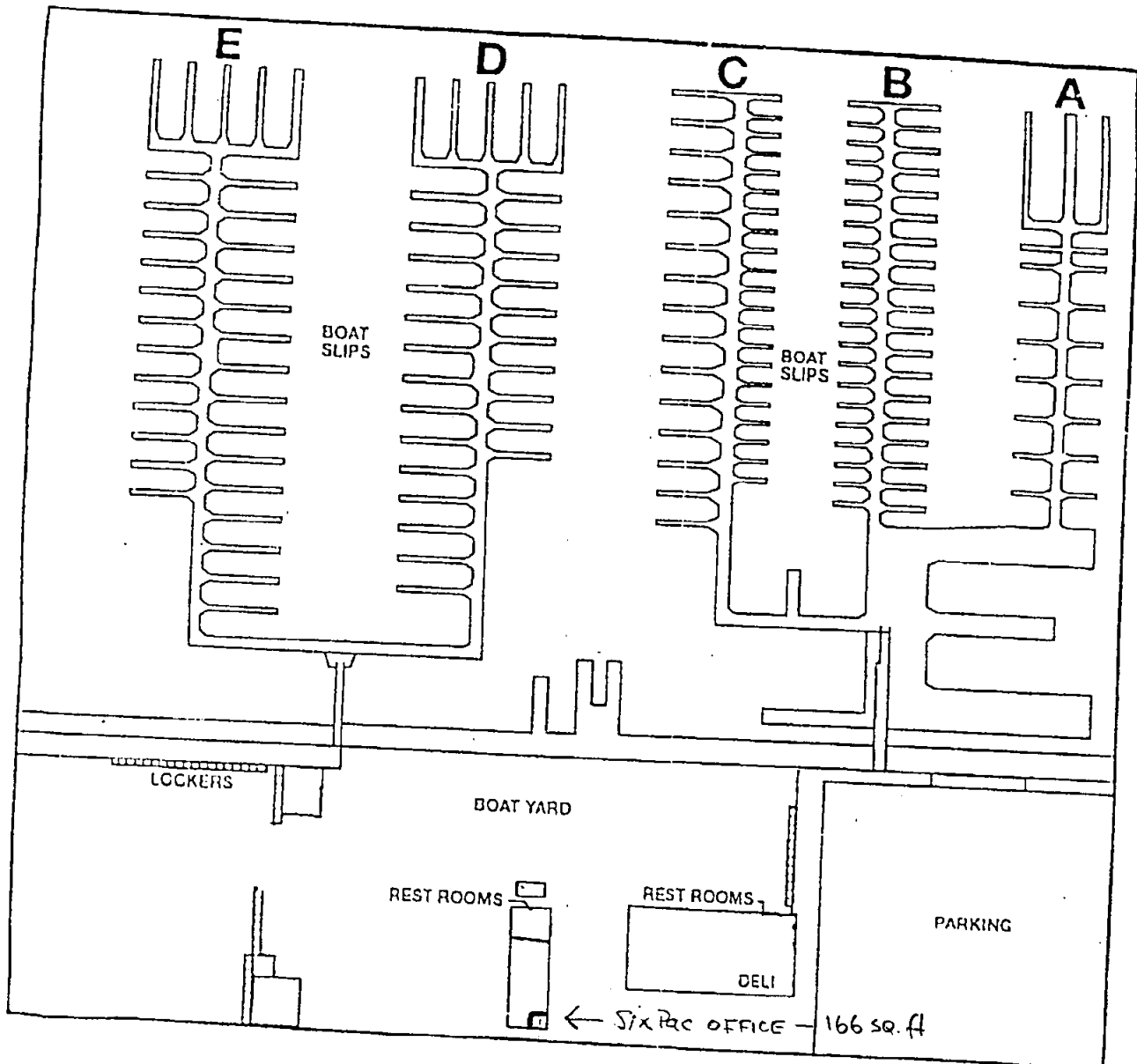
[to be attached]

Foti Vladamir

Exhibit B

Diagram of Subleased Premises and Site Plan

[to be attached]



FIRST ADDENDUM TO SUBLEASE

This First Addendum to Sublease ("**First Addendum**") is made as of May 1, 2007 by and between Driscoll Mission Bay LLC, a California limited liability company ("**Sublandlord**") and Six Pac, a California Company ("**Subtenant**").

Sublandlord and Subtenant entered into that certain sublease ("**Sublease**") of even date for the Subleased Premises located in the City of San Diego, California, as more fully described in the Sublease.

Sublandlord and Subtenant agree that notwithstanding anything contained in the Sublease to the contrary, the provisions set forth below shall be deemed to be a part of the Sublease and shall supercede, to the extent appropriate, any contrary provision in the Sublease. References in this First Addendum to the term "**Sublease**" shall be construed to mean the Sublease as amended and supplemented by this First Addendum. All capitalized terms used in this First Addendum, unless specifically defined in this First Addendum, shall have the same meaning attributed to those terms in the Sublease.

AGREEMENT

1. Master Lease. As set forth in Section 27 of the Sublease, Subtenant and Sublandlord agree that the terms and conditions of the Master Lease are incorporated herein by reference, and shall, as between Sublandlord and Subtenant, constitute the terms, covenants, conditions, and provisions of this Sublease, except to the extent that they are inapplicable to, inconsistent with, or modified by the provisions of this Sublease. Subtenant shall strictly comply with each applicable term and condition of the Master Lease. Any breach by Subtenant of any of the terms and conditions of the Master Lease shall be deemed a breach by Subtenant of the Sublease. Without limitation, Subtenant specifically acknowledges that it has reviewed and will comply with the following provisions of the Master Lease:

1.1 Section 14 of the Master Lease states:

"14. NON-DISCRIMINATION: Lessee agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, physical handicap or medical condition in Lessee's use of the premises, including, but not limited to, the providing of goods services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment."

1.2 Section IV(B)(4) of the Master Lease states:

"4. AFFIRMATIVE ACTION: Lessee agrees to take affirmative action to improve employment opportunities of minorities and women. When applicable, Lessee agrees to abide by the Affirmative Action Program for Lessees as it now exists or is hereafter amended. A copy of the program, effective as of the date of this agreement, is on file in the Office of the City Clerk as Document No. 746205 and by this reference is incorporated herein. Minorities are presently defined as Mexican-American, Black, Filipino, American Indian and Asian/Oriental. The goal of this program shall be the attainment

of the employment of minorities and women in all areas of employment in a total percentage of employment approximately equal to the total level of minority and women employment as established by the City for its Affirmative Action Program each year.

2. Effectiveness of Sublease. Except as and to the extent modified by this First Addendum, all of the provisions of the Sublease shall remain in full force and effect.

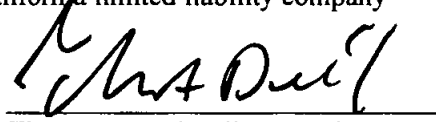
Date of execution:

4/30, 2007

Sublandlord:

DRISCOLL MISSION BAY LLC,
a California limited liability company

By:



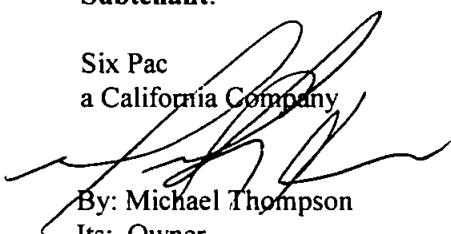
Thomas A. Driscoll, a Member

Date of execution:

4/25, 2007

Subtenant:

Six Pac
a California Company



By: Michael Thompson
Its: Owner

SECURITY AGREEMENT

THIS SECURITY AGREEMENT ("**Agreement**") is made at San Diego, California, effective as of May 1, 2007, by and between Six Pac ("**Debtor**") and DRISCOLL MISSION BAY LLC, a California limited liability company ("**Secured Party**") who agree as follows:

1. **Grant.** Debtor hereby grants to Secured Party an irrevocable security interest in any and all of the Collateral, as that term is defined below, pursuant to the terms and conditions of this Agreement. Debtor represents and warrants that Debtor is (and as to any Collateral acquired hereafter) agrees and warrants that Debtor will at all times be and remain, either the sole owner of or the sole person in possession of, the Collateral, free from any lien, security interest, or other claim, excepting only the security interest granted by this Agreement.

2. **Attachment.** The security interest hereby created shall attach immediately upon execution of this Agreement by Debtor and shall secure the Debtor's obligations under a sublease and attached first addendum to sublease of even date (collectively, the "**Sublease**") in which Driscoll Mission Bay LLC is the Sublandlord and Debtor is the Subtenant, for that certain subleased premises ("**Subleased Premises**") located in the City of San Diego, California and more fully described in the Sublease. The terms and conditions of the Sublease are incorporated in this Agreement by reference. The Sublease evidences value given by the Secured Party to Debtor and Debtor acknowledges that this Agreement constitutes a "security agreement" under the provisions of Section 9203 of the Uniform Commercial Code B Secured Transactions, or any successor statute.

3. **Description.** As set forth in the Sublease, certain personal property, furniture, fixtures and equipment are a part of the Subleased Premises leased to Debtor by the Secured Party and constitutes part of the Collateral secured by this Agreement. For the purposes of this Agreement, the term "**Collateral**" shall mean all goods and tangible personal property (including all appliances, furniture, furnishings, fittings, machinery, fixtures, tools, inventory, materials, supplies, and equipment) now or hereafter located or installed on or attached or affixed to the Subleased Premises, or used, necessary for use, or intended for use in connection with or otherwise relating in any way to the Subleased Premises, including all goods and tangible personal property (including all appliances, furniture, furnishings, fittings, machinery, fixtures, tools, inventory, materials, supplies, and equipment) for providing gas, light, heat, water, air-conditioning, ventilation, shade, refrigeration, laundry, food preparation, food service, dishwashing, garbage disposal, trash removal, fumigation, pest control, vacuuming, cleaning, window washing, telecommunications, computer, safety, security, alarm, maintenance, decoration, recreation, entertainment, or other utilities, services, facilities, or guest, tenant, visitor, or other accommodations of any kind at or for the Subleased Premises. Collateral shall also include any replacements of Collateral existing at the time of the execution of this Agreement and any additions after the date of this Agreement to the fixtures, inventory, equipment and/or other personal property used by the Debtor in the business conducted by the Debtor at the Subleased Premises.

The term "Collateral" also includes all goods, accounts, documents, instruments, deposit accounts, chattel paper, investment property, letter-of-credit rights, and general intangibles, as those terms are defined in the California Commercial Code from time to time in effect, now or hereafter located or installed on or attached or affixed to the Subleased Premises, or used, necessary for use, or intended for use in connection with or otherwise relating in any way to or deriving from the Debtor's business.

The term "Collateral" also includes, without limiting any part of the foregoing description of Collateral, all personal property described in **Schedule 1** attached to this Agreement.

4. **Proceeds.** Debtor also hereby grants and transfers to Secured Party a security interest in any and all proceeds, as provided in Sections 9203 and 9315 of the California Uniform Commercial Code, of the Collateral, or any part of the Collateral listed in **Schedule 1**. Nothing in this paragraph, however, shall constitute, or be deemed to constitute, a grant of authority to Debtor to sell, or otherwise dispose of, or encumber the Collateral, or any part of the Collateral, without the prior written consent of Secured Party.

5. **Repair and Replacement of Collateral.** Debtor shall maintain the Collateral, and each part of the Collateral, in good order and repair at Debtor's sole expense. Debtor shall not use the Collateral, or any part of the Collateral, in any manner resulting, or likely to result, in waste, damage, destruction, unreasonable deterioration or concealment of the Collateral or in any other manner other than leasing. Debtor shall keep the Collateral separate and identifiable to the fullest extent possible. Debtor will promptly replace every part of the Collateral that may become damaged, destroyed, consumed, worn out, lost, or which becomes obsolete or otherwise unfit for use in the operation of the business conducted by Subtenant on the Subleased Premises without Secured Party's consent, except that he will notify Secured Party pursuant to Paragraph 11.3.

6. **Disposition of Collateral.** Debtor shall not, without the prior written consent of Secured Party, sell, lease, dispose, transfer, convey, encumber or otherwise hypothecate any of the Collateral, or any part thereof, without Secured Party's prior written consent. Debtor's attempt to sell, lease or do any of the above acts shall be deemed an incurable material breach of this Agreement.

7. **Financing Statement; Other Documents.** Debtor acknowledges that Secured Party may file a UCC-1 financing statement ("**Financing Statement**") with the California Secretary of State, which Financing Statement will indicate Secured Party's security interest in the Collateral. Secured Party may file the Financing Statement without prior notice to Debtor and may file additional Financing Statements as may be reasonably required to protect and preserve its interest in the Collateral. Debtor agrees to promptly execute any and all other documents reasonably requested by Secured Party to perfect and protect Secured Party's security interest in the Collateral created by this Agreement.

8. **Property Insurance.** Until this Security Agreement is terminated by Secured Party after Debtor or related parties have performed all obligations secured hereby, Debtor, at Debtor's sole expense, shall keep the Collateral, and all parts thereof, insured against damage or loss resulting from any and all risks. Secured Party shall be named as an additional insured on Debtor's insurance policy

and Debtor shall provide a certificate of insurance to Secured Party immediately upon execution of this Agreement. This certificate of insurance shall provide that the coverage evidenced by the certificate shall not be canceled or diminished without at least thirty (30) days written notice to Secured Party.

8.1 If Debtor fails to provide the insurance coverage as required by this Section 8, in addition to other remedies available to Secured Party, Secured Party may, but is not required to, obtain such insurance coverage for the Collateral as it deems appropriate and necessary, in its sole discretion. Debtor shall immediately reimburse Secured Party, upon demand, for all premiums paid by Secured Party for any insurance obtained by Secured Party pursuant to the provisions of this Section 8.

9. **Taxes and Assessments.** Debtor shall pay at its sole expense, as they become due, all taxes, assessments and liens levied or assessed against the Collateral.

10. **Rights.** Secured Party, either in person or by agent, shall have the right, at any and all reasonable times and with twenty-four (24) hours prior notice to Debtor to enter the Subleased Premises and inspect the Collateral.

11. **Warranties and Representations.** Debtor hereby represents and warrants to Secured Party:

11.1 The Collateral is presently located at the Subleased Premises and shall not be removed from the Subleased Premises without the prior written consent of Secured Party.

11.2 The principal place of business of the Debtor is 1500 Quivira Way, San Diego, California.

11.3 Debtor has full power and authority to enter into this Agreement.

11.4 Debtor warrants and represents that there is no pending litigation, secured interest, pledges, judgments, court orders, claims or any other matter which have or will have an adverse and/or material impact on Debtor's financial worth or ability to conduct its business or perform all of its obligations under the Sublease.

11.5 Debtor warrants and represents that during the Term of the Sublease, it shall not, directly or indirectly, involuntarily or voluntarily, allow any of the Collateral to be encumbered or subject to any monetary lien or claim of another party.

11.5 Debtor warrants and represents that Debtor agrees to hold harmless, defend and indemnify Secured Party from any and all claims, expenses (including attorneys' fees), costs and liabilities which may arise from or be related to the Collateral, the operation of its business and its possession of the Subleased Premises. The foregoing shall survive the expiration of the Term or earlier termination of the Sublease and shall have no limit in scope or duration.

12. **Events of Default.** Debtor shall be deemed in default of this Agreement if Debtor breaches or fails to perform any provision, warranty or representation of this Agreement or the Sublease.

13. **Remedies of Secured Party.** Upon Debtor's default, as defined in Section 12, above, the Secured Party shall, at its option, have the following, but not exclusive, remedies:

(a) Any and all of the rights and remedies provided in the Uniform Commercial Code B Secured Transactions and/or any other applicable statute or regulation;

(b) The right to take possession of any or all of the Collateral and enter any premises where any Collateral is kept, with or without judicial process;

(c) The right to sell or lease in any commercially reasonable manner in one or more transactions any or all of the Collateral in its then condition and/or following any commercially reasonable preparation or processing. Sales for cash or on credit to any wholesaler, retailer or user of the Collateral, or at public auction or private sale, all are commercially reasonable;

(d) The right to require Debtor to assemble any or all of the Collateral and make it available to Secured Party at the entrance to the location of the Collateral, or any office of Secured Party in the county where the Collateral is, or should have been located under the terms of this Agreement;

(e) The right to sell or lease any or all of the Collateral without having it present at the place of the transaction. Whenever any Collateral is in Secured Party's possession, Secured Party may use, operate and consume it in any commercially reasonable manner or as it deems appropriate for paying or performing Debtor's obligations. Secured Party shall have no liability to the Debtor for any damage to real or personal property which is not Collateral caused by acts or omissions of Secured Party or its agents done in good faith in the course of removing, storing, processing, maintaining, preserving, protecting or disposing of any Collateral, nor for any such damage to Collateral except as a result of Secured Party's failure to sell or lease the Collateral in a commercially reasonable manner; and/or

(f) The right to use and operate the Collateral as determined by Secured Party.

14. **Notices.** Any and all notices or other communications required or permitted by this Agreement or by law to be given to Debtor or Secured Party shall be in writing and shall be personally delivered or sent by registered or certified mail, return receipt requested. Notices shall be deemed delivered upon the date of personal delivery or five (5) days after mailing if sent by mail as provided above.

Secured Party: Driscoll Mission Bay LLC
Attn: Ms. Mary-Carol Driscoll
1500 Quivira Way
San Diego, California 92109

Debtor: Six Pac
Attention: Michael Thompson
1500 Quivira Way, Box 8
San Diego, California 92109

Either party may change its address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

15. **Time of Essence.** Time is of the essence as to each provision of this Security Agreement.

16. **Successors.** This Security Agreement shall be binding on the heirs, executors, administrators, successors and permitted assigns of each of the parties hereto. Nothing contained in this paragraph, however, shall be deemed a consent to the sale, assignment or transfer of the Collateral or any of the obligations under this Agreement by Debtor.

17. **Entire Agreement.** This Agreement, the Sublease, and the Financing Statement constitute the entire agreement between the parties regarding the subject matter hereof and supersede all prior understandings or agreements, whether oral or written. This Agreement, the Sublease, and the Financing Statement can only be modified by a writing signed by Debtor and Secured Party.

18. **Captions.** The captions in this Agreement are for convenience only, and shall not be used to interpret this Agreement.

19. **Controlling Law.** This Agreement shall be construed and enforced according to the laws of the State of California. Time is of the essence.

20. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

21. **Representation.** No inference, assumption, or presumption shall be drawn if a party or a party's attorney prepared and/or drafted this Agreement; it shall be conclusively presumed that the parties participated equally in its preparation and/or drafting. Each party acknowledges that it has consulted independent counsel regarding this Agreement or has waived the right to do so, having been afforded sufficient opportunity to have this Agreement reviewed by independent counsel.

22. **"Herein"/"Hereof".** The use of the term "herein" or "hereof" shall mean and refer only to this Agreement, and not to any other agreement, document or instrument.

23. **Attorneys' Fees.** If any party commences litigation or arbitration to enforce or interpret this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees

and all litigation-related costs (including expert witnesses' fees) incurred in addition to all other items of recovery permitted by law.

24. Debtor Identification Information; Changes in Name or State of Organization.

24.1 Additional Representations and Warranties. Borrower further represents and warrants to Secured Party that:

24.1.1 Debtor is a California Company

24.1.2 The taxpayer identification numbers of the Debtor:

100-560913

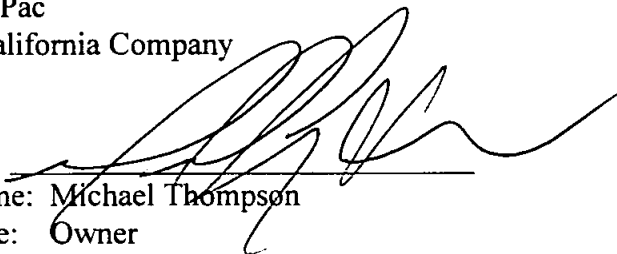
24.1.3 The Collateral is used in the business of the Debtor and does not include goods used or bought for use by Debtor primarily for personal, family, or household purposes. The Sublease was entered into by Debtor for business, commercial and/or investment purposes, and not primarily for personal, family, or household purposes. The Sublease is not a consumer goods transaction or a consumer transaction.

24.2 Changes in Name or State of Organization. Debtor will make no change to its name, organizational status or existence, or state of organization without providing Secured Party with at least thirty (30) days prior written notice of such change.

IN WITNESS WHEREOF, the parties execute this Agreement.

DEBTOR:

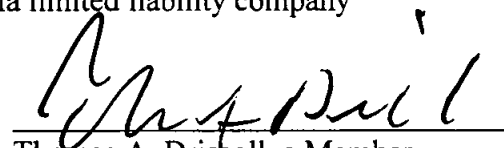
Six Pac
a California Company

By: 

Name: Michael Thompson
Title: Owner

SECURED PARTY:

DRISCOLL MISSION BAY LLC,
a California limited liability company

By: 

Thomas A. Driscoll, a Member

SCHEDULE 1
LIST OF SPECIFIC COLLATERAL

As set forth in Section 3 of the Agreement, the Collateral includes, but is not limited to, the following specific items of personal property, fixtures, inventory and equipment, this being the same personal property referred to as "FF&E" in the Sublease.

**[INSERT LIST OF FF&E HERE; SAME AS SCHEDULE 1 ATTACHED TO FIRST
ADDENDUM TO SUBLEASE]**

CONSENT TO SUBLEASE AGREEMENT

THIS CONSENT TO SUBLEASE AGREEMENT ("Consent") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), DRISCOLL MISSION BAY, LLC, a California limited liability company ("DRISCOLL"), and BOB ARONSON, an individual doing business as "AA Marine, a S Corporation" ("ARONSON"), to be effective upon execution by CITY (the "Effective Date") and approval by the San Diego Attorney, as follows:

RECITALS

- A. DRISCOLL is the "LESSEE", by assignment, under that certain PERCENTAGE LEASE dated March 5, 1979 (as amended by that certain FIRST AMENDMENT TO LEASE dated June 2, 1986, the "Master Lease"), by and between CITY, as lessor, and MISSION BAY MARINA, a limited partnership, as lessee, relating to certain real property ("Master Lease Property") described as Lots 25, 26, 27, and 28 of Quivira Basin, Mission Bay Park, together with the water areas adjacent thereto, located in San Diego, California, and more particularly described in the Master Lease, attached hereto as Exhibit A.
- B. The Master Lease requires CITY'S consent to any sublease of the Master Lease Property.
- C. DRISCOLL and ARONSON have executed that certain SUBLEASE ("Aronson Sublease") dated March 1, 2007, whereby, subject to CITY'S consent, DRISCOLL subleases to ARONSON and ARONSON subleases from DRISCOLL a portion of the Master Lease Property ("Sublease Premises") located in a building on the Master Lease Property and more fully described in the Aronson Sublease, attached hereto as Exhibit B.
- D. Under the terms of this Consent, CITY will consent to the Aronson Sublease.

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

- 1. Subordination. The Aronson Sublease is and shall be subordinate to the Master Lease. CITY shall not be bound by any term or condition in the Sublease, which in any way conflicts with CITY'S rights or increase CITY'S obligations under the Master Lease. Any conflict between the Master Lease and the Sublease shall be construed or resolved in favor of the Master Lease. ARONSON acknowledges and agrees that his rights and obligations as "Subtenant" under the Aronson Sublease are subject and subordinate to the terms and conditions of this Consent and the Master Lease.

2. Master Lease Provisions. Without releasing DRISCOLL of any obligation, ARONSON additionally assumes and shall perform the obligations of "LESSEE" under the Master Lease as and to the extent, such obligations are applicable to the Sublease Premises or ARONSON'S use of any common area within the Master Lease Property.
3. Use. ARONSON'S use shall be the new boat and accessory sales and shall comply at all times to the Master Lease.
4. Rent. DRISCOLL shall pay the following to CITY as rent defined under the Master Lease:
 - (a) Three-Quarter percent (3/4%) of ARONSON'S gross income ("gross income" as that term is defined in the Master Lease) from the new boat sales;
 - (b) Five percent (5%) of gross income from the boat brokerage under the Aronson Sublease;
 - (c) Ten percent (10%) of gross income from accessory sales under the Aronson Sublease;
 - (d) Twenty five percent (25%) of gross income from boat slip rentals and other wet storage;
 - (e) Twenty percent (20%) of gross income from dry storage;
 - (f) Seven percent (7%) of gross income from usage of office space;
 - (g) Seven percent (7%) of gross income from the admission fee to any boat shows held on Master Lease Property;
 - (h) Ten percent (10%) of all gross income from all other sales, services, or operations conducted on Master Lease Property.
5. Indemnification. DRISCOLL and ARONSON, jointly and severally, shall defend, indemnify, protect, and hold CITY, its elected officials, officers, representatives, agents and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including without limitation any injury to DRISCOLL'S or ARONSON'S officers, employees, agents, invitees, guests, subtenants or licensees, which arise out of or are in any manner directly or indirectly connected with the Aronson Sublease, ARONSON'S use of or operations on the Master Lease Property, the condition of the Sublease Premises, or form any act or omission of ARONSON or any of his employees, agents, invitees, guest, subtenants or licensees; provided, however, this duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents or employees.

6. Subsequent Sublease. This Consent does not constitute consent to any subsequent subletting of any portion of the Master Lease Property, and does not relieve DRISCOLL, ARONSON, or any person claiming under or through either of them of the obligation to obtain CITY'S consent to any future sublease.
7. Brokerage Commission. City shall not be liable for any brokerage commission or finder's fee in connection with the consummation of the Aronson Sublease or this Consent. DRISCOLL and ARONSON shall jointly and severally protect, defend, indemnify, and hold CITY harmless from and against any claim for any brokerage commission or finder's fee related to the consummation of the Aronson Sublease or this Consent, and from and against any cost or expense (including without limitation attorney fees) incurred by CITY in resisting any claim for any such brokerage commission or finder's fee.
8. San Diego's Strong Mayor Form of Governance. The Master Lease shall be amended by adding the following section:

All references to "City Manager" in this lease and all subsequent amendments to this lease shall be deemed to refer to "Mayor". This section became effective on January 1, 2006, and shall remain in effect for the duration the City operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the City of San Diego City Charter.
9. No Further Modification of Master Lease or Sublease. Except as provided herein, this Consent shall not be deemed or construed to modify, waive, impair, or affect any of the terms or conditions of the Master Lease or the Aronson Sublease.
10. Controlling Law. The terms and conditions of this Consent shall be construed in accordance with the laws of the State of California.
11. Captions. Captions to the sections of this Consent are included for convenience only and do not modify any of the terms of this Consent.
12. Entire Agreement. This Consent constitutes the entire statement of the agreement of the parties pertaining to the amendment of the Master Lease and CITY'S consent to the Aronson Sublease, and is binding on and inures to the benefit of the parties' respective heirs, representatives, successors and assigns. No party has been induced to enter into this Consent by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Consent. No modification of the terms or conditions of the Consent shall be effective unless made in writing that expressly states that it modifies this Consent, and signed by the parties hereto.
13. Attorney Fees. If any party commences litigation against any other party for the specific performance of this Consent, for damages for the breach of the terms and conditions of this Consent, or otherwise for any remedy and the enforcement thereof, the prevailing party shall be entitled to recover from the non-prevailing party its costs and reasonable attorney fees incurred.

14. Notice. Any notice required or permitted to be given to any party hereto shall be given in accordance with the provisions of the Master Lease, and if to ARONSON, addressed to:

AA MARINE, INC.
ATTN: BOB ARONSON
957 MARYLAND DRIVE
VISTA, CA 92083

15. Authority. Each individual executing this Consent on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Consent 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 agreement, and that this Consent is binding upon such person or entity in accordance with its terms. Each person executing this Consent on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to the City Manager, that such authority is valid and that 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.

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16. CITY'S Consent. Subject to the terms and conditions of the Consent, CITY hereby consents to the Aronson Sublease.

IN WITNESS WHEREOF, the parties hereto execute this Consent, to be effective as of the Effective Date.

Date: 7/18/07

DRISCOLL MISSION BAY, LLC,
A California limited liability company

BY: [Signature]
Name & Title: Thomas A. Driscoll
a Member

Date: 7/17/07

[Signature]
BOB ARONSON, an individual doing
business as "AA Marine a S Corporation"

Effective Date: 7/30/07

THE CITY OF SAN DIEGO,
A California municipal corporation

BY: [Signature]
Name & Title: James F. Barwick, CCIM
Director, Real Estate Assets

APPROVED AS TO FORM AND LEGALITY:

Date: 8-3-07

MICHAEL J. AGUIRRE, San Diego City Attorney

BY: [Signature]
Todd Bradley, Deputy City Attorney

VB/nb

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SUBLEASE

between

DRISCOLL MISSION BAY LLC,
a California limited liability company,

as Landlord,

and

AA Marine,
a S Corporation,

as Tenant,

for a portion of
MISSION BAY MARINA
San Diego, California

dated March 1, 2007

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EXHIBITS:

- A Master Lease
- B Description of the Subleased Premises and Site Plan

SUBLEASE

THIS SUBLEASE ("Sublease"), dated for reference purposes only as of March 1, 2007, is entered into by and between DRISCOLL MISSION BAY LLC, a California limited liability company, ("Sublandlord") and

AA Marine, a S Corporation ("Subtenant"), with reference to the following facts:

A. Master Lease. Sublandlord is the successor "Lessee" under that certain Lease dated March 5, 1979, between the CITY OF SAN DIEGO, a municipal corporation ("City"), as Lessor, and MISSION BAY MARINA, a California limited partnership, as Lessee, a copy of which is attached hereto as Exhibit A and incorporated herein by reference (as amended from time to time, the "Master Lease"), for certain leased premises in Quivira Basin at Mission Bay Park, San Diego, California, commonly known as "Mission Bay Marina" and more particularly described in the Master Lease (the "Master Premises").

B. Sublease. Sublandlord desires to sublease to Subtenant that portion of the Master Premises described on Exhibit B (the "Subleased Premises") and Subtenant desires to sublease the Subleased Premises from Sublandlord, on the terms and conditions provided in this Sublease. The Subleased Premises is located in a building ("Building") located on the Master Premises.

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

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

2. Term.

2.1 Primary Term. The term of this Sublease (the "Term") shall commence on March 1, 2007 (the "Commencement Date") and shall expire at midnight two (2) years thereafter, on February 28, 2009 (the "Expiration Date"), subject to earlier termination as provided in this Sublease.

2.2 Option to Extend. In the event this Sublease is in full force and effect, Subtenant has the option to extend the initial Term of this Sublease for four (4) extension periods of one (1) year each. Each one year extension period, if exercised, is referred to in this Sublease as an "Option Term." Each Option Term shall be subject to all the terms and provisions of this Sublease except for a change in the Base Rent. In the event that Subtenant elects to exercise its option to extend the initial Term or any Option Term, Subtenant shall provide written notice (the "Exercise Notice") to Sublandlord no later than three (3) months prior to the Expiration Date or, if exercised during an Option Term, three (3) months prior to the end of the then current Option Term. For the purpose of this Section 2.2, the phrase "in full force and effect" shall mean the following: (i) the Sublease has only been modified by the written mutual agreement of the parties and not by court order or as a part of a bankruptcy or other debtor-related procedure or proceeding; (ii) Subtenant has not unilaterally repudiated any terms of the Sublease; (iii) Subtenant is not then in Default under the Sublease (and will not be in Default on the last day of the initial Term or any Option Term); and (iv) Sublandlord has not given a notice of a Default to Subtenant on more than three (3) occasions since the Commencement Date. Subtenant's options to extend

are personal to Subtenant and cannot be exercised by any other party. Subtenant shall have no right to extend the Term or any Option Term except as set forth in this Section 2.2.

2.3 Increase in Base Rent During Option Term(s). The Base Rent for each Option Term shall be increased by ten percent (10%) over the Base Rent in effect during the last month of the initial Term or the then-existing Option Term, as the case may be. Unless the context of the reference clearly requires a different interpretation, any reference to the word "Term" shall include any Option Term for which Subtenant has properly exercised its rights to extend as set forth in Section 2.2, above.

3. **Rent.**

3.1 Base Rent. Subtenant agrees to pay Sublandlord monthly rent ("**Base Rent**") in advance according to the following schedule, beginning on the Commencement Date, and continuing on the first day of every month thereafter, during the initial Term of this Sublease.

Months 1-02	\$1,820.00 per month
Months 03-24	\$3,640.00 per month

3.2 Percentage Rent. In addition to Base Rent, Subtenant agrees to pay to Sublandlord monthly percentage rent ("**Percentage Rent**") in amounts calculated as set forth below. Percentage Rent shall be paid on or before the 20th day of each month during the Term based on Subtenant's Gross Income for the immediately preceding month.

Percentage Rent shall be calculated in the same manner and at the same rates as set forth in the Master Lease and as adjusted from time to time under the provisions of the Master Lease, the provisions of which relating to Percentage Rent are incorporated herein by reference. For the purposes of this Sublease, the term "**Gross Income**" shall have the same meaning as attributed to that term in the Master Lease, the provisions of which are incorporated herein by reference.

Subtenant acknowledges receipt of a copy of the provisions of the Master Lease currently in effect dealing with Percentage Rent and Gross Income.

3.3 Additional Rent. In addition to Base Rent and Percentage Rent, Subtenant agrees to pay to Sublandlord as additional rent ("**Additional Rent**"), at times specified in this Sublease: (i) the Common Area Expenses payable as provided in Article 5, and (ii) any other amounts that Subtenant assumes or agrees to pay under the provisions of this Sublease that are owed to Sublandlord, including, without limitation, any and all other sums that may become due by reason of any Default of Subtenant or Subtenant's failure to comply with the agreements, terms, covenants and conditions of this Sublease to be performed by Subtenant.

3.4 Increase in Base Rent Resulting from Increase in Percentage Rental under Master Lease. All Rent (as that term is defined below) received by Sublandlord under this Sublease is included in "gross income" as that term is defined in the Master Lease. Sublandlord is required to pay percentage rent to the City under the Master Lease based on Sublandlord's gross income generated by business conducted on the Master Premises. In the event Master Landlord increases the percentage rent payable under the Master Lease attributable to Rent paid under this Sublease, the Base Rent under this Sublease shall be increased by that amount required for Sublandlord to receive the same net Base Rent after the increase in percentage rent as it received immediately prior to the increase in percentage rent by the City.

3.5 Rent. Base Rent, Percentage Rent and Additional Rent shall together be referred to in this Sublease as "**Rent.**" Rent shall be paid to Sublandlord in lawful money of the United States of America at the office of Sublandlord or to such other person or at such other place as Sublandlord may from time to time designate in writing. All Rent and other monetary obligations shall be paid by Subtenant without notice or demand and without set-off, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction or defense.

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

4. **Security Deposit.** On execution of this Sublease, Subtenant shall deposit with Sublandlord a cash "**Security Deposit**" in the amount of Three Thousand Six Hundred Forty Dollars (\$3,640.00). The Security Deposit shall be held by Sublandlord as security for the timely and faithful performance by Subtenant of all of Subtenant's obligations under this Sublease. Sublandlord may apply all or part of the Security Deposit to any unpaid Rent or other charges due from Subtenant, to cure any other Subtenant Default(s) after expiration of any applicable cure period, or to clean or repair damages to the Subleased Premises upon expiration or earlier termination of this Sublease. If Sublandlord uses any part of the Security Deposit, Subtenant shall restore the Security Deposit to its full amount within ten (10) days after Sublandlord's written request. No interest shall be paid on the Security Deposit. Sublandlord shall not be required to keep the Security Deposit separate from its other accounts, and no trust relationship is created with respect to the Security Deposit. After both (a) the termination of this Sublease and (b) Subtenant's vacation of the Subleased Premises, Sublandlord, within a reasonable time, shall refund or credit to Subtenant (or Subtenant's successor) the unused portion of the Security Deposit and any advance Rent or other advance payments made by Subtenant to Sublandlord after deduction for any purposes permitted by this Section 4.

5. **Common Area Expenses.**

5.1 Payment of Subtenant's Share of Common Area Expenses. Each month during the Term, Subtenant shall pay to Sublandlord, as Additional Rent, one-twelfth (1/12th) of an amount reasonably estimated by Sublandlord to be Subtenant's Pro Rata Share (as defined below) of the total annual Common Area Expenses. Subtenant's "**Pro Rata Share**" is ten per cent (10%), which percentage has been determined by dividing the approximate rentable square footage of the Subleased Premises by the total approximate square footage of all of the buildings in the Master Premises. It is understood and agreed that the square footage figures used to make these calculations may not be strictly calculated pursuant to BOMA standards and are approximations which Sublandlord and Subtenant agree are reasonable and shall not be subject to revision. Sublandlord may adjust its estimate of such expenses at the end of any calendar quarter on the basis of Sublandlord's experience and reasonably anticipated costs.

Following the end of each calendar year (and also after the date of expiration or sooner termination of this Sublease), Sublandlord shall furnish to Subtenant a statement showing in reasonable detail the Common Area Expenses during such calendar year (or portion thereof prior to the expiration or sooner termination of this Sublease). If Subtenant's share of such costs exceeds Subtenant's payments made during the prior calendar year, Subtenant shall pay Sublandlord the deficiency within twenty (20) days after receipt of such statement. If Subtenant's payments of Common Area Expenses during the prior calendar year exceed its actual Pro Rate Share, Subtenant shall be entitled to credit the excess to its next monthly payment(s) of the Pro Rata Share until the credit is exhausted.

5.2 Definition of Common Area Expenses. As used in this Sublease, the term "**Common Area Expenses**" shall include, without limitation, all amounts paid by Sublandlord for the maintenance, repair, replacement, operation and management of the Common Area, together with an administrative fee equal to ten percent (10%) of all such amounts. In addition to those expenses specifically mentioned in Sections 9.1, 10.1, 10.2 and 14.1, below, Common Area Expenses shall include, without limitation, the costs of gardening; landscaping; repaving, resurfacing, and restriping of all parking areas; maintenance of all walkways and stairways; property management; exterior building painting; lighting and other utilities; cleaning; common area trash removal; depreciation and replacement of equipment; insurance on the Common Area; and all real property taxes and/or assessments levied against the Master Premises.

6. **Use.**

6.1 Use. Subtenant shall use the Subleased Premises for new boat and accessory sales, and shall not use the Subleased Premises, or permit or suffer the Subleased Premises to be used, for any other purpose without the prior written consent of Sublandlord, which consent may be withheld in Sublandlord's sole and unfettered discretion.

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

6.3 Insurance Requirements. The insurance to be initially carried by Sublandlord and Subtenant pursuant to the provisions of Article 14 shall be consistent with the actual use of the Subleased Premises. Thereafter, if the use of the Subleased Premises changes to another use permitted under Section 6.1 such insurance shall, to the extent available, be consistent with such changed use. Subtenant shall not do or permit to be done anything which will invalidate or increase the cost of any fire, extended coverage or any other insurance policy covering the Master Premises. Subtenant shall comply with all rules, orders, regulations and requirements of the insurers of the Master Premises. Subtenant shall promptly, upon demand, reimburse Sublandlord for any additional premium charged for any policy by reason of Subtenant's failure to comply with the provisions of this Section.

6.4 Key to Subleased Premises. Subtenant shall deliver to Sublandlord all keys to locks to doors in the Subleased Premises for the purpose of emergency access. Additionally, if requested by Sublandlord, or required by a government agency, Subtenant agrees to maintain a duplicate set of keys in a fire department controlled lock box located on the Subleased Premises or at a central location on the Master Premises as directed by Sublandlord.

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

6.6 Signs. No sign, advertisement or notice which is visible outside the Subleased Premises shall be exhibited, painted or affixed by Subtenant or any part of the Subleased Premises, or on any part of the exterior of the Building, without the prior written consent of Sublandlord, which consent may be withheld in Sublandlord's sole and unfettered discretion. All such signage shall be in compliance with applicable laws. Such signs shall be installed at Subtenant's sole cost, and the cost of removing such signs and repairing the Building at the end of the term of the Sublease shall be paid by Subtenant.

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

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

7. **Common Area.**

7.1 Common Area - Definition. The term "Common Area" is defined as all areas and facilities outside the Subleased Premises and any other sub-tenant's premises and within the exterior boundary line of the Master Premises that are provided and designated by Sublandlord from time to time for the general nonexclusive use of Sublandlord, Subtenant and other subtenant(s) and their respective employees, suppliers, shippers, customers and invitees, including but not limited to common entrances, corridors, stairways and stairwells, public restrooms, mechanical and electrical rooms, parking areas to the extent not otherwise prohibited by this Sublease, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, ramps, driveways, landscaped areas and decorative walls. Sublandlord shall have the right to exclude any portion of the Building and Master Premises other than the Subleased Premises from the Common Area under this Sublease.

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

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

(a) To make changes to the interior and exterior of the Building and to the Common Area, including, without limitation, changes in the location of structures in Common Area, construction of additional buildings and other structures in the Common Area and changes to the size, shape, and appearance of the Common Area, including but not limited to the driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, decorative walls, landscaped areas and walkways; provided, however, Sublandlord shall at all times provide the parking facilities required under this Sublease.

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

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

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

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

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

8. Condition of Subleased Premises.

8.1 No Representation. Subtenant acknowledges that neither Sublandlord nor any agent of Sublandlord has made any representations or warranties, express or implied with respect to (i) the condition of the Subleased Premises, the Building or the Master Premises, (ii) the suitability of the Subleased Premises for Subtenant's purposes (iii) the location, use, design, merchantability, fitness for use for a particular purpose, condition or durability of the Subleased Premises or the Building, (iv) the prospect or ability to make a profit in the operation of a business in the Subleased Premises, (v) the existence of Hazardous Materials (as defined in Section 24.6) in, on or adjoining the Building or the Master Premises, (vi) the quality of the material or workmanship in the Building or the Subleased Premises, (vii) the future use or uses of the Building or the Master Premises, and/or (viii) the continuation of any current business or the prospect for new or additional businesses in the Building, in the Master Premises, or on properties adjacent to or near the Master Premises. All risks incidental to the condition and use of the Subleased Premises shall be borne by Subtenant. Except as expressly provided in this Sublease, **IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE SUBLEASED PREMISES OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, LANDLORD SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.**

SUBTENANT AGREES THAT IT IS TAKING THE SUBLEASED PREMISES IN AN "AS-IS, WHERE-IS" CONDITION WITH ALL FAULTS AND WITH ABSOLUTELY NO REPRESENTATIONS AND WARRANTIES.

8.2 Walk-Through Inspection. Subtenant acknowledges and agrees that at or before the signing of this Sublease, he inspected the Subleased Premises and, as set forth in Section 8.1, above, accepted the Subleased Premises in their then existing condition. On or before the Commencement Date, Sublandlord and Subtenant shall conduct a walk-through inspection of the Premises and prepare a list of those items relating to the Subleased Premises which are not then in substantially the same condition as

existed at the time of the signing of the Sublease. The taking of possession of the Subleased Premises by Subtenant shall establish conclusively that the Subleased Premises existed on the Commencement Date in substantially the same condition as of the date of the signing of the Sublease, except for list items set forth in this list. Sublandlord shall promptly perform such maintenance and repairs as are required to bring the items on the list to a condition substantially the same as existed at the time of the signing of the Sublease.

9. Utilities and Services.

9.1 Utilities Provided. Sublandlord shall furnish to the Subleased Premises reasonable quantities of water, sewer, gas, electricity and trash removal as required for Subtenant's use. The cost of these utilities shall be Common Area Expenses.

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

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

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

10. Repairs and Maintenance.

10.1 Common Area. Sublandlord shall maintain the Common Area in good condition, ordinary wear and tear excepted. The costs for said repair and maintenance shall be a Common Area Expense.

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

10.3 Subtenant's Maintenance Obligations. Except for Sublandlord's obligations pursuant to Section 10.2 above, Subtenant shall, at Subtenant's sole cost and expense, keep the Subleased Premises and every part of the Subleased Premises in good order, condition and repair, and in compliance with all applicable laws, ordinary wear and tear excepted and regardless of the condition of the Subleased Premises on the Commencement Date (except for Sublandlord's obligations to repair under Section 8.2, above, if any). Subtenant shall, upon the expiration or sooner termination of the Term, surrender the Subleased Premises to Sublandlord in good order, condition and repair and in compliance with all

applicable laws. Subtenant's obligations shall include restorations, replacements or renewals, including capital expenditures for restorations, replacements or renewals which will have a useful life beyond the expiration of the Term, when necessary to keep the Subleased Premises and all improvements thereon or a part thereof in good order, condition and repair and in compliance with all applicable laws. Except as expressly set forth in this Sublease, it is intended by the parties hereto that Sublandlord shall have no obligation, in any manner whatsoever, to repair or maintain the Subleased Premises, including the improvements or equipment located therein, whether structural or nonstructural, all of which obligations are intended to be the sole expense of Subtenant, whether or not such repairs, maintenance or restoration shall have a useful life extending beyond the expiration of the Term. Subtenant shall further be responsible for the cost of all alterations and/or repairs to the Subleased Premises required to bring the Subleased Premises into compliance with any law, ordinance or regulation, including, without limitation, the Americans with Disabilities Act. Any such repairs and alterations shall become the property of Sublandlord upon the expiration or earlier termination of this Sublease.

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

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

11. **Alterations.**

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

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

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

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

11.5 Property of Sublandlord. All alterations, decorations, fixtures, equipment, additions and improvements attached to or built into the Subleased Premises, made by either party, shall, unless Sublandlord elects otherwise at the expiration or earlier termination of the Term, become the property of Sublandlord. If Sublandlord elects to have such alterations removed, Subtenant shall do so and shall repair and restore the Subleased Premises to the condition they were in prior to such alterations, all at Subtenant's sole cost.

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

11.7 Personal Property. All articles of Subtenant's personal property, including, but not limited to, detachable machinery and equipment, furniture, fixtures and movable partitions, which are owned by Subtenant and installed by Subtenant at its own expense in the Subleased Premises, shall be and remain the property of Subtenant and may be removed by Subtenant at any time during the term of this Sublease when Subtenant is not in Default hereunder. If Subtenant shall fail to remove all of its personal property from the Subleased Premises at the expiration or earlier termination of the Term, then Sublandlord may, at its option, remove the same in any manner that Sublandlord may deem appropriate and store this personal property without liability to Subtenant for loss thereof or damage thereto. Subtenant agrees to pay Sublandlord, upon demand, any expenses incurred in such removal and storage or Sublandlord may, at its option, without notice, sell this personal property or any of it, at a public or private sale and without legal process, for such price as Sublandlord may obtain; and Sublandlord may apply the proceeds of such sale against any amounts due under this Sublease from Subtenant to Sublandlord and against any expenses incident to the removal, storage and sale of this personal property, with any balance of the sales proceeds delivered to Subtenant. Subtenant agrees that this Sublease constitutes a "security agreement" under the provisions of Section 9203 of the Uniform Commercial Code – Secured Transactions, or any successor statute and, as such, Subtenant grants to Sublandlord a security interest in all Subtenant's personal property described in this Section 11.7, as well as all tenant improvements made to the Subleased Premises pursuant to this Article 11.

12. **Liens.**

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

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

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

13. **Indemnification and Exculpation.**

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

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

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

13.4 Assumption of Risk. Additionally, Sublandlord shall not be liable to Subtenant or any other party, and Subtenant assumes all risk of damage and liability (other than as may be covered by insurance or by a third party), resulting from any defect or malfunction of any Building system or

component of a Building system (such as HVAC, mechanical, plumbing, electrical, waste disposal, or sewer).

13.5 Security Devices. Security devices and services provided for the Building and Master Premises, if any, while intended to deter crime, may not in given instances prevent theft or other criminal acts, and it is agreed that Sublandlord shall not be liable for injuries or losses caused by criminal acts of third parties. The risk that any security device may malfunction or otherwise be circumvented by a criminal is assumed by Subtenant. Subtenant shall, at Subtenant's cost, obtain applicable insurance coverages to the extent Subtenant desires protection against such criminal acts. Sublandlord shall have no continuing obligation to repair, maintain or replace any existing security devices, if any, and may remove any such existing security devices, if any, at any time. Subtenant shall be solely responsible, at its sole expense, to provide a safe and secure environment within the Subleased Premises for its employees, customers, invitees and guests.

14. **Insurance.**

14.1 Insurance on Building. Sublandlord shall carry insurance on the Building, including the Subleased Premises and its improvements, to the extent such is insurable as part of the Building (excluding improvements made to the Subleased Premises made by Subtenant), in an amount equal to full replacement cost (without reference to depreciation taken by Sublandlord upon its books or tax returns), or such greater insurance coverage as Sublandlord's mortgage lender requires Sublandlord to maintain. Such insurance shall provide protection against any peril generally included within the classification "Fire and Extended Coverage," together with insurance against sprinkler damage (if applicable), vandalism and malicious mischief. Sublandlord shall also obtain rental loss insurance for a period of up to one year. Sublandlord, subject to availability thereof at a reasonable premium, may, but is not required to, further insure, as Sublandlord or its lender deems appropriate, against flood and/or earthquake, loss or failure of building equipment, hazardous materials risks, rental loss during the period to repair or rebuild, worker's compensation insurance and fidelity bonds for employees employed to perform services. The deductible limits of the "Fire and Extended Coverage" policy shall not exceed Five Thousand Dollars (\$5,000). Sublandlord shall furnish to Subtenant upon request a copy of said insurance policy. The cost of all such insurance policies shall be Common Area Expenses.

14.2 Liability Insurance. Subtenant, at its own cost, shall procure and continue in effect, from the Commencement Date or the at such time as Subtenant occupies the Subleased Premises, whichever first occurs, and continuing throughout the Term and thereafter until Subtenant has fully and finally surrendered the Subleased Premises to Sublandlord, comprehensive public liability insurance with limits of not less than Three Million Dollars (\$3,000,000) per occurrence for death, bodily injury or property damage with respect to the Subleased Premises and insurance on all of its personal property. The deductible amounts of such policy of insurance shall not exceed Five Thousand Dollars (\$5,000).

14.3 Additional Insureds. The aforesaid insurance required of Subtenant shall name as additional insureds the City, Sublandlord, their officers, directors, shareholders, partners, members and lenders, and Sublandlord's property manager, agents and representatives for the Subleased Premises. Said insurance shall be with companies having a policyholder rating of not less than A+ and financial category rating of Class IX in "Best's Insurance Guide." Subtenant shall cause any insurance companies issuing policies to Subtenant to furnish certificates evidencing such coverage to Sublandlord. No such policies shall be cancelable or subject to reduction of coverage or other modification or cancellation except after thirty (30) days prior written notice to Sublandlord from the insurer. All such policies shall be written as primary policies, not contributing with and not in excess of the coverage which Sublandlord may carry. Any of Subtenant's policies may be in the nature of a "blanket policy" which specifically provides that the amount of insurance shall not be prejudiced by other losses covered by the policy. Subtenant shall, at

least twenty (20) days prior to the expiration of any such policies, furnish Sublandlord with renewals or binders. Subtenant agrees that if Subtenant fails to procure and maintain such insurance, Sublandlord may (but shall not be required to) procure said insurance on Subtenant's behalf and charge Subtenant the premiums for any such policies, together with a ten percent (10%) handling charge, payable upon demand.

14.4 Fixtures and Other Items. Subtenant assumes the risk of damage to improvements made to the Subleased Premises by Subtenant (even if made with the consent and approval of Sublandlord), as well as any fixtures, goods inventory, merchandise, equipment, and personal property of any kind owned or leased by Subtenant and maintained in the Subleased Premises. Sublandlord shall not be liable for injury to Subtenant's operations or any loss of income therefrom relative to damage to such items, all as more particularly set forth herein. Subtenant, at Subtenant's cost, shall carry such insurance as Subtenant desires for Subtenant's protection with respect to the foregoing personal property and tenant improvements, as well as business interruption losses and other loss of income.

14.5 Lender and Others. If any policy of insurance is to name Sublandlord as additional insured, Subtenant shall, upon written request of Sublandlord, also designate as an additional insured, and furnish certificates evidencing Sublandlord as an additional insured to, (i) any lender to Sublandlord holding a security interest in the Building and/or (ii) the City.

14.6 Waiver of Subrogation. Sublandlord and Subtenant each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, on account of loss or damage occasioned to such waiving party or its property or the property of others under its control to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which either party may have in force at the time of such loss or damage, such waivers to continue as long as their respective insurers to permit. Any termination of such a waiver shall be by written notice of circumstances as hereinafter set forth. Sublandlord and Subtenant, upon obtaining the policies of insurance required or permitted under this Sublease, shall give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Sublease. If such policies are unobtainable with such waiver or obtainable only at a premium over that chargeable without such waiver, the party seeking such policy shall notify the other thereof, and the latter shall have ten (10) days thereafter to either (i) procure such insurance in companies reasonably satisfactory to the other party or (ii) agree to pay such additional premium. If neither (i) nor (ii) are done, this Section 14.6 shall have no effect during such time as such policies are unobtainable or the party in whose favor a waiver of subrogation is desired shall refuse to pay the additional premium. If such policies shall at any time be unobtainable, but subsequently shall be obtainable, neither party shall be subsequently liable for a failure to obtain such insurance until a reasonable time after notification thereof by the other party. If the release of either Sublandlord or Subtenant, as set forth in the first sentence of this Section 14.6 shall contravene any law with respect to exculpatory agreements, the liability of the party in question shall be deemed not released but shall be secondary to the other's insurer.

14.7 Increases in Insurance. At reasonable times, Sublandlord may require insurance policy limits to be raised to conform with reasonable requirements of Sublandlord's lender and/or the Port Authority, or to bring coverage limits to the level then being required of similar tenants of similar properties; provided, however, that Sublandlord may, in any event, require insurance policy limits to be increased in proportion to any increase in the Consumer Price Index from the date of this Sublease to the date of the requested adjustments.

15. **Damage or Destruction.**

15.1 Destruction Due to Risk covered by Insurance.

(a) If, during the Term, the Subleased Premises or the Building are totally or partially destroyed from a risk covered by the insurance described in Section 14.1, rendering the Subleased Premises totally or partially inaccessible or unusable, Sublandlord shall restore the Subleased Premises or the Building to substantially the same condition as they were in immediately before destruction, but not including any leasehold improvements made by Subtenant. Such destruction shall not terminate this Sublease. If the existing laws do not permit restoration and repair of the Building or the Subleased Premises, either party can terminate this Sublease immediately by giving notice to the other party.

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

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

15.2 Destruction Due to Risk Not Covered by Insurance.

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

(b) The provisions of Section 15.2(a) notwithstanding, if the cost of restoration exceeds five percent (5%) of the then replacement value of the Subleased Premises or the Building that are destroyed, Sublandlord can elect to terminate this Sublease by giving notice to the Subtenant within fifteen (15) days after determining the restoration cost and replacement value.

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

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

15.3 Extent of Sublandlord's Obligation to Restore. If Sublandlord is obligated to or elects to repair or restore as herein provided, Sublandlord shall be obligated to repair or restore only those portions of the Building and the Subleased Premises as existed on the Commencement Date and for which insurance proceeds are available to pay the costs to repair or restore; the repair and restoration of Subtenant's special tenant improvements or tenant's personal property shall be the obligation and sole expense of Subtenant.

15.4 Release. Upon any termination of this Sublease under any of the provisions of this Article 15, the parties each shall be released from further obligation to the other under this Sublease for Rent and other claims arising from and after the date of termination. However, termination of this Sublease shall not relieve either party from any obligation to the other existing prior to the date of termination, which obligations shall remain in full force and effect.

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

15.6 Damage at End of Term. Notwithstanding anything to the contrary contained in this Article 15, Sublandlord shall have no obligation whatsoever to repair, reconstruct or restore the Subleased Premises when the damage resulting from any casualty covered under this Article occurs during the last twelve (12) months of the Term. In the event Sublandlord elects not to repair, reconstruct or restore the Subleased Premises when the damage resulting from any casualty covered under this Article occurs during the last twelve (12) months of the term of this Sublease, Subtenant may, by written notice delivered to Sublandlord within ten (10) days after receipt by Subtenant of Sublandlord's notice of its election not to repair, reconstruct or restore the Subleased Premises, elect to terminate this Sublease.

16. Eminent Domain.

16.1 Taking. If the Subleased Premises or any material portion of the Subleased Premises are taken under the power of eminent domain or similar governmental action, either party may terminate this Sublease effective as of the date possession is required to be surrendered to the condemning authority.

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

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

17. Defaults and Remedies.

17.1 Late Charge. Late payment by Subtenant to Sublandlord of Rent or other sums due will cause Sublandlord to incur costs not contemplated by this Sublease, the exact amount of which is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, attorneys' charges, late payment charges on a mortgage, and so forth. In the event that Subtenant shall be in Default for late payment under Section 17.4(a) hereof for more than three (3) days after notice from Sublandlord, subtenant shall pay to Sublandlord a late charge in an amount equal to ten percent (10%) of the unpaid Rent for each month that an installment of Rent remains unpaid, which Sublandlord and Subtenant agree is not a penalty but is a reasonable estimate of the expenses Sublandlord may incur as a result of such late payment. In the event of any such late payment, in addition to the foregoing late charge, the amount unpaid shall bear interest at Bank of America's "reference rate" plus three percent (3%) per annum. Such interest shall be calculated from the date such amount was due and payable until the same shall have been fully paid.

17.2 No Waiver. No payment by Subtenant or receipt by Sublandlord of a lesser amount than that due shall be deemed to be other than on account of the amount due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Sublandlord may accept such check or payment without prejudice to Sublandlord's right to recover the balance or pursue any other remedy provided. If at any time a dispute shall arise as to any amount or sum of money to be paid by Subtenant to Sublandlord, Subtenant shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and Subtenant shall have the right to institute suit for recovery of the payment paid under protest.

17.3 Performance by Sublandlord. If Subtenant fails to perform any other act on its part to be performed hereunder, Sublandlord may, without waiving or releasing Subtenant from any obligations of Subtenant, perform such act on behalf of Subtenant. Any costs incurred by Sublandlord in performing the obligations of Subtenant under this Section 17.3 shall be paid by Subtenant as Additional Rent within ten (10) days of the date of an invoice for such costs.

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

- (a) The failure by Subtenant to make any payment of Rent, as and when due;
- (b) The failure by Subtenant to observe or perform any obligation other than described in Section 17.4(a) above, to be performed by Subtenant where such failure shall continue for a period of thirty (30) days after written notice thereof from Sublandlord to Subtenant. Such notice shall be in lieu of, and not in addition to, any notice required under California Code Of Civil Procedure 1161; provided that, if the nature of Subtenant's Default is such that it reasonably requires more than thirty (30) days to cure, then Subtenant shall not be deemed to be in Default if Subtenant shall commence such cure within said thirty (30) day period and thereafter diligently prosecute the same to completion;
- (c) Subtenant files a voluntary petition under any section of the Bankruptcy Code of the United States;
- (d) Subtenant makes a voluntary assignment for the benefit of creditors;
- (e) A receiver, trustee or custodian is appointed to, or does, take title, possession or control of all, or substantially all, of Subtenant's assets, or any involuntary petition is filed

against the Subtenant under any chapter of the Bankruptcy Code of the United States, and such petition or receiver, trustee or custodian is not dismissed within thirty (30) days;

(f) Subtenant's interest in this Sublease is attached, executed upon or otherwise judicially seized and such action is not released within thirty (30) days of the action;

(g) Subtenant fails to comply fully with all provisions of Article 24, below, concerning Hazardous Materials; or

(h) Subtenant fails to pay Rent, fails to pay any other monetary obligation arising under this Sublease, or fails to perform any obligation or duty under the Existing Subleases which arose prior to the Commencement Date.

Notices given under this Section 17.4 shall specify the alleged Default and shall demand that Subtenant perform the provisions of this Sublease within the applicable period of time, or quit the Subleased Premises. No such notice shall be deemed a forfeiture or a termination of this Sublease unless Sublandlord elects otherwise in such notice.

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

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

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

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

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

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

As used in Sections 17.5(a) and 17.5(b) above, "worth at the time of award" shall be computed by allowing interest at the rate specified in Section 17.1 above. As used in Section 17.5(c)

above, the "worth at the time of award" shall be computed by determining the present value of such amount using the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percentage point.

17.6 Right of Re-Entry. In the event of a Default by Subtenant, and at any time thereafter, with or without terminating this sublease, and with or without notice or demand and without limiting Sublandlord in the exercise of any right or remedy which Sublandlord may have, Sublandlord shall have the immediate right to re-enter and remove all persons and property, and such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Subtenant, all without service of notice or resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. No such re-entry shall be considered or construed to be a forcible entry by Sublandlord. If Sublandlord does not elect to terminate this Sublease as provided in this Section, then Sublandlord may, from time to time, recover all Rent as it becomes due under this Sublease pursuant to California Civil Code 1951.4. At any time thereafter, Sublandlord may elect to terminate this Sublease and to recover damages to which Sublandlord is entitled.

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

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

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

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

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

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

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

17.10 Right to Cure. Sublandlord shall not be in default hereunder unless Sublandlord fails to perform an obligation required of Sublandlord within a reasonable time, but in no event later than

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

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

18. Assignment or Subletting.

18.1 Assignment. Except as provided in this Article 18, Subtenant shall not, either voluntarily or by operation of law, assign, sell, hypothecate or transfer this Sublease or permit all or any part of the Subleased Premises to be used or occupied as work space, storage space, mailing privileges, concession or otherwise by anyone other than Subtenant, Subtenant's members or Subtenant's employees (all of these events collectively referred to as an "Assignment"), without the prior written consent of Sublandlord in each instance, which consent may be withheld by Sublandlord in its sole and absolute discretion. A transfer of more than fifty percent (50%) of the equity ownership of Subtenant during any two-year period to a party (or to an affiliated group of parties) shall also constitute a prohibited Assignment; provided, however, this provision shall not be applicable if such transfers occurred on a public stock exchange. If Sublandlord consents to an Assignment, Subtenant and its successors and assigns, and any guarantors of Subtenant's obligations under this Sublease, shall not be released from liability under this Sublease. Subtenant acknowledges that an Assignment must be approved by the City, as evidenced by formal resolution.

As a condition of Sublandlord's consent to an Assignment, the assignee and Subtenant shall execute an agreement in favor of Sublandlord and in a form acceptable to Sublandlord, pursuant to which the assignee shall agree to faithfully perform and assume and be bound by all of the terms, covenants, conditions, provisions and agreements of this Sublease. As used in this Article 18, the term "assignee" shall include the person or entity who is the transferee in any form of Assignment, as defined above. In addition, Subtenant and the assignee shall, upon not less than three (3) days prior written notice from Sublandlord, execute, acknowledge and deliver to Sublandlord a statement in writing (a) certifying that this Sublease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Sublease as so modified is in full force and effect), and the date to which the Rent and other charges are paid in advance, if any; (b) acknowledging that there are not, to Subtenant's and the assignee's knowledge, any uncured defaults under this Sublease on the part of Sublandlord or Subtenant, or specifying such defaults if any are claimed; (c) setting forth the Commencement Date and Expiration Date; and (d) certifying as to such other matters as Sublandlord may reasonably request. Any guarantor of this Sublease shall execute a reaffirmation of such guarantee in a form reasonably acceptable to Sublandlord agreeing to continue to be a guarantor of the terms and conditions of this Sublease following an Assignment.

18.2 Transfer Premium. As a reasonable condition to Sublandlord's consent to any Assignment, Subtenant shall pay to Sublandlord fifty percent (50%) of any Transfer Premium, as defined in subsection 18.2.1, below.

18.2.1 Definition of Transfer Premium. "Transfer Premium" means all Rent and other consideration actually received by Subtenant from the assignee (including key money and bonus money and any payment in excess of fair market value for services rendered by Subtenant to the assignee, or assets, fixtures, inventory, equipment, or furniture transferred by Subtenant to the assignee in connection with the Assignment (collectively, the "Assignment Rent"), after deducting:

- a. The Rent payable by Subtenant under this Lease (excluding the Transfer Premium) for the Subleased Premises;
- b. Reasonable leasing commissions paid by Subtenant; and,
- c. Other reasonable out-of-pocket costs paid by Subtenant (including attorneys' fees, advertising costs, and expenses of readying the Subleased Premises for occupancy by the assignee).

The costs referred to in subparagraphs (a) through (d) are referred to as the "Transfer Costs."

18.2.2 Monthly Payment of Transfer Premium. Subtenant shall pay the Transfer Premium to Sublandlord on a monthly basis, as Additional Rent under this Sublease.

18.2.3 Audit of Transfer Premium. Subtenant shall allow Sublandlord to review and audit Subtenant's books and records for the purpose of verifying Subtenant's calculation of the Transfer Premium, Assignment Rent, and Transfer Costs.

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

18.4 Unapproved Transfer Void. Any Assignment not in compliance with the provisions of this Article 18 shall be void, and shall, at the option of Sublandlord, be a breach of this Sublease.

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

18.6 No Waiver. Notwithstanding any Assignment, Subtenant shall remain fully and primarily liable for the payment of all Rent and other sums due, or to become due, hereunder, and for the full performance of all other terms, conditions and covenants to be kept and performed by Subtenant hereunder. The acceptance of Rent or any other sum due hereunder, or the acceptance of performance of

any other term, covenant or condition hereof, from any other person or entity shall not be deemed to be a waiver of any of the provisions of this Sublease or a consent to any Assignment of the Subleased Premises.

18.7 Assignment Fee. The Assignment Notice shall be accompanied by a "Transfer Fee" in the amount of \$1,000.00 payable to Sublandlord.

18.8 Sublandlord's Option to Recapture the Space. Despite any other provision of this Article 18, Sublandlord has the option to recapture the Subleased Premises, by written notice to Subtenant ("Recapture Notice") within ten (10) days after receiving an Assignment Notice from Subtenant. A timely Recapture Notice terminates this Sublease and Subtenant's obligations regarding the Subleased Premises for the remaining Term and as of the Assignment Date. The Recapture Notice shall be void, however, if Subtenant notifies Sublandlord, within ten (10) days after receipt of the Recapture Notice, that Subtenant withdraws the Assignment Notice. If Sublandlord declines or fails timely to elect to recapture the Subleased Premises, Sublandlord shall have no further right to the Subleased Premises under this Section 18.9 unless it becomes available again in connection with any subsequently proposed Assignment.

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

- a. Those acts specified in the Bankruptcy Code or other laws as included within the meaning of adequate assurance, even if this Sublease does not concern a facility described in such laws;
- b. A prompt cash payment to compensate Sublandlord for any monetary Defaults or damages arising from a breach of this Sublease;
- c. A cash deposit in an amount at least equal to the Security Deposit, if any, originally required at time of execution of this Sublease;
- d. The creditworthiness and desirability, as a tenant, of the person assuming this Sublease or receiving an assignment of this Sublease, at least equal to Sublandlord's customary and usual creditworthiness requirements and desirability standards in effect at the time of the assumption or assignment; and
- e. The assumption or assignment of all of Subtenant's interest and obligations under this Sublease.

20. **Subordination and Attornment.**

20.1 Subordination. This Sublease shall be subject and subordinate to the lien of any mortgage, deed of trust or lease in which Sublandlord is tenant, now or hereafter in force against the Subleased Premises, and to all advances made or hereafter to be made upon the security thereof without the necessity of the execution and delivery of any further instruments on the part of Subtenant to effectuate such subordination; provided, however, that for the lien of any mortgage, deed of trust or lease executed by Sublandlord after the date of this Sublease to be subordinate to this Sublease, the holder of

any such mortgage, deed of trust or lease shall execute, acknowledge and deliver to Subtenant a non-disturbance agreement providing that so long as Subtenant performs all of its obligations under the Sublease, Subtenant's quiet enjoyment and use of the Subleased Premises shall not be disturbed.

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

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

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

21. **Surrender.**

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

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

21.3 No Merger. The voluntary or other surrender of any ground or underlying lease that now exists or may hereafter be executed affecting the Building or Subleased Premises or a mutual cancellation thereof or of Sublandlord's interest therein, shall not work a merger and shall, at the option of the successor of Sublandlord's interest in the Building or Subleased Premises, operate as an assignment of this Sublease.

22. **Holding Over.**

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

22.2 Holding Over without Consent. If Subtenant remains in possession of the Subleased Premises after the expiration or earlier termination of the Term hereof without the express

written consent of Sublandlord, Subtenant shall become a tenant at sufferance upon all the terms of this Sublease applicable to a tenant at sufferance, except that the monthly installments of Base Rent shall be equal to one hundred fifty percent (150%) of the monthly installment of the Base Rent in effect during the immediately preceding thirty (30) days.

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

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

23. Taxes on Subtenant's Property.

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

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

24. Hazardous Materials.

24.1 Prohibition/Compliance. Subtenant, at its sole cost, shall comply with all federal, state and local laws, statutes, ordinances, codes, regulations and orders relating to the receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release and disposal of any Hazardous Material as defined in this Article 24 in or about the Subleased Premises or the Building. Subtenant shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept or used in or about the Subleased Premises by Subtenant, its agents, employees, contractors or invitees in a manner or for a purpose prohibited by any federal, state or local law, rule or regulation. The disposal of Hazardous Material shall be in approved containers and removed from the Subleased Premises by duly licensed carriers. Subtenant shall immediately provide Sublandlord with telephonic notice, which shall promptly be confirmed by written notice, of any and all spillage, discharge, release and disposal of Hazardous Materials onto or within the Subleased Premises or the Building, which by law must be reported to any federal, state or local agency, and any injuries or damages resulting directly or indirectly therefrom. A failure of Subtenant to give to Sublandlord the notices required in this Section 24.1 shall constitute a Default under this Sublease. Further, Subtenant shall deliver to Sublandlord each and every notice or order received from any federal, state or local agency concerning Hazardous Materials and the possession, use and/or disposal thereof promptly upon receipt of each such notice or order. Subtenant shall be responsible for and shall indemnify, protect, defend, and hold harmless Sublandlord and its agents, employees, representatives, directors and officers from any and all claims, costs, penalties, fines, liability and losses, including without limitation, (i) temporary or permanent diminution in value of the Subleased Premises or the Building, (ii) damages for the temporary or permanent loss of restriction on use of rentable or usable space or of any amenity of the Subleased Premises or the Building, and (iii) sums paid in settlement of claims, consultant fees and expert fees, liabilities, attorneys' fees, damages, injuries, causes of action, judgments and expenses, which arise during or after the Term of this Sublease and which (a) result from Subtenant's use and occupancy of the Subleased Premises, or (b) result from

Subtenant's receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release or disposal of Hazardous Materials in, upon or about the Subleased Premises or the Building. The indemnifications of Sublandlord and indemnities by Subtenant above include, to the extent Subtenant is responsible for such costs and expenses under the provisions above, without limiting the generalities thereof, reasonable costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work lawfully required by any federal, state or local governmental agency or political subdivision because of any Hazardous Materials present in the soil, subsoil, ground water, or elsewhere at, on or under the Subleased Premises or the Building.

24.2 Termination of Sublease. Notwithstanding the provisions of this Article 24, Sublandlord shall have the right to terminate the Sublease in the event that (i) Subtenant uses the Subleased Premises for the generation, storage, use, treatment or disposal of Hazardous Material in a manner or for a purpose prohibited by applicable law (unless Subtenant is diligently pursuing compliance therewith), (ii) Subtenant has been required by any governmental authority to take remedial action in connection with Hazardous Material contaminating the Subleased Premises or the Building if the contamination resulted from Subtenant's action or use of the Subleased Premises and such remedial action has a material adverse effect on Sublandlord, the Subleased Premises or the Building, or (iii) Subtenant is subject to an enforcement order issued by any governmental authority in connection with the use, disposal or storage of a Hazardous Material on the Subleased Premises and such enforcement order has a material adverse effect on Sublandlord, the Subleased Premises or the Building. Each of the foregoing events shall be deemed to be a material Default by Subtenant under this Sublease.

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

24.4 Sublandlord's Right to Perform Tests.

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

24.4.2 Upon the expiration or upon any early termination of this Sublease, Subtenant shall furnish to Sublandlord, at Subtenant's sole cost, a report and certification from a qualified environmental engineer, verifying that the Subleased Premises are free from any Hazardous Materials or

contamination in excess of legally permissible levels. If said report indicates that there are any impermissible levels of Hazardous Materials on the Subleased Premises, then Subtenant shall pay for all costs necessary to clean up and remedy said impermissible levels of Hazardous Materials; and Subtenant shall also continue to pay Rent for the Subleased Premises until such time as the impermissible levels of Hazardous Materials are cleaned up and remedied.

24.5 Survival of Subtenant's Obligations. Subtenant's obligations under this Article 24 shall survive the termination of this Sublease. During any period of time employed by Subtenant after the termination of this Sublease to complete the removal from the Subleased Premises or the Building of any such Hazardous Materials, Subtenant shall continue to pay the full Rent in accordance with this Sublease.

24.6 Definition of "Hazardous Material". As used herein, the term "**Hazardous Material**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States of America. The term "Hazardous Materials" shall also mean toxic or hazardous substances, including without limitation, asbestos or any substance containing asbestos and deemed hazardous under any Hazardous Material Law (defined below), the group of organic compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, chemicals known to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions or related materials and any items included in the definition of hazardous or toxic waste, materials or substances under any law relating to environmental conditions and industrial hygiene, including without limitation, the Resource Conservation and Recovery Act of 1976 ("**RCRA**"), 42 U.S.C. § 6901 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**"), 42 U.S.C. §§ 9601 - 9657, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("**SARA**"); the Hazardous Materials Transportation Act, 49 U.S.C. § 6901, *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*; the Clean Air Act, 42 U.S.C. §§ 741 *et seq.*, the Clean Water Act, 33 U.S.C. § 7401, *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 - 2629; the Safe Drinking Water Act, 42 U.S.C. §§ 300f - 300j; the Carpenter-Presley-Tanner Hazardous Substances Account Act; the Hazardous Waste Control Act; the Porter-Cologne Water Quality Control Act; and all similar federal, state and local environmental statutes, ordinances, and the regulations, orders, decrees now or hereafter promulgated thereunder (collectively the "**Hazardous Material Laws**").

24.7. Article Binding on Parties Related to Subtenant. For the purposes of this Article 24, the term "Subtenant" shall include Subtenant and its shareholders, members, partners, directors, officers, agents, employees, invitees, sub-subtenants, assigns, and guests, as well as their successors and assigns.

25. **Miscellaneous.**

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

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

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

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

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

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

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

25.8 Independent Counsel. Subtenant and Sublandlord each acknowledge that: (i) they have had the opportunity to be represented by independent counsel in connection with this Sublease; and (ii) this Sublease is the result of negotiations between Sublandlord and Subtenant and the advice and assistance of their respective counsel. The fact that this Sublease was prepared by Sublandlord's counsel as a matter of convenience shall have no impact or significance. Any uncertainty or ambiguity in this Sublease shall not be construed against Sublandlord because Sublandlord's counsel prepared this Sublease in its final form.

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

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

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

For Rent Payment and Notices to Sublandlord:

Driscoll Mission Bay
Attn: Ms. Mary-Carol Driscoll

1500 Quivira Way
San Diego, California 92109

For Notices to Subtenant:

AA Marine, Inc.
Attn: Bob Aronson
957 Maryland Drive
Vista, CA 92083

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

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

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

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

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

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

25.17 Real Estate Brokers; Finders. Subtenant and Sublandlord each represent to the other that they have not entered into any agreement or incurred any obligation in connection with this transaction that might result in the obligation to pay a brokerage commission or finder's fee to any broker, finder or other person. Each party agrees to defend, indemnify and hold the other party harmless from and against any liability, damages, claim or demand by any other broker or other person for bringing about this Sublease who claims to have dealt with such indemnifying party, including any expenses (including reasonable attorney fees) incurred in defending any such claim or demand.

25.18 Attorneys' Fees. If either party hereto becomes a party to any litigation concerning this Sublease (including any bankruptcy proceeding), the Subleased Premises, or the Building, by reason of any act or omission of the other party or its authorized representatives, and not by any act or omission of the party that becomes a party to that litigation or any act or omission of its authorized representatives, the party that causes the other party to become involved in the litigation shall be liable to

that party for reasonable attorneys' fees and court costs incurred by it in the litigation. If either party hereto commences an action against the other party arising out of or in connection with this Sublease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

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

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

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

25.22 Limitation of Sublandlord's Liability. If Sublandlord is a limited partnership or joint venture, the limited partners of such partnership shall not be personally liable and no limited partner of Sublandlord shall be sued individually or named individually as a party in any suit or action or service or process be made against any limited partner of Sublandlord. If Sublandlord is a corporation or limited liability company, the shareholders, members, directors, officers, managers, employees and/or agents of such corporation shall not be personally liable and no shareholder, member, director, officer, manager, employee or agent of Sublandlord shall be sued or named as a party in any suit or action or service or process be made against any shareholder, member, director, officer, manager, employee or agent of Sublandlord. No limited partner, shareholder, director, employee or agent of Sublandlord shall be required to answer or otherwise plead to any service of process and no judgment will be taken or writ of execution levied against any limited partner, shareholder, member, director, officer, manager, employee or agent of Sublandlord. Each of the covenants and agreements of this Section 25.22 shall be applicable to any covenant or agreement either expressly contained in this Sublease or imposed by statute or by common law.

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

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

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

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

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

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

28. **Right To Terminate.** Notwithstanding anything in this Sublease to the contrary, Sublandlord and/or Subtenant shall have the right to terminate this Sublease before expiration of the Term

by giving written notice of termination to Subtenant and/or Sublandlord not less than thirty (30) days before the effective date of the termination (the "Termination Date"). The Termination Date shall be specified in Sublandlord's and/or Subtenant's termination notice. In the event that the Termination Date is other than the last day of a calendar month, Rent for the partial last month shall be prorated on the basis of a thirty (30) day month and shall be due and payable on the first day of such month.

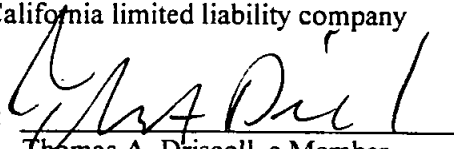
IN WITNESS WHEREOF, the parties hereto have executed this Sublease as of the dates set forth below next to their respective signatures:

Date of execution:

2/28, 2007

Sublandlord:

DRISCOLL MISSION BAY LLC,
a California limited liability company

By: 

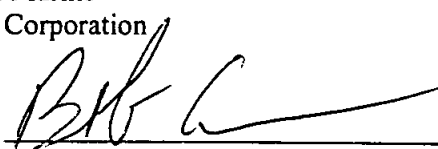
Thomas A. Driscoll, a Member

Date of execution:

2/22, 2007

Subtenant:

AA Marine
a S Corporation

By: 

Bob Aronson

Its: President

Exhibit A

Master Lease

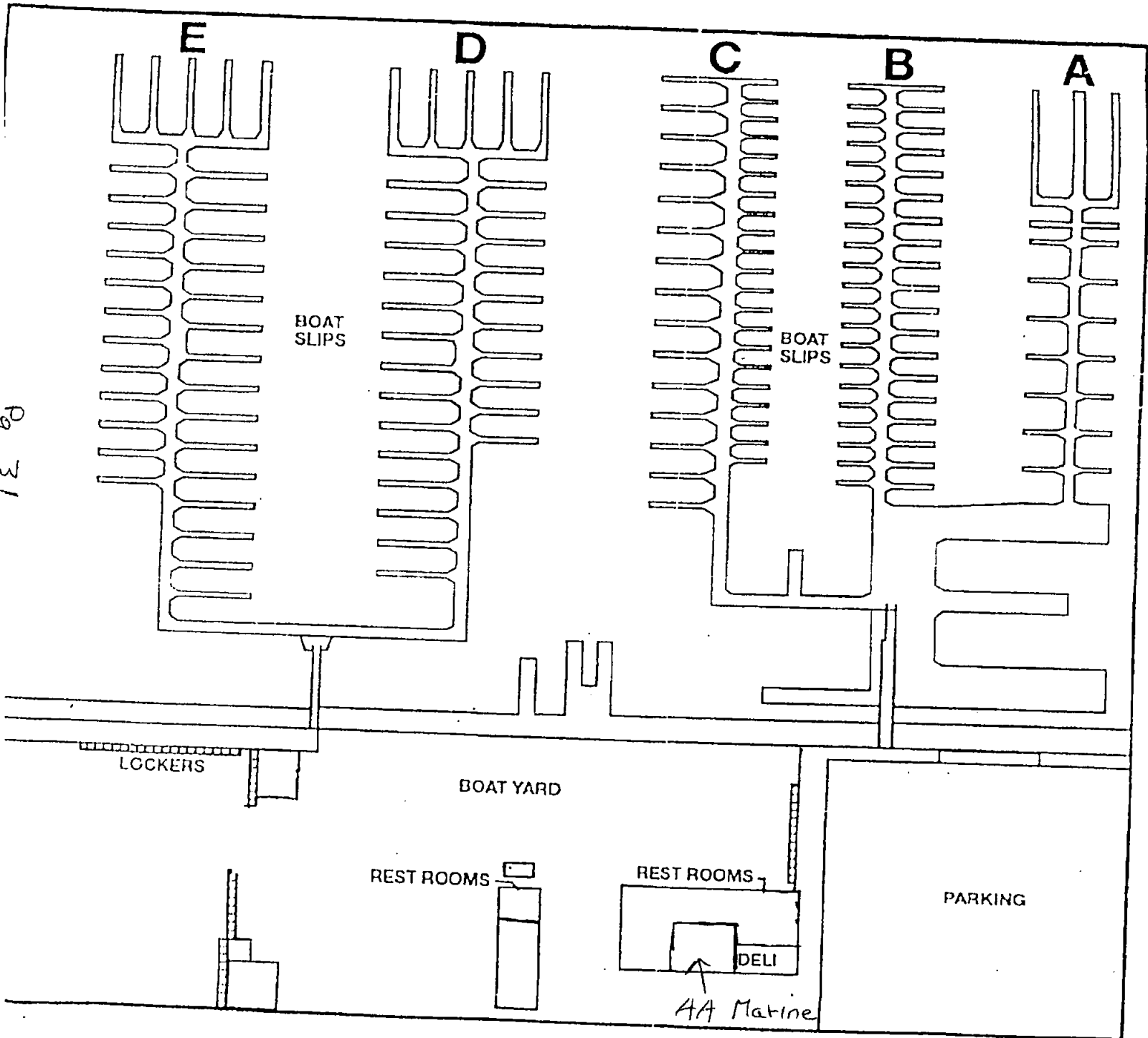
[to be attached]

Driscoll Mission Bay

Exhibit "B"

1500 Quivira Way
San Diego
California
92109-8303

Fx (619) 221-8458
Ph (619) 221-8456
www.driscoll-boats.com



pg 31

FIRST ADDENDUM TO SUBLEASE

This First Addendum to Sublease ("**First Addendum**") is made as of March 1, 2007 by and between Driscoll Mission Bay LLC, a California limited liability company ("**Sublandlord**") and AA Marine ("**Subtenant**").

Sublandlord and Subtenant entered into that certain sublease ("**Sublease**") of even date for the Subleased Premises located in the City of San Diego, California, as more fully described in the Sublease.

Sublandlord and Subtenant agree that notwithstanding anything contained in the Sublease to the contrary, the provisions set forth below shall be deemed to be a part of the Sublease and shall supercede, to the extent appropriate, any contrary provision in the Sublease. References in this First Addendum to the term "**Sublease**" shall be construed to mean the Sublease as amended and supplemented by this First Addendum. All capitalized terms used in this First Addendum, unless specifically defined in this First Addendum, shall have the same meaning attributed to those terms in the Sublease.

AGREEMENT

1. Master Lease. As set forth in Section 27 of the Sublease, Subtenant and Sublandlord agree that the terms and conditions of the Master Lease are incorporated herein by reference, and shall, as between Sublandlord and Subtenant, constitute the terms, covenants, conditions, and provisions of this Sublease, except to the extent that they are inapplicable to, inconsistent with, or modified by the provisions of this Sublease. Subtenant shall strictly comply with each applicable term and condition of the Master Lease. Any breach by Subtenant of any of the terms and conditions of the Master Lease shall be deemed a breach by Subtenant of the Sublease. Without limitation, Subtenant specifically acknowledges that it has reviewed and will comply with the following provisions of the Master Lease:

1.1 Section 14 of the Master Lease states:

"14. NON-DISCRIMINATION: Lessee agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, physical handicap or medical condition in Lessee's use of the premises, including, but not limited to, the providing of goods services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment."

1.2 Section IV(B)(4) of the Master Lease states:

"4. AFFIRMATIVE ACTION: Lessee agrees to take affirmative action to improve employment opportunities of minorities and women. When applicable, Lessee agrees to abide by the Affirmative Action Program for Lessees as it now exists or is hereafter amended. A copy of the program, effective as of the date of this agreement, is on file in the Office of the City Clerk as Document No. 746205 and by this reference is incorporated herein. Minorities are presently defined as Mexican-American, Black, Filipino, American Indian and Asian/Oriental. The goal of this program shall be the attainment

of the employment of minorities and women in all areas of employment in a total percentage of employment approximately equal to the total level of minority and women employment as established by the City for its Affirmative Action Program each year.

2. Effectiveness of Sublease. Except as and to the extent modified by this First Addendum, all of the provisions of the Sublease shall remain in full force and effect.

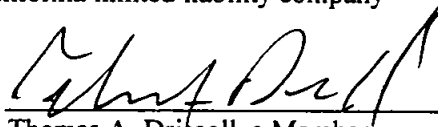
Date of execution:

2/28, 2007

Sublandlord:

DRISCOLL MISSION BAY LLC,
a California limited liability company

By:


Thomas A. Driscoll, a Member

Date of execution:

2/22, 2007

Subtenant:

AA Marine
a S Corporation

By:


Bob Aronson

Its: President

SECURITY AGREEMENT

THIS SECURITY AGREEMENT ("Agreement") is made at San Diego, California, effective as of March 1, 2007, by and between AA Marine ("Debtor") and DRISCOLL MISSION BAY LLC, a California limited liability company ("Secured Party") who agree as follows:

1. **Grant.** Debtor hereby grants to Secured Party an irrevocable security interest in any and all of the Collateral, as that term is defined below, pursuant to the terms and conditions of this Agreement. Debtor represents and warrants that Debtor is (and as to any Collateral acquired hereafter) agrees and warrants that Debtor will at all times be and remain, either the sole owner of or the sole person in possession of, the Collateral, free from any lien, security interest, or other claim, excepting only the security interest granted by this Agreement.

2. **Attachment.** The security interest hereby created shall attach immediately upon execution of this Agreement by Debtor and shall secure the Debtor's obligations under a sublease and attached first addendum to sublease of even date (collectively, the "**Sublease**") in which Driscoll Mission Bay LLC is the Sublandlord and Debtor is the Subtenant, for that certain subleased premises ("**Subleased Premises**") located in the City of San Diego, California and more fully described in the Sublease. The terms and conditions of the Sublease are incorporated in this Agreement by reference. The Sublease evidences value given by the Secured Party to Debtor and Debtor acknowledges that this Agreement constitutes a "security agreement" under the provisions of Section 9203 of the Uniform Commercial Code B Secured Transactions, or any successor statute.

3. **Description.** As set forth in the Sublease, certain personal property, furniture, fixtures and equipment are a part of the Subleased Premises leased to Debtor by the Secured Party and constitutes part of the Collateral secured by this Agreement. For the purposes of this Agreement, the term "**Collateral**" shall mean all goods and tangible personal property (including all appliances, furniture, furnishings, fittings, machinery, fixtures, tools, inventory, materials, supplies, and equipment) now or hereafter located or installed on or attached or affixed to the Subleased Premises, or used, necessary for use, or intended for use in connection with or otherwise relating in any way to the Subleased Premises, including all goods and tangible personal property (including all appliances, furniture, furnishings, fittings, machinery, fixtures, tools, inventory, materials, supplies, and equipment) for providing gas, light, heat, water, air-conditioning, ventilation, shade, refrigeration, laundry, food preparation, food service, dishwashing, garbage disposal, trash removal, fumigation, pest control, vacuuming, cleaning, window washing, telecommunications, computer, safety, security, alarm, maintenance, decoration, recreation, entertainment, or other utilities, services, facilities, or guest, tenant, visitor, or other accommodations of any kind at or for the Subleased Premises. Collateral shall also include any replacements of Collateral existing at the time of the execution of this Agreement and any additions after the date of this Agreement to the fixtures, inventory, equipment and/or other personal property used by the Debtor in the business conducted by the Debtor at the Subleased Premises.

The term "Collateral" also includes all goods, accounts, documents, instruments, deposit accounts, chattel paper, investment property, letter-of-credit rights, and general intangibles, as those terms are defined in the California Commercial Code from time to time in effect, now or hereafter located or installed on or attached or affixed to the Subleased Premises, or used, necessary for use, or intended for use in connection with or otherwise relating in any way to or deriving from the Debtor's business.

The term "Collateral" also includes, without limiting any part of the foregoing description of Collateral, all personal property described in **Schedule 1** attached to this Agreement.

4. **Proceeds.** Debtor also hereby grants and transfers to Secured Party a security interest in any and all proceeds, as provided in Sections 9203 and 9315 of the California Uniform Commercial Code, of the Collateral, or any part of the Collateral listed in **Schedule 1**. Nothing in this paragraph, however, shall constitute, or be deemed to constitute, a grant of authority to Debtor to sell, or otherwise dispose of, or encumber the Collateral, or any part of the Collateral, without the prior written consent of Secured Party.

5. **Repair and Replacement of Collateral.** Debtor shall maintain the Collateral, and each part of the Collateral, in good order and repair at Debtor's sole expense. Debtor shall not use the Collateral, or any part of the Collateral, in any manner resulting, or likely to result, in waste, damage, destruction, unreasonable deterioration or concealment of the Collateral or in any other manner other than leasing. Debtor shall keep the Collateral separate and identifiable to the fullest extent possible. Debtor will promptly replace every part of the Collateral that may become damaged, destroyed, consumed, worn out, lost, or which becomes obsolete or otherwise unfit for use in the operation of the business conducted by Subtenant on the Subleased Premises without Secured Party's consent, except that he will notify Secured Party pursuant to Paragraph 11.3.

6. **Disposition of Collateral.** Debtor shall not, without the prior written consent of Secured Party, sell, lease, dispose, transfer, convey, encumber or otherwise hypothecate any of the Collateral, or any part thereof, without Secured Party's prior written consent. Debtor's attempt to sell, lease or do any of the above acts shall be deemed an incurable material breach of this Agreement.

7. **Financing Statement; Other Documents.** Debtor acknowledges that Secured Party may file a UCC-1 financing statement ("**Financing Statement**") with the California Secretary of State, which Financing Statement will indicate Secured Party's security interest in the Collateral. Secured Party may file the Financing Statement without prior notice to Debtor and may file additional Financing Statements as may be reasonably required to protect and preserve its interest in the Collateral. Debtor agrees to promptly execute any and all other documents reasonably requested by Secured Party to perfect and protect Secured Party's security interest in the Collateral created by this Agreement.

8. **Property Insurance.** Until this Security Agreement is terminated by Secured Party after Debtor or related parties have performed all obligations secured hereby, Debtor, at Debtor's sole expense, shall keep the Collateral, and all parts thereof, insured against damage or loss resulting from any and all risks. Secured Party shall be named as an additional insured on Debtor's insurance policy

and Debtor shall provide a certificate of insurance to Secured Party immediately upon execution of this Agreement. This certificate of insurance shall provide that the coverage evidenced by the certificate shall not be canceled or diminished without at least thirty (30) days written notice to Secured Party.

8.1 If Debtor fails to provide the insurance coverage as required by this Section 8, in addition to other remedies available to Secured Party, Secured Party may, but is not required to, obtain such insurance coverage for the Collateral as it deems appropriate and necessary, in its sole discretion. Debtor shall immediately reimburse Secured Party, upon demand, for all premiums paid by Secured Party for any insurance obtained by Secured Party pursuant to the provisions of this Section 8.

9. **Taxes and Assessments.** Debtor shall pay at its sole expense, as they become due, all taxes, assessments and liens levied or assessed against the Collateral.

10. **Rights.** Secured Party, either in person or by agent, shall have the right, at any and all reasonable times and with twenty-four (24) hours prior notice to Debtor to enter the Subleased Premises and inspect the Collateral.

11. **Warranties and Representations.** Debtor hereby represents and warrants to Secured Party:

11.1 The Collateral is presently located at the Subleased Premises and shall not be removed from the Subleased Premises without the prior written consent of Secured Party.

11.2 The principal place of business of the Debtor is 1500 Quivira Way, San Diego, California.

11.3 Debtor has full power and authority to enter into this Agreement.

11.4 Debtor warrants and represents that there is no pending litigation, secured interest, pledges, judgments, court orders, claims or any other matter which have or will have an adverse and/or material impact on Debtor's financial worth or ability to conduct its business or perform all of its obligations under the Sublease.

11.5 Debtor warrants and represents that during the Term of the Sublease, it shall not, directly or indirectly, involuntarily or voluntarily, allow any of the Collateral to be encumbered or subject to any monetary lien or claim of another party.

11.5 Debtor warrants and represents that Debtor agrees to hold harmless, defend and indemnify Secured Party from any and all claims, expenses (including attorneys' fees), costs and liabilities which may arise from or be related to the Collateral, the operation of its business and its possession of the Subleased Premises. The foregoing shall survive the expiration of the Term or earlier termination of the Sublease and shall have no limit in scope or duration.

12. **Events of Default.** Debtor shall be deemed in default of this Agreement if Debtor breaches or fails to perform any provision, warranty or representation of this Agreement or the Sublease.

13. **Remedies of Secured Party.** Upon Debtor's default, as defined in Section 12, above, the Secured Party shall, at its option, have the following, but not exclusive, remedies:

(a) Any and all of the rights and remedies provided in the Uniform Commercial Code B Secured Transactions and/or any other applicable statute or regulation;

(b) The right to take possession of any or all of the Collateral and enter any premises where any Collateral is kept, with or without judicial process;

(c) The right to sell or lease in any commercially reasonable manner in one or more transactions any or all of the Collateral in its then condition and/or following any commercially reasonable preparation or processing. Sales for cash or on credit to any wholesaler, retailer or user of the Collateral, or at public auction or private sale, all are commercially reasonable;

(d) The right to require Debtor to assemble any or all of the Collateral and make it available to Secured Party at the entrance to the location of the Collateral, or any office of Secured Party in the county where the Collateral is, or should have been located under the terms of this Agreement;

(e) The right to sell or lease any or all of the Collateral without having it present at the place of the transaction. Whenever any Collateral is in Secured Party's possession, Secured Party may use, operate and consume it in any commercially reasonable manner or as it deems appropriate for paying or performing Debtor's obligations. Secured Party shall have no liability to the Debtor for any damage to real or personal property which is not Collateral caused by acts or omissions of Secured Party or its agents done in good faith in the course of removing, storing, processing, maintaining, preserving, protecting or disposing of any Collateral, nor for any such damage to Collateral except as a result of Secured Party's failure to sell or lease the Collateral in a commercially reasonable manner; and/or

(f) The right to use and operate the Collateral as determined by Secured Party.

14. **Notices.** Any and all notices or other communications required or permitted by this Agreement or by law to be given to Debtor or Secured Party shall be in writing and shall be personally delivered or sent by registered or certified mail, return receipt requested. Notices shall be deemed delivered upon the date of personal delivery or five (5) days after mailing if sent by mail as provided above.

Secured Party: Driscoll Mission Bay LLC
Attn: Ms. Mary-Carol Driscoll
1500 Quivira Way
San Diego, California 92109

Debtor: AA Marine
c/o Bob Aronson
957 Maryland Drive
Vista, CA 92083

Either party may change its address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

15. **Time of Essence.** Time is of the essence as to each provision of this Security Agreement.

16. **Successors.** This Security Agreement shall be binding on the heirs, executors, administrators, successors and permitted assigns of each of the parties hereto. Nothing contained in this paragraph, however, shall be deemed a consent to the sale, assignment or transfer of the Collateral or any of the obligations under this Agreement by Debtor.

17. **Entire Agreement.** This Agreement, the Sublease, and the Financing Statement constitute the entire agreement between the parties regarding the subject matter hereof and supersede all prior understandings or agreements, whether oral or written. This Agreement, the Sublease, and the Financing Statement can only be modified by a writing signed by Debtor and Secured Party.

18. **Captions.** The captions in this Agreement are for convenience only, and shall not be used to interpret this Agreement.

19. **Controlling Law.** This Agreement shall be construed and enforced according to the laws of the State of California. Time is of the essence.

20. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

21. **Representation.** No inference, assumption, or presumption shall be drawn if a party or a party's attorney prepared and/or drafted this Agreement; it shall be conclusively presumed that the parties participated equally in its preparation and/or drafting. Each party acknowledges that it has consulted independent counsel regarding this Agreement or has waived the right to do so, having been afforded sufficient opportunity to have this Agreement reviewed by independent counsel.

22. **"Herein"/"Hereof".** The use of the term "herein" or "hereof" shall mean and refer only to this Agreement, and not to any other agreement, document or instrument.

23. **Attorneys' Fees.** If any party commences litigation or arbitration to enforce or interpret this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees

and all litigation-related costs (including expert witnesses' fees) incurred in addition to all other items of recovery permitted by law.

24. Debtor Identification Information; Changes in Name or State of Organization.

24.1 Additional Representations and Warranties. Borrower further represents and warrants to Secured Party that:

24.1.1 Debtor is a California S Corporation.

24.1.2 The taxpayer identification numbers of the Debtor:

81-0635602

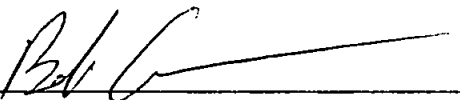
24.1.3 The Collateral is used in the business of the Debtor and does not include goods used or bought for use by Debtor primarily for personal, family, or household purposes. The Sublease was entered into by Debtor for business, commercial and/or investment purposes, and not primarily for personal, family, or household purposes. The Sublease is not a consumer goods transaction or a consumer transaction.

24.2 Changes in Name or State of Organization. Debtor will make no change to its name, organizational status or existence, or state of organization without providing Secured Party with at least thirty (30) days prior written notice of such change.

IN WITNESS WHEREOF, the parties execute this Agreement.

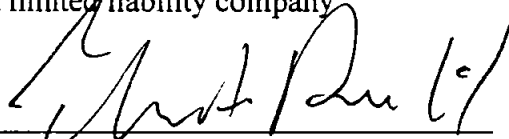
DEBTOR:

AA Marine
a California S Corporation

By: 
Name: Bob Aronson
Title: President

SECURED PARTY:

DRISCOLL MISSION BAY LLC,
a California limited liability company

By: 
Thomas A. Driscoll, a Member

SCHEDULE 1
LIST OF SPECIFIC COLLATERAL

As set forth in Section 3 of the Agreement, the Collateral includes, but is not limited to, the following specific items of personal property, fixtures, inventory and equipment, this being the same personal property referred to as "FF&E" in the Sublease.

None

CONSENT TO SUBLEASE AGREEMENT

THIS CONSENT TO SUBLEASE AGREEMENT ("Consent") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), DRISCOLL MISSION BAY, LLC, a California limited liability company ("DRISCOLL"), and ROBERT D. GORDON, an individual doing business as "Boating Dynamics" ("GORDON"), to be effective upon execution by CITY (the "Effective Date") and approval by the San Diego City Attorney, as follows:

RECITALS

- A. DRISCOLL is the "LESSEE," by assignment, under that certain PERCENTAGE LEASE dated March 5, 1979 (as amended by that certain FIRST AMENDMENT TO LEASE dated June 2, 1986, the "Master Lease"), by and between CITY, as lessor, and MISSION BAY MARINA, a limited partnership, as lessee, relating to certain real property ("Master Lease Property") described as Lots 25, 26, 27, and 28 of Quivira Basin, Mission Bay Park, together with the water areas adjacent thereto, located in San Diego, California, and more particularly described in the Master Lease, attached hereto as Exhibit A.
- B. The Master Lease requires CITY'S consent to any sublease of the Master Lease Property.
- C. DRISCOLL and GORDON have executed that certain SUBLEASE ("Gordon Sublease") dated July 29, 2005, whereby, subject to CITY'S consent, DRISCOLL subleases to GORDON and GORDON subleases from DRISCOLL a portion of the Master Lease Property ("Sublease Premises") located in a building on the Master Lease Property and more fully described in the Gordon Sublease, attached hereto as Exhibit B.
- D. Under the terms of this Consent, CITY will consent to the Gordon Sublease.

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

- 1. Subordination. The Gordon Sublease is and shall be subordinate to the Master Lease. CITY shall not be bound by any term or condition in the Sublease which in any way conflicts with CITY'S rights or increases CITY'S obligations under the Master Lease. Any conflict between the Master Lease and the Sublease shall be construed or resolved in favor of the Master Lease. GORDON acknowledges and agrees that his rights and obligations as "Subtenant" under the Gordon Sublease are subject and subordinate to the terms and conditions of this Consent and the Master Lease.

2. Master Lease Provisions. Without releasing DRISCOLL of any obligation, GORDON additionally assumes and shall perform the obligations of "LESSEE" under the Master Lease as and to the extent such obligations are applicable to the Sublease Premises or GORDON'S use of any common area within the Master Lease Property.
3. Use. GORDON'S use shall be for boat and motor repair and shall comply at all times to the Master Lease.
4. Rent. DRISCOLL shall pay the following to CITY as rent defined under the Master Lease:
 - (a) Four percent (4%) of GORDON'S gross income ("gross income" as that term is defined in the Master Lease) from his boat and motor repair business; and
 - (b) Seven percent (7%) of all of GORDON'S rent payments under the Gordon Sublease;
5. Indemnification. DRISCOLL and GORDON, jointly and severally, shall defend, indemnify, protect, and hold CITY, its elected officials, officers, representatives, agents and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including without limitation any injury to DRISCOLL'S or GORDON'S officers, employees, agents, invitees, guests, subtenants or licensees, which arise out of or are in any manner directly or indirectly connected with the Gordon Sublease, GORDON'S use of or operations on the Master Lease Property, the condition of the Sublease Premises, or from any act or omission of GORDON or any of his employees, agents, invitees, guests, subtenants or licensees; provided, however, this duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents or employees.
6. Subsequent Sublease. This Consent does not constitute consent to any subsequent subletting of any portion of the Master Lease Property, and does not relieve DRISCOLL, GORDON, or any person claiming under or through either of them of the obligation to obtain CITY'S consent to any future sublease.
7. Brokerage Commission. CITY shall not be liable for any brokerage commission or finder's fee in connection with the consummation of the Gordon Sublease or this Consent. DRISCOLL and GORDON shall jointly and severally protect, defend, indemnify, and hold CITY harmless from and against any claim for any brokerage commission or finder's fee related to the consummation of the Gordon Sublease or this Consent, and from and against any cost or expense (including without limitation attorney fees) incurred by CITY in resisting any claim for any such brokerage commission or finder's fee.

8. San Diego's Strong Mayor Form of Governance. The Master Lease shall be amended by adding the following section:

All references to "City Manager" in this lease and all subsequent amendments to this lease shall be deemed to refer to "Mayor." This section became effective on January 1, 2006, and shall remain in effect for the duration the City operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the City of San Diego City Charter.

9. No Further Modification of Master Lease or Sublease. Except as provided herein, this Consent shall not be deemed or construed to modify, waive, impair, or affect any of the terms or conditions of the Master Lease or the Gordon Sublease.
10. Controlling Law. The terms and conditions of this Consent shall be construed in accordance with the laws of the State of California.
11. Captions. Captions to the sections of this Consent are included for convenience only and do not modify any of the terms of this Consent.
12. Entire Agreement. This Consent constitutes the entire statement of the agreement of the parties pertaining to the amendment of the Master Lease and CITY'S consent to the Gordon Sublease, and is binding on and inures to the benefit of the parties' respective heirs, representatives, successors and assigns. No party has been induced to enter into this Consent by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Consent. No modification of the terms or conditions of this Consent shall be effective unless made in a writing that expressly states that it modifies this Consent, and signed by the parties hereto.
13. Attorney Fees. If any party commences litigation against any other party for the specific performance of this Consent, for damages for the breach of the terms and conditions of this Consent, or otherwise for any remedy and the enforcement thereof, the prevailing party shall be entitled to recover from the non-prevailing party its costs and reasonable attorney fees incurred.
14. Notice. Any notice required or permitted to be given to any party hereto shall be given in accordance with the provisions of the Master Lease, and if to GORDON, addressed to:

BOATING DYNAMICS
ATTN: R.D. GORDON
1500 QUIVIRA WAY, #4
SAN DIEGO, CA 92109

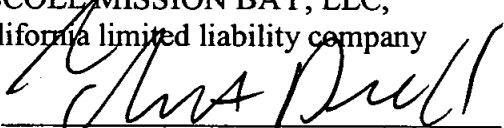
15. Authority. Each individual executing this Consent on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Consent on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Consent is binding upon such person or entity in accordance with its terms. Each person executing this Consent on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to the City Manager, that such authority is valid and that 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.

16. CITY'S Consent. Subject to the terms and conditions of this Consent, CITY hereby consents to the Gordon Sublease.

IN WITNESS WHEREOF, the parties hereto execute this Consent to be effective as of the Effective Date.

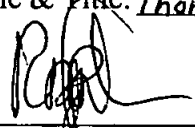
Date: 3/22/07

DRISCOLL MISSION BAY, LLC,
A California limited liability company

BY: 

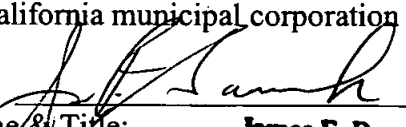
Name & Title: Thomas A. Driscoll, a Member

Date: 3/20/07


ROBERT D. GORDON, an individual doing
business as "Boating Dynamics"

Effective Date: 4/19/07

THE CITY OF SAN DIEGO,
A California municipal corporation

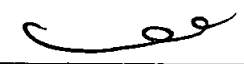
BY: 

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

APPROVED AS TO FORM AND LEGALITY:

Date: 4/20/07

MICHAEL J. AGUIRRE, San Diego City Attorney

BY: 

Todd Bradley, Deputy City Attorney

EXHIBIT B

SUBLEASE

between

DRISCOLL MISSION BAY LLC,
a California limited liability company,

as Landlord,

and

Boating Dynamics,
a sole proprietorship,

as Tenant,

for a portion of
MISSION BAY MARINA
San Diego, California

dated July 29, 2005

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EXHIBITS:

- A Master Lease
- B Description of the Subleased Premises and Site Plan

SUBLEASE

THIS SUBLEASE ("Sublease"), dated for reference purposes only as of July 29, 2005, is entered into by and between DRISCOLL MISSION BAY LLC, a California limited liability company, ("Sublandlord") and Boating Dynamics, a Sole Proprietorship ("Subtenant"), with reference to the following facts:

A. Master Lease. Sublandlord is the successor "Lessee" under that certain Lease dated March 5, 1979, between the CITY OF SAN DIEGO, a municipal corporation ("City"), as Lessor, and MISSION BAY MARINA, a California limited partnership, as Lessee, a copy of which is attached hereto as Exhibit A and incorporated herein by reference (as amended from time to time, the "**Master Lease**"), for certain leased premises in Quivira Basin at Mission Bay Park, San Diego, California, commonly known as "Mission Bay Marina" and more particularly described in the Master Lease (the "**Master Premises**").

B. Sublease. Sublandlord desires to sublease to Subtenant that portion of the Master Premises described on Exhibit B (the "**Subleased Premises**") and Subtenant desires to sublease the Subleased Premises from Sublandlord, on the terms and conditions provided in this Sublease. The Subleased Premises is located in a building ("**Building**") located on the Master Premises.

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

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

2. Term.

2.1 Primary Term. The term of this Sublease (the "**Term**") shall commence on August 1, 2005 (the "**Commencement Date**") and shall expire at midnight two (2) years thereafter, on July 31, 2007 (the "**Expiration Date**"), subject to earlier termination as provided in this Sublease.

2.2 Option to Extend. In the event this Sublease is in full force and effect, Subtenant has the option to extend the initial Term of this Sublease for four (4) extension periods of one (1) year each. Each one year extension period, if exercised, is referred to in this Sublease as an "**Option Term**." Each Option Term shall be subject to all the terms and provisions of this Sublease except for a change in the Base Rent. In the event that Subtenant elects to exercise its option to extend the initial Term or any Option Term, Subtenant shall provide written notice (the "**Exercise Notice**") to Sublandlord no later than three (3) months prior to the Expiration Date or, if exercised during an Option Term, three (3) months prior to the end of the then current Option Term. For the purpose of this Section 2.2, the phrase "in full force and effect" shall mean the following: (i) the Sublease has only been modified by the written mutual agreement of the parties and not by court order or as a part of a bankruptcy or other debtor-related procedure or proceeding; (ii) Subtenant has not unilaterally repudiated any terms of the Sublease; (iii) Subtenant is not then in Default under the Sublease (and will not be in Default on the last day of the initial Term or any Option Term); and (iv) Sublandlord has not given a notice of a Default to Subtenant on more than three (3) occasions since the Commencement Date. Subtenant's options to extend

are personal to Subtenant and cannot be exercised by any other party. Subtenant shall have no right to extend the Term or any Option Term except as set forth in this Section 2.2.

2.3 Increase in Base Rent During Option Term(s). The Base Rent for each Option Term shall be increased by 10 percent (10%) over the Base Rent in effect during the last month of the initial Term or the then-existing Option Term, as the case may be. Unless the context of the reference clearly requires a different interpretation, any reference to the word "Term" shall include any Option Term for which Subtenant has properly exercised its rights to extend as set forth in Section 2.2, above.

3. Rent.

3.1 Base Rent. Subtenant agrees to pay Sublandlord monthly rent ("**Base Rent**") in advance according to the following schedule, beginning on the Commencement Date, and continuing on the first day of every month thereafter, during the initial Term of this Sublease.

Months 1-24

\$2,640.00 per month

3.2 Percentage Rent. In addition to Base Rent, Subtenant agrees to pay to Sublandlord monthly percentage rent ("**Percentage Rent**") in amounts calculated as set forth below. Percentage Rent shall be paid on or before the 20th day of each month during the Term based on Subtenant's Gross Income for the immediately preceding month.

Percentage Rent shall be calculated in the same manner and at the same rates as set forth in the Master Lease and as adjusted from time to time under the provisions of the Master Lease, the provisions of which relating to Percentage Rent are incorporated herein by reference. For the purposes of this Sublease, the term "**Gross Income**" shall have the same meaning as attributed to that term in the Master Lease, the provisions of which are incorporated herein by reference.

Subtenant acknowledges receipt of a copy of the provisions of the Master Lease currently in effect dealing with Percentage Rent and Gross Income.

3.3 Additional Rent. In addition to Base Rent and Percentage Rent, Subtenant agrees to pay to Sublandlord as additional rent ("**Additional Rent**"), at times specified in this Sublease: (i) the Common Area Expenses payable as provided in Article 5, and (ii) any other amounts that Subtenant assumes or agrees to pay under the provisions of this Sublease that are owed to Sublandlord, including, without limitation, any and all other sums that may become due by reason of any Default of Subtenant or Subtenant's failure to comply with the agreements, terms, covenants and conditions of this Sublease to be performed by Subtenant.

3.4 Increase in Base Rent Resulting from Increase in Percentage Rental under Master Lease. All Rent (as that term is defined below) received by Sublandlord under this Sublease is included in "gross income" as that term is defined in the Master Lease. Sublandlord is required to pay percentage rent to the City under the Master Lease based on Sublandlord's gross income generated by business conducted on the Master Premises. In the event Master Landlord increases the percentage rent payable under the Master Lease attributable to Rent paid under this Sublease, the Base Rent under this Sublease shall be increased by that amount required for Sublandlord to receive the same net Base Rent after the increase in percentage rent as it received immediately prior to the increase in percentage rent by the City.

3.5 Rent. Base Rent, Percentage Rent and Additional Rent shall together be referred to in this Sublease as "**Rent.**" Rent shall be paid to Sublandlord in lawful money of the United States of America at the office of Sublandlord or to such other person or at such other place as Sublandlord may from time to time designate in writing. All Rent and other monetary obligations shall be paid by Subtenant without notice or demand and without set-off, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction or defense.

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

4. **Security Deposit.** On execution of this Sublease, Subtenant shall deposit with Sublandlord a cash "**Security Deposit**" in the amount of Two Thousand Six Hundred Forty Dollars (\$2,640.00). The Security Deposit shall be held by Sublandlord as security for the timely and faithful performance by Subtenant of all of Subtenant's obligations under this Sublease. Sublandlord may apply all or part of the Security Deposit to any unpaid Rent or other charges due from Subtenant, to cure any other Subtenant Default(s) after expiration of any applicable cure period, or to clean or repair damages to the Subleased Premises upon expiration or earlier termination of this Sublease. If Sublandlord uses any part of the Security Deposit, Subtenant shall restore the Security Deposit to its full amount within ten (10) days after Sublandlord's written request. No interest shall be paid on the Security Deposit. Sublandlord shall not be required to keep the Security Deposit separate from its other accounts, and no trust relationship is created with respect to the Security Deposit. After both (a) the termination of this Sublease and (b) Subtenant's vacation of the Subleased Premises, Sublandlord, within a reasonable time, shall refund or credit to Subtenant (or Subtenant's successor) the unused portion of the Security Deposit and any advance Rent or other advance payments made by Subtenant to Sublandlord after deduction for any purposes permitted by this Section 4.

5. **Common Area Expenses.**

5.1 Payment of Subtenant's Share of Common Area Expenses. Each month during the Term, Subtenant shall pay to Sublandlord, as Additional Rent, one-twelfth (1/12th) of an amount reasonably estimated by Sublandlord to be Subtenant's Pro Rata Share (as defined below) of the total annual Common Area Expenses. Subtenant's "**Pro Rata Share**" is ten per cent (10%), which percentage has been determined by dividing the approximate rentable square footage of the Subleased Premises by the total approximate square footage of all of the buildings in the Master Premises. It is understood and agreed that the square footage figures used to make these calculations may not be strictly calculated pursuant to BOMA standards and are approximations which Sublandlord and Subtenant agree are reasonable and shall not be subject to revision. Sublandlord may adjust its estimate of such expenses at the end of any calendar quarter on the basis of Sublandlord's experience and reasonably anticipated costs.

Following the end of each calendar year (and also after the date of expiration or sooner termination of this Sublease), Sublandlord shall furnish to Subtenant a statement showing in reasonable detail the Common Area Expenses during such calendar year (or portion thereof prior to the expiration or sooner termination of this Sublease). If Subtenant's share of such costs exceeds Subtenant's payments made during the prior calendar year, Subtenant shall pay Sublandlord the deficiency within twenty (20) days after receipt of such statement. If Subtenant's payments of Common Area Expenses during the prior calendar year exceed its actual Pro Rata Share, Subtenant shall be entitled to credit the excess to its next monthly payment(s) of the Pro Rata Share until the credit is exhausted.

5.2 Definition of Common Area Expenses. As used in this Sublease, the term "Common Area Expenses" shall include, without limitation, all amounts paid by Sublandlord for the maintenance, repair, replacement, operation and management of the Common Area, together with an administrative fee equal to ten percent (10%) of all such amounts. In addition to those expenses specifically mentioned in Sections 9.1, 10.1, 10.2 and 14.1, below, Common Area Expenses shall include, without limitation, the costs of gardening; landscaping; repaving, resurfacing, and restriping of all parking areas; maintenance of all walkways and stairways; property management; exterior building painting; lighting and other utilities; cleaning; common area trash removal; depreciation and replacement of equipment; insurance on the Common Area; and all real property taxes and/or assessments levied against the Master Premises.

6. Use.

6.1 Use. Subtenant shall use the Subleased Premises for boat and motor repair, and shall not use the Subleased Premises, or permit or suffer the Subleased Premises to be used, for any other purpose without the prior written consent of Sublandlord, which consent may be withheld in Sublandlord's sole and unfettered discretion.

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

6.3 Insurance Requirements. The insurance to be initially carried by Sublandlord and Subtenant pursuant to the provisions of Article 14 shall be consistent with the actual use of the Subleased Premises. Thereafter, if the use of the Subleased Premises changes to another use permitted under Section 6.1 such insurance shall, to the extent available, be consistent with such changed use. Subtenant shall not do or permit to be done anything which will invalidate or increase the cost of any fire, extended coverage or any other insurance policy covering the Master Premises. Subtenant shall comply with all rules, orders, regulations and requirements of the insurers of the Master Premises. Subtenant shall promptly, upon demand, reimburse Sublandlord for any additional premium charged for any policy by reason of Subtenant's failure to comply with the provisions of this Section.

6.4 Key to Subleased Premises. Subtenant shall deliver to Sublandlord all keys to locks to doors in the Subleased Premises for the purpose of emergency access. Additionally, if requested by Sublandlord, or required by a government agency, Subtenant agrees to maintain a duplicate set of keys in a fire department controlled lock box located on the Subleased Premises or at a central location on the Master Premises as directed by Sublandlord.

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

6.6 Signs. No sign, advertisement or notice which is visible outside the Subleased Premises shall be exhibited, painted or affixed by Subtenant or any part of the Subleased Premises, or on any part of the exterior of the Building, without the prior written consent of Sublandlord, which consent may be withheld in Sublandlord's sole and unfettered discretion. All such signage shall be in compliance with applicable laws. Such signs shall be installed at Subtenant's sole cost, and the cost of removing such signs and repairing the Building at the end of the term of the Sublease shall be paid by Subtenant.

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

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

7. **Common Area.**

7.1 Common Area - Definition. The term "Common Area" is defined as all areas and facilities outside the Subleased Premises and any other sub-tenant's premises and within the exterior boundary line of the Master Premises that are provided and designated by Sublandlord from time to time for the general nonexclusive use of Sublandlord, Subtenant and other subtenant(s) and their respective employees, suppliers, shippers, customers and invitees, including but not limited to common entrances, corridors, stairways and stairwells, public restrooms, mechanical and electrical rooms, parking areas to the extent not otherwise prohibited by this Sublease, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, ramps, driveways, landscaped areas and decorative walls. Sublandlord shall have the right to exclude any portion of the Building and Master Premises other than the Subleased Premises from the Common Area under this Sublease.

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

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

(a) To make changes to the interior and exterior of the Building and to the Common Area, including, without limitation, changes in the location of structures in Common Area, construction of additional buildings and other structures in the Common Area and changes to the size, shape, and appearance of the Common Area, including but not limited to the driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, decorative walls, landscaped areas and walkways; provided, however, Sublandlord shall at all times provide the parking facilities required under this Sublease.

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

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

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

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

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

8. Condition of Subleased Premises.

8.1 No Representation. Subtenant acknowledges that neither Sublandlord nor any agent of Sublandlord has made any representations or warranties, express or implied with respect to (i) the condition of the Subleased Premises, the Building or the Master Premises, (ii) the suitability of the Subleased Premises for Subtenant's purposes (iii) the location, use, design, merchantability, fitness for use for a particular purpose, condition or durability of the Subleased Premises or the Building, (iv) the prospect or ability to make a profit in the operation of a business in the Subleased Premises, (v) the existence of Hazardous Materials (as defined in Section 24.6) in, on or adjoining the Building or the Master Premises, (vi) the quality of the material or workmanship in the Building or the Subleased Premises, (vii) the future use or uses of the Building or the Master Premises, and/or (viii) the continuation of any current business or the prospect for new or additional businesses in the Building, in the Master Premises, or on properties adjacent to or near the Master Premises. All risks incidental to the condition and use of the Subleased Premises shall be borne by Subtenant. Except as expressly provided in this Sublease, **IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE SUBLEASED PREMISES OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, LANDLORD SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.**

SUBTENANT AGREES THAT IT IS TAKING THE SUBLEASED PREMISES IN AN "AS-IS, WHERE-IS" CONDITION WITH ALL FAULTS AND WITH ABSOLUTELY NO REPRESENTATIONS AND WARRANTIES.

8.2 Walk-Through Inspection. Subtenant acknowledges and agrees that at or before the signing of this Sublease, he inspected the Subleased Premises and, as set forth in Section 8.1, above, accepted the Subleased Premises in their then existing condition. On or before the Commencement Date, Sublandlord and Subtenant shall conduct a walk-through inspection of the Premises and prepare a list of those items relating to the Subleased Premises which are not then in substantially the same condition as

existed at the time of the signing of the Sublease. The taking of possession of the Subleased Premises by Subtenant shall establish conclusively that the Subleased Premises existed on the Commencement Date in substantially the same condition as of the date of the signing of the Sublease, except for list items set forth in this list. Sublandlord shall promptly perform such maintenance and repairs as are required to bring the items on the list to a condition substantially the same as existed at the time of the signing of the Sublease.

9. Utilities and Services.

9.1 Utilities Provided. Sublandlord shall furnish to the Subleased Premises reasonable quantities of water, sewer, gas, electricity and trash removal as required for Subtenant's use. The cost of these utilities shall be Common Area Expenses.

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

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

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

10. Repairs and Maintenance.

10.1 Common Area. Sublandlord shall maintain the Common Area in good condition, ordinary wear and tear excepted. The costs for said repair and maintenance shall be a Common Area Expense.

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

10.3 Subtenant's Maintenance Obligations. Except for Sublandlord's obligations pursuant to Section 10.2 above, Subtenant shall, at Subtenant's sole cost and expense, keep the Subleased Premises and every part of the Subleased Premises in good order, condition and repair, and in compliance with all applicable laws, ordinary wear and tear excepted and regardless of the condition of the Subleased Premises on the Commencement Date (except for Sublandlord's obligations to repair under Section 8.2, above, if any). Subtenant shall, upon the expiration or sooner termination of the Term, surrender the Subleased Premises to Sublandlord in good order, condition and repair and in compliance with all

applicable laws. Subtenant's obligations shall include restorations, replacements or renewals, including capital expenditures for restorations, replacements or renewals which will have a useful life beyond the expiration of the Term, when necessary to keep the Subleased Premises and all improvements thereon or a part thereof in good order, condition and repair and in compliance with all applicable laws. Except as expressly set forth in this Sublease, it is intended by the parties hereto that Sublandlord shall have no obligation, in any manner whatsoever, to repair or maintain the Subleased Premises, including the improvements or equipment located therein, whether structural or nonstructural, all of which obligations are intended to be the sole expense of Subtenant, whether or not such repairs, maintenance or restoration shall have a useful life extending beyond the expiration of the Term. Subtenant shall further be responsible for the cost of all alterations and/or repairs to the Subleased Premises required to bring the Subleased Premises into compliance with any law, ordinance or regulation, including, without limitation, the Americans with Disabilities Act. Any such repairs and alterations shall become the property of Sublandlord upon the expiration or earlier termination of this Sublease.

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

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

11. Alterations.

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

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

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

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

11.5 Property of Sublandlord. All alterations, decorations, fixtures, equipment, additions and improvements attached to or built into the Subleased Premises, made by either party, shall, unless Sublandlord elects otherwise at the expiration or earlier termination of the Term, become the property of Sublandlord. If Sublandlord elects to have such alterations removed, Subtenant shall do so and shall repair and restore the Subleased Premises to the condition they were in prior to such alterations, all at Subtenant's sole cost.

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

11.7 Personal Property. All articles of Subtenant's personal property, including, but not limited to, detachable machinery and equipment, furniture, fixtures and movable partitions, which are owned by Subtenant and installed by Subtenant at its own expense in the Subleased Premises, shall be and remain the property of Subtenant and may be removed by Subtenant at any time during the term of this Sublease when Subtenant is not in Default hereunder. If Subtenant shall fail to remove all of its personal property from the Subleased Premises at the expiration or earlier termination of the Term, then Sublandlord may, at its option, remove the same in any manner that Sublandlord may deem appropriate and store this personal property without liability to Subtenant for loss thereof or damage thereto. Subtenant agrees to pay Sublandlord, upon demand, any expenses incurred in such removal and storage or Sublandlord may, at its option, without notice, sell this personal property or any of it, at a public or private sale and without legal process, for such price as Sublandlord may obtain; and Sublandlord may apply the proceeds of such sale against any amounts due under this Sublease from Subtenant to Sublandlord and against any expenses incident to the removal, storage and sale of this personal property, with any balance of the sales proceeds delivered to Subtenant. Subtenant agrees that this Sublease constitutes a "security agreement" under the provisions of Section 9203 of the Uniform Commercial Code – Secured Transactions, or any successor statute and, as such, Subtenant grants to Sublandlord a security interest in all Subtenant's personal property described in this Section 11.7, as well as all tenant improvements made to the Subleased Premises pursuant to this Article 11.

12. **Liens.**

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

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

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

13. **Indemnification and Exculpation.**

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

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

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

13.4 Assumption of Risk. Additionally, Sublandlord shall not be liable to Subtenant or any other party, and Subtenant assumes all risk of damage and liability (other than as may be covered by insurance or by a third party), resulting from any defect or malfunction of any Building system or

component of a Building system (such as HVAC, mechanical, plumbing, electrical, waste disposal, or sewer).

13.5 Security Devices. Security devices and services provided for the Building and Master Premises, if any, while intended to deter crime, may not in given instances prevent theft or other criminal acts, and it is agreed that Sublandlord shall not be liable for injuries or losses caused by criminal acts of third parties. The risk that any security device may malfunction or otherwise be circumvented by a criminal is assumed by Subtenant. Subtenant shall, at Subtenant's cost, obtain applicable insurance coverages to the extent Subtenant desires protection against such criminal acts. Sublandlord shall have no continuing obligation to repair, maintain or replace any existing security devices, if any, and may remove any such existing security devices, if any, at any time. Subtenant shall be solely responsible, at its sole expense, to provide a safe and secure environment within the Subleased Premises for its employees, customers, invitees and guests.

14. **Insurance.**

14.1 Insurance on Building. Sublandlord shall carry insurance on the Building, including the Subleased Premises and its improvements, to the extent such is insurable as part of the Building (excluding improvements made to the Subleased Premises made by Subtenant), in an amount equal to full replacement cost (without reference to depreciation taken by Sublandlord upon its books or tax returns), or such greater insurance coverage as Sublandlord's mortgage lender requires Sublandlord to maintain. Such insurance shall provide protection against any peril generally included within the classification "Fire and Extended Coverage," together with insurance against sprinkler damage (if applicable), vandalism and malicious mischief. Sublandlord shall also obtain rental loss insurance for a period of up to one year. Sublandlord, subject to availability thereof at a reasonable premium, may, but is not required to, further insure, as Sublandlord or its lender deems appropriate, against flood and/or earthquake, loss or failure of building equipment, hazardous materials risks, rental loss during the period to repair or rebuild, worker's compensation insurance and fidelity bonds for employees employed to perform services. The deductible limits of the "Fire and Extended Coverage" policy shall not exceed Five Thousand Dollars (\$5,000). Sublandlord shall furnish to Subtenant upon request a copy of said insurance policy. The cost of all such insurance policies shall be Common Area Expenses.

14.2 Liability Insurance. Subtenant, at its own cost, shall procure and continue in effect, from the Commencement Date or the at such time as Subtenant occupies the Subleased Premises, whichever first occurs, and continuing throughout the Term and thereafter until Subtenant has fully and finally surrendered the Subleased Premises to Sublandlord, comprehensive public liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for death, bodily injury or property damage with respect to the Subleased Premises and insurance on all of its personal property. The deductible amounts of such policy of insurance shall not exceed Five Thousand Dollars (\$5,000).

14.3 Additional Insureds. The aforesaid insurance required of Subtenant shall name as additional insureds the City, Sublandlord, their officers, directors, shareholders, partners, members and lenders, and Sublandlord's property manager, agents and representatives for the Subleased Premises. Said insurance shall be with companies having a policyholder rating of not less than A+ and financial category rating of Class IX in "Best's Insurance Guide." Subtenant shall cause any insurance companies issuing policies to Subtenant to furnish certificates evidencing such coverage to Sublandlord. No such policies shall be cancelable or subject to reduction of coverage or other modification or cancellation except after thirty (30) days prior written notice to Sublandlord from the insurer. All such policies shall be written as primary policies, not contributing with and not in excess of the coverage which Sublandlord may carry. Any of Subtenant's policies may be in the nature of a "blanket policy" which specifically provides that the amount of insurance shall not be prejudiced by other losses covered by the policy. Subtenant shall, at

least twenty (20) days prior to the expiration of any such policies, furnish Sublandlord with renewals or binders. Subtenant agrees that if Subtenant fails to procure and maintain such insurance, Sublandlord may (but shall not be required to) procure said insurance on Subtenant's behalf and charge Subtenant the premiums for any such policies, together with a ten percent (10%) handling charge, payable upon demand.

14.4 Fixtures and Other Items. Subtenant assumes the risk of damage to improvements made to the Subleased Premises by Subtenant (even if made with the consent and approval of Sublandlord), as well as any fixtures, goods inventory, merchandise, equipment, and personal property of any kind owned or leased by Subtenant and maintained in the Subleased Premises. Sublandlord shall not be liable for injury to Subtenant's operations or any loss of income therefrom relative to damage to such items, all as more particularly set forth herein. Subtenant, at Subtenant's cost, shall carry such insurance as Subtenant desires for Subtenant's protection with respect to the foregoing personal property and tenant improvements, as well as business interruption losses and other loss of income.

14.5 Lender and Others. If any policy of insurance is to name Sublandlord as additional insured, Subtenant shall, upon written request of Sublandlord, also designate as an additional insured, and furnish certificates evidencing Sublandlord as an additional insured to, (i) any lender to Sublandlord holding a security interest in the Building and/or (ii) the City.

14.6 Waiver of Subrogation. Sublandlord and Subtenant each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, on account of loss or damage occasioned to such waiving party or its property or the property of others under its control to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which either party may have in force at the time of such loss or damage, such waivers to continue as long as their respective insurers to permit. Any termination of such a waiver shall be by written notice of circumstances as hereinafter set forth. Sublandlord and Subtenant, upon obtaining the policies of insurance required or permitted under this Sublease, shall give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Sublease. If such policies are unobtainable with such waiver or obtainable only at a premium over that chargeable without such waiver, the party seeking such policy shall notify the other thereof, and the latter shall have ten (10) days thereafter to either (i) procure such insurance in companies reasonably satisfactory to the other party or (ii) agree to pay such additional premium. If neither (i) nor (ii) are done, this Section 14.6 shall have no effect during such time as such policies are unobtainable or the party in whose favor a waiver of subrogation is desired shall refuse to pay the additional premium. If such policies shall at any time be unobtainable, but subsequently shall be obtainable, neither party shall be subsequently liable for a failure to obtain such insurance until a reasonable time after notification thereof by the other party. If the release of either Sublandlord or Subtenant, as set forth in the first sentence of this Section 14.6 shall contravene any law with respect to exculpatory agreements, the liability of the party in question shall be deemed not released but shall be secondary to the other's insurer.

14.7 Increases in Insurance. At reasonable times, Sublandlord may require insurance policy limits to be raised to conform with reasonable requirements of Sublandlord's lender and/or the Port Authority, or to bring coverage limits to the level then being required of similar tenants of similar properties; provided, however, that Sublandlord may, in any event, require insurance policy limits to be increased in proportion to any increase in the Consumer Price Index from the date of this Sublease to the date of the requested adjustments.

15. **Damage or Destruction.**

15.1 Destruction Due to Risk covered by Insurance.

(a) If, during the Term, the Subleased Premises or the Building are totally or partially destroyed from a risk covered by the insurance described in Section 14.1, rendering the Subleased Premises totally or partially inaccessible or unusable, Sublandlord shall restore the Subleased Premises or the Building to substantially the same condition as they were in immediately before destruction, but not including any leasehold improvements made by Subtenant. Such destruction shall not terminate this Sublease. If the existing laws do not permit restoration and repair of the Building or the Subleased Premises, either party can terminate this Sublease immediately by giving notice to the other party.

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

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

15.2 Destruction Due to Risk Not Covered by Insurance.

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

(b) The provisions of Section 15.2(a) notwithstanding, if the cost of restoration exceeds five percent (5%) of the then replacement value of the Subleased Premises or the Building that are destroyed, Sublandlord can elect to terminate this Sublease by giving notice to the Subtenant within fifteen (15) days after determining the restoration cost and replacement value.

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

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

15.3 Extent of Sublandlord's Obligation to Restore. If Sublandlord is obligated to or elects to repair or restore as herein provided, Sublandlord shall be obligated to repair or restore only those portions of the Building and the Subleased Premises as existed on the Commencement Date and for which insurance proceeds are available to pay the costs to repair or restore; the repair and restoration of Subtenant's special tenant improvements or tenant's personal property shall be the obligation and sole expense of Subtenant.

15.4 Release. Upon any termination of this Sublease under any of the provisions of this Article 15, the parties each shall be released from further obligation to the other under this Sublease for Rent and other claims arising from and after the date of termination. However, termination of this Sublease shall not relieve either party from any obligation to the other existing prior to the date of termination, which obligations shall remain in full force and effect.

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

15.6 Damage at End of Term. Notwithstanding anything to the contrary contained in this Article 15, Sublandlord shall have no obligation whatsoever to repair, reconstruct or restore the Subleased Premises when the damage resulting from any casualty covered under this Article occurs during the last twelve (12) months of the Term. In the event Sublandlord elects not to repair, reconstruct or restore the Subleased Premises when the damage resulting from any casualty covered under this Article occurs during the last twelve (12) months of the term of this Sublease, Subtenant may, by written notice delivered to Sublandlord within ten (10) days after receipt by Subtenant of Sublandlord's notice of its election not to repair, reconstruct or restore the Subleased Premises, elect to terminate this Sublease.

16. **Eminent Domain.**

16.1 Taking. If the Subleased Premises or any material portion of the Subleased Premises are taken under the power of eminent domain or similar governmental action, either party may terminate this Sublease effective as of the date possession is required to be surrendered to the condemning authority.

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

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

17. **Defaults and Remedies.**

17.1 Late Charge. Late payment by Subtenant to Sublandlord of Rent or other sums due will cause Sublandlord to incur costs not contemplated by this Sublease, the exact amount of which is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, attorneys' charges, late payment charges on a mortgage, and so forth. In the event that Subtenant shall be in Default for late payment under Section 17.4(a) hereof for more than three (3) days after notice from Sublandlord, subtenant shall pay to Sublandlord a late charge in an amount equal to ten percent (10%) of the unpaid Rent for each month that an installment of Rent remains unpaid, which Sublandlord and Subtenant agree is not a penalty but is a reasonable estimate of the expenses Sublandlord may incur as a result of such late payment. In the event of any such late payment, in addition to the foregoing late charge, the amount unpaid shall bear interest at Bank of America's "reference rate" plus three percent (3%) per annum. Such interest shall be calculated from the date such amount was due and payable until the same shall have been fully paid.

17.2 No Waiver. No payment by Subtenant or receipt by Sublandlord of a lesser amount than that due shall be deemed to be other than on account of the amount due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Sublandlord may accept such check or payment without prejudice to Sublandlord's right to recover the balance or pursue any other remedy provided. If at any time a dispute shall arise as to any amount or sum of money to be paid by Subtenant to Sublandlord, Subtenant shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and Subtenant shall have the right to institute suit for recovery of the payment paid under protest.

17.3 Performance by Sublandlord. If Subtenant fails to perform any other act on its part to be performed hereunder, Sublandlord may, without waiving or releasing Subtenant from any obligations of Subtenant, perform such act on behalf of Subtenant. Any costs incurred by Sublandlord in performing the obligations of Subtenant under this Section 17.3 shall be paid by Subtenant as Additional Rent within ten (10) days of the date of an invoice for such costs.

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

- (a) The failure by Subtenant to make any payment of Rent, as and when due;
- (b) The failure by Subtenant to observe or perform any obligation other than described in Section 17.4(a) above, to be performed by Subtenant where such failure shall continue for a period of thirty (30) days after written notice thereof from Sublandlord to Subtenant. Such notice shall be in lieu of, and not in addition to, any notice required under California Code Of Civil Procedure 1161; provided that, if the nature of Subtenant's Default is such that it reasonably requires more than thirty (30) days to cure, then Subtenant shall not be deemed to be in Default if Subtenant shall commence such cure within said thirty (30) day period and thereafter diligently prosecute the same to completion;
- (c) Subtenant files a voluntary petition under any section of the Bankruptcy Code of the United States;
- (d) Subtenant makes a voluntary assignment for the benefit of creditors;
- (e) A receiver, trustee or custodian is appointed to, or does, take title, possession or control of all, or substantially all, of Subtenant's assets, or any involuntary petition is filed

against the Subtenant under any chapter of the Bankruptcy Code of the United States, and such petition or receiver, trustee or custodian is not dismissed within thirty (30) days;

(f) Subtenant's interest in this Sublease is attached, executed upon or otherwise judicially seized and such action is not released within thirty (30) days of the action;

(g) Subtenant fails to comply fully with all provisions of Article 24, below, concerning Hazardous Materials; or

(h) Subtenant fails to pay Rent, fails to pay any other monetary obligation arising under this Sublease, or fails to perform any obligation or duty under the Existing Subleases which arose prior to the Commencement Date.

Notices given under this Section 17.4 shall specify the alleged Default and shall demand that Subtenant perform the provisions of this Sublease within the applicable period of time, or quit the Subleased Premises. No such notice shall be deemed a forfeiture or a termination of this Sublease unless Sublandlord elects otherwise in such notice.

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

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

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

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

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

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

As used in Sections 17.5(a) and 17.5(b) above, "worth at the time of award" shall be computed by allowing interest at the rate specified in Section 17.1 above. As used in Section 17.5(c)

above, the "worth at the time of award" shall be computed by determining the present value of such amount using the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percentage point.

17.6 Right of Re-Entry. In the event of a Default by Subtenant, and at any time thereafter, with or without terminating this sublease, and with or without notice or demand and without limiting Sublandlord in the exercise of any right or remedy which Sublandlord may have, Sublandlord shall have the immediate right to re-enter and remove all persons and property, and such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Subtenant, all without service of notice or resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. No such re-entry shall be considered or construed to be a forcible entry by Sublandlord. If Sublandlord does not elect to terminate this Sublease as provided in this Section, then Sublandlord may, from time to time, recover all Rent as it becomes due under this Sublease pursuant to California Civil Code 1951.4. At any time thereafter, Sublandlord may elect to terminate this Sublease and to recover damages to which Sublandlord is entitled.

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

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

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

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

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

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

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

17.10 Right to Cure. Sublandlord shall not be in default hereunder unless Sublandlord fails to perform an obligation required of Sublandlord within a reasonable time, but in no event later than

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

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

18. Assignment or Subletting.

18.1 Assignment. Except as provided in this Article 18, Subtenant shall not, either voluntarily or by operation of law, assign, sell, hypothecate or transfer this Sublease or permit all or any part of the Subleased Premises to be used or occupied as work space, storage space, mailing privileges, concession or otherwise by anyone other than Subtenant, Subtenant's members or Subtenant's employees (all of these events collectively referred to as an "Assignment"), without the prior written consent of Sublandlord in each instance, which consent may be withheld by Sublandlord in its sole and absolute discretion. A transfer of more than fifty percent (50%) of the equity ownership of Subtenant during any two-year period to a party (or to an affiliated group of parties) shall also constitute a prohibited Assignment; provided, however, this provision shall not be applicable if such transfers occurred on a public stock exchange. If Sublandlord consents to an Assignment, Subtenant and its successors and assigns, and any guarantors of Subtenant's obligations under this Sublease, shall not be released from liability under this Sublease. Subtenant acknowledges that an Assignment must be approved by the City, as evidenced by formal resolution.

As a condition of Sublandlord's consent to an Assignment, the assignee and Subtenant shall execute an agreement in favor of Sublandlord and in a form acceptable to Sublandlord, pursuant to which the assignee shall agree to faithfully perform and assume and be bound by all of the terms, covenants, conditions, provisions and agreements of this Sublease. As used in this Article 18, the term "assignee" shall include the person or entity who is the transferee in any form of Assignment, as defined above. In addition, Subtenant and the assignee shall, upon not less than three (3) days prior written notice from Sublandlord, execute, acknowledge and deliver to Sublandlord a statement in writing (a) certifying that this Sublease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Sublease as so modified is in full force and effect), and the date to which the Rent and other charges are paid in advance, if any; (b) acknowledging that there are not, to Subtenant's and the assignee's knowledge, any uncured defaults under this Sublease on the part of Sublandlord or Subtenant, or specifying such defaults if any are claimed; (c) setting forth the Commencement Date and Expiration Date; and (d) certifying as to such other matters as Sublandlord may reasonably request. Any guarantor of this Sublease shall execute a reaffirmation of such guarantee in a form reasonably acceptable to Sublandlord agreeing to continue to be a guarantor of the terms and conditions of this Sublease following an Assignment.

18.2 Transfer Premium. As a reasonable condition to Sublandlord's consent to any Assignment, Subtenant shall pay to Sublandlord fifty percent (50%) of any Transfer Premium, as defined in subsection 18.2.1, below.

18.2.1 Definition of Transfer Premium. "Transfer Premium" means all Rent and other consideration actually received by Subtenant from the assignee (including key money and bonus money and any payment in excess of fair market value for services rendered by Subtenant to the assignee, or assets, fixtures, inventory, equipment, or furniture transferred by Subtenant to the assignee in connection with the Assignment (collectively, the "Assignment Rent"), after deducting:

a. The Rent payable by Subtenant under this Lease (excluding the Transfer Premium) for the Subleased Premises;

b. Reasonable leasing commissions paid by Subtenant; and,

c. Other reasonable out-of-pocket costs paid by Subtenant (including attorneys' fees, advertising costs, and expenses of readying the Subleased Premises for occupancy by the assignee).

The costs referred to in subparagraphs (a) through (d) are referred to as the "Transfer Costs."

18.2.2 Monthly Payment of Transfer Premium. Subtenant shall pay the Transfer Premium to Sublandlord on a monthly basis, as Additional Rent under this Sublease.

18.2.3 Audit of Transfer Premium. Subtenant shall allow Sublandlord to review and audit Subtenant's books and records for the purpose of verifying Subtenant's calculation of the Transfer Premium, Assignment Rent, and Transfer Costs.

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

18.4 Unapproved Transfer Void. Any Assignment not in compliance with the provisions of this Article 18 shall be void, and shall, at the option of Sublandlord, be a breach of this Sublease.

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

18.6 No Waiver. Notwithstanding any Assignment, Subtenant shall remain fully and primarily liable for the payment of all Rent and other sums due, or to become due, hereunder, and for the full performance of all other terms, conditions and covenants to be kept and performed by Subtenant hereunder. The acceptance of Rent or any other sum due hereunder, or the acceptance of performance of

any other term, covenant or condition hereof, from any other person or entity shall not be deemed to be a waiver of any of the provisions of this Sublease or a consent to any Assignment of the Subleased Premises.

18.7 Assignment Fee. The Assignment Notice shall be accompanied by a "Transfer Fee" in the amount of \$1,000.00 payable to Sublandlord.

18.8 Sublandlord's Option to Recapture the Space. Despite any other provision of this Article 18, Sublandlord has the option to recapture the Subleased Premises, by written notice to Subtenant ("Recapture Notice") within ten (10) days after receiving an Assignment Notice from Subtenant. A timely Recapture Notice terminates this Sublease and Subtenant's obligations regarding the Subleased Premises for the remaining Term and as of the Assignment Date. The Recapture Notice shall be void, however, if Subtenant notifies Sublandlord, within ten (10) days after receipt of the Recapture Notice, that Subtenant withdraws the Assignment Notice. If Sublandlord declines or fails timely to elect to recapture the Subleased Premises, Sublandlord shall have no further right to the Subleased Premises under this Section 18.9 unless it becomes available again in connection with any subsequently proposed Assignment.

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

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

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

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

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

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

20. **Subordination and Attornment.**

20.1 Subordination. This Sublease shall be subject and subordinate to the lien of any mortgage, deed of trust or lease in which Sublandlord is tenant, now or hereafter in force against the Subleased Premises, and to all advances made or hereafter to be made upon the security thereof without the necessity of the execution and delivery of any further instruments on the part of Subtenant to effectuate such subordination; provided, however, that for the lien of any mortgage, deed of trust or lease executed by Sublandlord after the date of this Sublease to be subordinate to this Sublease, the holder of

any such mortgage, deed of trust or lease shall execute, acknowledge and deliver to Subtenant a non-disturbance agreement providing that so long as Subtenant performs all of its obligations under the Sublease, Subtenant's quiet enjoyment and use of the Subleased Premises shall not be disturbed.

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

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

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

21. **Surrender.**

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

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

21.3 No Merger. The voluntary or other surrender of any ground or underlying lease that now exists or may hereafter be executed affecting the Building or Subleased Premises or a mutual cancellation thereof or of Sublandlord's interest therein, shall not work a merger and shall, at the option of the successor of Sublandlord's interest in the Building or Subleased Premises, operate as an assignment of this Sublease.

22. **Holding Over.**

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

22.2 Holding Over without Consent. If Subtenant remains in possession of the Subleased Premises after the expiration or earlier termination of the Term hereof without the express

written consent of Sublandlord, Subtenant shall become a tenant at sufferance upon all the terms of this Sublease applicable to a tenant at sufferance, except that the monthly installments of Base Rent shall be equal to one hundred fifty percent (150%) of the monthly installment of the Base Rent in effect during the immediately preceding thirty (30) days.

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

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

23. Taxes on Subtenant's Property.

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

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

24. Hazardous Materials.

24.1 Prohibition/Compliance. Subtenant, at its sole cost, shall comply with all federal, state and local laws, statutes, ordinances, codes, regulations and orders relating to the receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release and disposal of any Hazardous Material as defined in this Article 24 in or about the Subleased Premises or the Building. Subtenant shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept or used in or about the Subleased Premises by Subtenant, its agents, employees, contractors or invitees in a manner or for a purpose prohibited by any federal, state or local law, rule or regulation. The disposal of Hazardous Material shall be in approved containers and removed from the Subleased Premises by duly licensed carriers. Subtenant shall immediately provide Sublandlord with telephonic notice, which shall promptly be confirmed by written notice, of any and all spillage, discharge, release and disposal of Hazardous Materials onto or within the Subleased Premises or the Building, which by law must be reported to any federal, state or local agency, and any injuries or damages resulting directly or indirectly therefrom. A failure of Subtenant to give to Sublandlord the notices required in this Section 24.1 shall constitute a Default under this Sublease. Further, Subtenant shall deliver to Sublandlord each and every notice or order received from any federal, state or local agency concerning Hazardous Materials and the possession, use and/or disposal thereof promptly upon receipt of each such notice or order. Subtenant shall be responsible for and shall indemnify, protect, defend, and hold harmless Sublandlord and its agents, employees, representatives, directors and officers from any and all claims, costs, penalties, fines, liability and losses, including without limitation, (i) temporary or permanent diminution in value of the Subleased Premises or the Building, (ii) damages for the temporary or permanent loss of restriction on use of rentable or usable space or of any amenity of the Subleased Premises or the Building, and (iii) sums paid in settlement of claims, consultant fees and expert fees, liabilities, attorneys' fees, damages, injuries, causes of action, judgments and expenses, which arise during or after the Term of this Sublease and which (a) result from Subtenant's use and occupancy of the Subleased Premises, or (b) result from

Subtenant's receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release or disposal of Hazardous Materials in, upon or about the Subleased Premises or the Building. The indemnifications of Sublandlord and indemnities by Subtenant above include, to the extent Subtenant is responsible for such costs and expenses under the provisions above, without limiting the generalities thereof, reasonable costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work lawfully required by any federal, state or local governmental agency or political subdivision because of any Hazardous Materials present in the soil, subsoil, ground water, or elsewhere at, on or under the Subleased Premises or the Building.

24.2 Termination of Sublease. Notwithstanding the provisions of this Article 24, Sublandlord shall have the right to terminate the Sublease in the event that (i) Subtenant uses the Subleased Premises for the generation, storage, use, treatment or disposal of Hazardous Material in a manner or for a purpose prohibited by applicable law (unless Subtenant is diligently pursuing compliance therewith), (ii) Subtenant has been required by any governmental authority to take remedial action in connection with Hazardous Material contaminating the Subleased Premises or the Building if the contamination resulted from Subtenant's action or use of the Subleased Premises and such remedial action has a material adverse effect on Sublandlord, the Subleased Premises or the Building, or (iii) Subtenant is subject to an enforcement order issued by any governmental authority in connection with the use, disposal or storage of a Hazardous Material on the Subleased Premises and such enforcement order has a material adverse effect on Sublandlord, the Subleased Premises or the Building. Each of the foregoing events shall be deemed to be a material Default by Subtenant under this Sublease.

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

24.4 Sublandlord's Right to Perform Tests.

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

24.4.2 Upon the expiration or upon any early termination of this Sublease, Subtenant shall furnish to Sublandlord, at Subtenant's sole cost, a report and certification from a qualified environmental engineer, verifying that the Subleased Premises are free from any Hazardous Materials or

contamination in excess of legally permissible levels. If said report indicates that there are any impermissible levels of Hazardous Materials on the Subleased Premises, then Subtenant shall pay for all costs necessary to clean up and remedy said impermissible levels of Hazardous Materials; and Subtenant shall also continue to pay Rent for the Subleased Premises until such time as the impermissible levels of Hazardous Materials are cleaned up and remedied.

24.5 Survival of Subtenant's Obligations. Subtenant's obligations under this Article 24 shall survive the termination of this Sublease. During any period of time employed by Subtenant after the termination of this Sublease to complete the removal from the Subleased Premises or the Building of any such Hazardous Materials, Subtenant shall continue to pay the full Rent in accordance with this Sublease.

24.6 Definition of "Hazardous Material". As used herein, the term "**Hazardous Material**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States of America. The term "**Hazardous Materials**" shall also mean toxic or hazardous substances, including without limitation, asbestos or any substance containing asbestos and deemed hazardous under any Hazardous Material Law (defined below), the group of organic compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, chemicals known to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions or related materials and any items included in the definition of hazardous or toxic waste, materials or substances under any law relating to environmental conditions and industrial hygiene, including without limitation, the Resource Conservation and Recovery Act of 1976 ("**RCRA**"), 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**"), 42 U.S.C. §§ 9601 - 9657, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("**SARA**"); the Hazardous Materials Transportation Act, 49 U.S.C. § 6901, et seq., the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 741 et seq., the Clean Water Act, 33 U.S.C. § 7401, et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 - 2629; the Safe Drinking Water Act, 42 U.S.C. §§ 300f - 300j; the Carpenter-Presley-Tanner Hazardous Substances Account Act; the Hazardous Waste Control Act; the Porter-Cologne Water Quality Control Act; and all similar federal, state and local environmental statutes, ordinances, and the regulations, orders, decrees now or hereafter promulgated thereunder (collectively the "**Hazardous Material Laws**").

24.7. Article Binding on Parties Related to Subtenant. For the purposes of this Article 24, the term "Subtenant" shall include Subtenant and its shareholders, members, partners, directors, officers, agents, employees, invitees, sub-subtenants, assigns, and guests, as well as their successors and assigns.

25. **Miscellaneous.**

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

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

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

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

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

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

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

25.8 Independent Counsel. Subtenant and Sublandlord each acknowledge that: (i) they have had the opportunity to be represented by independent counsel in connection with this Sublease; and (ii) this Sublease is the result of negotiations between Sublandlord and Subtenant and the advice and assistance of their respective counsel. The fact that this Sublease was prepared by Sublandlord's counsel as a matter of convenience shall have no impact or significance. Any uncertainty or ambiguity in this Sublease shall not be construed against Sublandlord because Sublandlord's counsel prepared this Sublease in its final form.

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

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

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

For Rent Payment and Notices to Sublandlord:

Driscoll Mission Bay
Attn: Ms. Mary-Carol Driscoll

1500 Quivira Way
San Diego, California 92109

For Notices to Subtenant:

Boating Dynamics
Attn: R.D. Gordon
1500 Quivira Way, #4
San Diego, CA 92109

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

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

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

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

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

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

25.17 Real Estate Brokers; Finders. Subtenant and Sublandlord each represent to the other that they have not entered into any agreement or incurred any obligation in connection with this transaction that might result in the obligation to pay a brokerage commission or finder's fee to any broker, finder or other person. Each party agrees to defend, indemnify and hold the other party harmless from and against any liability, damages, claim or demand by any other broker or other person for bringing about this Sublease who claims to have dealt with such indemnifying party, including any expenses (including reasonable attorney fees) incurred in defending any such claim or demand.

25.18 Attorneys' Fees. If either party hereto becomes a party to any litigation concerning this Sublease (including any bankruptcy proceeding), the Subleased Premises, or the Building, by reason of any act or omission of the other party or its authorized representatives, and not by any act or omission of the party that becomes a party to that litigation or any act or omission of its authorized representatives, the party that causes the other party to become involved in the litigation shall be liable to

that party for reasonable attorneys' fees and court costs incurred by it in the litigation. If either party hereto commences an action against the other party arising out of or in connection with this Sublease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

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

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

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

25.22 Limitation of Sublandlord's Liability. If Sublandlord is a limited partnership or joint venture, the limited partners of such partnership shall not be personally liable and no limited partner of Sublandlord shall be sued individually or named individually as a party in any suit or action or service or process be made against any limited partner of Sublandlord. If Sublandlord is a corporation or limited liability company, the shareholders, members, directors, officers, managers, employees and/or agents of such corporation shall not be personally liable and no shareholder, member, director, officer, manager, employee or agent of Sublandlord shall be sued or named as a party in any suit or action or service or process be made against any shareholder, member, director, officer, manager, employee or agent of Sublandlord. No limited partner, shareholder, director, employee or agent of Sublandlord shall be required to answer or otherwise plead to any service of process and no judgment will be taken or writ of execution levied against any limited partner, shareholder, member, director, officer, manager, employee or agent of Sublandlord. Each of the covenants and agreements of this Section 25.22 shall be applicable to any covenant or agreement either expressly contained in this Sublease or imposed by statute or by common law.

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

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

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

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

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

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

28. **Right To Terminate.** Notwithstanding anything in this Sublease to the contrary, Sublandlord and/or Subtenant shall have the right to terminate this Sublease before expiration of the Term

by giving written notice of termination to Subtenant and/or Sublandlord not less than thirty (30) days before the effective date of the termination (the "Termination Date"). The Termination Date shall be specified in Sublandlord's and/or Subtenant's termination notice. In the event that the Termination Date is other than the last day of a calendar month, Rent for the partial last month shall be prorated on the basis of a thirty (30) day month and shall be due and payable on the first day of such month.

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

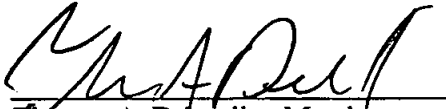
Date of execution:

5 Aug, 2005

Sublandlord:

DRISCOLL MISSION BAY LLC,
a California limited liability company

By:


Thomas A. Driscoll, a Member

Date of execution:

8-1-05, 2005

Subtenant:

Boating Dynamics
a Sole Proprietorship

By:

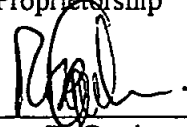

Robert D. Gordon
Its: Owner

Exhibit B

Diagram of Subleased Premises and Site Plan

[to be attached]

FIRST ADDENDUM TO SUBLEASE

This First Addendum to Sublease ("**First Addendum**") is made as of August 1, 2005 by and between Driscoll Mission Bay LLC, a California limited liability company ("**Sublandlord**") and Boating Dynamics, a Sole Proprietorship ("**Subtenant**").

Sublandlord and Subtenant entered into that certain sublease ("**Sublease**") of even date for the Subleased Premises located in the City of San Diego, California, as more fully described in the Sublease.

Sublandlord and Subtenant agree that notwithstanding anything contained in the Sublease to the contrary, the provisions set forth below shall be deemed to be a part of the Sublease and shall supercede, to the extent appropriate, any contrary provision in the Sublease. References in this First Addendum to the term "**Sublease**" shall be construed to mean the Sublease as amended and supplemented by this First Addendum. All capitalized terms used in this First Addendum, unless specifically defined in this First Addendum, shall have the same meaning attributed to those terms in the Sublease.

AGREEMENT

1. Master Lease. As set forth in Section 27 of the Sublease, Subtenant and Sublandlord agree that the terms and conditions of the Master Lease are incorporated herein by reference, and shall, as between Sublandlord and Subtenant, constitute the terms, covenants, conditions, and provisions of this Sublease, except to the extent that they are inapplicable to, inconsistent with, or modified by the provisions of this Sublease. Subtenant shall strictly comply with each applicable term and condition of the Master Lease. Any breach by Subtenant of any of the terms and conditions of the Master Lease shall be deemed a breach by Subtenant of the Sublease. Without limitation, Subtenant specifically acknowledges that it has reviewed and will comply with the following provisions of the Master Lease:

1.1 Section 14 of the Master Lease states:

"14. NON-DISCRIMINATION: Lessee agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, physical handicap or medical condition in Lessee's use of the premises, including, but not limited to, the providing of goods services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment."

1.2 Section IV(B)(4) of the Master Lease states:

"4. AFFIRMATIVE ACTION: Lessee agrees to take affirmative action to improve employment opportunities of minorities and women. When applicable, Lessee agrees to abide by the Affirmative Action Program for Lessees as it now exists or is hereafter amended. A copy of the program, effective as of the date of this agreement, is on file in the Office of the City Clerk as Document No. 746205 and by this reference is incorporated herein. Minorities are presently defined as Mexican-American, Black, Filipino, American Indian and Asian/Oriental. The goal of this program shall be the attainment of the employment of minorities and women in all areas of employment in a total percentage of employment approximately equal to the total level of minority and women

approximately equal to the total level of minority and women employment as established by the City for its Affirmative Action Program each year.

2. Guaranty. The obligations of the Subtenant shall be personally guaranteed by Robert D. Gordon (the "**Guarantor**"). This Sublease shall not be effective until the Guarantor sign and deliver to Subtenant a written Guaranty in the form attached hereto and made a part hereof by reference as Schedule 3.

3. Effectiveness of Sublease. Except as and to the extent modified by this First Addendum, all of the provisions of the Sublease shall remain in full force and effect.

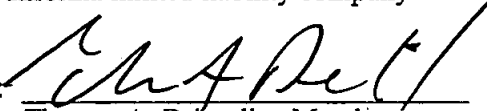
Date of execution:

5 Aug, 2005

Sublandlord:

DRISCOLL MISSION BAY LLC,
a California limited liability company

By:


Thomas A. Driscoll, a Member

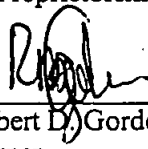
Date of execution:

08-1-05, 2005

Subtenant:

Boating Dynamics
a Sole Proprietorship

By:


Robert D. Gordon

Its: Owner

GUARANTY OF SUBLEASE

This Guaranty of Sublease ("Guaranty") is made and effective as of August 1, 2005, by Robert D. Gordon ("Guarantor") in favor of DRISCOLL MISSION BAY LLC, a California limited liability company ("Sublandlord") with reference to the facts set forth below.

RECITALS:

A. Sublandlord has entered into that certain Sublease and First Addendum (collectively, the "Sublease"), of even date herewith with Boating Dynamics, a Sole Proprietorship ("Subtenant"), to which this Guaranty is attached as an exhibit. The Sublease concerns the subleased premises ("Subleased Premises") located in the City of San Diego, State of California, as more particularly described in the Sublease. Unless specifically defined, all capitalized terms used in this Guaranty shall have the same meaning attributed to those terms in the Sublease.

B. As a condition to entering into the Sublease, Sublandlord has required that Guarantor execute this Guaranty guaranteeing performance of all the covenants to be performed by Subtenant under the Sublease. Guarantor's agreement to provide this Guaranty is a material consideration for Sublandlord's decision to sublease the Subleased Premises to Subtenant.

NOW, THEREFORE, to induce Sublandlord to enter into the Sublease and in consideration thereof, Guarantor agrees as follows:

1. Guarantor unconditionally guarantees to Sublandlord, and to Sublandlord's successors and assigns, without deduction by reason of setoff, defense or counterclaim, the payment by Subtenant of all Rent and all other charges which accrue under the Sublease in the manner and at the time prescribed therein, and the full and punctual performance and observance, by Subtenant, of all the terms, covenants and conditions contained in the Sublease. Guarantor waives notice of any breach or default by Subtenant. Guarantor's obligations hereunder shall continue in full force and effect with respect to all of Subtenant's obligations under the Sublease, and any extensions thereof, which are not performed upon the termination of the Sublease.

2. If Subtenant shall at any time default in the punctual payment, performance and observance of any of the amounts, terms, covenants or conditions of the Sublease, Guarantor will pay, keep, perform and observe same, as the case may be, in the place and stead of Subtenant. Guarantor shall also pay to Sublandlord all reasonable and necessary incidental damages and expenses incurred by Sublandlord as a direct and proximate result of Subtenant's failure to perform, which expenses shall include reasonable attorneys' fees and interest on all sums due and owing Sublandlord by reason of Subtenant's failure to pay same, at the maximum rate allowed by law.

3. This Guaranty is a continuing guaranty of all of Subtenant's obligations under the Sublease, independent of and in addition to any other guaranty, previously or subsequently given to Sublandlord, and this Guaranty shall not affect any of said guaranties.

4. Guarantor hereby expressly waives and relinquishes any and all rights and remedies ~~which Guarantor may have or be able to assert by reason of the laws or decisions of the State of~~ California pertaining to the rights and remedies of sureties.

5. Guarantor waives any right to require Sublandlord to (a) proceed against Subtenant or any co-guarantor, (b) proceed against or exhaust any security (including a security deposit) held by Sublandlord, or (c) pursue any remedy in Sublandlord's power whatsoever. Guarantor waives any defense it may acquire by reason of Sublandlord's election of any remedy against it or Subtenant or both, including, but without limitation, the election by Sublandlord to exercise its rights to occupy and operate the Subleased Premises under the Sublease.

6. The obligations of Guarantor hereunder shall not be released by Sublandlord's receipt, application or release of any security given for the performance and observance of any covenant or condition in the Sublease on Subtenant's part to be performed or observed.

7. Guarantor waives any defense based upon the legal disability of Subtenant, or any discharge, release or limitation of the liability of Subtenant to Sublandlord, or any restraint or stay applicable to actions against Subtenant, or any disaffirmance or abandonment of the Sublease by a trustee of Subtenant whether consensual, or by order of a court or other governmental authority, arising by operation of law or any liquidation, reorganization, receivership, bankruptcy, insolvency or debtor relief proceeding, or any other cause. Guarantor further waives any defense based upon any amendment, modification, renewal, extension, assignment, subletting or other alteration (with or without the consent of Sublandlord) of the Sublease, or the Term of the Sublease or obligation of Subtenant or Sublandlord under the Sublease, or any other documents relating to the transactions described therein; any defense based upon the negligence of Sublandlord; any defense based upon the forfeiture or termination of the Sublease by Sublandlord whether by expiration or default; any defense based upon the failure of Sublandlord to file a claim in bankruptcy of Subtenant; ~~all rights of subrogation, all rights to enforce any remedy that Sublandlord may have~~ against Subtenant, and all rights to participate in any security held by Sublandlord for the performance and obligations of Subtenant under the Sublease, except to the extent such security remains after payment and performance of Subtenant's obligations in full; any defense based upon the impairment of any subrogation rights that Subtenant might have; any defense based upon death, incapacity, lack of authority or termination of existence or revocation hereof by any person or entity, or persons or entities, or the substitution of any party hereto, and any defense based upon or related to Guarantor's lack of knowledge as to Subtenant's financial condition, and any and all rights under Section 2845 of the California Civil Code and any successor provision. Guarantor also hereby waives the provisions of Sections 2809, 2810, 2819 and 2850 of the California Civil Code and their successors, and all other defenses which are capable of being waived.

8. Guarantor waives all presentments, demands, protests and notices of any kind including notice of acceptance of the Guaranty by Sublandlord. Any act of Sublandlord, or its successors or assigns, consisting of a modification of the Sublease, a waiver of any of the terms or conditions of the Sublease, or the giving of any consent to any manner or thing relating to the Sublease, or the granting of any indulgences or extensions of time to Subtenant, are hereby deemed approved by Guarantor and may be done without notice to Guarantor and without releasing Guarantor from any of its obligations hereunder.

9. The liability of Guarantor hereunder shall in no way be affected by: (a) the release or discharge of Subtenant in any creditor's, receivership, bankruptcy or other proceeding; (b) the impairment, limitation or modification of the liability of Subtenant or the estate of Subtenant in bankruptcy, or of any remedy for the enforcement of Subtenant's liability under the Sublease resulting from the operation of any present or future provision of the Bankruptcy Code of the United States or other statute or from the decision of any court; (c) the rejection or disaffirmance of the Sublease in any such proceedings; (d) the assignment or transfer of the Sublease by Subtenant; (e) any disability or other defense of Subtenant; (f) the cessation from any cause whatever of the liability of Subtenant; (g) the exercise by Sublandlord of any of its rights or remedies reserved under the Sublease or by law; or (h) any termination of the Sublease.

10. If Subtenant shall become insolvent or be adjudicated bankrupt, whether by voluntary or involuntary petition, if any bankruptcy action involving Subtenant shall be commenced or filed, if a petition for reorganization, arrangement or similar relief shall be filed against Subtenant, or if a receiver of any part of Subtenant's property or assets shall be appointed by any court, Guarantor shall pay to Sublandlord the amount of all accrued, unpaid and accruing Rent and other charges due under the Sublease to the date when the debtor-in-possession, the trustee or administrator rejects the Sublease. In addition, Guarantor shall pay to Sublandlord all accrued, unpaid and accruing Rent and other charges under the Sublease for the remainder of the Sublease Term. At the option of Sublandlord, Guarantor shall either: (a) pay Sublandlord an amount equal to the Rent and other charges which would have been payable for the unexpired portion of the Term reduced to present-day value; or (b) execute and deliver to Sublandlord a new Sublease for the balance of the Term with the same terms and conditions as the Sublease, but with Guarantor as Subtenant thereunder. Any operation of any present or future debtor's relief act or similar act, or law or decision of any court, shall in no way affect the obligations of Guarantor or Subtenant to perform any of the terms, covenants or conditions of the Sublease or of this Guaranty.

11. Guarantor assumes full responsibility for keeping fully informed of the financial condition of Subtenant and all other circumstances affecting Subtenant's ability to perform its obligations to Sublandlord, and agrees that Sublandlord shall have no duty to report to Guarantor any information which Sublandlord receives about Subtenant's financial condition or any circumstances bearing on Subtenant's ability to perform.

12. The covenants and obligations of Guarantor hereunder are independent of the Subtenant's obligations under the Sublease and are binding upon the Guarantor notwithstanding the fact that the Guarantor is not the signatory to the Sublease; separate action or actions may be brought against any Guarantor hereon, whether or not action is brought against Subtenant or any co-guarantor or Subtenant or any co-guarantor be joined in any such action or actions.

13. Any indebtedness or other obligations of Subtenant now or hereafter held by Guarantor is hereby subordinated to Subtenant's obligations to Sublandlord, and such indebtedness or other obligations of Subtenant to Guarantor, if Sublandlord so requests, shall be collected, enforced and received by Guarantor as a trustee for Sublandlord and be paid over to Sublandlord on account of Subtenant's obligations to Sublandlord, but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty.

14. Guarantor authorizes Sublandlord, without giving notice to Guarantor or obtaining Guarantor's consent and without affecting the liability of Guarantor, from time to time, to: (a) renew or extend all or any portion of Subtenant's obligations under the Sublease or the Sublease itself; (b) declare all sums owing to Sublandlord under the Sublease due and payable upon the occurrence of a default or event of default under the Sublease; (c) make changes in the dates specified for payments of any sums payable in periodic installments under the Sublease; (d) otherwise modify the terms of the Sublease; (e) take and hold security for the performance of Subtenant's obligations under the Sublease and exchange, enforce, waive and release any such security; (f) apply such security and direct the order or manner of sale thereof as Sublandlord in Sublandlord's discretion may determine; (g) release, substitute or add any one or more endorsers of the Sublease or guarantors of Subtenant's obligations under the Sublease; and (h) assign this Guaranty in whole or in part.

15. This Guaranty shall be enforceable by Sublandlord in accordance with the laws of the State of California and shall be construed in accordance therewith. Guarantor agrees to pay attorneys' fees and all other costs and expenses which may be incurred by Sublandlord in enforcement of this Guaranty. Until paid to Sublandlord, such sums will bear interest from the date such costs and expenses are incurred at the maximum rate permitted by law.

16. No delay or failure on the part of Sublandlord to pursue any right or remedy hereunder or under the Sublease shall constitute a waiver of that right or remedy. All remedies of Sublandlord against Guarantor are cumulative.

17. The obligations and promises set forth herein shall be joint and several undertakings of each of the persons executing this Guaranty as a Guarantor, and Sublandlord may proceed hereunder against any one or more of said persons without waiving its right to proceed against any of the others. The use of the singular herein shall include the plural.

18. Guarantor acknowledges that its undertakings given hereunder are given in consideration of Sublandlord's entering into the Sublease and that Sublandlord would not consummate the Sublease were it not for the execution and delivery of this Guaranty.

19. The provisions of this Guaranty will bind and benefit the heirs, executors, administrators, legal representatives, successors and assigns of Guarantor and Sublandlord. However, Guarantor may not assign this Guaranty or its obligations hereunder, without Sublandlord's prior written consent, which may be withheld in Sublandlord's sole and absolute discretion.

20. Guarantor individually represents and warrants that it has all requisite power and authority to execute, deliver, perform and be legally bound by this Guaranty on the terms and conditions herein stated and transact any other business with Sublandlord as necessary to fulfill the terms of this Guaranty.

21. No provision of this Guaranty or Sublandlord's rights hereunder can be waived or modified nor can Guarantor be released from its obligations hereunder except by a writing executed by Sublandlord. No such waiver shall be applicable except in the specific instance for which given.

22. Guarantor hereby waives its right to trial by jury of any cause of action, claim, ~~counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either~~ Sublandlord against Subtenant and/or Guarantor or Subtenant against Sublandlord and/or Guarantor, or by Guarantor against Sublandlord and/or Subtenant, on any matter whatsoever arising out of, or in any way connected with, this Guaranty and/or the Sublease, the relationship of Sublandlord, Subtenant and Guarantor, Subtenant's use and occupancy of the Subleased Premises or Common Area, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now of hereafter in effect.

23. The term "Subtenant" will mean both the named Subtenant and any other person or entity at any time assuming, subleasing or otherwise becoming primarily liable for all or any part of the Subtenant's obligations. The term "Sublandlord" will mean both the Sublandlord named herein and any future owner or holder of Sublandlord's interest in the Subleased Premises. Sublandlord may, without notice, assign this Guaranty in whole or in part without extinguishing or reducing the liability of the Guarantor.

24. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be given in the manner required for giving notices as set forth in the Sublease. For purposes of notice, the addresses of the parties shall be as set forth on the signature page hereof; provided, however, that any party shall have the right to change its address for notice hereunder to any other location by giving notice to the other party in the manner set forth above.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the day and year first above written.

Address of Guarantor:

3118 Canon Street, #2
San Diego, CA 92106

GUARANTOR



Robert D. Gordon

Guarantor's Social Security No: 611-92-0575

Address of Sublandlord:

Driscoll Mission Bay LLC
1500 Quivira Way
San Diego, CA 92109

EXHIBIT A

PERCENTAGE LEASE

["Master Lease" dated March 5, 1979 (as amended by that certain FIRST AMENDMENT TO LEASE dated June 2, 1986), by and between CITY, as lessor, and MISSION BAY MARINA, a limited partnership, as lessee, relating to certain real property described as Lots 25, 26, 27, and 28 of Quivira Basin, Mission Bay Park, together with the water areas adjacent thereto, located in San Diego, California]

CONSENT TO SUBLEASE AGREEMENT

THIS CONSENT TO SUBLEASE AGREEMENT ("Consent") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), DRISCOLL MISSION BAY, LLC, a California limited liability company ("DRISCOLL"), and BAJA CANVAS AND UPHOLSTERY a California company, ("BAJA") to be effective upon execution by CITY (the "Effective Date") and approval by the San Diego Attorney, as follows:

RECITALS

- A. DRISCOLL is the "LESSEE", by assignment, under that certain PERCENTAGE LEASE dated March 5, 1979 (as amended by that certain FIRST AMENDMENT TO LEASE dated June 2, 1986, the "Master Lease"), by and between CITY, as lessor, and MISSION BAY MARINA, a limited partnership, as lessee, relating to certain real property ("Master Lease Property") described as Lots 25, 26, 27, and 28 of Quivira Basin, Mission Bay Park, together with the water areas adjacent thereto, located in San Diego, California, and more particularly described in the Master Lease, attached hereto as Exhibit A.
- B. The Master Lease requires CITY'S consent to any sublease of the Master Lease Property.
- C. DRISCOLL and BAJA have executed that certain SUBLEASE ("Baja Canvas and Upholstery Sublease") dated May 27, 2005, whereby, subject to CITY'S consent, DRISCOLL subleases to BAJA and BAJA subleases from DRISCOLL a portion of the Master Lease Property consisting of a 744 square foot office located in a building on the Master Lease Property ("Sublease Premises") described in Section B Sublease of the Baja Canvas and Upholstery Sublease, attached hereto as Exhibit B.
- D. Under the terms of this Consent, CITY will consent to the Baja Canvas and Upholstery Sublease.

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

- 1. Subordination. The Baja Canvas and Upholstery Sublease is and shall be subordinate to the Master Lease. CITY shall not be bound by any term or condition in the Sublease, which in any way conflicts with CITY'S rights or increase CITY'S obligations under the Master Lease. Any conflict between the Master Lease and the Sublease shall be construed or resolved in favor of the Master Lease. BAJA acknowledges and agrees that its rights and obligations as "Subtenant" under the Baja Canvas and Upholstery Sublease are subject and subordinate to the terms and conditions of this Consent and the Master Lease.
- 2. Master Lease Provisions. Without releasing DRISCOLL of any obligation, BAJA additionally assumes and shall perform the obligations of "LESSEE" under the Master Lease as and to the extent, such obligations are applicable to the Sublease Premises or BAJA'S use of any common area within the Master Lease Property.

3. Use. BAJA'S use shall be limited to canvas and upholstery repair and fabrication on Master Lease Property and shall comply at all times to the Master Lease.
4. Rent. DRISCOLL shall pay the following to CITY as rent defined under the Master Lease:
 - (a) Four percent (4%) of gross income from repair and painting of boats, repair of motors, sale of boats and motor parts, accessories and marine hardware, and for boat launching, haul out , and lay days (as defined in Master Lease);
 - (b) Seven percent (7%) of gross income from usage of office space;
 - (c) Twenty percent (20%) of gross income from dry storage;
 - (d) Ten percent (10%) of all gross income from all other sales, services, or operations conducted on Master Lease Property.
5. Indemnification. DRISCOLL and BAJA, jointly and severally, shall defend, indemnify, protect, and hold CITY, its elected officials, officers, representatives, agents and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including without limitation any injury to DRISCOLL'S or BAJA'S officers, employees, agents, invitees, guests, subtenants or licensees, which arise out of or are in any manner directly or indirectly connected with the Baja Canvas and Upholstery Sublease, BAJA'S use of or operations on the Master Lease Property, the condition of the Sublease Premises, or form any act or omission of BAJA or any of its employees, agents, invitees, guest, subtenants or licensees; provided, however, this duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents or employees.
6. Subsequent Sublease. This Consent does not constitute consent to any subsequent subletting of any portion of the Master Lease Property, and does not relieve DRISCOLL, BAJA, or any person claiming under or through either of them of the obligation to obtain CITY'S consent to any future sublease.
7. Brokerage Commission. CITY shall not be liable for any brokerage commission or finder's fee in connection with the consummation of the Baja Canvas and Upholstery Sublease or this Consent. DRISCOLL and BAJA shall jointly and severally protect, defend, indemnify, and hold CITY harmless from and against any claim for any brokerage commission or finder's fee related to the consummation of the Baja Canvas and Upholstery Sublease or this Consent, and from and against any cost or expense (including without limitation attorney fees) incurred by CITY in resisting any claim for any such brokerage commission or finder's fee.
8. San Diego's Strong Mayor Form of Governance. The Master Lease shall be amended by adding the following section:

All references to "City Manager" in this lease and all subsequent amendments to this lease shall be deemed to refer to "Mayor". This section became effective on January 1, 2006, and shall remain in effect for the duration the City operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the City of San Diego City Charter.

9. No Further Modification of Master Lease or Sublease. Except as provided herein, this Consent shall not be deemed or construed to modify, waive, impair, or affect any of the terms or conditions of the Master Lease or the Baja Canvas and Upholstery Sublease.
10. Controlling Law. The terms and conditions of this Consent shall be construed in accordance with the laws of the State of California.
11. Captions. Captions to the sections of this Consent are included for convenience only and do not modify any of the terms of this Consent.
12. Entire Agreement. This Consent constitutes the entire statement of the agreement of the parties pertaining to the amendment of the Master Lease and CITY'S consent to the Baja Canvas and Upholstery Sublease, and is binding on and inures to the benefit of the parties' respective heirs, representatives, successors and assigns. No party has been induced to enter into this Consent by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Consent. No modification of the terms or conditions of the Consent shall be effective unless made in writing that expressly states that it modifies this Consent, and signed by the parties hereto.
13. Attorney Fees. If any party commences litigation against any other party for the specific performance of this Consent, for damages for the breach of the terms and conditions of this Consent, or otherwise for any remedy and the enforcement thereof, the prevailing party shall be entitled to recover from the non-prevailing party its costs and reasonable attorney fees incurred.
14. Notice. Any notice required or permitted to be given to any party hereto shall be given in accordance with the provisions of the Master Lease, and if to BAJA, addressed to:

Baja Canvas and Upholstery
Attn: Jose Beleche
1500 Quivira Way
San Diego, CA 92109
15. Authority. Each individual executing this Consent on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Consent 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 agreement, and that this Consent is binding upon such person or entity in accordance with its terms. Each person executing this Consent on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to the City Manager, that such authority is

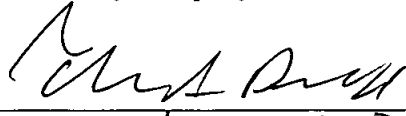
valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

16. CITY'S Consent. Subject to the terms and conditions of the Consent, CITY hereby consents to the Baja Canvas and Upholstery Sublease.

IN WITNESS WHEREOF, the parties hereto execute this Consent, to be effective as of the Effective Date.

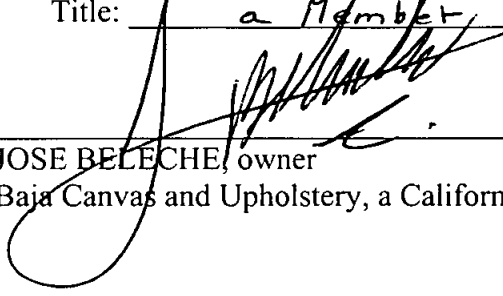
Date: 12/3/07

DRISCOLL MISSION BAY, LLC, a California limited liability company

BY: 

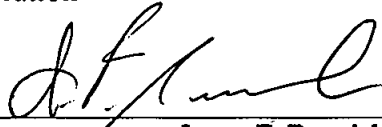
Name: Thomas A. Driscoll
Title: a Member

Date: 11/27/07


JOSE BELECHE, owner
Baja Canvas and Upholstery, a California company

Effective Date: 12/2/07

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:

Date: 2-8-08

MICHAEL J. AGUIRRE, San Diego City Attorney

BY: 

Todd Bradley, Deputy City Attorney

VB/nb

7/17/2007

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EXHIBIT B

SUBLEASE

between

DRISCOLL MISSION BAY LLC,
a California limited liability company,

as Landlord,

and

Baja Canvas & Upholstery,
a California Company,

as Tenant,

for a portion of
MISSION BAY MARINA
San Diego, California

dated May 27, 2005

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EXHIBITS:

- A Master Lease
- B Description of the Subleased Premises and Site Plan

SUBLEASE

THIS SUBLEASE ("Sublease"), dated for reference purposes only as of May 27, 2005, is entered into by and between DRISCOLL MISSION BAY LLC, a California limited liability company, ("Sublandlord") and Baja Canvas & Upholstery, a California Company _____ ("Subtenant"), with reference to the following facts:

A. Master Lease. Sublandlord is the successor "Lessee" under that certain Lease dated March 5, 1979, between the CITY OF SAN DIEGO, a municipal corporation ("City"), as Lessor, and MISSION BAY MARINA, a California limited partnership, as Lessee, a copy of which is attached hereto as Exhibit A and incorporated herein by reference (as amended from time to time, the "**Master Lease**"), for certain leased premises in Quivira Basin at Mission Bay Park, San Diego, California, commonly known as "Mission Bay Marina" and more particularly described in the Master Lease (the "**Master Premises**").

B. Sublease. Sublandlord desires to sublease to Subtenant that portion of the Master Premises described on Exhibit B (the "**Subleased Premises**") and Subtenant desires to sublease the Subleased Premises from Sublandlord, on the terms and conditions provided in this Sublease. The Subleased Premises is located in a building ("**Building**") located on the Master Premises.

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

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

2. Term.

2.1 Primary Term. The term of this Sublease (the "**Term**") shall commence on June 1, 2005 (the "**Commencement Date**") and shall expire at midnight two years (2) years thereafter, on May 31, 2007 (the "**Expiration Date**"), subject to earlier termination as provided in this Sublease.

2.2 Option to Extend. In the event this Sublease is in full force and effect, Subtenant has the option to extend the initial Term of this Sublease for four (4) extension periods of one (1) year each. Each one year extension period, if exercised, is referred to in this Sublease as an "**Option Term**." Each Option Term shall be subject to all the terms and provisions of this Sublease except for a change in the Base Rent. In the event that Subtenant elects to exercise its option to extend the initial Term or any Option Term, Subtenant shall provide written notice (the "**Exercise Notice**") to Sublandlord no later than three (3) months prior to the Expiration Date or, if exercised during an Option Term, three (3) months prior to the end of the then current Option Term. For the purpose of this Section 2.2, the phrase "in full force and effect" shall mean the following: (i) the Sublease has only been modified by the written mutual agreement of the parties and not by court order or as a part of a bankruptcy or other debtor-related procedure or proceeding; (ii) Subtenant has not unilaterally repudiated any terms of the Sublease; (iii) Subtenant is not then in Default under the Sublease (and will not be in Default on the last day of the initial Term or any Option Term); and (iv) Sublandlord has not given a notice of a Default to Subtenant on more than three (3) occasions since the Commencement Date. Subtenant's options to extend

are personal to Subtenant and cannot be exercised by any other party. Subtenant shall have no right to extend the Term or any Option Term except as set forth in this Section 2.2.

[Option 1 – Percentage Increase for each year of Option Term]

2.3 Increase in Base Rent During Option Term(s). The Base Rent for each Option Term shall be increased by ten percent (10%) over the Base Rent in effect during the last month of the initial Term or the then-existing Option Term, as the case may be. Unless the context of the reference clearly requires a different interpretation, any reference to the word "Term" shall include any Option Term for which Subtenant has properly exercised its rights to extend as set forth in Section 2.2, above.

[Option 2 – Market Rate Determination for each year of Option Term]

2.3 Increase in Base Rent During Option Term(s). Base Rent shall be payable (and shall be subject to adjustment) during the Option Term in accordance with Section 3 of this Sublease, except that the amount of Base Rent payable for the Option Term shall be computed using the then existing Market Rental Rate. The "**Market Rental Rate**" shall mean the projected prevailing market rental rates and other generally applicable economic terms and conditions which a willing, comparable, new non-renewal, non-equity tenant would pay, and which a willing landlord of comparable commercial space in a marina complex in the immediate market area of the Building would accept, projected to be paid as of the commencement of the applicable Option Term. In making a determination of Market Rental Rate, Sublandlord shall take into account items that professional real estate appraisers customarily consider, including, but not limited to, rental rates, fixed rental rate versus percentage rent, availability of similar commercial space, tenant size, tenant improvement allowances over building standard, free rent and any other concessions projected to be offered for such similar commercial space as of such date. For reference purposes only, the Market Rental Rate used to determine Base Rent for the initial Term was \$1.09 per square foot and took into consideration, among other things, the costs which would be incurred by Subtenant during the initial Term for extensive tenant improvements to the Subleased Premises.

Sublandlord shall, within ten (10) business days after receipt of the Exercise Notice for any Option Term), deliver to Subtenant a written determination of the then Market Rental Rate as determined by Sublandlord using the criteria set forth above ("**Sublandlord's Determination**"). Subtenant shall have ten (10) business days from the date of Sublandlord's delivery to notify Sublandlord in writing of Subtenant's acceptance of Sublandlord's Determination or deliver to Sublandlord a written statement of Subtenant's determination of the then Market Rental Rate using the criteria set forth above ("**Subtenant's Determination**"). If Subtenant does not deliver to Sublandlord the Subtenant's Determination within this 10 day period, Subtenant shall be deemed to have accepted the Sublandlord's Determination and the Market Rental Rate stated in the Sublandlord's Determination shall be used to determine the Base Rent payable for the applicable Option Term. If Subtenant does deliver the Subtenant's Determination within this 10 day period, then Sublandlord and Subtenant will have ten (10) days from the date of delivery of Subtenant's Determination to negotiate a Market Rental Rate acceptable to both Sublandlord and Subtenant (the "**Negotiating Period**").

If no agreement can be reached as to the Market Rental Rate within the Negotiating Period, then, within three (3) days after the Negotiating Period expires, Subtenant and Sublandlord shall mutually appoint a certified M.A.I. appraiser who has at least five (5) years full-time commercial appraisal experience. If Sublandlord and Subtenant are unable to agree on an appraiser, either of the parties to this Sublease, after giving five (5) days prior written notice to the other party, may apply to the then president of the San Diego Association of Realtors ("**SDAR**") for the selection of an appraiser who meets the foregoing qualifications, which selection shall be made within three (3) days. The appraiser selected by the president of SDAR shall be a person who has not previously acted in any capacity for either party. The appraiser shall,

within ten (10) days of his appointment, review the Sublandlord's Determination and Subtenant's Determination of the Market Rental Rate and such other information as he shall deem necessary and shall determine which of the two is closer to the actual Market Rental Rate. The appraiser shall be instructed, in deciding whether the Sublandlord's Determination or the Subtenant's Determination is closer to the actual Market Rental Rate, to use the criteria as to Market Rental Rate set forth above. The appraiser shall not establish his own Market Rental Rate, and must select either Sublandlord's or Subtenant's Determination and shall immediately notify the parties in writing of his selection. The Market Rental Rate determined by Sublandlord or Subtenant and selected as the one closer to the actual Market Rental Rate by the appraiser, shall be the Market Rental Rate used to determine the Base Rent payable for the applicable Option Term. Each of the parties shall bear one-half the cost of the appraiser.

If the Market Rental Rate shall not have been determined by the commencement of the applicable Option Term, Subtenant shall continue to pay the Base Rent payable as of the month immediately preceding such commencement until the Market Rental Rate is established at which time there shall be an adjustment between the parties so that the Base Rent established for the applicable Option Term using the Market Rental Rate shall be retroactive to the commencement of that Option Term.

Notwithstanding the foregoing, in no event shall the Base Rent for any Option Term be less than the scheduled Base Rent payable by Subtenant during the calendar month immediately preceding the commencement of the applicable Option Term.

This procedure for determination of Market Rental Rate shall be followed to determine Base Rent for each Option Term.

3. Rent.

3.1 Base Rent. Subtenant agrees to pay Sublandlord monthly rent ("**Base Rent**") in advance according to the following schedule, beginning on the Commencement Date, and continuing on the first day of every month thereafter, during the initial Term of this Sublease.

Months 1-6	\$1,000.00 per month
Months 7-12	\$1,227.60 per month
Months 13-24	\$1,227.60 per month

3.2 Percentage Rent. In addition to Base Rent, Subtenant agrees to pay to Sublandlord monthly percentage rent ("**Percentage Rent**") in amounts calculated as set forth below. Percentage Rent shall be paid on or before the 20th day of each month during the Term based on Subtenant's Gross Income for the immediately preceding month.

Percentage Rent shall be calculated in the same manner and at the same rates as set forth in the Master Lease and as adjusted from time to time under the provisions of the Master Lease, the provisions of which relating to Percentage Rent are incorporated herein by reference. For the purposes of this Sublease, the term "**Gross Income**" shall have the same meaning as attributed to that term in the Master Lease, the provisions of which are incorporated herein by reference.

Subtenant acknowledges receipt of a copy of the provisions of the Master Lease currently in effect dealing with Percentage Rent and Gross Income.

3.3 Additional Rent. In addition to Base Rent and Percentage Rent, Subtenant agrees to pay to Sublandlord as additional rent ("**Additional Rent**"), at times specified in this Sublease: (i) the Common Area Expenses payable as provided in Article 5, and (ii) any other amounts that Subtenant assumes or agrees to pay under the provisions of this Sublease that are owed to Sublandlord, including, without limitation, any and all other sums that may become due by reason of any Default of Subtenant or Subtenant's failure to comply with the agreements, terms, covenants and conditions of this Sublease to be performed by Subtenant.

3.4 Increase in Base Rent Resulting from Increase in Percentage Rental under Master Lease. All Rent (as that term is defined below) received by Sublandlord under this Sublease is included in "gross income" as that term is defined in the Master Lease. Sublandlord is required to pay percentage rent to the City under the Master Lease based on Sublandlord's gross income generated by business conducted on the Master Premises. In the event Master Landlord increases the percentage rent payable under the Master Lease attributable to Rent paid under this Sublease, the Base Rent under this Sublease shall be increased by that amount required for Sublandlord to receive the same net Base Rent after the increase in percentage rent as it received immediately prior to the increase in percentage rent by the City.

3.5 Rent. Base Rent, Percentage Rent and Additional Rent shall together be referred to in this Sublease as "**Rent.**" Rent shall be paid to Sublandlord in lawful money of the United States of America at the office of Sublandlord or to such other person or at such other place as Sublandlord may from time to time designate in writing. All Rent and other monetary obligations shall be paid by Subtenant without notice or demand and without set-off, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction or defense.

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

4. Security Deposit. On execution of this Sublease, Subtenant shall deposit with Sublandlord a cash "**Security Deposit**" in the amount of One Thousand Two Hundred Twenty-Seven and 60/100 Dollars (\$1,227.60). The Security Deposit shall be held by Sublandlord as security for the timely and faithful performance by Subtenant of all of Subtenant's obligations under this Sublease. Sublandlord may apply all or part of the Security Deposit to any unpaid Rent or other charges due from Subtenant, to cure any other Subtenant Default(s) after expiration of any applicable cure period, or to clean or repair damages to the Subleased Premises upon expiration or earlier termination of this Sublease. If Sublandlord uses any part of the Security Deposit, Subtenant shall restore the Security Deposit to its full amount within ten (10) days after Sublandlord's written request. No interest shall be paid on the Security Deposit. Sublandlord shall not be required to keep the Security Deposit separate from its other accounts, and no trust relationship is created with respect to the Security Deposit. After both (a) the termination of this Sublease and (b) Subtenant's vacation of the Subleased Premises, Sublandlord, within a reasonable time, shall refund or credit to Subtenant (or Subtenant's successor) the unused portion of the Security Deposit and any advance Rent or other advance payments made by Subtenant to Sublandlord after deduction for any purposes permitted by this Section 4.

5. **Common Area Expenses.**

5.1 Payment of Subtenant's Share of Common Area Expenses. Each month during the Term, Subtenant shall pay to Sublandlord, as Additional Rent, one-twelfth (1/12th) of an amount reasonably estimated by Sublandlord to be Subtenant's Pro Rata Share (as defined below) of the total annual Common Area Expenses. Subtenant's "**Pro Rata Share**" is ten per cent (10%), which percentage

has been determined by dividing the approximate rentable square footage of the Subleased Premises by the total approximate square footage of all of the buildings in the Master Premises. It is understood and agreed that the square footage figures used to make these calculations may not be strictly calculated pursuant to BOMA standards and are approximations which Sublandlord and Subtenant agree are reasonable and shall not be subject to revision. Sublandlord may adjust its estimate of such expenses at the end of any calendar quarter on the basis of Sublandlord's experience and reasonably anticipated costs.

Following the end of each calendar year (and also after the date of expiration or sooner termination of this Sublease), Sublandlord shall furnish to Subtenant a statement showing in reasonable detail the Common Area Expenses during such calendar year (or portion thereof prior to the expiration or sooner termination of this Sublease). If Subtenant's share of such costs exceeds Subtenant's payments made during the prior calendar year, Subtenant shall pay Sublandlord the deficiency within twenty (20) days after receipt of such statement. If Subtenant's payments of Common Area Expenses during the prior calendar year exceed its actual Pro Rate Share, Subtenant shall be entitled to credit the excess to its next monthly payment(s) of the Pro Rata Share until the credit is exhausted.

5.2 Definition of Common Area Expenses. As used in this Sublease, the term "Common Area Expenses" shall include, without limitation, all amounts paid by Sublandlord for the maintenance, repair, replacement, operation and management of the Common Area, together with an administrative fee equal to ten percent (10%) of all such amounts. In addition to those expenses specifically mentioned in Sections 9.1, 10.1, 10.2 and 14.1, below, Common Area Expenses shall include, without limitation, the costs of gardening; landscaping; repaving, resurfacing, and restriping of all parking areas; maintenance of all walkways and stairways; property management; exterior building painting; lighting and other utilities; cleaning; common area trash removal; depreciation and replacement of equipment; insurance on the Common Area; and all real property taxes and/or assessments levied against the Master Premises.

6. Use.

6.1 Use. Subtenant shall use the Subleased Premises for Canvas & Upholstery Repair and Fabrication, and shall not use the Subleased Premises, or permit or suffer the Subleased Premises to be used, for any other purpose without the prior written consent of Sublandlord, which consent may be withheld in Sublandlord's sole and unfettered discretion.

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

6.3 Insurance Requirements. The insurance to be initially carried by Sublandlord and Subtenant pursuant to the provisions of Article 14 shall be consistent with the actual use of the Subleased Premises. Thereafter, if the use of the Subleased Premises changes to another use permitted under Section 6.1 such insurance shall, to the extent available, be consistent with such changed use. Subtenant shall not do or permit to be done anything which will invalidate or increase the cost of any fire,

extended coverage or any other insurance policy covering the Master Premises. Subtenant shall comply with all rules, orders, regulations and requirements of the insurers of the Master Premises. Subtenant shall promptly, upon demand, reimburse Sublandlord for any additional premium charged for any policy by reason of Subtenant's failure to comply with the provisions of this Section.

6.4 Key to Subleased Premises. Subtenant shall deliver to Sublandlord all keys to locks to doors in the Subleased Premises for the purpose of emergency access. Additionally, if requested by Sublandlord, or required by a government agency, Subtenant agrees to maintain a duplicate set of keys in a fire department controlled lock box located on the Subleased Premises or at a central location on the Master Premises as directed by Sublandlord.

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

6.6 Signs. No sign, advertisement or notice which is visible outside the Subleased Premises shall be exhibited, painted or affixed by Subtenant or any part of the Subleased Premises, or on any part of the exterior of the Building, without the prior written consent of Sublandlord, which consent may be withheld in Sublandlord's sole and unfettered discretion. All such signage shall be in compliance with applicable laws. Such signs shall be installed at Subtenant's sole cost, and the cost of removing such signs and repairing the Building at the end of the term of the Sublease shall be paid by Subtenant.

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

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

7. **Common Area.**

7.1 Common Area - Definition. The term "**Common Area**" is defined as all areas and facilities outside the Subleased Premises and any other sub-tenant's premises and within the exterior boundary line of the Master Premises that are provided and designated by Sublandlord from time to time for the general nonexclusive use of Sublandlord, Subtenant and other subtenant(s) and their respective employees, suppliers, shippers, customers and invitees, including but not limited to common entrances, corridors, stairways and stairwells, public restrooms, mechanical and electrical rooms, parking areas to the extent not otherwise prohibited by this Sublease, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, ramps, driveways, landscaped areas and decorative walls. Sublandlord shall have the right to exclude any portion of the Building and Master Premises other than the Subleased Premises from the Common Area under this Sublease.

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

compliance with said rules and regulations by other subtenants of the Master Premises, their agents, employees and invitees.

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

(a) To make changes to the interior and exterior of the Building and to the Common Area, including, without limitation, changes in the location of structures in Common Area, construction of additional buildings and other structures in the Common Area and changes to the size, shape, and appearance of the Common Area, including but not limited to the driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, decorative walls, landscaped areas and walkways; provided, however, Sublandlord shall at all times provide the parking facilities required under this Sublease.

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

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

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

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

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

8. **Condition of Subleased Premises.**

8.1 No Representation. Subtenant acknowledges that neither Sublandlord nor any agent of Sublandlord has made any representations or warranties, express or implied with respect to (i) the condition of the Subleased Premises, the Building or the Master Premises, (ii) the suitability of the Subleased Premises for Subtenant's purposes (iii) the location, use, design, merchantability, fitness for use for a particular purpose, condition or durability of the Subleased Premises or the Building, (iv) the prospect or ability to make a profit in the operation of a business in the Subleased Premises, (v) the existence of Hazardous Materials (as defined in Section 24.6) in, on or adjoining the Building or the Master Premises, (vi) the quality of the material or workmanship in the Building or the Subleased Premises, (vii) the future use or uses of the Building or the Master Premises, and/or (viii) the continuation

of any current business or the prospect for new or additional businesses in the Building, in the Master Premises, or on properties adjacent to or near the Master Premises. All risks incidental to the condition and use of the Subleased Premises shall be borne by Subtenant. Except as expressly provided in this Sublease, **IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE SUBLEASED PREMISES OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, LANDLORD SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.**

SUBTENANT AGREES THAT IT IS TAKING THE SUBLEASED PREMISES IN AN "AS-IS, WHERE-IS" CONDITION WITH ALL FAULTS AND WITH ABSOLUTELY NO REPRESENTATIONS AND WARRANTIES.

8.2 Walk-Through Inspection. Subtenant acknowledges and agrees that at or before the signing of this Sublease, he inspected the Subleased Premises and, as set forth in Section 8.1, above, accepted the Subleased Premises in their then existing condition. On or before the Commencement Date, Sublandlord and Subtenant shall conduct a walk-through inspection of the Premises and prepare a list of those items relating to the Subleased Premises which are not then in substantially the same condition as existed at the time of the signing of the Sublease. The taking of possession of the Subleased Premises by Subtenant shall establish conclusively that the Subleased Premises existed on the Commencement Date in substantially the same condition as of the date of the signing of the Sublease, except for list items set forth in this list. Sublandlord shall promptly perform such maintenance and repairs as are required to bring the items on the list to a condition substantially the same as existed at the time of the signing of the Sublease.

9. **Utilities and Services.**

9.1 Utilities Provided. Sublandlord shall furnish to the Subleased Premises reasonable quantities of water, sewer, gas, electricity and trash removal as required for Subtenant's use. The cost of these utilities shall be Common Area Expenses.

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

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

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

10. **Repairs and Maintenance.**

10.1 Common Area. Sublandlord shall maintain the Common Area in good condition, ordinary wear and tear excepted. The costs for said repair and maintenance shall be a Common Area Expense.

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

10.3 Subtenant's Maintenance Obligations. Except for Sublandlord's obligations pursuant to Section 10.2 above, Subtenant shall, at Subtenant's sole cost and expense, keep the Subleased Premises and every part of the Subleased Premises in good order, condition and repair, and in compliance with all applicable laws, ordinary wear and tear excepted and regardless of the condition of the Subleased Premises on the Commencement Date (except for Sublandlord's obligations to repair under Section 8.2, above, if any). Subtenant shall, upon the expiration or sooner termination of the Term, surrender the Subleased Premises to Sublandlord in good order, condition and repair and in compliance with all applicable laws. Subtenant's obligations shall include restorations, replacements or renewals, including capital expenditures for restorations, replacements or renewals which will have a useful life beyond the expiration of the Term, when necessary to keep the Subleased Premises and all improvements thereon or a part thereof in good order, condition and repair and in compliance with all applicable laws. Except as expressly set forth in this Sublease, it is intended by the parties hereto that Sublandlord shall have no obligation, in any manner whatsoever, to repair or maintain the Subleased Premises, including the improvements or equipment located therein, whether structural or nonstructural, all of which obligations are intended to be the sole expense of Subtenant, whether or not such repairs, maintenance or restoration shall have a useful life extending beyond the expiration of the Term. Subtenant shall further be responsible for the cost of all alterations and/or repairs to the Subleased Premises required to bring the Subleased Premises into compliance with any law, ordinance or regulation, including, without limitation, the Americans with Disabilities Act. Any such repairs and alterations shall become the property of Sublandlord upon the expiration or earlier termination of this Sublease.

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

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

11. Alterations.

11.1 No Alterations. Without Sublandlord's prior written consent, which consent shall not be unreasonably withheld, Subtenant shall make no alterations, additions or improvements in or to the Subleased Premises. All such alterations, additions or improvements shall be made only by

licensed and qualified contractors or mechanics. Subtenant's contractor for performing any alterations, additions or improvements shall be subject to Sublandlord's reasonable approval and shall maintain appropriate insurance as reasonably required and approved by Sublandlord. Subtenant acknowledges that any such alterations and repairs may also require the approval of the City.

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

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

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

11.5 Property of Sublandlord. All alterations, decorations, fixtures, equipment, additions and improvements attached to or built into the Subleased Premises, made by either party, shall, unless Sublandlord elects otherwise at the expiration or earlier termination of the Term, become the property of Sublandlord. If Sublandlord elects to have such alterations removed, Subtenant shall do so and shall repair and restore the Subleased Premises to the condition they were in prior to such alterations, all at Subtenant's sole cost.

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

11.7 Personal Property. All articles of Subtenant's personal property, including, but not limited to, detachable machinery and equipment, furniture, fixtures and movable partitions, which are owned by Subtenant and installed by Subtenant at its own expense in the Subleased Premises, shall be and remain the property of Subtenant and may be removed by Subtenant at any time during the term of this Sublease when Subtenant is not in Default hereunder. If Subtenant shall fail to remove all of its personal property from the Subleased Premises at the expiration or earlier termination of the Term, then Sublandlord may, at its option, remove the same in any manner that Sublandlord may deem appropriate and store this personal property without liability to Subtenant for loss thereof or damage thereto. Subtenant agrees to pay Sublandlord, upon demand, any expenses incurred in such removal and storage or Sublandlord may, at its option, without notice, sell this personal property or any of it, at a public or private sale and without legal process, for such price as Sublandlord may obtain; and Sublandlord may apply the proceeds of such sale against any amounts due under this Sublease from Subtenant to Sublandlord and against any expenses incident to the removal, storage and sale of this personal property, with any balance of the sales proceeds delivered to Subtenant. Subtenant agrees that this Sublease constitutes a "security agreement" under the provisions of Section 9203 of the Uniform Commercial Code – Secured Transactions, or any successor statute and, as such, Subtenant grants to Sublandlord a security

interest in all Subtenant's personal property described in this Section 11.7, as well as all tenant improvements made to the Subleased Premises pursuant to this Article 11.

12. **Liens.**

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

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

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

13. **Indemnification and Exculpation.**

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

13.2 Indemnification by Sublandlord. Except as otherwise provided in this Article, Sublandlord agrees to indemnify Subtenant and its shareholders, directors, officers, agents, servants and

employees (collectively "Subtenant's Indemnified Parties") against, and to protect, defend and save them harmless from all liability, demands, claims, causes of action or judgments, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), for death of, or injury to, any person or damage to property occurring in, upon, or about the Subleased Premises during the term of this Sublease caused solely by the willful acts or gross negligence of Sublandlord or Sublandlord's agents, contractors, employees, and/or servants.

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

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

13.5 Security Devices. Security devices and services provided for the Building and Master Premises, if any, while intended to deter crime, may not in given instances prevent theft or other criminal acts, and it is agreed that Sublandlord shall not be liable for injuries or losses caused by criminal acts of third parties. The risk that any security device may malfunction or otherwise be circumvented by a criminal is assumed by Subtenant. Subtenant shall, at Subtenant's cost, obtain applicable insurance coverages to the extent Subtenant desires protection against such criminal acts. Sublandlord shall have no continuing obligation to repair, maintain or replace any existing security devices, if any, and may remove any such existing security devices, if any, at any time. Subtenant shall be solely responsible, at its sole expense, to provide a safe and secure environment within the Subleased Premises for its employees, customers, invitees and guests.

14. **Insurance.**

14.1 Insurance on Building. Sublandlord shall carry insurance on the Building, including the Subleased Premises and its improvements, to the extent such is insurable as part of the Building (excluding improvements made to the Subleased Premises made by Subtenant), in an amount equal to full replacement cost (without reference to depreciation taken by Sublandlord upon its books or tax returns), or such greater insurance coverage as Sublandlord's mortgage lender requires Sublandlord to maintain. Such insurance shall provide protection against any peril generally included within the classification "Fire and Extended Coverage," together with insurance against sprinkler damage (if applicable), vandalism and malicious mischief. Sublandlord shall also obtain rental loss insurance for a period of up to one year. Sublandlord, subject to availability thereof at a reasonable premium, may, but is not required to, further insure, as Sublandlord or its lender deems appropriate, against flood and/or earthquake, loss or failure of building equipment, hazardous materials risks, rental loss during the period to repair or rebuild, worker's compensation insurance and fidelity bonds for employees employed to perform services. The deductible limits of the "Fire and Extended Coverage" policy shall not exceed Five Thousand Dollars (\$5,000). Sublandlord shall furnish to Subtenant upon request a copy of said insurance policy. The cost of all such insurance policies shall be Common Area Expenses.

14.2 Liability Insurance. Subtenant, at its own cost, shall procure and continue in effect, from the Commencement Date or the at such time as Subtenant occupies the Subleased Premises, whichever first occurs, and continuing throughout the Term and thereafter until Subtenant has fully and

finally surrendered the Subleased Premises to Sublandlord, comprehensive public liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for death, bodily injury or property damage with respect to the Subleased Premises and insurance on all of its personal property. The deductible amounts of such policy of insurance shall not exceed Five Thousand Dollars (\$5,000).

14.3 Additional Insureds. The aforesaid insurance required of Subtenant shall name as additional insureds the City, Sublandlord, their officers, directors, shareholders, partners, members and lenders, and Sublandlord's property manager, agents and representatives for the Subleased Premises. Said insurance shall be with companies having a policyholder rating of not less than A+ and financial category rating of Class IX in "Best's Insurance Guide." Subtenant shall cause any insurance companies issuing policies to Subtenant to furnish certificates evidencing such coverage to Sublandlord. No such policies shall be cancelable or subject to reduction of coverage or other modification or cancellation except after thirty (30) days prior written notice to Sublandlord from the insurer. All such policies shall be written as primary policies, not contributing with and not in excess of the coverage which Sublandlord may carry. Any of Subtenant's policies may be in the nature of a "blanket policy" which specifically provides that the amount of insurance shall not be prejudiced by other losses covered by the policy. Subtenant shall, at least twenty (20) days prior to the expiration of any such policies, furnish Sublandlord with renewals or binders. Subtenant agrees that if Subtenant fails to procure and maintain such insurance, Sublandlord may (but shall not be required to) procure said insurance on Subtenant's behalf and charge Subtenant the premiums for any such policies, together with a ten percent (10%) handling charge, payable upon demand.

14.4 Fixtures and Other Items. Subtenant assumes the risk of damage to improvements made to the Subleased Premises by Subtenant (even if made with the consent and approval of Sublandlord), as well as any fixtures, goods inventory, merchandise, equipment, and personal property of any kind owned or leased by Subtenant and maintained in the Subleased Premises. Sublandlord shall not be liable for injury to Subtenant's operations or any loss of income therefrom relative to damage to such items, all as more particularly set forth herein. Subtenant, at Subtenant's cost, shall carry such insurance as Subtenant desires for Subtenant's protection with respect to the foregoing personal property and tenant improvements, as well as business interruption losses and other loss of income.

14.5 Lender and Others. If any policy of insurance is to name Sublandlord as additional insured, Subtenant shall, upon written request of Sublandlord, also designate as an additional insured, and furnish certificates evidencing Sublandlord as an additional insured to, (i) any lender to Sublandlord holding a security interest in the Building and/or (ii) the City.

14.6 Waiver of Subrogation. Sublandlord and Subtenant each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, on account of loss or damage occasioned to such waiving party or its property or the property of others under its control to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which either party may have in force at the time of such loss or damage, such waivers to continue as long as their respective insurers to permit. Any termination of such a waiver shall be by written notice of circumstances as hereinafter set forth. Sublandlord and Subtenant, upon obtaining the policies of insurance required or permitted under this Sublease, shall give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Sublease. If such policies are unobtainable with such waiver or obtainable only at a premium over that chargeable without such waiver, the party seeking such policy shall notify the other thereof, and the latter shall have ten (10) days thereafter to either (i) procure such insurance in companies reasonably satisfactory to the other party or (ii) agree to pay such additional premium. If neither (i) nor (ii) are done, this Section 14.6 shall have no effect during such time as such policies are unobtainable or the party in whose favor a waiver of subrogation is desired shall refuse to pay the additional premium. If such policies shall at any

time be unobtainable, but subsequently shall be obtainable, neither party shall be subsequently liable for a failure to obtain such insurance until a reasonable time after notification thereof by the other party. If the release of either Sublandlord or Subtenant, as set forth in the first sentence of this Section 14.6 shall contravene any law with respect to exculpatory agreements, the liability of the party in questions shall be deemed not released but shall be secondary to the other's insurer.

14.7 Increases in Insurance. At reasonable times, Sublandlord may require insurance policy limits to be raised to conform with reasonable requirements of Sublandlord's lender and/or the Port Authority, or to bring coverage limits to the level then being required of similar tenants of similar properties; provided, however, that Sublandlord may, in any event, require insurance policy limits to be increased in proportion to any increase in the Consumer Price Index from the date of this Sublease to the date of the requested adjustments.

15. **Damage or Destruction.**

15.1 Destruction Due to Risk covered by Insurance.

(a) If, during the Term, the Subleased Premises or the Building are totally or partially destroyed from a risk covered by the insurance described in Section 14.1, rendering the Subleased Premises totally or partially inaccessible or unusable, Sublandlord shall restore the Subleased Premises or the Building to substantially the same condition as they were in immediately before destruction, but not including any leasehold improvements made by Subtenant. Such destruction shall not terminate this Sublease. If the existing laws do not permit restoration and repair of the Building or the Subleased Premises, either party can terminate this Sublease immediately by giving notice to the other party.

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

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

15.2 Destruction Due to Risk Not Covered by Insurance.

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

(b) The provisions of Section 15.2(a) notwithstanding, if the cost of restoration exceeds five percent (5%) of the then replacement value of the Subleased Premises or the Building that are destroyed, Sublandlord can elect to terminate this Sublease by giving notice to the Subtenant within fifteen (15) days after determining the restoration cost and replacement value.

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

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

15.3 Extent of Sublandlord's Obligation to Restore. If Sublandlord is obligated to or elects to repair or restore as herein provided, Sublandlord shall be obligated to repair or restore only those portions of the Building and the Subleased Premises as existed on the Commencement Date and for which insurance proceeds are available to pay the costs to repair or restore; the repair and restoration of Subtenant's special tenant improvements or tenant's personal property shall be the obligation and sole expense of Subtenant.

15.4 Release. Upon any termination of this Sublease under any of the provisions of this Article 15, the parties each shall be released from further obligation to the other under this Sublease for Rent and other claims arising from and after the date of termination. However, termination of this Sublease shall not relieve either party from any obligation to the other existing prior to the date of termination, which obligations shall remain in full force and effect.

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

15.6 Damage at End of Term. Notwithstanding anything to the contrary contained in this Article 15, Sublandlord shall have no obligation whatsoever to repair, reconstruct or restore the Subleased Premises when the damage resulting from any casualty covered under this Article occurs during the last twelve (12) months of the Term. In the event Sublandlord elects not to repair, reconstruct or restore the Subleased Premises when the damage resulting from any casualty covered under this Article occurs during the last twelve (12) months of the term of this Sublease, Subtenant may, by written notice delivered to Sublandlord within ten (10) days after receipt by Subtenant of Sublandlord's notice of its election not to repair, reconstruct or restore the Subleased Premises, elect to terminate this Sublease.

16. Eminent Domain.

16.1 Taking. If the Subleased Premises or any material portion of the Subleased Premises are taken under the power of eminent domain or similar governmental action, either party may terminate this Sublease effective as of the date possession is required to be surrendered to the condemning authority.

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

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

17. **Defaults and Remedies.**

17.1 Late Charge. Late payment by Subtenant to Sublandlord of Rent or other sums due will cause Sublandlord to incur costs not contemplated by this Sublease, the exact amount of which is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, attorneys' charges, late payment charges on a mortgage, and so forth. In the event that Subtenant shall be in Default for late payment under Section 17.4(a) hereof for more than three (3) days after notice from Sublandlord, subtenant shall pay to Sublandlord a late charge in an amount equal to ten percent (10%) of the unpaid Rent for each month that an installment of Rent remains unpaid, which Sublandlord and Subtenant agree is not a penalty but is a reasonable estimate of the expenses Sublandlord may incur as a result of such late payment. In the event of any such late payment, in addition to the foregoing late charge, the amount unpaid shall bear interest at Bank of America's "reference rate" plus three percent (3%) per annum. Such interest shall be calculated from the date such amount was due and payable until the same shall have been fully paid.

17.2 No Waiver. No payment by Subtenant or receipt by Sublandlord of a lesser amount than that due shall be deemed to be other than on account of the amount due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Sublandlord may accept such check or payment without prejudice to Sublandlord's right to recover the balance or pursue any other remedy provided. If at any time a dispute shall arise as to any amount or sum of money to be paid by Subtenant to Sublandlord, Subtenant shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and Subtenant shall have the right to institute suit for recovery of the payment paid under protest.

17.3 Performance by Sublandlord. If Subtenant fails to perform any other act on its part to be performed hereunder, Sublandlord may, without waiving or releasing Subtenant from any obligations of Subtenant, perform such act on behalf of Subtenant. Any costs incurred by Sublandlord in performing the obligations of Subtenant under this Section 17.3 shall be paid by Subtenant as Additional Rent within ten (10) days of the date of an invoice for such costs.

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

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

Notices given under this Section 17.4 shall specify the alleged Default and shall demand that Subtenant perform the provisions of this Sublease within the applicable period of time, or quit the Subleased Premises. No such notice shall be deemed a forfeiture or a termination of this Sublease unless Sublandlord elects otherwise in such notice.

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

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

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

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

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

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

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

17.6 Right of Re-Entry. In the event of a Default by Subtenant, and at any time thereafter, with or without terminating this sublease, and with or without notice or demand and without limiting Sublandlord in the exercise of any right or remedy which Sublandlord may have, Sublandlord shall have the immediate right to re-enter and remove all persons and property, and such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Subtenant, all without service of notice or resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. No such re-entry shall be considered or construed to be a forcible entry by Sublandlord. If Sublandlord does not elect to terminate this Sublease as provided in this Section, then Sublandlord may, from time to time, recover all Rent as it becomes due under this Sublease pursuant to California Civil Code 1951.4. At any time thereafter, Sublandlord may elect to terminate this Sublease and to recover damages to which Sublandlord is entitled.

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

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

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

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

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

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

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

17.10 Right to Cure. Sublandlord shall not be in default hereunder unless Sublandlord fails to perform an obligation required of Sublandlord within a reasonable time, but in no event later than thirty (30) days after written notice by Subtenant specifically identifying the obligation Sublandlord has failed to perform; provided, however, that if the nature of Sublandlord's obligation is such that more than thirty (30) days are required for performance, then Sublandlord shall not be in default if Sublandlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

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

18. Assignment or Subletting.

18.1 Assignment. Except as provided in this Article 18, Subtenant shall not, either voluntarily or by operation of law, assign, sell, hypothecate or transfer this Sublease or permit all or any part of the Subleased Premises to be used or occupied as work space, storage space, mailing privileges, concession or otherwise by anyone other than Subtenant, Subtenant's members or Subtenant's employees (all of these events collectively referred to as an "Assignment"), without the prior written consent of Sublandlord in each instance, which consent may be withheld by Sublandlord in its sole and absolute discretion. A transfer of more than fifty percent (50%) of the equity ownership of Subtenant during any two-year period to a party (or to an affiliated group of parties) shall also constitute a prohibited Assignment; provided, however, this provision shall not be applicable if such transfers occurred on a public stock exchange. If Sublandlord consents to an Assignment, Subtenant and its successors and assigns, and any guarantors of Subtenant's obligations under this Sublease, shall not be released from liability under this Sublease. Subtenant acknowledges that an Assignment must be approved by the City, as evidenced by formal resolution.

As a condition of Sublandlord's consent to an Assignment, the assignee and Subtenant shall execute an agreement in favor of Sublandlord and in a form acceptable to Sublandlord, pursuant to which the assignee shall agree to faithfully perform and assume and be bound by all of the terms, covenants, conditions, provisions and agreements of this Sublease. As used in this Article 18, the term

"assignee" shall include the person or entity who is the transferee in any form of Assignment, as defined above. In addition, Subtenant and the assignee shall, upon not less than three (3) days prior written notice from Sublandlord, execute, acknowledge and deliver to Sublandlord a statement in writing (a) certifying that this Sublease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Sublease as so modified is in full force and effect), and the date to which the Rent and other charges are paid in advance, if any; (b) acknowledging that there are not, to Subtenant's and the assignee's knowledge, any uncured defaults under this Sublease on the part of Sublandlord or Subtenant, or specifying such defaults if any are claimed; (c) setting forth the Commencement Date and Expiration Date; and (d) certifying as to such other matters as Sublandlord may reasonably request. Any guarantor of this Sublease shall execute a reaffirmation of such guarantee in a form reasonably acceptable to Sublandlord agreeing to continue to be a guarantor of the terms and conditions of this Sublease following an Assignment.

18.2 Transfer Premium. As a reasonable condition to Sublandlord's consent to any Assignment, Subtenant shall pay to Sublandlord fifty percent (50%) of any Transfer Premium, as defined in subsection 18.2.1, below.

18.2.1 Definition of Transfer Premium. "Transfer Premium" means all Rent and other consideration actually received by Subtenant from the assignee (including key money and bonus money and any payment in excess of fair market value for services rendered by Subtenant to the assignee, or assets, fixtures, inventory, equipment, or furniture transferred by Subtenant to the assignee in connection with the Assignment (collectively, the "Assignment Rent"), after deducting:

a. The Rent payable by Subtenant under this Lease (excluding the Transfer Premium) for the Subleased Premises;

b. Reasonable leasing commissions paid by Subtenant; and,

c. Other reasonable out-of-pocket costs paid by Subtenant (including attorneys' fees, advertising costs, and expenses of readying the Subleased Premises for occupancy by the assignee).

The costs referred to in subparagraphs (a) through (d) are referred to as the "Transfer Costs."

18.2.2 Monthly Payment of Transfer Premium. Subtenant shall pay the Transfer Premium to Sublandlord on a monthly basis, as Additional Rent under this Sublease.

18.2.3 Audit of Transfer Premium. Subtenant shall allow Sublandlord to review and audit Subtenant's books and records for the purpose of verifying Subtenant's calculation of the Transfer Premium, Assignment Rent, and Transfer Costs.

18.3 Notice of Proposed Assignment. In the event Subtenant desires Landlord to review and approve an Assignment, then at least forty-five (45) days, but not more than ninety (90) days, prior to the date when Subtenant desires the Assignment to be effective (the "Assignment Date"), Subtenant shall give Sublandlord written notice (the "Assignment Notice") which shall set forth the name, address and business of the proposed assignee, information (including references) concerning the business experience, financial reputation and character of the proposed assignee, the Assignment Date, any ownership or commercial relationship between Subtenant and the proposed assignee or sublessee, and the consideration paid for the Assignment, and all other material terms and conditions of the proposed Assignment, all in such detail as Sublandlord shall reasonably require. Additionally, Subtenant shall

furnish to Sublandlord a copy of the audited financial statements for the most recently past fiscal year, as well as the most recent unaudited quarterly financial statements for both Subtenant and the proposed assignee.

18.4 Unapproved Transfer Void. Any Assignment not in compliance with the provisions of this Article 18 shall be void, and shall, at the option of Sublandlord, be a breach of this Sublease.

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

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

18.7 Assignment Fee. The Assignment Notice shall be accompanied by a "Transfer Fee" in the amount of \$1,000.00 payable to Sublandlord.

18.8 Sublandlord's Option to Recapture the Space. Despite any other provision of this Article 18, Sublandlord has the option to recapture the Subleased Premises, by written notice to Subtenant ("**Recapture Notice**") within ten (10) days after receiving an Assignment Notice from Subtenant. A timely Recapture Notice terminates this Sublease and Subtenant's obligations regarding the Subleased Premises for the remaining Term and as of the Assignment Date. The Recapture Notice shall be void, however, if Subtenant notifies Sublandlord, within ten (10) days after receipt of the Recapture Notice, that Subtenant withdraws the Assignment Notice. If Sublandlord declines or fails timely to elect to recapture the Subleased Premises, Sublandlord shall have no further right to the Subleased Premises under this Section 18.9 unless it becomes available again in connection with any subsequently proposed Assignment.

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

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

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

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

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

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

20. Subordination and Attornment.

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

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

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

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

21. Surrender.

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

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

21.3 No Merger. The voluntary or other surrender of any ground or underlying lease that now exists or may hereafter be executed affecting the Building or Subleased Premises or a mutual cancellation thereof or of Sublandlord's interest therein, shall not work a merger and shall, at the option of the successor of Sublandlord's interest in the Building or Subleased Premises, operate as an assignment of this Sublease.

22. **Holding Over.**

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

22.2 Holding Over without Consent. If Subtenant remains in possession of the Subleased Premises after the expiration or earlier termination of the Term hereof without the express written consent of Sublandlord, Subtenant shall become a tenant at sufferance upon all the terms of this Sublease applicable to a tenant at sufferance, except that the monthly installments of Base Rent shall be equal to one hundred fifty percent (150%) of the monthly installment of the Base Rent in effect during the immediately preceding thirty (30) days.

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

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

23. **Taxes on Subtenant's Property.**

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

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

24. **Hazardous Materials.**

24.1 Prohibition/Compliance. Subtenant, at its sole cost, shall comply with all federal, state and local laws, statutes, ordinances, codes, regulations and orders relating to the receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release and disposal of any Hazardous Material as defined in this Article 24 in or about the Subleased Premises or the Building. Subtenant shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept or used in or about the Subleased Premises by Subtenant, its agents, employees, contractors or

invitees in a manner or for a purpose prohibited by any federal, state or local law, rule or regulation. The disposal of Hazardous Material shall be in approved containers and removed from the Subleased Premises by duly licensed carriers. Subtenant shall immediately provide Sublandlord with telephonic notice, which shall promptly be confirmed by written notice, of any and all spillage, discharge, release and disposal of Hazardous Materials onto or within the Subleased Premises or the Building, which by law must be reported to any federal, state or local agency, and any injuries or damages resulting directly or indirectly therefrom. A failure of Subtenant to give to Sublandlord the notices required in this Section 24.1 shall constitute a Default under this Sublease. Further, Subtenant shall deliver to Sublandlord each and every notice or order received from any federal, state or local agency concerning Hazardous Materials and the possession, use and/or disposal thereof promptly upon receipt of each such notice or order. Subtenant shall be responsible for and shall indemnify, protect, defend, and hold harmless Sublandlord and its agents, employees, representatives, directors and officers from any and all claims, costs, penalties, fines, liability and losses, including without limitation, (i) temporary or permanent diminution in value of the Subleased Premises or the Building, (ii) damages for the temporary or permanent loss of restriction on use of rentable or usable space or of any amenity of the Subleased Premises or the Building, and (iii) sums paid in settlement of claims, consultant fees and expert fees, liabilities, attorneys' fees, damages, injuries, causes of action, judgments and expenses, which arise during or after the Term of this Sublease and which (a) result from Subtenant's use and occupancy of the Subleased Premises, or (b) result from Subtenant's receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release or disposal of Hazardous Materials in, upon or about the Subleased Premises or the Building. The indemnifications of Sublandlord and indemnities by Subtenant above include, to the extent Subtenant is responsible for such costs and expenses under the provisions above, without limiting the generalities thereof, reasonable costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work lawfully required by any federal, state or local governmental agency or political subdivision because of any Hazardous Materials present in the soil, subsoil, ground water, or elsewhere at, on or under the Subleased Premises or the Building.

24.2 Termination of Sublease. Notwithstanding the provisions of this Article 24, Sublandlord shall have the right to terminate the Sublease in the event that (i) Subtenant uses the Subleased Premises for the generation, storage, use, treatment or disposal of Hazardous Material in a manner or for a purpose prohibited by applicable law (unless Subtenant is diligently pursuing compliance therewith), (ii) Subtenant has been required by any governmental authority to take remedial action in connection with Hazardous Material contaminating the Subleased Premises or the Building if the contamination resulted from Subtenant's action or use of the Subleased Premises and such remedial action has a material adverse effect on Sublandlord, the Subleased Premises or the Building, or (iii) Subtenant is subject to an enforcement order issued by any governmental authority in connection with the use, disposal or storage of a Hazardous Material on the Subleased Premises and such enforcement order has a material adverse effect on Sublandlord, the Subleased Premises or the Building. Each of the foregoing events shall be deemed to be a material Default by Subtenant under this Sublease.

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

24.4 Sublandlord's Right to Perform Tests.

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

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

24.5 Survival of Subtenant's Obligations. Subtenant's obligations under this Article 24 shall survive the termination of this Sublease. During any period of time employed by Subtenant after the termination of this Sublease to complete the removal from the Subleased Premises or the Building of any such Hazardous Materials, Subtenant shall continue to pay the full Rent in accordance with this Sublease.

24.6 Definition of "Hazardous Material". As used herein, the term "**Hazardous Material**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States of America. The term "**Hazardous Materials**" shall also mean toxic or hazardous substances, including without limitation, asbestos or any substance containing asbestos and deemed hazardous under any Hazardous Material Law (defined below), the group of organic compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, chemicals known to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions or related materials and any items included in the definition of hazardous or toxic waste, materials or substances under any law relating to environmental conditions and industrial hygiene, including without limitation, the Resource Conservation and Recovery Act of 1976 ("**RCRA**"), 42 U.S.C. § 6901 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**"), 42 U.S.C. §§ 9601 - 9657, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("**SARA**"); the Hazardous Materials Transportation Act, 49 U.S.C. § 6901, *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*; the Clean Air Act, 42 U.S.C. §§ 741 *et seq.*, the Clean Water Act, 33 U.S.C. § 7401, *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 - 2629; the Safe Drinking Water Act, 42 U.S.C. §§ 300f - 300j; the Carpenter-Presley-Tanner Hazardous Substances Account Act; the Hazardous Waste Control Act; the Porter-Cologne Water Quality Control Act; and all similar federal, state and local environmental statutes, ordinances, and the regulations, orders, decrees now or hereafter promulgated thereunder (collectively the "**Hazardous Material Laws**").

24.7. Article Binding on Parties Related to Subtenant. For the purposes of this Article 24, the term "Subtenant" shall include Subtenant and its shareholders, members, partners, directors, officers, agents, employees, invitees, sub-subtenants, assigns, and guests, as well as their successors and assigns.

25. **Miscellaneous.**

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

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

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

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

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

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

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

25.8 Independent Counsel. Subtenant and Sublandlord each acknowledge that: (i) they have had the opportunity to be represented by independent counsel in connection with this Sublease; and (ii) this Sublease is the result of negotiations between Sublandlord and Subtenant and the advice and assistance of their respective counsel. The fact that this Sublease was prepared by Sublandlord's counsel as a matter of convenience shall have no impact or significance. Any uncertainty or ambiguity in this Sublease shall not be construed against Sublandlord because Sublandlord's counsel prepared this Sublease in its final form.

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

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

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

For Rent Payment and Notices to Sublandlord:

Driscoll Mission Bay
Attn: Ms. Mary-Carol Driscoll
1500 Quivira Way
San Diego, California 92109

For Notices to Subtenant:

Baja Canvas & Upholstery
Attn: Jose Beleche
1500 Quivira Way
San Diego, California 92109

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

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

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

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

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

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

25.17 Real Estate Brokers; Finders. Subtenant and Sublandlord each represent to the other that they have not entered into any agreement or incurred any obligation in connection with this transaction that might result in the obligation to pay a brokerage commission or finder's fee to any broker, finder or other person. Each party agrees to defend, indemnify and hold the other party harmless from and against any liability, damages, claim or demand by any other broker or other person for bringing about this Sublease who claims to have dealt with such indemnifying party, including any expenses (including reasonable attorney fees) incurred in defending any such claim or demand.

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

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

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

25.21 Definition of Sublandlord. The term "Sublandlord" as used in this Sublease, so far as covenants or obligations on the part of Sublandlord are concerned, shall be limited to mean and include only Sublandlord or the successor-in-interest of Sublandlord under this Sublease at the time in question. In the event of any transfer, assignment or the conveyance of Sublandlord's title or leasehold, the Sublandlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer, assignment or conveyance of all liability for the performance of any covenants or obligations contained in this Sublease thereafter to be performed by Sublandlord and, without further agreement, the transferee of such title or leasehold shall be deemed to have assumed and agreed to observe and perform any and all obligations of Sublandlord hereunder during its ownership or ground lease of the Subleased Premises. Sublandlord may transfer its interest in the Subleased Premises or this Sublease without the consent of Subtenant, and such

transfer, or a subsequent transfer shall not be deemed a violation on the part of Sublandlord or the then grantor of any of the terms or conditions of this Sublease.

25.22 Limitation of Sublandlord's Liability. If Sublandlord is a limited partnership or joint venture, the limited partners of such partnership shall not be personally liable and no limited partner of Sublandlord shall be sued individually or named individually as a party in any suit or action or service or process be made against any limited partner of Sublandlord. If Sublandlord is a corporation or limited liability company, the shareholders, members, directors, officers, managers, employees and/or agents of such corporation shall not be personally liable and no shareholder, member, director, officer, manager, employee or agent of Sublandlord shall be sued or named as a party in any suit or action or service of process be made against any shareholder, member, director, officer, manager, employee or agent of Sublandlord. No limited partner, shareholder, director, employee or agent of Sublandlord shall be required to answer or otherwise plead to any service of process and no judgment will be taken or writ of execution levied against any limited partner, shareholder, member, director, officer, manager, employee or agent of Sublandlord. Each of the covenants and agreements of this Section 25.22 shall be applicable to any covenant or agreement either expressly contained in this Sublease or imposed by statute or by common law.

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

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

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

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

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

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

28. **Right To Terminate.** Notwithstanding anything in this Sublease to the contrary, Sublandlord and/or Subtenant shall have the right to terminate this Sublease before expiration of the Term by giving written notice of termination to Subtenant and/or Sublandlord not less than thirty (30) days before the effective date of the termination (the "Termination Date"). The Termination Date shall be specified in Sublandlord's and/or Subtenant's termination notice. In the event that the Termination Date is other than the last day of a calendar month, Rent for the partial last month shall be prorated on the basis of a thirty (30) day month and shall be due and payable on the first day of such month.

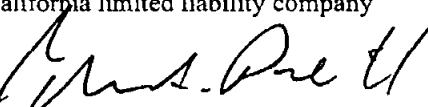
IN WITNESS WHEREOF, the parties hereto have executed this Sublease as of the dates set forth below next to their respective signatures:

Date of execution:

May 27, 2005

Sublandlord:

DRISCOLL MISSION BAY LLC,
a California limited liability company

By: 

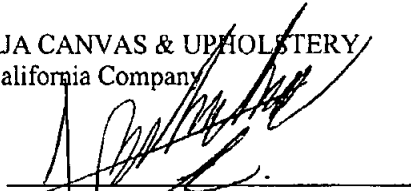
Thomas A. Driscoll, a Member

Date of execution:

May 27, 2005

Subtenant:

BAJA CANVAS & UPHOLSTERY
a California Company

By: 

Jose Beleche, Owner

Exhibit A

Master Lease

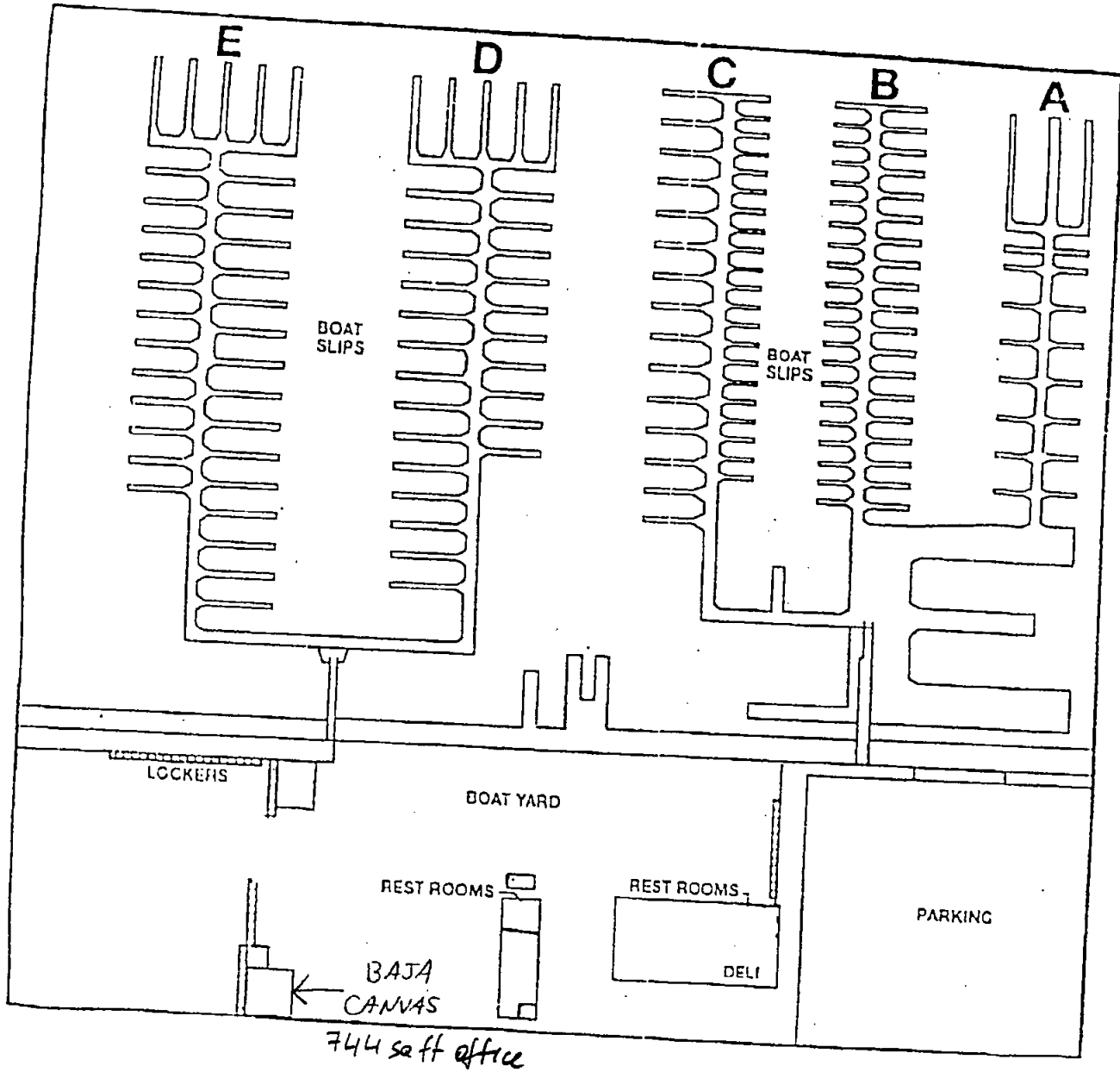
[to be attached]

Fot: Uladimir Balotsky
Fax 236-6706

Exhibit B

Diagram of Subleased Premises and Site Plan

[to be attached]



FIRST ADDENDUM TO SUBLEASE

This First Addendum to Sublease ("First Addendum") is made as of June 1, 2005 by and between Driscoll Mission Bay LLC, a California limited liability company ("Sublandlord") and Baja Canvas & Upholstery, a California Company ("Subtenant").

Sublandlord and Subtenant entered into that certain sublease ("Sublease") of even date for the Subleased Premises located in the City of San Diego, California, as more fully described in the Sublease.

Sublandlord and Subtenant agree that notwithstanding anything contained in the Sublease to the contrary, the provisions set forth below shall be deemed to be a part of the Sublease and shall supercede, to the extent appropriate, any contrary provision in the Sublease. References in this First Addendum to the term "Sublease" shall be construed to mean the Sublease as amended and supplemented by this First Addendum. All capitalized terms used in this First Addendum, unless specifically defined in this First Addendum, shall have the same meaning attributed to those terms in the Sublease.

AGREEMENT

1. Master Lease. As set forth in Section 27 of the Sublease, Subtenant and Sublandlord agree that the terms and conditions of the Master Lease are incorporated herein by reference, and shall, as between Sublandlord and Subtenant, constitute the terms, covenants, conditions, and provisions of this Sublease, except to the extent that they are inapplicable to, inconsistent with, or modified by the provisions of this Sublease. Subtenant shall strictly comply with each applicable term and condition of the Master Lease. Any breach by Subtenant of any of the terms and conditions of the Master Lease shall be deemed a breach by Subtenant of the Sublease. Without limitation, Subtenant specifically acknowledges that it has reviewed and will comply with the following provisions of the Master Lease:

1.1 Section 14 of the Master Lease states:

"14. NON-DISCRIMINATION: Lessee agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, physical handicap or medical condition in Lessee's use of the premises, including, but not limited to, the providing of goods services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment."

1.2 Section IV(B)(4) of the Master Lease states:

"4. AFFIRMATIVE ACTION: Lessee agrees to take affirmative action to improve employment opportunities of minorities and women. When applicable, Lessee agrees to abide by the Affirmative Action Program for Lessees as it now exists or is hereafter amended. A copy of the program, effective as of the date of this agreement, is on file in the Office of the City Clerk as Document No. 746205 and by this reference is incorporated herein. Minorities are presently defined as Mexican-American, Black, Filipino, American Indian and Asian/Oriental. The goal of this program shall be the attainment of the employment of minorities and women in all areas of employment in a total percentage of employment approximately equal to the total level of minority and women

employment as established by the City for its Affirmative Action Program each year.

2. Guaranty. The obligations of the Subtenant shall be personally guaranteed by Jose Beleche (the "**Guarantor**"). This Sublease shall not be effective until the Guarantor sign and deliver to Subtenant a written Guaranty in the form attached hereto and made a part hereof by reference as Schedule 3.

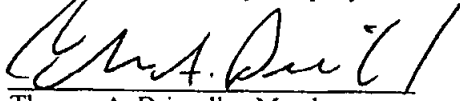
3. Effectiveness of Sublease. Except as and to the extent modified by this First Addendum, all of the provisions of the Sublease shall remain in full force and effect.

Date of execution:

May 27, 2005

Sublandlord:

DRISCOLL MISSION BAY LLC,
a California limited liability company

By: 

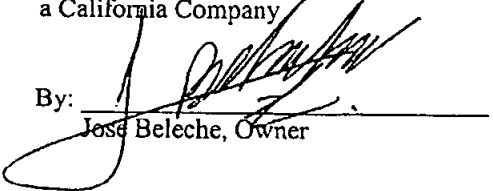
Thomas A. Driscoll, a Member

Date of execution:

May 27, 2005

Subtenant:

BAJA CANVAS & UPHOLSTERY
a California Company

By: 

Jose Beleche, Owner

GUARANTY OF SUBLEASE

This Guaranty of Sublease ("Guaranty") is made and effective as of June 1, 2005, by Jose Beleche ("Guarantor") in favor of DRISCOLL MISSION BAY LLC, a California limited liability company ("Sublandlord") with reference to the facts set forth below.

RECITALS:

A. Sublandlord has entered into that certain Sublease and First Addendum (collectively, the "Sublease"), of even date herewith with Baja Canvas & Upholstery, a California Company ("Subtenant"), to which this Guaranty is attached as an exhibit. The Sublease concerns the subleased premises ("Subleased Premises") located in the City of San Diego, State of California, as more particularly described in the Sublease. Unless specifically defined, all capitalized terms used in this Guaranty shall have the same meaning attributed to those terms in the Sublease.

B. As a condition to entering into the Sublease, Sublandlord has required that Guarantor execute this Guaranty guaranteeing performance of all the covenants to be performed by Subtenant under the Sublease. Guarantor's agreement to provide this Guaranty is a material consideration for Sublandlord's decision to sublease the Subleased Premises to Subtenant.

NOW, THEREFORE, to induce Sublandlord to enter into the Sublease and in consideration thereof, Guarantor agrees as follows:

1. Guarantor unconditionally guarantees to Sublandlord, and to Sublandlord's successors and assigns, without deduction by reason of setoff, defense or counterclaim, the payment by Subtenant of all Rent and all other charges which accrue under the Sublease in the manner and at the time prescribed therein, and the full and punctual performance and observance, by Subtenant, of all the terms, covenants and conditions contained in the Sublease. Guarantor waives notice of any breach or default by Subtenant. Guarantor's obligations hereunder shall continue in full force and effect with respect to all of Subtenant's obligations under the Sublease, and any extensions thereof, which are not performed upon the termination of the Sublease.

2. If Subtenant shall at any time default in the punctual payment, performance and observance of any of the amounts, terms, covenants or conditions of the Sublease, Guarantor will pay, keep, perform and observe same, as the case may be, in the place and stead of Subtenant. Guarantor shall also pay to Sublandlord all reasonable and necessary incidental damages and expenses incurred by Sublandlord as a direct and proximate result of Subtenant's failure to perform, which expenses shall include reasonable attorneys' fees and interest on all sums due and owing Sublandlord by reason of Subtenant's failure to pay same, at the maximum rate allowed by law.

3. This Guaranty is a continuing guaranty of all of Subtenant's obligations under the Sublease, independent of and in addition to any other guaranty, previously or subsequently given to Sublandlord, and this Guaranty shall not affect any of said guaranties.

4. Guarantor hereby expressly waives and relinquishes any and all rights and remedies which Guarantor may have or be able to assert by reason of the laws or decisions of the State of California pertaining to the rights and remedies of sureties.

5. Guarantor waives any right to require Sublandlord to (a) proceed against Subtenant or any co-guarantor, (b) proceed against or exhaust any security (including a security deposit) held by Sublandlord, or (c) pursue any remedy in Sublandlord's power whatsoever. Guarantor waives any defense it may acquire by reason of Sublandlord's election of any remedy against it or Subtenant or both, including, but without limitation, the election by Sublandlord to exercise its rights to occupy and operate the Subleased Premises under the Sublease.

6. The obligations of Guarantor hereunder shall not be released by Sublandlord's receipt, application or release of any security given for the performance and observance of any covenant or condition in the Sublease on Subtenant's part to be performed or observed.

7. Guarantor waives any defense based upon the legal disability of Subtenant, or any discharge, release or limitation of the liability of Subtenant to Sublandlord, or any restraint or stay applicable to actions against Subtenant, or any disaffirmance or abandonment of the Sublease by a trustee of Subtenant whether consensual, or by order of a court or other governmental authority, arising by operation of law or any liquidation, reorganization, receivership, bankruptcy, insolvency or debtor relief proceeding, or any other cause. Guarantor further waives any defense based upon any amendment, modification, renewal, extension, assignment, subletting or other alteration (with or without the consent of Sublandlord) of the Sublease, or the Term of the Sublease or obligation of Subtenant or Sublandlord under the Sublease, or any other documents relating to the transactions described therein; any defense based upon the negligence of Sublandlord; any defense based upon the forfeiture or termination of the Sublease by Sublandlord whether by expiration or default; any defense based upon the failure of Sublandlord to file a claim in bankruptcy of Subtenant; all rights of subrogation, all rights to enforce any remedy that Sublandlord may have against Subtenant, and all rights to participate in any security held by Sublandlord for the performance and obligations of Subtenant under the Sublease, except to the extent such security remains after payment and performance of Subtenant's obligations in full; any defense based upon the impairment of any subrogation rights that Subtenant might have; any defense based upon death, incapacity, lack of authority or termination of existence or revocation hereof by any person or entity, or persons or entities, or the substitution of any party hereto, and any defense based upon or related to Guarantor's lack of knowledge as to Subtenant's financial condition, and any and all rights under Section 2845 of the California Civil Code and any successor provision. Guarantor also hereby waives the provisions of Sections 2809, 2810, 2819 and 2850 of the California Civil Code and their successors, and all other defenses which are capable of being waived.

8. Guarantor waives all presentments, demands, protests and notices of any kind including notice of acceptance of the Guaranty by Sublandlord. Any act of Sublandlord, or its successors or assigns, consisting of a modification of the Sublease, a waiver of any of the terms or conditions of the Sublease, or the giving of any consent to any manner or thing relating to the Sublease, or the granting of any indulgences or extensions of time to Subtenant, are hereby deemed approved by Guarantor and may be done without notice to Guarantor and without releasing Guarantor from any of its obligations hereunder.

9. The liability of Guarantor hereunder shall in no way be affected by: (a) the release or discharge of Subtenant in any creditor's, receivership, bankruptcy or other proceeding; (b) the impairment, limitation or modification of the liability of Subtenant or the estate of Subtenant in bankruptcy, or of any remedy for the enforcement of Subtenant's liability under the Sublease resulting from the operation of any present or future provision of the Bankruptcy Code of the United States or other statute or from the decision of any court; (c) the rejection or disaffirmance of the Sublease in any such proceedings; (d) the assignment or transfer of the Sublease by Subtenant; (e) any disability or other defense of Subtenant; (f) the cessation from any cause whatever of the liability of Subtenant; (g) the exercise by Sublandlord of any of its rights or remedies reserved under the Sublease or by law; or (h) any termination of the Sublease.

10. If Subtenant shall become insolvent or be adjudicated bankrupt, whether by voluntary or involuntary petition, if any bankruptcy action involving Subtenant shall be commenced or filed, if a petition for reorganization, arrangement or similar relief shall be filed against Subtenant, or if a receiver of any part of Subtenant's property or assets shall be appointed by any court, Guarantor shall pay to Sublandlord the amount of all accrued, unpaid and accruing Rent and other charges due under the Sublease to the date when the debtor-in-possession, the trustee or administrator rejects the Sublease. In addition, Guarantor shall pay to Sublandlord all accrued, unpaid and accruing Rent and other charges under the Sublease for the remainder of the Sublease Term. At the option of Sublandlord, Guarantor shall either: (a) pay Sublandlord an amount equal to the Rent and other charges which would have been payable for the unexpired portion of the Term reduced to present-day value; or (b) execute and deliver to Sublandlord a new Sublease for the balance of the Term with the same terms and conditions as the Sublease, but with Guarantor as Subtenant thereunder. Any operation of any present or future debtor's relief act or similar act, or law or decision of any court, shall in no way affect the obligations of Guarantor or Subtenant to perform any of the terms, covenants or conditions of the Sublease or of this Guaranty.

11. Guarantor assumes full responsibility for keeping fully informed of the financial condition of Subtenant and all other circumstances affecting Subtenant's ability to perform its obligations to Sublandlord, and agrees that Sublandlord shall have no duty to report to Guarantor any information which Sublandlord receives about Subtenant's financial condition or any circumstances bearing on Subtenant's ability to perform.

12. The covenants and obligations of Guarantor hereunder are independent of the Subtenant's obligations under the Sublease and are binding upon the Guarantor notwithstanding the fact that the Guarantor is not the signatory to the Sublease; separate action or actions may be brought against any Guarantor hereon, whether or not action is brought against Subtenant or any co-guarantor or Subtenant or any co-guarantor be joined in any such action or actions.

13. Any indebtedness or other obligations of Subtenant now or hereafter held by Guarantor is hereby subordinated to Subtenant's obligations to Sublandlord, and such indebtedness or other obligations of Subtenant to Guarantor, if Sublandlord so requests, shall be collected, enforced and received by Guarantor as a trustee for Sublandlord and be paid over to Sublandlord on account of Subtenant's obligations to Sublandlord, but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty.

14. Guarantor authorizes Sublandlord, without giving notice to Guarantor or obtaining Guarantor's consent and without affecting the liability of Guarantor, from time to time, to: (a) renew or extend all or any portion of Subtenant's obligations under the Sublease or the Sublease itself; (b) declare all sums owing to Sublandlord under the Sublease due and payable upon the occurrence of a default or event of default under the Sublease; (c) make changes in the dates specified for payments of any sums payable in periodic installments under the Sublease; (d) otherwise modify the terms of the Sublease; (e) take and hold security for the performance of Subtenant's obligations under the Sublease and exchange, enforce, waive and release any such security; (f) apply such security and direct the order or manner of sale thereof as Sublandlord in Sublandlord's discretion may determine; (g) release, substitute or add any one or more endorsers of the Sublease or guarantors of Subtenant's obligations under the Sublease; and (h) assign this Guaranty in whole or in part.

15. This Guaranty shall be enforceable by Sublandlord in accordance with the laws of the State of California and shall be construed in accordance therewith. Guarantor agrees to pay attorneys' fees and all other costs and expenses which may be incurred by Sublandlord in enforcement of this Guaranty. Until paid to Sublandlord, such sums will bear interest from the date such costs and expenses are incurred at the maximum rate permitted by law.

16. No delay or failure on the part of Sublandlord to pursue any right or remedy hereunder or under the Sublease shall constitute a waiver of that right or remedy. All remedies of Sublandlord against Guarantor are cumulative.

17. The obligations and promises set forth herein shall be joint and several undertakings of each of the persons executing this Guaranty as a Guarantor, and Sublandlord may proceed hereunder against any one or more of said persons without waiving its right to proceed against any of the others. The use of the singular herein shall include the plural.

18. Guarantor acknowledges that its undertakings given hereunder are given in consideration of Sublandlord's entering into the Sublease and that Sublandlord would not consummate the Sublease were it not for the execution and delivery of this Guaranty.

19. The provisions of this Guaranty will bind and benefit the heirs, executors, administrators, legal representatives, successors and assigns of Guarantor and Sublandlord. However, Guarantor may not assign this Guaranty or its obligations hereunder, without Sublandlord's prior written consent, which may be withheld in Sublandlord's sole and absolute discretion.

20. Guarantor individually represents and warrants that it has all requisite power and authority to execute, deliver, perform and be legally bound by this Guaranty on the terms and conditions herein stated and transact any other business with Sublandlord as necessary to fulfill the terms of this Guaranty.

21. No provision of this Guaranty or Sublandlord's rights hereunder can be waived or modified nor can Guarantor be released from its obligations hereunder except by a writing executed by Sublandlord. No such waiver shall be applicable except in the specific instance for which given.

22. Guarantor hereby waives its right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either Sublandlord against Subtenant and/or Guarantor or Subtenant against Sublandlord and/or Guarantor, or by Guarantor against Sublandlord and/or Subtenant, on any matter whatsoever arising out of, or in any way connected with, this Guaranty and/or the Sublease, the relationship of Sublandlord, Subtenant and Guarantor, Subtenant's use and occupancy of the Subleased Premises or Common Area, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

23. The term "Subtenant" will mean both the named Subtenant and any other person or entity at any time assuming, subleasing or otherwise becoming primarily liable for all or any part of the Subtenant's obligations. The term "Sublandlord" will mean both the Sublandlord named herein and any future owner or holder of Sublandlord's interest in the Subleased Premises. Sublandlord may, without notice, assign this Guaranty in whole or in part without extinguishing or reducing the liability of the Guarantor.

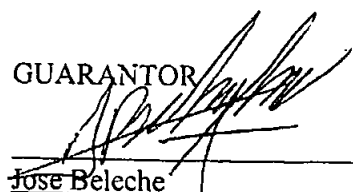
24. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be given in the manner required for giving notices as set forth in the Sublease. For purposes of notice, the addresses of the parties shall be as set forth on the signature page hereof; provided, however, that any party shall have the right to change its address for notice hereunder to any other location by giving notice to the other party in the manner set forth above.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the day and year first above written.

Address of Guarantor:

4440 Everts Street
Pacific Beach, California 92109

GUARANTOR



Jose Beleche

Guarantor's Social Security No: 622-27-5468

Address of Sublandlord:

Driscoll Mission Bay LLC
1500 Quivira Way
San Diego, California 92109

Merv R. Thompson, Esq.

-8-

February 7, 2008

CONSENT TO SUBLEASE AGREEMENT

The City of San Diego (CITY), as LESSOR under that certain Lease Agreement (Master Lease) entered into with

MISSION BAY MARINA

and filed in the Office of the City Clerk as Document No. 766042, as amended by First Amendment, filed in the Office of the City Clerk as Document No. RR-265857 and subsequently assigned to

DRISCOLL MISSION BAY LLC

(LESSEE) hereby consents to that certain Sublease Agreement between the above LESSEE (SUBLESSOR) and

BAY ISLAND YACHTS, a California Company

(SUBLESSEE) dated August 1, 2000. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, this consent is subject to the following conditions:

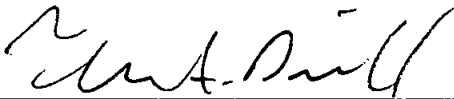
- 1) The term of this Sublease Agreement is approved for a period of one (1) year commencing upon the date this Consent to Sublease Agreement is executed by CITY. LESSEE and SUBLESSEE acknowledge and understand that this leasehold is included in a planned redevelopment of the Quivira Basin area of Mission Bay Park. The redevelopment may require that facilities and/or uses, including this SUBLESSEE, be terminated with ninety (90) days advance written notice.
- 2) Additional conditions attached as ADDENDUM A: "MINIMUM STANDARD SUBLEASE CONDITIONS".

The undersigned hereby agrees to the terms and conditions set forth in this Consent to Sublease Agreement.

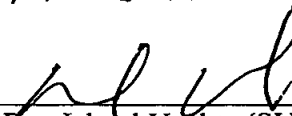
Dated: 11/13/00

By 
Craig W. Gibson
Acting Supervising Property Agent
for the City Manager

Dated: 10/12/00

By: 
Driscoll Mission Bay (SUBLESSOR)
Thomas A. Driscoll

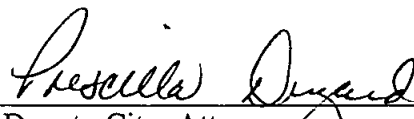
Dated: 10-2-2000

By: 
Bay Island Yachts (SUBLESSEE)
Neil Riley for

APPROVED AS TO FORM:

CASEY GWINN, City Attorney

Dated: 11-27-00

By 
Deputy City Attorney

ADDENDUM A

MINIMUM STANDARD SUBLEASE CONDITIONS

ASSIGNMENT AND SUBLEASING: SUBLESSEE shall not assign the sublease or sublet the premises or any part thereof without the prior written consent of LESSEE and The City of San Diego, hereinafter, "CITY". An assignment by operation of law shall automatically terminate this lease.

HOLD HARMLESS: SUBLESSEE shall assume the defense of, indemnify and hold harmless LESSEE and CITY from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the operations conducted on the leased premises, the condition of the premises or from any act or omission of SUBLESSEE, his agents and invitees; provided, however, SUBLESSEE's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

INSURANCE: SUBLESSEE shall be insured by an insurance carrier acceptable to the LESSEE and CITY against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be \$1 million COMBINED SINGLE LIMIT LIABILITY in an occurrence form. A copy of the policy of insurance shall be filed with CITY and shall name "The City of San Diego" as an additional insured. Said policy shall specify that the policy may not be terminated, altered or canceled without 30 days prior written notice to CITY by the insurance company.

LEGAL PROCEEDINGS: Should it become necessary for LESSEE or CITY to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this Sublease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.

SUBORDINATION: This agreement is in effect a Sublease of a portion of the premises covered by that certain Lease Agreement (Master Lease) dated March 5, 1979, between the SUBLESSOR herein and the City of San Diego. This sublease is subject and subordinate to the covenants and conditions of said Lease Agreement (Master Lease) notwithstanding any provision hereof contrary to or in conflict with said Sublease agreement.

SUBLEASE

between

DRISCOLL MISSION BAY LLC,
a California limited liability company,

as Landlord,

and

Bay Island Yachts,
a California Company,

as Tenant,

for a portion of
MISSION BAY MARINA
San Diego, California

dated 8/1/00, 199

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EXHIBITS:

- A Master Lease
- B Description of the Subleased Premises and Site Plan

SUBLEASE

THIS SUBLEASE ("Sublease"), dated for reference purposes only as of 8/1/00, ~~199~~, is entered into by and between DRISCOLL MISSION BAY LLC, a California limited liability company, ("Sublandlord") and Bay Island Yachts a California Company ("Subtenant"), with reference to the following facts:

A. **Master Lease.** Sublandlord is the successor "Lessee" under that certain Lease dated March 5, 1979, between the CITY OF SAN DIEGO, a municipal corporation ("City"), as Lessor, and MISSION BAY MARINA, a California limited partnership, as Lessee, a copy of which is attached hereto as Exhibit A and incorporated herein by reference (as amended from time to time, the "Master Lease"), for certain leased premises in Quivira Basin at Mission Bay Park, San Diego, California, commonly known as "Mission Bay Marina" and more particularly described in the Master Lease (the "Master Premises").

B. **Sublease.** Sublandlord desires to sublease to Subtenant that portion of the Master Premises described on Exhibit B (the "Subleased Premises") and Subtenant desires to sublease the Subleased Premises from Sublandlord, on the terms and conditions provided in this Sublease.

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

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

2. **Term.**

2.1 **Primary Term.** The primary term of this Sublease (the "Term") shall commence on 8/1/00, ~~199~~ (the "Commencement Date") and shall expire at midnight two (2) years thereafter, on 7/31/02 (the "Expiration Date"), subject to earlier termination as provided in this Sublease.

3. **Rent.**

3.1 **Basic Rent.** Subtenant agrees to pay Sublandlord rent in the amount of two hundred eighty Dollars (\$ 280.00) per month commencing on the Commencement Date, and continuing monthly in advance thereafter, on the first day of each month, payable each and every month thereafter during the term of this Sublease.

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

3.3 **Increase in Percentage Rental under Master Lease.** Rent payable under this Sublease is subject to a percentage rental payable by Sublandlord to Master Landlord under the Master Lease. In the event Master Landlord increases the percentages payable under the Master Lease for the Rent paid under this Sublease, Basic Rent shall be increased so that Sublandlord receives the same net sublease rent (net of percentage rent payable under the Master Lease) as Sublandlord would have received if Master Landlord had not increased the percentage payable under the Master Lease.

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

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

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

4. Security Deposit. Subtenant shall pay to Sublandlord upon the execution of this Sublease a security deposit of two hundred eighty Dollars (\$ 280.00) (the Security Deposit"). The Security Deposit shall be utilized by Sublandlord for the satisfaction of any default by Subtenant under this Sublease. The Security Deposit shall not bear interest and may be deposited by Sublandlord in its general accounts. If Sublandlord applies any part of the Security Deposit to cure any default of Subtenant, Subtenant shall on demand deposit with Sublandlord the amount so applied that Sublandlord shall have the full Security Deposit on hand at all times during the Term of this Sublease.

5. Use.

5.1 Use. Subtenant shall use the Subleased Premises for new and used yachts sales purposes and shall not use the Subleased Premises, or permit or suffer the Subleased Premises to be used, for any other purpose without the prior written consent of Sublandlord, which Sublandlord may withhold in its sole and absolute discretion.

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

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

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

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

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

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

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

6. Common Areas.

6.1 Common Areas - Definition. The term "Common Areas" is defined as all areas and facilities outside the Subleased Premises and any other tenant's premises and within the exterior boundary line of the Master Premises that are provided and designated by Sublandlord from time to time for the general nonexclusive use of Sublandlord, Subtenant and other tenant(s) and their respective employees, suppliers, shippers, customers and invitees, including but not limited to common entrances, lobbies, corridors, stairways and stairwells, public restrooms, elevators, mechanical and electrical rooms, parking areas to the extent not otherwise prohibited by this Sublease, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, ramps, driveways, landscaped areas and decorative walls. Sublandlord shall have the right to exclude any portion of the Building and Master Premises other than the Subleased Premises from the Common Areas under this Sublease.

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

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

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

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

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

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

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

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

7. **Condition of Subleased Premises.**

7.1 **No Representation.** Subtenant acknowledges that it is in possession of the Subleased Premises and is thoroughly familiar with their condition. Subtenant acknowledges that, except as expressly set forth herein, neither Sublandlord nor any agent of Sublandlord has made any representations or warranties, express or implied, with respect to (i) the condition of the Subleased Premises, the Building or the Master Premises, (ii) the suitability of the Subleased Premises for Subtenant's purposes (iii) the location, use, design, merchantability, fitness for use for a particular purpose, condition or durability thereof, (iv) the existence of Hazardous Materials (as defined in Section 23.6), (v) the quality of the material or workmanship therein; and all risks incidental to the Subleased Premises shall be borne by Subtenant. Except as expressly provided herein, IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE SUBLEASED PREMISES OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, LANDLORD SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS SECTION HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ALL WARRANTIES BY LANDLORD, EXPRESS OR IMPLIED.

8. **Utilities and Services.**

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

8.2 **Utilities and Services Not Provided.** Subtenant shall arrange, and pay the supplier directly, for all telephone and (except as provided in Section 8.1) all other utilities and services supplied to the Subleased Premises, together with any connection charges and taxes thereon.

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

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

9. **Repairs and Maintenance.**

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

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

9.3 **Subtenant's Sole Cost.** Except for Sublandlord's obligations pursuant to Section 9.2 above, Subtenant shall, at Subtenant's sole cost and expense, keep the Subleased Premises and every part thereof (structural and nonstructural, whether or not such portion of the Subleased Premises needing repairs, or the means of repairing the same, are reasonably or readily accessible to Subtenant, and whether or not the need for such repairs occurs as a result of Subtenant's use, any prior use, the elements or the age of such portion of the Subleased Premises) in a good condition, ordinary wear and tear excepted. Subtenant shall, upon the expiration or sooner termination of the term hereof, surrender the Subleased Premises to Sublandlord in the same condition as when received, ordinary wear and tear excepted. Subtenant's obligations shall include restorations, replacements or renewals, including capital expenditures for restorations, replacements or renewals which will have a useful life beyond the term of this Sublease, when necessary to keep the Subleased Premises and all improvements thereon or a part thereof

in good order, condition and repair and in compliance with all applicable laws. Except as expressly set forth in this Sublease, it is intended by the parties hereto that Sublandlord shall have no obligation, in any manner whatsoever, to repair or maintain the Subleased Premises, the improvements located thereof or the equipment therein, whether structural or nonstructural, all of which obligations are intended to be the expense of Subtenant, whether or not such repairs, maintenance or restoration shall have a useful life extending beyond the term of this Sublease. Subtenant shall further be responsible for the cost of all alterations to the Subleased Premises required by law, which alterations shall become the property of Sublandlord upon the expiration of this Sublease.

9.4 Notice and Sublandlord's Right to Repair Building. Prior to making any material repair to the Building, Subtenant shall give to Sublandlord notice of the need for such repair. Sublandlord shall have the right, but not the duty, to make all necessary repairs to the Building. If Sublandlord elects to make such repairs, the cost thereof shall be at Subtenant's expense. If Sublandlord does not elect to make such repairs to the Building within a reasonable time of notice thereof, Subtenant shall make such repair at its own cost and expense. Subtenant shall not make any repairs in a manner which will defeat any warranty for the Subleased Premises.

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

9.6 Damage or Destruction. Notwithstanding any of the foregoing, in the event of fire, earthquake, flood, war or similar cause of damage or destruction, this Article 9 shall not be applicable and the provisions of Article 14 entitled "Damage or Destruction" shall apply and control.

10. Alterations.

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

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

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

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

10.5 Property of Sublandlord. All alterations, decorations, fixtures, equipment, additions and improvements attached to or built into the Subleased Premises, made by either party, shall, unless Sublandlord elects otherwise at the time consent for such alteration or an election by Sublandlord is obtained (or at the end of the term of this Sublease, if consent is not obtained or an election by Sublandlord is not earlier requested), become the property of Sublandlord upon the expiration or earlier termination of the term of this Sublease and shall remain upon and be surrendered with the Subleased Premises as a part thereof.

If Sublandlord elects to have such alterations removed, Subtenant shall do so and shall repair and restore the Subleased Premises to the condition they were in prior to such alterations, all at Subtenant's sole cost.

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

10.7 **Personal Property.** All articles of Subtenant's personal property, detachable machinery and equipment, furniture and movable partitions which are owned by Subtenant and installed by Subtenant at its own expense in the Subleased Premises shall be and remain the property of Subtenant and may be removed by Subtenant at any time during the term of this Sublease when Subtenant is not in default hereunder. If Subtenant shall fail to remove all of its effects from the Subleased Premises upon the termination of this Sublease, then Sublandlord may, at its option, remove the same in any manner that Sublandlord may remove and store said effects without liability to Subtenant for loss thereof or damage thereto, and Subtenant agrees to pay Sublandlord upon demand any expenses incurred in such removal and storage or Sublandlord may, at its option, without notice, sell said property or any of the same, at private sale and without legal process, for such price as Sublandlord may obtain; and Sublandlord may apply the proceeds of such sale against any amounts due under this Sublease from Subtenant to Sublandlord and against any expenses incident to the removal, storage and sale of said personal property, with any balance of the sales proceeds to be delivered to Subtenant.

11. **Liens.**

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

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

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

12. **Indemnification and Exculpation.**

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

omission of Subtenant, its agents, contractors, employees, servants and tenants ("Subtenant's Agents"), except if such death or injury, or damage to property is caused by the willful act or gross negligence of Sublandlord or Sublandlord's Agents.

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

12.3 No Liability of Sublandlord. Notwithstanding any provision of Sections 12.1 and 12.2 to the contrary, Sublandlord shall not be liable to Subtenant or any other party, and Subtenant assumes all risk of damage to personal property, including loss of records kept within the Subleased Premises. Subtenant further waives any claim for injury to Subtenant's operations or loss of income relating to any such damage or destruction of personal property, including any loss of records.

12.4 Assumption of Risk. Additionally, Sublandlord shall not be liable to Subtenant or any other party, and Subtenant assumes all risk of damage and liability (other than as may be covered by insurance or by a third party), resulting from any defect or malfunction of any Building system or component of a Building system (such as HVAC, mechanical, plumbing, electrical, waste disposal, or sewer) other than as set forth in Section 9.2 above.

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

13. Insurance.

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

13.2 Liability Insurance. Subtenant, at its own cost, shall procure and continue in effect, from the Commencement Date or the date of occupancy, whichever first occurs, and continuing throughout the term of this Sublease and thereafter until Subtenant has fully and finally surrendered the Subleased Premises to Sublandlord, comprehensive public liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for death, bodily injury or property damage with respect to the Subleased Premises and insurance on all of its personal property. The deductible amounts of such policy of insurance shall not exceed Five Thousand Dollars (\$5,000).

13.3 Additional Insureds. The aforesaid insurance required of Subtenant shall name as additional insureds Sublandlord, its officers, directors, shareholders, partners, members and lenders, and Sublandlord's property manager, agents and representatives for the Subleased Premises. Said insurance shall be with companies having a policyholder rating of not less than A+ and financial category rating of Class IX in "Best's Insurance Guide". Subtenant shall cause any insurance companies issuing policies to Subtenant to furnish certificates evidencing such coverage to Sublandlord. No such policies shall be cancelable or subject to reduction of coverage or other modification or cancellation except after thirty (30) days' prior written notice to Sublandlord from the insurer. All such policies shall be written as primary policies, not contributing with and not in excess of the coverage which Sublandlord may carry. Any of Subtenant's policies may be in the nature of a "blanket policy" which specifically provides that the amount of insurance shall not be prejudiced by other losses covered by the policy. Subtenant shall, at least twenty (20) days prior to the expiration of any such policies, furnish Sublandlord with renewals or binders. Subtenant agrees that if Subtenant fails to procure and maintain such insurance, Sublandlord may (but shall not be required to) procure said insurance on Subtenant's behalf and charge Subtenant the premiums for any such policies, together with a ten percent (10%) handling charge, payable upon demand.

13.4 Fixtures and Other Items. Subtenant assumes the risk of damage to any fixtures, goods inventory, merchandise, equipment and personal property of any kind. Sublandlord shall not be liable for injury to Subtenant's operations or any loss of income therefore relative to damage to such items, all as more particularly set forth herein. Subtenant, at

Subtenant's cost, shall carry such insurance as Subtenant desires for Subtenant's protection with respect to such items, business interruption or loss of income.

13.5 Lender and Others. If any policy of insurance is to name Sublandlord as additional insured, Subtenant shall, upon written request of Sublandlord, also designate as an additional insured, and furnish certificates evidencing Sublandlord as an additional insured to, (i) any lender to Sublandlord holding a security interest in the Building or, and/or (ii) the Sublandlord under any lease wherein Sublandlord is or shall become a tenant under a ground lease for the Master Premises rather than that of fee owner, and/or (iii) Sublandlord's member, property manager, agents and representatives.

13.6 Waiver of Subrogation. Sublandlord and Subtenant each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, on account of loss or damage occasioned to such waiving party or its property or the property of others under its control to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which either party may have in force at the time of such loss or damage, such waivers to continue as long as their respective insurers so permit. Any termination of such a waiver shall be by written notice of circumstances as hereinafter set forth. Sublandlord and Subtenant, upon obtaining the policies of insurance required or permitted under this Sublease, shall give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Sublease. If such policies are unobtainable with such waiver or obtainable only at premium over that chargeable without such waiver, the party seeking such policy shall notify the other thereof, and the latter shall have ten (10) days thereafter to either (i) procure such insurance in companies reasonably satisfactory to the other party or (ii) agree to pay such additional premium. If neither (i) nor (ii) are done, this Section 13.6 shall have no effect during such time as such policies are unobtainable or the party in whose favor a waiver of subrogation is desired shall refuse to pay the additional premium. If such policies shall at any time be unobtainable, but subsequently shall be obtainable, neither party shall be subsequently liable for a failure to obtain such insurance until a reasonable time after notification thereof by the other party. If the release of either Sublandlord or Subtenant, as set forth in the first sentence of this Section shall contravene any law with respect to exculpatory agreements, the liability of the party in question shall be deemed not released but shall be secondary to the other's insurer.

13.7 Increases in Insurance. At reasonable times, Sublandlord may require insurance policy limits to be raised to conform with reasonable requirements of Sublandlord's lender or to bring coverage limits to the level then being required of similar tenants of similar properties; provided, however, that Sublandlord may, in any event, require insurance policy limits to be increased in proportion to any increase in the Consumer Price Index from the date of this Sublease to the date of the requested adjustments.

14. Damage or Destruction.

14.1 Destruction Due to Risk Covered by Insurance.

(a) If, during the term, the Subleased Premises or the Building are totally or partially destroyed from a risk covered by the insurance described in Section 13.1, rendering the premises totally or partially inaccessible or unusable, Sublandlord shall restore the Subleased Premises or the Building to substantially the same condition as they were in immediately before destruction. Such destruction shall not terminate this Sublease. If the existing laws do not permit the restoration, either party can terminate this lease immediately by giving notice to the other party.

(b) If the cost of the restoration exceeds the amount of proceeds received from the insurance required under Section 13.1, Sublandlord can elect to terminate this Sublease by giving notice to Subtenant within fifteen (15) days after determining that the restoration cost will exceed the insurance proceeds. In the case of destruction to the Subleased Premises only, if Sublandlord elects to terminate this Sublease, Subtenant, within fifteen (15) days after receiving Sublandlord's notice to terminate, can elect to pay to Sublandlord, at the time Subtenant notifies Sublandlord of its election, the difference between the amount of insurance proceeds and the cost of restoration, in which case Sublandlord shall restore the Subleased Premises. Sublandlord shall give Subtenant satisfactory evidence that all sums contributed by Subtenant as provided in this Section 14.1 have been expended by Sublandlord in paying the cost of restoration.

(c) If Sublandlord elects to terminate this Sublease and Subtenant does not elect to contribute toward the cost of restoration as provided in this Section 14.1, this Sublease shall terminate.

14.2 Destruction Due to Risk Not Covered by Insurance.

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

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

(c) In the case of destruction to the Subleased Premises only, if Sublandlord elects to terminate this Sublease Subtenant, within fifteen (15) days after receiving Sublandlord's notice to terminate, can elect to pay to Sublandlord, at the time Subtenant notifies Sublandlord of its election, the difference between five percent (5%) of the then replacement value of the Subleased Premises and the actual cost of restoration, in which case Sublandlord shall restore the Subleased Premises. Sublandlord shall give Subtenant satisfactory evidence that all sums contributed by Subtenant as provided in this Section 14.2 have been expended by Sublandlord in paying the cost of restoration.

(d) If Sublandlord elects to terminate this Sublease and Subtenant does not elect to perform the restoration or contribute toward the cost of restoration as provided in this Section 14.2, this Sublease shall terminate.

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

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

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

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

15. Eminent Domain.

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

15.2 **Restoration.** Upon any taking, if this Sublease is not terminated pursuant to Section 15.1 above, then Sublandlord promptly shall proceed to restore the Subleased Premises to substantially their same condition, to the extent reasonably Possible, prior to such partial taking. If such restoration has been completed, thereafter Basic Annual Rent shall be abated proportionately based on the percentage of the rental value of the Subleased Premises after such taking as compared to the rental value of the Subleased Premises prior to such taking.

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

16. **Defaults and Remedies.**

16.1 **Late Charge.** Late payment by Subtenant to Sublandlord of Rent or other sums due will cause Sublandlord to incur costs not contemplated by this Sublease, the exact amount of which is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, attorneys' charges, late payment charges on a mortgage, and so forth. In the event that Subtenant shall be in default for late payment under Section 16.4(a) hereof for more than three (3) days after notice from Sublandlord, Subtenant shall pay to Sublandlord a service charge in an amount of Fifteen Percent (15%) of the monthly Basic Rent for each month that a monthly installment of Rent remains unpaid, which Sublandlord and Subtenant agree is not a penalty but is a reasonable estimate of the expenses Sublandlord may incur as a result of such late payment. In the event of any such late payment, in addition to the foregoing service charge, the amount unpaid shall bear interest at Bank of America's "reference rate" plus three (3) percent per annum. Such interest shall be calculated from the date such amount was due and payable until the same shall have been fully paid.

16.2 **No Waiver.** No payment by Subtenant or receipt by Sublandlord of a lesser amount than that due shall be deemed to be other than on account of the amount due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Sublandlord may accept such check or payment without prejudice to Sublandlord's right to recover the balance or pursue any other remedy provided. If at any time a dispute shall arise as to any amount or sum of money to be paid by Subtenant to Sublandlord, Subtenant shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and Subtenant shall have the right to institute suit for recovery of the payment paid under protest.

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

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

(a) The failure by Subtenant to make any payment of Rent, as and when due;

(b) The failure by Subtenant to observe or perform any obligation other than described in Section 16.4(a) above, to be performed by Subtenant where such failure shall continue for a period of thirty (30) days after written notice thereof from Sublandlord to Subtenant. Such notice shall be in lieu of, and not in addition to, any notice required under California CODE OF CIVIL PROCEDURE § 1161; provided that, if the nature of Subtenant's default is such that it reasonably requires more than thirty (30) days to cure, then Subtenant shall not be deemed to be in default if Subtenant shall commence such cure within said thirty (30) day period and thereafter diligently prosecute the same to completion;

(c) Subtenant makes an assignment for the benefit of creditors;

(d) Subtenant files a voluntary petition under any chapter of the BANKRUPTCY CODE;

(e) Subtenant makes a voluntary assignment for the benefit of creditors;

(f) A receiver, trustee or custodian is appointed to, or does, take title, possession or control of all, or substantially all, of Subtenant's assets, or any involuntary petition is filed against the Subtenant under any chapter of the BANKRUPTCY CODE, and such petition or receiver, trustee or custodian is not dismissed within thirty (30) days;

(g) Subtenant's interest in this Sublease is attached, executed upon or otherwise judicially seized and such action is not released within thirty (30) days of the action; or

(h) Subtenant fails to comply fully with all provisions in Article 23 concerning Hazardous Materials.

Notices given under this Section shall specify the alleged default and shall demand that Subtenant perform the provisions of this Sublease within the applicable period of time, or quit the Subleased Premises. No such notice shall be deemed a forfeiture or a termination of this Sublease unless Sublandlord elects otherwise in such notice.

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

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

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

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

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

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

As used in Sections 16.5(a) and 16.5(b) above, "worth at the time of award" shall be computed by allowing interest at the rate specified in Section 16.1 above. As used in Section 16.5(c) above, the "worth at the time of award" shall be computed by determining the present value of such amount using the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percentage point.

16.6 Right of Re-Entry. In the event of a Default by Subtenant, and at any time thereafter, with or without terminating this Sublease, and with or without notice or demand and without limiting Sublandlord in the exercise of any right or remedy which Sublandlord may have, Sublandlord shall have the immediate right to re-enter and remove all persons and property, and such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Subtenant, all without service of notice or resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. No such re-entry shall be considered or construed to be a forcible entry by Sublandlord. If Sublandlord does not elect to terminate this Sublease as provided in this Section, then Sublandlord may, from time to time, recover all Rent as it becomes due under this Sublease pursuant to California CIVIL CODE

§ 1951.4. At any time thereafter, Sublandlord may elect to terminate this Sublease and to recover damages to which Sublandlord is entitled.

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

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

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

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

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

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

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

16.10 Right to Cure. Sublandlord shall not be in default hereunder unless Sublandlord fails to perform an obligation required of Sublandlord within a reasonable time, but in no event later than thirty (30) days after written notice by Subtenant specifically identifying the obligation Sublandlord has failed to perform; provided, however, that if the nature of Sublandlord's obligation is such that more than thirty (30) days are required for performance, then Sublandlord shall not be in default if Sublandlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

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

17. Assignment or Subletting.

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

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

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

17.4 **Transfer Void.** Any sale, assignment, hypothecation or transfer of this Sublease or subletting of Subleased Premises, or part thereof, that is not in compliance with the provisions of this Article shall be void, and shall, at the option of Sublandlord, be a breach of this Sublease.

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

17.6 **Security.** If Subtenant shall sublet the Subleased Premises, or any part thereof, Subtenant hereby immediately and irrevocably assigns to Sublandlord, as security for Subtenant's obligations under this Sublease, all rent from any such subletting, and Sublandlord, as assignee and as attorney-in-fact for Subtenant, or a receiver for Subtenant appointed on Sublandlord's application, may collect such rent and apply it toward Subtenant's obligations under this Sublease; except that, until the occurrence of an act of default by Subtenant, Subtenant shall have the right to collect such rent from the sublessee subject to the obligations of Section 17.2 above.

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

18. Bankruptcy.

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

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

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

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

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

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

19. **Subordination and Attornment.**

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

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

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

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

20. **Surrender.**

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

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

20.3 **No Merger.** The voluntary or other surrender of any ground or underlying lease that now exists or may hereafter be executed affecting the Building or Subleased Premises, or a mutual cancellation thereof or of Sublandlord's interest therein, shall not work a merger and shall, at the option of the successor of Sublandlord's interest in the Building or Subleased Premises, operate as an assignment of this Sublease.

21. **Holding Over.**

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

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

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

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

22. Taxes on Subtenant's Property.

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

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

23. Hazardous Materials.

23.1 Prohibition/Compliance. Subtenant, at its sole cost, shall comply with all federal, state and local laws, statutes, ordinances, codes, regulations and orders relating to the receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release and disposal of any Hazardous Material as defined in this Article in or about the Subleased Premises or the Building. Subtenant shall not cause or permit any Hazardous Material (as hereinafter defined) to be brought upon, kept or used in or about the Subleased Premises by Subtenant, its agents, employees, contractors or invitees in a manner or for a purpose prohibited by any federal, state or local law, rule or regulation. The disposal of Hazardous Material shall be in approved containers and removed from the Subleased Premises by duly licensed carriers. Subtenant shall immediately provide Sublandlord with telephonic notice, which shall promptly be confirmed by written notice, of any and all spillage, discharge, release and disposal of Hazardous Materials onto or within the Subleased Premises or the Building, which by law must be reported to any federal, state or local agency, and any injuries or damages resulting directly or indirectly therefrom. A failure of Subtenant to give to Sublandlord the notices required in this Section 23.1 shall constitute a default under this Sublease. Further, Subtenant shall deliver to Sublandlord each and every notice or order received from any federal, state or local agency concerning Hazardous Materials and the possession, use and/or disposal thereof promptly upon receipt of each such notice or order. Subtenant shall be responsible for and shall indemnify, protect, defend and hold harmless Sublandlord and its agents, employees, representatives, directors and officers from any and all claims, costs, penalties, fines, liability and losses, including without limitation, (i) temporary or permanent diminution in value of the Subleased Premises or the Building, (ii) damages for the temporary or permanent loss or restriction on use of rentable or usable space or of any amenity of the Subleased Premises or the Building, and (iii) sums paid in settlement of claims, consultant fees and expert fees, liabilities, attorneys' fees, damages, injuries, causes of action, judgments and expenses, which arise during or after the Term of this Sublease and which (a) result from Subtenant's use and occupancy of the Subleased Premises, or (b) result from Subtenant's receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release or disposal of Hazardous Materials in, upon or about the Subleased Premises or the Building. The indemnifications of Sublandlord and indemnities by Subtenant above include, to the extent Subtenant is responsible for such costs and expenses under the provisions above, without limiting the generalities thereof, reasonable costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work lawfully required by any federal, state or local governmental agency or political subdivision because of any Hazardous Materials present in the soil, subsoil, ground water, or elsewhere at, on or under the Subleased Premises or the Building.

23.2 Termination of Sublease. Notwithstanding the provisions of this Article, Sublandlord shall have the right to terminate the Sublease in this event that (i) Subtenant uses the Subleased Premises for the generation, storage, use, treatment or disposal of Hazardous Material in a manner or for a purpose prohibited by applicable law (unless Subtenant is

diligently pursuing compliance therewith), (ii) Subtenant has been required by any governmental authority to take remedial action in connection with Hazardous Material contaminating the Subleased Premises or the Building if the contamination resulted from Subtenant's action or use of the Subleased Premises and such remedial action has a material adverse effect on Sublandlord, the Subleased Premises or the Building, or (iii) Subtenant is subject to an enforcement order issued by any governmental authority in connection with the use, disposal or storage of a Hazardous Material on the Subleased Premises and such enforcement order has a material adverse effect on Sublandlord, the Subleased Premises or the Building. Each of the foregoing events shall be deemed to be a material default by Subtenant under this Sublease.

23.3 Assignment and Subletting. Notwithstanding the provisions of Article 17 above, if (i) any anticipated use of the Subleased Premises by any proposed assignee or sublessee involves the generation or storage, use, treatment or disposal of Hazardous Material in any manner or for a purpose prohibited hereunder or by any applicable law, (ii) the proposed assignee or sublessee has been required by any governmental authority to take remedial action in connection with a Hazardous Material if the contamination resulted from such party's action or use of the property in question and has failed to take such action, or (iii) the proposed assignee or sublessee is subject to an enforcement order issued by any governmental authority in connection with the use, disposal or storage of a Hazardous Material of a type such proposed assignee or sublessee intends to use in, on or at the Subleased Premises and the proposed assignee or sublessee has failed to fully comply with such enforcement order, it shall not be unreasonable for Sublandlord to withhold its consent to an assignment or subletting to such proposed assignee or sublessee.

23.4 Perform Tests.

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

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

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

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

24. **Miscellaneous.**

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

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

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

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

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

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

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

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

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

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

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

for Rent Payment and Notices to Sublandlord:

Driscoll Mission Bay LLC
Attn: Ms. Mary-Carol Driscoll
1500 Quivira Way
San Diego, California 92109

for Notices to Subtenant:

Bay Island Yachts
Attn: Mike Clausen
San Diego, California 92

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

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

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

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

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

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

24.17 Real Estate Brokers/Finders. Subtenant and Sublandlord each represent to the other that they have not entered into any agreement or incurred any obligation in connection with this transaction that might result in the obligation to pay a brokerage commission or finder's fee to any broker, finder or other person. Each party agrees to indemnify and hold the other party harmless from and against any liability, damages, claim or demand by any broker or other person for bringing about this Sublease who claims to have dealt with such indemnifying party, including any expenses (including reasonable attorney fees) incurred in defending any such claim or demand.

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

24.19 Waiver of Jury Trial and Counterclaims. The parties hereto shall and do hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other or any matters whatsoever

arising out of or in any way connected with this Sublease, the relationship of Sublandlord and Subtenant, Subtenant's use or occupancy of the Subleased Premises or any claim of injury or damage.

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

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

24.22 Limitation of Sublandlord's Liability. If Sublandlord is a limited partnership or joint venture, the limited partners of such partnership shall not be personally liable and no limited partner of Sublandlord shall be sued individually or named individually as a party in any suit or action or service of process be made against any limited partner of Sublandlord. If Sublandlord is a corporation or limited liability company, the shareholders, members, directors, officers, managers, employees and/or agents of such corporation shall not be personally liable and no shareholder, member, director, officer, manager, employee or agent of Sublandlord shall be sued or named as a party in any suit or action or service of process be made against any shareholder, member, director, officer, officer, manager, employee or agent of Sublandlord. No limited partner, shareholder, director, employee or agent of Sublandlord shall be required to answer or otherwise plead to any service of process and no judgment will be taken or writ of execution levied against any limited partner, shareholder, member, director, officer, manager, employee or agent of Sublandlord. Each of the covenants and agreements of this Section 24.22 shall be applicable to any covenant or agreement either expressly contained in this Sublease or imposed by statute or by common law.

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

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

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

24.26 Estoppel Certificate. From time to time as reasonably requested by Sublandlord, Subtenant shall, within fifteen (15) days of written notice from Sublandlord, execute, acknowledge and deliver to Sublandlord a statement in writing in a form reasonably requested by a proposed lender or purchaser (i) certifying that this Sublease is unmodified and in

full force and effect (or, if modified, stating the nature of such modification and certifying that this Sublease as so modified is in full force and effect) and the dates to which the Rent and other charges are paid in advance, if any (ii) acknowledging that there are not, to Subtenant's knowledge, any uncured defaults on the part of Sublandlord hereunder or specifying such defaults if any are claimed, and (iii) setting forth such further reasonable information with respect to this Sublease or the Subleased Premises as may be requested thereon. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Subleased Premises.

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

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

27. **Right To Terminate.** Notwithstanding anything in this Sublease to the contrary, Sublandlord and/or Subtenant shall have the right to terminate this Sublease before expiration of the Term by giving written notice of termination to Subtenant and/or Sublandlord not less than thirty (30) days before the effective date of the termination (the "Termination Date"). The Termination Date shall be specified in Sublandlord's and/or Subtenant's termination notice. In the event that the Termination Date is other than the last day of a calendar month, Rent for the partial last month shall be prorated on the basis of a thirty (30) day month and shall be due and payable on the first day of such month.

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

Date of execution:

8/8/00, 1999

Sublandlord:

DRISCOLL MISSION BAY LLC,
a California limited liability company

By:

Thomas A. Driscoll, a Member

Date of execution:

8/3/00, 1999

Subtenant:

Bay Island Yachts
a California Company

By:

Its:

Michael B. Clausen

Exhibit A

Master Lease

[to be attached]

Available on request.

Sublease Exhibit B (Subleased Premises)

BAIT DOCK

Mission Bay Marina

CHANNEL

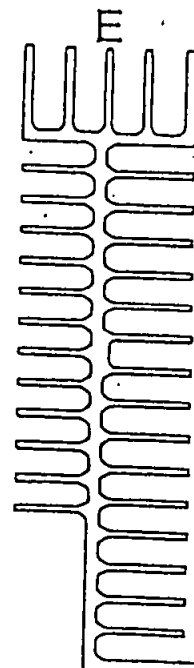
LIFEGUARD
HARBOR
POLICE

PARKING

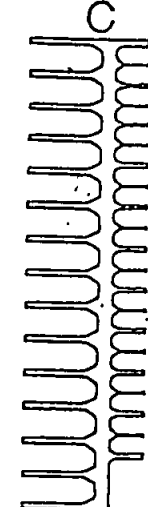
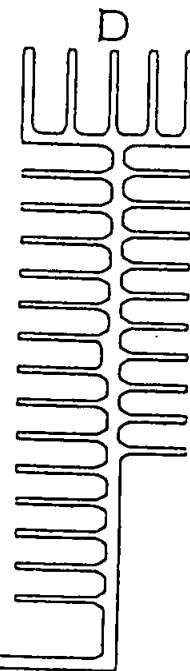
PARKING

HOSPITALITY
POINT

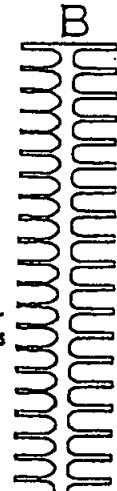
TO OCEAN



BOAT
SLIPS



BOAT
SLIPS



BOAT TIES

ENTRANCE

REST ROOMS

LOCKERS

WASH

LIFT AREA
BOAT YARD

REST ROOMS
YARD OFFICE

REST ROOMS

Laundry

DEU

Bay Island Yacht
224 Sq. Ft.
Upstairs

ENTRANCE

ENTRANCE

PARKING

1500 QUIXIRA WAY

CONSENT TO SUBLEASE AGREEMENT

The City of San Diego (CITY), as LESSOR under that certain Lease Agreement (Master Lease) entered into with

MISSION BAY MARINA

and filed in the Office of the City Clerk as Document No. 766042, as amended by First Amendment, filed in the Office of the City Clerk as Document No. RR-265857 and subsequently assigned to

DRISCOLL MISSION BAY LLC

(LESSEE) hereby consents to that certain Sublease Agreement between the above LESSEE (SUBLESSOR) and

AQUA ADVENTURES, INC., a California Company

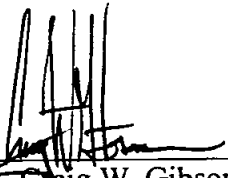
(SUBLESSEE) dated July 21, 2000. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, this consent is subject to the following conditions:

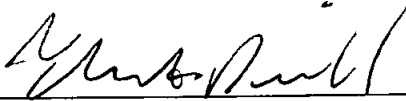
- 1) The term of this Sublease Agreement is approved for a period of one (1) year commencing upon the date this Consent to Sublease Agreement is executed by CITY. LESSEE and SUBLESSEE acknowledge and understand that this leasehold is included in a planned redevelopment of the Quivira Basin area of Mission Bay Park. The redevelopment may require that facilities and/or uses, including this SUBLESSEE, be terminated with ninety (90) days advance written notice.
- 2) Additional conditions attached as ADDENDUM A: "MINIMUM STANDARD SUBLEASE CONDITIONS".

The undersigned hereby agrees to the terms and conditions set forth in this Consent to Sublease Agreement.

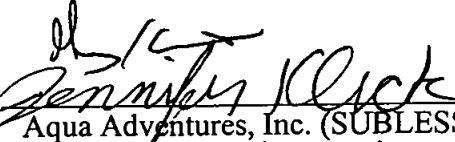
Dated: 11/13/00

By 
Craig W. Gibson
Acting Supervising Property Agent
for the City Manager

Dated: 10/12/00

By: 
Driscoll Mission Bay (SUBLESSOR)
Thomas A. Driscoll

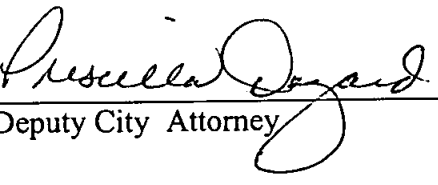
Dated: 10-5-00

By: 
Aqua Adventures, Inc. (SUBLESSEE)
Greg Knight/Jennifer Kleck

APPROVED AS TO FORM:

CASEY GWINN, City Attorney

Dated: 11-27-00

By 
Deputy City Attorney

ADDENDUM A

MINIMUM STANDARD SUBLEASE CONDITIONS

ASSIGNMENT AND SUBLEASING: SUBLESSEE shall not assign the sublease or sublet the premises or any part thereof without the prior written consent of LESSEE and The City of San Diego, hereinafter, "CITY". An assignment by operation of law shall automatically terminate this lease.

HOLD HARMLESS: SUBLESSEE shall assume the defense of, indemnify and hold harmless LESSEE and CITY from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the operations conducted on the leased premises, the condition of the premises or from any act or omission of SUBLESSEE, his agents and invitees; provided, however, SUBLESSEE's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

INSURANCE: SUBLESSEE shall be insured by an insurance carrier acceptable to the LESSEE and CITY against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be \$1 million COMBINED SINGLE LIMIT LIABILITY in an occurrence form. A copy of the policy of insurance shall be filed with CITY and shall name "The City of San Diego" as an additional insured. Said policy shall specify that the policy may not be terminated, altered or canceled without 30 days prior written notice to CITY by the insurance company.

LEGAL PROCEEDINGS: Should it become necessary for LESSEE or CITY to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this Sublease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.

SUBORDINATION: This agreement is in effect a Sublease of a portion of the premises covered by that certain Lease Agreement (Master Lease) dated March 5, 1979, between the SUBLESSOR herein and the City of San Diego. This sublease is subject and subordinate to the covenants and conditions of said Lease Agreement (Master Lease) notwithstanding any provision hereof contrary to or in conflict with said Sublease agreement.

SUBLEASE

between

DRISCOLL MISSION BAY LLC,
a California limited liability company,

as Landlord,

and

Aqua Adventures, Inc.
a California Company.

as Tenant,

for a portion of
MISSION BAY MARINA
San Diego, California

dated 7/21/00, 1990

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EXHIBITS:

- A Master Lease
- B Description of the Subleased Premises and Site Plan

SUBLEASE

THIS SUBLEASE ("Sublease"), dated for reference purposes only as of 7/21/00, ~~199~~, is entered into by and between DRISCOLL MISSION BAY LLC, a California limited liability company, ("Sublandlord") and a Agua Adventures, Inc., California Company ("Subtenant"), with reference to the following facts:

A. **Master Lease.** Sublandlord is the successor "Lessee" under that certain Lease dated March 5, 1979, between the CITY OF SAN DIEGO, a municipal corporation ("City"), as Lessor, and MISSION BAY MARINA, a California limited partnership, as Lessee, a copy of which is attached hereto as **Exhibit A** and incorporated herein by reference (as amended from time to time, the "Master Lease"), for certain leased premises in Quivira Basin at Mission Bay Park, San Diego, California, commonly known as "Mission Bay Marina" and more particularly described in the Master Lease (the "Master Premises").

B. **Sublease.** Sublandlord desires to sublease to Subtenant that portion of the Master Premises described on **Exhibit B** (the "Subleased Premises") and Subtenant desires to sublease the Subleased Premises from Sublandlord, on the terms and conditions provided in this Sublease.

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

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

2. **Term.**

2.1 **Primary Term.** The primary term of this Sublease (the "Term") shall commence on 7/22/00, ~~199~~ (the "Commencement Date") and shall expire at midnight two (2) years thereafter, on 7/21/02 (the "Expiration Date"), subject to earlier termination as provided in this Sublease.

3. **Rent.**

3.1 **Basic Rent.** Subtenant agrees to pay Sublandlord rent in the amount of one hundred twenty five Dollars (\$ 1,125.00) per month commencing on the Commencement Date, and continuing monthly in advance thereafter, on the first day of each month, payable each and every month thereafter during the term of this Sublease.

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

3.3 **Increase in Percentage Rental under Master Lease.** Rent payable under this Sublease is subject to a percentage rental payable by Sublandlord to Master Landlord under the Master Lease. In the event Master Landlord increases the percentages payable under the Master Lease for the Rent paid under this Sublease, Basic Rent shall be increased so that Sublandlord receives the same net sublease rent (net of percentage rent payable under the Master Lease) as Sublandlord would have received if Master Landlord had not increased the percentage payable under the Master Lease.

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

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

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

4. Security Deposit. Subtenant shall pay to Sublandlord upon the execution of this Sublease a security deposit of one months rent Dollars (\$ 1,125.00) (the Security Deposit"). The Security Deposit shall be utilized by Sublandlord for the satisfaction of any default by Subtenant under this Sublease. The Security Deposit shall not bear interest and may be deposited by Sublandlord in its general accounts. If Sublandlord applies any part of the Security Deposit to cure any default of Subtenant, Subtenant shall on demand deposit with Sublandlord the amount so applied that Sublandlord shall have the full Security Deposit on hand at all times during the Term of this Sublease.

5. Use.

5.1 Use. Subtenant shall use the Subleased Premises for Kayak sales, rental, and kayak accessories purposes and shall not use the Subleased Premises, or permit or suffer the Subleased Premises to be used, for any other purpose without the prior written consent of Sublandlord, which Sublandlord may withhold in its sole and absolute discretion.

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

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

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

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

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

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

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

6. **Common Areas.**

6.1 Common Areas - Definition. The term "Common Areas" is defined as all areas and facilities outside the Subleased Premises and any other tenant's premises and within the exterior boundary line of the Master Premises that are provided and designated by Sublandlord from time to time for the general nonexclusive use of Sublandlord, Subtenant and other tenant(s) and their respective employees, suppliers, shippers, customers and invitees, including but not limited to common entrances, lobbies, corridors, stairways and stairwells, public restrooms, elevators, mechanical and electrical rooms, parking areas to the extent not otherwise prohibited by this Sublease, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, ramps, driveways, landscaped areas and decorative walls. Sublandlord shall have the right to exclude any portion of the Building and Master Premises other than the Subleased Premises from the Common Areas under this Sublease.

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

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

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

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

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

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

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

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

7. **Condition of Subleased Premises.**

7.1 **No Representation.** Subtenant acknowledges that it is in possession of the Subleased Premises and is thoroughly familiar with their condition. Subtenant acknowledges that, except as expressly set forth herein, neither Sublandlord nor any agent of Sublandlord has made any representations or warranties, express or implied, with respect to (i) the condition of the Subleased Premises, the Building or the Master Premises, (ii) the suitability of the Subleased Premises for Subtenant's purposes (iii) the location, use, design, merchantability, fitness for use for a particular purpose, condition or durability thereof, (iv) the existence of Hazardous Materials (as defined in Section 23.6), (v) the quality of the material or workmanship therein; and all risks incidental to the Subleased Premises shall be borne by Subtenant. Except as expressly provided herein, IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE SUBLEASED PREMISES OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, LANDLORD SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS SECTION HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ALL WARRANTIES BY LANDLORD, EXPRESS OR IMPLIED.

8. **Utilities and Services.**

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

8.2 **Utilities and Services Not Provided.** Subtenant shall arrange, and pay the supplier directly, for all telephone and (except as provided in Section 8.1) all other utilities and services supplied to the Subleased Premises, together with any connection charges and taxes thereon.

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

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

9. **Repairs and Maintenance.**

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

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

9.3 **Subtenant's Sole Cost.** Except for Sublandlord's obligations pursuant to Section 9.2 above, Subtenant shall, at Subtenant's sole cost and expense, keep the Subleased Premises and every part thereof (structural and nonstructural, whether or not such portion of the Subleased Premises needing repairs, or the means of repairing the same, are reasonably or readily accessible to Subtenant, and whether or not the need for such repairs occurs as a result of Subtenant's use, any prior use, the elements or the age of such portion of the Subleased Premises) in a good condition, ordinary wear and tear excepted. Subtenant shall, upon the expiration or sooner termination of the term hereof, surrender the Subleased Premises to Sublandlord in the same condition as when received, ordinary wear and tear excepted. Subtenant's obligations shall include restorations, replacements or renewals, including capital expenditures for restorations, replacements or renewals which will have a useful life beyond the term of this Sublease, when necessary to keep the Subleased Premises and all improvements thereon or a part thereof

in good order, condition and repair and in compliance with all applicable laws. Except as expressly set forth in this Sublease, it is intended by the parties hereto that Sublandlord shall have no obligation, in any manner whatsoever, to repair or maintain the Subleased Premises, the improvements located thereof or the equipment therein, whether structural or nonstructural, all of which obligations are intended to be the expense of Subtenant, whether or not such repairs, maintenance or restoration shall have a useful life extending beyond the term of this Sublease. Subtenant shall further be responsible for the cost of all alterations to the Subleased Premises required by law, which alterations shall become the property of Sublandlord upon the expiration of this Sublease.

9.4 Notice and Sublandlord's Right to Repair Building. Prior to making any material repair to the Building, Subtenant shall give to Sublandlord notice of the need for such repair. Sublandlord shall have the right, but not the duty, to make all necessary repairs to the Building. If Sublandlord elects to make such repairs, the cost thereof shall be at Subtenant's expense. If Sublandlord does not elect to make such repairs to the Building within a reasonable time of notice thereof, Subtenant shall make such repair at its own cost and expense. Subtenant shall not make any repairs in a manner which will defeat any warranty for the Subleased Premises.

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

9.6 Damage or Destruction. Notwithstanding any of the foregoing, in the event of fire, earthquake, flood, war or similar cause of damage or destruction, this Article 9 shall not be applicable and the provisions of Article 14 entitled "Damage or Destruction" shall apply and control.

10. Alterations.

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

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

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

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

10.5 Property of Sublandlord. All alterations, decorations, fixtures, equipment, additions and improvements attached to or built into the Subleased Premises, made by either party, shall, unless Sublandlord elects otherwise at the time consent for such alteration or an election by Sublandlord is obtained (or at the end of the term of this Sublease, if consent is not obtained or an election by Sublandlord is not earlier requested), become the property of Sublandlord upon the expiration or earlier termination of the term of this Sublease and shall remain upon and be surrendered with the Subleased Premises as a part thereof.

If Sublandlord elects to have such alterations removed, Subtenant shall do so and shall repair and restore the Subleased Premises to the condition they were in prior to such alterations, all at Subtenant's sole cost.

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

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

11. Liens.

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

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

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

12. Indemnification and Exculpation.

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

omission of Subtenant, its agents, contractors, employees, servants and tenants ("Subtenant's Agents"), except if such death or injury, or damage to property is caused by the willful act or gross negligence of Sublandlord or Sublandlord's Agents.

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

12.3 No Liability of Sublandlord. Notwithstanding any provision of Sections 12.1 and 12.2 to the contrary, Sublandlord shall not be liable to Subtenant or any other party, and Subtenant assumes all risk of damage to personal property, including loss of records kept within the Subleased Premises. Subtenant further waives any claim for injury to Subtenant's operations or loss of income relating to any such damage or destruction of personal property, including any loss of records.

12.4 Assumption of Risk. Additionally, Sublandlord shall not be liable to Subtenant or any other party, and Subtenant assumes all risk of damage and liability (other than as may be covered by insurance or by a third party), resulting from any defect or malfunction of any Building system or component of a Building system (such as HVAC, mechanical, plumbing, electrical, waste disposal, or sewer) other than as set forth in Section 9.2 above.

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

13. Insurance.

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

13.2 Liability Insurance. Subtenant, at its own cost, shall procure and continue in effect, from the Commencement Date or the date of occupancy, whichever first occurs, and continuing throughout the term of this Sublease and thereafter until Subtenant has fully and finally surrendered the Subleased Premises to Sublandlord, comprehensive public liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for death, bodily injury or property damage with respect to the Subleased Premises and insurance on all of its personal property. The deductible amounts of such policy of insurance shall not exceed Five Thousand Dollars (\$5,000).

13.3 Additional Insureds. The aforesaid insurance required of Subtenant shall name as additional insureds Sublandlord, its officers, directors, shareholders, partners, members and lenders, and Sublandlord's property manager, agents and representatives for the Subleased Premises. Said insurance shall be with companies having a policyholder rating of not less than A+ and financial category rating of Class IX in "Best's Insurance Guide". Subtenant shall cause any insurance companies issuing policies to Subtenant to furnish certificates evidencing such coverage to Sublandlord. No such policies shall be cancelable or subject to reduction of coverage or other modification or cancellation except after thirty (30) days' prior written notice to Sublandlord from the insurer. All such policies shall be written as primary policies, not contributing with and not in excess of the coverage which Sublandlord may carry. Any of Subtenant's policies may be in the nature of a "blanket policy" which specifically provides that the amount of insurance shall not be prejudiced by other losses covered by the policy. Subtenant shall, at least twenty (20) days prior to the expiration of any such policies, furnish Sublandlord with renewals or binders. Subtenant agrees that if Subtenant fails to procure and maintain such insurance, Sublandlord may (but shall not be required to) procure said insurance on Subtenant's behalf and charge Subtenant the premiums for any such policies, together with a ten percent (10%) handling charge, payable upon demand.

13.4 Fixtures and Other Items. Subtenant assumes the risk of damage to any fixtures, goods inventory, merchandise, equipment and personal property of any kind. Sublandlord shall not be liable for injury to Subtenant's operations or any loss of income therefore relative to damage to such items, all as more particularly set forth herein. Subtenant, at

Subtenant's cost, shall carry such insurance as Subtenant desires for Subtenant's protection with respect to such items, business interruption or loss of income.

13.5 Lender and Others. If any policy of insurance is to name Sublandlord as additional insured, Subtenant shall, upon written request of Sublandlord, also designate as an additional insured, and furnish certificates evidencing Sublandlord as an additional insured to, (i) any lender to Sublandlord holding a security interest in the Building or, and/or (ii) the Sublandlord under any lease wherein Sublandlord is or shall become a tenant under a ground lease for the Master Premises rather than that of fee owner, and/or (iii) Sublandlord's member, property manager, agents and representatives.

13.6 Waiver of Subrogation. Sublandlord and Subtenant each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, on account of loss or damage occasioned to such waiving party or its property or the property of others under its control to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which either party may have in force at the time of such loss or damage, such waivers to continue as long as their respective insurers so permit. Any termination of such a waiver shall be by written notice of circumstances as hereinafter set forth. Sublandlord and Subtenant, upon obtaining the policies of insurance required or permitted under this Sublease, shall give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Sublease. If such policies are unobtainable with such waiver or obtainable only at premium over that chargeable without such waiver, the party seeking such policy shall notify the other thereof, and the latter shall have ten (10) days thereafter to either (i) procure such insurance in companies reasonably satisfactory to the other party or (ii) agree to pay such additional premium. If neither (i) nor (ii) are done, this Section 13.6 shall have no effect during such time as such policies are unobtainable or the party in whose favor a waiver of subrogation is desired shall refuse to pay the additional premium. If such policies shall at any time be unobtainable, but subsequently shall be obtainable, neither party shall be subsequently liable for a failure to obtain such insurance until a reasonable time after notification thereof by the other party. If the release of either Sublandlord or Subtenant, as set forth in the first sentence of this Section shall contravene any law with respect to exculpatory agreements, the liability of the party in question shall be deemed not released but shall be secondary to the other's insurer.

13.7 Increases in Insurance. At reasonable times, Sublandlord may require insurance policy limits to be raised to conform with reasonable requirements of Sublandlord's lender or to bring coverage limits to the level then being required of similar tenants of similar properties; provided, however, that Sublandlord may, in any event, require insurance policy limits to be increased in proportion to any increase in the Consumer Price Index from the date of this Sublease to the date of the requested adjustments.

14. Damage or Destruction.

14.1 Destruction Due to Risk Covered by Insurance.

(a) If, during the term, the Subleased Premises or the Building are totally or partially destroyed from a risk covered by the insurance described in Section 13.1, rendering the premises totally or partially inaccessible or unusable, Sublandlord shall restore the Subleased Premises or the Building to substantially the same condition as they were in immediately before destruction. Such destruction shall not terminate this Sublease. If the existing laws do not permit the restoration, either party can terminate this lease immediately by giving notice to the other party.

(b) If the cost of the restoration exceeds the amount of proceeds received from the insurance required under Section 13.1, Sublandlord can elect to terminate this Sublease by giving notice to Subtenant within fifteen (15) days after determining that the restoration cost will exceed the insurance proceeds. In the case of destruction to the Subleased Premises only, if Sublandlord elects to terminate this Sublease, Subtenant, within fifteen (15) days after receiving Sublandlord's notice to terminate, can elect to pay to Sublandlord, at the time Subtenant notifies Sublandlord of its election, the difference between the amount of insurance proceeds and the cost of restoration, in which case Sublandlord shall restore the Subleased Premises. Sublandlord shall give Subtenant satisfactory evidence that all sums contributed by Subtenant as provided in this Section 14.1 have been expended by Sublandlord in paying the cost of restoration.

(c) If Sublandlord elects to terminate this Sublease and Subtenant does not elect to contribute toward the cost of restoration as provided in this Section 14.1, this Sublease shall terminate.

14.2 Destruction Due to Risk Not Covered by Insurance.

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

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

(c) In the case of destruction to the Subleased Premises only, if Sublandlord elects to terminate this Sublease Subtenant, within fifteen (15) days after receiving Sublandlord's notice to terminate, can elect to pay to Sublandlord, at the time Subtenant notifies Sublandlord of its election, the difference between five percent (5%) of the then replacement value of the Subleased Premises and the actual cost of restoration, in which case Sublandlord shall restore the Subleased Premises. Sublandlord shall give Subtenant satisfactory evidence that all sums contributed by Subtenant as provided in this Section 14.2 have been expended by Sublandlord in paying the cost of restoration.

(d) If Sublandlord elects to terminate this Sublease and Subtenant does not elect to perform the restoration or contribute toward the cost of restoration as provided in this Section 14.2, this Sublease shall terminate.

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

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

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

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

15. Eminent Domain.

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

15.2 Restoration. Upon any taking, if this Sublease is not terminated pursuant to Section 15.1 above, then Sublandlord promptly shall proceed to restore the Subleased Premises to substantially their same condition, to the extent reasonably Possible, prior to such partial taking. If such restoration has been completed, thereafter Basic Annual Rent shall be abated proportionately based on the percentage of the rental value of the Subleased Premises after such taking as compared to the rental value of the Subleased Premises prior to such taking.

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

16. Defaults and Remedies.

16.1 Late Charge. Late payment by Subtenant to Sublandlord of Rent or other sums due will cause Sublandlord to incur costs not contemplated by this Sublease, the exact amount of which is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, attorneys' charges, late payment charges on a mortgage, and so forth. In the event that Subtenant shall be in default for late payment under Section 16.4(a) hereof for more than three (3) days after notice from Sublandlord, Subtenant shall pay to Sublandlord a service charge in an amount of Fifteen Percent (15%) of the monthly Basic Rent for each month that a monthly installment of Rent remains unpaid, which Sublandlord and Subtenant agree is not a penalty but is a reasonable estimate of the expenses Sublandlord may incur as a result of such late payment. In the event of any such late payment, in addition to the foregoing service charge, the amount unpaid shall bear interest at Bank of America's "reference rate" plus three (3) percent per annum. Such interest shall be calculated from the date such amount was due and payable until the same shall have been fully paid.

16.2 No Waiver. No payment by Subtenant or receipt by Sublandlord of a lesser amount than that due shall be deemed to be other than on account of the amount due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Sublandlord may accept such check or payment without prejudice to Sublandlord's right to recover the balance or pursue any other remedy provided. If at any time a dispute shall arise as to any amount or sum of money to be paid by Subtenant to Sublandlord, Subtenant shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment, and Subtenant shall have the right to institute suit for recovery of the payment paid under protest.

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

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

- (a) The failure by Subtenant to make any payment of Rent, as and when due;
- (b) The failure by Subtenant to observe or perform any obligation other than described in Section 16.4(a) above, to be performed by Subtenant where such failure shall continue for a period of thirty (30) days after written notice thereof from Sublandlord to Subtenant. Such notice shall be in lieu of, and not in addition to, any notice required under California CODE OF CIVIL PROCEDURE § 1161; provided that, if the nature of Subtenant's default is such that it reasonably requires more than thirty (30) days to cure, then Subtenant shall not be deemed to be in default if Subtenant shall commence such cure within said thirty (30) day period and thereafter diligently prosecute the same to completion;
- (c) Subtenant makes an assignment for the benefit of creditors;
- (d) Subtenant files a voluntary petition under any chapter of the BANKRUPTCY CODE;
- (e) Subtenant makes a voluntary assignment for the benefit of creditors;

(f) A receiver, trustee or custodian is appointed to, or does, take title, possession or control of all, or substantially all, of Subtenant's assets, or any involuntary petition is filed against the Subtenant under any chapter of the BANKRUPTCY CODE, and such petition or receiver, trustee or custodian is not dismissed within thirty (30) days;

(g) Subtenant's interest in this Sublease is attached, executed upon or otherwise judicially seized and such action is not released within thirty (30) days of the action; or

(h) Subtenant fails to comply fully with all provisions in Article 23 concerning Hazardous Materials.

Notices given under this Section shall specify the alleged default and shall demand that Subtenant perform the provisions of this Sublease within the applicable period of time, or quit the Subleased Premises. No such notice shall be deemed a forfeiture or a termination of this Sublease unless Sublandlord elects otherwise in such notice.

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

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

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

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

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

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

As used in Sections 16.5(a) and 16.5(b) above, "worth at the time of award" shall be computed by allowing interest at the rate specified in Section 16.1 above. As used in Section 16.5(c) above, the "worth at the time of award" shall be computed by determining the present value of such amount using the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percentage point.

16.6 Right of Re-Entry. In the event of a Default by Subtenant, and at any time thereafter, with or without terminating this Sublease, and with or without notice or demand and without limiting Sublandlord in the exercise of any right or remedy which Sublandlord may have, Sublandlord shall have the immediate right to re-enter and remove all persons and property, and such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Subtenant, all without service of notice or resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. No such re-entry shall be considered or construed to be a forcible entry by Sublandlord. If Sublandlord does not elect to terminate this Sublease as provided in this Section, then Sublandlord may, from time to time, recover all Rent as it becomes due under this Sublease pursuant to California CIVIL CODE

§ 1951.4. At any time thereafter, Sublandlord may elect to terminate this Sublease and to recover damages to which Sublandlord is entitled.

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

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

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

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

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

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

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

16.10 Right to Cure. Sublandlord shall not be in default hereunder unless Sublandlord fails to perform an obligation required of Sublandlord within a reasonable time, but in no event later than thirty (30) days after written notice by Subtenant specifically identifying the obligation Sublandlord has failed to perform; provided, however, that if the nature of Sublandlord's obligation is such that more than thirty (30) days are required for performance, then Sublandlord shall not be in default if Sublandlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

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

17. Assignment or Subletting.

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

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

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

17.4 **Transfer Void.** Any sale, assignment, hypothecation or transfer of this Sublease or subletting of Subleased Premises, or part thereof, that is not in compliance with the provisions of this Article shall be void, and shall, at the option of Sublandlord, be a breach of this Sublease.

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

17.6 **Security.** If Subtenant shall sublet the Subleased Premises, or any part thereof, Subtenant hereby immediately and irrevocably assigns to Sublandlord, as security for Subtenant's obligations under this Sublease, all rent from any such subletting, and Sublandlord, as assignee and as attorney-in-fact for Subtenant, or a receiver for Subtenant appointed on Sublandlord's application, may collect such rent and apply it toward Subtenant's obligations under this Sublease; except that, until the occurrence of an act of default by Subtenant, Subtenant shall have the right to collect such rent from the sublessee subject to the obligations of Section 17.2 above.

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

18. **Bankruptcy.**

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

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

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

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

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

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

19. **Subordination and Attornment.**

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

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

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

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

20. **Surrender.**

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

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

20.3 **No Merger.** The voluntary or other surrender of any ground or underlying lease that now exists or may hereafter be executed affecting the Building or Subleased Premises, or a mutual cancellation thereof or of Sublandlord's interest therein, shall not work a merger and shall, at the option of the successor of Sublandlord's interest in the Building or Subleased Premises, operate as an assignment of this Sublease.

21. **Holding Over.**

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

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

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

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

22. **Taxes on Subtenant's Property.**

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

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

23. **Hazardous Materials.**

23.1 **Prohibition/Compliance.** Subtenant, at its sole cost, shall comply with all federal, state and local laws, statutes, ordinances, codes, regulations and orders relating to the receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release and disposal of any Hazardous Material as defined in this Article in or about the Subleased Premises or the Building. Subtenant shall not cause or permit any Hazardous Material (as hereinafter defined) to be brought upon, kept or used in or about the Subleased Premises by Subtenant, its agents, employees, contractors or invitees in a manner or for a purpose prohibited by any federal, state or local law, rule or regulation. The disposal of Hazardous Material shall be in approved containers and removed from the Subleased Premises by duly licensed carriers. Subtenant shall immediately provide Sublandlord with telephonic notice, which shall promptly be confirmed by written notice, of any and all spillage, discharge, release and disposal of Hazardous Materials onto or within the Subleased Premises or the Building, which by law must be reported to any federal, state or local agency, and any injuries or damages resulting directly or indirectly therefrom. A failure of Subtenant to give to Sublandlord the notices required in this Section 23.1 shall constitute a default under this Sublease. Further, Subtenant shall deliver to Sublandlord each and every notice or order received from any federal, state or local agency concerning Hazardous Materials and the possession, use and/or disposal thereof promptly upon receipt of each such notice or order. Subtenant shall be responsible for and shall indemnify, protect, defend and hold harmless Sublandlord and its agents, employees, representatives, directors and officers from any and all claims, costs, penalties, fines, liability and losses, including without limitation, (i) temporary or permanent diminution in value of the Subleased Premises or the Building, (ii) damages for the temporary or permanent loss or restriction on use of rentable or usable space or of any amenity of the Subleased Premises or the Building, and (iii) sums paid in settlement of claims, consultant fees and expert fees, liabilities, attorneys' fees, damages, injuries, causes of action, judgments and expenses, which arise during or after the Term of this Sublease and which (a) result from Subtenant's use and occupancy of the Subleased Premises, or (b) result from Subtenant's receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release or disposal of Hazardous Materials in, upon or about the Subleased Premises or the Building. The indemnifications of Sublandlord and indemnities by Subtenant above include, to the extent Subtenant is responsible for such costs and expenses under the provisions above, without limiting the generalities thereof, reasonable costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work lawfully required by any federal, state or local governmental agency or political subdivision because of any Hazardous Materials present in the soil, subsoil, ground water, or elsewhere at, on or under the Subleased Premises or the Building.

23.2 **Termination of Sublease.** Notwithstanding the provisions of this Article, Sublandlord shall have the right to terminate the Sublease in this event that (i) Subtenant uses the Subleased Premises for the generation, storage, use, treatment or disposal of Hazardous Material in a manner or for a purpose prohibited by applicable law (unless Subtenant is

diligently pursuing compliance therewith), (ii) Subtenant has been required by any governmental authority to take remedial action in connection with Hazardous Material contaminating the Subleased Premises or the Building if the contamination resulted from Subtenant's action or use of the Subleased Premises and such remedial action has a material adverse effect on Sublandlord, the Subleased Premises or the Building, or (iii) Subtenant is subject to an enforcement order issued by any governmental authority in connection with the use, disposal or storage of a Hazardous Material on the Subleased Premises and such enforcement order has a material adverse effect on Sublandlord, the Subleased Premises or the Building. Each of the foregoing events shall be deemed to be a material default by Subtenant under this Sublease.

23.3 Assignment and Subletting. Notwithstanding the provisions of Article 17 above, if (i) any anticipated use of the Subleased Premises by any proposed assignee or sublessee involves the generation or storage, use, treatment or disposal of Hazardous Material in any manner or for a purpose prohibited hereunder or by any applicable law, (ii) the proposed assignee or sublessee has been required by any governmental authority to take remedial action in connection with a Hazardous Material if the contamination resulted from such party's action or use of the property in question and has failed to take such action, or (iii) the proposed assignee or sublessee is subject to an enforcement order issued by any governmental authority in connection with the use, disposal or storage of a Hazardous Material of a type such proposed assignee or sublessee intends to use in, on or at the Subleased Premises and the proposed assignee or sublessee has failed to fully comply with such enforcement order, it shall not be unreasonable for Sublandlord to withhold its consent to an assignment or subletting to such proposed assignee or sublessee.

23.4 Perform Tests.

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

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

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

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

24. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

for Rent Payment and Notices to Sublandlord:

Driscoll Mission Bay LLC
Attn: Ms. Mary-Carol Driscoll
1500 Quivira Way
San Diego, California 92109

for Notices to Subtenant:

Aqua Adventures, Inc.
Attn: Greg Knight
4901 Motena Blvd, Suite 1102
San Diego, California 92117

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

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

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

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

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

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

24.17 Real Estate Brokers/Finders. Subtenant and Sublandlord each represent to the other that they have not entered into any agreement or incurred any obligation in connection with this transaction that might result in the obligation to pay a brokerage commission or finder's fee to any broker, finder or other person. Each party agrees to indemnify and hold the other party harmless from and against any liability, damages, claim or demand by any broker or other person for bringing about this Sublease who claims to have dealt with such indemnifying party, including any expenses (including reasonable attorney fees) incurred in defending any such claim or demand.

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

24.19 Waiver of Jury Trial and Counterclaims. The parties hereto shall and do hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other or any matters whatsoever.

arising out of or in any way connected with this Sublease, the relationship of Sublandlord and Subtenant, Subtenant's use or occupancy of the Subleased Premises or any claim of injury or damage.

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

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

24.22 Limitation of Sublandlord's Liability. If Sublandlord is a limited partnership or joint venture, the limited partners of such partnership shall not be personally liable and no limited partner of Sublandlord shall be sued individually or named individually as a party in any suit or action or service of process be made against any limited partner of Sublandlord. If Sublandlord is a corporation or limited liability company, the shareholders, members, directors, officers, managers, employees and/or agents of such corporation shall not be personally liable and no shareholder, member, director, officer, manager, employee or agent of Sublandlord shall be sued or named as a party in any suit or action or service of process be made against any shareholder, member, director, officer, officer, manager, employee or agent of Sublandlord. No limited partner, shareholder, director, employee or agent of Sublandlord shall be required to answer or otherwise plead to any service of process and no judgment will be taken or writ of execution levied against any limited partner, shareholder, member, director, officer, manager, employee or agent of Sublandlord. Each of the covenants and agreements of this Section 24.22 shall be applicable to any covenant or agreement either expressly contained in this Sublease or imposed by statute or by common law.

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

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

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

24.26 Estoppel Certificate. From time to time as reasonably requested by Sublandlord, Subtenant shall, within fifteen (15) days of written notice from Sublandlord, execute, acknowledge and deliver to Sublandlord a statement in writing in a form reasonably requested by a proposed lender or purchaser (i) certifying that this Sublease is unmodified and in

full force and effect (or, if modified, stating the nature of such modification and certifying that this Sublease as so modified is in full force and effect) and the dates to which the Rent and other charges are paid in advance, if any (ii) acknowledging that there are not, to Subtenant's knowledge, any uncured defaults on the part of Sublandlord hereunder or specifying such defaults if any are claimed, and (iii) setting forth such further reasonable information with respect to this Sublease or the Subleased Premises as may be requested thereon. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Subleased Premises.

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

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

27. **Right To Terminate.** Notwithstanding anything in this Sublease to the contrary, Sublandlord and/or Subtenant shall have the right to terminate this Sublease before expiration of the Term by giving written notice of termination to Subtenant and/or Sublandlord not less than thirty (30) days before the effective date of the termination (the "Termination Date"). The Termination Date shall be specified in Sublandlord's and/or Subtenant's termination notice. In the event that the Termination Date is other than the last day of a calendar month, Rent for the partial last month shall be prorated on the basis of a thirty (30) day month and shall be due and payable on the first day of such month.

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

Date of execution:

7/24, 2000
199

Sublandlord:

DRISCOLL MISSION BAY LLC,
a California limited liability company

By: Thomas A. Driscoll
Thomas A. Driscoll, a Member

Date of execution:

7/20/00, 199

Subtenant:

Aqua Adventures, Inc.
a California Company

By: Greg Knight/Jennifer Kleck
Its: Owners

Greg Knight/Jennifer Kleck

Exhibit A

Master Lease

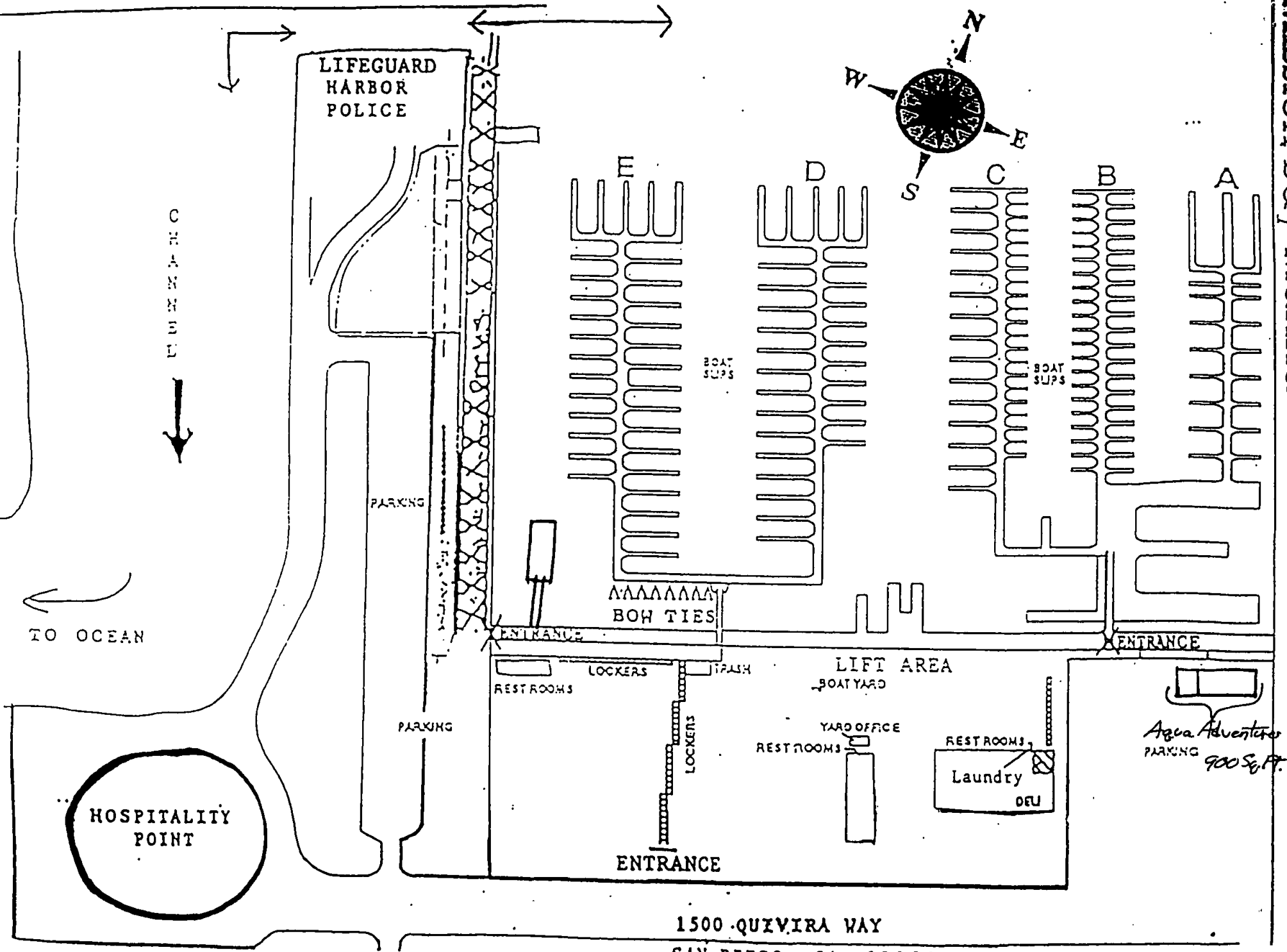
[to be attached]

Available on Request.

Sublease Exhibit B (Subleased Premises)

BAIT
DOCK

Mission Bay Marina



Agua Adventure
PARKING 900 SEPT.

1500 QUIVIRA WAY

STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE—GROSS

AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION



1. Basic Provisions ("Basic Provisions").

1.1 Parties: This Lease ("Lease"), dated for reference purposes only, July 21, 1996, is made by and between Pacific Rim Marine Enterprises (California), Inc. ("Lessor") and Marine Charter Enterprises, Inc., a Florida corporation ("Lessee"), (collectively the "Parties," or individually a "Party").

1.2(a) Premises: That certain portion of the premises commonly known by the street address of 1500 Quivira Way, located in the City of San Diego, County of San Diego, State of California, with zip code 92109, as outlined on Exhibit attached hereto ("Premises"). The "Building" is that certain building containing the Premises and generally described as (describe briefly the nature of the Building): 4,488 sq. ft. of yard space where the "Invader" is currently located plus 2,565 sq. ft. of shop space until 09/01/96, then 3,852 sq. ft. of shop space plus the 4,488 sq. ft. of yard space. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, exterior walls or utility raceways of the Building or to any other buildings in the Industrial Center. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Industrial Center." (Also see Paragraph 2.)

1.2(b) Parking: unreserved vehicle parking spaces ("Unreserved Parking Spaces"); and reserved vehicle parking spaces ("Reserved Parking Spaces"). (Also see Paragraph 2.6.)

1.3 Term: years and months ("Original Term") commencing July 21, 1996 ("Commencement Date") and ending on 30 days' written notice by either ("Expiration Date"). (Also see Paragraph 3.)

1.4 Early Possession: party ("Early Possession Date"). (Also see Paragraphs 8.2 and 8.3.)

1.5 Base Rent: \$ As follows per month ("Base Rent"), payable on the 1st day of each month commencing August 1996 plus prorated rent (Also see Paragraph 4.) \$1 per sq. ft. occupied (4,488 sq. ft. yard space plus 2,565 sq. ft. shop space until 09/01/96 then 3,852 sq. ft. shop space plus 4,488 sq. ft. yard space), per Exhibit for 07/21/96-07/31/96

[] If this box is checked, this Lease provides for the Base Rent to be adjusted per Addendum attached hereto, attached hereto. A hereto.

1.6(a) Base Rent Paid Upon Execution: 6 as Base Rent for the period A hereto.

1.6(b) Lessee's Share of Common Area Operating Expenses: percent ("Lessee's Share") as determined by prorata square footage of the Premises as compared to the total square footage of the Building or other criteria as described in Addendum

1.7 Security Deposit: \$ 5,000 ("Security Deposit"). (Also see Paragraph 5.)

1.8 Permitted Use: storage of the boating vessel known as "Invader" and shop space for working on "Invader" including repair and rebuilding of the "Invader" ("Permitted Use") (Also see Paragraph 6.)

1.9 Insuring Party. Lessor is the "Insuring Party." (Also see Paragraph 8.)

1.10(a) Real Estate Brokers. The following real estate broker(s) (collectively, the "Brokers") and brokerage relationships exist in this transaction and are consented to by the Parties (check applicable boxes):

- [] represents Lessor exclusively ("Lessor's Broker");
[] represents Lessee exclusively ("Lessee's Broker"); or
[] represents both Lessor and Lessee ("Dual Agency"). (Also see Paragraph 15.)

1.10(b) Payment to Brokers. Upon the execution of this Lease by both Parties, Lessor shall pay to said Broker(s) jointly, or in such separate shares as they may mutually designate in writing, a fee as set forth in a separate written agreement between Lessor and said Broker(s) (or in the event there is no separate written agreement between Lessor and said Broker(s), the sum of \$ for brokerage services rendered by said Broker(s) in connection with this transaction.

1.11 Guarantor. The obligations of the Lessee under this Lease are to be guaranteed by Kevin Jaffe ("Guarantor"). (Also see Paragraph 37.)

1.12 Addenda and Exhibits. Attached hereto is an Addendum or Addenda consisting of Paragraphs through and Exhibits through, all of which constitute a part of this Lease.

2. Premises, Parking and Common Areas.

2.1 Letting. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of square footage set forth in this Lease, or that may have been used in calculating rental and/or Common Area Operating Expenses, is an approximation which Lessor and Lessee agree is reasonable and the rental and Lessee's Share (as defined in Paragraph 1.6(b)) based thereon is not subject to revision whether or not the actual square footage is more or less.

2.2 Condition. Lessor shall deliver the Premises to Lessee clean and free of debris on the Commencement Date and warrants to Lessee that the existing plumbing, electrical systems, fire sprinkler system, lighting, air conditioning and heating systems and loading doors, if any in the Premises, other than those constructed by Lessee, shall be in good operating condition on the Commencement Date. If a non-compliance with said warranty exists as of the Commencement Date, Lessor shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within thirty (30) days after the Commencement Date, non-compliance of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. In its as is condition, including all of Lessor's personal property presently located thereon.

2.3 Compliance with Covenants, Restrictions and Building Code. Lessor warrants that any improvements (other than those constructed by Lessee or at Lessee's direction) on or in the Premises which have been constructed or installed by Lessor or with Lessor's consent or at Lessor's direction shall comply with all applicable covenants or restrictions of record and applicable building codes, regulations and ordinances in effect on the Commencement Date. Lessor further warrants to Lessee that Lessor has no knowledge of any claim having been made by any governmental agency that a violation or violations of applicable building codes, regulations, or ordinances exist with regard to the Premises as of the Commencement Date. Said warranties shall not apply to any Alterations or Utility Installations (defined in Paragraph 7.3(a)) made or to be made by Lessee. If the Premises do not comply with said warranties, Lessor shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee given within six (6) months following the Commencement Date and setting forth with specificity the nature and extent of such non-compliance, take such action, at Lessor's expense, as may be reasonable or appropriate to rectify the non-compliance. Lessor makes no warranty that the Permitted Use in Paragraph 1.8 is permitted for the Premises under Applicable Laws (as defined in Paragraph 2.4).

2.4 Acceptance of Premises. Lessee hereby acknowledges: (a) that it has been advised by the Brokers to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical and fire sprinkler systems, security, environmental aspects, seismic and earthquake requirements, and compliance with the Americans with Disabilities Act and applicable zoning, municipal, county, state and federal laws, ordinances and regulations and any covenants or restrictions of record (collectively, "Applicable Laws") and the present and future suitability of the Premises for Lessee's intended use; (b) that Lessee has made such investigation as it deems necessary with reference to such matters, is satisfied with reference thereto, and assumes all responsibility thereafter as to the same relate to Lessee's occupancy of the Premises and/or the terms of this Lease; and (c) that neither Lessor nor any of Lessor's agents, has made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease.

2.5 Lessee as Prior Owner/Occupant. The warranties made by Lessor in this Paragraph shall be of no force or effect if immediately prior to the date set forth in Paragraph 1.1 Lessee was the owner or occupant of the Premises. In such event, Lessee shall, at Lessee's sole cost and expense, correct any non-compliance of the Premises with said warranties. Lessee hereby warrants, represents and confirms that Lessee was, in fact, the occupant of the Premises prior to the Effective Date of this Lease.

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~~2.6 Vehicle Parking. Lessee shall be entitled to use the number of Unreserved Parking Spaces and Reserved Parking Spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "Permitted Size Vehicles." Vehicles other than Permitted Size Vehicles shall be parked and loaded or unloaded as directed by Lessor in the Rules and Regulations (as defined in Paragraph 40) issued by Lessor. (Also see Paragraph 2.9.)~~

(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

~~(c) Lessor shall at the Commencement Date of this Lease, provide the parking facilities required by Applicable Law.~~

2.7 **Common Areas—Definition.** The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Industrial Center and interior utility raceways within the Premises that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other lessees of the Industrial Center and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, driveways and landscaped areas.

2.8 **Common Areas—Lessee's Rights.** Lessor hereby grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Industrial Center. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor. **Subcontractors may be subject to a yard service fee.**

2.9 **Common Areas—Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable Rules and Regulations with respect thereto in accordance with Paragraph 40. Lessee agrees to abide by and conform to all such Rules and Regulations, and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said rules and regulations by other lessees of the Industrial Center.

2.10 **Common Areas—Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time to do the following, so long as it does not prevent ingress and egress to the Premises:

- (a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;
- (b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;
- (c) To designate other land outside the boundaries of the Industrial Center to be a part of the Common Areas;
- (d) To add additional buildings and improvements to the Common Areas;
- (e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Industrial Center, or any portion thereof; and
- (f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Industrial Center as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. Term.

3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

~~3.2 Early Possession. If an Early Possession Date is specified in Paragraph 1.4 and if Lessee totally or partially occupies the Premises after the Early Possession Date but prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such early occupancy. All other terms of this Lease, however, (including but not limited to the obligations to pay Lessee's Share of Common Area Operating Expenses and to carry the insurance required by Paragraph 9) shall be in effect during such period. Any such early possession shall not effect nor advance the Expiration Date of the Original Term.~~

~~3.3 Delay in Possession. If for any reason Lessor cannot deliver possession of the Premises to Lessee by the Early Possession Date, if one is specified in Paragraph 1.4, or if no Early Possession Date is specified, by the Commencement Date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease, or the obligations of Lessee hereunder, or extend the term hereof, but in such case, Lessee shall not, except as otherwise provided herein, be obligated to pay rent or perform any other obligation of Lessee under the terms of this Lease until Lessor delivers possession of the Premises to Lessee. If possession of the Premises is not delivered to Lessee within sixty (60) days after the Commencement Date, Lessee may, at its option, by notice in writing to Lessor within ten (10) days after the end of said sixty (60) day period, cancel this Lease, in which event the parties shall be discharged from all obligations hereunder; provided further, however, that if such written notice of Lessee is not received by Lessor within said ten (10) day period, Lessee's right to cancel this Lease hereunder shall terminate and be of no further force or effect. Except as may be otherwise provided, and regardless of when the Original Term actually commences, if possession is not tendered to Lessee when required by this Lease and Lessee does not terminate this Lease, as aforesaid, the period free of the obligation to pay Base Rent, if any, that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to the period during which the Lessee would have otherwise enjoyed under the terms hereof, but minus any days of delay caused by the acts, changes or omissions of Lessor.~~

4. Rent.

4.1 **Base Rent.** Lessee shall pay Base Rent and other rent or charges, as the same may be adjusted from time to time, to Lessor in lawful money of the United States, without offset or deduction, on or before the day on which it is due under the terms of this Lease. Base Rent and all other rent and charges for any period during the term hereof which is for less than one full month shall be prorated based upon the actual number of days of the month involved. Payment of Base Rent and other charges shall be made to Lessor at its address stated herein or to such other persons or at such other addresses as Lessor may from time to time designate in writing to Lessee.

~~4.2 Common Area Operating Expenses. Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Paragraph 1.6(b)) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:~~

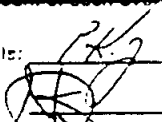
(a) "Common Area Operating Expenses" are defined, for purposes of this Lease, as all costs incurred by Lessor relating to the ownership and operation of the Industrial Center, including, but not limited to, the following:

- (i) The operation, repair and maintenance, in neat, clean, good order and condition, of the following:
 - (aa) The Common Areas, including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators and roof.
 - (bb) Exterior signs and any tenant directories.
 - (cc) Fire detection and sprinkler systems.
- (ii) The cost of water, gas, electricity and telephone to service the Common Areas.
- (iii) Trash disposal, property management and security services and the costs of any environmental inspections.
- (iv) Reserves set aside for maintenance and repair of Common Areas.
- (v) Any increase above the Base Real Property Taxes (as defined in Paragraph 10.2(b)) for the Building and the Common Areas.
- (vi) Any "Insurance Cost Increase" (as defined in Paragraph 8.1)
- (vii) The cost of insurance carried by Lessor with respect to the Common Areas.
- (viii) Any deductible portion of an insured loss concerning the Building or the Common Areas.
- (ix) Any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Building or to any other building in the Industrial Center or to the operation, repair and maintenance thereof, shall be allocated entirely to the Building or to such other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Industrial Center.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Industrial Center already has the same. Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses shall be payable by Lessee within ten (10) days after a reasonably detailed statement of actual expenses is presented to Lessee by Lessor. At Lessor's option, however, an amount may be estimated by Lessor from time to time of Lessee's Share of annual Common Area Operating Expenses and the same shall be payable monthly or quarterly, as Lessor shall designate, during each 12-month period of the Lease term, on the same day as the Base Rent is due hereunder. Lessor shall deliver to Lessee within sixty (60) days after the expiration of each calendar year a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses incurred during the preceding year. If Lessee's payments under this Paragraph 4.2(d) during each preceding year exceed Lessee's Share as indicated on said statement, Lessor shall be credited the amount of such over-

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payment against Lessee's Share of Common Area Operating Expenses not becoming due, if Lessee's payments under this Paragraph 4 did not exceed the year were less than Lessee's Share as indicated on said statement, Lessee shall pay to Lessor the amount of the deficiency within ten (10) days after delivery by Lessor to Lessee of said statement.

5. **Security Deposit.** Lessee shall deposit with Lessor upon Lessee's execution hereof the Security Deposit set forth in Paragraph 1.7 as security for Lessee's faithful performance of Lessee's obligations under this Lease. If Lessee fails to pay Base Rent or other rent or charges due hereunder, or otherwise Defaults under this Lease (as defined in Paragraph 13.1), Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due Lessor or to reimburse or compensate Lessor for any liability, cost, expense, loss or damage (including attorneys' fees) which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of said Security Deposit, Lessee shall within ten (10) days after written request therefore deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. Any time the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor as an addition to the Security Deposit so that the total amount of the Security Deposit shall at all times bear the same proportion to the then current Base Rent as the initial Security Deposit bears to the initial Base Rent set forth in Paragraph 1.5. Lessor shall not be required to keep all or any part of the Security Deposit separate from its general accounts. Lessor shall, at the expiration or earlier termination of the term hereof and after Lessee has vacated the Premises, return to Lessee (or, at Lessor's option, to the last assignee, if any, of Lessee's interest herein), that portion of the Security Deposit not used or applied by Lessor. Unless otherwise expressly agreed in writing by Lessor, no part of the Security Deposit shall be considered to be held in trust, to bear interest or other increment for its use, or to be prepayment for any monies to be paid by Lessee under this Lease.

6. Use.

6.1 Permitted Use.

(a) Lessee shall use and occupy the Premises only for the Permitted Use set forth in Paragraph 1.8, ~~or any other local use which is reasonably compatible thereto, and for no other purpose.~~ Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates waste or a nuisance, or that disturbs owners and/or occupants of, or causes damage to the Premises or neighboring premises or properties.

~~(b) Lessor hereby agrees to not unreasonably withhold or delay its consent to any written request by Lessee, Lessee's assignee or subtenant, and by prospective assignees and subtenants of Lessee, its assignees and subtenants, for a modification of said Permitted Use, so long as the same will not impair the structural integrity of the improvements on the Premises or in the Building or the mechanical or electrical systems therein, does not conflict with uses by other lessees, is not significantly more burdensome to the Premises or the Building and the improvements thereon, and is otherwise permissible pursuant to this Paragraph 6. If Lessor agrees to withhold such consent, Lessor shall within five (5) business days after such request give a written notification of same, which notice shall include an explanation of Lessor's reasonable objections to the change in use.~~

6.2 Hazardous Substances.

(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment, or the Premises; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include, but not be limited to, hydrocarbons, petroleum, gasoline, crude oil or any products or by-products thereof. Lessee shall not engage in any activity in or about the Premises which constitutes a Reportable Use (as hereinafter defined) of Hazardous Substances without the express prior written consent of Lessor and compliance in a timely manner (at Lessee's sole cost and expense) with all Applicable Requirements (as defined in Paragraph 6.3). "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and (iii) the presence in, on or about the Premises of a Hazardous Substance with respect to which any Applicable Laws require that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may, without Lessor's prior consent, but upon notice to Lessor and in compliance with all Applicable Requirements, use any ordinary and customary materials reasonably required to be used by Lessee in the normal course of the Permitted Use, so long as such use is not a Reportable Use and does not expose the Premises or neighboring properties to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may (but without any obligation to do so) condition its consent to any Reportable Use of any Hazardous Substance by Lessee upon Lessee's giving Lessor such additional assurances as Lessor, in its reasonable discretion, deems necessary to protect itself, the public, the Premises and the environment against damage, contamination or injury and/or liability therefor, including but not limited to the installation (and, at Lessor's option, removal on or before Lease expiration or earlier termination) of reasonably necessary protective modifications to the Premises (such as concrete encasements) and/or the deposit of an additional Security Deposit under Paragraph 5 hereof.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises or the Building, other than as previously consented to by Lessor, Lessee shall immediately give Lessor written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to, or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Substance including but not limited to all such documents as may be involved in any Reportable Use involving the Premises. Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under or about the Premises (including, without limitation, through the plumbing or sanitary sewer system).

(c) **Indemnification.** Lessee shall indemnify, protect, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, and the Premises, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee or by anyone under Lessee's control. Lessee's obligations under this Paragraph 6.2(c) shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration and/or abatement thereof, or of any contamination therein involved, and shall survive the expiration or earlier termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

6.3 **Lessee's Compliance with Requirements.** Lessee shall, at Lessee's sole cost and expense, fully, diligently and in a timely manner, comply with all "Applicable Requirements," which term is used in this Lease to mean all laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, permits, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants, relating in any manner to the Premises (including but not limited to matters pertaining to (i) industrial hygiene, (ii) environmental conditions on, in, under or about the Premises, including soil and groundwater conditions, and (iii) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill, or release of any Hazardous Substance), now in effect or which may hereafter come into effect. Lessee shall, within five (5) days after receipt of Lessor's written request, provide Lessor with copies of all documents and information, including but not limited to permits, registrations, manifests, applications, reports and certificates, evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by Lessee or the Premises to comply with any Applicable Requirements.

6.4 **Inspection; Compliance with Law.** Lessor, Lessor's agents, employees, contractors and designated representatives, and the holders of any mortgages, deeds of trust or ground leases on the Premises ("Lenders") shall have the right to enter the Premises at any time in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease and all Applicable Requirements (as defined in Paragraph 6.3), and Lessor shall be entitled to employ experts and/or consultants in connection therewith to advise Lessor with respect to Lessee's activities, including but not limited to Lessee's installation, operation, use, monitoring, maintenance, or removal of any Hazardous Substance on or from the Premises. The costs and expenses of any such inspections shall be paid by the party requesting same, unless a Default or Breach of this Lease by Lessee or a violation of Applicable Requirements or a contamination, caused or materially contributed to by Lessee, is found to exist or to be imminent, or unless the inspection is requested or ordered by a governmental authority as the result of any such existing or imminent violation or contamination. In such case, Lessee shall upon request reimburse Lessor or Lessor's Lender, as the case may be, for the costs and expenses of such inspections.

7. Maintenance, Repairs, Utility Installations, Trade Fixtures and Alterations.

7.1 **Lessee's Obligations.** Lessee shall, at Lessee's sole cost and expense, repair and/or replace as necessary all or any portions of the Premises or Lessor's personal property presently located therein which is damaged, by any ~~(or Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance with Covenants, Restrictions and Building Code), 7.2 (Lessee's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole cost and expense and at all times, keep the Premises and every part thereof in good order, condition and repair (whether or not such portion of the Premises requiring repair, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, without limiting the generality of the foregoing, all equipment or facilities specifically serving the Premises, such as plumbing, heating, air conditioning, ventilating, electrical, lighting facilities, boilers, fired or unfired pressure vessels, fire hose connections if within the Premises, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights, but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2 below. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair, cause and by any person, as a result of or during Lessee's use or occupancy of the Premises during the term hereof.~~

~~(or Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance with Covenants, Restrictions and Building Code), 7.2 (Lessee's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole cost and expense, repair and/or replace as necessary all or any portions of the Premises or Lessor's personal property presently located therein which is damaged, by any~~

~~(or Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance with Covenants, Restrictions and Building Code), 7.2 (Lessee's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole cost and expense, repair and/or replace as necessary all or any portions of the Premises or Lessor's personal property presently located therein which is damaged, by any~~

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance with Covenants, Restrictions and Building Code), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, ~~subject to reimbursement pursuant to Paragraph 4.2,~~ shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler and/or standpipe and hose (if located in the Common Areas) or other automatic fire extinguishing system including fire alarm and/or smoke detection

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systems and equipment, ~~the maintenance, repair, replacement, and utility systems serving the Common Areas and all parts thereof, as well as providing the services to which there is a Common Area Operating Expense amount to Paragraph 4.2.~~ Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect which would otherwise afford Lessee the right to make repairs at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the Building, Industrial Center or Common Areas in good order, condition and repair.

7.3 Utility Installations, Trade Fixtures, Alterations.

(a) **Definitions; Consent Required.** The term "Utility Installations" is used in this Lease to refer to all air lines, power panels, electrical distribution, security, fire protection systems, communications systems, lighting fixtures, heating, ventilating and air conditioning equipment, plumbing, and fencing in, on or about the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment which can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements on the Premises which are provided by Lessor under the terms of this Lease, other than Utility Installations or Trade Fixtures. "Lessee-Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a). Lessee shall not make nor cause to be made any Alterations or Utility Installations in, on, under or about the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof) without Lessor's consent but upon notice to Lessor, so long as they are not visible from the outside of the Premises, do not involve puncturing, relocating or removing the roof or any existing walls, or changing or interfering with the fire sprinkler or fire detection systems and the cumulative cost thereof during the term of this Lease as extended does not exceed \$2,500.00.

(b) **Consent.** Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. All consents given by Lessor, whether by virtue of Paragraph 7.3(a) or by subsequent specific consent, shall be deemed conditioned upon: (i) Lessee's acquiring all applicable permits required by governmental authorities; (ii) the furnishing of copies of such permits together with a copy of the plans and specifications for the Alteration or Utility Installation to Lessor prior to commencement of the work thereon; and (iii) the compliance by Lessee with all conditions of said permits in a prompt and expeditious manner. Any Alterations or Utility Installations by Lessee during the term of this Lease shall be done in a good and workmanlike manner, with good and sufficient materials, and be in compliance with all Applicable Requirements. Lessee shall promptly upon completion thereof furnish Lessor with as-built plans and specifications therefor. Lessor may, (but without obligation to do so) condition its consent to any requested Alteration or Utility Installation that costs \$2,500.00 or more upon Lessee's providing Lessor with a lien and completion bond in an amount equal to one and one-half times the estimated cost of such Alteration or Utility Installation.

(c) **Lien Protection.** Lessee shall pay when due all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than ten (10) days' notice prior to the commencement of any work in, on, or about the Premises, and Lessor shall have the right to post notices of non-responsibility in or on the Premises as provided by law. If Lessee shall, in good faith, contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense, defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Lessor or the Premises. If Lessor shall require, Lessee shall furnish to Lessor a surety bond satisfactory to Lessor in an amount equal to one and one-half times the amount of such contested lien claim or demand, indemnifying Lessor against liability for the same, as required by law for the holding of the Premises free from the effect of such lien or claim. In addition, Lessor may require Lessee to pay Lessor's attorneys' fees and costs in participating in such action if Lessor shall decide it is to its best interest to do so.

7.4 Ownership, Removal, Surrender, and Restoration.

(a) **Ownership.** Subject to Lessor's right to require their removal and to cause Lessee to become the owner thereof as hereinafter provided in this Paragraph 7.4, all Alterations and Utility Installations made to the Premises by Lessee shall be the property of and owned by Lessee, but considered a part of the Premises. Lessor may, at any time and at its option, elect in writing to Lessee to be the owner of all or any specified part of the Lessee-Owned Alterations and Utility Installations. Unless otherwise instructed per Subparagraph 7.4(b) hereof, all Lessee-Owned Alterations and Utility Installations shall, at the expiration or earlier termination of this Lease, become the property of Lessor and remain upon the Premises and be surrendered with the Premises by Lessee.

(b) **Removal.** Unless otherwise agreed in writing, Lessor may require that any or all Lessee-Owned Alterations or Utility Installations be removed by the expiration or earlier termination of this Lease, notwithstanding that their installation may have been consented to by Lessor. Lessor may require the removal at any time of all or any part of any Alterations or Utility Installations made without the required consent of Lessor.

(c) **Surrender/Restoration.** Lessee shall surrender the Premises by the end of the last day of the Lease term or any earlier termination date, clean and free of debris and in good operating order, condition and state of repair, ordinary wear and tear excepted. Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by good maintenance practice or by Lessee performing all of its obligations under this Lease. Except as otherwise agreed or specified herein, the Premises, as surrendered, shall include the Alterations and Utility Installations. The obligation of Lessee shall include the repair of any damage occasioned by the installation, maintenance or removal of Lessee's Trade Fixtures, furnishings, equipment, and Lessee-Owned Alterations and Utility Installations, as well as the removal of any storage tank installed by or for Lessee, and the removal, replacement, or remediation of any soil, material or ground water contaminated by Lessee, all as may then be required by Applicable Requirements and/or good practice. Lessee's Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee subject to its obligation to repair and restore the Premises per this Lease.

8. Insurance; Indemnity.

8.1 Payment of Premium Increases.

(a) As used herein, the term "Insurance Cost Increase" is defined as any increase in the actual cost of the insurance applicable to the Building and required to be carried by Lessor pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b). ("Required Insurance"), over and above the Base Premium, as hereinafter defined, calculated on an annual basis. "Insurance Cost Increase" shall include, but not be limited to, requirements of the holder of a mortgage or deed of trust covering the Premises, increased valuation of the Premises, and/or a general premium rate increase. The term "Insurance Cost Increase" shall not, however, include any premium increases resulting from the nature of the occupancy of any other lessee of the Building. If the parties insert a dollar amount in Paragraph 1.9, such amount shall be considered the "Base Premium." If a dollar amount has not been inserted in Paragraph 1.9 and if the Building has been previously occupied during the twelve (12) month period immediately preceding the Commencement Date, the "Base Premium" shall be the annual premium applicable to such twelve (12) month period. ~~If the Building was not fully occupied during such twelve (12) month period, the "Base Premium" shall be the lowest annual premium reasonably obtainable for the Required Insurance as of the Commencement Date, assuming the most normal use possible of the Building.~~ In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$1,000,000 procured under Paragraph 8.2(b).

(b) Lessee shall pay any Insurance Cost Increase to Lessor pursuant to Paragraph 4.2. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Commencement Date or Expiration Date.

8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force during the term of this Lease a Commercial General Liability policy of insurance protecting Lessee, Lessor and any Lender(s) whose names have been provided to Lessee in writing (as additional insureds) against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an "Additional Insured-Managers or Lessors of Premises" endorsement and contain the "Amendment of the Pollution Exclusion" endorsement for damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance required by this Lease or as carried by Lessee shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. All insurance to be carried by Lessee shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

as it is required under the Master Lease

(b) **Carried by Lessor.** Lessor shall also maintain liability insurance described in Paragraph 8.2(a) ~~in addition to and not in lieu of~~, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 Property Insurance-Building, Improvements and Rental Value.

(a) **Building and Improvements.** Lessor shall obtain and keep in force during the term of this Lease ~~a policy or policies in the name of Lessor with loss payable to Lessor and to any Lender(s), insuring against loss or damage to the Premises. Such insurance shall be for full replacement cost, as the same shall exist from time to time, or the amount required by any Lender(s), but in no event more than the commercially reasonable and available insurable value thereof if, by reason of the unique nature or age of the improvements involved, such latter amount is less than full replacement cost.~~ Lessee-Owned Alterations and Utility Installations, Trade Fixtures and Lessee's personal property shall be insured by Lessee pursuant to Paragraph 8.4. If the coverage is available and commercially appropriate, Lessor's policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender or included in the Base Premium), including coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of any uncanceled sections of the Building required to be demolished or removed by reason of the enforcement of any building, zoning, safety or land use laws as the result of a covered loss, but not including plate glass insurance. Said policy or policies shall also contain an agreed valuation provision in lieu of any co-insurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located, such policy(ies) as it is required under the Master Lease.

(b) **Rental Value.** Lessor shall also obtain and keep in force during the term of this Lease ~~a policy or policies in the name of Lessor, with loss payable to Lessor and any Lender(s), insuring the loss of the full rental and other charges payable by all lessees of the Building to Lessor for one year (including all Real Property Taxes, insurance costs, all Common Area Operating Expenses and any scheduled rental increases). Said insurance may provide that in the event the Lease is terminated by reason of an insured loss, the period of indemnity for such coverage shall be extended beyond the date of the completion of repairs or replacement of the Premises, to provide for one full year's loss of rental revenues from the date of any such loss. Said insurance shall contain an agreed valuation provision in lieu of any co-insurance clause, and the amount of coverage shall be adjusted annually to reflect the projected rental income, Real Property Taxes, insurance premium costs and other expenses, if any, otherwise payable, for the next 12-month period. Common Area Operating Expenses shall include any deductible amount in the event of such loss.~~

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Industrial Center if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

Initials:

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee-Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

8.4 **Lessee's Property Insurance.** Subject to the requirements of Paragraph 8.5, Lessee at its cost shall either by separate policy or, at Lessor's option, by endorsement to a policy already carried, maintain insurance coverage on all of Lessee's personal property, Trade Fixtures and Lessee-Owned Alterations and Utility Installations in, on, or about the Premises similar in coverage to that carried by Lessor as the Insuring Party under Paragraph 8.3(a). Such insurance shall be full replacement cost coverage with a deductible not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property and the restoration of Trade Fixtures and Lessee-Owned Alterations and Utility Installations. Upon request from Lessor, Lessee shall provide Lessor with written evidence that such insurance is in force.

8.5 **Insurance Policies.** Insurance required hereunder shall be in companies duly licensed to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least B+. V, or such other rating as may be required by a Lender, as set forth in the most current issue of "Best's Insurance Guide." Lessee shall not do or permit to be done anything which shall invalidate the insurance policies referred to in this Paragraph 8. Lessee shall cause to be delivered to Lessor, within seven (7) days after the earlier of the Early Possession Date or the Commencement Date, certified copies of, or certificates evidencing the existence and amounts of, the insurance required under Paragraph 8.2(a) and 8.4. No such policy shall be cancelable or subject to modification except after thirty (30) days' prior written notice to Lessor. Lessee shall at least thirty (30) days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand.

8.6 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages (whether in contract or in tort) against the other, for loss or damage to their property arising out of or incident to the perils required to be insured against under Paragraph 8. The effect of such releases and waivers of the right to recover damages shall not be limited by the amount of insurance carried or required, or by any deductibles applicable thereto. Lessor and Lessee agree to have their respective insurance companies issuing property damage insurance waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 **Indemnity.** Except for Lessor's negligence and/or breach of express warranties, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, costs, liens, judgments, penalties, loss of permits, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the occupancy of the Premises by Lessee, the conduct of Lessee's business, any act, omission or neglect of Lessee, its agents, contractors, employees or invitees, and out of any Default or Breach by Lessee in the performance in a timely manner of any obligation on Lessee's part to be performed under this Lease. The foregoing shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against Lessor) litigated and/or reduced to judgment. In case any action or proceeding be brought against Lessor by reason of any of the foregoing matters, Lessee upon notice from Lessor shall defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be so indemnified.

8.8 **Exemption of Lessor from Liability.** Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said injury or damage results from conditions arising upon the Premises or upon other portions of the Building of which the Premises are a part, from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is accessible or not. Lessor shall not be liable for any damages arising from any act or neglect of any other lessee of Lessor nor from the failure by Lessor to enforce the provisions of any other lease in the Industrial Center. Notwithstanding Lessor's negligence or breach of this Lease, Lessor shall under no circumstances be liable for injury to Lessee's business or for any loss of income or profit therefrom.

9. Damage or Destruction.

9.1 Definitions.

(a) **"Premises Partial Damage"** shall mean ~~any~~ ^{any} damage or destruction to the Premises, ~~other than Lessee-Owned Alterations and Utility Installations, the repair cost of which damage or destruction is less than fifty percent (50%) of the then Replacement Cost (as defined in Paragraph 9.1(d)) of the Premises (excluding Lessee-Owned Alterations and Utility Installations and Trade Fixtures) immediately prior to such damage or destruction.~~ ^{or to}

(b) **"Premises Total Destruction"** shall mean ~~damage or destruction to the Premises, other than Lessee-Owned Alterations and Utility Installations, the repair cost of which damage or destruction is fifty percent (50%) or more of the then Replacement Cost of the Premises (excluding Lessee-Owned Alterations and Utility Installations and Trade Fixtures) immediately prior to such damage or destruction. In addition, damage or destruction to the Building, other than Lessee-Owned Alterations and Utility Installations and Trade Fixtures of any lessee of the Building, the cost of which damage or destruction is fifty percent (50%) or more of the then Replacement Cost (excluding Lessee-Owned Alterations and Utility Installations and Trade Fixtures of any lessee of the Building) of the Building shall, at the option of Lessor, be deemed to be Premises Total Destruction.~~

(c) **"Insured Loss"** shall mean ~~damage or destruction to the Premises, other than Lessee-Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a) irrespective of any deductible amounts or coverage limits involved.~~

(d) **"Replacement Cost"** shall mean ~~the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of applicable building codes, ordinances or laws, and without deduction for depreciation.~~

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 6.2(a), in, on, or under the Premises.

9.2 **Premises Partial Damage - Insured Loss.** ~~If Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee-Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect. In the event, however, that there is a shortage of insurance proceeds and such shortage is due to the fact that by reason of the unique nature of the improvements in the Premises, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within ten (10) days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said ten (10) day period, Lessor shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If Lessor does not receive such funds or assurance within said period, Lessor may nevertheless elect by written notice to Lessee within ten (10) days thereafter to make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect. If Lessor does not receive such funds or assurance within such ten (10) day period, and if Lessor does not so elect to restore and repair, then this Lease shall terminate sixty (60) days following the occurrence of the damage or destruction. Unless otherwise agreed, Lessee shall in no event have any right to reimbursement from Lessor for any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3 rather than Paragraph 9.2, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs it made by other Party.~~

9.3 **Partial Damage - Uninsured Loss.** ~~If Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense and this Lease shall continue in full force and effect), Lessor may, at Lessor's option, either (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Lessee within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such damage of Lessor's desire to terminate this Lease as of the date sixty (60) days following the date of such notice. In the event Lessor elects to give such notice of Lessor's intention to terminate this Lease, Lessee shall have the right within ten (10) days after the receipt of such notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage totally at Lessee's expense and without reimbursement from Lessor. Lessee shall provide Lessor with the required funds or satisfactory assurance thereof within thirty (30) days following such commitment from Lessee. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the funds or assurance thereof within the times specified above, this Lease shall terminate as of the date specified in Lessor's notice of termination.~~

9.4 **Total Destruction.** ~~Notwithstanding any other provision hereof, if Premises Total Destruction occurs including any destruction required by any authorized public authority), this Lease shall terminate sixty (60) days following the date of such Premises Total Destruction, whether or not the damage or destruction is an Insured Loss or was caused by a negligent or willful act of Lessee. In the event, however, that the damage or destruction was caused by Lessee, Lessor shall have the right to recover Lessor's damages from Lessee except as released and waived in Paragraph 9.7.~~

9.5 **Damage Near End of Term.** ~~If at any time during the term of this Lease there is damage or destruction to the Premises, Lessor may, at Lessor's option, terminate this Lease effective only (60) days following the date of occurrence of such damage by giving written notice to Lessee of Lessor's election to do so within thirty (30) days after the date of occurrence of such damage. Provided, however, if Lessee at that time has an option to extend this Lease or to purchase the Premises, then Lessor may preserve this Lease or (a) exercising such option, and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is ten (10) days after Lessee's receipt of Lessor's written notice to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's expense repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate as of the date set forth in the first sentence of this Paragraph 9.5.~~ ^{ten (10)} ^{any Premises Damage.}

Proration

9.6 Abatement of Rent; Lessee's Remedies.

(a) In the event of (i) Premises Partial Damage or (ii) Hazardous Substance Condition for which Lessee is not legally responsible, the Base Rent, Common Area Operating Expenses and other charges, if any, ~~shall be~~ ^{previously paid in advance} ~~abated~~ ^{proration} by Lessee hereunder for the period during which such damage or condition, its repair, remediation or restoration continues, and no abatement in rent shall be made in the period in which Lessee is not legally responsible for such damage or condition, but not in excess of proceeds from insurance required to be carried under Paragraph 8.3(a). Except for abatement of Base Rent, Common Area Operating Expenses and other charges, if any, as aforesaid, all other obligations of Lessee hereunder shall be performed by Lessee, and Lessee shall have no claim against Lessor for any damage suffered by reason of any such damage, destruction, repair, remediation or restoration.

shall be prorate through the date this Lease is terminated.

Initials: *P.K.J.*

~~(b) If Lessor shall be obligated to repair or restore the Premises under the provisions of this Paragraph 9.7 and shall not commence in a meaningful way, the repair or restoration of the Premises within ninety (90) days after such obligation shall accrue. Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice of Lessee's election to terminate this Lease on a date not less than sixty (60) days following the giving of such notice. If Lessee gives such notice to Lessor and such Lenders and such repair or restoration is not commenced within thirty (30) days after receipt of such notice, this Lease shall terminate as of the date specified in said notice. If Lessor or a Lender commences the repair or restoration of the Premises within thirty (30) days after the receipt of such notice, this Lease shall continue in full force and effect. "Commence" as used in this Paragraph 9.6 shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever occurs first.~~

~~ten (10) twenty (20)~~
9.7 **Hazardous Substance Conditions.** If a Hazardous Substance Condition occurs, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(c) and Paragraph 13). Lessor may at Lessor's option either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to investigate and remediate such condition exceeds twelve (12) times the then monthly Base Rent or \$100,000 whichever is greater, give written notice to Lessee within ~~ten (10)~~ twenty (20) days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition of Lessor's desire to terminate this Lease as of the date ~~ten (10)~~ twenty (20) days following the date of such notice. In the event Lessor elects to give such notice of Lessor's intention to terminate this Lease, Lessee shall have the right within ten (10) days after the receipt of such notice to give written notice to Lessor of Lessee's commitment to pay for the excess costs of (a) investigation and remediation of such Hazardous Substance Condition to the extent required by Applicable Requirements, over (b) an amount equal to twelve (12) times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with the funds required of Lessee or satisfactory assurance thereof within ~~ten (10)~~ twenty (20) days following said commitment by Lessee. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such investigation and remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time period specified above, this Lease shall terminate as of the date specified in Lessor's notice of termination.

9.8 **Termination—Advance Payments.** Upon termination of this Lease pursuant to this Paragraph 9, Lessor shall return to Lessee any advance payment made by Lessee to Lessor and so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor under the terms of this Lease.

9.9 **Waiver of Statutes.** Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises and the Building with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent it is inconsistent herewith.

10. Real Property Taxes.

10.1 **Payment of Taxes.** Lessor shall pay the Real Property Taxes, as defined in Paragraph 10.2(a), applicable to the Industrial Center, and except as otherwise provided in Paragraph 10.3, any increases in such amounts over the Base Real Property Taxes shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.2 Real Property Tax Definitions.

(a) As used herein, the term "Real Property Taxes" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed upon the Industrial Center by any authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage, or other improvement district thereof, levied against any legal or equitable interest of Lessor in the Industrial Center or any portion thereof, Lessor's right to rent or other income therefrom, and/or Lessor's business of leasing the Premises. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein, imposed by reason of events occurring, or changes in Applicable Law taking effect, during the term of this Lease, including but not limited to a change in the ownership of the Industrial Center or in the improvements thereon, the execution of this Lease, or any modification, amendment or transfer thereof, and whether or not contemplated by the Parties.

(b) As used herein, the term "Base Real Property Taxes" shall be the amount of Real Property Taxes, which are assessed against the Premises, Building or Common Areas in the calendar year during which the Lease is executed. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

10.3 **Additional Improvements.** Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Industrial Center by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.1 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request.

10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 **Lessee's Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee-Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises or stored within the Industrial Center. When possible, Lessee shall cause its Lessee-Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within ten (10) days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. **Utilities.** Lessee shall pay directly for all utilities and services supplied to the Premises, including but not limited to electricity, telephone, security, gas and cleaning of the Premises, together with any taxes thereon. If any such utilities or services are not separately metered to the Premises or separately billed to the Premises, Lessee shall pay to Lessor a reasonable proportion to be determined by Lessor of all such charges jointly metered or billed with other premises in the Building, in the manner and within the time periods set forth in Paragraph 4.2(d).

12. **Assignment and Subletting.** Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or otherwise transfer or encumber or sublet (collectively, "transfer") all or any part of Lessee's

~~12.1 Lessor's Consent Required~~
~~Lessee's interest in this Lease or in the Premises. Breach of this provision shall result in~~

~~(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or otherwise transfer or encumber (collectively, "transfer") all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent given under and subject to the terms of Paragraph 36~~

~~(b) A change in the control of Lessee shall constitute an assignment requiring Lessor's consent. The transfer, on a cumulative basis, of twenty-five percent (25%) or more of the voting control of Lessee shall constitute a change in control for this purpose.~~

~~(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, refinancing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee, as hereinafter defined, by an amount equal to or greater than twenty-five percent (25%) of such Net Worth of Lessee as it was represented to Lessor at the time of full execution and delivery of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, at whichever time said Net Worth of Lessee was or is greater, shall be considered an assignment of this Lease by Lessee to which Lessor may reasonably withhold its consent. "Net Worth of Lessee" for purposes of this Lease shall be the net worth of Lessee (excluding any Guarantors) established under generally accepted accounting principles consistently applied.~~

~~(d) An assignment or subletting of Lessee's interest in this Lease without Lessor's specific prior written consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1, or a non-curable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unconsented to assignment or subletting as a non-curable Breach, Lessor shall have the right to either: (i) terminate this Lease, or (ii) upon thirty (30) days' written notice ("Lessor's Notice"), increase the monthly Base Rent for the Premises to the greater of the then fair market rental value of the Premises, as reasonably determined by Lessor, or one hundred ten percent (110%) of the Base Rent then in effect. Pending determination of the new fair market rental value, if disputed by Lessee, Lessee shall pay the amount set forth in Lessor's Notice, with any overpayment credited against the next installment(s) of Base Rent coming due, and any underpayment for the period retroactively to the effective date of the adjustment being due and payable immediately upon the determination thereof. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to the then fair market value as reasonably determined by Lessor (without the Lease being considered an encumbrance or any deduction for depreciation or obsolescence, and considering the Premises at its highest and best use and in good condition) or one hundred ten percent (110%) of the price previously in effect, (ii) any index-oriented rental or price adjustment formulas contained in this Lease shall be adjusted to require that the base index be determined with reference to the index applicable to the time of such adjustment, and (iii) any fixed rental adjustments scheduled during the remainder of the Lease term shall be increased in the same ratio as the new rental bears to the Base Rent in effect immediately prior to the adjustment specified in Lessor's Notice.~~

~~(e) Lessee's remedy for any breach of this Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.~~

12.2 Terms and Conditions Applicable to Assignment and Subletting:

~~(a) Regardless of Lessor's consent, any assignment or subletting shall not (i) be obtained without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, nor (iii) alter the primary liability of Lessee for the payment of Base Rent and other sums due Lessor hereunder or for the performance of any other obligations to be performed by Lessee under this Lease.~~

~~(b) Lessor may accept any rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of any rent for performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for the Default or Breach by Lessee of any of the terms, covenants or conditions of this Lease.~~

~~(c) The consent of Lessor to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting by Lessee or to any subsequent or successive assignment or subletting by the assignee or sublessee. However, Lessor may consent to subsequent sublettings and assignments of the sublease or any amendments or modifications thereto without notifying Lessee or anyone else liable under this Lease or the sublease and without obtaining their consent, and such action shall not remove such persons from liability under the Lease or the sublease.~~
automatic termination of this Lease, without notice, and all parties in possession under this Lease or any transfer of this Lease, shall be subject to immediate eviction.

Initials:

~~(d) In the event of any Default or Breach of Lessee's obligation under this Lease, Lessor may proceed directly against Lessee, any Guarantor, or any one else responsible for the performance of the Lessee's obligations under this Lease, including any sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.~~

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a non-refundable deposit of \$1,000 or ten percent (10%) of the monthly Base Rent applicable to the portion of the Premises which is the subject of the proposed assignment or sublease, whichever is greater, as reasonable consideration for Lessor's considering and processing the request for consent. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested by Lessor.

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed, for the benefit of Lessor, to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented in writing.

(g) The occurrence of a transaction described in Paragraph 12.2(c) shall give Lessor the right (but not the obligation) to require that the Security Deposit be increased by an amount equal to six (6) times the then monthly Base Rent, and Lessor may make the actual receipt by Lessor of the Security Deposit increase a condition to Lessor's consent to such transaction.

(h) Lessor, as a condition to giving its consent to any assignment or subletting, may require that the amount and adjustment schedule of the rent payable under this Lease be adjusted to what is then the market value and/or adjustment schedule for property similar to the Premises as then constituted, as determined by Lessor.

~~12.0 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:~~

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all rentals and income arising from any sublease of all or a portion of the Premises heretofore or hereafter made by Lessee, and Lessor may collect such rent and income and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach (as defined in Paragraph 13.1) shall occur in the performance of Lessee's obligations under this Lease, Lessee may, except as otherwise provided in this Lease, receive, collect and enjoy the rents accruing under such sublease. Lessor shall not, by reason of the foregoing provision or any other assignment of such sublease to Lessor, nor by reason of the collection of the rents from a sublessee, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee under such sublease. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor the rents and other charges due and to become due under the sublease. Sublessee shall rely upon any such statement and request from Lessor and shall pay such rents and other charges to Lessor without any obligation or right to inquire as to whether such Breach exists and notwithstanding any notice from or claim from Lessee to the contrary. Lessee shall have no right or claim against such sublessee, or, until the Breach has been cured, against Lessor, for any such rents and other charges so paid by said sublessee to Lessor.

(b) In the event of a Breach by Lessee in the performance of its obligations under this Lease, Lessor, at its option and without any obligation to do so, may require any sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any other prior defaults or breaches of such sublessor under such sublease.

(c) Any matter or thing requiring the consent of the sublessor under a sublease shall also require the consent of Lessor herein.

(d) No sublessee under a sublease approved by Lessor shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. Default; Breach; Remedies.

13.1 **Default; Breach.** Lessor and Lessee agree that if an attorney is consulted by Lessor in connection with a Lessee Default or Breach (as hereinafter defined), \$350.00 is a reasonable minimum sum per such occurrence for legal services and costs in the preparation and service of a notice of Default, and that Lessor may include the cost of such services and costs in said notice as rent due and payable to cure said default. A "Default" by Lessee is defined as a failure by Lessee to observe, comply with or perform any of the terms, covenants, conditions or rules applicable to Lessee under this Lease. A "Breach" by Lessee is defined as the occurrence of any one or more of the following Defaults, and, where a grace period for cure after notice is specified herein, the failure by Lessee to cure such Default prior to the expiration of the applicable grace period, and shall entitle Lessor to pursue the remedies set forth in Paragraphs 13.2 and/or 13.3:

(a) The vacating of the Premises without the intention to reoccupy same, or the abandonment of the Premises.

(b) Except as expressly otherwise provided in this Lease, the failure by Lessee to make any payment of Base Rent, Lessee's Share of Common Area Operating Expenses, or any other monetary payment required to be made by Lessee hereunder as and when due, the failure by Lessee to provide Lessor with reasonable evidence of insurance or surety bond required under this Lease, or the failure of Lessee to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of three (3) days following written notice thereof by or on behalf of Lessor to Lessee.

(c) Except as expressly otherwise provided in this Lease, the failure by Lessee to provide Lessor with reasonable written evidence (in duly executed original form, if applicable) of (i) compliance with Applicable Requirements per Paragraph 6.3, (ii) the inspection, maintenance and service contracts required under Paragraph 7.1(b), (iii) the rescission of an unauthorized assignment or subletting per Paragraph 12.1, (iv) a Tenancy Statement per Paragraphs 16 or 37, (v) the subordination or non-subordination of this Lease per Paragraph 30, (vi) the guaranty of the performance of Lessee's obligations under this Lease if required under Paragraphs 1.11 and 37, (vii) the execution of any document requested under Paragraph 42 (easements), or (viii) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this lease, where any such failure continues for a period of ten (10) days following written notice by or on behalf of Lessor to Lessee.

(d) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof that are to be observed, complied with or performed by Lessee, other than those described in Subparagraphs 13.1(a), (b) or (c), above, where such Default continues for a period of thirty (30) days after written notice thereof by or on behalf of Lessor to Lessee; provided, however, that if the nature of Lessee's Default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a Breach of this Lease by Lessee if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

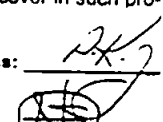
(e) The occurrence of any of the following events: (i) the making by Lessee of any general arrangement or assignment for the benefit of creditors; (ii) Lessee's becoming a "debtor" as defined in 11 U.S. Code Section 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this Subparagraph 13.1(e) is contrary to any applicable law, such provision shall be of no force or effect, and shall not affect the validity of the remaining provisions.

(f) The discovery by Lessor that any financial statement of Lessee or of any Guarantor, given to Lessor by Lessee or any Guarantor, was materially false.

(g) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory breach basis, and Lessee's failure, within sixty (60) days following written notice by or on behalf of Lessor to Lessee of any such event, to provide Lessor with written alternative assurances of security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 **Remedies.** If Lessee fails to perform any affirmative duty or obligation of Lessee under this Lease, within ten (10) days after written notice to Lessee (or in case of an emergency, without notice), Lessor may at its option (but without obligation to do so), perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by Lessor shall be due and payable by Lessee to Lessor upon invoice therefor. If any check given to Lessor by Lessee shall not be honored by the bank upon which it is drawn, Lessor, at its own option, may require all future payments to be made under this Lease by Lessee to be made only by cashier's check. In the event of a Breach of this Lease by Lessee as defined in Paragraph 13.1, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach, Lessor may:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease and the term hereof shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the worth at the time of the award of the unpaid rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco or the Federal Reserve Bank District in which the Premises are located at the time of award plus one percent (1%). Efforts by Lessor to mitigate damages caused by Lessee's Default or Breach of this Lease shall not waive Lessor's right to recover damages under this Paragraph 13.2. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such pro-

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ceeding the unpaid rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit for such . . . and/or damages. If a notice and grace period required under Subparagraph 13.1(b), (c) or (d) was not previously given, a notice to pay rent or quit, or to perform or quit, as the case may be, given to Lessee under any statute authorizing the forfeiture of leases or unlawful detainer shall also constitute the applicable notice for grace period purposes required by Subparagraph 13.1(b), (c) or (d). In such case, the applicable grace period under the unlawful detainer statute shall run concurrently after the one such statutory notice, and the failure of Lessee to cure the Default within the greater of the two (2) such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession in effect (in California under California Civil Code Section 1951.4) after Lessee's Breach and recover the rent as it becomes due, provided Lessee has the right to sublet or assign, subject only to reasonable limitations. Lessor and Lessee agree that the limitations on assignment and subletting in this Lease are reasonable. Acts of maintenance or preservation, efforts to relet the Premises, or the appointment of a receiver to protect the Lessor's interest under this Lease, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the state wherein the Premises are located.

(d) The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

~~13.2 Inducement Receipture in Event of Breach. Any agreement by Lessor for free or abated rent or other charges applicable to the Premises, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions" shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease to be performed or observed by Lessee during the term hereof as the same may be extended. Upon the occurrence of a Breach (as defined in Paragraph 13.1) of this Lease by Lessee, any such Inducement Provisions shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, and recoverable by Lessor, as additional rent due under this Lease, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this Paragraph 13.2 shall not be deemed a waiver by Lessor of the provisions of this Paragraph 13.2 unless specifically so stated in writing by Lessor at the time of such acceptance.~~

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by the terms of any ground lease, mortgage or deed of trust covering the Premises. Accordingly, if any installment of rent or other sum due from Lessee shall not be received by Lessor or Lessor's designee within ten (10) days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall pay to Lessor a late charge equal to six percent (6%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment by Lessee. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of Base Rent, then notwithstanding Paragraph 4.1 or any other provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Breach by Lessor. Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph 13.5, a reasonable time shall in no event be less than thirty (30) days after receipt by Lessor, and by any Lender(s) whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days after such notice are reasonably required for its performance, then Lessor shall not be in breach of this Lease if performance is commenced within such thirty (30) day period and thereafter diligently pursued to completion.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than ten percent (10%) of the floor area of the Premises, or more than twenty-five percent (25%) of the portion of the Common Areas designated for Lessee's parking, is taken by condemnation, Lessee may, at Lessee's option, to be exercised in writing within ten (10) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in the same proportion as the rentable floor area of the Premises taken bears to the total rentable floor area of the Premises. No reduction of Base Rent shall occur if the condemnation does not apply to any portion of the Premises. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Lessor, whether such award shall be made as compensation for diminution of value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Lessee shall be entitled to any compensation, separately awarded to Lessee for Lessee's relocation expenses and/or loss of Lessee's Trade Fixtures, in the event that this Lease is not terminated by reason of such condemnation. Lessor shall to the extent of its net severance damages received, over and above Lessee's Share of the legal and other expenses incurred by Lessor in the condemnation matter, repair any damage to the Premises caused by such condemnation authority. Lessee shall be responsible for the payment of any amount in excess of such net severance damages required to complete such repair.

15. Brokers' Fees.

15.1 Procuring Cause. The Broker(s) named in Paragraph 1.10 were the procuring cause of this Lease.

15.2 Additional Terms. Unless Lessor and Broker(s) have otherwise agreed in writing, Lessor agrees that, for if Lessee exercises any Option (as defined in Paragraph 39.1) granted under this Lease or any Option subsequently granted, or (b) if Lessee acquires any rights to the Premises or other premises in which Lessor has an interest, or (c) if Lessee remains in possession of the Premises with the consent of Lessor after the expiration of the term of this Lease after having failed to exercise an Option, or (d) if said Brokers are the procuring cause of any other lease or sale entered into between the Parties pertaining to the Premises and/or any adjacent property in which Lessor has an interest, or (e) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then as to any of said transactions, Lessor shall pay said Broker(s) a fee in accordance with the schedule of said Broker(s) in effect at the time of the execution of this Lease.

15.3 Assumption of Obligations. Any buyer or transferee of Lessor's interest in this Lease, whether such transfer is by agreement or by operation of law, shall be deemed to have assumed Lessor's obligation under this Paragraph 15. Each Broker shall be an intended third party beneficiary of the provisions of Paragraph 1.10 and of this Paragraph 15 in the event of no interest in any commission arising from this Lease and may enforce that right directly against Lessor and its successors.

15.4 Representations and Warranties. Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder other than as named in Paragraph 1.10(a) in connection with the negotiation of this Lease and/or the consummation of the transaction contemplated hereby, and that no broker or other person, firm or entity other than said named Broker(s) is entitled to any commission or finder's fee in connection with said transaction. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, and/or attorneys' fees reasonably incurred with respect thereto.

16. Tenancy and Financial Statements.

16.1 Tenancy Statement. Each Party (as "Responding Party") shall within ten (10) days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in a form similar to the then most current "Tenancy Statement" form published by the American Industrial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

16.2 Financial Statement. If Lessor desires to finance, refinance, or sell the Premises or the Building, or any part thereof, Lessee and all Guarantors shall deliver to any potential lender or purchaser designated by Lessor such financial statements of Lessee and such Guarantors as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past three (3) years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. Lessor's Liability. The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises. In the event of a transfer of Lessor's fee or interest in the Premises or in this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor at the time of such transfer or assignment. Except as provided in Paragraph 15.3, upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

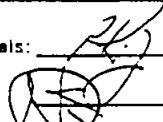
19. Interest on Past-Due Obligations. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor within ten (10) days following the date on which it was due, shall bear interest from the date due at the prime rate charged by the largest state chartered bank in the state in which the Premises are located plus four percent (4%) per annum, but not exceeding the maximum rate allowed by law, in addition to the potential late charge provided for in Paragraph 13.4.

20. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

21. Rent Defined. All monetary obligations of Lessee to Lessor under the terms of this Lease are deemed to be rent.

22. No Prior or other Agreements. Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach noted by either Party. Each Broker shall be an intended third party beneficiary of the provisions of this Paragraph 22.

In addition, Guarantor shall deliver a certified statement of Guarantor's net worth (in terms of exceeding a baseline amount) to Lessor and such potential lender or purchaser.

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23. Notices.

23.1 **Notice Requirements.** All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by messenger or courier service) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission during normal business hours, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notice purposes. Either Party may by written notice to the other specify a different address for notice purposes, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for the purpose of mailing or delivering notices to Lessee. A copy of all notices required or permitted to be given to Lessor hereunder shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate by written notice to Lessee.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail, the notice shall be deemed given forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the United States Postal Service or courier. If any notice is transmitted by facsimile transmission or similar means, the same shall be deemed served or delivered upon telephone or facsimile confirmation of receipt of the transmission thereof, provided a copy is also delivered via delivery or mail. If notice is received on a Saturday or a Sunday or a legal holiday, it shall be deemed received on the next business day.

24. **Waivers.** No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or any other term, covenant or condition hereof. Lessor's consent to, or approval of, any such act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent. Regardless of Lessor's knowledge of a Default or Breach at the time of accepting rent, the acceptance of rent by Lessor shall not be a waiver of any Default or Breach by Lessee of any provision hereof. Any payment given Lessor by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

25. **Recording.** Either Lessor or Lessee shall, upon request of the other, execute, acknowledge and deliver to the other a short form memorandum of this Lease for recording purposes. The Party requesting recordation shall be responsible for payment of any fees or taxes applicable thereto.

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease. In the event that Lessee holds over in violation of this Paragraph 26 then the Base Rent payable from and after the time of the expiration or earlier termination of this Lease shall be increased to two hundred percent (200%) of the Base Rent applicable during the month immediately preceding such expiration or earlier termination. Nothing contained herein shall be construed as a consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. Subordination; Attornment; Non-Disturbance.

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed by Lessor upon the real property of which the Premises are a part, to any and all advances made on the security thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof. Lessee agrees that the Lenders holding any such Security Device shall have no duty, liability or obligation to perform any of the obligations of Lessor under this Lease, but that in the event of Lessor's default with respect to any such obligation, Lessee will give any Lender whose name and address have been furnished Lessee in writing for such purpose notice of Lessor's default pursuant to Paragraph 13.5. If any Lender shall elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device and shall give written notice thereof to Lessee, this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** Subject to the non-disturbance provisions of Paragraph 30.3, Lessee agrees to attorn to a Lender or any other party who acquires ownership of the Premises by reason of a foreclosure of a Security Device, and that in the event of such foreclosure, such new owner shall not: (i) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership, (ii) be subject to any offsets or defenses which Lessee might have against any prior lessor, or (iii) be bound by prepayment of more than one month's rent.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this lease, Lessee's subordination of this Lease shall be subject to receiving assurance (a "non-disturbance agreement") from the Lender that Lessee's possession and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any such subordination or non-subordination, attornment and/or non-disturbance agreement as is provided for herein.

31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. Lessor shall be entitled to attorneys' fees, costs and expenses incurred in preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach. Broker(s) shall be intended third party beneficiaries of this Paragraph 31.

32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times for the purpose of showing the same to prospective purchasers, lenders, or lessees, and making such alterations, repairs, improvements or additions to the Premises or to the Building, as Lessor may reasonably deem necessary. Lessor may at any time place on or about the Premises or Building any ordinary "For Sale" signs and Lessor may at any time during the last one hundred eighty (180) days of the term hereof place on or about the Premises any ordinary "For Lease" signs. All such activities of Lessor shall be without abatement of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises without first having obtained Lessor's prior written consent. Notwithstanding anything to the contrary in this Lease, Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to grant such consent.

34. **Signs.** Lessee shall not place any sign upon the exterior of the Premises or the Building, except that Lessee may, with Lessor's prior written consent, place (but not on the roof) such signs as are reasonably required to advertise Lessee's own business so long as such signs are in a location designated by Lessor and comply with Applicable Requirements and the signage criteria established for the Industrial Center by Lessor. The installation of any sign on the Premises by or for Lessee shall be subject to the provisions of Paragraph 7 (Maintenance, Repairs, Utility Installations, Trade Fixtures and Alterations). Unless otherwise expressly agreed herein, Lessor reserves all rights to the use of the roof of the Building, and the right to install advertising signs on the Building, including the roof, which do not unreasonably interfere with the conduct of Lessee's business. Lessor shall be entitled to all revenues from such advertising signs.

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, Lessor shall, in the event of any such surrender, termination or cancellation, have the option to continue any one or all of any existing subtenancies. Lessor's failure within ten (10) days following any such event to make a written election to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. Consents.

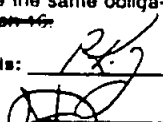
(a) Except for Paragraph 33 hereof (Auctions) or as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent pertaining to this Lease or the Premises, including but not limited to consents to an assignment a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee to Lessor upon receipt of an invoice and supporting documentation therefor. In addition to the deposit described in Paragraph 12.2(e), Lessor may, as a condition to considering any such request by Lessee, require that Lessee deposit with Lessor an amount of money (in addition to the Security Deposit held under Paragraph 5) reasonably calculated by Lessor to represent the cost Lessor will incur in considering and responding to Lessee's request. Any unused portion of said deposit shall be refunded to Lessee without interest. Lessor's consent to any act, assignment of this Lease or subletting of the Premises by Lessee shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent.

(b) All conditions to Lessor's consent authorized by this Lease are acknowledged by Lessee as being reasonable. The failure to specify herein any particular condition to Lessor's consent shall not preclude the impositions by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given.

37. Guarantor.

— See Exhibit B hereto.

37.1 **Form of Guaranty.** There are to be no Guarantors of this Lease per Paragraph 14.1. The form of the guaranty to be provided by each such Guarantor shall be in the form most recently published by the American Industrial Real Estate Association, and each such Guarantor shall have the same obligations as Lessee under this lease, including but not limited to the obligation to provide the information contained in Paragraph 16.

Initials: 

37.2. **Additional Obligations of Guarantor.** It shall constitute a Default of the Lessee under this Lease if any such Guarantor fails or refuses, upon reasonable request by Lessor to give: (a) evidence of the due execution of the guaranty called for by this Lease, including the authority of the Guarantor (and of the party signing on Guarantor's behalf) to obligate such Guarantor on said guaranty, and resolution of its board of directors authorizing the making of such guaranty (together with a certificate of incumbency showing the signatures of the persons authorized to sign on its behalf); (b) current financial statements of Guarantor as may from time to time be requested by Lessor; (c) a Tenancy Statement; or (d) written confirmation that the guaranty is still in effect. **pursuant to Section 16.2**

38. **Quiet Possession.** Upon payment by Lessee of the rent for the Premises and the performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession of the Premises for the entire term hereof subject to all of the provisions of this Lease.

39. Options.

39.1. **Definition.** As used in this Lease, the word "Option" has the following meaning: (a) the right to extend the term of this Lease or to renew this Lease or to extend or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal to lease the Premises or the right of first offer to lease the Premises or the right of first refusal to lease other property of Lessor or the right of first offer to lease other property of Lessor; (c) the right to purchase the Premises, or the right of first refusal to purchase the Premises, or the right of first offer to purchase the Premises, or the right to purchase other property of Lessor, or the right of first refusal to purchase other property of Lessor, or the right of first offer to purchase other property of Lessor.

39.2. **Options Personal to Original Lessee.** Each Option granted to Lessee in this Lease is personal to the original Lessee named in Paragraph 1.1 hereof, and cannot be voluntarily or involuntarily assigned or exercised by any person or entity other than said original Lessee while the original Lessee is in full and actual possession of the Premises and without the intention of hereafter assigning or subletting. The Options, if any, herein granted to Lessee are not assignable, either as a part or as a whole, of this Lease or separately or upon termination, and no Option may be separated from this Lease in any manner by reservation or otherwise.

39.3. **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later option cannot be exercised unless the prior Options to extend or renew this Lease have been validly exercised.

39.4. Effect of Default on Options.

(a) Lessee shall have no right to exercise an Option, notwithstanding any provision in the grant of Option to the contrary: (i) during the period commencing with the giving of any notice of Default under Paragraph 13.1 and continuing until the noticed Default is cured, or (ii) during the period of time any monetary obligation due Lessor from Lessee is unpaid (without regard to whether notice thereof is given Lessee), or (iii) during the time Lessee is in Breach of this Lease; or (iv) in the event that Lessor has given to Lessee three (3) or more notices of separate Defaults under Paragraph 13.1 during the twelve (12) month period immediately preceding the exercise of the Option, whether or not the Defaults are cured.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) All rights of Lessee under the provisions of an Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and during the term of this Lease, (i) Lessee fails to pay to Lessor a monetary obligation of Lessee for a period of thirty (30) days after such obligation becomes due (without any necessity of Lessor to give notice thereof to Lessee), or (ii) Lessor gives to Lessee three (3) or more notices of separate Defaults under Paragraph 13.1 during any twelve (12) month period, whether or not the Defaults are cured, or (iii) if Lessee commits a Breach of this Lease.

40. **Rules and Regulations.** Lessee agrees that it will abide by, and keep and observe all reasonable rules and regulations ("Rules and Regulations") which Lessor may make from time to time for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Industrial Center and their invitees.

41. **Security Measures.** Lessee hereby acknowledges that the rental payable to Lessor hereunder does not include the cost of guard service or other security measures; and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

42. **Reservations.** Lessor reserves the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights of way, utility raceways, and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights of way, utility raceways, dedications, maps and restrictions do not reasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

43. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease.

44. **Authority.** If either Party hereto is a corporation, trust, or general or limited partnership, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. If Lessee is a corporation, trust or partnership, Lessee shall, within thirty (30) days after request by Lessor, deliver to Lessor evidence satisfactory to Lessor of such authority.

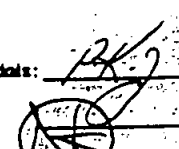
45. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. **Offer.** Preparation of this Lease by either Lessor or Lessee or Lessor's agent or Lessee's agent and submission of same to Lessee or Lessor shall not be deemed an offer to lease. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

47. **Amendments.** This Lease may be modified only in writing, signed by the parties in interest at the time of the modification. The Parties shall amend this Lease from time to time to reflect any adjustments that are made to the Base Rent or other rent payable under this Lease. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by an institutional insurance company or pension plan Lender in connection with the obtaining of normal financing or refinancing of the property of which the Premises are a part.

48. **Multiple Parties.** Except as otherwise expressly provided herein, if more than one person or entity is named herein as either Lessor or Lessee, the obligations of such multiple parties shall be the joint and several responsibility of all persons or entities named herein as such Lessor or Lessee.

49. **Effective Date.** Upon execution by Lessor, Lessee and Guarantor, this Lease shall become effective, retroactive to July 21, 1996.

Initials: 

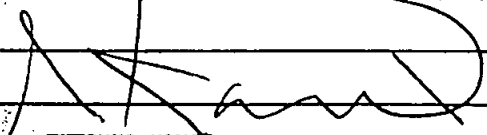
LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

IF THIS LEASE HAS BEEN FILLED IN, IT HAS BEEN PREPARED FOR YOUR ATTORNEY'S REVIEW AND APPROVAL. FURTHER, EXPERTS SHOULD BE CONSULTED TO EVALUATE THE CONDITION OF THE PROPERTY FOR THE POSSIBLE PRESENCE OF ASBESTOS, UNDERGROUND STORAGE TANKS OR HAZARDOUS SUBSTANCES. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION OR BY THE REAL ESTATE BROKERS OR THEIR CONTRACTORS, AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES; THE PARTIES SHALL RELY SOLELY UPON THE ADVICE OF THEIR OWN COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE. IF THE SUBJECT PROPERTY IS IN A STATE OTHER THAN CALIFORNIA, AN ATTORNEY FROM THE STATE WHERE THE PROPERTY IS LOCATED SHOULD BE CONSULTED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: San Diego, California
on: October, 1996

By LESSOR:

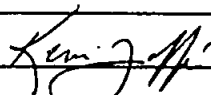
PACIFIC RIM MARINE ENTERPRISES (CALIFORNIA), INC.
By: 
Name Printed: TETSUYA KAMOI
Title: TREASURER 1-8-97
By: _____
Name Printed: _____
Title: _____
Address: _____
Telephone: () _____
Facsimile: () _____

BROKER:

Executed at: _____
on: _____
By: _____
Name Printed: _____
Title: _____
Address: _____
Telephone: () _____
Facsimile: () _____

Executed at: San Diego, California
on: October, 1996

By LESSEE:

MARINE CHARTER ENTERPRISES, INC.
By: 
Name Printed: KEVIN JAFFE
Title: _____
By: _____
Name Printed: _____
Title: _____
Address: _____
Telephone: () _____
Facsimile: () _____

BROKER:

Executed at: _____
on: _____
By: _____
Name Printed: _____
Title: _____
Address: _____
Telephone: () _____
Facsimile: () _____

NOTE: These forms are often modified to meet changing requirements of law and needs of the industry. Always write or call to make sure you are utilizing the most current form: AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION, 345 So. Figueroa St., M-1, Los Angeles, CA 90071. (213) 687-8777.

EXHIBIT A

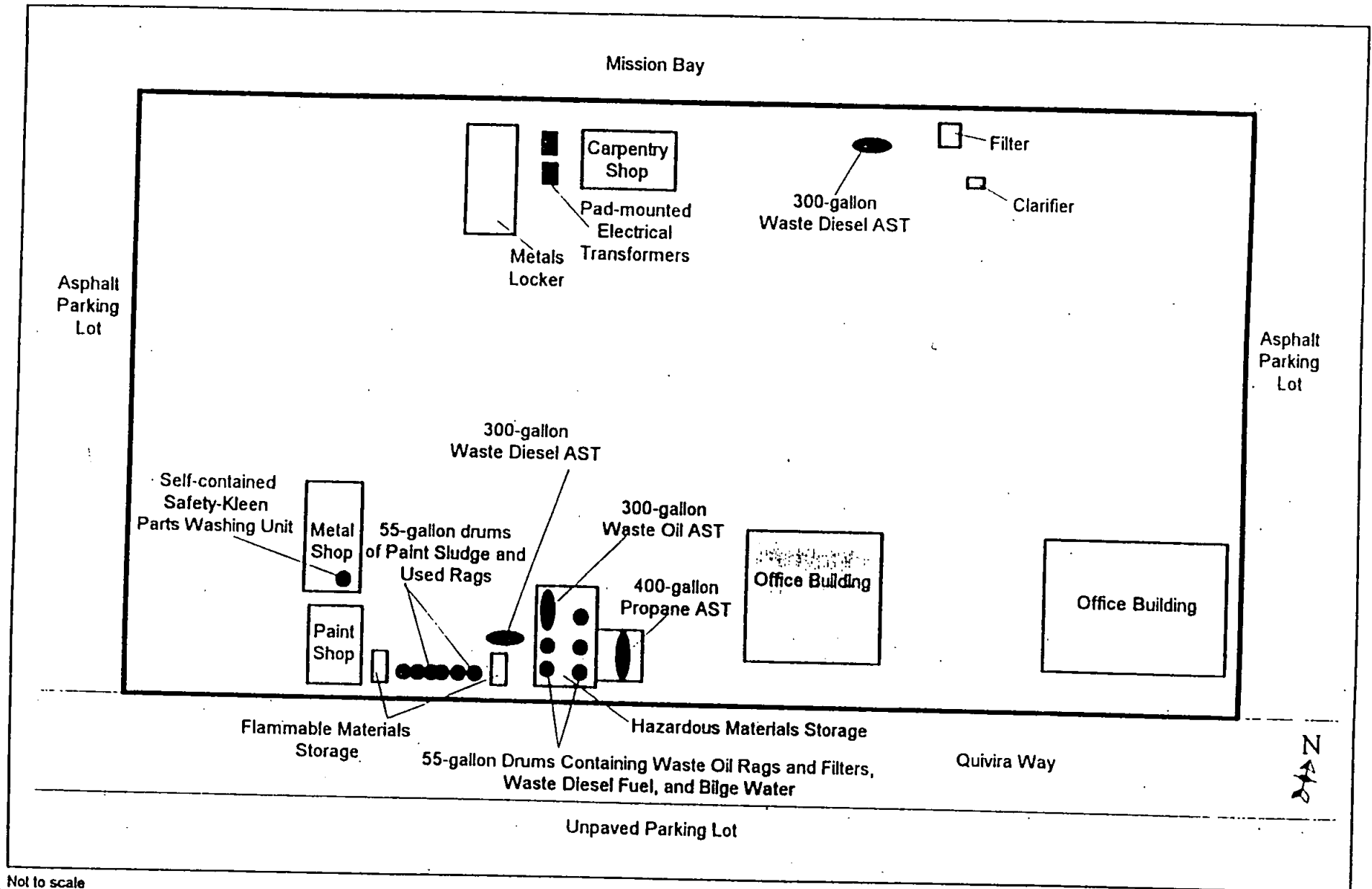
See Sketch of Premises attached hereto.

55569.1

P. X. J.
(R)

CERES Environmental Site Assessment Transaction Screen
ENVIRONMENTAL

PROPERTY SKETCH



Not to scale
All locations are approximate

EXHIBIT B
GUARANTY

In order to induce Pacific Rim Marine enterprises (California), Inc. ("Lessor") to execute that certain Standard Industrial/Commercial Multi-Tenant Lease-Gross dated July 21, 1996 ("Invader Lease"), by and between Lessor and Marine Charter Enterprises, Inc. ("Lessee"), and for other consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned parties (collectively referred to as the "Undersigned") does hereby absolutely and unconditionally, jointly and severally, guarantee to Lessor, its successors and assigns, the full performance and observance of all the covenants, conditions, and agreements provided to be performed and observed by Lessee in the Invader Lease, including, without limitation, the prompt payment of Rent and all other amounts provided in the Invader Lease to be paid by Lessee and any other agreement between the parties now or hereafter entered into in connection with the Invader Lease or the Premises thereunder (collectively referred to herein as "Lease").

The Undersigned hereby waives acceptance and notice of acceptance of this Guaranty, and notice of non-payment, non-performance or non-observance, and all other notices and all proof or demands. Further, the Undersigned expressly agrees that its obligations hereunder shall in no way be terminated, affected or impaired by reason of the granting by Lessor of any indulgences to Lessee or by reason of the assertion against Lessee of any of the rights or remedies reserved to Lessor pursuant to the provisions of said Lease or by the relief of Lessee from any of Lessee's obligations under said Lease by operation of law or otherwise, including, without limitation, the rejection of the Lease in a bankruptcy proceeding, the Undersigned hereby waiving all suretyship defenses. The Undersigned further covenants and agrees that this Guaranty shall remain and continue in full force and effect as to any renewal, modification or extension of the Lease whether or not the Undersigned shall have received any notice of or consented to such renewal, modification or extension. The Undersigned further agrees that its liability hereunder shall be primary, and that in any right of action which shall accrue to the Lessor under the Lease, Lessor may, at its option, proceed against the Undersigned and the Lessee, jointly or severally, and Lessor may proceed against the Undersigned without having commenced any action against or having obtained any judgment against the Lessee. Lessor may proceed against any one or more of the Undersigned without proceeding against the others, and may release any of the Undersigned or any security deposit, security interest or letter of credit without releasing any other of the Undersigned. It is agreed that the failure of Lessor to insist in any one or more instances upon strict performance or observance of any of the terms, provisions, or covenants of the Lease or this Guaranty or to exercise any right therein or herein contained shall not be construed or deemed to be a waiver or relinquishment for the future of such term, provision, covenant or right, but the same shall continue and remain in full force and effect. Receipt by Lessor of Rent or other payments with knowledge of the breach of any provision of the Lease shall not be deemed a waiver of such breach or of this Guaranty. No assignment or other transfer of the Lease, or any interest therein, shall operate to extinguish or diminish the liability of the Undersigned hereunder. If the laws applied by the jurisdiction in which this Guaranty is sought to be enforced require that the Undersigned have any rights not set forth herein in order for this Guaranty to be valid or enforceable, then such rights shall be deemed a part hereof, but only to the extent necessary to make this Guaranty valid and enforceable. If Lessor obtains a judgment against the Undersigned by reason of a breach of this Guaranty, the Undersigned shall pay all reasonable attorneys' fees and costs incurred in any collection or attempted collection of the obligations hereby guaranteed or in enforcing this Guaranty. This Guaranty shall be binding upon and inure to the benefit of the parties and their respective heirs, administrators, executors, successors and assigns.

The Undersigned has caused his (her) spouse to join in this Guaranty by signing below and, if no such spouse has signed, the Undersigned hereby represents and warrants that he (she) is unmarried.

IN WITNESS WHEREOF, this Guaranty is executed retroactive as of July 21, 1996.

Guarantor:

Spouse:



55569.1



GUARANTY

In order to induce Pacific Rim Marine enterprises (California), Inc. ("Lessor") to execute that certain Standard Industrial/Commercial Multi-Tenant Lease-Gross dated July 21, 1996 ("Invader Lease"), by and between Lessor and Marine Charter Enterprises, Inc. ("Lessee"), and for other consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned parties (collectively referred to as the "Undersigned") does hereby absolutely and unconditionally, jointly and severally, guarantee to Lessor, its successors and assigns, the full performance and observance of all the covenants, conditions, and agreements provided to be performed and observed by Lessee in the Invader Lease, including, without limitation, the prompt payment of Rent and all other amounts provided in the Invader Lease to be paid by Lessee and any other agreement between the parties now or hereafter entered into in connection with the Invader Lease or the Premises thereunder (collectively referred to herein as "Lease").

The Undersigned hereby waives acceptance and notice of acceptance of this Guaranty, and notice of non-payment, non-performance or non-observance, and all other notices and all proof or demands. Further, the Undersigned expressly agrees that its obligations hereunder shall in no way be terminated, affected or impaired by reason of the granting by Lessor of any indulgences to Lessee or by reason of the assertion against Lessee of any of the rights or remedies reserved to Lessor pursuant to the provisions of said Lease or by the relief of Lessee from any of Lessee's obligations under said Lease by operation of law or otherwise, including, without limitation, the rejection of the Lease in a bankruptcy proceeding, the Undersigned hereby waiving all suretyship defenses. The Undersigned further covenants and agrees that this Guaranty shall remain and continue in full force and effect as to any renewal, modification or extension of the Lease whether or not the Undersigned shall have received any notice of or consented to such renewal, modification or extension. The Undersigned further agrees that its liability hereunder shall be primary, and that in any right of action which shall accrue to the Lessor under the Lease, Lessor may, at its option, proceed against the Undersigned and the Lessee, jointly or severally, and Lessor may proceed against the Undersigned without having commenced any action against or having obtained any judgment against the Lessee. Lessor may proceed against any one or more of the Undersigned without proceeding against the others, and may release any of the Undersigned or any security deposit, security interest or letter of credit without releasing any other of the Undersigned. It is agreed that the failure of Lessor to insist in any one or more instances upon strict performance or observance of any of the terms, provisions, or covenants of the Lease or this Guaranty or to exercise any right therein or herein contained shall not be construed or deemed to be a waiver or relinquishment for the future of such term, provision, covenant or right, but the same shall continue and remain in full force and effect. Receipt by Lessor of Rent or other payments with knowledge of the breach of any provision of the Lease shall not be deemed a waiver of such breach or of this Guaranty. No assignment or other transfer of the Lease, or any interest therein, shall operate to extinguish or diminish the liability of the Undersigned hereunder. If the laws applied by the jurisdiction in which this Guaranty is sought to be enforced require that the Undersigned have any rights not set forth herein in order for this Guaranty to be valid or enforceable, then such rights shall be deemed a part hereof, but only to the extent necessary to make this Guaranty valid and enforceable. If Lessor obtains a judgment against the Undersigned by reason of a breach of this Guaranty, the Undersigned shall pay all reasonable attorneys' fees and costs incurred in any collection or attempted collection of the obligations hereby guaranteed or in enforcing this Guaranty. This Guaranty shall be binding upon and inure to the benefit of the parties and their respective heirs, administrators, executors, successors and assigns.

The Undersigned has caused his (her) spouse to join in this Guaranty by signing below and, if no such spouse has signed, the Undersigned hereby represents and warrants that he (she) is unmarried.

IN WITNESS WHEREOF, this Guaranty is executed retroactive as of July 21, 1996.

Guarantor:

Spouse:



55569.1



Phil Pacific Rim

NON-DISTURBANCE AGREEMENT

THIS AGREEMENT, made as of the 1 day of December 1994, by and among the City of San Diego ("LANDLORD"), Knight & Carver Yacht Center, INC., a California corporation, having an office at 1502 Quivira Way ("YACHTCENTER") represented by its agent Pacific Rim Enterprises, Inc. ("PRME"), and France Cup, Inc., a Delaware corporation having an office 1500 Quivira Way ("SUBTENANT").

WITNESSETH:

WHEREAS, LANDLORD and Mission Bay Marina Associates ("MISSION BAY"), a Limited Partnership of which Coastal Marine Management is a General Partner, entered into a Percentage Lease Agreement dated March 5, 1979 (the "Master Lease"), whereby LANDLORD leased to Mission Bay certain premises located at 1500 Quivira Way, San Diego, California, together with certain water areas adjacent thereto (the "Premises");

WHEREAS, on or about [August 15, 1990], with the consent of the LANDLORD, YACHTCENTER as successor of MISSION BAY assigned all of its rights, title and interests in and to the Master Lease to PRME;

WHEREAS on [July 21, 1990], PRME as landlord and YACHTCENTER as tenant entered into a Standard Industrial Sublease (the "Prima Sublease") whereby YACHTCENTER became tenant of PRME and subtenant of LANDLORD;

Nov 11 1994
WHEREAS YACHTCENTER has entered into a Sublease Agreement (the "Sublease Agreement") with SUBTENANT dated as of May 11, 1994, whereby YACHTCENTER has subleased by and through its agent PRME, to SUBTENANT a portion of the Premises ("Subleased Premises");

WHEREAS in consideration for the Sublease Agreement SUBTENANT has requested YACHTCENTER to obtain this Non-Disturbance Agreement from LANDLORD and to deliver such Agreement to SUBTENANT;

NOW, THEREFORE, the parties do covenant and agree as follows:

1. LANDLORD hereby consents to the execution and delivery of the Sublease Agreement;
2. LANDLORD covenants and agrees that, so long as SUBTENANT is in compliance with all of its obligations under the Sublease Agreement, SUBTENANT shall not be joined as a party

IN WITNESS WHEREOF, the parties hereto have executed
this Agreement as of the date first written above:

CITY OF SAN DIEGO

By: Joe C. Valera
Name:
Title: Learning Property Agent

KNIGHT & CARVER YACHT CHARTER, INC.

By: [Signature]
Name:
Title: PACIFIC RIM MARINE ENTERPRISES, INC.
Title: Agent

By: AKIHIRO TAKEI, PRESIDENT
Name:
Title:

FRANCE CUP, INC.

By: F. U. G. [Signature]
Name:
Title:

DRAFT



SUBLEASE

This SUBLEASE ("Sublease") is made as of November 1, 1994 between Knight & Carver Yachtcenter, Inc., ("Yachtcenter"), by and through its agent Pacific Rim Marine Enterprises, Inc., ("PRME"), and France Cup Inc. ("Subtenant"), who agree as follows:

1. FACT RECITALS.

This Sublease is made with reference to the following facts:

(a) Master Lease.

On or about March 5, 1979, THE CITY OF SAN DIEGO a municipal corporation ("City"), as landlord, and Mission Bay Marina Associates, a limited partnership of which Coastal Marine Management, (DBA: Mission Bay Marina Associates), is a general partner, as tenant, signed that certain written Percentage Lease (the "Master Lease"). The Master Lease was approved by the City Council of City by resolution number 222988 dated March 5, 1979. The Master Lease provided, among other things, that Marina could construct upon the property that was the subject of the Master Lease, certain improvements and then sublease space in those improvements to subtenants. Subtenant hereby acknowledges Subtenant's receipt of a true copy of the Master Lease. Thereafter, on or about August 15, 1990, with the consent of the City, the Master Lease was assigned by Knight & Carver Yachtcenter

Inc. as successor of Mission Bay Marina, to Pacific Rim Marina Enterprises (California) Inc., a California corporation ("Pacific Rim"). Under the terms of transfer agreement, Pacific Rim became tenant of City and Yachtcenter became subtenant of Pacific Rim, pursuant to a Standard Industrial Lease -Net, dated July 21, 1990, including that certain addendum thereto. (the "Prime Sublease") This sublease shall terminate upon the first to occur of the following:

1. The end of the term of this Sublease.
2. Upon termination for any reason of the Master Lease between City and Pacific Rim, providing that Pacific Rim shall not voluntarily surrender the Master Lease, at anytime during term of Sublease.
3. Upon termination for any reason of the Prime Sublease between Pacific Rim and Yachtcenter, providing that Yachtcenter shall not voluntarily surrender the Prime Sublease at any time during term of Sublease.
4. Upon any default by Subtenant remaining uncured for 30 days after written notice thereof.
5. Upon any violation of conditions or provisions as provided in the terms of this sublease remaining uncured for 30 days after written notice thereof.

(b) Sublease.

The subject of this Sublease is a certain space at 1500 Quivira Way designated as the "Premises", which space is delineated on the plan attached hereto, marked Exhibit "A".

(c) Intent of the Parties.

It is the intention of the parties to set forth in this Sublease their agreement concerning Subtenant's use and occupancy of the space delineated in Exhibit "A" and attached hereto.

2. SUBLEASE SUBJECT TO MASTER LEASE.

A. This Sublease is subject to the provisions of the Master Lease and Prime Sublease. Yachtcenter represents and warrants that this Sublease does not violate any provision of the Master Lease or Prime Sublease, and that no provisions of this Sublease are in conflict with any provisions of the Master Lease or Prime Sublease. If the Master Lease or Prime Sublease terminates and this Sublease terminates as a result, the parties shall be released from all liabilities and obligations under this Sublease. This Sublease is subject and subordinate to the Master Lease and the Prime Sublease.

B. Sublease shall be subject to approval by The City of San Diego, landlord. Without such approval, the parties shall be released from all liabilities and obligations under this sublease.

3. SUBLEASE OF THE PREMISES.

Yachtcenter Sublets to Subtenant and Subtenant sublets from Yachtcenter that certain space at Mission Bay Marina, which space consists of land and water and comprises approximately 25,000 square feet of land space within the leasehold and 20,000 square feet of City owned land, and approximately 300 linear feet of dock space, which space is delineated on the plan attached hereto as

Exhibit "A",. The space shall hereinafter be called the "Premises".

It is understood that Premises shall be used for the sole purpose of an America's Cup Sailing Challenge and subtenant's operations will in no way conflict, interfere or compete with operations by Yachtcenter or Pacific Rim.

4. PREPARATION AND ACCEPTANCE OF THE PREMISES.

Subtenant shall have access to the Premises and may commence Subtenant's improvement and fixturing process on November 1, 1994. Subtenant or their agent shall indemnify and hold harmless Yachtcenter, City, Pacific Rim and their principals from any and all claims, demands or liability, arising out of, or in any way connected with Subtenant's improvement and fixturing process. Subtenant's taking possession of the Premises on the commencement date of the term of this Sublease shall constitute Subtenant's acknowledgement that the premises are in good condition, unless the Subtenant shall have presented to Yachtcenter in writing prior to taking possession of the Premises a list of defects which such defects Yachtcenter shall make good as soon as reasonably practical thereafter. Immediately after the commencement date of the term of this Sublease, Subtenant may, at Subtenant's sole cost and expense, move into the Premises all the furnishings and other items required by Subtenant to conduct Subtenant's business.

5. TERM: COMMENCEMENT DATE.

(a) Term.

The term of this Sublease shall be for the period of November 1, 1994 through May 31, 1995 on the Knight & Carver leasehold, and November 21, 1994 through May 31, 1995 on the City land. Subtenant's rent and other obligations are due and payable for the entire period, whether the Premises are occupied or not.

6. RENT.

(a) Lease Amount

Total value of lease as contracted is \$US 350,000.
(A breakdown for percent rent purposes).

(b) Payment Agreement

Subtenant shall pay to Yachtcenter the agreed upon monthly rent of \$50,000.00. Rent shall be due and payable on the first day of each month. Occupancy beyond Term shall be paid on a per diem basis. The per diem basis will be derived from the monthly rent of \$50,000.00.

(c) Prior to the execution of the Sublease, the Subtenant has paid a \$50,000 security deposit plus the first month's rent and Yachtcenter acknowledges receipt of such payment. This deposit and first months rent are fully refundable in the event that the approval of the City of San Diego as required by clause 2B is not secured within 60 days of the date of this Agreement. The deposit and first months rent are not refundable if the Subtenant defaults on its obligations under this agreement and

Yachtcenter notifying the Subtenant of the default in writing. The security deposit will be subject to refund within 30 days upon inspection and approval, by Yachtcenter, of premises after Subtenant is completely moved out.

7. IMPROVEMENTS.

(a) Subtenant shall construct on the Premises no improvements or signage without the prior written consent of Yachtcenter and the City of San Diego provided that Yachtcenter shall obtain the consent of City and any required consent of Pacific Rim to any such improvements or signage contemplated by or constructed pursuant to a construction agreement reasonably acceptable to all parties.

(b) Subtenant shall be responsible for relocating and/or reconstructing Marina lockers to a new location.

8. REPAIRS AND MAINTENANCE.

(a) Yachtcenter's Responsibility.

Yachtcenter shall not be required to maintain or make any repairs or replacements of any nature or description whatsoever to the Premises. Subtenant hereby expressly waives the right to make repairs at the expense of Yachtcenter as provided for in any statute or law in effect at the time of the execution of this Sublease, or in any other statute or law which may hereafter be enacted.

(b) Subtenant's Duty to Maintain the Premises.

Subtenant shall at Subtenant's sole cost and expense, maintain the Premises in good condition and repair and in

accordance with all applicable laws. Upon vacating the Premises, Subtenant shall remove all of Subtenants personal property not permanently affixed to the premises and at their cost, restore any damage to the premises caused by such removal and redeliver the space in a "broom clean" condition that is reasonably acceptable by Yachtcenter.

9. USE OF THE PREMISES.

Subtenant shall operate an America's Cup Sailing Challenge within the Premises in such a manner to conform to and comply with each, every, and all of the ordinances or regulations of the City, the County of San Diego, the State of California, and the United States of America that are now in force or which may hereinafter be enacted with reference to the use or contemplated use of the Premises. Subtenant's use of the Premises shall at all times be consistent with the uses permitted under the Master Lease and Prime Sublease. The intended use of the Premises is compatible with the stated restrictions so far as Yachtcenter is currently aware. Subtenant acknowledges and agrees that the premises are located on tidelands in dedicated Mission Bay Park, a public park, and that all use of the premises shall be in compliance with the legal restrictions applicable to tidelands and public parks. Subtenant shall not compete directly with Yachtcenter in the normal repair, maintenance, and commissioning of boats.

10. UTILITIES.

Subtenant shall pay, before delinquency, any and all charges for electricity which are separately metered to the

Premises. Subtenant shall reimburse Yachtcenter it's share of charges for any utilities which are not separately billed or metered to the Premises, but which are billed or metered for the entire area, including, but not limited to, water, gas and heat. Yachtcenter shall pay such utilities prior to delinquency.

11. TAXES AND ASSESSMENTS.

(a) Personal Property Tax.

If applicable, Subtenant shall pay, prior to delinquency, all taxes, assessments, license fees, and other charges that are levied and assessed against Subtenant's personal property located in, on, or about the Premises, which taxes become payable during the term of this Sublease. Upon written demand by Yachtcenter, Subtenant shall furnish Yachtcenter and City with satisfactory evidence of such payments. If any taxes on Subtenant's personal property are levied against Yachtcenter or Yachtcenter's property and the assessed value of the Building is increased by the inclusion of a value placed upon Subtenant's personal property, and if Yachtcenter pays the taxes or the increased assessment, Subtenant, on demand, shall immediately reimburse Yachtcenter for the sum of such taxes and increased assessments levied against Yachtcenter. Yachtcenter shall have the right to pay such taxes regardless of the validity of the levy. Notwithstanding the foregoing, however, it is understood and agreed that for all purposes of this Section 11 (a) that "Subtenants personal property" shall in no case include any property, work or improvements constructed or installed pursuant to this Agreement,

except as taxed during the use by Subtenant.

12. INDEMNITY AND INSURANCE.

(a) Indemnity.

Subtenant shall assume the defense of, indemnify and save harmless Yachtcenter, City and Pacific Rim, from all claims, demands, expenses, and liability of every nature, directly or indirectly arising from or alleged to have arisen from the operations conducted on the Premises or from any act or omission of Subtenant, his agents and invitees.

(b) General Public Liability Insurance.

Subtenant shall be insured by an insurance carrier acceptable to Yachtcenter and City, against loss from public liability arising from the use or condition of or operations conducted on the Premises, along with products liability and completed operations insurance. Minimum coverage shall be One Million Dollars (\$1,000,000.00). A copy of the policy of insurance shall be filed with Yachtcenter and City and shall name Yachtcenter, City and Pacific Rim as additional insured. Said policy shall specify that the policy may not be terminated, canceled or substantially altered or altered in a form which would negatively effect Yachtcenter, City and Pacific Rim without prior written notice to Yachtcenter, City, and Pacific Rim by the insurance company. The policy or policies shall be issued by an insurance company or companies licensed to do business in the State of California. Prior to the commencement date of this Sublease, Subtenant shall deliver to Yachtcenter a certificate or

certificates of insurance evidencing the existence of such policy or policies of insurance. Yachtcenter hereby represents that it is insured by St. Paul Insurance Co. for general liability coverage arising from the use or condition of the premises as attached herein as Exhibit-B, and that such policy shall remain in full force and effect during the term of this Contract.

(c) Fire and Extended Coverage Insurance.

Subtenant shall, at its sole cost and expense, during the term of this Sublease, pay for and maintain a policy or policies of fire, extended coverage, and vandalism insurance on the Premises. Such policy or policies shall be issued by an insurance company or companies licensed to do business in the State of California.

(d) Other Insurance.

Subtenant shall, at its sole cost and expense, during the term of this Sublease, pay for and maintain any other necessary policy or policies of insurance, including, but not limited to Worker's Compensation, covering and insuring against risks which reasonably may be anticipated in a business such as the one in which Subtenant is engaged.

13. NO ASSIGNMENT OR SUBLETTING.

Subtenant shall not assign this Sublease or sublet the Premises or any part thereof without the prior written consent of Yachtcenter, City and Pacific Rim. An assignment by operation of law shall automatically terminate this Sublease.

14. ENVIRONMENTAL STANDARDS.

Subtenant shall be responsible for and comply with all environmental rules and regulations as set forth by local, State and Federal agencies and organizations applicable to Subtenant's use of the Premises. Subtenant shall indemnify Knight & Carver Yachtcenter Inc. and Pacific Rim Marine Enterprises (California) Inc. against any and all violations in regards to same, or costs incurred by reason of violations due to Subtenants use, or as a result of, Subtenants use of property.

15. PARKING.

(a) Subtenant, all of Subtenant's employees and Subtenants guests shall park on the Subtenant's leased area, dirt parking lot south of the Yachtcenter, or on the street outside the leased area.

16. RIGHT TO INSPECT FACILITY.

Yachtcenter reserves the right to inspect facility, throughout the term of this sublease, with 24 hour notice given to Subtenant. In case of emergency, Yachtcenter reserves the right to enter property immediately.

17. EFFECTIVENESS OF PROVISIONS OF MASTER LEASE AND PRIME SUBLEASE.

Subtenant shall conduct itself at all times so as not to violate any of the terms or provisions of the Master Lease or Prime Sublease as applicable to the use of the premises and such terms and provisions shall control as to Subtenant's use and shall remain in full force and effect for the entire term of this Sublease.

18. QUIET ENJOYMENT.

Notwithstanding any other provisions hereof, Yachtcenter covenants that Subtenant's use and enjoyment will not be disturbed during the term of this sublease.

19. AMENDMENT.

This Sublease may be amended only by a writing signed by both parties.

20. NOTICES.

Any notice from one party to another shall be delivered either personally or via United States mail, postage fully prepaid, addressed to the parties as follows:

To PRME:	Mr. Roy Takei c/o Mission Bay Marina 1500 Quivira Way San Diego, CA 92109
To Yachtcenter:	Knight & Carver Yachtcenter, Inc. Meri P. Knight 1500 Quivira Way San Diego, CA 92109
To Subtenant:	France Cup, Inc. Francois Chateau Sutherland Asbill & Brennan 1270 Ave of the America's New York, NY 10020

Any notice shall be deemed delivered at the time of personal service or forty-eight (48) hours after the time of deposit in the United States mail, as the case may be. In the event that either party changes its address, the change of address shall be communicated to the other party in the manner set forth in this numbered paragraph.

21. ATTORNEY'S FEES.

Should it become necessary for Yachtcenter and City to commence legal proceedings to collect rent, to recover possession or enforce any other problem of this Sublease, Subtenant shall pay all legal costs in connection therewith, including a reasonable sum as attorney's fee's.

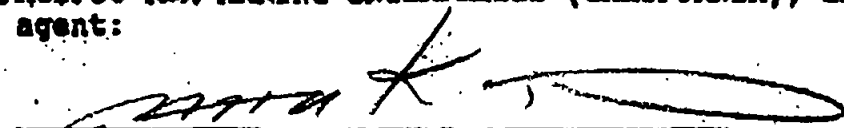
22. HEADINGS AND CAPTIONS.

The headings and captions at the beginning of various paragraphs and subparagraphs of this Sublease shall not be construed to be a substantive part of this Sublease and shall not in any way define, limit, expand, or affect any provision of this Sublease.

23. COUNTERPARTS.

This Sublease may be signed in as many as three counterparts, each of which shall constitute an original, but all of which together shall be one (1) and the same document.

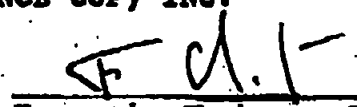
KNIGHT & CARVER YACHTCENTER, INC.
by PACIFIC RIM MARINE ENTERPRISES (CALIFORNIA), INC.
its agent:

By: 

Roy A. Takel
President & C.E.O
Pacific Rim Marine Enterprises, Inc.

SUBTENANT:

FRANCE CUP, INC.

By: 

Francois Chateau, Secretary
Franc Cup, Inc.

NON-DISTURBANCE AGREEMENT

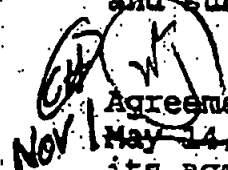
THIS AGREEMENT, made as of the ____ day of ____, 1994, by and among the City of San Diego ("LANDLORD"), Knight & Carver Yacht Center, INC., a California corporation, having an office at ____ ("YACHTCENTER") represented by its agent Pacific Rim Enterprises, Inc. ("PRME"), and France Cup, Inc., a Delaware corporation having an office ____ ("SUBTENANT").

W I T N E S S E T H :

WHEREAS, LANDLORD and Mission Bay Marina Associates ("MISSION BAY"), a Limited Partnership of which Coastal Marine Management is a General Partner, entered into a Percentage Lease Agreement dated March 5, 1979 (the "Master Lease"), whereby LANDLORD leased to Mission Bay certain premises located at 1500 Quivira Way, San Diego, California, together with certain water areas adjacent thereto (the "Premises");

WHEREAS, on or about [August 15, 1990], with the consent of the LANDLORD, YACHTCENTER as successor of MISSION BAY assigned all of its rights, title and interests in and to the Master Lease to PRME;

WHEREAS on [July 21, 1990], PRME as landlord and YACHTCENTER as tenant entered into a Standard Industrial Sublease (the "Prime Sublease") whereby YACHTCENTER became tenant of PRME and subtenant of LANDLORD;

Nov 1  WHEREAS YACHTCENTER has entered into a Sublease Agreement (the "Sublease Agreement") with SUBTENANT dated as of May 14, 1994, whereby YACHTCENTER has subleased by and through its agent PRME, to SUBTENANT a portion of the Premises ("Subleased Premises");

WHEREAS in consideration for the Sublease Agreement SUBTENANT has requested YACHTCENTER to obtain this Non-Disturbance Agreement from LANDLORD and to deliver such Agreement to SUBTENANT;

NOW, THEREFORE, the parties do covenant and agree as follows:

1. LANDLORD hereby consents to the execution and delivery of the Sublease Agreement;

2. LANDLORD covenants and agrees that, so long as SUBTENANT is in compliance with all of its obligations under the Sublease Agreement, SUBTENANT shall not be joined as a party

defendant in any eviction or repossession action or proceedings which may be instituted or taken by LANDLORD, nor shall the SUBTENANT be evicted from the Subleased Premises, or any of the SUBTENANT's rights under the Sublease Agreement be affected in any way, by reason of any default under the Master Lease except as hereinafter provided.

3. If the Prime Sublease shall terminate before the expiration of the term of the Sublease Agreement, the Sublease Agreement shall continue as a lease between PRME and SUBTENANT with the same force and effect as if PRME and SUBTENANT had entered into a lease as of the date of termination of the Prime Lease, containing the same terms, covenants and conditions as those contained in the Sublease Agreement, including any rights of renewal thereof, for a term equal to the unexpired term of the Sublease Agreement.

4. If the Master Lease shall terminate before the expiration of the term of the Sublease Agreement, the Sublease Agreement shall continue as a lease between LANDLORD and SUBTENANT with the same force and effect as if LANDLORD and SUBTENANT had entered into a lease as of the date of termination of the Master Lease, containing the same terms, covenants and conditions as those contained in the Sublease Agreement for a term equal to the unexpired term of the Sublease Agreement.

5. In the event any action is instituted by the LANDLORD to evict YACHTCENTER or repossess the Subleased Premises, SUBTENANT, after written notice to such effect from LANDLORD, shall from all and after such date promptly pay to LANDLORD all rent due and to become due under the Sublease Agreement.

6. It is a condition of this Agreement that SUBTENANT shall not at any time make any payment of advance rent or prepay rent to YACHTCENTER, other than to the extent specifically required by the Sublease Agreement, prior to the time when rent payments are due without the prior written consent of LANDLORD, it being understood that the rent is payable on the first day of each month.

7. If LANDLORD shall have terminated the Master Lease, SUBTENANT shall attorn to LANDLORD and recognize it as the landlord under the Sublease Agreement and promptly execute and deliver an attornment agreement upon request of LANDLORD and landlord shall recognize SUBTENANT as tenant of the Subleased Premises, pursuant to the Sublease Agreement.

8. The covenants and agreements herein contained shall be deemed to be covenants running with the land and shall inure to the benefit of and be binding upon the successors in interest of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed
this Agreement as of the date first written above.

CITY OF SAN DIEGO

By: _____

Name:
Title:

KNIGHT & CARVER YACHT CHARTER, INC.

By: _____

PACIFIC RIM MARINE ENTERPRISES, INC.
Title: Agent

By: AKIHIRO TAKEI, PRESIDENT,
Name:
Title:

FRANCE CUP, INC.

By: _____

Name:
Title:

DRAFT

CONSENT TO SUBLEASE AGREEMENT

File:

The City of San Diego (CITY), as LESSOR under that certain Lease Agreement (Master Lease) entered into with

Pacific Rim Marine Enterprises

(LESSEE) and filed in the Office of the City Clerk as Document 766042, hereby consents to that certain Sublease Agreement between the Knight & Carver Yachtcenter (SUBLESSOR) on behalf of the above LESSEE and

Australian Challenge for the America's Cup

(SUBLESSEE) dated April 27, 1994: Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease which in any way conflicts with or is additional to the provisions of the Master Lease.

All parties agree that the rent percentages to the CITY for this sublease are as follows:

Australia Challenge for the America's Cup
\$13,750 per month

City's Participation
\$12,550 @ 8%
\$1,200 @ 22.5%

In the event sublessor receives additional revenue not defined above, City shall be entitled to the appropriate percentage rates.

In addition, within thirty (30) days following the termination of the sublease, the property shall be completely restored to its original condition unless otherwise approved in writing by the City of San Diego.

THE CITY OF SAN DIEGO

Dated 09-14-94

By Joe E. Vicken
Supervising Property Agent
for the City Manager

APPROVED AS TO FORM:

JOHN W. WITT, City Attorney

Dated 9/26/94

By [Signature]
Deputy

PACIFIC RIM MARINE ENTERPRISES

Dated 10/14/94

By [Signature]

KNIGHT & CARVER YACHTCENTER

Dated 10/10/94

By [Signature]

APR 27 '94 17:13 DYSART & DUBICK

P.F.2/15-15
APR 26 '94 28:17AM

SUBLEASE

This SUBLEASE ("Sublease") is made as of April 22, 1994 between Knight & Carver Yachtcenter, Inc. ("Yachtcenter"), by and through its agent Pacific Rim Marine Enterprises, Inc., ("PRME"), and Australian Challenge for the America's Cup ("Subtenant"), who agree as follows:

1. FACT RECITALS.

This sublease is made with reference to the following facts:

(a) Master Lease.

On or about March 5, 1979, THE CITY OF SAN DIEGO a municipal corporation ("City"), as landlord, and Mission Bay Marina Associates, a limited partnership of which Coastal Marine Management, (DBA: Mission Bay Marina Associates), is a general partner, as tenant, signed that certain written Percentage Lease (the "Master Lease"). The Master Lease was approved by the City Council of City by resolution number 222988 dated March 5, 1979. The Master Lease provided, among other things, that Marina could construct upon the property that was the subject of the Master Lease, certain improvements and then sublease space in those improvements to subtenants. Subtenant hereby acknowledges Subtenant's receipt of a true copy of the Master Lease. Thereafter, on or about August 15, 1990, with the consent of the

APR 27 '94 17:14 DYSAR & DUBICK

APR 26 '94 25:17 P.P. 3/15 15

*
City, the Master Lease was assigned by Knight & Carver Yachtcenter Inc. as successor of Mission Bay Marina, to Pacific Rim Marina Enterprises (California) Inc., a California corporation ("Pacific Rim"). Under the terms of transfer agreement, Pacific Rim became tenant of City and Yachtcenter became subtenant of Pacific Rim, pursuant to a Standard Industrial Lease-Net, dated July 21, 1990, including that certain addendum thereto. (the "Prime Sublease") This sublease shall terminate upon the first to occur of the following:

1. The end of the term of this Sublease.
2. Upon termination for any reason of the Master Lease between City and Pacific Rim, providing that Pacific Rim shall not voluntarily surrender the Master Lease, at anytime during term of sublease.
3. Upon termination for any reason of the Prime sublease between Pacific Rim and Yachtcenter, providing that Yachtcenter shall not voluntarily surrender the Prime sublease at any time during term of Sublease.
4. Upon any default by Subtenant remaining uncured for 20 days after written notice thereof or upon any violation of conditions or provisions as provided in the terms of this sublease.

(b) Sublease.

The subject of this Sublease is a certain space at 1500 Quivira Way designated as the "Premises", which space is delineated on the plan attached hereto, marked Exhibit "A" and incorporated herein by this reference.

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APR - APR 27 '94 17:14 DYSART & DUBICK

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(c) Intent of the Parties.

It is the intention of the parties to set forth in this Sublease their agreement concerning Subtenant's use and occupancy of the space delineated in Exhibit "A" and attached hereto.

2. SUBLEASE SUBJECT TO MASTER LEASE.

A. This Sublease is subject to the provisions of the Master Lease and Prime Sublease. Yachtcenter represents and warrants that this Sublease does not violate any provision of the Master Lease or Prime Sublease, and that no provisions of this Sublease are in conflict with any provisions of the Master Lease or Prime Sublease. If the Master Lease or Prime Sublease terminates and this Sublease terminates as a result, the parties shall be released from all liabilities and obligations under this Sublease. This Sublease is subject and subordinate to the Master Lease and the Prime Sublease.

B. Sublease shall be subject to approval by The City of San Diego, landlord. Without such approval, the parties shall be released from all liabilities and obligations under this sublease.

3. SUBLEASE OF THE PREMISES.

Yachtcenter Sublets to Subtenant and Subtenant sublets from Yachtcenter that certain space at Mission Bay Marina, which space consists of land and water and comprises approximately 19,200 square feet of land space, and approximately 300 linear feet of dock space, which space is delineated on the plan attached hereto as Exhibit "A". The space shall hereinafter be called the

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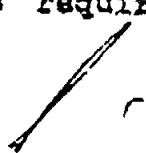
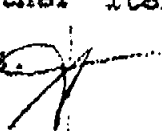


"Premises".

It is understood that Premises shall be used for the sole purpose of an America's Cup Sailing Challenge and subtenant's operations will in no way conflict, interfere or compete with operations by Yachtcenter or Pacific Rim.

4. PREPARATION AND ACCEPTANCE OF THE PREMISES.

Subtenant shall have access to the Premises and may commence Subtenant's improvement and fixturing process on October 1, 1994. Subtenant shall indemnify and hold harmless Yachtcenter, City, Pacific Rim and their principals from any and all claims, demands or liability, arising out of, or in any way connected with Subtenant's improvement and fixturing process. Subtenant's taking possession of the Premises on the commencement date of the term of this Sublease shall constitute Subtenant's acknowledgement that the premises are in good condition, unless the Subtenant shall have presented to Yachtcenter in writing prior to taking possession of the Premises a list of defects which such defects Yachtcenter shall make good as soon as reasonably practical thereafter. Immediately after the commencement date of the term of this Sublease, Subtenant may, at Subtenant's sole cost and expense, move into the Premises all the furnishings and other items required by Subtenant to conduct Subtenant's business.



APR 27 '94 17:13 DYSART 2 DUBICK

APR 28 '94 08:17AM P.P. 8/15/15

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5. TERM: COMMENCEMENT DATE.(a) Term.

The term of this Sublease shall be for the period of October 1, 1994 through May 31, 1995. Subtenant's rent and other obligations are due and payable for the entire period, whether the Premises are occupied or not. - 8 mos.

6. RENT.(a) Lease Amount

Total value of lease as contracted is \$US 110,000. (circled)

(A breakdown for percent rent purposes).

(b) Payment Agreement

Subtenant shall pay to Yachtcenter the agreed upon monthly rent of \$13,750.00. Rent shall be due and payable on the first day of each month. Occupancy beyond Term shall be paid on a per diem basis. The per diem basis will be derived from the monthly rent of \$13,750.00.

(c) Upon execution of the Sublease, the Subtenant will be responsible for furnishing a \$25,000 security deposit plus the first month's rent. This deposit is fully refundable in the event that the approval of the City of San Diego as required by clause 2B is not secured within 60 days of the date of this Agreement. The deposit is not refundable if the Subtenant defaults on its obligations under this agreement and such default is not corrected within 20 days of Yachtcenter notifying the Subtenant of the default in writing. Yachtcenter shall notify the Subtenant of any default of any of the terms and conditions of this Sublease and in

APR 27 '94 17:16 DYSART DUBICK

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the event Subtenant has not cured such default within twenty (20) days, or in the event such default requires more than twenty (20) days to cure, and Subtenant has failed to undertake reasonable steps to effect cure, only then in such events may Yachtcenter apply all or portion of said security deposit as may be necessary to cure said default. In the event Yachtcenter elects to use all or part of said security deposit for purposes of curing an event of default, Yachtcenter shall notify subtenant in writing immediately, and Subtenant shall replenish such deposit to the full \$25,000. The security deposit will be subject to refund upon inspection and approval, by Yachtcenter, of premises after Subtenant is completely moved out.

7. IMPROVEMENTS.

(a) Subtenant shall construct on the Premises no improvements or signage without the prior written consent of Yachtcenter and the City of San Diego provided that Yachtcenter shall obtain the consent of City and any required consent of Pacific Rim to any such improvements or signage contemplated by or constructed pursuant to a construction agreement acceptable to all parties.

(b) Subtenant shall be responsible for relocating and/or reconstructing Marina lockers to a new location, to be determined by Yachtcenter.

(c) Yachtcenter shall be responsible for the following work prior to October 1, 1994:

(1) Relocating and restoring KCYSC trailer.

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- (2) Relocating and restoring vessels currently residing in leased water space area.
- (3) Provide bathroom and laundry facility for marina tenants.
- (4) Giving Subtenant assistance in obtaining required permits.
- (5) Provide a site free of physical encumbrances and ready to occupy.

8. REPAIRS AND MAINTENANCE.

(a) Yachtcenter's Responsibility.

Yachtcenter shall not be required to maintain or make any repairs or replacements of any nature or description whatsoever to the Premises. Subtenant hereby expressly waives the right to make repairs at the expense of Yachtcenter as provided for in any statute or law in effect at the time of the execution of this Sublease, or in any other statute or law which may hereafter be enacted.

(b) Subtenant's Duty to Maintain the Premises.

Subtenant shall at Subtenant's sole cost and expense, maintain the Premises in good condition and repair and in accordance with all applicable laws. Upon vacating the Premises, Subtenant shall remove all of Subtenant's personal property not permanently affixed to the premises and at their cost, restore any damage to the premises caused by such removal and redeliver the space in a "broom clean" condition that is acceptable by Yachtcenter. The leased area as described in exhibit-A, will be

APR 28 '94 22:21 DYSART & DUBICK

P.9/15

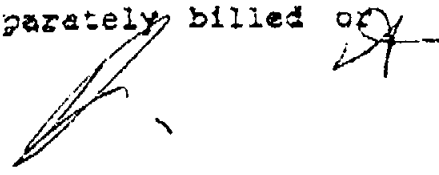

returned to landlord in a similar or better condition than when it was delivered. This will determine the refund of the \$25,000 security deposit.

9. USE OF THE PREMISES.

Subtenant shall operate an America's Cup Sailing Challenge within the Premises in such a manner to conform to and comply with each, every, and all of the ordinances or regulations of the City, the County of San Diego, the State of California, and the United States of America that are now in force or which may hereinafter be enacted with reference to the use or contemplated use of the Premises. Subtenant's use of the Premises shall at all times be consistent with the uses permitted under the Master Lease and Prime Sublease, and consent to this sublease as granted by the City of San Diego. The intended use of the Premises is compatible with the stated restrictions so far as Yachtcenter is currently aware. Subtenant acknowledges and agrees that the premises are located on tidelands in dedicated Mission Bay Park, a public park, and that all use of the premises shall be in compliance with the legal restrictions applicable to tidelands and public parks. Subtenant shall not compete directly with Yachtcenter in the normal repair, maintenance, and commissioning of boats.

10. UTILITIES.

Subtenant shall pay, before delinquency, any and all charges for electricity which are separately metered to the Premises. Subtenant shall reimburse Yachtcenter it's share of charges for any utilities which are not separately billed or



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metered to the Premises, but which are billed or metered for the entire area, including, but not limited to, water, gas and heat. Yachtcenter shall pay such utilities prior to delinquency.

11. TAXES AND ASSESSMENTS.

(a) Personal Property Tax.

If applicable, Subtenant shall pay, prior to delinquency, all taxes, assessments, license fees, and other charges that are levied and assessed against Subtenant's personal property located in, on, or about the Premises, which taxes become payable during the term of this Sublease. Upon written demand by Yachtcenter, Subtenant shall furnish Yachtcenter and City with satisfactory evidence of such payments. If any taxes on Subtenant's personal property are levied against Yachtcenter or Yachtcenter's property and the assessed value of the Building is increased by the inclusion of a value placed upon Subtenant's personal property, and if Yachtcenter pays the taxes or the increased assessment, Subtenant, on demand, shall immediately reimburse Yachtcenter for the sum of such taxes and increased assessments levied against Yachtcenter. Yachtcenter shall have the right to pay such taxes regardless of the validity of the levy. Notwithstanding the foregoing, however, it is understood and agreed that for all purposes of this Section 11 (a) that "Subtenants personal property" shall in no case include any property, work or improvements constructed or installed pursuant to this Agreement, except as taxed during the use by Subtenant.

12. INDEMNITY AND INSURANCE

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(a) Indemnity.

Subtenant shall assume the defense of, indemnify and save harmless Yachtcenter, City and Pacific Rim, from all claims, demands, expenses, and liability of every nature, directly or indirectly arising from or alleged to have arisen from the operations conducted on the Premises or from any act or omission of Subtenant, his agents and invitees, except acts committed by Yachtcenter, its agents employees or invitees.

(b) General Public Liability Insurance.

Subtenant shall be insured by an insurance carrier acceptable to Yachtcenter and City, against loss from public liability arising from the use or condition of or operations conducted on the Premises, along with products liability and completed operations insurance. Minimum coverage shall be One Million Dollars (\$1,000,000.00). A copy of the policy of insurance shall be filed with Yachtcenter and City and shall name Yachtcenter, City and Pacific Rim as additional insured. Said policy shall specify that the policy may not be terminated, canceled or substantially altered or altered in a form which would negatively affect Yachtcenter, City and Pacific Rim without prior written notice to Yachtcenter, City, and Pacific Rim by the insurance company. The policy or policies shall be issued by an insurance company or companies licensed to do business in the State of California. Prior to the commencement date of this Sublease, Subtenant shall deliver to Yachtcenter a certificate or certificates of insurance evidencing the existence of such policy.

*
or policies of insurance.

(c) Fire and Extended Coverage Insurance.

Subtenant shall, at its sole cost and expense, during the term of this Sublease, pay for and maintain a policy or policies of fire, extended coverage, and vandalism insurance on the Premises. Such policy or policies shall be issued by an insurance company or companies licensed to do business in the State of California.

(d) Other Insurance.

Subtenant shall, at its sole cost and expense, during the term of this Sublease, pay for and maintain any other necessary policy or policies of insurance, including, but not limited to Worker's Compensation, covering and insuring against risks which reasonably may be anticipated in a business such as the one in which Subtenant is engaged.

13. NO ASSIGNMENT OR SUBLETTING.

Subtenant shall not assign this Sublease or sublet the Premises or any part thereof without the prior written consent of Yachtcenter, City and Pacific Rim. An assignment by operation of law shall automatically terminate this Sublease.

14. ENVIRONMENTAL STANDARDS.

Subtenant shall be responsible for and comply with all environmental rules and regulations as set forth by local, State and Federal agencies and organizations applicable to Subtenant's use of the Premises. Subtenant shall indemnify Knight & Carver Yachtcenter Inc. and Pacific Rim Marine Enterprises (California)

*
Inc. against any and all violations in regards to same, or costs incurred by reason of violations due to Subtenants use, or as a result of, Subtenants use of property.

15. PARKING.

(a) Subtenant, all of Subtenant's employees and Subtenants guests shall park on the Subtenant's leased area, dirt parking lot south of the Yachtcenter, or on the street outside the leased area.

16. RIGHT TO INSPECT FACILITY.

Yachtcenter reserves the right to inspect facility, throughout the term of this sublease, with 24 hour notice given to Subtenant. In case of emergency, Yachtcenter reserves the right to enter property immediately.

17. EFFECTIVENESS OF PROVISIONS OF MASTER LEASE AND PRIME SUBLEASE.

Subtenant shall conduct itself at all times so as not to violate any of the terms or provisions of the Master Lease or Prime Sublease as applicable to the use of the premises and such terms and provisions shall control as to Subtenant's use and shall remain in full force and effect for the entire term of this Sublease.

18. QUIET ENJOYMENT.

Notwithstanding any other provisions hereof, Yachtcenter covenants that Subtenant's use and enjoyment will not be disturbed during the term of this sublease.

19. AMENDMENT.

This sublease may be amended only by a writing signed by both parties.

20. NOTICES.

Any notice from one party to another shall be delivered either personally or via United States mail, postage fully prepaid, addressed to the parties as follows:

To PRME:

Mr. Roy Takei
c/o Mission Bay Marina
1500 Quivira Way
San Diego, CA 92109

To Yachtcenter:

Knight & Carver Yachtcenter, Inc.
Merl P. Knight
1500 Quivira Way
San Diego, CA 92109

To Subtenant:

Mr. Syd Fischer
Australian Challenge for the
America's Cup
99 Elizabeth Street, Sydney

Any notice shall be deemed delivered at the time of personal service or forty-eight (48) hours after the time of deposit in the United States mail, as the case may be. In the event that either party changes its address, the change of address shall be communicated to the other party in the manner set forth in this numbered paragraph.

21. ATTORNEY'S FEES.

Should it become necessary for Yachtcenter and City to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this sublease, Subtenant shall pay all legal costs in connection therewith, including a reasonable sum as attorney's fees.

as attorney's fee's.

22. HEADINGS AND CAPTIONS.

The headings and captions at the beginning of various paragraphs and subparagraphs of this Sublease shall not be construed to be a substantive part of this Sublease and shall not in any way define, limit, expand, or affect any provision of this Sublease.

23. COUNTERPARTS.

This Sublease may be signed in as many as three counterparts, each of which shall constitute an original, but all of which together shall be one (1) and the same document.

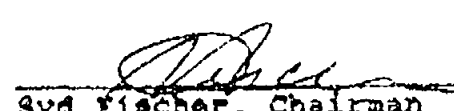
KNIGHT & CARVER YACHTCENTER, INC.
by PACIFIC RIM MARINE ENTERPRISES (CALIFORNIA), INC.
its agent:

By: 

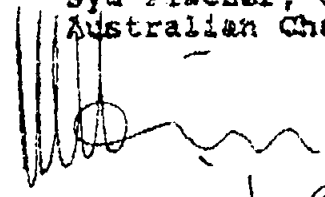
Roy A. Takel
President & C.E.O
Pacific Rim Marine Enterprises, Inc.

SUBTENANT:

AUSTRALIAN CHALLENGE FOR THE AMERICA'S CUP, INC

By: 

Syd Fischer, Chairman
Australian Challenge for the America's Cup

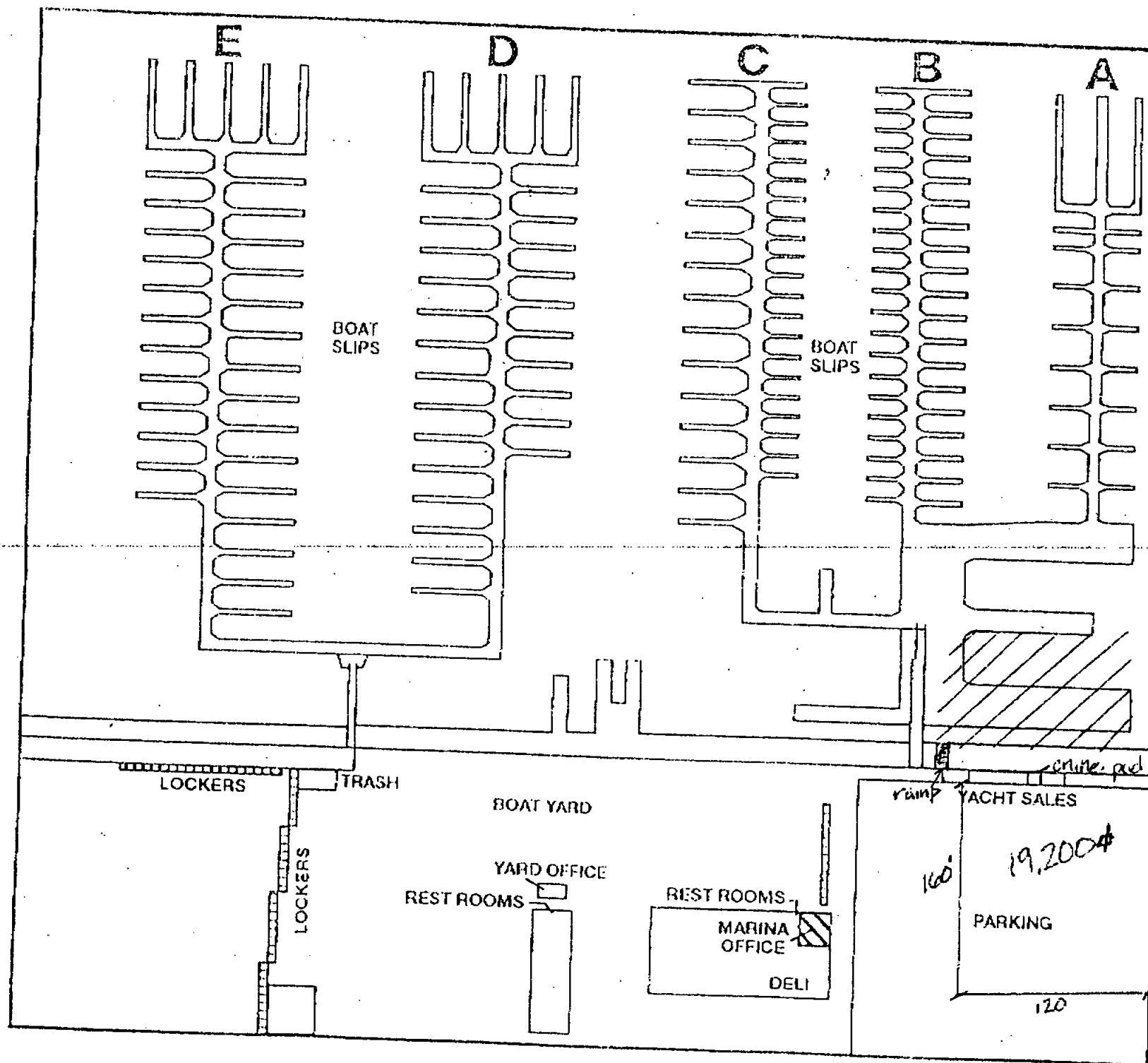

witness

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Syd

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CONSENT TO SUBLEASE AGREEMENT

File

The City of San Diego (CITY), as LESSOR under that certain Lease Agreement (Master Lease) entered into with

Pacific Rim Marine Enterprises

(LESSEE) and filed in the Office of the City Clerk as Document 766042, hereby consents to that certain Sublease Agreement between the Knight & Carver Yachtcenter (SUBLESSOR) on behalf of the above LESSEE and

One Australia

(SUBLESSEE) dated April 27, 1994. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease which in any way conflicts with or is additional to the provisions of the Master Lease.

All parties agree that the rent percentages to the CITY for this sublease are as follows:

One Australia
\$30,625 per month

City's Participation
\$29,425 @ 8%
\$1,200 @ 22.5%

In the event sublessor receives additional revenue not defined above, City shall be entitled to the appropriate percentage rates.

In addition, within thirty (30) days following the termination of the sublease, the property shall be completely restored to its original condition unless otherwise approved in writing by the City of San Diego.

THE CITY OF SAN DIEGO

Dated

09/14/94

By

Jane E. Vick
Supervising Property Agent
for the City Manager

APPROVED AS TO FORM:

JOHN W. WITT, City Attorney

Dated

9/26/94

By

W. Witt
Deputy

PACIFIC RIM MARINE ENTERPRISES

Dated

10/14/94

By

James P.
KNIGHT & CARVER YACHTCENTER

Dated

10/10/94

By

Neri Kuf



SUBLEASE

This SUBLEASE ("Sublease") is made as of January 14, 1994 between Knight & Carver Yachtcenter, Inc., ("Yachtcenter"), by and through its agent Pacific Rim Marine Enterprises, Inc., ("PRME"), and One Australia ("Subtenant"), who agree as follows:

1. FACT RECITALS.

This Sublease is made with reference to the following facts:

(a) Master Lease.

On or about March 5, 1979, THE CITY OF SAN DIEGO a municipal corporation ("City"), as landlord, and Mission Bay Marina Associates, a limited partnership of which Coastal Marine Management, (DBA: Mission Bay Marina Associates), is a general partner, as tenant, signed that certain written Percentage Lease (the "Master Lease"). The Master Lease was approved by the City Council of City by resolution number 222988 dated March 5, 1979. The Master Lease provided, among other things, that Marina could construct upon the property that was the subject of the Master Lease, certain improvements and then sublease space in those improvements to subtenants. Subtenant hereby acknowledges Subtenant's receipt of a true copy of the Master Lease. Thereafter, on or about August 15, 1990, with the consent of the City, the Master Lease was assigned by Knight & Carver Yachtcenter

Inc. as successor of Mission Bay Marina, to Pacific Rim Marina Enterprises (California) Inc., a California corporation ("Pacific Rim"). Under the terms of transfer agreement, Pacific Rim became tenant of City and Yachtcenter became subtenant of Pacific Rim, pursuant to a Standard Industrial Lease -Net, dated July 21, 1990, including that certain addendum thereto. (the "Prime Sublease") This sublease shall terminate upon the first to occur of the following:

1. The end of the term of this Sublease.
2. Upon termination for any reason of the Master Lease between City and Pacific Rim, providing that Pacific Rim shall not voluntarily surrender the Master Lease, at anytime during term of Sublease.
3. Upon termination for any reason of the Prime Sublease between Pacific Rim and Yachtcenter, providing that Yachtcenter shall not voluntarily surrender the Prime Sublease at any time during term of Sublease.
4. Upon any default by Subtenant remaining uncured for 30 days after written notice thereof.
5. Upon any violation of conditions or provisions as provided in the terms of this sublease remaining uncured for 30 days after written notice thereof.

(b) Sublease.

The subject of this Sublease is a certain space at 1500 Quivira Way designated as the "Premises", which space is delineated on the plan attached hereto, marked Exhibit "A" and

in letter of 9/15/93, marked Exhibit "B", and incorporated herein by this reference.

(c) Intent of the Parties.

It is the intention of the parties to set forth in this Sublease their agreement concerning Subtenant's use and occupancy of the space delineated in Exhibit "A" and attached hereto.

→ 2. SUBLEASE SUBJECT TO MASTER LEASE.

A. This Sublease is subject to the provisions of the Master Lease and Prime Sublease. Yachtcenter represents and warrants that this Sublease does not violate any provision of the Master Lease or Prime Sublease, and that no provisions of this Sublease are in conflict with any provisions of the Master Lease or Prime Sublease. If the Master Lease or Prime Sublease terminates and this Sublease terminates as a result, the parties shall be released from all liabilities and obligations under this Sublease. This Sublease is subject and subordinate to the Master Lease and the Prime Sublease.

B. Sublease shall be subject to approval by The City of San Diego, landlord. Without such approval, the parties shall be released from all liabilities and obligations under this sublease.

3. SUBLEASE OF THE PREMISES.

Yachtcenter Sublets to Subtenant and Subtenant sublets from Yachtcenter that certain space at Mission Bay Marina, which space consists of land and water and comprises approximately 13,000 square feet of land space, and approximately 300 linear feet of

dock space, which space is delineated on the plan attached hereto as Exhibit "A", : The space shall hereinafter be called the "Premises".

It is understood that Premises shall be used for the sole purpose of an America's Cup Sailing Challenge and subtenant's operations will in no way conflict, interfere or compete with operations by Yachtcenter or Pacific Rim.

4. PREPARATION AND ACCEPTANCE OF THE PREMISES.

Subtenant shall have access to the Premises and may commence Subtenant's improvement and fixturing process on October 1, 1994. Subtenant shall indemnify and hold harmless Yachtcenter, City, Pacific Rim and their principals from any and all claims, demands or liability, arising out of, or in any way connected with Subtenant's improvement and fixturing process. Subtenant's taking possession of the Premises on the commencement date of the term of this Sublease shall constitute Subtenant's acknowledgement that the premises are in good condition, unless the Subtenant shall have presented to Yachtcenter in writing prior to taking possession of the Premises a list of defects which such defects Yachtcenter shall make good as soon as reasonably practical thereafter. Immediately after the commencement date of the term of this Sublease, Subtenant may, at Subtenant's sole cost and expense, move into the Premises all the furnishings and other items required by Subtenant to conduct Subtenant's business.

5. TERM: COMMENCEMENT DATE.

(a) Term.

The term of this Sublease shall be for the period of October 1, 1994 through May 31, 1995. Subtenant's rent and other obligations are due and payable for the entire period, whether the Premises are occupied or not.

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mos.

6. RENT.

(a) Lease Amount

Total value of lease as contracted is \$US 220,000.

(A breakdown for percent rent purposes).

(b) Payment Agreement

Subtenant shall pay to Yachtcenter the agreed upon monthly rent of \$27,500 or \$30,625 should the option be accepted. Rent shall be due and payable on the first day of each month. Occupancy beyond Term shall be paid on a per diem basis. The per diem basis will be derived from the monthly rent of \$27,500 or 30,625 should the option be accepted.

(c) Upon execution of the Sublease, the Subtenant will be responsible for furnishing a \$50,000 security deposit plus the first month's rent. This deposit is fully refundable in the event that the approval of the City of San Diego as required by clause 2B is not secured within 60 days of the date of this Agreement. The deposit is not refundable if the Subtenant defaults on its obligations under this agreement and such default is not corrected within 10 days of Yachtcenter notifying the Subtenant of the

default in writing. The security deposit will be subject to refund upon inspection and approval, by Yachtcenter, of premises after Subtenant is completely moved out.

7. IMPROVEMENTS.

(a) Subtenant shall construct on the Premises no improvements or signage without the prior written consent of Yachtcenter and the City of San Diego provided that Yachtcenter shall obtain the consent of City and any required consent of Pacific Rim to any such improvements or signage contemplated by or constructed pursuant to a construction agreement acceptable to all parties.

(b) Subtenant shall be responsible for relocating and/or reconstructing Marina lockers to a new location, to be determined by Yachtcenter.

(c) Yachtcenter shall be responsible for the following work prior to October 1, 1994:

- (1) Relocating and restoring the Marina office.
- (2) Relocating and restoring the Mechanics shop.
- (3) Relocating bathroom and laundry facility.
- (4) Ensuring visual security from the upstairs canvas shop into Premises.
- (5) Giving Subtenant assistance in obtaining required permits.
- (6) Providing alternative access to the canvas shop.
- (7) Providing alternative access to the eastern portion of the marina.

8. REPAIRS AND MAINTENANCE.

(a) Yachtcenter's Responsibility.

Yachtcenter shall not be required to maintain or make any repairs or replacements of any nature or description whatsoever to the Premises. Subtenant hereby expressly waives the right to make repairs at the expense of Yachtcenter as provided for in any statute or law in effect at the time of the execution of this Sublease, or in any other statute or law which may hereafter be enacted.

(b) Subtenant's Duty to Maintain the Premises.

Subtenant shall at Subtenant's sole cost and expense, maintain the Premises in good condition and repair and in accordance with all applicable laws. Upon vacating the Premises, Subtenant shall remove all of Subtenants personal property not permanently affixed to the premises and at their cost, restore any damage to the premises caused by such removal and redeliver the space in a "broom clean" condition that is acceptable by Yachtcenter. The above will determine the refund of the \$50,000 security deposit.

9. USE OF THE PREMISES.

Subtenant shall operate an America's Cup Sailing Challenge within the Premises in such a manner to conform to and comply with each, every, and all of the ordinances or regulations of the City, the County of San Diego, the State of California, and the United States of America that are now in force or which may hereinafter be enacted with reference to the use or contemplated

use of the Premises. Subtenant's use of the Premises shall at all times be consistent with the uses permitted under the Master Lease and Prime Sublease. The intended use of the Premises is compatible with the stated restrictions so far as Yachtcenter is currently aware. Subtenant acknowledges and agrees that the premises are located on tidelands in dedicated Mission Bay Park, a public park, and that all use of the premises shall be in compliance with the legal restrictions applicable to tidelands and public parks. Subtenant shall not compete directly with Yachtcenter in the normal repair, maintenance, and commissioning of boats.

10. UTILITIES.

Subtenant shall pay, before delinquency, any and all charges for electricity which are separately metered to the Premises. Subtenant shall reimburse Yachtcenter it's share of charges for any utilities which are not separately billed or metered to the Premises, but which are billed or metered for the entire area, including, but not limited to, water, gas and heat. Yachtcenter shall pay such utilities prior to delinquency.

11. TAXES AND ASSESSMENTS.

(a) Personal Property Tax.

If applicable, Subtenant shall pay, prior to delinquency, all taxes, assessments, license fees, and other charges that are levied and assessed against Subtenant's personal property located in, on, or about the Premises, which taxes become payable during the term of this Sublease. Upon written demand by Yachtcenter, Subtenant shall furnish Yachtcenter and City with

satisfactory evidence of such payments. If any taxes on Subtenant's personal property are levied against Yachtcenter or Yachtcenter's property and the assessed value of the Building is increased by the inclusion of a value placed upon Subtenant's personal property, and if Yachtcenter pays the taxes or the increased assessment, Subtenant, on demand, shall immediately reimburse Yachtcenter for the sum of such taxes and increased assessments levied against Yachtcenter. Yachtcenter shall have the right to pay such taxes regardless of the validity of the levy. Notwithstanding the foregoing, however, it is understood and agreed that for all purposes of this Section 11 (a) that "Subtenants personal property" shall in no case include any property, work or improvements constructed or installed pursuant to this Agreement, except as taxed during the use by Subtenant.

→ 12. INDEMNITY AND INSURANCE.

(a) Indemnity.

Subtenant shall assume the defense of, indemnify and save harmless Yachtcenter, City and Pacific Rim, from all claims, demands, expenses, and liability of every nature, directly or indirectly arising from or alleged to have arisen from the operations conducted on the Premises or from any act or omission of Subtenant, his agents and invitees.

(b) General Public Liability Insurance.

Subtenant shall be insured by an insurance carrier acceptable to Yachtcenter and City, against loss from public liability arising from the use or condition of or operations