

CITY OF SAN DIEGO CONSENT TO SUBLEASE AGREEMENT

THIS CITY OF SAN DIEGO CONSENT TO SUBLEASE AGREEMENT ("Consent") is made by THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), to be effective as of August 15, 2011 (the "Effective Date"), as follows:

CITY, as lessor, and Driscoll Mission Bay, LLC, a California Limited Liability Company ("LESSEE"), as lessee, are parties to a certain percentage lease (the "Master Lease") as amended and assigned and set forth in documents filed in the Office of the San Diego City Clerk as Document Nos. 766042, and RR-265857, and relating to certain CITY-owned real property (the "Premises") located in Mission Bay Park in San Diego, California.

LESSEE, and Heritage Yacht Sales, Inc., a California Corporation, ("Sublessee") have entered into a sublease of a portion of the Premises dated July 1, 2011 ("Sublease").

LESSEE has obtained a loan made through Peninsula Bank that is secured by the leasehold for the Premises, for which US Bank is the successor-in-interest lender, and CITY has provided written notice of the Sublease to US Bank as required by Section IV.A.2 of the Master Lease.

CITY hereby consents to Sublease, provided all of the following conditions are and remain true throughout the term of the Sublease:

- (a) The Sublease shall remain subject and subordinate to the Master Lease, as may be amended from time to time, and this Consent.
- (b) CITY is not bound by any term or condition in the Sublease which in any way conflicts with CITY'S rights or would otherwise result in increasing CITY'S obligations under the Master Lease.
- (c) As stated in Article 13 of the Sublease, Sublessee shall assume the defense of, indemnify and hold harmless CITY, its elected officials, officers, representatives, agents and employees from all claims asserted or liability established for damages to or injuries to any person or property, including injury to Sublessees' employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the portion of the Premises that are the subject of the Sublease or the work to be performed under the Sublease, and all expenses of investigation and defense. However, Sublessees' duty to indemnify and hold harmless shall not include any claims or liability arising from the established gross negligence or sole willful misconduct of CITY, its agents, officers or employees.
- (d) LESSEE and Sublessee shall not amend the Sublease to alter any provisions of Article 14 (Insurance) and Article 18 (Assignment or Subletting) of the Sublease in

any way that reduces the insurance of CITY or permits further assignment or subletting by Sublessee without CITY's prior written consent.

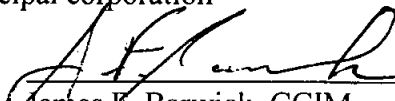
If at any time the foregoing provisions are not true, this Consent shall automatically and retroactively become null and void as of the Effective Date.

This Consent does not amend or otherwise modify the Master Lease.

THE CITY OF SAN DIEGO, a California
municipal corporation

Date: 8/10/11

BY:


James F. Barwick, CCIM
Real Estate Assets Director

Date: 8/15/2011

APPROVED AS TO FORM AND LEGALITY:

JAN I. GOLDSMITH, City Attorney

BY:


Deputy City Attorney

SUBLEASE

between

DRISCOLL MISSION BAY LLC,
a California Limited Liability Company,

as Landlord,

and

Heritage Yacht Sales, Inc.,
a California Corporation,

as Tenant,

for a portion of
MISSION BAY MARINA
San Diego, California

dated July 1, 2011

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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 1, 2011, is entered into by and between DRISCOLL MISSION BAY LLC, a California Limited Liability Company, ("**Sublandlord**") and Heritage Yacht Sales, Inc., a California 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 July 1, 2011 (the "**Commencement Date**") and shall expire at midnight one (1) year thereafter, on June 30, 2012 (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 1-12	\$165.00 per month
Months 13-24	\$181.50 per month
Months 25-36	\$199.65 per month
Months 37-48	\$219.62 per month
Months 49-60	\$241.58 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 Hundred Sixty-Five Dollars (\$165.00). 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 Yacht 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 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 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 City 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:

Heritage Yacht Sales, Inc.
Attn: Tony Duni
231 Marina Drive
Long Beach, CA 90803

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:

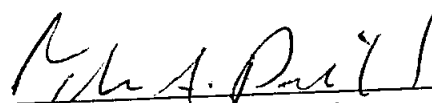
Date of execution:

6/23, 2011

Sublandlord:

DRISCOLL MISSION BAY LLC,
a California Limited Liability Company

By:


Thomas A. Driscoll, a Member

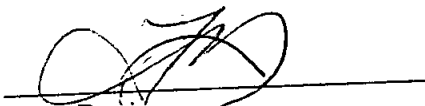
Date of execution:

6.17, 2011

Subtenant:

Heritage Yacht Sales, Inc.
a California Corporation

By:


Tony Duni

Its: President

Exhibit A

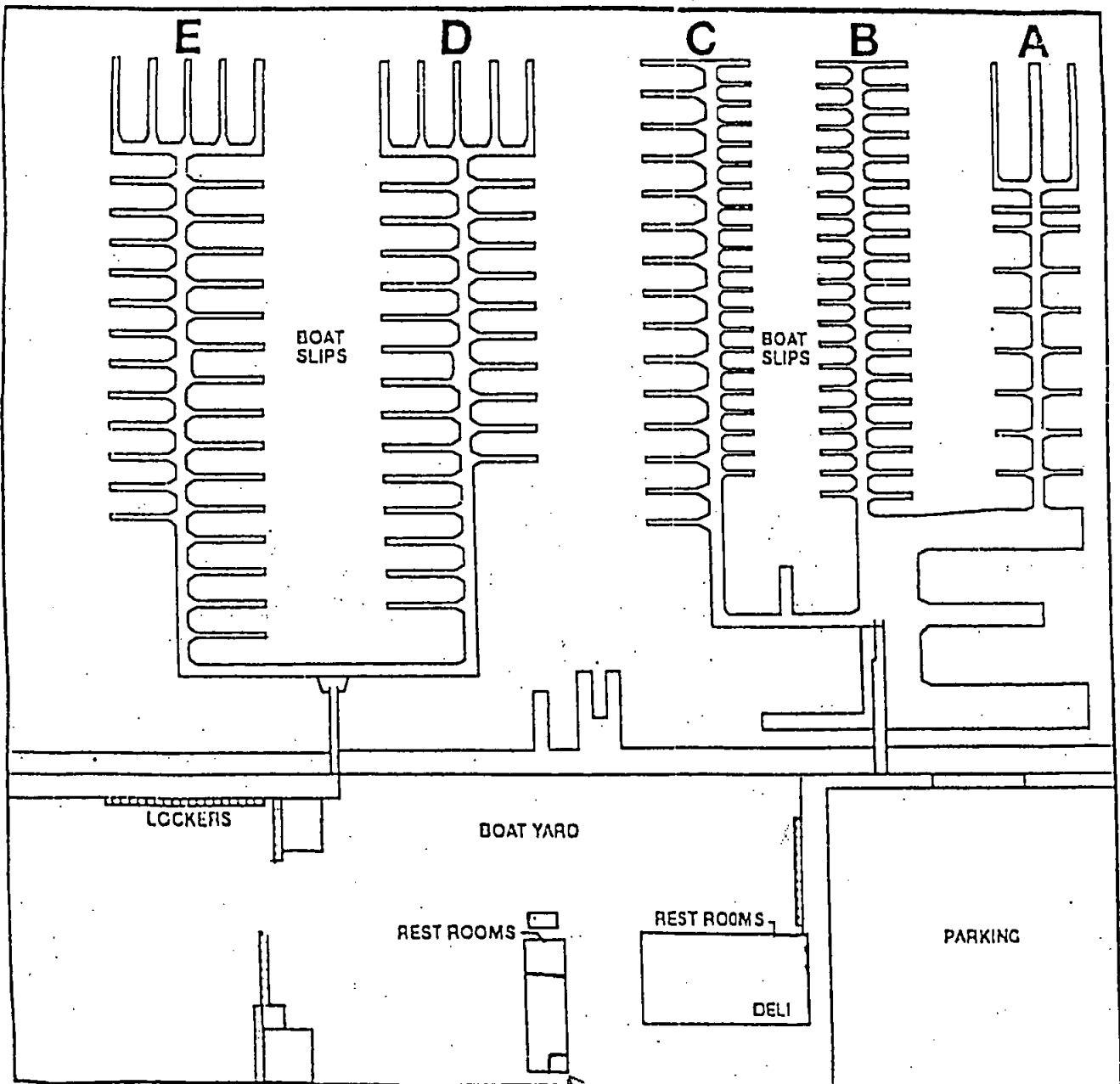
Master Lease

[to be attached]

Exhibit B

Diagram of Subleased Premises and Site Plan

[to be attached]



Heritage Yacht Sales
Upper level
100 Sq. Ft

FIRST ADDENDUM TO SUBLEASE

This First Addendum to Sublease ("**First Addendum**") is made as of July 1, 2011 by and between Driscoll Mission Bay LLC, a California Limited Liability Company ("**Sublandlord**") and Heritage Yacht Sales, Inc. ("**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.

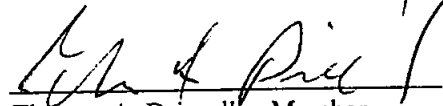
2. Effectiveness of Sublease. Except as and to the extent modified by this First Addendum, all of the provisions of the Sublease shall remain in full force and effect.

Date of execution:

6/23, 2011

Sublandlord:

DRISCOLL MISSION BAY LLC,
a California Limited Liability Company

By: 

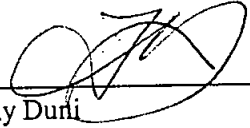
Thomas A. Driscoll, a Member

Date of execution:

6.17, 2011

Subtenant:

Heritage Yacht Sales, Inc.
a California Corporation

By: 

Tony Duni

Its: President