

CONSENT TO SUBLEASE AGREEMENT

The City of San Diego (CITY), as LESSOR under that certain Lease Agreement (Master Lease) entered into with

THE RETIREMENT TRUST FUND OF THE PLUMBING-HEATING AND PIPING
INDUSTRY OF SOUTHERN CALIFORNIA d.b.a. MARINA VILLAGE, Successor in
Interest To HIGH FLIERS, LTD.

(LESSEE) and filed in the Office of the City Clerk as Document #759240 hereby
consents to that certain Sublease Agreement made between the above LESSEE
(SUBLESSOR) and

Ranch Catering, Inc

(SUBLESSEE) dated May 1, 1997. Said Sublease Agreement shall be subordinate to
the Lease Agreement (Master Lease) in all respects. The CITY is merely approving the
SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease
shall control and supersede any inconsistent or contrary provisions in the Sublease
Agreement. The CITY is not bound by any term or condition in the Sublease
Agreement which in any way conflicts with or is additional to the provisions of the
Master Lease.

SUBLESSEE hereby agrees to the conditions set forth on Addendum A, attached
hereto and made a part hereof by this reference.

In addition, this consent is subject to the following conditions:

1. No signs or banners may be installed without prior approval of CITY
Manager.
2. Any and all tenant improvements shall be submitted to City for approval
prior to commencement of work.
3. Any and all catering from the Marina Village Ranch Catering location is
limited to customers in Marina Village and elsewhere on Mission Bay only.

THE CITY OF SAN DIEGO

Dated 11-14-97

By: Jane E. Vickers
JANE E. VICKERS

Deputy Director, Real Estate Assets Department

APPROVED AS TO FORM:

CASEY GWINN ~~JOHN W. WITT~~, City Attorney

Dated 11/5/97

By: [Signature]
William T. Griffith, Deputy City Attorney

12/12/97
Dated 12/1/97

[Signature], SUBLESSOR
By: [Signature], SUBLESSEE
~~SUBLESSOR~~

~~Dated~~ _____

~~By:~~ _____
~~SUBLESSEE~~

h:\wpwdata\consent.arg

ADDENDUM A

MINIMUM STANDARD SUBLEASE CONDITIONS

ASSIGNMENT AND SUBLEASING: Sublessee shall not assign the sublease or sublet the premises or any part thereof without the prior written consent of LESSEE and The City of San Diego, hereinafter, "City". An assignment by operation of law shall automatically terminate this lease.

HOLD HARMLESS: Sublessee shall assume the defense of, indemnify and hold harmless Lessee and City from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the operations conducted on the leased premises, the condition of the premises or from any act or omission of Sublessee, his agents and invitees; provided, however, Sublessee's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the City, its agents, officers, or employees.

INSURANCE: Sublessee shall be insured by an insurance carrier acceptable to the Lessee and City against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be \$1 million COMBINED SINGLE LIMIT LIABILITY. A copy of the policy of insurance shall be filed with City and shall name "The City of San Diego" as an additional insured. Said policy shall specify that the policy may not be terminated, altered or canceled without 30 days prior written notice to City by the insurance company.

LEGAL PROCEEDINGS: Should it become necessary for Lessee or City to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.

SUBORDINATION: This agreement is in effect a sublease of a portion of the premises covered by that certain Lease Agreement dated February 9, 1987, as amended between the sublessor herein and the City of San Diego. This sublease is subject and subordinate to the covenants and conditions of said Lease Agreement notwithstanding any provision hereof contrary to or in conflict with said agreement.

CONSENT TO TRANSFER OF LEASE

The CITY of San Diego (CITY), as Lessor under that certain Lease Agreement (Lease) executed with High Fliers Ltd., a California limited partnership (HIGH FLIERS), filed in the Office of the City Clerk as Document 759240, and assigned by HIGH FLIERS to Marina Village, Ltd., a California limited partnership (LESSEE), in 1983, hereby consents to the transfer of the Lease from LESSEE to the Retirement Fund Trust of the Plumbing-Heating and Piping Industry of Southern California (TRUST), the general partner of LESSEE, upon the dissolution of LESSEE and the distribution of LESSEE's assets to TRUST, on the following conditions:

1. All terms and conditions of the Lease shall remain in effect, and TRUST shall be bound thereby as if it were the original lessee under the Lease.
2. TRUST shall at all times retain a property manager, acceptable to CITY, to manage the day-to-day operation of retail shops and restaurants in the shopping center. TRUST shall at all times retain a competent dockmaster acceptable to the CITY Manager, who shall manage the marina and administer the dockside affairs of boaters within the marina. Acceptance of the property manager and the dockmaster by CITY shall not be unreasonably withheld.
3. TRUST shall have its property manager prepare a management plan for the center's future operation which shall include, but not be limited to projected operating expenses and revenues and which plan shall be satisfactory to the City Manager and updated annually. If the plan is unacceptable to the City Manager, the City Manager shall advise TRUST of the perceived deficiencies of the plan in writing and in specific detail. TRUST's property manager shall continue to submit plans in a timely manner until one is found acceptable to the City Manager, which acceptance shall not be unreasonably withheld. The initial management plan shall be submitted by the property manager to the City Manager for acceptance within four months of the effective date of dissolution of LESSEE.
4. TRUST shall pay any and all outstanding sums due CITY and any additional sums determined due CITY by the City Auditor and Comptroller, under the terms of the lease.
5. TRUST shall expend a sum of at least \$50,000 annually in promotion of operations of the leased premises.

DOCUMENT NO. **769740**FILED **JUN 05 1990**OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

6. This consent to transfer will be effective upon CITY's receipt of documents evidencing completion of dissolution of LESSEE.

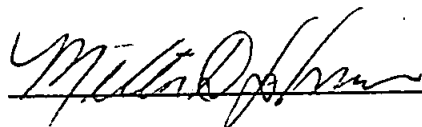
The City of San Diego, a municipal corporation

Dated: 12/27/89

By: 
for Property Director

The Retirement Fund Trust of the
Plumbing-Heating and Piping Industry
of Southern California

Date: 1/4/89

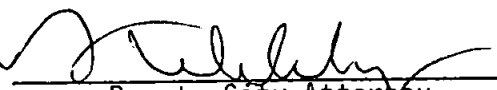
By: 

Date: _____

By: _____

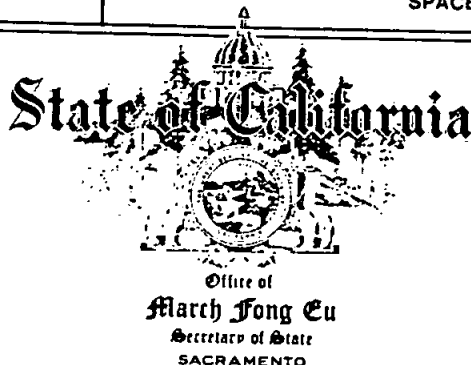
APPROVED AS TO FORM AND LEGALITY THIS 22 DAY of December, 1989

JOHN W. WITT, City Attorney

By: 
Deputy City Attorney

MLS:st(62-6)
12-21-89

SPACE ABOVE THIS LINE FOR RECORDER'S USE



I, MARCH FONG EU, Secretary of State of the State of California,
hereby certify:

That the annexed transcript of 3 page(s) was prepared by
and in this office from the record on file, of which it purports to be a
copy, and that it is full, true and correct.



IN WITNESS WHEREOF, I execute
this certificate and affix the Great
Seal of the State of California this

APR 18 1990

March Fong Eu
Secretary of State



STATE OF CALIFORNIA
CERTIFICATE OF DISSOLUTION—LIMITED PARTNERSHIP—FORM LP-3
IMPORTANT—Read instructions on back before completing this form

This Certificate is presented for filing pursuant to Chapter 3, Article 2, Section 15623, California Corporations Code.

1. SECRETARY OF STATE FILE NO. (ORIGINAL CERTIFICATE)
8429900048

2. SECRETARY OF STATE FILE DATE (ORIGINAL CERTIFICATE)
October 22, 1984

3. NAME OF LIMITED PARTNERSHIP
Marina Village, Ltd.

4. THIS LIMITED PARTNERSHIP IS DISSOLVED EFFECTIVE: MONTH February DAY 20 YEAR 1990

5. THE EVENT(S) CAUSING THE DISSOLUTION OF THIS LIMITED PARTNERSHIP IS (ARE):

- A. ☒ TERM EXPIRED AS STATED IN THE CERTIFICATE OF LIMITED PARTNERSHIP
- B. ☐ WRITTEN CONSENT OF ALL GENERAL PARTNERS AND A MAJORITY IN INTEREST OF THE LIMITED PARTNERS
- C. ☐ THERE ARE NO GENERAL PARTNERS TO CONTINUE THE BUSINESS OF THE LIMITED PARTNERSHIP
- D. ☐ ENTRY OF A DECREE OF JUDICIAL DISSOLUTION UNDER SECTION 15682 OF THE CALIFORNIA CORPORATIONS CODE
- E. ☐ OTHER EVENT(S) CAUSING THE DISSOLUTION OF THIS LIMITED PARTNERSHIP (DESCRIBE BELOW):
(CONTINUE ON SEPARATE PAGE, IF NECESSARY.) NUMBER OF ADDITIONAL PAGES 2

6. IT IS HEREBY DECLARED THAT I AM (WE ARE) THE PERSON(S) WHO EXECUTED THIS CERTIFICATE OF DISSOLUTION WHICH EXECUTION IS MY (OUR) ACT AND DEED. (SEE INSTRUCTIONS)

RETIREMENT FUND TRUST OF THE PLUMBING
HEATING AND PIPING INDUSTRY OF SOUTHERN CALIFORNIA

SIGNATURE OF GENERAL PARTNER DATE 3/20/90
MILTON D. JOHNSON, ADMINISTRATOR

SIGNATURE OF GENERAL PARTNER DATE

SIGNATURE OF GENERAL PARTNER DATE

SIGNATURE OF GENERAL PARTNER DATE

SIGNATURE OF OTHER THAN GENERAL PARTNER

TITLE OR DESIGNATION DATE

B. RETURN ACKNOWLEDGMENT TO:

NAME Michael J. DiBiase, Esq.
ADDRESS HILL, FARRER & BURRILL
CITY 445 S. Figueroa St., 35th Floor
STATE Los Angeles, California 90071
ZIP CODE

7. THIS SPACE FOR FILING OFFICER USE
(DATE OF FILING)

8429900048

FILED
In the office of the Secretary of State
of the State of California

APR 10 1990

March Fong Eu
MARCH FONG EU
SECRETARY OF STATE

SPACE ABOVE THIS LINE FOR RECORDER'S USE

State of California



Office of
March Fong Eu
Secretary of State
SACRAMENTO

I, MARCH FONG EU, Secretary of State of the State of California,
hereby certify:

That the annexed transcript of 1 page(s) was prepared by
and in this office from the record on file, of which it purports to be a
copy, and that it is full, true and correct.



IN WITNESS WHEREOF, I execute
this certificate and affix the Great
Seal of the State of California this

APR 18 1990

March Fong Eu
Secretary of State





State of California

March Fong Eu

Secretary of State

Form LP-4

CERTIFICATE OF CANCELLATION—LIMITED PARTNERSHIP

IMPORTANT—Read instructions on back before completing this form

This Certificate is presented for filing pursuant to Chapter 3, Article 2, Section 15623, California Corporations Code.

1. SECRETARY OF STATE FILE NO.
(ORIGINAL CERTIFICATE—FORM LP-1)

8429900048

2. NAME OF LIMITED PARTNERSHIP

Marina Village, Ltd.

3.

ANY OTHER INFORMATION TO BE INCLUDED IN THE FILING OF THIS CERTIFICATE OF CANCELLATION. (COMMENT IN SPACE PROVIDED OR CONTINUE ON SEPARATE PAGES IF NECESSARY) NUMBER OF PAGES ATTACHED: ☐

4. IT IS HEREBY DECLARED THAT I AM (WE ARE) THE PERSON(S) WHO EXECUTED THIS CERTIFICATE OF CANCELLATION WHICH EXECUTION IS MY (OUR) ACT AND DEED. (SEE INSTRUCTIONS)
RETIREMENT FUND TRUST OF THE PLUMBING
HEATING AND PIPING INDUSTRY OF SOUTHERN CALIFORNIA

Milton D. Johnson 3/10/90
MILTON D. JOHNSON, ADMINISTRATOR

SIGNATURE

DATE

SIGNATURE

DATE

SIGNATURE

DATE

SIGNATURE

DATE

5. RETURN ACKNOWLEDGMENT TO:

NAME ☐ Michael J. DiBiase, Esq.
ADDRESS ☐ HILL, FARRER & BURRILL
CITY ☐ 445 S. Figueroa St., 35th Floor
STATE ☐ Los Angeles, California 90071
ZIP CODE ☐

THIS SPACE FOR FILING OFFICER USE

8429900048

FILED
In the office of the Secretary of State
of the State of California

APR 10 1990

March Fong Eu
MARCH FONG EU
SECRETARY OF STATE



AMENDMENT NO. 1 TO
CONTRIBUTION AGREEMENT

This Amendment is made as of this 5th day of August, 1983, by and between RETIREMENT FUND TRUST OF THE PLUMBING, HEATING AND PIPING INDUSTRY OF SOUTHERN CALIFORNIA (the "Trust") and HIGH FLIERS LTD., a California general partnership ("High Fliers") with reference to the following:

A. On May 24, 1983, the parties executed a "Contribution Agreement" (the "Agreement") providing for the formation of a limited partnership entitled Marina Village, Ltd. (the "Partnership"), to operate a restaurant and specialty shop complex with marina facilities in the City of San Diego, County of San Diego. The Agreement expires August 31, 1983.

B. High Fliers and the Trust have agreed to amend the Agreement in certain particulars more specifically provided herein.

NOW, THEREFORE, the Trust and High Fliers hereby agree as follows:

1. The Closing or the Closing Date as defined in Paragraph 5 of the Agreement shall be on or before October 31, 1983. If the Closing has not occurred by October 31, 1983, the Agreement and this Amendment shall be null and void.

2. A plan of arrangement incorporating the various transactions contemplated for in the Agreement shall be submitted for approval of the Bankruptcy Court within twenty (20) business days from the date of this Amendment, with such plan of arrangement having been approved by the Trust's legal counsel. High Fliers' covenant to submit the plan of arrangement shall act as a condition precedent to the continued effectiveness of the Agreement.

3. The Trust entered into a "Whole Loan Sale Agreement" ("Loan Agreement") on July 26, 1983, whereunder the Trust agreed to purchase the SPNB Obligation and related loan documents, securing and evidencing such loan, on August 2, 1983, for the sum of Four Million Four Hundred Thousand Dollars (\$4,400,000) and said transaction has closed. The parties agree as follows with respect to the SPNB Obligation:

ORIGINAL

(a) Provided that the Closing occurs on or before October 31, 1983, the Trust hereby agrees to allow High Fliers to discharge and satisfy the SPNB Obligation in full concurrently with the Closing by payment of the sum of Four Million Four Hundred Thousand Dollars (\$4,400,000), plus interest as hereinafter provided, and all collateral, security interests and guarantees related to the SPNB Obligation shall thereupon be immediately released by the Trust.

(b) Provided that the Closing occurs on or before October 31, 1983, the Trust agrees that, notwithstanding the contract rate under the SPNB Obligation, interest shall accrue to the Trust on the SPNB Obligation on the amount of the Trust's purchase price, namely \$4,400,000, at a rate of twelve percent (12%) per annum from August 2, 1983, to the date the SPNB Obligation is satisfied and discharged in full concurrently with the Closing, both dates inclusive.

(c) The interest and principal on the SPNB Obligation shall be charged solely to High Fliers and shall be payable at the Closing by High Fliers as a liability chargeable to High Fliers under Paragraph 16 of the Agreement from proceeds of the capital contribution to the Partnership made by the Trust.

4. The parties agree that the sum of \$300,000, shall be withheld from the portion of Trust's capital contribution otherwise available for distribution to High Fliers for payment of liabilities charged to it under Paragraph 16 of the Agreement and shall be retained by the Partnership. Said \$300,000 shall remain as an asset of the Partnership, thereby providing initial working capital for the Partnership. High Fliers, from its plan of reorganization, shall pay all expenses in connection with the Closing, including escrow fees, title insurance premiums, documentary transfer tax, recording fees and the fees of Trust's legal counsel.

5. The Marina Facility Lease and the Seminars by the Bay Lease, forms of which are exhibits to the Partnership Agreement, shall include a provision to the effect that if after the two year period described in Paragraph 11.4 of the Partnership Agreement, the Trust sells, transfers or assigns the Property as provided therein, then the Trust shall have the option to terminate the Marina Facility Lease and the Seminars by the Bay Lease upon 60 days' prior written notice of such termination to High Fliers. Further, the Marina Facility Lease shall include a provision requiring High Fliers to retain a "Dock Master," which individual or firm shall be previously approved by the Trust.

6. As a condition to the Closing, the Partnership shall be issued an ALTA title insurance policy in the amount of \$14,000,000 and the Trust shall be issued an ALTA lender's policy in an amount equal to the then remaining principal balance of the Note in favor of the Trust.

7. Any cash of High Fliers held by its trustee in the bankruptcy proceeding in excess of security and lease deposits shall be utilized to satisfy creditors under the plan of arrangement prior to funds contributed by the Trust pursuant to the Agreement and the Partnership Agreement.

8. All terms and conditions of the Agreement shall remain expressly in full force and effect except as amended or modified hereby in which case such amendments or modifications herein shall control.

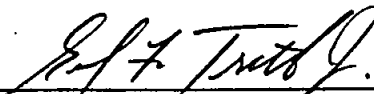
9. If the Amendment and the Agreement become null and void due to the inability of High Fliers to consummate the Closing by October 31, 1983, then the parties expressly agree that all rights herein granted to High Fliers with respect to the SPNB Obligation shall likewise become null and void, with the Trust being vested with the full contract right to repayment of principal, interest, and other amounts owing thereunder as provided therein.

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed in their name by their fully authorized representatives on the dates indicated below opposite their signatures.

Dated: August 5, 1983

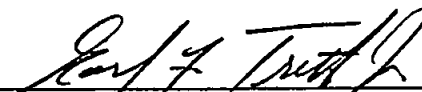
HIGH FLIERS LTD., a general partnership

By


EARL F. TRITT, JR.
General Partner

By FLIERS, INC., a California corporation

By


EARL F. TRITT, JR.
President

General Partner

Dated: August 5, 1983RETIREMENT FUND TRUST OF THE
PLUMBING, HEATING AND PIPING
INDUSTRY OF SOUTHERN CALIFORNIA

By _____

By Mark J. EvelynBy Robert C. LaneBy Paul T. BonnierBy W.D. HarrisBy Donald E. ReedBy Ray LaumannBy Calvin Emery

MARINA VILLAGE SUBLEASE

between

THE RETIREMENT FUND TRUST OF THE
PLUMBING-HEATING AND PIPING INDUSTRY OF SOUTHERN CALIFORNIA

(the "Landlord")

and

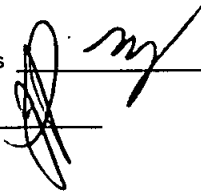
RANCH CATERING, INC.,
a California corporation

(the "Tenant")

Date of Sublease: May 1, 1997

Marina Village Sublease

Landlord's Initials



Seaside1 -35-

Tenant's Initials

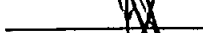


TABLE OF CONTENTS

SECTION	PAGE
1. BASIC SUBLEASE PROVISIONS	1
2. THE PREMISES	3
2.1 Sublease of the Premises	3
2.2 Square Footage	3
2.3 Condition of the Premises at Commencement	3
3. TERM	3
3.1 Term; Commencement Date	3
3.2 Early Possession	3
3.3 Delay in Possession	3
4. SECURITY DEPOSIT	4
5. RENT	4
5.1 Base Rent	4
5.2 Proportionate Share of Operating Costs	4
5.3 Percentage Rent	7
6. INITIAL CONSTRUCTION	8
7. REPAIRS AND ALTERATIONS	8
7.1 The Landlord's Obligations	8
7.2 The Tenant's Obligations	8
7.3 The Landlord's Right of Entry	8
7.4 Mechanic's Liens	9
7.5 Restrictions on the Tenant's Alterations	9
7.6 Removal of Alterations at Expiration	9
7.7 Compliance With Codes	9
7.8 Contractor Charges	9
7.9 Builder's All Risk Insurance	9
8. FIRE, EARTHQUAKE OR OTHER CASUALTY DAMAGE	10
8.1 Notice of Damage	10
8.2 The Landlord's Right to Restrict Entry to Marina Village	10
8.3 Preliminary Estimate of Damage	10
8.4 Repair or Termination	10
8.5 Damage Caused by Tenant	10
8.6 Rent Abatement	11
8.7 The Tenant's Personal Property	11
8.8 Diligent Prosecution of Repairs	11
8.9 Waiver of Statutes	11

Marina Village Sublease

Landlord's Initials

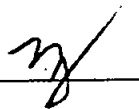
Seaside1 -i-

Tenant's Initials

9.	INSURANCE	11
9.1	The Tenant's Insurance Obligations	11
9.2	Insurance Requirements	11
9.3	The Landlord's Insurance	12
9.4	The Landlord's Right to Change Insurance.....	12
9.5	Waiver of Subrogation	12
10.	WAIVER AND INDEMNIFICATION	12
11.	EMINENT DOMAIN	12
12.	ASSIGNMENT AND SUBLETTING	13
12.1	The Landlord's Consent Required for Transfers	13
12.2	Reasonable Grounds for Withholding Consent.....	13
12.3	Transfers of an Interest in the Tenant	13
12.4	The Tenant Remains Primarily Liable upon Transfer	13
12.5	Transfers Without Consent Voidable.....	13
12.6	Assignment of Rents.....	13
12.7	The Landlord's Costs in Giving Consent	14
12.8	Excess Rent	14
12.9	The Landlord's Right to Terminate Sublease.....	14
13.	TRANSFER OF THE LANDLORD'S INTEREST	14
14.	USE OF PREMISES.....	14
15.	CONTINUOUS OPERATIONS	14
16.	COMPLIANCE WITH LAW	14
17.	HAZARDOUS MATERIALS	15
17.1	Definition	15
17.2	The Tenant's Obligations	15
17.3	Indemnification	16
17.4	Inspection by the Landlord	16
18.	USE OF COMMON FACILITIES.....	16
19.	SIGNS AND STORE FRONTS	16
20.	BUILDING RENOVATIONS	16
21.	SERVICES	17
21.1	Standard Building Services.....	17
21.2	Special Services.....	17
21.3	Utilities	17
22.	ENTRY OF THE LANDLORD	17
23.	SUBORDINATION AND ATTORNMENMENT	17

Marina Village Sublease

Landlord's Initials



Seaside1 -ii-

Tenant's Initials



24.	ESTOPPEL CERTIFICATE	18
25.	MARINA VILLAGE RULES AND REGULATIONS	18
26.	EVENTS OF DEFAULT	18
27.	THE LANDLORD'S REMEDIES	18
27.1	The Landlord's Remedies	18
27.2	The Landlord's Rights With Respect to Subleases	19
27.3	Late Charge	19
28.	RIGHT OF THE LANDLORD TO CURE THE TENANT'S DEFAULT	19
29.	EXCULPATION OF THE LANDLORD	19
30.	SUBSTITUTED PREMISES	20
31.	SURRENDER OF PREMISES	20
32.	HOLDING OVER	20
33.	GENERAL MATTERS	20
33.1	Notices	20
33.2	Successors and Assigns	20
33.3	Prohibition Against Recording	20
33.4	Waiver and Severability	20
33.5	Force Majeure	21
33.6	Attorneys' Fees	21
33.7	Joint and Several	21
33.8	Governing Law; Consent to Jurisdiction	21
33.9	Submission of Sublease	21
33.10	Brokers	21
33.11	Landlord's Reservations	21
33.12	Captions	21
33.13	Relationship of Parties	21
33.14	Time of Essence	22
33.15	Right to Sublease	22
33.16	Authority	22
33.17	Transportation Management	22
33.18	Counterparts	22
33.19	Exhibits and Addenda	22
34.	OPTIONS	23

Marina Village Sublease

Landlord's Initials

Seaside1 -iii-

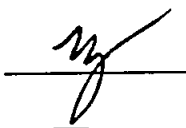
Tenant's Initials

EXHIBITS	PAGE
A1 & A2 OUTLINE OF PREMISES	23
B TENANT WORK LETTER	24
C NOTICE OF SUBLEASE TERM DATES.....	28
D RULES AND REGULATIONS	29
E TENANT SIGN CRITERIA	31
F ESTOPPEL CERTIFICATE	33
G FORM OF GUARANTY	35

LIST ALL ADDITIONAL EXHIBITS, ADDENDA AND RIDERS:

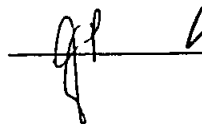
Marina Village Sublease

Landlord's Initials



Seaside1 -iv-

Tenant's Initials



MARINA VILLAGE SUBLEASE

This Sublease (the "Sublease") is made as of May 1, 1997 (the "Date of Sublease") by and between THE RETIREMENT FUND TRUST OF THE PLUMBING-HEATING AND PIPING INDUSTRY OF SOUTHERN CALIFORNIA (the "Landlord") and RANCH CATERING, INC., a California corporation (the "Tenant"). Both Landlord and Tenant are sometimes collectively referred to hereinafter as the "Parties" and individually referred to hereinafter as a "Party."

RECITALS:

A. Landlord is the successor in interest to all the right, title and interest of the lessee in and under that certain lease Agreement dated February 16, 1977 by and between the City of San Diego, a municipal corporation ("City"), as Lessor, and High Fliers, Ltd., a California limited partnership, as Lessee, filed in the Office of the City Clerk as Document 759240 (the "Master Lease") and recorded July 25, 1977, at File No. 77-296337, Official Records of the County Recorder of the County of San Diego, State of California, covering premises commonly known as "Marina Village" and located at 1842 Quivira Way, San Diego, California, as more particularly described in the Master Lease (the "Property"), a portion of which constitutes the "Premises" as defined in Section 1 and 2 below.

B. Tenant desires to rent from Landlord premises located at the Property for establishment of a full service restaurant and bar open to the general public, specializing in food and entertainment and catering operations, operating at Marina Village and other local areas within Mission Bay Park only.

C. The Sublease constitutes the entire present agreement between Landlord and Tenant with respect to the premises and the rights and obligations of the Landlord and Tenant with the premises.

IN CONSIDERATION FOR THE MUTUAL PROMISES AND AGREEMENTS AMONG THE PARTIES set forth hereinbelow, and with reference to the Recitals set forth above, the Parties, intending to be legally bound, hereby agree as follows:

1. **BASIC SUBLEASE PROVISIONS.** This Section summarizes the basic provisions of this Sublease. The full agreement of the parties with respect to each of the following provisions is set forth in the remaining sections of this Sublease.

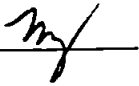
1.1. Premises. The premises Subleased by the Landlord to the Tenant under this Sublease (the "Premises") consist of approximately 10,837 rentable square feet of interior space (computed from measurements to the exterior of outside walls of the building and to the center of interior walls), as outlined on the plan attached to this Sublease as Exhibit A-1 and identified as building R2 of the survey conducted July 1988 attached to this Sublease as Exhibit A-2, together with all of the Landlord's interest (if any) in the furnishings, fixtures and equipment (FF&E) currently located in the Premises, it being understood that the Landlord does not represent or warrant that it has any interest in the FF&E and Tenant acknowledges that the FF&E may be subject to third party claims.

1.2. Marina Village. The Premises are part of Marina Village known as the "Seaside Room" formerly known as the "Salmon House Restaurant", as shown on the plan attached hereto as Exhibit A-1 & A-2, located at 1970 Quivira Road. The term "Marina Village" as used in this Sublease means the building or buildings that constitute such complex of buildings as shown on Exhibit A-1 (the "Buildings"), the land on which the Buildings are located, all parking areas and parking structures used in connection with Marina Village, and all landscaping, sidewalks and other common areas located on the land, together with such additions and other changes as the Landlord may from time to time designate as included within Marina Village.

1.3. Term. This Sublease shall be for a term (the "Term") of forty eight (48) months, subject to the provisions of Section 3 below.

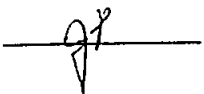
Marina Village Sublease

Landlord's Initials



Seaside1 -1-

Tenant's Initials



1.4. Estimated Commencement Date. The parties estimate that the Term shall commence on or about May 1, 1997 (the "Estimated Commencement Date"), but the actual Commencement Date shall be the date described in Section 3 below.

1.5. Early Possession Date: N/A See Section 3.2 below for the agreement of the parties regarding early possession.

1.6. Base Rent. The Tenant shall pay rent pursuant to the terms of Section 5 of this Sublease. The "Base Rent" shall be \$1,000 per month for months one through six and \$3,000 per month for months seven through forty eight, as adjusted pursuant to Section 5.1.2 below.

1.7. Base Rent Paid Upon Execution. Upon execution of this Sublease, the Tenant shall pay to the Landlord \$1,000, as Base Rent for the period May 1 - 31, 1997.

1.8. Security Deposit. Upon execution of this Sublease, the Tenant shall deposit with the Landlord \$3,000 as a security deposit (the "Security Deposit"). Section 4 of this Sublease describes the parties' agreement with respect to the Security Deposit.

1.9. Percentage Rent. In addition to Base Rent, the Tenant shall pay five percent (5%) (the "Percentage Rent Rate") of Gross Sales (as defined in Section 5.3.4 below), in excess of \$20,000 per month (the "Monthly Breakpoint"), pursuant to the provisions of Section 5.3 below.

1.10. "Tenant's Proportionate Share" means 100% and applies to section 5.2, Taxes on Tenant's Personal Property only.

1.11. Permitted Use. The Tenant shall only use the Premises as a full service restaurant and bar open to the general public, specializing in food and entertainment and catering operations, restricted to operate at Marina Village and other local areas within Mission Bay Park only. The Premises are located on dedicated State Park Land, and may only be used for approved park purposes as governed by the Marina Village Master Lease and the City of San Diego. The Tenant's use of the Premises shall be governed by Section 14 of this Sublease.

1.12. Tenant's Trade Name. Ranch Catering, Inc.

1.13. Landlord's Broker: John Burnham & Company
610 West Ash Street, Suite 2000
San Diego, CA 92101

Tenant's Broker: N/A

1.14. Landlord's Address for Payments and Notice.

Marina Village
1842 Quivira Way
San Diego, CA 92109
Telephone: (619) 224-3125
Facsimile: (619) 226-4260

with a copy of all notices to:

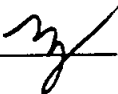
Southern California Pipe Trades Trust Funds
501 Shatto Place, 5th Floor
Los Angeles, California 90020
Attn: Administrator
Telephone: (213) 385-6161
Facsimile: (213) 383-0725
Tenant's Address for Notice.

and to:

Lamb & Baute
601 South Figueroa St., Suite 4100
Los Angeles, California 90017
Attn: Kevin J. Lamb, Esq.
Telephone: (213) 630-5000
Facsimile: (213) 683-1225

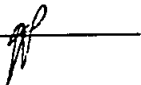
Marina Village Sublease

Landlord's Initials



Seaside1 -2-

Tenant's Initials



Before Occupancy: Ranch Catering, Inc.
1895 Camino Del Rio South
San Diego, CA 92108

After Occupancy: Ranch Catering, Inc.
1895 Camino Del Rio South
San Diego, CA 92108

1.15 Guarantor(s). The obligations of the Tenant under this Sublease shall be guaranteed by the following person; Jason Peltier, using the form of Guaranty attached to this Sublease as Exhibit G:

1.16 Marina Village Hours. Marina Village shall be open, and the Tenant shall continuously operate its business in the Premises in compliance with State of California ABC licensing requirements. Tenant's minimum operating hours shall be 11:00 AM to 7 :00 PM daily except Marina Village holidays.

1.17 Master Lease. Landlord shall obtain written consent of the City (acting by and through it's City Manager) to this Sublease, as required under Section (D) 21 of the Master Lease. If the City does not consent to this Sublease, this Sublease shall not come into effect and neither party shall have rights or obligations hereunder. If the City does consent, Tenant agrees to comply with all of the terms and conditions of the Master Lease that apply to the lessee thereunder, to the extent applicable to the Premises.

2. THE PREMISES.

2.1. Sublease of the Premises. By this Sublease, the Landlord Subleases to the Tenant, and the Tenant Subleases from the Landlord, the Premises on all of the terms and conditions set forth in this Sublease.

2.2. Square Footage. The statement of the rentable square footage of the Premises included in Section 1.1 above is an approximation that the Tenant and the Landlord agree is reasonable. Within the first month of the Term, the Landlord may elect to retain an architect or other contractor to provide an exact measurement of the rentable square footage of the Premises, and the parties agree to accept the measurement of the square footage as determined by such architect or contractor.

2.3. Condition of the Premises at Commencement. The Landlord shall deliver the Premises to the Tenant in an "as is" condition on the Commencement Date, together with any improvements the Landlord is required to construct pursuant to Section 6 below. The Tenant shall have thirty (30) days after the Commencement Date to provide the Landlord with written notice of any problems in the Premises relating to the plumbing, electrical, fire sprinkler, and lighting that existed on the Commencement Date. The Tenant acknowledges that the Heating, Ventilation and Air Conditioning systems are inoperative and in most cases beyond repair. The Landlord delivers the premises in an "as is" condition and the Tenant accepts this condition as a part of the Sublease Agreement. The written notice of any other problems shall specify the nature and extent of the problems. If the Landlord is obligated to maintain and repair the relevant system pursuant to the terms of this Sublease, the Landlord will repair such problem at the Landlord's expense. If the Tenant does not give the Landlord written notice of any such problem within such thirty (30) day period, correction of the problem shall be the obligation of the Tenant at the Tenant's sole cost and expense. If the Tenant was the owner or occupant of the Premises immediately prior to the date of this Sublease, the Landlord shall have no obligations under this paragraph and the Tenant shall, at the Tenant's sole cost and expense, correct any such problems.

3. TERM.

3.1. Term; Commencement Date. The Term shall be the period of time specified in Section 1.3 above, commencing on the Commencing Date. If the end of the Term as measured from the Commencement Date does not occur at the end of a month, the Term shall extend until the end of the last month of the Term. The "Commencement Date" shall be the earlier of: (a) the date of delivery of the substantially completed Premises to the Tenant, or (b) the date the Tenant commences business in the Premises. If delivery of the substantially completed Premises is delayed due to delays caused by the Tenant, such delays shall not delay the Commencement Date. Within ninety (90) days of commencement of the Term, the Landlord may deliver to the Tenant a notice substantially in the form attached to this Sublease as Exhibit C, which the Tenant shall execute and return to the Landlord within five (5) days of receipt. For

Marina Village Sublease

Landlord's Initials

Seaside1 -3-

Tenant's Initials

purposes of this Sublease, the term "Sublease Year" means each consecutive twelve (12) month period during the Term, commencing on the Commencement Date.

3.2. Early Possession. If an Early Possession Date is specified in Section 1.5, the Tenant shall have the right to access the Premises after the Early Possession Date and before the Commencement Date for the limited purposes of installing trade fixtures, equipment and furniture, but not for the purpose of conducting business from the Premises. If the Tenant totally or partially occupies the Premises after the Early Possession Date but prior to the Commencement Date for such limited purposes, the Tenant shall have no obligation to pay Rent during such period, but all other terms of this Sublease (including but not limited to the insurance obligations set forth in Section 9) shall be in effect during such period. Any such early possession shall not affect or advance the Commencement Date or the Term.

3.3 Delay in Possession. If the Landlord is unable to deliver possession of the Premises to Tenant on or before the Estimated Commencement Date, the Landlord shall not be subject to any liability to the Tenant for any loss or damage resulting from the non-delivery, and the non-delivery shall not affect the validity of this Sublease or the obligations of the Tenant under this Sublease. If the Landlord is unable to deliver possession of the Premises to the Tenant within six (6) months after the Estimated Commencement Date, this Sublease shall automatically terminate, and the Landlord shall not, by reason of such termination, be subject to any liability except that the Landlord shall return to the Tenant all amounts which the Landlord previously received from the Tenant as prepaid Rent or as a Security Deposit, without interest; provided, however, that the Tenant's occupancy of the Premises at any time shall conclusively be deemed a waiver of this provision.

3.4 Termination: Landlord and Tenant each retain the right to terminate this sublease agreement upon ninety (90) days' written notice, with or without cause.

4. **SECURITY DEPOSIT**. Concurrently with the Tenant's execution of this Sublease, the Tenant shall deposit with the Landlord a security deposit in the amount set forth in Section 1.8 above for the performance of all of the Tenant's obligations under this Sublease. Upon expiration of the Term, as long as the Tenant is not in default under this Sublease the Landlord shall return the Security Deposit to the Tenant, after deducting the amounts needed to make good any default by the Tenant. The Landlord shall have the right, but not the obligation, to apply all or any portion of the Security Deposit to cure any Tenant default at any time, in which case the Tenant shall be obligated to restore the Security Deposit to its original amount within ten (10) business days. The Tenant waives the provisions of Section 1950.7 of the California Civil Code, and all other provisions of law, now or hereafter in force, which provide that the Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by the Tenant or to clean the Premises, it being agreed that the Landlord may, in addition, claim those sums reasonably necessary to compensate the Landlord for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of the Tenant or any officer, employee, agent or invitee of the Tenant. The Landlord shall not be required to keep all or any part of the Security Deposit separate from its general accounts. Unless otherwise expressly agreed in writing by the Landlord, no part of the Security Deposit shall be considered to be held in trust, to bear interest or other increment for its use, or to be prepayment for any monies to be paid by the Tenant under this Sublease. If the Landlord keeps the Security Deposit in an interest bearing account, all interest shall accrue for the benefit of the Landlord.

5. **RENT**. The term "Rent" as used in this Sublease shall mean Base Rent, City Percentage Rent, and Additional Percentage Rent, and all other amounts required to be paid by Tenant under the terms of this Sublease.

5.1 Base Rent.

5.1.1 Monthly Payments. The Tenant agrees to pay the Base Rent set forth in Section 1.6 above for each month of the Term, payable in advance on the first day of each month commencing with the Commencement Date, without any deduction or offset whatsoever. If the Commencement Date is not the first day of a month, a prorated monthly installment shall be paid on the Commencement Date for the fractional month during which the Commencement Date occurs. If the last day of the Term of this Sublease is not the last day of a month, the Base Rent for such month shall be prorated for the number of days during such month that are a part of the Term compared to the actual number of days of such month. At the time of execution of this Sublease, the Tenant shall pay the amount set forth in Section 1.7, as prepayment of the Base Rent for the periods set forth in Section 1.7.

Marina Village Sublease

Landlord's Initials



Seaside1 -4-

Tenant's Initials



5.1.2 Annual Increases. Base Rent shall be increased on each anniversary of the Commencement Date (or if the Commencement Date does not fall on the first day of a month, then on each anniversary of the first day of the month following the month in which the Commencement Date occurs) (the "Adjustment Date(s)"). The adjusted Base Rent as of each Adjustment Date shall be the Base Rent set forth in Section 1.6 above, multiplied by Four Percent (4%) compounded annually from the Commencement Date.

5.2 Taxes on the Tenant's Personal Property. In addition to the Tenant's Proportionate Share of Operating Costs, the Tenant shall reimburse the Landlord upon demand for any and all taxes required to be paid by the Landlord when such taxes are measured by or reasonably attributable to the cost or value of the Tenant's equipment, furniture, trade fixtures and other personal property located in the Premises.

5.3 City and Percentage Rent.

5.3.1 Payment of City and Percentage Rent. Starting with the month immediately following the month in which the Commencement Date occurs, in addition to the Base Rent, the amounts described in Section 5.2 above, and any other amounts payable by the Tenant under this Sublease, the Tenant shall pay to the Landlord, at the times and in the manner set forth below, City Rent (the "City Rent") and Percentage Rent (the "Percentage Rent"). The City Rent will be calculated in accordance with the Marina Village Master Lease Agreement with the City of San Diego and the City Rent schedule as provided in the City of San Diego "Consent to Sublease Agreement" endorsement to this Sublease Agreement. In addition, the Tenant shall pay to Landlord Percentage Rent in an amount equal to the Percentage Rent Rate specified in Section 1.9 times the excess of the Tenant's Gross Sales (defined below) for the preceding month over the Monthly Breakpoint specified in Section 1.9. The calculations for Gross Sales for computation of Percentage Rent will be reduced by any gross sales that are subject to percentage commissions payable to the Marina Village Conference Center.

5.3.2 Calculation of Percentage Rent. Within fifteen (15) days after the end of each calendar month following the Commencement Date, the Tenant shall furnish to the Landlord a written statement, certified by the Tenant to be correct and complete, showing the total Gross Sales (defined below) from the Premises during the preceding calendar month. Each such statement shall be accompanied by a payment to the Landlord in the amount of the City Rent and Percentage Rent calculated according to Section 5.3.1 above.

5.3.3 Annual Adjustment. Within thirty (30) days after the end of each calendar year during the Term of this Sublease, the Tenant shall furnish to the Landlord a written statement, certified by the Tenant to be correct and complete, showing the total Gross Sales from the Premises during the preceding calendar year. At the time such annual statement is delivered, if an adjustment to the Tenant's Percentage Rent for the preceding year is necessary, an adjustment shall be made between the Landlord and the Tenant to the end that the total Percentage Rent paid for the preceding calendar year shall be a sum equal to the Percentage Rent Rate multiplied by the excess of the total Gross Sales from the Premises during the preceding calendar year over the Monthly Breakpoint multiplied by twelve (12). In addition, within thirty (30) days after the end of the Term of this Sublease, the Tenant shall furnish to the Landlord such a written statement relating to the Gross Sales from the Premises during the period of time from the beginning of the calendar year in which the Term ended to and including the last day of the Term of this Sublease, and such an adjustment shall be made with respect to such period of time.

5.3.4 Definition of Gross Sales. The term "Gross Sales", as used in this Sublease, shall mean the total amount of the actual gross selling or rental price, whether for cash, on credit or otherwise or any combination thereof, of all food, drink, merchandise or services sold in or from the Premises by the Tenant and/or its subtenants, concessionaires or licensees, and all other receipts of business conducted in or from the Premises, including but not limited to: all gift and merchandise certificates; mail or telephone orders taken or received at or from the Premises, whether or not filled elsewhere; deposits not refunded to purchasers; and fees, commissions or the Tenant's share of gross income received on lottery tickets, vending machines and coin operated devices, money orders, and mechanical and/or electronic entertainment devices. For the purpose of a sales tax imposed by an ordinance adopted pursuant to California Revenue and Taxation Code Section 7200 et seq., all sales generated from Gross Sales shall

be deemed to be consummated at the Premises, and the Tenant shall use its best efforts to ensure that sales taxes on Gross Sales are credited to the jurisdictions in which the Premises are located.

5.3.5 Records of Gross Sales. The Tenant shall keep full, complete and proper books, records and accounts of its daily Gross Sales, both for cash and on credit, of each separate department, subtenant, concessionaire and licensee operated at any time in the Premises. The Tenant shall keep all such books, records and accounts for a minimum of three (3) years. The Landlord and its agents and employees shall have the right at any time and all times, during the regular business hours, to examine and inspect all of the books, records and accounts of the Tenant, including any sales tax reports pertaining to the business conducted in or from the Premises, for the purpose of investigating and verifying the accuracy of any statement of Gross Sales. In addition to the foregoing right to examine and inspect such books, records and accounts, the Landlord may at any time cause an audit of the business of the Tenant to be made by an accountant of the Landlord's selection; and if any statement or statements of Gross Sales previously made to the Landlord shall be found to be inaccurate, there shall be an adjustment and one party shall pay to the other on demand such sums as may be necessary to settle in full the accurate amount of City Rent and Percentage Rent that should have been paid for the period or periods covered by such inaccurate statement or statements. If such audit shall disclose an inaccuracy in favor of the Tenant of greater than a three percent (3%) error with respect to the amount of Gross Sales reported by the Tenant for the period of the applicable statement or statements, then the Tenant shall immediately pay to the Landlord the cost of the audit; otherwise, the cost of the audit shall be paid by the Landlord. If the audit shall disclose any willful or substantial inaccuracies, such inaccuracies shall be deemed a material breach of this Sublease and the Landlord may, in addition to any other remedies it may have for the Tenant's breach of this Sublease, terminate this Sublease. In the event that the Tenant is delinquent in paying rents as defined in paragraph C(4) of the Master Lease, Sublessee will pay subject penalties as defined by the Master Lease.

6. **INITIAL CONSTRUCTION.** Construction, if any, to be completed by the Landlord will be in accordance with the plans, specifications and agreements approved by both parties (collectively, the "Tenant Work Letter"), attached hereto as Exhibit B and made a part of this Sublease. The Landlord will not be obligated to construct or install any improvements or facilities of any kind other than those called for in the Tenant Work Letter. The Landlord agrees to commence and complete the construction of the Premises with reasonable diligence. All improvements shall remain the property of the Landlord and upon termination of this Sublease, the Tenant shall deliver the Premises, including such improvements, to the Landlord in good condition, normal wear and tear excepted.

7. REPAIRS AND ALTERATIONS.

7.1 The Landlord's Obligations. The Landlord agrees to keep in good order and repair the foundations, exterior walls, exterior doors, exterior windows (other than windows & doors in the Premises or the premises of other tenants), corridors in common areas of the Marina Village, structural condition of interior bearing walls, exterior roof, fire sprinkler and/or standpipe and hose (if not located within the Premises or the premises of other tenants) or other automatic fire extinguishing system including fire alarm and smoke detection systems and equipment (except those specifically required by fire code for the Tenant's trade equipment), fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems servicing the common areas of the Marina Village, and otherwise to keep the Marina Village in a clean, neat and attractive condition. The foregoing shall be at Landlord's cost and expense. The Landlord agrees to keep all building standard equipment such as elevators, escalators, plumbing, heating, air conditioning and similar equipment in good repair (except for the obligations of the Tenant to repair such systems as provided in Section 7.2), but the Landlord shall not be liable or responsible for breakdowns or temporary interruptions in service where reasonable efforts are used to restore service. The Landlord agrees to make repairs, if necessary, to interior walls, floors and ceilings installed by the Landlord in the Premises, but only if such repairs are due to defects in construction.

7.2 The Tenant's Obligations. The Tenant agrees that it will, at its sole cost and expense, keep the Premises and every part thereof including the assigned trash enclosure in good order, condition and repair (whether or not such portion of the Premises requiring repair, or the means of repairing the same, are reasonably or readily accessible to the Tenant, and whether or not the need for such repairs occurs as a result of the Tenant's use, any prior use, the elements or the age of such portion of the Premises), except as required of the Landlord pursuant to Section 7.1. Specifically, but without limiting the generality of the foregoing sentence, the Tenant shall, at the Tenant's sole cost and expense, keep in good order, condition and repair: (a) all equipment or facilities specifically serving the Premises, such as plumbing, heating, air conditioning, ventilating, electrical, lighting facilities, boilers,

Marina Village Sublease

Landlord's Initials

Seaside1 -6-

Tenant's Initials

fired or unfired pressure vessels, and fire hose connections if within the Premises, and (b) all fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights, if within the Premises. Notwithstanding anything to the contrary contained herein, the Tenant will pay for any repairs to the Premises or Marina Village made necessary by any negligence or carelessness of the Tenant or its employees or persons permitted in Marina Village by the Tenant. The Tenant will maintain the Premises in clean, neat and sanitary condition. The Tenant hereby waives and releases its right under Sections 1941 and 1942 of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect.

7.3 The Landlord's Right of Entry. If the Tenant fails to perform the Tenant's obligations under Section 7.2, the Landlord may enter the Premises after ten (10) days' prior written notice to the Tenant (except in the case of an emergency, in which case no notice shall be required), perform such obligations on the Tenant's behalf, and put the Premises in good order, condition and repair, and the costs and expenses incurred by the Landlord in doing so shall be due and payable by the Tenant to the Landlord upon receipt of an invoice therefor. Such action by the Landlord shall not cure the Tenant's breach of its obligations under Section 7.2, and the Landlord shall have the right to exercise any or all of its other remedies as set forth in Section 27.

7.4 Mechanic's Liens. The Tenant covenants and agrees not to suffer or permit any lien of mechanics or materialmen or others to be placed against the Marina Village, the Buildings or the Premises with respect to work or services claimed to have been performed for or materials claimed to have been furnished to the Tenant or the Premises under this Article 7 or otherwise, and, in case of any such lien attaching or notice of any lien, the Tenant covenants and agrees to cause it to be immediately released and removed of record or the Landlord, at its sole option, may immediately take all action necessary to release and remove such lien and the Tenant shall upon demand reimburse the Landlord for all costs involved therewith.

7.5 Restrictions on the Tenant's Alterations. Subject to the restrictions in this paragraph, the Tenant is responsible for all redecorating, remodeling, alterations and painting of the Premises during the Term. The Tenant may not make any improvements, alterations, additions or changes to the Premises (collectively, the "Alterations") without the prior written consent of the Landlord, which consent shall be requested by the Tenant not less than thirty (30) days prior to the planned commencement of such Alterations and which consent shall not be unreasonably withheld by the Landlord. The construction of the initial improvements to the Premises shall be governed by the terms of the Tenant Work Letter, attached hereto as Exhibit B, and not the terms of this Article 7.

7.6 Removal of Alterations at Expiration. Except to the extent the Tenant requests and the Landlord designates otherwise at the time the Landlord approves such Alterations, all or any part of the Alterations (including, without limitation, wall-to-wall carpeting and wiring), whether made with or without the consent of the Landlord, shall, at the election of the Landlord, either be removed by the Tenant at the Tenant's sole cost and expense before the expiration of the Term or shall remain upon the Premises and be surrendered therewith at the expiration of the Term or earlier termination of this Sublease as the property of the Landlord. If the Landlord requires the removal of all or part of any Alterations, the Tenant, at the Tenant's sole cost and expense, shall repair any damage to the Premises or the Buildings caused by such removal. If the Tenant fails to remove the Alterations upon the Landlord's request, then the Landlord may (but shall not be obligated to) remove them and the cost of removal and repair of any damage together with all other damages which the Landlord may suffer by reason of the failure of the Tenant to remove the Alterations, shall be charged to the Tenant and paid by the Tenant upon demand. This paragraph shall not alter the requirement in Section 6 above that all improvements constructed by the Landlord prior to the Commencement Date shall remain a part of the Premises at expiration.

7.7 Compliance with Codes. The Tenant shall construct such Alterations and perform such repairs in conformance with any and all applicable rules and regulations of any federal, state, county or municipal code, ordinance or law, pursuant to a valid building permit issued by the applicable municipality and in conformance with the Landlord's construction rules and regulations. The Tenant shall be responsible for obtaining any and all permits, licenses and/or other approvals necessary from any applicable governmental authority prior to constructing such Alterations or performing such repairs, and all work shall be performed in accordance with such permits, licenses and/or other approvals. All work with respect to any Alterations must be done in a good and workmanlike manner and diligently prosecuted to completion to the end that the Premises shall at all times be a complete unit except during the period of work. In performing any such Alterations, the Tenant shall have the work performed in such a manner as not to obstruct access to the Marina Village or the common areas for any shoppers or for any other tenant of the Marina Village, and as not to interfere with the business of the Landlord or other tenants in the Marina Village. Upon

Marina Village Sublease

Landlord's Initials

Seaside1 -7-

Tenant's Initials

completion of any Alterations, the Tenant agrees to cause a Notice of Completion to be recorded in the Office of the Recorder of the county in which the Marina Village is located in accordance with Section 3093 of the California Civil Code or any successor statute, and the Tenant shall deliver to the Marina Village management office a reproducible copy of the "as built" drawings of the Alterations. In addition, upon completion of the Alterations, the Tenant shall deliver to the Landlord evidence of payment, contractors' affidavits and full and final waivers of all liens for labor, services or materials.

7.8 Contractor Charges. If the construction of the Alterations is performed by a contractor selected and retained by the Landlord, the charges for such work shall be deemed Rent under this Sublease, payable upon billing therefor, either periodically during construction or upon the substantial completion of such work, at the Landlord's option. The Tenant shall pay to the Landlord a percentage of the cost of such work sufficient to compensate the Landlord for all overhead, general conditions, fees and other costs and expenses arising from the Landlord's involvement with such work.

7.9 Builder's All Risk Insurance. In the event that the Tenant makes any Alterations, the Tenant agrees to carry "Builder's All Risk" insurance in an amount approved by the Landlord covering the construction of such Alterations, and such other insurance as the Landlord may require, it being understood and agreed that all of such Alterations shall be insured by the Tenant pursuant to Article 9 of this Sublease immediately upon completion thereof. In addition, the Landlord may, in its discretion, require the Tenant to obtain a lien and completion bond or some alternate form of security satisfactory to the Landlord in an amount sufficient to insure the lien-free completion of such Alterations and naming the Landlord a co-obligee.

8. FIRE, EARTHQUAKE OR OTHER CASUALTY DAMAGE

8.1 Notice of Damage. If either party becomes aware of damage to the Premises or the Marina Village by fire, earthquake or other casualty ("Casualty Damage"), such party shall give prompt written and telephonic notice to the other party.

8.2 The Landlord's Right to Restrict Entry to Marina Village. In the event of an earthquake or other casualty that may affect the safety of persons or property in the Marina Village, the Landlord shall request an inspection of the Marina Village and the Premises by appropriate governmental inspectors as soon as possible. If the Landlord in good faith believes there is a risk of injuries to natural persons or damage to property from entry into the Marina Village or Premises prior to governmental inspection, the Landlord may restrict entry into the Marina Village or the Premises by the Tenant, its employees, guests and contractors in a nondiscriminatory manner. Upon request, the Landlord shall consult with the Tenant to determine if there are safe methods of entry into the Marina Village and Premises in order to retrieve files, data in computers and inventory, subject to any indemnities and waivers of liability that the Landlord may reasonably require. The decision of any appropriate governmental inspector regarding safe entry shall be binding on the parties unless subsequently amended or revoked.

8.3 Preliminary Estimate of Damage. Within thirty (30) days after the initial occurrence of the Casualty Damage (the "Initial Occurrence"), the Landlord shall give the Tenant its best preliminary estimate (the "Preliminary Estimate") of the cost of repairing the Casualty Damage, the time needed to complete the repairs (without the payment of overtime or other premiums), and the limits of any insurance coverage the Landlord reasonably believes is applicable to the Casualty Damage. The Preliminary Estimate shall not include any extra time or cost required to construct new, additional or upgraded improvements to any portion of the Marina Village, except as may be required to meet building and other codes then in effect. The Preliminary Estimate shall include reasonably detailed backup information justifying the information contained in the Preliminary Estimate. (As used throughout this Article 8, the cost of repairing Casualty Damage shall include only the cost of repairing damage that the Landlord is required to repair under Section 8.8 below.) If the Landlord is unable to submit the Preliminary Estimate within such 30 day period despite the Landlord's commercially reasonable efforts, the Landlord shall submit the Preliminary Estimate as soon as reasonably possible thereafter.

8.4 Repair or Termination. The Landlord shall have the obligation to repair the Casualty Damage diligently and as soon as practical after the date of the Initial Occurrence at the Landlord's expense after the Landlord applies the proceeds of any insurance, including without limitation the Tenant's insurance, except if the Casualty Damage was the fault of the Tenant or the result of the Tenant's negligence, the repairs shall be at the Tenant's expense in accordance with Section 8.5. Notwithstanding the foregoing, the Landlord shall have the right to elect in

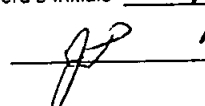
Marina Village Sublease

Landlord's Initials



Seaside1 -8-

Tenant's Initials



its sole discretion to terminate this Sublease and not to repair the Casualty Damage in the following situations: (a) the time set forth in the Preliminary Estimate for the completion of the repairs is in excess of 200 days measured from the date of the Initial Occurrence, (b) the holder of any mortgage or deed of trust on the Marina Village shall require that the insurance proceeds or any portion thereof be used to retire the mortgage debt, (c) any ground lessor of the Marina Village shall terminate the ground Sublease as a result of the Casualty Damage, (d) the Casualty Damage is not fully covered, except for deductible amounts, by the Landlord's and the Tenant's insurance policies, or (e) in the case of earthquake damage, the cost of repair not covered by insurance as a result of the deductible is greater than Fifty Thousand Dollars (\$50,000.00). The Landlord shall state in the Preliminary Estimate whether or not the Landlord elects to terminate the Sublease, provided that if the Landlord is not informed until after the date of the Preliminary Estimate by the holder of a mortgage or deed of trust that all or a portion of the insurance proceeds shall be used to retire the mortgage debt, or by the ground lessor of the termination of the ground Sublease, the Landlord may notify the Tenant of the Landlord's election to terminate this Sublease within one week after receipt of such information. If the Landlord elects to terminate the Sublease, the Landlord shall give the Tenant not less than ninety (90) days to vacate the Premises, and Rent shall be apportioned and paid to the date of termination.

8.5 Damage Caused By Tenant. All Casualty Damage resulting from the fault or negligence of the Tenant or its agents shall be repaired by the Tenant, at the Tenant's expense, and Rent shall not abate. If the Tenant shall fail to do so or if the Landlord shall so elect, the Landlord shall have the right to make repairs to the Marina Village and to the Premises (but not to any tenant improvements not installed by the Landlord, or to alterations or personal property), and any expense incurred by the Landlord, together with interest thereon at the rate of fifteen percent (15%) per annum, shall be paid by the Tenant upon demand.

8.6 Rent Abatement. During the period that the Tenant is deprived of the damaged portion of the Premises, and provided the damage is not due to the fault or negligence of the Tenant or its agents, Base Rent shall be reduced by the ratio that the rentable square footage of the Premises damaged bears to the total rentable square footage of the Premises.

8.7 The Tenant's Personal Property. Notwithstanding the foregoing, the Tenant shall be solely responsible for all costs of repairs or replacements of the Tenant's merchandise, inventory and other personal property, including without limitation any alterations or improvements constructed or installed by the Tenant, resulting from fire, earthquake or other casualty.

8.8 Diligent Prosecution of Repairs. If the Landlord does not terminate this Sublease as a result of any Casualty Damage, the Landlord shall promptly commence and diligently prosecute to completion the repair of the Casualty Damage. However, the Landlord shall not be liable for its failure to complete the repairs within the time estimate set forth in the Preliminary Estimate. Immediately after completion of the repair work the Landlord is obligated to perform, the Tenant shall commence and diligently pursue to completion the repair and/or replacement of the tenant improvements to the Property. Any material modification of such tenant improvements shall constitute an alteration requiring the Landlord's consent pursuant to Section 7.5.

8.9 Waiver of Statutes. The provisions of this Sublease, including this Article 8, constitute an express agreement between the Landlord and the Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, the Buildings or any other portion of the Marina Village, and any statute or regulation of the State of California, including, without limitation, Sections 1932 and 1933 of the California Civil Code, with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other statute or regulation, now or hereafter in effect, shall have no application to this Sublease or any damage or destruction to all or any part of the Premises, the Buildings or any other portion of the Marina Village.

9. INSURANCE

9.1 The Tenant's Insurance Obligations. The Tenant shall during the entire Term maintain the following insurance coverage:

9.1.1 Commercial General Liability Insurance against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the Tenant's occupation, use or maintenance of the Premises and all areas appurtenant to the Premises, and the Tenant's business operations. Such insurance shall be on an occurrence basis providing coverage in an amount not less than One Million Dollars (\$1,000,000.00) for each

Marina Village Sublease Landlord's Initials my

Seaside1 -9- Tenant's Initials JP

occurrence and Two Million Dollars (\$2,000,000.00) for all occurrences each year. Such insurance shall include an "Additional Insured - Managers or Lessors of Premises" endorsement and contain the "Amendment of the Pollution Exclusion" endorsement for damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Sublease as an "insured contract" for the performance of the Tenant's indemnity obligations under this Sublease.

9.1.2 Property Damage Insurance covering all the Tenant's furniture, trade fixtures, equipment, merchandise and other personal property in the Premises and all Alterations and Tenant Improvements in the Premises. This insurance should be an "all risk" policy covering the full replacement cost of the items covered and including vandalism, malicious mischief, earthquake and sprinkler leakage coverage.

9.1.3 Loss of income and business interruption insurance in such amounts as will reimburse the Tenant for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent tenants or attributable to prevention of access to the Premises or the Marina Village as a result of such perils, but in no event in an amount less than the total Gross Sales of the Tenant from the Premises for six (6) months.

9.1.4 Workers' Compensation Insurance or other similar insurance pursuant to all applicable state and local statutes and regulations.

9.2 Insurance Requirements. Neither the minimum insurance requirements set forth in this Sublease, nor the limits of such insurance, shall limit the liability of the Tenant under this Sublease. The Landlord and any lenders or other parties specified by the Landlord shall be named as additional insureds under the Tenant's insurance. All insurance companies providing insurance pursuant to this Article 9 shall be rated at least A-XII in Best's Key Rating Guide and shall be otherwise reasonably acceptable to the Landlord and licensed and qualified to do business in the State of California. Insurance provided by the Tenant shall be primary as to all covered claims and any insurance carried by the Landlord is not excess and is non-contributing. The Tenant authorizes the Landlord to contact the Tenant's insurance company directly in the event that the Landlord elects to make a claim under the Tenant's insurance. Each of the Tenant's insurance policies must not be cancelable or modifiable except upon thirty (30) days prior written notice to the Landlord and any specified mortgagee and ground lessor of the Landlord. The insurance must also contain a cross-liability endorsement or severability of interest clause acceptable to the Landlord. Copies of policies or original certificates of insurance with respect to each policy shall be delivered to the Landlord prior to the Commencement Date (or, if there is an Early Possession Date, prior to the Early Possession Date), and thereafter, at least thirty (30) days before the expiration of each existing policy.

9.3 The Landlord's Insurance. The Landlord shall have the right to insure the structure and common areas of the Marina Village in an amount and for coverage reasonably satisfactory to the Landlord. In addition, if the Tenant fails to obtain the insurance required in Section 9.1, the Landlord shall have the right and option, but not the obligation, to maintain any or all of the insurance which is required in Section 9.1 above to be provided by the Tenant. All costs of the Tenant's insurance provided by the Landlord shall be obtained at the Tenant's sole cost and expense.

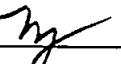
9.4 The Landlord's Right to Change Insurance. The Landlord has the right at any time, but not the obligation, to change, cancel, decrease or increase any insurance required or specified under this Sublease, but in no event shall any such increased amounts of insurance or such other reasonable types of insurance be in excess of that required by comparable landlords in the vicinity of the Marina Village. The Landlord at its option may obtain any of the required insurance directly or through umbrella policies covering the Marina Village and other assets owned by the Landlord.

9.5 Waiver of Subrogation. The Landlord and the Tenant each release the other and their respective agents and employees from all liability to each other, or anyone claiming through or under them, by way of subrogation or otherwise, for any loss or damage to property caused by or resulting from risks insured against under this Sublease pursuant to insurance policies carried by the parties which are in force at the time of the loss or damage. The Landlord and the Tenant will each request its respective insurance carrier to include in policies provided pursuant to this Sublease an endorsement recognizing this waiver of subrogation.

10. **WAIVER AND INDEMNIFICATION.** To the fullest extent permitted by law, the Landlord, its partners, trustees, ancillary trustees, lenders and ground lessors (if any), and their respective officers, directors, shareholders, members, partners, beneficiaries, agents, servants, employees, independent contractors, attorneys, successors and

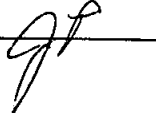
Marina Village Sublease

Landlord's Initials



Seaside1 -10-

Tenant's Initials



assigns (the "Landlord's Parties") shall not be liable for any damage either to person or property or resulting from the loss of use of property, which damage is sustained by the Tenant or by other persons claiming through the Tenant. The Tenant shall indemnify, protect, defend and hold the Landlord's Parties harmless from and against any and all claims, loss of rents and/or damages, costs, liens, judgments, penalties, loss of permits, attorneys' and consultants' fees, expenses and/or liabilities, except those caused by the Landlord's gross negligence or willful misconduct, arising out of, resulting from, or occurring in connection with: (a) any accident, injury, death, loss or damage to any person or to any property including the person and property of the Tenant and its employees, officers, agents, customers, contractors, guests, licensees, invitees and all other persons at any time in the Marina Village or the Premises or the common areas, (b) the occupancy or use of the Premises by the Tenant, (c) the conduct of the Tenant's business; (d) the breach by the Tenant of any obligation, covenant, representation or warranty contained in this Sublease, or (e) any act, omission or negligence of the Tenant or any employee, officer, guest, licensee or invitee of the Tenant or of any agent or contractor of the Tenant or of any subtenant or subtenant's agents, employees, contractors or invitees. The foregoing shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against the Landlord) litigated and/or reduced to judgment. In case any action or proceeding is brought against the Landlord by reason of any of the foregoing matters, the Tenant upon notice from the Landlord shall defend such action or proceeding at the Tenant's expense by counsel reasonably satisfactory to the Landlord, and the Landlord shall cooperate with the Tenant in such defense at the Tenant's sole cost and expense. The Landlord need not have first paid any such claim in order to be so indemnified.

11. EMINENT DOMAIN. If all or any portion of the Premises is taken from the Tenant by power of eminent domain or condemned by any competent authority (the "Condemning Authority") for any public or quasi-public use or purpose, or if the Landlord shall grant a deed or other instrument in lieu of and under the threat of such taking by eminent domain or condemnation (all of which is referred to in this paragraph as being "Condemned", or as a "Condemnation"), this Sublease shall terminate as to the part so taken as of the date the Condemning Authority takes title or possession, whichever occurs first. If ten percent (10%) or more of the Premises or Marina Village are Condemned, the Landlord shall have the option to terminate this Sublease upon ninety (90) days notice to the Tenant, as long as such notice is given no later than one hundred eighty (180) days after the date of the Condemnation. If less than all of the Premises is Condemned and if Landlord does not elect to terminate this Sublease, then this Sublease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in the same proportion as the rentable floor area of the Premises taken bears to the total rentable floor area of the Premises. The entire award or payment in connection with any Condemnation shall be the property of the Landlord, whether such award or payment is made as compensation for diminution of value of the Subleasehold or for the taking of the fee or as severance damages; provided, however, that the Tenant shall be entitled to compensation, if separately awarded to the Tenant, for the Tenant's relocation expenses and/or loss of the Tenant's trade fixtures. The Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure.

12. ASSIGNMENT AND SUBLETTING

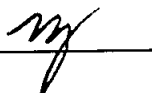
12.1 The Landlord's Consent Required for Transfers. The Tenant shall not assign, transfer, mortgage or otherwise encumber this Sublease or sublet or rent (or permit a third party to occupy or use) (collectively, a "Transfer") all or any portion of the Premises, nor shall any Transfer of this Sublease or the right of occupancy be effected by operation of law or otherwise, without the prior written consent of the Landlord, which shall not be unreasonably withheld or delayed.

12.2 Reasonable Grounds for Withholding Consent. The parties agree that it shall be deemed to be reasonable under this Sublease and under any applicable law for the Landlord to withhold consent to any proposed Transfer where, without limitation as to other reasonable grounds for withholding consent, (a) the transferee is of a character or reputation or engaged in a business which is not consistent with the quality of the Marina Village, in the Landlord's reasonable opinion, (b) the business of the transferee does not fit within the tenant mix reasonable deemed by the Landlord to be desirable for the Marina Village, (c) the transferee sells items or services that would violate an exclusive right of another tenant of the Marina Village to sell such items or services within the Marina Village, or (d) Landlord reasonably determines that the transferee is not a party of reasonable financial worth and/or financial stability in light of the responsibilities involved under this Sublease on the date consent is requested.

12.3 Transfers of an Interest in the Tenant. For purposes of the foregoing prohibitions, a transfer at any one time or from time to time of twenty percent (20%) or more of an interest in the Tenant or in an entity that controls the Tenant (whether stock, partnership interest or other form of ownership or control) by any person or persons or

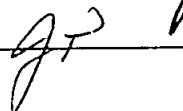
Marina Village Sublease

Landlord's Initials



Seaside1 -11-

Tenant's Initials



entity or entities having an ownership interest in or other control of the Tenant as of the Date of Sublease shall be deemed to be a Transfer of this Sublease.

12.4 The Tenant Remains Primarily Liable Upon Transfer. If the Landlord consents to any proposed Transfer, the Tenant and any guarantor shall remain liable under this Sublease. Neither the consent by the Landlord to any Transfer nor the collection or acceptance by the Landlord of rent from such assignee, subtenant or occupant shall be construed as a waiver or release of the Tenant or any guarantor from the terms and conditions of this Sublease or relieve the Tenant or any subtenant, assignee or other party from obtaining the consent in writing of the Landlord to any further Transfer.

12.5 Transfers Without Consent Voidable. Any Transfer without the Landlord's written consent shall be voidable by the Landlord and, at the Landlord's election, constitute an "Event of Default," as that term is defined in Article 26 of this Sublease.

12.6 Assignment of Rents. The Tenant hereby assigns to the Landlord the rent and other sums due from any subtenant, assignee or other occupant of the Premises and hereby authorizes and directs each such subtenant, assignee or other occupant to pay such rent or other sums directly to the Landlord; provided, however, that until the occurrence of an Event of Default under this Sublease, the Tenant shall have the license to continue collecting such rent and other sums. Upon an Event of Default under this Sublease, the Landlord shall have the right to instruct any or all such subtenants, assignees or other occupants to pay such rent or other sums directly to the Landlord, and the Tenant shall cooperate in causing such rent or other sums to be paid directly to the Landlord.

12.7 The Landlord's Costs in Giving Consent. If the Landlord consents to a Transfer under this Article, the Tenant will pay the Landlord's processing costs and attorneys' fees incurred in giving such consent.

12.8 Excess Rent. The Tenant will pay to the Landlord as additional Rent promptly upon receipt any rent or other consideration received in any proposed Transfer exceeding the total Rent payable under this Sublease after deduction of the Tenant's reasonable costs for the Tenant Improvements and free rent concessions (prorated by the ratio that the assignment or Sublease term and square footage bears to the term and square footage of this Sublease).

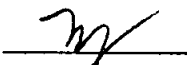
12.9 The Landlord's Right to Terminate Sublease. In the event of a proposed assignment or subletting, the Landlord shall also have the right, by notice to the Tenant, to terminate this Sublease in the event of an assignment as to all of the Premises and, in the event of a Sublease, as to the Subleased portion of the Premises, and to require that all or part, as the case may be, of the Premises be surrendered to the Landlord for the balance of the Term.

13. **TRANSFER OF THE LANDLORD'S INTEREST.** The Landlord has the right to transfer all or any portion of its interest in the Marina Village and in this Sublease and the Tenant agrees that in the event of any such transfer and a transfer of the Security Deposit, the Landlord shall automatically be released from all liability under this Sublease and the Tenant agrees to look solely to such transferee for the performance of the Landlord's obligations hereunder after the date of such transfer. The Tenant further acknowledges that the Landlord may assign its interest in this Sublease to a mortgage lender as additional security and agrees that such an assignment shall not release the Landlord from its obligations hereunder and that the Tenant shall continue to look to the Landlord for the performance of its obligations hereunder.

14. **USE OF PREMISES.** The Premises are Subleased to the Tenant for the sole purpose set forth in Section 1.11 above and the Tenant shall not use or permit the Premises to be used for any other purposes without the prior written consent of the Landlord. The Tenant further covenants and agrees that it shall not use, or permit any person or person to use, the Premises or any part thereof for any use or purpose contrary to the rules and regulations, attached hereto as Exhibit D and made a part of this Sublease, or in violation of the laws of the United States of America or the State of California, or the ordinances, regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction over the Marina Village. The Landlord shall not be responsible to the Tenant for the nonperformance of any of such rules and regulations by or otherwise with respect to the acts or omissions of any other tenants or occupants of the Marina Village. The Tenant shall comply with all recorded covenants, conditions, and restrictions now or hereafter affecting the real property underlying the Marina Village.

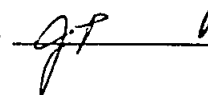
Marina Village Sublease

Landlord's Initials



Seaside1 -12-

Tenant's Initials



15. **CONTINUOUS OPERATIONS.** The Tenant shall not at any time leave the Premises vacant, but shall in good faith continuously throughout the Term of this Sublease conduct and carry on in the entire Premises the type of business for which the Premises are Subleased. The Tenant shall operate its business with a complete line and sufficient stock of merchandise, with attractive displays, and in an efficient, high class and reputable manner so as to produce the maximum amount of Gross Sales from the Premises. The Tenant shall keep the Premises open to the public for business with adequate and competent personnel in attendance on all days and during all hours set forth in Section 1.18 above. The Tenant acknowledges that its breach of this Section shall cause the Landlord to lose revenue not only from the loss of the Tenant's Percentage Rent, but also from the loss of rent from other tenants of the Marina Village and from loss of value in the Marina Village because of diminished saleability or mortgageability or adverse publicity or appearance. Therefore, for each day this Section is breached, the Landlord shall have the right, in addition to any other remedies available under this Sublease or at law, to (a) increase Base Rent to 200% of Base Rent, and (b) reduce the Monthly Breakpoint by an amount equal to 1/30th of the Monthly Breakpoint.

16. **COMPLIANCE WITH LAW.** The Tenant shall not do anything or suffer anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or other governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated. At its sole cost and expense, the Tenant shall promptly comply with all such governmental measures, other than the making of structural changes to the Buildings or changes to the Buildings' life safety systems. Should any standards or regulations now or hereafter be imposed on the Landlord or the Tenant by a state, federal or local governmental body charged with the establishment, regulation and enforcement of occupational, health or safety standards for employers, employees, landlords or tenants, then the Tenant agrees, at its sole cost and expense, to comply promptly with such standards or regulations. The judgment of any court of competent jurisdiction or the admission of the Tenant in any judicial action, regardless of whether the Landlord is a party thereto, that the Tenant has violated any of said governmental measures, shall be conclusive of that fact as between the Landlord and the Tenant.

17. **HAZARDOUS MATERIALS.**

17.1 **Definition.** As used in this Sublease, the term "Hazardous Material" means any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "infectious wastes", "hazardous materials" or "toxic substances" now or subsequently regulated under any federal, state or local laws, regulations or ordinances including, without limitation, petroleum-based products, printing inks, acids, pesticides, asbestos, PCBs and similar compounds and including any different products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons.

17.2 **The Tenant's Obligations.**

17.2.1 **Landlord's Prior Consent.** The Tenant shall not cause or permit any Hazardous Material to be generated, handled, manufactured, produced, installed, maintained, brought upon, transported through or across, used, stored, treated, spilled released, removed or disposed of in, on, from or about the Premises or the Marina Village by the Tenant, its agents, contractors, employees, contractors, affiliates, Tenants or invitees, without obtaining the Landlord's prior written consent.

17.2.2 **Compliance With Laws.** Whether or not the Tenant obtains such prior written consent from the Landlord (but without waiving the requirement to obtain such prior written consent), the Tenant shall, at the Tenant's sole cost and expense, fully, diligently and in a timely manner, comply with all applicable permits, all applicable federal, state and local laws, rules, regulations, ordinances, directives, covenants, easements and restrictions of record, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of the Landlord's engineers and/or consultants (collectively, the "Environmental Requirements") governing or relating to: (a) environmental conditions on, in, under or about the Premises and the Marina Village, including without limitation soil and groundwater conditions; (b) the use, generation, handling, manufacture, production, installation, maintenance, storage, treatment, spill, release, transportation, removal and/or disposal of such Hazardous Materials, (c) the posting of notices with respect to such Hazardous Material, or the providing of notices to third parties with respect to such Hazardous Materials, (d) the obtaining of all necessary licenses, permits or other authorizations relating to such Hazardous Materials, and (e) the filing of all applicable applications, reports, notices, registrations or business plans regarding such Hazardous Materials with the appropriate governmental agencies or authorities. Notwithstanding the foregoing, the Tenant shall not cause or permit any Hazardous Material

Marina Village Sublease

Landlord's Initials

Seaside1 -13-

Tenant's Initials

to be spilled or released in, on, under or about the Premises, including, without limitation, through the plumbing or sanitary sewer system. The Tenant shall provide the Landlord with copies of all documents and information, including but not limited permits, registrations, manifests, applications, reports, notices and certificates, evidencing the Tenant's compliance with the Environmental Requirements, and shall immediately upon receipt, notify the Landlord in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving failure by the Tenant or the Premises to comply with any of the Environmental Requirements.

17.2.3 Duty to Inform the Landlord. If the Tenant knows, or has reasonable cause to believe, that a Hazardous Material has come to be located in, on, under or about the Premises or the Marina Village, other than as previously consented to by the Landlord, the Tenant shall immediately give the Landlord written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to, or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to such Hazardous Material.

17.2.4 Removal of Hazardous Materials on Sublease Termination. Upon expiration of the Term or earlier termination of this Sublease, the Tenant shall deliver possession of the Premises to the Landlord free from any and all Hazardous Materials. Therefore, upon expiration or earlier termination of this Sublease, the Tenant shall cause any Hazardous Material used by, or otherwise arising out of or related to the use or occupancy of the Premises by, the Tenant or its agents, affiliates, customers, employees, business associates or assigns, to be removed from the Premises and the Marina Village and properly transported for use, storage or disposal in accordance with all Environmental Requirements. Failure to comply with this Section 17.2.4 shall, in addition to constituting an Event of Default under this Sublease, constitute (without limiting any cause of action available to the Landlord): (a) a continuing trespass upon the Premises by the Tenant; (b) a continuing nuisance; and (c) at the Landlord's option, a failure to tender possession of the Premises to the Landlord with the result that the Tenant shall be deemed to be a holdover tenant of the Premises in accordance with Section 32 below until all such Hazardous Materials are removed from the Premises and the Marina Village by the Tenant at the Tenant's sole cost and expense in accordance with all Environmental Requirements.

17.3 Indemnification. The Tenant shall indemnify, defend and hold the Landlord and the Landlord's Parties harmless from all actions (including, without limitation, remedial or enforcement actions of any kind, and administrative or judicial proceedings and orders or judgments), costs, claims, damages (including punitive damages), expenses (including attorneys', consultants' and experts' fees and court costs), amounts paid in settlement, fines, forfeitures or other civil, administrative or criminal penalties, injunctive or other relief, liabilities or losses arising from a breach of this Article 17 by the Tenant, its agents, employees, contractors, affiliates, Tenants or invitees.

17.4 Inspection by the Landlord. The Landlord, the Landlord's agents, employees, contractors and designated representatives, and/or the holders of any mortgages, deeds of trust or ground Subleases on the Premises or the Marina Village shall have the right to enter the Premises at any time in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by the Tenant with this Sublease and all Environmental Requirements, and the Landlord shall be entitled to employ experts and/or consultants in connection therewith to advise the Landlord with respect to the Tenant's activities, including but not limited to the Tenant's installation, operation, use, monitoring, maintenance, storage, transportation, spill or release of any Hazardous Materials on, in, under or from the Premises. The costs and expenses of such inspection shall be paid by the party requesting such inspection, unless the inspection reveals that an Event of Default or a breach of this Sublease by the Tenant or a violation of the Environmental Requirements or a contamination, caused or contributed to by the Tenant, exists or is imminent, or unless the inspection is requested or ordered by a governmental authority as the result of any such existing or imminent violation or contamination. In such case, the Tenant shall upon request reimburse the Landlord or the Landlord's lender or ground lessor, as the case may be, for the costs and expenses of such inspections.

18. USE OF COMMON FACILITIES. All elevators, escalators, stairways, halls and areas for the common use of all tenants in the Marina Village, and all sidewalks, landscaping, parking areas not reserved for others, and other areas for the common use of tenants in the Marina Village, shall be open to reasonable use at all reasonable times by the Tenant, its customers, clients and employees during ordinary business hours as set forth in Section 21 below.

19. SIGNS AND STORE FRONTS.

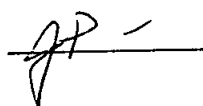
Marina Village Sublease

Landlord's Initials



Seaside1 -14-

Tenant's Initials



19.1 Landlord Consent. The Tenant shall not, without the Landlord's prior written consent, (a) make any changes to or paint the store front of the Premises; (b) install any exterior lighting, decorations or paintings; or (c) erect or install any signs, window or door lettering, placards, decorations or advertising media (collectively referred to in this Sublease as "Signs") of any type which can be viewed from the exterior of the Premises, excepting only dignified displays of customary type for its display windows. All Signs shall conform in all respects to the uniform, non-discriminatory Tenant Sign Criteria attached hereto as Exhibit E, as modified or amended from time to time, for the Marina Village and be subject to the prior written approval of the Landlord as to construction, method of attachment, size, shape, height, lighting, color and general appearance. The Tenant shall, at the Tenant's sole cost and expense, keep all Signs in good condition and in proper operating order at all times. The Landlord reserves the right to designate a uniform type of sign for the Marina Village to be installed and paid for by the Tenant. The Landlord reserves the right to place its own signs on the building facade over the Premises.

19.2 Installation of Signs Before Commencement Date. The Tenant shall erect and/or install and have fully operative on or before the Commencement Date of this Sublease, all of the Tenant's Signs in accordance with the Tenant Sign Criteria attached hereto as Exhibit E. Upon vacation of the Premises or the removal or alteration of the Tenant's Signs for any reason, the Tenant shall be responsible for the repair, painting, and/or replacement of the building facade surface where the Signs were attached.

20. **BUILDING RENOVATIONS**. The Tenant hereby acknowledges that the Landlord may during the Term renovate, improve, alter or modify (collectively, the "Renovations") the Marina Village, the Buildings and/or the Premises, which Renovations may include, without limitation, (i) installing or modifying sprinklers in the Marina Village common areas and tenant spaces, (ii) modifying the common areas and tenant spaces to comply with applicable laws and regulations, including regulations relating to the physically disabled, and (iii) installing new carpeting, lighting and wall coverings in the common areas. The Tenant hereby agrees that such Renovations shall in no way constitute a constructive eviction of the Tenant nor entitle the Tenant to any abatement of Rent. The Landlord shall use reasonable efforts to ensure that such Renovations shall be conducted in such a way as to minimize their effect on the Tenant's operations; provided, however, the Landlord shall have no responsibility, or for any reason be liable, to the Tenant for any injury to or interference with the Tenant's business arising from the Renovations, nor shall the Tenant be entitled to any compensation or damages from the Landlord for loss of the use of the whole or any part of the Premises or of the Tenant's personal property or improvements resulting from the Renovations, or for any inconvenience or annoyance occasioned by such Renovations.

21. SERVICES.

21.1 Standard Building Services. The Landlord shall furnish to the Premises throughout the Term (i) electricity to the point of connection of the premises, (ii) contracting for regular trash removal from the collection points within the property, (iii) water to point of connection to the premises, and (iv) sanitary sewer service beyond the point of connection of the tenant's premises at the lateral sewer line. The Landlord agrees to furnish landscaping and grounds maintenance for the areas used in common by the tenants of the Marina Village. The Landlord shall have no responsibility or liability for failure or interruption in such services caused by breakage, accident, strikes, repairs or for any other causes beyond the control of the Landlord, nor in any event for any indirect or consequential damages; and failures or omission on the part of the Landlord to furnish such services shall not be construed as an eviction of the Tenant, nor work an abatement of Rent, nor render the Landlord liable in damages, nor release the Tenant from prompt fulfillment of any of the covenants under this Sublease.

21.2 Special Services. If the Tenant requires or requests that the services to be furnished by the Landlord (except Marina Village standard electricity) be provided during periods in addition to the periods set forth in Section 1.18 above, then the Tenant shall obtain the Landlord's consent and, if consent is granted, shall pay upon demand the cost of such excess consumption, the cost of the installation, operation, and maintenance of equipment which is installed in order to supply or meter such excess consumption, and the cost of the increased wear and tear on existing equipment caused by such excess consumption. The Landlord may, from time to time during the Term, set a per hour charge for after-hours service which shall include the cost of utility service, labor costs, administrative costs and a cost for depreciation of the equipment used to provide after-hours service.

21.3 Utilities. All telephone, electricity, gas, heat, trash removal costs associated with the specific premises' collection point enclosure and other utility service furnished to the Premises shall be paid for directly by the

Marina Village Sublease

Landlord's Initials

Seaside1 -15-

Tenant's Initials

Tenant. The Landlord agrees to reimburse Tenant for electricity consumption in the southern attached room known as the Marine Room. The method of calculation of the electrical usage will be determined by the submeter installed on the HVAC equipment and based upon the hours of usage and ratings of other electrical equipment of the Marine Room. Reimbursement calculation will be for the actual kilowatt usage during the respective billing cycle at the applied rate by the utility company.

22. ENTRY BY THE LANDLORD. The Landlord reserves the right to enter the Premises at all reasonable times and reserves the right, during the last nine (9) months of the Term, to show the Premises at reasonable times to prospective the Tenants and to affix for Sublease/rent signs to the Premises at the Landlord's discretion.

23. SUBORDINATION AND ATTORNMENT. This Sublease is and shall be subject and subordinate to all ground or underlying Subleases and to any mortgage or deed of trust that may now or hereafter be placed against the Marina Village, and to all renewals, modifications, consolidations, replacements and extensions thereof. This subordination shall be self-operative; however, the Tenant shall promptly execute any instrument that the Landlord or any ground lessor, mortgagee or holder of a deed of trust may request confirming subordination. The Tenant hereby appoints the Landlord as the Tenant's attorney-in-fact to execute any such instrument on behalf of the Tenant. Notwithstanding the foregoing, the mortgagee or holder of a deed of trust that may now or hereafter be placed against the Marina Village shall have the unilateral, unconditional right, exercisable by providing written notice thereof to the Tenant, to subordinate or cause to be subordinated the mortgage or deed of trust to this Sublease. If such mortgagee or holder of a deed of trust so elects and subsequently forecloses such mortgage or deed of trust, this Sublease shall continue in full force and effect and the Tenant shall attorn to and recognize as its landlord the purchaser of the Landlord's interest under this Sublease, and the purchaser shall not disturb the Tenant's rights under this Sublease as long as the Tenant is not in default under this Sublease. The Tenant shall, upon the request of a mortgagee, holder of a deed of trust or purchaser at foreclosure, execute, acknowledge and deliver any instrument that has for its purpose and effect the subordination of the lien of any mortgage or deed of trust to this Sublease or the Tenant's attornment to the purchaser.

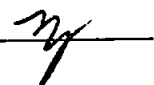
24. ESTOPPEL CERTIFICATE. The Tenant shall at any time upon not less than ten (10) days prior written notice from the Landlord execute, acknowledge and deliver to the Landlord a statement in writing in the form as attached hereto as Exhibit F (i) certifying that this Sublease is unmodified and in full 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 date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to the Tenant's knowledge, any uncured landlord defaults, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by a prospective purchaser or encumbrancer of the Premises. The Tenant's failure to deliver this statement within such time shall be conclusive upon the Tenant (i) that this Sublease is in full force, without modification except as may be represented by the Landlord, (ii) that there are no uncured defaults in the Landlord's performance, and (iii) that not more than one month's Base Rent has been paid in advance. If the Landlord desires to finance or refinance the Marina Village or the Premises, or any part thereof, the Tenant agrees to deliver to any lender designated by the Landlord such financial statements of the Tenant as may be reasonably required by that lender, including the past three years' financial statements. All such financial statements shall be received by the Landlord in confidence and shall be used only for the specified purposes.

25. MARINA VILLAGE RULES AND REGULATIONS. The Tenant agrees to abide by all rules and regulations of the Marina Village promulgated by the Landlord. These rules and regulations, attached hereto as Exhibit D and made a part of this Sublease, are imposed for the cleanliness, good appearance, proper maintenance, good order and reasonable use of the Premises and the Marina Village, and as may be reasonably necessary for the proper enjoyment of Marina Village by all tenants and their clients, customers and employees. The rules and regulations may be changed from time to time by the Landlord upon reasonable notice to the Tenant.

26. EVENTS OF DEFAULT. Each of the following shall constitute an "Event of Default": (i) the Tenant fails to pay Rent or another charge required to be paid under this Sublease when due, (ii) the Tenant fails to observe or perform any other term, condition or covenant of this Sublease binding upon or obligating the Tenant within ten (10) days after notice from the Landlord, (iii) the Tenant abandons the Premises; (iv) the Tenant or any guarantor makes or consents to a general assignment for the benefit of creditors or a common law composition of creditors, or a receiver of the Premises or all or substantially all of the Tenant's or guarantor's assets is appointed, (v) the Tenant or any guarantor files a voluntary petition in any bankruptcy or insolvency proceeding, or an involuntary petition in any

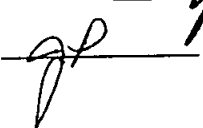
Marina Village Sublease

Landlord's Initials



Seaside1 -16-

Tenant's Initials



bankruptcy or insolvency proceeding is filed against the Tenant or any guarantor and is not discharged by the Tenant or the guarantor within sixty (60) days, or (vi) the Tenant fails to occupy the Premises within ten (10) business days after the Premises are substantially completed.

27. THE LANDLORD'S REMEDIES.

27.1 The Landlord's Remedies. Upon the occurrence of an Event of Default, the Landlord, at its option, without further notice or demand to the Tenant, shall have, in addition to all other rights and remedies provided in this Sublease, at law or in equity, the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever:

27.1.1 The Landlord shall have the right to terminate this Sublease, in which event the Tenant shall immediately surrender the Premises to the Landlord, and if the Tenant fails to do so, the Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove the Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and the Landlord may recover from the Tenant the following:

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

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

(iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that the Tenant proves could be reasonably avoided;

(iv) Any other amount necessary to compensate the Landlord for all the detriment proximately caused by the Tenant's failure to perform its obligations under this Sublease or which in the ordinary course of events would be likely to result therefrom, specifically including, but not limited to, brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new tenant, whether for the same or a different use, and any special concessions made to obtain a new tenant; and

(v) At the Landlord'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.

The term "rent" as used in this Section 27.1 shall be deemed to be and to mean all sums of every nature required to be paid by the Tenant pursuant to the terms of this Sublease, whether to the Landlord or to others. As used in Sections 27.1.1(i) and (ii) above, the "worth at the time of award" shall be computed by allowing interest at the rate set forth in Section 27.3, below, but in no case greater than the maximum amount of such interest permitted by law. As used in Section 27.1.1(iii) above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

27.1.2 The Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue Sublease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if the Landlord does not elect to terminate this Sublease on account of any default by the Tenant, the Landlord may, from time to time, without terminating this Sublease, enforce all of its rights and remedies under this Sublease, including the right to recover all rent as it becomes due and the rights set forth in Section 15 above.

27.2 The Landlord's Rights With Respect to Subleases. Whether or not the Landlord elects to terminate this Sublease on account of any default by the Tenant, as set forth in this Article 27, the Landlord shall have the right to terminate any and all Subleases, licenses, concessions or other consensual arrangements for possession entered into by the Tenant and affecting the Premises or may, in the Landlord's sole discretion, succeed to the Tenant's interest in such Subleases, licenses, concessions or arrangements. In the event of the Landlord's election to succeed

Marina Village Sublease

Landlord's Initials



Seaside1 -17-

Tenant's Initials



to the Tenant's interest in any such Subleases, licenses, concessions or arrangements, the Tenant shall, as of the date of notice by the Landlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

27.3 Late Charge. If the Tenant fails to pay any Rent within five (5) days after the Rent becomes due and payable, the Tenant shall pay to the Landlord a late charge of ten percent (10%) of the amount of overdue Rent. In addition, any late Rent payment shall bear interest from the date that Rent became due and payable to the date of payment by the Tenant at the interest rate of fifteen percent (15%) per annum, provided that in no case shall such rate be higher than the highest rate permitted by applicable law. Late charges and interest shall be due and payable within two (2) days after written demand from the Landlord.

28. **RIGHT OF THE LANDLORD TO CURE THE TENANT'S DEFAULT.** If an Event of Default occurs, then the Landlord may (but shall not be obligated to) make such payment or do such act to cure the Event of Default, and charge the expense, together with interest, at the rate of fifteen percent (15%) per annum, to the Tenant. Payment for the cure shall be due and payable by the Tenant upon demand; however, the making of any payment or the taking of such action by the Landlord shall not be deemed to cure the Event of Default or to stop the Landlord from the pursuit of any remedy to which the Landlord would otherwise be entitled.

29. **EXCULPATION OF THE LANDLORD.** It is expressly understood and agreed that notwithstanding anything in this Sublease to the contrary and notwithstanding any applicable law to the contrary, the liability of the Landlord hereunder (including any successor landlord) and any recourse by the Tenant against the Landlord shall be limited solely and exclusively to the interest of the Landlord in and to the Marina Village, and neither the Landlord nor any of the Landlord's Parties, shall have any personal liability therefor and the Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under the Tenant.

30. **SUBSTITUTED PREMISES.** The Landlord reserves the right on sixty (60) days written notice to the Tenant to substitute other premises within the Marina Village for the Premises for all uses and purposes as though originally Subleased to the Tenant by this Sublease. The substituted premises shall contain at least the same square footage as the original Premises without increase of Rent. The Landlord shall pay all reasonable and actual moving expenses of the Tenant incidental to the substitution of premises upon presentation of invoices paid by the Tenant.

31. **SURRENDER OF PREMISES.** The Tenant shall peaceably surrender the Premises to the Landlord on the expiration date of the Term or earlier termination of this Sublease, in broom-clean condition and in as good a condition as when the Tenant took possession, including, without limitation, the repair of any damage to the Premises caused by the removal of any of the Tenant's personal property or trade fixtures from the Premises, except for reasonable wear and tear and loss by fire or other casualty not caused by the Tenant or its agents. Any of the Tenant's personal property left on or in the Premises, the Marina Village or the common areas after the expiration date of the Term or earlier termination of this Sublease shall be deemed to be abandoned, and, at the Landlord's option, title shall pass to the Landlord under this Sublease. This Section is subject to the terms and conditions of Section 17.2.4 above.

32. **HOLDING OVER.** In the event that the Tenant shall not immediately surrender the Premises to the Landlord on the expiration date of the Term or earlier termination of this Sublease (including without limitation for the reasons set forth in Section 17.2.4 above), the Tenant shall be deemed to be a month to month tenant upon all of the terms and provisions of this Sublease, except the monthly Rent shall be twice the monthly Rent in effect during the last month of the Term. If the Tenant shall hold over after the expiration date of the Term or earlier termination of this Sublease, and the Landlord shall desire to regain possession of the Premises, then the Landlord may forthwith re-enter and take possession of the Premises without process or by any legal process in force in the State of California. The Tenant shall indemnify the Landlord against all liabilities and damages sustained by the Landlord by reason of such holding over.

33. GENERAL MATTERS.

33.1 Notices. All notices or other communications between the parties shall be in writing and shall be deemed duly given, if delivered in person, or upon the earlier of receipt, if mailed by certified or registered mail, or three (3) days after certified or registered mailing, return receipt requested, postage prepaid, addressed and sent to

Marina Village Sublease

Landlord's Initials

Seaside1 -18-

Tenant's Initials

the parties at their addresses set forth in Sections 1.14 above. The Landlord and the Tenant may from time to time by written notice to the other designate another address for receipt of future notices.

33.2 Successors and Assigns. Subject to the provisions of Article 12 hereof, the rights, duties and liabilities created hereunder shall inure to the benefit of and be binding upon the parties hereto, their heirs, personal representatives, successors and assigns.

33.3 Prohibition Against Recording. Except as provided in this Sublease, neither this Sublease, nor any memorandum, affidavit or other writing with respect thereto, shall be recorded by the Tenant or by anyone acting through, under, or on behalf of the Tenant and the recording thereof in violation of this provision shall make this Sublease null and void at the Landlord's election.

33.4 Waiver and Severability.

33.4.1 The consent of the Landlord in any instance to any variation of the terms of this Sublease, or the receipt of Rent with knowledge of any breach, shall not be deemed to be a waiver as to any breach of any Sublease covenant or condition, nor shall any waiver occur to any provision of this Sublease except in writing, signed by the Landlord or the Landlord's authorized agent. It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Sublease and this Sublease supersedes and cancels any and all previous negotiations and understandings, if any, between the parties hereto and none thereof shall be used to interpret or construe this Sublease. This Sublease and any side letter or separate agreement executed by the Landlord and the Tenant in connection with this Sublease and dated of even date herewith contain all of the terms, covenants and agreements of the parties relating in any manner to the Premises, and shall be considered to be the only agreement between the parties hereto and their representatives and agents.

33.4.2 If any term or provision of this Sublease or any application shall be invalid or unenforceable, then the remaining terms and provisions of this Sublease shall not be affected.

33.5 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (collectively, a "Force Majeure"), except with respect to the obligations imposed with regard to the Rent and other charges to be paid by the Tenant pursuant to this Sublease and the Tenant's obligations under Article 14, 15, 16 and 17 of this Sublease notwithstanding anything to the contrary contained in this Sublease, shall excuse the performance of such party for a period equal to any such prevention, delay, or stoppage and, therefore, if this Sublease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.

33.6 Attorneys' Fees. If either party commences litigation against the other for the specific performance of this Sublease, for damages for breach hereof or otherwise for enforcement of any remedy hereunder, the parties hereto agree to and hereby do waive any right to a trial by jury and, in the event of any such commencement of litigation, the prevailing party shall be entitled to recover from the other party such costs and reasonable attorneys' fees as may have been incurred.

33.7 Joint and Several. If there is more than one individual or entity comprising the Tenant, the obligations imposed upon the Tenant under this Sublease shall be joint and several.

33.8 Governing Law; Consent to Jurisdiction. This Sublease shall be construed and enforced in accordance with the laws of the State of California. The Landlord and the Tenant agree that any action or proceeding to enforce the provisions of this Sublease or otherwise relating to this Sublease or the Premises shall be brought in a court of law of competent jurisdiction located in the county and state in which the Marina Village is located.

33.9 Submission of Sublease. Submission of this instrument for examination or signature by the Tenant does not constitute a reservation of or an option for Sublease and it is not effective as a Sublease or otherwise until execution and delivery by both the Landlord and the Tenant.

Marina Village Sublease

Landlord's Initials

ny

Seaside1 -19-

Tenant's Initials

g.p

33.10 Brokers. The Landlord and the Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Sublease, excepting only the real estate brokers or agents specified in Sections 1.13 above (the "Brokers") and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Sublease. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any real estate broker or agent other than the Brokers. The terms of this Section 33.10 shall survive the expiration of the Term or earlier termination of this Sublease.

33.11 The Landlord's Reservations. In addition to the other rights of the Landlord under this Sublease, the Landlord reserves the right to change the street address and/or name of the Marina Village without being deemed to be guilty of an eviction, actual or constructive, or a disturbance or interruption of the business of the Tenant or the Tenant's use or occupancy of the Premises.

33.12 Captions. The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.

33.13 Relationship of Parties. Nothing contained in this Sublease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between the Landlord and the Tenant, it being expressly understood and agreed that neither the method of computation of Rent nor any act of the parties hereto shall be deemed to create any relationship between the Landlord and the Tenant other than the relationship of landlord and tenant.

33.14 Time of Essence. Time is of the essence of this Sublease and each of its provisions.

33.15 Right to Sublease. The Landlord reserves the absolute right to effect such other tenancies in the Marina Village as the Landlord in the exercise of its sole business judgment shall determine to best promote the interests of the Marina Village. The Tenant does not rely on the fact, nor does the Landlord represent, that any specific tenant or type or number of tenants shall, during the Term, occupy any space in the Marina Village.

33.16 Authority. If the Tenant is a corporation, partnership or other form of legal entity, each individual executing this Sublease on behalf of the Tenant hereby represents and warrants that the Tenant is a duly formed and existing entity qualified to do business in California and that the Tenant has full right and authority to execute and deliver this Sublease and that each person signing on behalf of the Tenant is authorized to do so.

33.17 Transportation Management. The Tenant shall fully comply with all present or future programs intended to manage parking, transportation or traffic in and around the Marina Village, and in connection therewith, the Tenant shall take responsible action for the transportation planning and management of all employees located at the Premises by working directly with the Landlord, any governmental transportation management organization or any other transportation-related committees or entities.

33.18 Counterparts. This Sublease may be signed in counterparts, each of which shall be deemed an original but all of which together constitute one and the same instrument.

33.19 Exhibits and Addenda. The exhibits and addenda that are attached to this Sublease are listed on page iv of the Table of Contents, and all exhibits and addenda that are attached to this Sublease are incorporated into and constitute a part of this Sublease.

34. OPTIONS

34.1 HVAC Repair / Replacement

34.1.1 Landlord's Approval. Provided the tenant is not in default of any of the terms and conditions of the sublease, Tenant shall have the option to repair and/or replace components of the HVAC system. Prior to repairing or replacing any components of the HVAC system, Tenant shall submit to Landlord for approval equipment specifications and work plans showing precisely the repairs or replacements to be made, the contractor Tenant

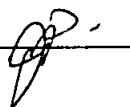
Marina Village Sublease

Landlord's Initials



Seaside1 -20-

Tenant's Initials



intends to use, the cost of such work, and the schedule for such work. Landlord shall have the right to approve or disapprove any such aspects of the work, and Tenant shall not perform any of such work unless and until Landlord has given its final approval. All such work shall comply with the requirements of Sections 7.4, 7.7, 7.8 and 7.9 above.

34.1.2 Rent Credits. If Tenant elects to perform such work, Landlord agrees to provide Tenant rent credits against current and future Base Rent and Percentage Rents for the actual cost of HVAC repairs and/or replacements of equipment that were pre-approved by Landlord.

34.1.3 Lease Termination. In the event the Tenant terminates this Sublease prior to the recovery of the pre-approved expenses, the Landlord will retain possession of the improvements without any obligation of reimbursement beyond rent credits already accrued pursuant to Section 34.1.2. In the event the Landlord terminates this Sublease for any reason other than Tenant's default, Landlord agrees to reimburse Tenant an amount equivalent to the balance of the costs not previously reimbursed to Tenant through rent credits. If the Landlord terminates this Sublease because of Tenant's default, however, Tenant shall not be entitled to any such reimbursement.

34.1.4 Exclusive Catering Rights. In further consideration for the replacement or repair of the HVAC equipment, if Tenant elects to perform such work, Landlord shall provide Tenant exclusive catering rights to future event bookings in the Marine Room. Such catering rights shall be contingent upon the completion of the pre-approved repairs or replacement of HVAC components and the continued satisfactory performance of catering operations as determined solely by Landlord. Notwithstanding the foregoing, the Landlord reserves the right to schedule events in the Marine Room, without using Tenant for the exclusive catering, in cases where the party reserving the room requires catering service from other than Tenant and Marina Village has no other suitable rooms to reserve.

34.2 Expansion. Tenant, at Tenant's expense, has the option of installing and operating a patio deck on the north side of the premises. Prior to performing any such work, Tenant shall submit to Landlord for approval specifications and work plans showing precisely the work to be performed, the contractor Tenant intends to use, the cost of such work, and the schedule for such work. Landlord shall have the right to approve or disapprove any such aspects of the work, and Tenant shall not perform any of such work unless and until Landlord has given its final approval. All such work shall comply with the requirements of Sections 7.4, 7.7, 7.8 and 7.9 above. Landlord agrees to provide rent credits to Tenant up to a maximum of \$3,000 for qualified improvements which are pre-approved by Landlord.

IN WITNESS WHEREOF, the parties have executed this Sublease as of the "Date of Sublease" shown on the first page of this Sublease.

THE "TENANT":
RANCH CATERING, INC.,
a California corporation

By: [Signature]
Name: J. Pether
Title: Pres.

THE "LANDLORD":
RETIREMENT FUND TRUST OF THE
PLUMBING-HEATING AND PIPING INDUSTRY OF
SOUTHERN CALIFORNIA

By: [Signature]
Name: MILTON D. JOHNSON
Title: ADMINISTRATOR

The Tenant hereby exercises the option set forth in Section 34.2 of the Sublease to install and operate a patio deck on the north side of the Premises. On or before June 1, 1997, Tenant shall submit to Landlord all of the documents, materials and other information required by such Section 34.2, and Tenant shall otherwise comply with all requirements of such section.

Marina Village Sublease

Landlord's Initials

Seaside1 -21-

Tenant's Initials

EXHIBIT A-1 & A-2

PLAN OF MARINA VILLAGE, SHOWING THE LOCATION OF THE PREMISES

[See following page]

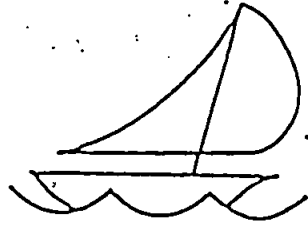
Marina Village Sublease Landlord's Initials *MF*

Seaside1 -22- Tenant's Initials *JP*

Marina Village

Special Events & Conference Center

1936 Quivira Way San Diego, Ca 92109
(619) 222-1620



MISSION BAY

Marina
Office

1840-
1842

C Dock

Harbor Hopper

Sunset
Room
1935

Bldg A 1925

Captains Room Rest Rooms

Bldg B
1845

2
1
Coral

Courtyard

Snack
Shack

Bldg C 1975

Baja Room
1904

Shanghai 1930 Bayview Room 1933

Bldg F 1950
Dockside
8 3
9
Nautical

SEASIDE ROOM 1970
MARINE ROOM
DECK

Starboard 1920
Restrooms

Courtyard

Terrace 7 Office
1 4

Bldg G 1936

Bldg E 1960
11 10 9 8
12 1 3 4 5

Bldg D 1945
8 7
6
M.B.L.A.
1

Conference Center Office 1936

SEASIDE ROOM
Proposed Patio Deck

PARKING

PARKING

QUIVIRA WAY

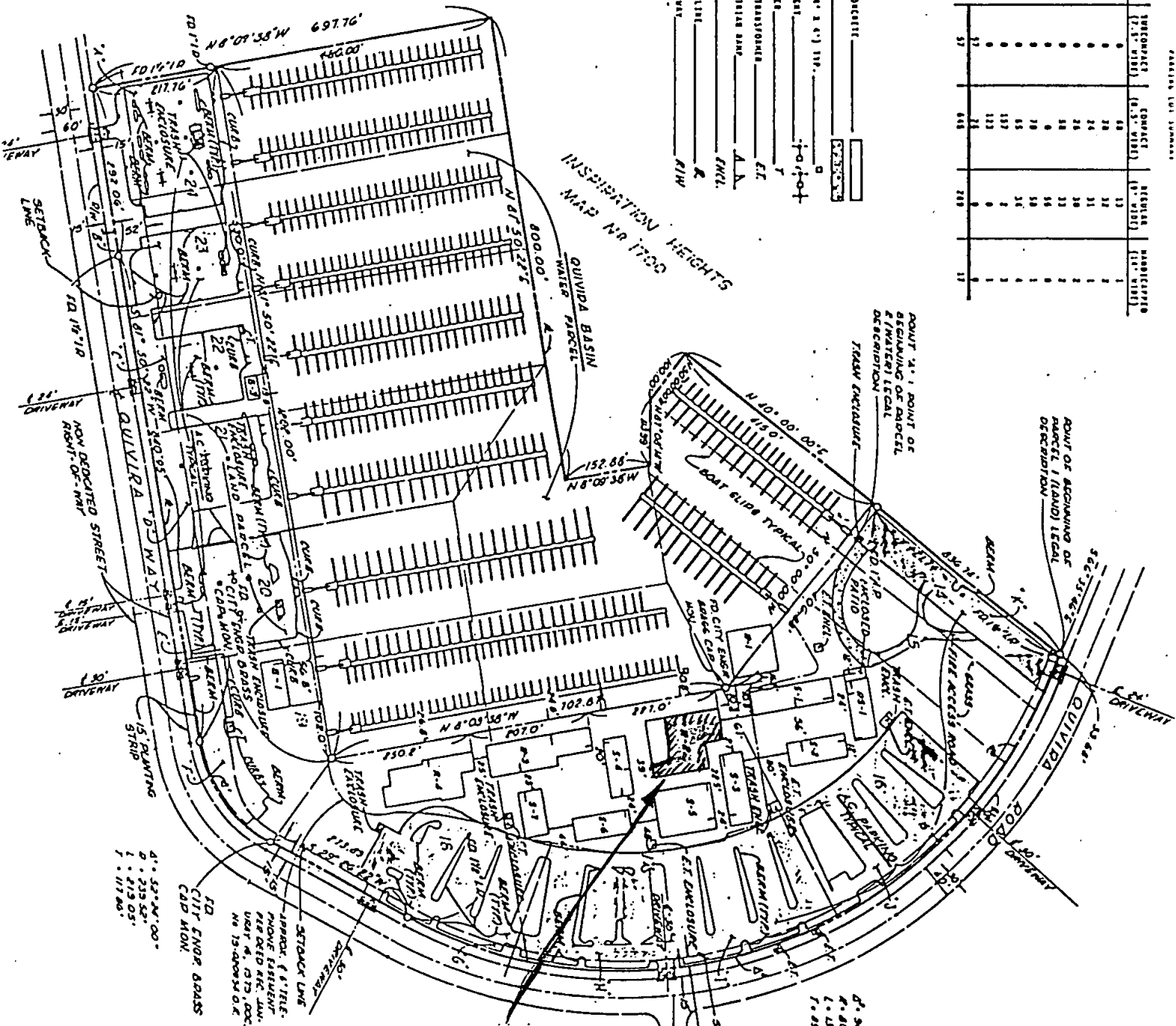
QUIVIRA ROAD

EVALUATION
A-1

PARCELS AREA	TRIP/CONTACT (7.5' VIB)	CONTACT (8.5' VIB)	STREET (10' VIB)	MANUFACTURE (11' VIB)
1	0	10	11	1
2	0	20	21	2
3	0	30	31	3
4	0	40	41	4
5	0	50	51	5
6	0	60	61	6
7	0	70	71	7
8	0	80	81	8
9	0	90	91	9
10	0	100	101	10
11	0	110	111	11
12	0	120	121	12
13	0	130	131	13
14	0	140	141	14
15	0	150	151	15
16	0	160	161	16
17	0	170	171	17
18	0	180	181	18
19	0	190	191	19
20	0	200	201	20
21	0	210	211	21
22	0	220	221	22
23	0	230	231	23
24	0	240	241	24
25	0	250	251	25
26	0	260	261	26
27	0	270	271	27
28	0	280	281	28
29	0	290	291	29
30	0	300	301	30
31	0	310	311	31
32	0	320	321	32
33	0	330	331	33
34	0	340	341	34
35	0	350	351	35
36	0	360	361	36
37	0	370	371	37
38	0	380	381	38
39	0	390	391	39
40	0	400	401	40
41	0	410	411	41
42	0	420	421	42
43	0	430	431	43
44	0	440	441	44
45	0	450	451	45
46	0	460	461	46
47	0	470	471	47
48	0	480	481	48
49	0	490	491	49
50	0	500	501	50
51	0	510	511	51
52	0	520	521	52
53	0	530	531	53
54	0	540	541	54
55	0	550	551	55
56	0	560	561	56
57	0	570	571	57
58	0	580	581	58
59	0	590	591	59
60	0	600	601	60
61	0	610	611	61
62	0	620	621	62
63	0	630	631	63
64	0	640	641	64
65	0	650	651	65
66	0	660	661	66
67	0	670	671	67
68	0	680	681	68
69	0	690	691	69
70	0	700	701	70
71	0	710	711	71
72	0	720	721	72
73	0	730	731	73
74	0	740	741	74
75	0	750	751	75
76	0	760	761	76
77	0	770	771	77
78	0	780	781	78
79	0	790	791	79
80	0	800	801	80
81	0	810	811	81
82	0	820	821	82
83	0	830	831	83
84	0	840	841	84
85	0	850	851	85
86	0	860	861	86
87	0	870	871	87
88	0	880	881	88
89	0	890	891	89
90	0	900	901	90
91	0	910	911	91
92	0	920	921	92
93	0	930	931	93
94	0	940	941	94
95	0	950	951	95
96	0	960	961	96
97	0	970	971	97
98	0	980	981	98
99	0	990	991	99
100	0	1000	1001	100

- LISTED
- ASPHALT CONCRETE
 - CONCRETE
 - FLASHER (6" x 6")
 - STEEL LIGHT
 - TRANSFORMER
 - ELECTRIC TRANSFORMER
 - 12" PERFORATED DRAIN
 - ENCLOSURE
 - PROPERTY LINE
 - RIGHT OF WAY
 - ALH

INSPECTION HEIGHTS
MAP NO 1700



SEASIDE ROOM
Bldg R-2

EXHIBIT B

TENANT WORK LETTER

NOT APPLICABLE -- The Tenant agrees that the Premises are to be delivered in their "as is" condition, and Landlord shall not be required to do any work whatsoever to prepare the Premises for Tenant's use. Tenant acknowledges that the HVAC, trade fixtures and FF&E are not operational and any repairs will be at Tenant's sole cost and expense (except as otherwise provided in Section 34 of this Sublease).

Marina Village Sublease

Landlord's Initials



Seaside1 -23-

Tenant's Initials



EXHIBIT C

NOTICE OF SUBLEASE TERM DATES

To:

Re: Marina Village Sublease dated _____, 19____, for _____, a
(the "Tenant") concerning Store No. _____ of the Marina Village located at
_____, California.

In accordance with the Marina Village Sublease (the "Sublease"), we wish to advise you and/or confirm as follows:

1. The Premises are substantially completed and the Term has commenced on _____, 19____ (the "Commencement Date") for a term of _____ (____) months ending on _____, 19/20____ (the "Expiration Date").
2. Rent commenced to accrue on _____, 19____, with the monthly Base Rent in the amount of \$ _____.
3. If the Commencement Date is other than the first day of the month, the first billing will contain a pro rata adjustment. Each billing thereafter, with the exception of the final billing, shall be for the full amount of the monthly installment as provided for in the Sublease.
4. Your rent checks should be made payable to Marina Village and delivered to 1842 Quivira Way, San Diego, CA.
5. The exact number of rentable square feet within the Premises is _____ square feet.
6. The Tenant's Proportionate Share as adjusted based upon the exact number of rentable square feet within the Premises is _____%.

Agreed and Accepted by the Tenant
as of _____, 199____

THE "TENANT":
RANCH CATERING, INC.,
a California corporation

THE "LANDLORD":
RETIREMENT FUND TRUST OF THE
PLUMBING-HEATING AND PIPING INDUSTRY OF
SOUTHERN CALIFORNIA

By:

By:

Name:

Name:

Title:

Title: _____

—

Marina Village Sublease

Landlord's Initials _____

Seaside1 -24-

Tenant's Initials _____

EXHIBIT D

RULES AND REGULATIONS

Tenant covenants and agrees with Landlord that:

1. No symbol, design, name, mark or insignia adopted by Landlord for the Marina Village or the Project shall be used by Tenant in or about the Premises without the prior written consent of Landlord. No illuminated signs located in the interior of any store and which are visible from the outside shall advertise any product. All signs located in the interior of any store shall be in good taste so as not to detract from the general appearance of the Premises and the Marina Village. Tenant shall not use handbills for advertising at the Marina Village.
2. No awning or other projections shall be attached to the exterior walls of the Premises or the building of which it forms a part without the prior written consent of Landlord.
3. All loading and unloading of goods shall be done only at such times, in the areas and through the entrances reasonably designated for such purpose by Landlord, and Tenant shall use its best efforts to prevent the parking or standing outside of such areas of trucks, trailers or other vehicles or equipment engaged in such loading or unloading.
4. All garbage and refuse shall be kept in the kind of container specified by Landlord and shall be placed in the areas reasonably specified by Landlord and prepared for collection in the manner and at the times specified by Landlord. If Landlord shall provide or designate a service for picking up refuse and garbage, Tenant shall use same at Tenant's sole cost, provided such cost shall be competitive to any similar service available to Tenant. Tenant will not install or cause to be installed any automatic garbage disposal equipment without the prior written consent of Landlord.
5. No radio or television or other similar device shall be installed, and no aerial shall be erected on the roof, on exterior walls of the Premises, or on the grounds. Any such device or aerial so installed shall be subject to removal without notice at any time.
6. No loud speakers, television sets, CD players, phonographs, radios or other devices shall be used in a manner so as to be heard or seen outside of the Premises without the prior written consent of Landlord.
7. The following types of sales shall not be conducted on or about the Premises without the prior written consent of Landlord:
 - a. Sales using the auction method of selling or bankruptcy sales unless pursuant to the order of a bankruptcy court having jurisdiction;
 - b. Fire sales except for those solely involving merchandise damaged at the Premises; or
 - c. Closing out or going out of business sales except for those conducted by Tenant personally (and specifically not by a firm specializing in liquidation sales) for a reasonable period of time only which are an integral part of Tenant's conclusion of business at the Premises and the termination of Tenant's Sublease for the Premises.
8. Tenant shall keep Tenant's display windows illuminated and signs and lights on the store front lighted each and every day of the Sublease Term during the hours designated by Landlord.
9. Tenant shall not place or permit any obstructions, merchandise, hand billings or soliciting of business in the corridors, sidewalks, entrances, passages, courts, corridors, elevators, stairways, parking areas, alleys, landscaping or other common area.
10. Tenant and Tenant's employees shall park their cars only in those portions of the parking area designated for employee parking by Landlord. Tenant shall furnish to Landlord upon request a complete list of license

Marina Village Sublease

Landlord's Initials

Seaside1 -25-

Tenant's Initials

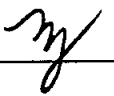
numbers of all automobiles operated by Tenant, its employees, subtenants, licensees or concessionaires within five (5) days of any request to do so by Landlord.

11. Tenant shall use at Tenant's sole cost such pest extermination contractor as Landlord may direct and at such intervals as Landlord may reasonably require, provided the cost thereof is competitive to any similar service available to Tenant.
12. Tenant shall not make or permit any noise or odor which Landlord deems objectional to emanate from the Premises, and no person shall use the Premises as sleeping quarters, sleeping apartment or lodging room.
13. Tenant shall obtain all permits and/or licenses necessary to conduct its business.
14. Except for those exclusively for use by employees of Tenant which are not visible from the sales area of Tenant or the exterior of the Premises, Tenant shall not operate any coin or token operated vending machine or similar device for the sale of any goods, wares, merchandise, food, beverages, or services, including, but not limited to, pay telephones, pay lockers, pay toilets, scales, amusement devices and machines for the sale of beverages, food, candy, cigarettes or other commodities, without the prior written consent of Landlord.
15. Tenant shall not place or maintain any temporary fixture for the display of merchandise outside of the Premises, and Landlord shall have the right, without giving prior notice to Tenant and without any liability for damage to the Premises or Tenant's merchandise, to remove any of the same from the Premises, and, except such as shall have first received the written approval of Landlord as to size, color, location, nature and display qualities.
16. Tenant shall not make noises, cause disturbances or vibrations or use or operate any electrical or electronic devices or other devices that emit sound or other waves of disturbances, or create odors, any of which may be offensive to other tenants and occupants of the Marina Village or that would interfere with the operation of any device of equipment or radio to television broadcasting or reception from or within the Marina Village or elsewhere.

The foregoing covenants and agreements in this Exhibit D shall be referred to collectively as the "Rules and Regulations". Tenant agrees that Landlord may amend, modify and delete the Rules and Regulations, or add new and additional reasonable rules and regulations for the use and care of the Premises, the building of which the Premises is a part, the common areas of the Marina Village, and all other areas of the Marina Village. Tenant agrees to comply with all such Rules and Regulations upon notice to Tenant from Landlord or upon the posting of same in such place within the Marina Village as Landlord may designate. In the event of any breach of any Rules and Regulations herein set forth or any amendments or additions thereto, Landlord shall have all remedies in this Sublease provided for upon default of Tenant.

Marina Village Sublease

Landlord's Initials



Seaside1 -26-

Tenant's Initials

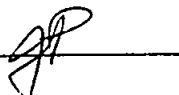


EXHIBIT E

TENANT SIGN CRITERIA

The following criteria have been established for the purpose of assuring an outstanding and consistent tenant sign program. Conformance will be strictly enforced and any nonconforming signs will be disapproved.

- 1.1 Submission. Tenant shall submit for approval one (1) complete set of sign drawings to Landlord and three (3) sets to Landlord's architect prior to sign fabrication. In addition to detailed drawings, such submissions shall include:

- A. Elevation of storefront showing design, location, size and layout of sign drawn to scale indicating dimensions, attachment devices and construction detail.
- B. Sample board showing colors and materials.
- C. Section through letter and/or sign panel showing the dimensioned projection of the face of the letter and/or sign panel and the illumination.

1.2 General Requirements.

- A. Tenant signs shall be designed in a manner that is not only imaginative but also of high graphic quality, as determined by Landlord.
- B. Brightness of signs is subject to approval by Landlord, shall comply with all applicable building and electrical codes and shall bear the U.L. label at interior of cabinet. Surface brightness of all illuminated materials shall be consistent in all letters and components of the sign. Light leaks will not be permitted.
- C. Advertising or informative content of Tenant's signs shall be limited to letters designating Tenant's trade name. Crests, corporate shields or logos may be permitted at the discretion of the Landlord.
- D. Tenant will be permitted to place upon the main entrance to the Premises not more than a 144 square inch of white vinyl lettering not to exceed 1-1/2" in height, indicating hours of business and emergency phone numbers.

1.3 Sign Construction Requirements.

- A. Tenant's sign contractor shall submit drawings and obtain all required permits from the appropriate agency of the City or County in which the Marina Village is located. All drawings submitted to the City or County shall bear the approval of the Landlord or Landlord's agent.
- B. All letters shall be fabricated using full-welded construction.
- C. Location of all openings for conduit sleeves and supports in sign panels building walls shall be indicated by the sign contractor on drawings submitted to the Landlord. Sign contractor shall install same in accordance with the approved drawings.
- D. Sign contractor shall repair any damage caused by his or her work.
- E. Sign installation shall be coordinated with the Landlord prior to commencement of any work by the Tenant's sign contractor.
- F. All electrical signs shall bear the U.L. label inside of cabinet; their fabrication and installation shall comply with all national and local building and electrical codes.

Marina Village Sublease

Landlord's Initials

Seaside1 -27-

Tenant's Initials

G. All conduit, raceways, crossovers, wiring, ballast boxes, transformers, and other equipment necessary for sign connection shall be concealed. All bolts, fastenings and clips shall consist of enameling iron with porcelain enamel finish; stainless steel, anodized aluminum, brass or bronzed; or carbon-bearing steel with painted finish. No black iron materials will be allowed.

H. Separate all ferrous and non-ferrous metals with non-conductive gaskets to prevent electrolysis. In addition to gaskets, provide stainless steel fasteners to secure ferrous to non-ferrous metals.

I. No sign maker's labels or other identification will be permitted on the exposed surface of signs.

J. Simplicity and restraint in materials selection is important; however, the material selection, its method of application, or its detail construction should be consistent with other storefront design criteria.

K. Landlord shall not be responsible for the cost of signs fabricated or installed which do not conform to the Tenant Sign Criteria.

1.4 Storefront Tenant Identification.

A. Tenant in typical bays shall provide one (1) 6'-0" x 3'-0" identification sign per set of double entry doors per occupied bay.

B. Sign will be integral with storefront construction in space provided above double doors.

C. Signs face copy shall be routed out of 1/8" seamless aluminum panel and backed with acrylic panel.

D. Signs shall have fluorescent interior illumination.

1.5 Tenant Blade Sign Identification.

A. Tenant shall install a blade bracket that is approved by the Landlord.

B. Tenant shall provide one (1) five-square-foot panel per bracket.

C. Blade sign shall be 80% or more generic symbol depicting tenant product. Remaining 20% of sign may contain tenant name.

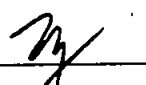
D. Blade sign may be of fabricated metal or wood non-illuminated.

1.6 General.

A. This Tenant Sign Criteria is for general guidelines only and will be subject to further development. All tenant signs must be submitted to Landlord for approval.

Marina Village Sublease

Landlord's Initials



Seaside1 -28-

Tenant's Initials

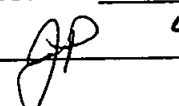


EXHIBIT F

ESTOPPEL CERTIFICATE

To:

Attn:

(the "Tenant") hereby certifies as follows:

1. The undersigned is the Tenant under that certain Marina Village Sublease dated _____, 19____ (the "Sublease"), executed by THE RETIREMENT FUND TRUST OF THE PLUMBING-HEATING AND PIPING INDUSTRY OF SOUTHERN CALIFORNIA ("the Landlord") as the Landlord and the undersigned as the Tenant, covering a portion of the Marina Village located at _____ (the "Marina Village").
2. Pursuant to the Sublease, the Tenant has Subleased approximately _____ square feet of space, known as Store No. _____ (the "Premises") at the Marina Village, and has paid to the Landlord a security deposit of \$_____. The term of the Sublease commenced on _____, 19____, and the expiration date of the Sublease is _____, 19/20____. The Tenant has paid rent through _____, 19____. The next rental payment in the amount of \$_____ is due on _____, 19____. The Tenant is required to pay _____ percent (____%) of all annual operating expenses for the Marina Village, and the Tenant is required to pay _____ percent (____%) of its gross sales from the Premises in excess of \$_____ per month, as additional rent.
3. The Sublease provides for an option to extend the term of the Sublease for _____ years. The rental rate for such extension term is as follows:

Except as expressly provided in the Sublease, and other documents attached hereto, the Tenant does not have any right or option to renew or extend the term of the Sublease, to Sublease other space at the Property, nor any preferential right to purchase all or any part of the Premises or the Property.
4. True, correct and complete copies of the Sublease and all amendments, modifications and supplements thereto are attached hereto and the Sublease, as so amended, modified and supplemented, is in full force and effect, and represents the entire agreement between the Tenant and the Landlord with respect to the Premises and the Marina Village. There are no amendments, modifications or supplements to the Sublease, whether oral or written, except as follows (include the date of such amendment, modification or supplement):
5. All space and improvements Subleased by the Tenant have been completed and furnished in accordance with the provisions of the Sublease and the Tenant has accepted and taken possession of the Premises.
6. The Landlord is not in default in the performance of any of the terms and provisions of the Sublease. The Tenant is not in default under the Sublease and has not assigned, transferred or hypothecated the Sublease or any interest therein or Subleased all or any portion of the Premises.
7. There are no offsets or credits against rentals payable under the Sublease and no free periods or rental concessions have been granted to the Tenant, except as follows:
8. The Tenant has no actual or constructive knowledge of any processing, use, storage, disposal, release or treatment of any hazardous or toxic materials or substances on the Premises or the Marina Village except as follows: (if none, state "none"):

Marina Village Sublease

Landlord's Initials _____

Seaside1 -29-

Tenant's Initials _____

This Estoppel Certificate is given to _____ with the understanding that _____ will rely hereon in connection with the conveyance of the Marina Village of which the Premises constitute a part to _____. Following any such conveyance, the Tenant agrees that the Sublease shall remain in full force and effect and shall bind and inure to the benefit of the _____ and its successor in interest as if no purchase had occurred.

DATED: _____, 19__

The "Tenant":

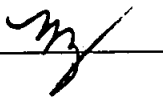
a _____

By:
Name:
Title:

[ATTACH SUBLEASE AND AMENDMENTS TO THIS CERTIFICATE]

Marina Village Sublease

Landlord's Initials



Seaside1 -30-

Tenant's Initials

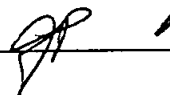


EXHIBIT G

GUARANTY OF SUBLEASE

THIS GUARANTY OF SUBLEASE (this "Guaranty") is made by JASON PELTIER, an individual (the "Guarantor"), to THE RETIREMENT FUND TRUST OF THE PLUMBING-HEATING AND PIPING INDUSTRY OF SOUTHERN CALIFORNIA (the "Landlord"), with respect to the Marina Village Sublease (the "Sublease") dated December 1, 1996, between the Landlord and RANCH CATERING, INC., A CALIFORNIA CORPORATION (the "Tenant"), relating to certain premises located at 1970 Quivira Road, San Diego, CA (the "Premises").

In consideration of the Sublease, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Guarantor hereby covenants and agrees for the benefit of the Landlord, as a material inducement to the Landlord's execution of the Sublease, as follows:

1. The Guarantor absolutely, unconditionally and fully guarantees: (i) the payment of all rent, monies and charges expressed to be payable by the Tenant under the Sublease at the times the same are required to be paid thereunder; (ii) the performance when due of all and each of the covenants, conditions and obligations contained in the Sublease to be kept, performed or observed by the Tenant; and (iii) all damages owing to the Landlord by the Tenant after termination of the Sublease following a default thereof by the Tenant. The Guarantor agrees that if the Tenant fails to pay any monetary obligation as required by the Sublease, the Guarantor, after receipt of written demand therefor by the Landlord, shall pay such obligation when required of the Tenant under the Sublease as if such obligation constituted the direct and primary obligation of the Guarantor. The Guarantor shall indemnify, defend and hold the Landlord harmless from any and all losses, liabilities, costs and damages arising out of any failure by the Tenant to pay or perform as required hereunder, or the recapture of any rent, monies or charges received during a preference period provided in any state or federal bankruptcy law.
2. In such manner, upon such terms and at such times as the Landlord shall deem best, and without notice to or the consent of the Guarantor, the Landlord may alter, compromise, extend or change the time or manner for the performance of any obligation hereby guaranteed, substitute or add any one or more the Guarantors, accept additional or substituted security for the performance of any such obligation, or release or subordinate any security therefor, any and all of which may be accomplished without any effect on the obligations of the Guarantor hereunder. No exercise or non-exercise by the Landlord of any right hereby given, no dealing by the Landlord with the Tenant, any other guarantor or other person, and no change, impairment or suspension of any right or remedy of the Landlord shall in any way affect any of the obligations of the Guarantor hereunder or any security furnished by the Guarantor or give the Guarantor any recourse against the Landlord.
3. The Guarantor hereby waives and agrees not to assert or take advantage of the following:
 - (a) any right to require the Landlord to proceed against the Tenant or any other person or to proceed or exhaust any security held by the Landlord at any time or to pursue any other remedy in the Landlord's power before proceeding against the Guarantor.
 - (b) any defense based on the statute of limitation in any action hereunder or in any action for the performance of any obligation hereby guaranteed;
 - (c) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or persons or the failure of the Landlord to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons;
 - (d) any right to receive demands, protests and notices of any kind including, but not limited to, notice of the existence, creation or incurring of any new or additional obligation or of any action or non-action on the part of the Tenant, the Landlord or any other person;
 - (e) any defense based on an election of remedies including, but not limited to, any action by the Landlord which shall destroy or otherwise impair any subrogation right of the Guarantor or the right of

Marina Village Sublease

Landlord's Initials

Seaside1 -31-

Tenant's Initials

the Guarantor to proceed against the Tenant for reimbursement or contribution or any rights or benefits under any provisions of California law in any way qualifying, conditioning or limiting the obligations of the Guarantor based on any steps or procedures that the Landlord should take before proceeding against the Guarantor; the Guarantor wishes by this paragraph to waive the rights and defenses permitted to be waived under Section 2856 of the California Civil Code, by which a the Guarantor may provide the following:

The guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the guarantor's rights of subrogation and reimbursement against the principal by operation of Section 580d of the Code of Civil Procedure or otherwise;

- (f) any duty on the part of the Landlord to disclose to the Guarantor any facts the Landlord may now or hereafter know about the Tenant, regardless of whether the Landlord has reason to believe that such facts materially increase the risk beyond that which the Guarantor intends to assume or has reason to believe that such facts are unknown to the Guarantor or has a reasonable opportunity to communicate such facts to the Guarantor, it being understood and agreed that the Guarantor is fully responsible for being and keeping informed of the financial condition of the Tenant and of all circumstances bearing on the risk of non-performance of any obligation hereby guaranteed;
- (g) any rights or benefits in favor of the Guarantor under Sections 2815, 2819, 2839, 2845, 2849 or 2850 of the California Civil Code or under Sections 364 or 1111(b) of 11 U.S.C.;
- (h) any transfer of the Landlord's interest in the premises demised pursuant to the Sublease;
- (i) any transfer of the Tenant's interest as tenant under the Sublease or any part thereof or any Sublease or assignment by the Tenant;
- (j) any merger or consolidation of the Tenant or sale of all or a substantial portion of the Tenant's assets;
- (k) any sale of all or any portion of any capital stock of the Tenant or partnership interest in the Tenant owned by the Guarantor; or
- (l) any prior or concurrent representation, understanding, promise or condition concerning the subject matter hereof which is not expressed herein, which are of no effect.

In addition to the foregoing, the Guarantor hereby waives notice of acceptance of this Guaranty of Sublease by the Landlord and this Guaranty of Sublease shall immediately be binding upon the Guarantor.

- 4. Until all obligations hereby guaranteed shall have been fully performed, the Guarantor shall have no right of subrogation and waives any right to enforce any remedy which the Landlord now has or may hereafter have against the Tenant and any benefit of, and any right to participate in, any security now or hereafter held by the Landlord.
- 5. All existing and future obligations of the Tenant to the Guarantor or any person owned in whole or in part by the Guarantor and the right of the Guarantor to cause or permit itself or such person to withdraw any capital invested in the Tenant are hereby subordinated to all obligations hereby guaranteed and, without the prior written consent of the Landlord, such obligations to the Guarantor shall not be performed and such capital shall not be withdrawn, in whole or in part, while the Tenant is in default under the Sublease.
- 6. The amount of the Guarantor's liability and all rights, powers and remedies of the Landlord hereunder and under any other agreement now or at any time hereafter in force between the Landlord and the Guarantor shall be cumulative and not alternative, and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to the Landlord at law or in equity. This Guaranty of Sublease is in addition to and exclusive of the guaranty of any other guarantor of any obligation of the Tenant to the Landlord.

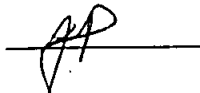
Marina Village Sublease

Landlord's Initials



Seaside1 -32-

Tenant's Initials



7. The obligations of the Guarantor hereunder are independent of the obligations of the Tenant under the Sublease and, in the event of any default hereunder or under the Sublease, a separate action or actions may be brought and prosecuted against the Guarantor, whether or not the Tenant is joined therein or a separate action or actions are brought against the Tenant. The Landlord may maintain successive actions for other defaults. The Landlord's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all obligations hereby guaranteed shall have been fully performed.
8. The Guarantor shall pay to the Landlord, upon demand, reasonable attorneys' fees and all costs and other expenses which the Landlord shall expend or incur in collecting or compromising any obligation hereby guaranteed or in enforcing this Guaranty of Sublease against the Guarantor, whether or not suit is filed including, but not limited to, reasonable attorneys' fees, costs and other expenses incurred by the Landlord in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceeding involving the Guarantor which in any way affects the exercise by the Landlord of its rights and remedies hereunder.
9. Should any one or more provisions of this Guaranty of Sublease be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.
10. This Guaranty of Sublease shall inure to the benefit of the Landlord and its successors and assigns and shall bind the heirs, legal representatives, executors, administrators, successors and assigns of the Guarantor. This Guaranty of Sublease may be assigned by the Landlord concurrently with the transfer of title to property covered by the Sublease and, when so assigned, the Guarantor shall be liable to the assignee without in any manner affecting the liability of the Guarantor hereunder. The acceptance by the Landlord of the performance of any of the Tenant's obligations under the Sublease by the Guarantor, including, without limitation, the acceptance of rent payments, shall not constitute an assignment of the Sublease to the Guarantor or the Landlord's consent to such assignment.
11. Satisfaction by the Guarantor of any liability hereunder incident to a particular default shall not discharge the Guarantor except for the default satisfied. This Guaranty of Sublease and the obligations of the Guarantor hereunder shall be continuing and irrevocable until: (i) the Landlord has received full payment of all rents, monies and charges due under the Sublease and full performance of all of the obligations due under the Sublease or to become due during the term of the Sublease, including any option to extend thereunder; (ii) any applicable preference period under state or federal bankruptcy law has expired; or (iii) the Landlord has released the Guarantor from the obligations of the Tenant under the Sublease, which may be accomplished by only an instrument in writing signed by the Landlord. Upon full performance of all obligations hereby guaranteed, this Guaranty of Sublease shall be of no further force or effect.
12. No provision of this Guaranty of Sublease or right of the Landlord hereunder can be waived or modified, nor can the Guarantor be released from the Guarantor's obligations hereunder, except by a writing duly executed by the Landlord.
13. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and neuter and vice versa. The word "person" as used herein shall include any individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.
14. If two (2) or more persons are signing this Guaranty of Sublease as the Guarantor, then all such persons shall be jointly and severally liable for the obligations of the Guarantor hereunder.
15. This Guaranty of Sublease shall be governed by and construed in accordance with the laws of the State of California. In any action brought under or arising out of this Guaranty of Sublease, the Guarantor hereby consents to the jurisdiction of any competent court within the State of California and hereby consents to service of process by any means authorized by California law. This Guaranty of Sublease shall constitute the entire agreement of the Guarantor with respect to the subject matter hereof and no representation,

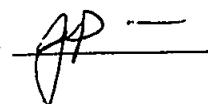
Marina Village Sublease

Landlord's Initials



Seaside1 -33-

Tenant's Initials



understanding, promise or condition concerning the subject matter hereof shall be binding upon the Landlord unless expressed herein.

16. Without limiting the generality of the foregoing, the liability of the Guarantor under this Guaranty shall not be deemed to have been waived, released, discharged, impaired or affected by reason of: (a) the termination of the term of the Sublease; (b) the release or discharge of the Tenant in any receivership, bankruptcy, winding-up or other creditors' proceedings or the rejection, disaffirmance or disclaimer of the Sublease by any party in any such proceeding; (c) the repossession of the Premises demised under the Sublease by the Landlord, provided, however, that the net payments received by the Landlord after deducting all costs and expenses of repossessions and/or reletting such Premises shall be credited from time to time by the Landlord to the account of the Guarantor; or (d) any amendment of the terms of the Sublease without the Guarantor's consent.
17. The Guarantor, promptly from time to time upon request, shall execute and deliver to the Landlord: (a) an estoppel certificate containing such truthful information as the Landlord may reasonably request; and (b) such further instruments or documentation as may reasonably be requested by the Landlord to ratify and confirm this Guaranty of Sublease and the continuing liability of the Guarantor hereunder.

DATED: 6-20, 19 97.

The "Guarantor":



JASON PELTIER, an individual

P.C. Inc

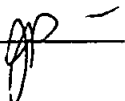
Marina Village Sublease

Landlord's Initials



Seaside1 -34-

Tenant's Initials



CONSENT TO SUBLEASE AGREEMENT

The City of San Diego (CITY), as LESSOR under that certain Lease Agreement (Master Lease) entered into with

MARINA VILLAGE, LTD.

(LESSEE) and filed in the Office of the City Clerk as Document 759240, hereby consents to that certain Sublease Agreement between the above LESSEE (SUBLESSOR) and

MISSION BAY LESSEES ASSOCIATION, INC.

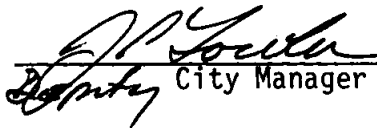
(SUBLESSEE) dated April 1, 1986. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, this consent is subject to the following conditions: (If none, write "none.")

Sublessee shall provide City with a certificate of insurance naming City as additional insured.

THE CITY OF SAN DIEGO

Dated 5-13-86

By 
Deputy City Manager

APPROVED AS TO FORM:

JOHN W. WITT, City Attorney

Dated 5/9/86

By 
Deputy

RJC:st(43-1)
5-8-86



THE CITY OF

SAN DIEGO

CITY OPERATIONS BUILDING • 1222 FIRST AVENUE, M.S. 503
SAN DIEGO, CALIFORNIA 92101-4155

PROPERTY
DEPARTMENT
(619) 236-6020

May 22, 1986

File: Leases - Marina Village, Ltd.

Gary Cooper, Property Manager
Marina Village
1872 Quivira Way
San Diego, CA 92109

Re: Consent to Sublease - Marina Village - Mission Bay Lessees
Association, Inc.

Enclosed please find the consent to the above-referenced sublease
for your records.

We recently received a copy of the Fourth Amendment to sublease
for designs for travel at Marina Village. The City requires a
processing fee of \$200 for reviewing and consenting to any amend-
ments to subleases at Marina Village. Therefore, please forward
said amount to cover our processing fee in this matter.

Robert J. Collins

Robert J. Collins, Property Agent
Property Management Division

RJC:baa(1)43

Enclosure

CITY OF SAN DIEGO	
PROPERTY DEPT.	
☐	DIRECTOR
☐	DEPUTY MANAGER
☒	FILE COPY
☐	CHRON. COPY
☐	ORIGINATOR

MARINA VILLAGE SHOP SUBLEASE

Marina Village

TABLE OF CONTENTS

<u>Paragraph</u>	<u>Page</u>
1. Sublease	1
2. Term	2
3. Rent	3
4. Security Deposit	7
5. Construction of Improvements	8
6. Use	9
7. Operation and Charges	10
8. Common Facilities	10
9. Taxes	12
10. Hold Harmless, Indemnity and Insurance	14
11. Condition of Premises, Maintenance, Alterations, Modifications, Repairs and Signs	16
12. Utilities	19
13. Advertising Requirement	20
14. Trade Name	20
15. Default and Remedies	20
16. Damage or Destruction	24
17. Eminent Domain	26
18. Sublessor Paying Claims	28
19. Surrender and Removal of Personal Property	28
20. Ownership of Improvements and Trade Fixtures	29

	<u>Page</u>
21. Abandonment	29
22. Waiver of Breach	29
23. Right of Entry	30
24. Assignment and Subletting	30
25. Subordination and Attornment	31
26. Non-Discrimination and Affirmative Action	32
27. City Approval	32
28. Holding Over	33
29. Attorneys' Fees	33
30. Sublessee's Certificate	34
31. Transfer by Sublessor	34
32. Time of the Essence	34
33. Payments and Notices	34
34. Quiet Possession	35
35. Joint and Several Liability of Multiple Sublessees	35
36. Headings	35
37. Number and Gender	35
38. Governing Law and Severability	35
39. Interest Rate	36
40. Binding Effect	36
41. Entire Agreement and Amendment	36

MARINA VILLAGE SHOP SUBLEASE

This Sublease is entered into as of April 1,
19 86 between MARINA VILLAGE LTD., a California limited
partnership, as "Sublessor," and Mission Bay Lessees
Association, Inc., as "Sublessee."

R E C I T A L S

A. Sublessor's predecessor in interest entered into a lease dated March 28, 1972, (the "Master Lease") with the City of San Diego, a chartered municipal corporation ("The City"), covering certain premises commonly known as Quivira Basin located in San Diego, California ("Marina Village") and more particularly described in the Master Lease. Sublessee acknowledges receipt of a copy of the Master Lease.

B. Pursuant to an order of the United States Bankruptcy Court, Southern District of California (the "Court"), in Case Number 80-03490-M, Sublessor took possession and control of all the assets and properties of High Fliers, Ltd., predecessor in interest to Sublessor, including the Master Lease.

C. Under Section (D)21 of the Master Lease, Sublessor has the right to sublease Marina Village for uses permitted under the Master Lease, subject to the prior approval of The City.

A G R E E M E N T

1. SUBLEASE

1.1 Sublease. In consideration of the amounts to be paid and the terms, covenants and conditions to be kept, performed and satisfied by Sublessee under this Sublease, Sublessor subleases to Sublessee and Sublessee hires from Sublessor those certain premises ("Premises") consisting of a portion of Marina Village more particularly described in Exhibits "A" and "B" attached, made up of four parts consisting of: (i) the legal description covered by the Master Lease; (ii) the identification of the building in or about which the Premises are located and the agreed amount of square footage of the subleased Premises; (iii) a plot plan showing the Premises outlined in red; and (iv) the Common Facilities described in paragraph 8.1. All parts of Exhibits "A" and "B" shall be initialed by the parties.

1.2 The City's Approval. Sublessee acknowledges the rights and obligations of the parties under this Sublease are subject to The City's prior approval of this executed Sublease and of Sublessee as a tenant. Following execution of this Sublease, Sublessor shall request and use its best efforts to obtain The City's approval. Sublessee shall pay all costs and fees charged by The City to Sublessor and/or Sublessee for processing this Sublease. If for any reason approval of The City is not obtained this Sublease shall be of no further force or effect, and no obligations shall have been incurred by either party hereunder.

1.3 Master Lease, City and State Rights. Sublessee expressly agrees all rights under this Sublease shall be subject to the Master Lease and any amendments thereto and to all prior exceptions, reservations, restrictions, easements, rights-of-way, licenses and other matters of record now existing which affect the Premises in any manner. This Sublease is subject to any and all rights, present and future, of the State of California and the United States of America to exercise dominion over the Premises and the adjoining public waterways.

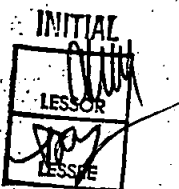
1.4 Termination or Abandonment of Master Lease. The termination of the Master Lease prior to the expiration of the term of this Sublease other than by voluntary surrender or abandonment by Sublessor shall not cancel this Sublease, but shall operate as an assignment of this Sublease to The City, and all rights of Sublessor under this Sublease shall terminate and pass to The City. In the event of such assignment, The City shall not assume, nor be required to assume, any obligation or liability of Sublessor under this Sublease which is greater than, or in addition to, The City's obligations and liabilities under the Master Lease. The City may then, at its option, transfer this Sublease to a new lessee from The City or otherwise, as The City deems proper. In the event of a voluntary surrender or abandonment of the Master Lease by Sublessor prior to the expiration of the Sublease term, The City shall have the option to either cancel this Sublease or treat such abandonment or surrender as an assignment to The City of this Sublease.

2. TERM

2.1 Initial Term.

(a) The initial term of this Sublease shall be for a period of thirty (30) days* unless sooner terminated as provided herein, commencing on the commencement date.

*this is a month to month tenancy



2.2 Commencement Date. The commencement date shall be the earlier of (i) sixty (60) days following the date on which the City approves this Sublease, (ii) Thirty (30) days following the completion of Sublessor's Work as defined below; or (iii) the date on which Sublessee opens the Premises for business.

When the Commencement Date is determined, the parties shall execute the form of Confirmation of Commencement Date attached as Exhibit "C." Sublessee irrevocably appoints Sublessor as attorney in fact for Sublessee with full power and authority to execute the Confirmation in the name and on behalf of Sublessee if Sublessee fails to execute the Confirmation within five (5) days of Sublessor's demand.

2.3 Early Occupancy. Sublessee shall be entitled to take possession of the Premises commencing on the date of execution of this Sublease and ending the day before the Commencement Date for the purpose of making such alterations and improvements and doing such other work at the Premises reasonably necessary to prepare the Premises for the opening of business. Sublessee shall not be obligated to pay rent under paragraph 3 during such period of early occupancy, but Sublessee shall be obligated to pay all other sums due Sublessor and to perform all other terms and covenants and satisfy all other conditions of this Sublease.

2.4 Lease Month The term "lease month" as used in this Sublease shall mean: the period commencing on the first day of the month and ending the last day.



3. RENT

3.1 Rent. Sublessee agrees to pay to Sublessor rent for the use and occupancy of the Premises without deduction, offset, prior notice or demand at such address as Sublessor may from time to time designate in writing at the times and in the manner and amounts set forth below. The rent provided in this Sublease shall be absolutely net to Sublessor, and except as otherwise expressly provided in this Sublease, Sublessee shall pay all Common Facilities charges, insurance premiums, utilities, taxes and all other costs and expenses payable in connection with Sublessee's

use and occupancy of the Premises and Marina Village. All such charges, costs and expenses shall be prorated on the basis of a thirty (30) day month at the commencement and termination of the Sublease term.

3.2 Monthly Rent. Sublessee agrees to pay Sublessor in advance each month, on or before the monthly anniversary of the Commencement Date, Monthly Rent as set forth below;

(a) \$400.00 (Four Hundred Dollars) Monthly

(b)

(c)

(d)

3.3 Percentage Rent.

~~(a) In addition to Monthly Rent Sublessee shall pay to Sublessor as additional rent during the term of this Sublease, at the time and in the manner specified below, Percentage Rent in an amount equal to ____ percent (____%) of Sublessee's "gross income" as shown on an annual statement of gross income to be provided to Sublessor by Sublessee pursuant to subparagraph (d) below, less the total Monthly Rent paid by Sublessee during the lease year.~~

~~(b) Under the terms of the Master Lease Sublessor is required to pay to The City certain percentage rent. Therefore, in addition to Monthly Rent and Percentage Rent, Sublessee shall pay to Sublessor as additional rent during the term of this Sublease at the time and in the manner specified below, Additional Percentage Rent in an amount equal to ____ percent (____%) of Sublessee's "gross income" as shown on an annual statement of gross income to be provided to Sublessor by Sublessee pursuant to subparagraph (d) below. Additional Percentage Rent shall be payable in monthly installments as provided below commencing on the Commencement Date. Sublessee agrees that it will assume and pay, within 30 days of notice of same, any additional charges applicable to Sublessee's operations imposed by The City on Sublessor.~~

The City of San Diego will be paid \$40.00 per month as their additional rent satisfying Subsection 2.K of Document RR-759240 concerning rent due the City of San Diego. The Sublessor will pay this amount.

INITIAL
LESSOR
LESSEE

INITIAL
LESSOR
LESSEE

(c) Installment Payment. Within ten (10) days after the end of each calendar month of the term of this Sublease, Sublessee shall furnish to Sublessor a written statement certified by Sublessee to be correct showing Sublessee's total gross income for the preceding calendar month. On or before the first day of the next calendar month, Sublessee shall pay to Sublessor an amount equal to _____ percent (____%) of Sublessee's total gross income as shown on such monthly statement as the installment of Percentage Rent due for the month for which gross income was reported and an amount equal to _____ percent (____%) of Sublessee's total gross income as shown on such monthly statement as the installment of Additional Percentage Rent due for the month for which gross income was reported.

(d) Annual Adjustment. Within forty-five (45) days after the end of each lease year, Sublessee shall furnish to Sublessor a written statement certified by Sublessee to be correct showing Sublessee's total gross income for the preceding lease year. If the total amount paid as installments of Percentage Rent and Additional Percentage Rent under subparagraph (c) for such preceding lease year exceeds or is less than the amount of Percentage Rent and Additional Percentage Rent actually due for the lease year as determined from the annual statement, Sublessee shall be entitled to a credit for any overpayment or shall pay the difference of any underpayment, as the case may be. Any overpayment shall be credited by Sublessor against monthly installments of Monthly Rent falling due thereafter until the credit has been offset in full. Any underpayment by Sublessee shall be paid to Sublessor in full with the first monthly installment of Monthly Rent next falling due after notice of such underpayment to Sublessee.

(e) Partial Lease Year. If the lease year in which this Sublease is terminated is less than twelve (12) full calendar months, the Percentage Rent and Additional Percentage Rent due for such year shall be calculated on Sublessee's gross income for such partial year. Any overpayment shall be applied to any and all amounts due Sublessor by Sublessee, and any remaining balance shall be paid immediately to Sublessee. Sublessee shall pay to Sublessor any underpayment in full in cash upon notice to Sublessee of such underpayment.

3.4 Gross Income. The term "gross income" as used in this Sublease shall mean the gross selling price of all goods, merchandise or services sold in or from the Premises by Sublessee, its sublessees, licensees and concessionaries, ~~whether for cash or on credit, less or offset by.~~

(i) the selling price of all merchandise returned by customers and accepted for full credit or the amount of discounts and allowances made and all sums and credits received in the settlement of claims for loss or damage to merchandise;

(ii) the price allowed on all merchandise traded in by customers for credit and taken into inventory for resale on the Premises, or the amount of credit for discounts and allowances made in lieu of acceptance thereof;

(iii) cash refunds made to customers in the ordinary course of business (this exclusion shall not include any amount paid or payable for trading stamps);

(iv) receipts from sale taxes, luxury taxes, consumers' excise taxes, gross receipts taxes and other similar taxes now or hereafter imposed upon the sale of merchandise or services and collected from customers.

All sales originated at the Premises shall be recorded by Sublessee and considered as made and completed therein, even though bookkeeping and collection of the account may be transferred to another place and even though the sale or service orders are actually filled and delivery of the merchandise made from a place other than the Premises.

3.5 Record Keeping. Section (D)1 of the Master Lease specifying record keeping requirements is incorporated hereby by this reference as though fully set forth, except the annual audit provided in Section (D)(1) shall be made at the Sublessor's expense with Sublessee's full cooperation. If such audit discloses that during any lease year Sublessee has understated its gross income for such lease year by two percent (2%) or more, Sublessee shall pay all costs of such audit. The City shall have the right to audit Sublessee's operations at any time upon reasonable notice. Within four (4) months of the Commencement Date, Sublessor shall notify the City Manager, who shall review Sublessee's bookkeeping procedures and monthly gross income reports to determine if Sublessee's procedures and reports comply with The City's requirements. All records shall be retained for the periods required by law.

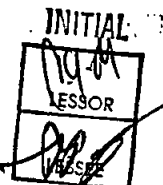
3.6 Delinquency Compensation Charge. Sublessee recognizes the failure to pay rent when due will cause Sublessor to incur certain costs, including without limitation processing and accounting charges, delinquent rent

charges imposed upon Sublessor under the Master Lease, late charges under the deeds of trust encumbering the Premises and the loss to Sublessor of the use of the funds. If any installment of rent is not paid on or before its due date, Sublessee agrees to pay to Sublessor a delinquency compensation charge for the late payment of such installment in an amount equal to ten percent (10%) of each such installment. Sublessee agrees to pay such charges to Sublessor immediately upon such charges becoming due and payable without notice or demand. Sublessee agrees the delinquency compensation charges are reasonable under the circumstances existing at the time this Sublease is executed. Sublessee understands the payment of the delinquency compensation charge for delinquent rent represents compensation to Sublessor for damages incurred by Sublessor by reason of the failure to receive the rent when due. Sublessee's obligation to pay the delinquency compensation charge does not alter or preclude Sublessor's right and option, prior to Sublessor's actual receipt of any delinquent installment of rent and the related delinquency compensation charge, if due, to exercise any right or remedy Sublessor may have under this Sublease for Sublessee's failure to pay rent when due.

3.7 Interest on Rent. Any rent payment, including any underpayment of Percentage Rent or Additional Percentage Rent, not paid when due, shall bear interest at the rate provided in this Sublease.

4. SECURITY DEPOSIT

4.1 Cash Deposit. Upon execution of this Sublease, Sublessee shall pay to Sublessor the sum of \$ N/A as security for Sublessee's full performance of all of the terms and covenants of this Sublease. If Sublessee is in default under this Sublease, Sublessor may, notwithstanding any other provision herein, (a) apply the security deposit against any sum due Sublessor hereunder; (b) use the security deposit to make any payments required on Sublessee's behalf or (c) retain the security deposit as compensation for any expenses or damages incurred by Sublessor by reason of Sublessee's default. Within ten (10) days after written demand from Sublessor, Sublessee shall pay to Sublessor a sum sufficient to restore the security deposit to the original amount. Failure to restore the security deposit shall be equivalent to a failure to pay rent. Neither the deposit nor its application by Sublessor shall constitute a bar or defense to any action in unlawful detainer or any other action Sublessor may commence based on Sublessee's default under this Sublease.



4.2 Sublessor's Use of Funds. Sublessor is not the trustee of the funds on deposit and may commingle the funds, use them in the ordinary course of business, transfer or assign them or use the funds for Sublessor's own account in any manner. No interest shall accrue on the funds. Upon the expiration or earlier termination of this Sublease, Sublessor shall return the cash security deposit to Sublessee within the time period provided by law, less any amounts Sublessor has applied as above. If this Sublease is terminated pursuant to paragraph 1.2 the security deposit shall be returned to Sublessee immediately.

5. CONSTRUCTION OF IMPROVEMENTS

5.1 Right to Construct Improvements.

(a) Subject to the terms and conditions of this paragraph 5 and as material consideration under this Sublease to Sublessor, prior to the commencement of the term of this Sublease, Sublessee shall construct, at Sublessee's sole cost and expense certain interior improvements to the Premises and install certain fixtures and signs approved by Sublessor and The City (collectively called "Improvements"). The plans for and the construction of the Improvements shall be in accordance with plans and specifications approved by Sublessor and The City pursuant to this paragraph 5 and such other requirements as may reasonably be established by Sublessor and The City and as set forth in Exhibit "D" hereto. Subject to the terms of this paragraph 5.1(a) and space availability, Sublessee may, on one of the pylon signs in the Marina Village parking area, install one sign identifying Sublessee.

5.2 Indemnification. Pursuant to paragraph 10.1 below, Sublessee agrees to indemnify and hold Sublessor harmless for any damages and claims arising out of the construction of the Improvements. Prior to commencement of any construction, Sublessee shall submit to Sublessor evidence of workman's compensation insurance as required in paragraph 10 of this Sublease. Such insurance shall provide that during the course of construction all required coverage and workmen's compensation coverage shall be in full force and effect in the amounts specified in paragraph 10 for liability and workmen's compensation covering all phases of Sublessee's work.

5.3 Liens. The terms of paragraph 11.6 are incorporated herein as if fully set forth and shall apply to Sublessee's construction of the Improvements.

5.4 Notice of Completion. Sublessee shall obtain and record a Notice of Completion promptly following completion of Sublessee's Improvements.

6. USE

6.1 Authorized Use. The Premises shall be used only for the following purposes: Office for Mission Bay Lessees Assoc Sublessee shall not use the Premises for any other purpose without the prior written consent of Sublessor and The City or use the Premises in a manner which interferes with commerce, navigation or fish or is inconsistent with any trust upon which the Premises are now or may hereafter be held by The City.

6.2 Compliance with Law. Sublessee shall at all times and at Sublessee's sole cost and expense comply with and conform to all municipal, county, state and federal laws, regulations, requirements or orders, present or future, which in any way relate to the condition, licensing, use or occupancy of the Premises.

6.3 Waste. Sublessee agrees not to waste or suffer any waste upon the premises, nor to use or permit the Premises to be used for any noxious, unlawful or offensive trade or business, nor to cause, maintain or permit any nuisance upon the Premises, nor cause or permit any act which obstructs or interferes with the use and enjoyment of Marina Village by other sublessees or their patrons.

6.4 Use and Insurance. No use shall be made or permitted to be made of the Premises, nor acts done by Sublessee which will cause a cancellation of any insurance policy covering the Premises, nor shall Sublessee sell, or permit to be kept, used, or sold in or about the Premises, any article which may be prohibited by any insurance policies covering the Premises. Sublessee agrees to pay to Sublessor upon demand the amount equal to any increase in premiums paid by Sublessor for insurance carried and maintained by Sublessor as a result of any activity carried on by or use of the Premises made by Sublessee, whether or not such activity or use has been consented to by Sublessor and The City.

6.5 Sublessor's Rules and Regulations. Sublessor may from time to time establish, maintain and enforce rules and regulations regarding the use and occupancy of the Premises and for the safety, care, cleanliness and preservation of the good order of the Premises, the Common Facilities and Marina Village generally. Such rules and regulations shall

be applicable to all sublessees of Marina Village. Sublessee and Sublessee's employees, agents and invitees shall comply with all such rules and regulations. Any violation by Sublessee or Sublessee's employees, agents or invitees of any rule or regulation of Sublessor shall constitute a default under this Sublease. Sublessor shall give notice to Sublessee of the rules and regulations as they may exist from time to time, and Sublessee will not be bound thereby until given a copy of same. Pursuant to paragraph 10.1, Sublessee shall indemnify and hold Sublessor harmless from all claims and liabilities for Sublessee's breach of the rules and regulations. If there is a conflict between any rules and regulations and any of the provisions of this Sublease, this Sublease shall prevail. Upon execution of this Sublease, Sublessor shall furnish Sublessee with a copy of the existing rules and regulations. See page 10 (a)

7. OPERATIONS AND CHARGES

7.1 Maintenance of Inventory. Sublessee shall at all times carry a stock of goods and merchandise of such size, quality and character to produce maximum gross income it being the intent of this provision that Sublessee provide goods and services of such size, quality and character to produce maximum gross income on which the Percentage Rent and Additional Percentage Rent to be paid by Sublessee are to be calculated. Sublessee expressly acknowledges and agrees to be bound by Section D(30) of the Master Lease concerning schedule of prices which Section is incorporated by reference as if fully set forth herein.

7.2 Conduct of Personnel. Sublessee hereby expressly acknowledges and agrees to be bound by Section D(27) of the Master Lease concerning standard of employees which Section is incorporated hereby by reference as if fully set forth herein.

7.3 Others. The provisions of this paragraph 7 shall be binding upon all agents, sub-sublessees, concessionaires and licenses of Sublessee.

8. COMMON FACILITIES

8.1 Common Facilities Defined. The term "Common Facilities" for the purposes of this Sublease shall mean the foundation, roof, exterior walls and structural portions of all buildings, the automobile parking stalls, driveways, entrances and exits, landscaping, irrigation system, sidewalks, malls and all other improvements located within the land site development at Marina Village as shown in Exhibits "A" and

"B", excluding only the building interiors reserved for the exclusive use of the individual sublessees of Marina Village and such other improvements for which the individual sublessees are responsible for maintaining under their respective subleases.

8.2 Nonexclusive Use. Sublessor grants to Sublessee the nonexclusive right in common with the other individual sublessees of Marina Village to use the Common Facilities during the term of this Sublease for the uses and purposes designated by Sublessor from time to time. Sublessee's right to use the common facilities is subject to the rights of Sublessor, the other individual sublessees of Marina Village and the general public to use the same and Sublessee shall keep all such areas free and clear of any obstructions.

8.3 Management and Control. Sublessor shall have the exclusive management and control of the Common Facilities. Sublessor shall have the right to make changes in the Common Facilities, including, without limitation, changes in or establishing the location of driveways, entrances, exhibits, vehicular parking spaces, and direction of traffic flow, prohibited areas, and employee parking areas. Sublessor shall have the right to remove any person, authorized or unauthorized, from the Common Facilities or to restrain the use thereof by such persons. Sublessor may establish a system or systems of parking validation or other operation including a system of charges against nonvalidated user parking.

8.4 Maintenance and Charges. Sublessor shall keep and maintain or cause to be kept and maintained, the Common Facilities in a neat, clean, orderly condition, and state of repair, properly lighted and landscaped. Sublessee ~~agrees to pay to Sublessor as additional rent Sublessee's~~ prorata share (defined below) of all costs and expenses incurred by Sublessor in connection with the maintenance, management and operation of the Common Facilities ("Common Facilities Charges"), including without limitation all costs, expenses, fees and other sums incurred or expended for:

- (i) all general maintenance and repairs, pest control, resurfacing, painting, restriping, cleaning, removal of rubbish and debris, sweeping and janitorial services;
- (ii) maintenance and repair of sidewalks and curbs, planting and landscaping, lighting, drainage and other utilities;
- (iii) directional signs and other markers and bumpers;
- (iv) maintenance and repair of all structures;
- (v) security;
- (vi) personnel to implement all such services and to police the automobile parking and common areas when deemed advisable



by Sublessor; (vii) all real and personal property taxes and assessments thereon, including possessory interest taxes on secured or unsecured tax rolls imposed, assessed or attributed to the Common Facilities and the land side development; (viii) public liability and property damage insurance on the Common Facilities in such amounts as Sublessor shall determine; (ix) fire and extended coverage insurance on all structures available for the use in common by all Sublessees and the visiting public; (x) fees for Sublessors management (ten per cent (10%) of the Common Facilities Charges) and supervision of the Common Facilities and Marina Village generally; and (xi) all other costs and expenses incurred by Sublessor in the maintenance, management and operation of the Common Facilities and Marina Village generally.

Sublessor shall furnish to Sublessee monthly a statement setting forth Sublessee's prorata share of the Common Facilities Charges for expenses for the previous calendar month. Sublessee agrees to pay to Sublessor Sublessee's share of such costs and expenses within ten (10) days after receipt of each such monthly statement. Sublessee's failure to pay when due any of the charges under this paragraph shall be equivalent to a failure to pay rent.

8.5 Sublessee's Prorata Share Defined. Sublessee's prorata share of the Common Facilities Charges shall be that portion of such costs and expenses as the square footage area of the Premises bears to the total square footage area of the land side development available for subleasing by Sublessor under the Precise Plan approved by The City under the Master Lease. The "square footage area of the Premises" for all purposes under this Sublease shall be deemed to mean the square footage area of the entire Premises, and if the same lies within a building, then it shall include the square footage area of the ground floor and any mezzanine, basement and upper floors in the Premises, such area to be measured from the outside exterior walls and from the center of interior walls and to include all columns, supports and interior walls.



9. TAXES

9.1 Payment of Taxes and Assessments. Sublessee shall pay at least ten (10) days before delinquency to the appropriate taxing authority all taxes and assessments of any nature whatsoever, assessed or charged for or against the Premises, or any of the buildings, structures, equipment, appliances or other real or personal property improvements

or equipment of every nature found on or about the Premises, or used in connection with the Premises. Sublessee agrees to pay as part of the Common Facilities Charges its prorata share of all such taxes and assessments allocable or attributable to the Common Facilities and the land side development as that area is identified on Exhibits A and B.

9.2 Taxes Defined. Under this Sublease, the term "taxes" and "real property taxes" shall include any form of assessment, license fee, license tax, business license fee, commercial rental tax, levy, charge, penalty or similar imposition by any authority having direct power to tax, including any municipal, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district, as against any legal or equitable interest of Sublessor in the Premises and the real property of which the Premises are a part, including without limitation:

(a) any assessment, tax, fee, levy or charge in substitution, partially or totally, of any assessment, tax, fee levy or charge on land, buildings or personal property it being acknowledged by Sublessee and Sublessor that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such services as fire protection, street sidewalk and road maintenance, refuse removal and for other governmental services formally provided without charge to property owners or occupants, and it being the intention of Sublessee and Sublessor that all such new and increased assessments, taxes, fees, levies and charges and all similar assessments, taxes, fees, levies and charges be included within the definition of "taxes" and "real property taxes" for the purposes of this Sublease;

(b) any assessment, tax, fee, levy or charge allocable to or measured by the area of the Premises, or the real property of which the premises are a part, including without limitation any gross income tax or excise tax levied by the state, city or federal government, or any political subdivision thereof, with respect to the receipt of rent, or upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Sublessee of the Premises or any portion of the Premises; and

(c) any assessment, tax, fee, levy or charge upon this transaction or document to which Sublessee is party creating or transferring an interest or an estate in the Premises.

The term "taxes" and "real property taxes" shall not include Sublessor's federal or state income, franchise, gift, inheritance or estate taxes.

10. HOLD HARMLESS, INDEMNITY AND INSURANCE

10.1 Indemnity. As a material part of the consideration for this Sublease, Sublessee hereby waives all claims against Sublessor and The City for damages to goods, wares, merchandise, buildings, installations or other improvements in, upon or about the Premises and for injuries to Sublessee, its agents or employees, or third persons in or about the Premises from any cause arising at any time, except for the negligence of Sublessor or The City. Sublessee agrees to assume the defense of, indemnify and hold Sublessor and The City exempt and harmless from any claims, expenses and liability of every kind and nature for damages or injury to any person, or to the goods, wares, merchandise, water craft, facilities, or other property of any person, arising directly or indirectly from, or alleged to have arisen from, the operations conducted on the Premises by Sublessee, or from the failure of Sublessee to keep the Premises in good condition and repair, as herein provided, or from any act or omission of Sublessee, its agents or invitees.

10.2 Insurance.

(a) Sublessee's Insurance. Sublessee agrees that from the time possession of the Premises is delivered to Sublessee, it shall carry and maintain during the entire time of this Sublease, as its sole cost and expense, the following types of insurance in the amounts specified and in the form hereinafter specified below:

(i) Public Liability and Property Damage. Sublessee shall carry and maintain comprehensive public liability insurance, including products liability, and property damage insurance in such amounts as may, from time to time be customary with respect to the use authorized hereunder, but in no event less than \$1,000,000.00 in coverage for any one accident or occurrence.

(ii) Boiler and Machinery. Sublessee shall carry and maintain boiler and machinery insurance on all boilers, and other pressure vessels and systems, whether fired or unfired, located in the Premises. If boiler and machinery and the damage caused by them are not covered by Sublessee's extended coverage insurance, then said boiler and machinery insurance shall be in an amount of at least \$100,000.00.

(iii) Hazardous Activities. If Sublessee commits, permits or causes the conduct of any activity or the bringing or operation of any equipment on or about the Premises creating unusual hazards, Sublessee shall procure and maintain daily on such activity or operation insurance sufficient to cover the risks represented by the unusual hazards. This requirement for unusual hazard insurance shall not constitute a waiver of Sublessor's right to demand the removal, cessation or abatement of such activity or operation.

(iv) Workmen and Employees. Sublessee shall carry and maintain insurance against liability arising on account of injuries or death to workmen or employees of Sublessee on the Premises or any installation or other improvements of Sublessee in amount not less than the minimum required under applicable California law.

(v) Sublessee's Personal Property and Improvements. Sublessee shall carry and maintain insurance covering all of Sublessee's improvements and personal property including all trade fixtures, merchandise and inventory, fixtures and furniture and equipment maintained in or about the Premises with coverage in an amount not less than the full replacement cost without deduction for depreciation providing protection against any peril included within the classification "Fire and Extended Coverage", together with insurance against sprinkler damage, vandalism and malicious mischief.

All policies of insurance provided for herein shall be issued by insurance companies with general policyholders' rating of not less than "A Excellent" and a financial rating of AAA as rated in the most current available "Bests' Insurance Reports," and qualified to do business in California. All policies shall be issued in the names of Sublessor, Sublessee and such other persons specified by Sublessor from time to time and shall be for the mutual and joint benefit and protection of said parties. Sublessee shall deliver to Sublessor executed copies of such policies of insurance or certificates at least ten (10) days prior to the date possession of the Premises is delivered to Sublessee and thereafter within thirty (30) days prior to the expiration of the term of each such policy. Sublessee shall procure and maintain renewal or additional policies as often as any policy expires or terminates. All policies of insurance delivered to Sublessor must contain a provision that the company writing said policy will give sublessor twenty (20) days' notice in writing in advance of any cancellation or lapse or of the effective date of any reduction in coverage. All public liability, property damage

and other casualty policies shall be written as primary policies, not contributing with and not in excess of any coverage which Sublessor may carry.

(b) Sublessor's Insurance. Sublessor shall at all times during the term of this Sublease carry, procure and maintain in force and effect a policy or policies of standard form of fire with extended coverage insurance covering the Premises and the improvements thereon (except property to be insured by Sublessee as herein provided) in an amount equal to the full replacement cost (exclusive of excavations, footings and foundations) of such Premises and improvements, without deduction for depreciation. Sublessor and any additional persons or entities designated by Sublessor shall be the named assureds under such insurance. In satisfaction of its obligations hereunder, Sublessor shall be entitled to maintain a blanket policy or policies of such insurance which may be subject to a deductible provision covering all or a portion of the real property of which the Premises are a part. ~~Sublessee shall pay to Sublessor pursuant to paragraph 8 as part of the Common Facilities Charges, its prorata share of the cost of any insurance carried and maintained by Sublessor hereunder.~~

INITIAL
LESSOR
X
LESSEE

10.3 Subrogation. Sublessor and Sublessee waive any rights each may have against the other on account of any loss or damage suffered by Sublessor or Sublessee as the case may be, their respective property, the Premises, or its contents or to other portions of Marina Village, arising from any risk generally covered by fire and extended coverage insurance. Each party, on behalf of their respective insurance companies insuring the property of either against any such loss, hereby waives any such right of subrogation that it may have against the other if such waiver is permitted by, or obtainable from, the respective insurance company.

10.4 Proceeds. All insurance proceeds received by Sublessor shall be held by Sublessor to secure the performance of the obligations under paragraph 16 of this Sublease to repair, replace or reconstruct any improvement that may have been damaged or destroyed.

11. CONDITION OF PREMISES, MAINTENANCE, ALTERATIONS, MODIFICATIONS, REPAIRS AND SIGNS

11.1 Condition. Sublessee has inspected the Premises and accepts the Premises in their "as is" condition as of the date of this Sublease and agrees the Premises are suitable and satisfactory for the use authorized by this

Sublease. Sublessee waives all rights Sublessee may have, if any, to have Sublessor alter or repair the Premises prior to the time possession is delivered to Sublessee. Sublessee shall have the right to require Sublessor to repair the air conditioning equipment servicing the Premises for a period of ninety (90) days after the date the Premises are delivered to Sublessee.

11.2 Alterations, Modifications and Repairs. Except as provided in paragraph 5, Sublessee shall not make any alterations, improvements, additions, installations, or other changes, excluding those required for maintenance, or changes or alterations required by applicable laws, regulations or ordinances, to the Premises or in the building structure, signs or other improvements without the express prior written consent of Sublessor and The City. As a condition to such consent, Sublessor or The City may require Sublessee to remove any such alterations, improvements, additions or installations at the expiration of the term of this Sublease and to restore the Premises to their original condition. Unless Sublessor requires their removal, all such alterations, improvements, additions or installations made in or to the Premises by Sublessee shall become the property of Sublessor and shall remain upon and be surrendered with the Premises at the expiration of the term. Sublessee shall give Sublessor not less than ten (10) days' notice prior to the commencement of any work on the Premises and Sublessor and The City shall have the right to post notices of nonresponsibility in or on the Premises as provided by law.

11.3 Installation of Trade Fixtures and Signs. Sublessee may install its trade fixtures and equipment, and may from time to time during the term of this Sublease replace and alter its trade fixtures and equipment without the further consent of Sublessor. Sublessee shall not erect or maintain any sign, marquee or awning on or about the Premises without the prior written consent of Sublessor and The City. Sublessor shall have the right to approve the type, size, design, location and color of all signs desired by Sublessee. Sublessee shall affix and maintain upon the glass panes and supports of show windows and within twelve (12) inches of any windows or upon the exterior walls of the building only such signs, advertising placards, names, insignia, trademarks and descriptive material as shall have first received the written approval of Sublessor as to size, type, color, location, copy, nature and display qualities.

11.4 Maintenance. Except as otherwise provided in paragraph 7 hereof with respect to the Common Facilities, Sublessee shall at its sole cost and expense at all times during the term hereof keep and maintain the Premises, including without limitation Sublessee's signs, entrances and exits, plate glass, glazing and skylights, plumbing and other fixtures, equipment and appliances, including ventilating and air conditioning equipment, plumbing lines exclusively serving the Premises, interior walls, ceilings and floors and exterior patios and terraces and related walls, fences and appurtenances comprising a part of the Premises, in sanitary order, condition and repair. The maintenance of all glass, both exterior and interior, is at the sole risk of Sublessee and any glass broken or damages shall be promptly replaced at Sublessee's sole cost and expense with glass of the same size, same kind and the same, or better, quality.

11.5 Air Conditioning Contracts. Sublessee agrees to procure and maintain in full force and effect throughout the term hereof a contract for the maintenance and repair of the air conditioning equipment serving the Premises with such company or companies that will assure prompt and workman-like maintenance and repair. Prior to taking possession of the Premises and during the entire Sublease term, Sublessee shall deliver to and keep on file with Sublessor a copy of such contract.

11.6 Sublessor's Right to Enter and Repair. Sublessee agrees Sublessor may enter the Premises and make any necessary repairs to the Premises and perform any work thereon (i) which may be necessary to comply with any laws, ordinances, rules or regulations of any public authority or of any similar body, or the requirements of the insurers of Sublessee, Sublessor or The City; (ii) that Sublessee is obligated to make under the terms of this Sublease; or (iii) that Sublessor deems necessary to prevent any waste or deterioration of the Premises, if the Sublessee does not repair or cause such repairs to be made or commenced or initiate action to protest such repairs to be performed pursuant to the above requirements within ten (10) days after receipt of written demand for such repairs from Sublessor. This paragraph shall not impose any duty on Sublessor to make any such repairs, nor constitute a waiver of Sublessee's failure to do the same. If Sublessor makes or causes to be made any repairs which Sublessee is obligated to make hereunder, Sublessee shall pay to Sublessor upon demand the cost of such repairs, plus a supervision fee equal to ten percent (10%) of such costs, the total of which shall bear interest at the rate provided in this Sublease.

11.7 Liens. Sublessee shall pay when due all claims for labor or materials furnished or alleged to have been furnished to or for Sublessee at, or for use in, the Premises, which claims are or may be secured by any mechanic's or materialman's lien against the Premises or any interest therein. Sublessee shall indemnify and hold Sublessor and The City free, clear and harmless from all claims for labor and materials in connection with improvements, repairs, installations or alterations to the Premises and the cost of defending against such claims, including reasonable attorneys' fees. Where improvements, repairs, installations or alterations are constructed on the Premises, Sublessee shall either (a) file with Sublessor a bond conditioned for the payment in full of the claims of all persons performing labor or furnishing materials therefor plus estimated costs and attorneys' fees in defending any claim with respect thereto as determined by Sublessor, which bond shall be acknowledged by Sublessee as principal and by a corporation licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety, or (b) provide Sublessor with such other security or assurances against liens as may be approved in writing by Sublessor.

12. UTILITIES

12.1 Payment. Sublessee shall pay before delinquency all charges for electricity, gas, water, sewer, heating, air conditioning, telephone and all other utilities and related services or commodities furnished to the Premises. All costs and expenses for the installation, connection, disconnection and maintenance of such services or commodities shall be the sole responsibility of Sublessee.

12.2 Special Requirements. Upon the prior consent of Sublessor, any authorized utility company shall have the right, subject to Sublessor's written approval, to run utility lines, pipe, conduits or duct work where necessary or desirable through the Premises in a manner which will not unnecessarily interfere with Sublessee's use of the Premises, provided such utilities are for the use of Sublessee alone. If Sublessor grants such approval, then Sublessor shall secure from the utility company for the benefit of Sublessor and Sublessee an agreement under which the utility company agrees to indemnify and hold Sublessor and Sublessee harmless from any loss or damage as a result of the negligent act or omission of the utility company in the exercise of rights granted to it by Sublessor or Sublessee. The agreement shall also require the utility company upon completion to restore the Premises to its condition prior to said installation.

13. ADVERTISING REQUIREMENT

Sublessee shall pay monthly on the tenth (10th) day of each calendar month one percent (1%) of Sublessee's gross income to Sublessor's Mission Bay Marina Village Institutional Advertising Fund. Said funds shall be used by Sublessor exclusively for promoting the Marina Village and to increase public awareness of the existence, location and nature of the total facility. Failure to make such payments shall be equivalent to a failure to pay rent.

14. TRADE NAME

Sublessee shall operate the Premises under the trade name Mission Bay Lessee and shall not use any other trade name without the prior consent of Sublessor. This Sublease conveys no right to Sublessor to use Sublessee's trade name without the prior written consent of Sublessee, except to identify it as one of the businesses in Marina Village.

15. DEFAULT AND REMEDIES

15.1 Default. The occurrence of any one of the following events shall be a default under this sublease:

(a) Sublessee fails to pay when due rent or any other sum payable by Sublessee under this Sublease;

(b) Sublessee fails to perform any other term or covenant of this Sublease to be performed by Sublessee within any time limits specified, or if such failure is of a nature that it cannot be cured within such time period, Sublessee fails to commence and pursue diligently efforts to cure such failure, or if no time limit is set forth, Sublessee fails to cure such default within thirty (30) days after written notice from Sublessor;

(c) a court of competent jurisdiction enters a decree or order for relief in favor of Sublessee or any member of Sublessee (which for the purposes of this paragraph 15 shall include any general partner, joint venturer shareholder or beneficiary holding ten percent (10%) or more of an ownership interest of Sublessee) in any involuntary case under any applicable bankruptcy, insolvency or similar law, state or federal, now or hereinafter in effect or a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Sublessee or any member of Sublessee or for any substantial part of the assets or property of Sublessee or any member of Sublessee, or ordering the wind-up or liquidation of the affairs of Sublessee or any member of Sublessee, and such

decree or order shall remain unstayed and in effect for a period of sixty (60) consecutive days;

(d) Sublessee or a member of Sublessee commences a voluntary case under any applicable bankruptcy, insolvency, or similar law, state or federal, now or hereafter in effect, or shall consent to the entry of an order for relief in any involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Sublessee or any member of Sublessee or for any substantial part of the assets or property of Sublessee or any member of Sublessee, or shall make any general assignment for the benefit of creditors, or shall fail generally to pay their debts as they become due or shall take any action in furtherance of any of the foregoing; or

(e) the attachment, garnishment or levy of execution upon the assets, property, business or income of Sublessee or a member of Sublessee or the appointment of a receiver or trustee of or for any part of the assets, property, business, or income of Sublessee or any member of Sublessee.

15.2 Remedies. Upon the occurrence of any default, Sublessor shall have the right to exercise any and all rights available to Sublessor under the terms of this Sublease or such other agreements between the parties, and under California law or other applicable law, all of which rights shall be cumulative to the fullest extent permitted by law.

(a) Right to Terminate. Upon default, Sublessor may terminate this Sublease and all rights of Sublessee hereunder upon written notice to Sublessee. In the event of such termination, Sublessee agrees to surrender immediately possession of the premises to Sublessor. Sublessor shall have the right to the extent permitted by law to enter upon and repossess the Premises, make any necessary or desirable repairs, additions and improvements, and remove Sublessee's property and store it at Sublessee's sole risk and expense, at any public warehouse until claimed by Sublessee. Sublessor shall be entitled to recover as damages all of the following:

(i) The worth at the time of the award of any unpaid rent or other charges which have been earned at the time of termination;

(ii) The worth at the time of the award of the amount by which the unpaid rent and other charges which would have been earned after termination until the time of the award exceeds the amount of the loss of such rent or other charges that Sublessee proves could have been reasonably avoided;

(iii) The worth at the time of the award of the amount by which the unpaid rent and other charges for the balance of the term after the time of the award exceeds the amount of the loss of such rent and other charges that Sublessee proves could have been reasonably avoided;

(iv) Any other amount necessary to compensate Sublessor for the detriment proximately caused by Sublessee'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 any costs or expenses incurred by Sublessor in maintaining or preserving the Premises after such default, preparing the Premises for reletting to a new Sublessee, accomplishing any repairs or alterations to the Premises for the purpose of such reletting, repairing any damage caused by any act or omission of Sublessee or any other costs necessary or appropriate to relet or restore the Premises.

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

As used in subparagraphs (i) and (ii) above, the "worth at the time of the award" shall be computed by allowing interest at the annual rate of ten percent (10%). As used in subparagraph (iii) above, the "worth at the time of the award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(b) Continuing Sublease. Upon an event of default Sublessor may elect to continue this Sublease in full force and effect and collect all rent and such other sums payable under this Sublease as they become due. Sublessee shall have the right to possess the Premises, however, Sublessor, as the agent for Sublessee, shall have the right to sublet all or any portion of the Premises on the account of Sublessee upon such terms and conditions Sublessor deems advisable. Any rent paid to Sublessor by such sublessee shall be applied to offset the amounts due and owing Sublessor by Sublessee in the following order: (i) the costs and expenses of subletting the Premises including, repairs, improvements, brokers'

or leasing fees, and attorneys' fees; (ii) all costs and expenses incurred in curing any default; and (iii) all amounts due and payable under this Sublease. If any rent paid to Sublessor by any such sublessee is insufficient to pay the amounts due and owing to Sublessor by Sublessee, including rent, Sublessor shall have the right to recover any deficiency from Sublessee. Sublessor shall not incur any liability for failing to relet the Premises or failing to collect rental or any other charge from any sublessee. Sublessee's right to possession shall not be deemed to have been terminated by any efforts of Sublessor to relet the Premises, by its acts of maintenance or preservation with respect to the Premises, or by the appointment of a receiver to protect Sublessor's interest hereunder. In the event of Sublessee's abandonment of the Premises, no re-entry or taking possession of the Premises by Sublessor shall be construed as an election to terminate this Sublease, nor shall it cause a forfeiture of rents or other charges remaining to be paid during the balance of the term hereof, unless written notice of such intention to terminate is given to Sublessee by Sublessor. Any re-entry of the Premises by Sublessor upon an event of default shall not constitute a trespass or forcible entry and Sublessee shall have no claim for any losses or damages of any nature whatsoever against Sublessor arising out of or connected with Sublessor's re-entry.

Sublessor shall have the right to take any action necessary or appropriate, including entering upon the premises, to cure any default. All costs incurred by Sublessor to cure any such default, including reasonable attorneys' fees, with interest, shall become immediately due and payable upon demand as additional rent. Nothing in this subparagraph (b) shall preclude or limit Sublessor from electing to terminate this Sublease pursuant to subparagraph (a) upon written notice to Sublessee.

For the purposes of subparagraphs (a) and (b), the monthly installment of Percentage Rent payable after an event of default and re-entry by Sublessor shall thereafter be equal to the average of the monthly installments of Percentage Rent paid to Sublessor over the twenty-four (24) month period (or such shorter period equal to the term Sublessee has occupied the Premises immediately preceding) the termination or re-entry date.

In the event of default, Sublessee may not remove its fixtures, furniture, equipment, improvements, additions, alterations and other personal property, all of which shall remain on the Premises. During the period of

such default, Sublessor shall have the option to take exclusive possession of same and to use the same free of charge until all defaults are cured or require Sublessee to remove such property upon demand.

16. DAMAGE OR DESTRUCTION

16.1 Sublessee's Notice of Damage or Destruction. Sublessee shall give notice to Sublessor of any material fire or other damage that may occur on the Premises within three (3) days of any such occurrence.

16.2 Sublease Not Terminated. The damage or destruction to the improvements comprising the Premises or any portion thereof, by reason of any casualty, including without limitation fire, earthquake, flood, act of God, or the elements shall not automatically annul or void this Sublease. Sublessee hereby expressly waives the provisions of Section 1932(2) and 1933(4) of the California Civil Code or any statute or law now or hereinafter in effect which provides for the automatic termination of a leasehold interest, or provides a tenant with the right to terminate its tenancy upon the partial or total damage to or destruction of the leasehold estate.

16.3 Insured Casualty. If the Premises or any portion of the Premises is damaged or destroyed by any casualty insured under any fire and extended coverage insurance policy or policies required to be maintained by Sublessor hereunder, the following provisions shall govern the rights and obligations of Sublessor and Sublessee.

(a) If such damage or destruction occurs during the last twelve (12) months of the then current term of this Sublease and is to the extent of twenty-five percent (25%) or more of the then current actual replacement cost of the improvement so damaged or destroyed, Sublessor may elect to terminate this Sublease by giving at least fifteen (15) days' written notice to Sublessee, such notice to be given within thirty (30) days after the date of such damage or destruction.

(b) If the insurance proceeds received or to be received by Sublessor by reason of such damage or destruction are in the judgment of Sublessor inadequate to repair, reconstruct or restore the Premises to the condition in which the Premises were immediately prior to such damage or destruction, Sublessor may elect to terminate this Sublease by giving at least fifteen (15) days' written notice to Sublessee, such notice to be given within thirty (30) days after Sublessor ascertains such proceeds are inadequate for that purpose.

(c) Unless Sublessor elects under subparagraphs (a) and (b) above to terminate this Sublease, this Sublease shall remain in full force and effect, except as otherwise herein provided, that Sublessor shall promptly commence and complete with due diligence, the repair, reconstruction or restoration of the Premises so far as practicable to the condition in which the Premises were immediately prior to such damage or destruction. Sublessor's obligation hereunder, however, shall in no event exceed the scope of the work done in the original construction and improvement of the Premises, nor shall Sublessor be required to expend sums therefor in excess of the insurance proceeds received or to be received by Sublessor by reason of such damage or destruction.

16.4 Uninsured Casualty. If the improvements comprising the Premises or any portion thereof, are damaged or destroyed by any casualty not required on the part of Sublessor to be insured against hereunder, then Sublessor may, but shall have no obligation to, elect to repair, reconstruct or restore the Premises after any such damage or destruction by giving at least fifteen (15) days' written notice to Sublessee, such notice to be given within thirty (30) days after the date of such damage or destruction. If Sublessor elects to repair, reconstruct or restore the Premises after such damage or destruction, this Sublease shall continue in full force and effect, except as otherwise herein provided, and Sublessor shall promptly commence and complete with due diligence the repair, reconstruction or restoration of the Premises so far as practicable to the condition to which the Premises were immediately prior to such damage or destruction. If Sublessor does not so elect, this Sublease shall be terminated as of the date of such damage or destruction.

16.5 Sublessee's Obligations on Reconstruction. If the Premises are to be restored, Sublessee shall at its sole cost and expense as soon as reasonably practicable replace or fully repair all signs, trade fixtures, furnishings, equipment, merchandise and personal property necessary or beneficial to the conduct of Sublessee's business. Sublessee agrees to continue operation of its business during any period of reconstruction if commercially practicable. Sublessee shall not be entitled to any damages by reason of any inconvenience or loss sustained by Sublessee during any period of reconstruction.

16.6 Rent Abatement. During the period commencing with the date of any such damage or destruction which Sublessor is required or elects to repair, reconstruct or restore and

ending with the completion of such work, the Monthly Rent reserved herein shall be proportionately abated in an amount equal to the proportion thereof which the number of square footage area in the Premises rendered untenable bears to the total number of square footage area of the entire kept Premises immediately prior to such damage or destruction. The full amount of the Monthly Rent shall again become payable immediately upon the completion of such work. Except as expressly hereinabove provided, there shall be no reduction, change or abatement of any rent or other charge to be paid by Sublessee to Sublessor or in the event of computing, accounting for or paying the same.

16.7 Insurance Proceeds. Sublessee shall have no interest in or claim to any portion of the proceeds of any insurance maintained by Sublessor hereunder on the improvements comprising the Premises, or any portion thereof. All such proceeds are to be paid over to Sublessor for use in repair, reconstruction or restoration if this Sublease is not terminated, otherwise to be retained solely by Sublessor for its own account and to discharge its obligations under the Master Lease.

16.8 Reconstruction Prohibited. If existing laws do not permit repair, reconstruction or restoration, either party may terminate this Sublease upon prior written notice to the other party.

16.9 Proration of Rent on Termination. If this Sublease is terminated under this paragraph 16 such termination shall become effective at the time and in accordance with the respective provisions herein contained for such termination; however, all rent and other charges to be paid by Sublessee under this Sublease shall be prorated and paid either as of the date of such damage or destruction, or as of the date Sublessee ceases doing business at the Premises, whichever last occurs.

17. EMINENT DOMAIN

17.1 Definitions. For the purposes of this paragraph, the following definitions shall apply: The term "total taking" means the taking of the entire Premises under the power of eminent domain or a taking of so much of the Premises as to prevent or substantially impair the conduct of Sublessee's business therein. The term "partial taking" means the taking of a portion only of the Premises which does not constitute a total taking. A voluntary sale by Sublessor to any public body or agency having the power of eminent domain, either under threat of condemnation or while

condemnation proceedings are pending, shall be deemed to be a taking under the power of eminent domain for the purposes of this paragraph.

17.2 Total Taking. If during the term of this Sublease there is a total taking by a public authority under the power of eminent domain, then the leasehold estate of Sublessee in and to the Premises shall cease and terminate as of the date actual physical possession of the Premises is taken.

17.3 Partial Taking. If during the term of this Sublease there is a partial taking of the Premises, Sublessee may elect either to cancel and terminate this Sublease or to remain in possession of the remainder of the Premises not taken, provided, however, Sublessee shall give Sublessor written notice of its election within thirty (30) days after the date of such actual taking, and failing to do so, shall be deemed to have elected to remain in possession of the remainder of the Premises, or if the portion of the Premises so taken shall not be so extensive as may reasonably be construed to render the remainder of the Premises unsuitable for the business of Sublessee then and in either such event, if a portion of the total award is made for a taking of any portion of the Premises, Sublessor shall (but only out of and not exceeding such portion of the award received by Sublessor for or on account of such taking) repair, reconstruct or restore the remainder of the Premises (including the building which is a part thereof) to the condition as it existed immediately prior to such taking (and Sublessee shall not be entitled to any damages by reason of any convenience or loss sustained by Sublessee as a result thereof) and, except as otherwise herein provided, this Sublease shall continue in full force and effect in all respects.

17.4 Award Proceeds. Except as otherwise herein provided, all compensation and damages awarded for a taking of the Premises or the Common Facilities, or any portion or portions thereof, shall belong to and be the sole property of Sublessor, and Sublessee shall not have any claim or be entitled to any award for diminution in value of its leasehold hereunder or for the value of any unexpired term of this Sublease; provided, however, Sublessee shall be entitled to any award that may be made for the taking of or injury to or on account of any cost or loss Sublessee may sustain in the removal of Sublessee's merchandise, fixtures, equipment, and furnishings Sublessee has a right to remove under this Sublease.

17.5 Termination. If this Sublease is terminated in whole or in part pursuant to any of the provisions of this paragraph, all rent and other charges payable to Sublessee to Sublessor hereunder and attributable to the Premises taken shall be paid up to the date at which actual physical possession is taken by the condemnor, and the parties shall then be released from all further liability in relation thereto.

18. SUBLESSOR PAYING CLAIMS

If Sublessee fails to pay when due any tax or assessment, or any premium or other charge in connection with any insurance policy or policies which Sublessee is obligated to pay, or any lien or claim for labor or materials is employed or used in, or any claim for damages arising out of the repair, alteration, maintenance and use of the Premises as provided in this Sublease, then Sublessor may at its option and without waiving or releasing Sublessee from any of Sublessee's obligations pay any such tax, assessment, lien, claim, insurance premium or charge, or settle or discharge any action therefor or satisfy the judgment thereon. All costs, expenses and other sums incurred or paid by Sublessor in connection therewith, including attorneys' fees, together with interest at the rate provided in this Sublease on such costs, expenses and sums shall be deemed to be additional rent and shall be paid by Sublessee at the same time as the next monthly installment of Monthly Rent.

19. SURRENDER AND REMOVAL OF PERSONAL PROPERTY

Upon termination of this Sublease, Sublessee shall quit and surrender possession of the Premises to Sublessor in the same condition as upon delivery of possession to Sublessee, reasonable wear and tear excepted. Subject to the provisions of paragraph 11, before surrendering possession of the Premises, Sublessee as its expense shall remove from the Premises all signs, furnishings, equipment, trade fixtures, merchandise and other personal property installed or placed on the Premises. Sublessee shall remove all debris and rubbish and repair all damage to the Premises resulting from removal of Sublessee's property. If Sublessee fails to remove any of Sublessee's property upon termination of this Sublease, Sublessor may at Sublessor's option (i) treat Sublessee as a holdover in which event the provisions of paragraph 28 shall apply, (ii) deem any or all of the property abandoned to the sole property of Sublessor; or (iii) remove, dispose or store the property for Sublessee at Sublessee's cost and expense. If requested by Sublessor,

Sublessee shall execute, acknowledge and deliver to Sublessor such documents or instruments required by Sublessee to release and quit-claim to Sublessor all Sublessee's rights, title and interest in the Premises by reason of this Sublease.

20. OWNERSHIP OF IMPROVEMENTS AND TRADE FIXTURES

Subject to the provisions of paragraph 11 and except as otherwise provided below, all fixtures and improvements of the Premises, except Sublessee's trade fixtures, shall at Sublessor's option become the property of Sublessor upon the expiration or earlier termination of this Sublease. Trade fixtures installed or owned by Sublessee shall be the property of Sublessee. Sublessee shall have the right to remove its trade fixtures prior to the termination of this Sublease at Sublessee's own expense, provided, Sublessee is not then in default under this Sublease. Sublessee shall repair immediately any damage to the Premises or the remaining fixtures and improvements caused by such removal and Sublessee shall leave the Premises in a good state of repair and in a clean condition, normal wear and tear excepted. If Sublessee does not remove its trade fixtures and the improvements not owned by or reverting to Sublessor, Sublessor may remove and sell or destroy the same at Sublessee's expense, and Sublessee shall pay to Sublessor upon demand the cost of any such removal, sale or destruction, together with the cost to repair damages to the Premises resulting from such removal. At the option of Sublessor, any such property not removed by Sublessee may be deemed abandoned and may be removed and sold by Sublessor, and all sales proceeds received by Sublessor shall be the sole property of Sublessor.

21. ABANDONMENT

Sublessee shall not abandon or vacate the Premises at any time during the term of this Sublease. If Sublessee abandons or vacates the Premises, or is dispossessed by process of law or otherwise, any of Sublessee's personal property remaining on the Premises shall at the option of Sublessor be deemed to have been abandoned and shall become the property of Sublessor.

22. WAIVER OF BREACH

Sublessor's waiver of any default shall not constitute a waiver of any other default, whether of the same or of any other covenant or condition. No waiver, benefit or privilege voluntarily given or performed by either party shall give the other party any contractual right by custom, estoppel

or otherwise. The subsequent acceptance of rent shall not constitute a waiver of any preceding default by Sublessee, other than the default in the payment of the particular rent payment so accepted, regardless of Sublessor's knowledge of the preceding default at the time of accepting the delinquent rent. The acceptance of rent or any other payment after termination shall not constitute a reinstatement, extension or renewal of the Sublease or revocation of any notice or other act by Sublessor.

23. RIGHT OF ENTRY

Sublessor and its agents shall have the right to enter the Premises at any reasonable time to inspect the Premises to determine if Sublessee is complying with this Sublease, to post and maintain notices of nonresponsibility as provided by law, or any other notice deemed necessary by Sublessor for the protection of its interest, and to make any repairs or alterations provided for in this Sublease. During the last month of the term of this Sublease or at any time after Sublessee is in default hereunder, Sublessor may place and maintain on the Premises customary "For Lease" signs and may at all reasonable times enter the Premises for the purpose of exhibiting the Premises to prospective sublessees. During the progress of any work on the Premises by Sublessor, Sublessor or its agents may keep and store upon the Premises all necessary materials, tools and equipment and Sublessor shall not be liable for any inconvenience, annoyance, disturbance, loss of business or other damage to Sublessee, and the obligations of Sublessee under this Sublease shall not be affected.

24. ASSIGNMENT AND SUBLETTING

24.1 Consent Requirement. Sublessee shall not assign or transfer any right or interest in this Sublease or sublet all or any part of the Premises without the prior written consent of Sublessor and The City, which consent shall not be unreasonably withheld. Sublessor reserves the right to withhold any such consent until Sublessor has determined to its reasonable satisfaction the proposed assignee or sublessee (i) has sufficient financial strength and responsibility, reasonable in relation to the obligations of Sublessee under this Sublease; (ii) has demonstrated an ability to operate a business with a sales volume that will produce Percentage Rent in excess of the total Monthly Rent payable during the lease year; (iii) will provide the same type of inventory, goods, wares and services provided by Sublessee or some other type specifically approved by Sublessor; and (iv) can meet such other reasonable requirements

as Sublessor or The City may impose. Such approval may additionally be conditioned on execution of such instruments in writing as may be reasonably required by Sublessor and The City which may, among other things, require the proposed assignee or sub-sublessee to be bound to the terms, covenants and conditions of this Sublease and require those persons comprising the proposed assignee or sublessee to execute continuing personal guarantees in forms satisfactory to Sublessor. Sublessor's and The City's consent to one assignment or subletting shall not be deemed to be a consent to any subsequent assignment or subletting. Consent to any assignment or subletting shall not relieve Sublessee of any liability under this Sublease. Any transfer or assignment, whether voluntary or involuntary, by operation of law, under legal process or proceeding, by any bankruptcy or insolvency proceedings and any subletting without the prior written consent and approval required under this paragraph shall be void and of no force or effect.

24.2 Transfer of Interest in Sublessee. If Sublessee is a corporation, unincorporated association, trust or a partnership, the transfer, assignment or hypothecation of any stock or interest in such corporation, association or partnership which singularly or in the aggregate with prior transactions results in excess of fifty percent (50%) (compared to the ownership existing as of date hereof) of the ownership interest in Sublessee being transferred, assigned or hypothecated during the Sublease term shall be deemed an assignment within the meaning and provisions of this paragraph.

24.3 Costs. If Sublessor and The City consent to an assignment, transfer or sublease by Sublessee of all or a portion of Sublessee's interest under this Sublease, Sublessee shall pay or cause to be paid to The City any fee charged by The City for processing said assignment, transfer or sublease, and any attorneys' fees reasonably incurred by Sublessor in connection with any such assignment, transfer or sublease.

25. SUBORDINATION AND ATTORNMENT

25.1 Subordination. Sublessor shall have the right to encumber in any manner whatsoever any right or interest in the Premises and this Sublease. Upon Sublessor's request, Sublessee shall subordinate this Sublease and Sublessee's rights hereunder to any mortgage, deed of trust, hypothecation, security instrument, or other form of encumbrance, present or future, and to any and all conditions, modifications, consolidations, extensions, renewals or replacements thereof; provided, the encumbrancer has agreed in writing

for the benefit of Sublessee that so long as Sublessee is not in default under the terms of this Sublease, Sublessee's quiet possession of the Premises shall not be disturbed and this Sublease shall not terminate or be modified as a result of any action taken or proceeding commenced, including without limitation foreclosure or trustee's sale, by any encumbrancer to enforce its encumbrance.

25.2 Attornment. If any right or interest in the Premises or this Sublease is sold or transferred by judicial or non-judicial sale, deed in lieu of foreclosure or any other proceeding or action commenced to enforce an encumbrance, Sublessee shall attorn to such purchaser, transferee or grantee, as the case may be, and recognize such purchaser, transferee or grantee as sublessor under and for the purpose of this Sublease.

25.3 Prior Status. If any encumbrancer elects to have this Sublease prior to its encumbrance, this Sublease shall upon notice to Sublessee be deemed prior to such encumbrance, whether this Sublease is dated or recorded prior or subsequent to the date or recording of the encumbrance.

25.4 Necessary Documents. Sublessee agrees to execute and deliver to Sublessor within ten (10) days of Sublessor's request all documents and instruments required by Sublessor or any encumbrancer to make this Sublease and Sublessee's rights hereunder subordinate or prior to any encumbrance, as the case may be. Sublessee hereby irrevocably appoints Sublessor as Sublessee's attorney-in-fact to execute such documents and instruments on behalf of Sublessee if Sublessee fails to execute and deliver such documents and instruments to Sublessor within the ten (10) day period.

26. NON-DISCRIMINATION AND AFFIRMATIVE ACTION

Sublessee hereby expressly acknowledges its obligation to comply with Sections (D)(26) and (D)(40) of the Master Lease concerning nondiscrimination and affirmative action with respect to Sublessee's activities at the Premises. The provisions of Section (D)(26) and (D)(40) are incorporated here by reference as if fully set forth.

27. CITY APPROVAL

The approval, consent or option of The City wherever required or granted in this Sublease shall mean the approval, consent or option of the City Manager, unless otherwise specified. Sublessor's refusal to consent or approve of any matter under this Sublease whenever required shall be deemed

reasonable if the consent or approval of The City is required and The City refuses to give its consent or approval, and Sublessor shall have no liability to Sublessee with respect to such refusal.

28. HOLDING OVER

28.1 No Renewal. This Sublease shall terminate and become null and void without further notice upon expiration of its term. Any holding over by Sublessee after such expiration shall not constitute a renewal of this Sublease or give Sublessee any rights hereunder. The term of this Sublease cannot be renewed or extended, except as expressly provided in this Sublease. Nothing in this paragraph shall be construed to alter or impair the provisions of paragraph 19 hereof.

28.2 Month-to-Month Tenancy. If Sublessee holds over for any period after the expiration of the term, Sublessor may at its option treat Sublessee as a tenant from month-to-month commencing on the first day following the expiration of this Sublease subject to the terms, conditions and covenants of this Sublease except the Monthly Rent which shall be payable in monthly installments in advance shall be equal to 150% of such rent applicable on the termination date.

28.3 Indemnity. If Sublessee fails to surrender the Premises upon the expiration of this Sublease despite demand to do so by Sublessor, Sublessee shall indemnify and hold Sublessor harmless from all loss, liability, costs and expenses, including attorneys' fees, incurred by Sublessee as a result of such holdover, including without limitation any claims made by any succeeding sublessee.

29. ATTORNEYS' FEES

If either Sublessor or Sublessee institutes or is involved in any action or proceeding to enforce any provision of this Sublease for (i) damages because of default, (ii) declaration of the rights or obligations, (iii) possession of any interest in real or personal property, (iv) any indebtedness, or (v) in any other way connected with this Sublease or the Premises, the party in whose favor final judgment shall be entered or other final determination made shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred.

30. SUBLESSEE'S CERTIFICATE

From time to time at the written request of Sublessor, Sublessee shall execute, acknowledge and deliver to Sublessor a statement certifying: (a) this Sublease is unmodified and in full force and effect (or, if there have been modifications, the same is in full force and effect as modified, and stating the modifications); (b) any existing offsets or defenses known to Sublessee or which Sublessee has reason to know or which in the exercise of reasonable care Sublessee should know against the enforcement of any provision of this Sublease (and, if so, specifying the same); and (c) the dates to which rent or other charges have been paid in advance. This certificate may be relied upon by any prospective purchaser, lessor, mortgagee or holder of a deed of trust on the Premises. Sublessor shall provide a similar statement to Sublessee from time to time as requested.

31. TRANSFER BY SUBLESSOR

If Sublessor or Sublessor's successor in interest transfers its interest in this Sublease, Sublessor (or its successor in interest) shall automatically be freed and relieved from all personal liability for the performance of any obligations after the date of such transfer or conveyance. Any funds in which Sublessee has an interest which are in the hands of Sublessor (or its successor in interest) shall be turned over to the transferee, and any amount payable to Sublessee by Sublessor successor in interest under this Sublease shall be paid to Sublessee.

32. TIME OF THE ESSENCE

Time is of the essence under this Sublease.

33. PAYMENTS AND NOTICES

All rent and other sums payable by Sublessee to Sublessor shall be paid to Sublessor at its business office at 1842 Quivira Way, San Diego, California, 92109, either delivered in person or sent by regular mail, or at such other place as Sublessor may hereafter designate in writing. Any notice to be given or other document to be delivered by either party to the other may be delivered in person to an officer of Sublessor or to Sublessee or any officer of Sublessee, if a corporation, or may be deposited in the United States regular mail, postage prepaid, and addressed to Sublessor at its business office and to Sublessee at the Premises. All notices shall be deemed effective and binding for all purposes upon personal service or forty-eight (48) hours after mailing in

the manner provided above. Either party may from time to time by written notice to the other served in the above manner designate a different address. If more than one sublessee is named under this Sublease, service of any notice may be made by Sublessor upon any one of said sublessees on behalf of all sublessees.

34. QUIET POSSESSION

So long as Sublessee makes all payments when due and fully performs the terms and covenants and satisfies the conditions to be kept, performed and satisfied by Sublessee under this Sublease, Sublessee shall have the peaceable and quiet possession of the Premises during the Sublease term.

35. JOINT AND SEVERAL LIABILITY OF MULTIPLE SUBLESSEES

If Sublessee consists of one or more persons, the obligations and liabilities of each shall be joint and several.

36. HEADINGS

The captions and paragraph headings of this Sublease are inserted only as a matter of convenience and in no way define, limit or describe the scope of the meaning or intent of the provisions of this Sublease.

37. NUMBER AND GENDER

Words of gender shall include any other gender, singular words include the plural and the word "person" includes individuals, firms, partnerships, joint ventures, corporations, trusts and other types of entities or associates.

38. GOVERNING LAW AND SEVERABILITY

This Sublease is entered into at San Diego, California, and shall be governed by and construed under California law as applied to contracts made and to be performed entirely in California. If any provision of this Sublease is invalid or contravenes California law, such provision shall be deemed not to be a part of this Sublease and shall not affect the validity or enforceability of the remaining provisions.

39. INTEREST RATE

Whenever it is provided in this Sublease that interest at the rate provided in this Sublease shall accrue and be payable by Sublessee to Sublessor on amounts paid or incurred by Sublessor on behalf of Sublessee or due and payable by Sublessee to Sublessor, unless otherwise specifically provided, such interest shall be at the annual rate of twelve percent (12%) and shall accrue as of the date paid or incurred by Sublessor on behalf of Sublessee or the date due and payable by Sublessee to Sublessor and shall continue to accrue up to and including the date all such amounts, together with interest, are paid by Sublessee to Sublessor.

40. BINDING EFFECT

Subject to the restrictions on the rights of Sublessee to transfer, assign or sublet this Sublease, this Sublease shall be binding upon and inure to the benefit of Sublessor and Sublessee and their respective heirs, beneficiaries, legal representatives, successors and assigns.

41. ENTIRE AGREEMENT AND AMENDMENT

This Sublease, all attached exhibits and all documents incorporated by reference supercede all oral statements and representations and contain the entire agreement of the parties with respect to Sublessee's use and occupancy of the Premises. This Sublease shall not be amended or modified in any respect without the prior written consent of Sublessor and The City. Any purported amendment or modification without such prior written consent shall be null and void.

Sublessor and Sublessee have signed this Sublease on the date set forth below opposite their respective signatures.

Dated: 4/21/86

SUBLESSOR:

MARINA VILLAGE LTD., a California
limited partnership

M. H. Hymowitz Council

By

Title

Dated: April 4, 1986

SUBLESSEE:

Theodore R. Jackson
President
Mission Bay Lessees Association

ACCEPTED:

DATED: _____

CONSENT OF MASTER LESSOR

CITY OF SAN DIEGO,
a chartered municipal corporation

CITY MANAGER

By _____

Marina Village

EXHIBITS

Exhibit "A"

Premises

Exhibit "B"

Plot Plan

Exhibit "C"

Confirmation of Commencement
Date

Exhibit "D"

Requirements for Construction
of Improvements

MARINA VILLAGE SHOP LEASE

EXHIBIT "A"

PREMISES

I. Legal Description

PARCEL 1 (LAND)

That portion of the tidelands and submerged or filled lands of Mission Bay - formerly False Pay - and a portion of the Pueblo Lands of San Diego, according to Map thereof made by James Pascoe in 1870, a copy of which was filed in the office of the County Recorder of San Diego County, November 14, 1921 and is known as Miscellaneous Map no. 36, all being in the City of San Diego, County of San Diego, State of California, and described as a whole as follows:

Commencing at the Southeast corner of Lot 24 in Block 10 of Resubdivision of Blocks 7, 8, 10, and a portion of Block 9 and Lot "A", Inspiration Heights, according to Map thereof No. 1700, filed in the office of the County Recorder of San Diego County, December 27, 1917; thence along the Southerly line of said Lot 24, South $89^{\circ} 55' 56''$ West - Record South $89^{\circ} 59' 00''$ West - 25.00 feet to a point of tangent curve in the Boundary of said Lot 24; thence South $00^{\circ} 04' 04''$ East 2.00 feet to an intersection with a line which is parallel with and 2.00 feet southerly at right angles to the Southerly line of said Block 10; thence along said parallel line North $89^{\circ} 55' 56''$ East 249.70 feet; thence North $05^{\circ} 30' 02''$ West 104.06 feet to the United States Coast and Geodetic Survey Triangulation Station "Old Town" - the Lambert Grid Coordinates, California Zone 6, for said Station "Old Town" are X equals 1,712,415.7 and Y equals 213,819.22 - and said triangulation station is located at latitude $32^{\circ} 45' 02.45''$ North and longitude $117^{\circ} 11' 07.200''$ West, being also the point of origin for the San Diego City Engineer's Mission Bay Park Coordinate System; thence North 5160.53 feet and West 16,030.79 feet, being at Mission Bay Park Coordinates; North 5160.53 feet and West 16,030.79 feet; thence South $66^{\circ} 35' 46''$ East 352.89 feet being at Mission Bay Park Coordinates North 5020.42 feet and West 15,706.89 feet; thence continuing South $66^{\circ} 35' 46''$ East 618.76 feet being at Mission Bay Coordinates North 4774.57 feet and West 15,139.07 feet; thence continuing South $66^{\circ} 35' 46''$ East

313.04 feet to a point, for reference the coordinates hereinafter mentioned are said Mission Bay Park Coordinate System, said last mentioned point being also the TRUE POINT OF BEGINNING: thence South 40°00'00" West 421.74 feet to a point herein called "Point A"; thence South 50°00'00" East 406.88 feet to coordinates North 4065.64 feet and West 14,811.19 feet; thence South 08°09'38" East 8.12 feet to coordinates North 4057.60 feet and West 14,810.04 feet; Thence South 08°09'38" East 694.75 feet to coordinates North 3369.88 feet and West 14,711.43 feet; thence South 81°50'22" West 1202.00 feet; thence South 08°09'38" East 217.76 feet; thence North 81°50'22" East 1133.01 feet to a tangent 239.52 foot radius curve, concave Northwesterly; thence Northeasterly along said curve 219.05 feet through an angle of 52°24'00"; thence tangent to said curve North 29°26'22" East 273.89 feet to a tangent 805.00 foot radius curve, concave Westerly; thence Northeasterly, Northerly and Northwesterly along the arc of said curve 1349.29 feet through an angle of 96°02'08"; thence tangent to said curve North 66°35'46" West 33.68 feet to the TRUE POINT OF BEGINNING.

PARCEL 2 (WATER)

That portion of the tidelands and submerged or filled lands of Mission Bay - formerly False Bay - and a portion of the Pueblo Lands of San Diego, according to Map thereof made by James Pascoe in 1870, a copy of which was filed in the office of the County Recorder of San Diego County, November 14, 1921 and is known as Miscellaneous Map no. 36, all being in the City of San Diego, County of San Diego, State of California, and described as a whole as follows:

Commencing at the abovesaid "Point A" being also the TRUE POINT OF BEGINNING: thence South 50°00'00" East 406.88 feet to coordinates North 4065.64 feet and West 14,811.19 feet; thence South 08°09'38" East 8.12 feet to coordinates North 4057.60 feet and West 14,810.04 feet; thence South 08°09'38" East 694.75 feet to coordinates North 3369.88 feet and West 14,711.43 feet; thence South 81°50'22" West 1202.00 feet; thence North 08°09'38" West 480.00 feet; thence North 81°50'22" East 800.00 feet; thence North 08°09'38" West 152.88 feet; thence North 87°08'14" West 113.99 feet to coordinates North 3944.99 feet and West 15,313.03 feet; thence North 50°00'00" West 100.00 feet; thence North 40°00'00" East 415.00 feet to the TRUE POINT OF BEGINNING.

Excepting from that portion of said Parcels 1 and 2 lying within the natural boundaries of Mission Bay - formerly False Bay - all the deposits of minerals, including oil and gas, together with the right to prospect for, mine and remove such deposits and to occupy and use so much of the surfact as may be required therefor, as reserved by the State of California in an act of the legislature approved April 27, 1945; Status of California, Chapter 142.

NOTE: The above-described parcels are delineated on the City of San Diego Engineering Drawing Nos. 4822-D and 4823-D.

II. Demised Premises.

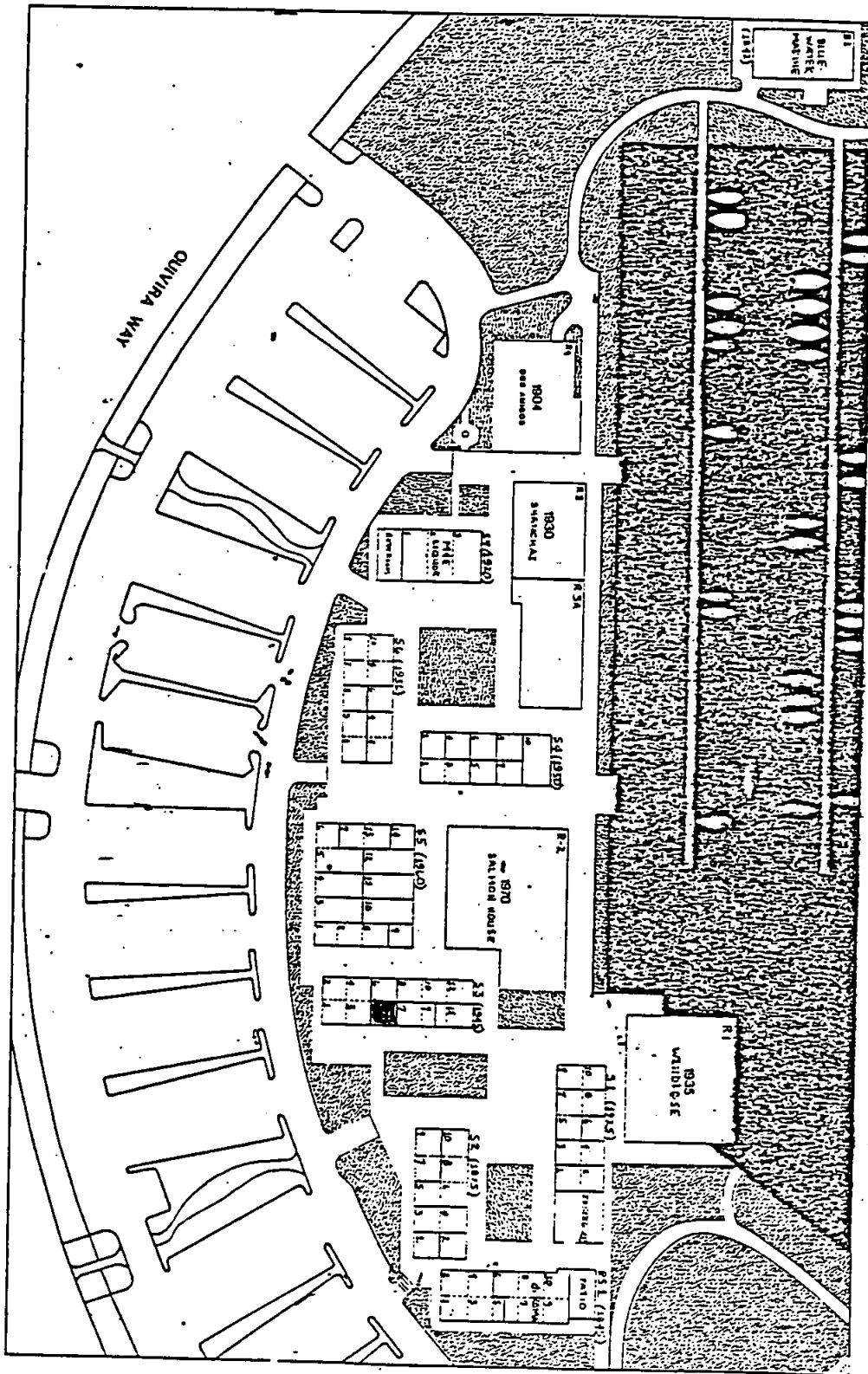


The premises leased herein shall be located in Building S-3 space Five (5), and shall consist of approximately 400 square feet; said space being approximately twenty (20) feet by twenty (20) feet. The premises shall be further designated as 1945 Quivira; San Diego, California.

III. Plot Plan.

Said premises are further delineated in red on the plot plan attached hereto and made a part hereof.

EXHIBIT "B"



INITIAL
LESSOR
LESSEE

147

147

147

147

147

147

147

MARINA VILLAGE SHOP LEASE

EXHIBIT "D"

INTERIOR PLANS PREPARATION AND CONSTRUCTION REQUIREMENTS

Preparation of Plans.

Sublessee shall cause to be prepared as the interior plans, three complete sets of fully dimensioned 1/4" scale drawings along with detailed specifications in the form and content acceptable to Sublessor's architect, detailing Sublessee's required interior improvements, trade fixtures, furnishings, furniture and equipment. Said plans shall be prepared in separate plats as follows:

- I. Overall floor and partition plan designating all area uses including fixture layout.
- II. Lighting plan designating type and intensity of all lighting.
- III. Electrical plan showing the precise location for all outlets, and lighting fixtures including electrical loads prepared by a licensed electrical engineer.
- IV. Plumbing plan showing type and location of all plumbing fixtures and all sewer, water, and/or gas lines.
- V. Signing plan showing the type design coloration and location of all signs.

Said interior plans shall additionally specify:

1. The overall design and decor theme and color coordination.
2. Floor and wall coverings.
3. Any window coverings and special ceiling effects.
4. Any special effects.

Construction Requirements.

Sublessee shall only use such contractors as are bondable and utilize only union employees in good standing for all trades. All construction shall be fully consistent with the approved exterior and interior plans incorporated as Exhibit "D" and performed in a first class workmanlike manner acceptable to Sublessor's architect.

The items set forth below shall be incorporated as special conditions into the contract between Sublessee and its contractors as follows (with a copy of the contract to be furnished Sublessor prior to the commencement of Sublessee's construction work):

1. Prior to start of Sublessee's work, Sublessee's contractor shall provide Sublessor with a construction schedule indicating the completion date of all phases of Sublessee's work.
2. Sublessee's contractor shall perform said work in a manner and at times which do not impede or delay Sublessor in the completion of the premises as provided in this sublease. Any delays in the completion of the premises or the commencement of the minimum annual rental and any damage to any work caused by Sublessee's contractor shall be at the sole cost and expense of Sublessee.
3. Sublessee's contractor shall be responsible for the repair, replacement or clean up of any damage done by him to other contractor's work which specifically includes accessways to the Sublessee's premises which may be concurrently used by others.
4. Sublessee's contractor shall contain his storage of materials and his operations within the premises and such other space as he may be assigned by Sublessor. Should he be assigned space outside of the Premises, he shall move to such other space as Sublessor shall direct from time to time to avoid interference or delays with other work.
5. All trash and surplus construction materials shall be stored within the Premises and shall be promptly removed from the marina development.

6. Sublessee's contractor shall provide temporary utilities, portable toilet facilities and portable drinking water as required for his work within the Premises and shall pay to Sublessor the cost of any temporary utilities and facilities provided by Sublessor at Sublessee's contractor's request.
7. Sublessee's contractor shall notify Sublessor's project manager of any planned work to be done on weekends or other than normal job hours.
8. Sublessee and Sublessee's contractor are responsible for compliance with all applicable codes and regulations of duly constituted authorities having jurisdiction insofar as the performance of the work and completed improvements are concerned for all work performed by Sublessee or Sublessee's contractor and all applicable safety regulations established by Sublessor for the marina development and Sublessee further agrees to save and hold Sublessor harmless for said work as provided in paragraph 14 of this sublease. Prior to commencement of construction, Sublessee shall submit to Sublessor evidence of insurance as required in paragraph 14 of this Sublease. Said insurance shall provide that course of construction coverage and workman's compensation coverage shall be in full force and effect in the amounts specified for liability and workmen's compensation in paragraph 14 of the lease covering all phases of Sublessee's work.
9. Sublessee's contractor or subcontractors shall not post signs on any part of the marina development or on the Premises.
10. Sublessee shall be responsible for and shall obtain and record a Notice of Completion promptly following completion of Sublessee's work.
11. All work performed by Sublessee or Sublessee's contractor will be in compliance with the master labor agreement existing between trade unions and the Chapter of the Associated General Contractors of America having jurisdiction over the construction of the marina development.

CITY of SAN DIEGO
MEMORANDUM

10.20

FILE NO.: *204-55*
Van derburg
or Delaney
High Fliers, Ltd. Subleases

DATE : April 24, 1978

TO : Deputy City Manager John P. Fowler via Deputy City Attorney H. O. Valderhaug *H.O.V.*

FROM : Property Director

SUBJECT: High Fliers, Ltd. Sublease Approval

Attached are three (3) copies each of executed subleases between High Fliers, Ltd. as sublessor and the following as sublessees:

1. Joseph F. Weller and Kristina Weller
2. Rick C. Reynolds
3. Bennett and Ledet
4. Gerald L. Aboud and Charles R. Temple, Jr.

All are prospective speciality shop operators in the Marina Village Development in Quivira Basin, Mission Bay Park.

Each sublease and prospective sublessee has been reviewed in terms of appropriate use, managerial capability and financial ability by Property Department Staff, and found acceptable.

Would you review each sublease, and if found satisfactory, execute each copy in the spaces indicated for City approval. When completed, please return them to me for further processing.

W.L. MacFarlane
W. L. MacFarlane, Property Director

WLM:GRR:jvs

Attachments

4/27 OK
H.O.V.

COPY

CONSENT TO SUBLEASE AGREEMENT

The City of San Diego (CITY), as LESSOR under than certain Lease Agreement (Master Lease) entered into with

MARINA VILLAGE, LTD., a California Limited Partnership,
Successor in Interest to High Fliers, Ltd.

(LESSEE), and filed in the Office of the City Clerk as Document 759240, hereby consents to that certain Sublease Agreement between the above LESSEE (SUBLESSOR) and

HIGH FLIERS, LTD., a California General Partnership

(SUBLESSEE), dated **DECEMBER 29**, 1983. Said Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Sublease. The CITY is not bound by any term or condition in the Sublease which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, this consent is subject to the following condition:

Lessee shall require SUBLESSEE, at all times to engage the services of a competent dockmaster acceptable to LESSEE and the City Manager of the CITY, who shall administer the dockside affairs of boaters within the Marina Facility constituting a part of the Premises. Acceptance of the dockmaster selected by SUBLESSEE shall not be unreasonably withheld by LESSEE or CITY. If SUBLESSEE shall fail to provide competent management of the Premises, SUBLESSEE shall upon written request of LESSEE either: (1) hire at SUBLESSEE'S expense a property manager for the Premises acceptable to LESSEE and the City Manager of the CITY, or (2) hire at SUBLESSEE'S expense the property manager retained by LESSEE for the restaurant and retail specialty center. Acceptance of a marina property manager chosen by SUBLESSEE shall not be unreasonably withheld.

THE CITY OF SAN DIEGO

Dated 10-19-83

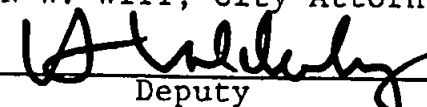
By *J. P. Fowler*
City Manager

DOCUMENT NO. 768832
FILED JAN 11 1984
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

APPROVED AS TO FORM:

JOHN W. WITT, City Attorney

Dated 10/17/83

By 
Deputy

MARINA FACILITY SUBLEASE

TABLE OF CONTENTS

<u>Section</u>	<u>Title</u>	<u>Page</u>
1	Lease of Premises	1
2	Term	2
3	Rent	3
4	Use	7
5	Maintenance, Repairs and Alterations	7
6	Hold Harmless, Indemnity and Insurance	9
7	Lessee's Covenants and Conditions	10
8	Defaults and Remedies	11
9	Assignments and Subletting	14
10	Damage, Destruction, Obligation to Rebuild	14
11	Destruction Due to Risk Not Covered by Insurance	15
12	Miscellaneous Provisions	15

INDEX TO EXHIBITS

<u>Exhibit</u>	<u>First Reference</u>
A Legal Description of Marina Portion of the Premises	1
B Description of Property Adjacent to Marina	1
C Legal Description of Land Portion of Marina Village	2
D Equipment, Fixtures, Supplies	2
E Form of Boat Slip Rental Agreement	14

MARINA FACILITY SUBLEASE

THIS AGREEMENT is entered this 29TH day of DECEMBER, 1983, by and between MARINA VILLAGE LTD., a California limited partnership ("Lessor") and HIGH FLIERS LTD., a general partnership ("Lessee").

RECITALS:

A. Lessee was the predecessor in interest of the leasehold interest in the real property the subject of this Lease hereunder and described below. Lessee defaulted on various obligations secured by the property including that certain "Lease Agreement" executed between Lessee and The City of San Diego, a municipal corporation ("City") on April 1, 1977 ("Master Lease").

B. Lessee filed for protection under Chapter 11 of the U.S. Code of Bankruptcy and pursuant to a plan of reorganization approved by the Court thereunder, ownership of the real property the subject of this Lease was transferred to Lessor.

IT IS THEREFORE AGREED AS FOLLOWS:

1. Lease of Premises.

1.1 Description of Leased Premises. Lessor hereby leases to Lessee and Lessee leases from Lessor all of that certain real property situated in the City of San Diego, County of San Diego, State of California comprising approximately 17.5 acres of water (described in Exhibit A attached hereto and made a part hereof) and approximately nine acres of adjacent real property (described on Exhibit B attached hereto) together with the improvements, facilities, equipment, and supplies thereon (the "Premises"). By way of illustration and not of limitation, the improvements and facilities comprising the Premises include boat slips, pump-out station, Boater Buildings B-1, B-2, and B-3 as identified in Exhibit A, 800 square feet of office space on the top floor of a structure located near Boater Building B-1 formerly used by the Marina operator, boat rentals and other structures or facilities currently being used in the operation of the Premises as a "Marina Facility." The aforementioned 800

square feet of office space shall not be used for any residential use without the prior written consent of Lessor and the City Manager of the City.

1.2 Easement of Ingress and Egress Over Adjacent Parcel. Lessor grants to Lessee, its employees, agents, assigns, invitees and customers the right of ingress and egress together with the right to park over that certain adjacent parcel of land of approximately nine acres and comprised of specialty shops, restaurants and parking and described within Exhibit C hereto and commonly known as "Marina Village."

1.3 Lease of Personal Property. Lessor leases to Lessee those items indicated on Exhibit D hereto, the items listed thereon shall be included within the meaning of "Premises" unless specifically excluded. Lessee acknowledges receipt of such Personal Property in good and operable condition.

1.4 The City's Approval and Master Lease. Lessee acknowledges the rights and obligations of the parties under this Lease are subject to the City's prior approval of this executed Lease and of Lessee as a tenant. Following execution of this Lease, Lessor shall request and use its best efforts to obtain the City's approval. Lessee shall pay all costs and fees charged by the City to Lessor for processing this Lease. Lessee expressly agrees all rights under this Lease shall be subject to the Master Lease and any amendments thereto and to all prior exceptions, reservations, restrictions, easements, rights-of-way, licenses and other matters of record now existing which affect the Premises in any manner. This Lease is subject to any and all rights, present and future, of the State of California and the United States of America to exercise dominion over the Premises.

2. Term. The term of this Lease shall be for two (2) years ("Term"). Unless Lessee is in breach of its obligations hereunder at the time of renewal or notifies Lessor in writing of its desire to cancel this Lease at least sixty (60) days prior to the expiration of the Term, the Lease shall automatically extend for another three (3) year period upon the same terms and conditions of this Lease. Irrespective of anything to the contrary

contained in this Section 2, if after the initial two year period described above, Lessor sells, transfers or assigns the "Property" as defined in that certain Contribution Agreement dated May 24, 1983, as amended, which Property includes the Premises subject to this Agreement, then Lessor shall have the option to terminate this Lease upon 60 days' prior written notice of such termination to Lessee.

3. Rent.

3.1 Minimum Annual Rent. Without deduction, set off, prior notice or demand, Lessee shall pay to Lessor the annual sum of Seven Hundred Forty-four Thousand Dollars (\$738,000) as rent hereunder ("Minimum Annual Rent") with the Minimum Annual Rent being payable in twelve (12) equal installments of Sixty-one Thousand Five Hundred Dollars (\$61,500) in arrears on the last day of each month.

3.2 Percentage Rent. In addition to the Minimum Annual Rent, Lessee shall pay Lessor an additional amount of rent ("Percentage Rent") equal to ten percent (10%) of "Gross Income" (as defined below) over \$100,000 per month for the first twelve (12) months of this Lease and fifteen percent (15%) of Gross Income over \$100,000 per month after the initial twelve (12) months of this Lease. Gross Income is defined to include all income resulting from the occupancy and operations of the Premises from whatever source derived or to become due provided, however, Gross Income shall not include:

(a) Federal, state and municipal sales taxes collected by Lessee from the consumer and paid over to a governmental agency as required by law;

(b) Income from sale of licenses and permits for a governmental agency;

(c) Income from sale of merchandise to other dealers at actual cost or less;

(d) Income from galley sales of food and beverage aboard boats operating from the Premises;

(e) Credits and cash refunds made on any sale that took place on or from the Premises;

(f) Accounts and notes receivable previously reported as Gross Income which have been uncollectible, provided that all recoveries thereof shall be reported as Gross Income subject to percentage rent hereunder;

(g) Allowances made by Lessee for traded-in merchandise which do not, in each instance, exceed the amount of the sale, provided that the allowances are adequately documented and further provided that the traded-in merchandise is held in inventory for resale on the premises.

Deductions from Gross Income shall be allowed for any of the foregoing previously reported as Gross Income for rental purposes. Provided further, however, all such exclusions shall be accurately documented on the books and records elsewhere herein required to be maintained.

3.3 Special Net Lease. It is intended that this Lease be considered what is commonly called a "Net, Net, Net Lease," it being understood that Lessor shall receive the rent set forth under this Section 3 free and clear of any and all other impositions, taxes, liens, charges or expenses of any nature whatsoever in connection with the ownership and operation of the Premises. In addition to the rent reserved by Paragraph 3.1 and 3.2, Lessee shall pay to the parties respectively entitled thereto all impositions, insurance premiums, operating charges, maintenance charges, construction costs, and any other charges, costs and expenses (all of which are "Lessee's Costs of Operation and Maintenance" as defined in Paragraph 3.4 below) which are paid or incurred by Lessor following Lessee's receipt of written notice of failure to pay same from Lessor. All of such charges, costs and expenses paid or incurred by Lessor shall constitute Additional Rent and upon the failure of Lessee to pay any of such costs, charges or expenses, Lessor shall have the same rights and remedies as otherwise provided in this Lease for the failure of Lessee to pay rent.

3.4 Lessee's Cost of Operation and Maintenance.

Lessee shall pay "Lessee's Costs of Operation and Maintenance"

related to the Premises which are herein defined to be the following:

- (a) Utilities, including but not limited to, gas, electricity, water, telephone service and trash collection;
- (b) Cost of repair, maintenance, and reasonable refurbishing of any portion of the Premises;
- (c) Cost of janitorial and other services and maintenance contracts relating to the Marina Facility together with any supplies relating thereto;
- (d) Insurance as hereinafter provided;
- (e) All property taxes as hereinafter defined payable monthly as hereinafter provided;
- (f) All rent to the City under the Master Lease applicable to the Marina Facility;
- (g) Other charges directly related to the operation and maintenance of the Premises.

3.5 Payment of Certain Costs of Operation and Maintenance. Lessee shall pay on the last day of each month together with the monthly installment of the Minimum Annual Rent and Percentage Rent, if applicable, one-twelfth (1/12th) of Lessor's estimated payments of property taxes (i.e., currently \$3,512 per month) and, at the times required by the Master Lease, all rent to the City under the Master Lease applicable to the Marina Facility. At the end of every twelve (12) months of this Lease, any shortage or overage between Lessee's amounts paid and those actually incurred by Lessor shall be made and such difference shall either be paid over to Lessor or Lessee, as the case may be, within forty-five (45) days of the end of the first twelve (12) month period.

3.6 Definition of Property Taxes. The term "property taxes," as used in this Lease, is defined as all real estate taxes or personal property taxes levied with respect to the Premises, and any improvements, fixtures and equipment and other property of the Lessee, real or personal, located on the Premises and used in connection with the operation of the Marina Facility and the land and water upon which they are situated, or any tax,

general or special assessment, or other charge of any description imposed upon or in respect of said Premises, including, without limitation, a tax upon any rent therefrom or any occupancy or use thereof, in lieu of or in addition to real estate or personal property taxes, but excluding any of Lessor's franchise taxes or any tax imposed upon Lessor's general income or revenues. Lessee shall have the right in its discretion to contest the amount or validity of any property taxes by appropriate legal proceedings.

3.7 Payment of Personal Property Taxes. Lessee hereby agrees to pay all taxes which may be levied with respect to Lessee's personal property located upon the Premises.

3.8 Delinquent Rent. In the event Lessee fails to pay Lessor any amount due hereunder including the monthly payment of Minimum Annual Rent, Percentage Rent or any of Lessee's Costs of Operation and Maintenance which are payable to Lessor and said amounts remain unpaid after fifteen (15) days of becoming delinquent, then Lessee shall pay to Lessor in addition to such delinquent sums, a sum of money equal to ten percent (10%) of said delinquent amount. Lessee acknowledges that late payment by Lessee to Lessor of rent will cause lessor to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Lessor by the terms of any encumbrance and note secured by any encumbrance covering the Premises. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Lessor will incur by reason of late payment of Lessee. Acceptance of any late charge shall not constitute a waiver of Lessee's default with respect to the overdue amount, nor prevent Lessor from exercising any of the other rights and remedies available to Lessor. In addition to the above late charge for delinquent rent, interest shall be payable from the date that such was due until the date paid at the maximum rate permitted by law.

3.9 Right of Offset. In the event Lessee is delinquent on any payment of rent including a late charge or interest thereon, Lessor in its sole discretion may elect to offset and deduct such sums from any amounts owing to Lessee under that certain Limited Partnership Agreement executed between the parties. If Lessor elects to exercise this right of offset, notice of such offset shall be given within five (5) days of the deduction. Nothing herein shall be construed as to give Lessee any right of offset or deduction from rent owing to Lessor nor shall the exercise of Lessor's right of offset and deduction be construed as exercising or waiving the remaining or any subsequent delinquent payment of rent, late charge or interest.

4. Use. The Premises shall be used by Lessee for the operation and maintenance of a "first class" marina complex including such activities as major and minor boat repairs, boat sales, marine chandlery, boat slips, transient mooring, marine fuel dock, pump-out station, boat rental and such other uses necessary or incidental thereto and in accordance with that certain Precise Plan of Development filed in the Office of the City Clerk of San Diego as Document No. 740187 and for no other purpose.

5. Maintenance, Repairs and Alterations.

5.1 Lessee's Obligations. Lessee shall keep in good order, condition and repair the Premises and every part thereof, structural and non-structural whether or not such portion of the Premises requiring repair or the means of repairing the same are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises including, without limiting the generality of the foregoing, all plumbing, heating, electrical or painting repairs for the Premises. In addition to the above, Lessee shall also do all acts necessary to maintain the Premises as a "first class marina facility."

5.2 Surrender. On the last day of the Term hereof, or on any sooner termination, Lessee shall surrender the Premises to

Lessor in the same condition as when received, ordinary wear and tear excepted, clean and free of debris. Lessee shall repair any damage to the Premises occasioned by the installation or removal of Lessee's fixtures, furnishings and equipment.

5.3 Lessor's Rights. If Lessee fails to perform Lessee's obligations under this Section, or under any other paragraph of this Lease, Lessor may at its option (but shall not be required to) enter upon the Premises after ten (10) days' prior written notice to Lessee (except in the case of an emergency, in which case not notice shall be required), perform such obligations on Lessee's behalf and put the same in good order, condition and repair, and the cost thereof together with interest thereon at the maximum rate then allowable by law shall become due and payable as additional rental to Lessor together with Lessee's next rental installment.

5.4 Lessor's Obligations. It is intended by the parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises nor any buildings or structures located thereon nor the equipment therein, whether structural or non-structural, all of which obligations are intended to be that of Lessee under Section 5.1 hereof. Lessee expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Lessee the right to make repairs at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the Premises in good order, condition and repair.

5.5 Alteration and Additions.

(a) Lessee shall not, without Lessor's prior written consent make any alterations, improvements, additions, or utility installations in, on or about the Premises, which require an expenditure greater than \$10,000.

(b) Any alterations, improvements, additions or utility installations in, or about the Premises that Lessee shall desire to make and which requires the consent of the Lessor shall be presented to Lessor in written form, with proposed detailed plans. If Lessor shall give its consent, the consent shall be

deemed conditioned upon Lessee acquiring a permit to do so from appropriate governmental agencies, the furnishing of a copy thereof to Lessor prior to the commencement of the work and the compliance by Lessee of all conditions of said permit in a prompt and expeditious manner.

(c) All alterations, improvements, additions and utility installations (whether or not such utility installations constitute trade fixtures of Lessee), which may be made on the Premises, shall become the property of Lessor and remain upon and be surrendered with the Premises at the expiration of the Term.

6. Hold Harmless, Indemnity and Insurance.

6.1 Exculpation of Lessor. As a material part of the consideration for this Lease, Lessee waives all claims against Lessor and agrees that Lessor shall not be liable to Lessee for any damage to Lessee's property in, upon or about the Premises or for any injuries to Lessee, its agents, employees or third persons in or about the Premises from any cause whatsoever.

6.2. Indemnity. Lessee shall assume the defense of, indemnify, hold harmless and exempt Lessor and the City of San Diego from any claim, expense and liability of every kind and nature for damages to property or person arising directly or indirectly from, or alleged to have arisen from the operations conducted on the Premises by Lessee or from the failure of Lessee to keep the Premises in good condition and repair, or from any act or omission of Lessee, its agents, invitees or customers.

6.3 Public Liability and Property Damage Insurance.

Lessee shall be insured by an insurance carrier acceptable to Lessor and The City of San Diego against loss from public liability arising from the use or condition of or operation conducted on the Premises. Minimum coverage shall be \$1 million COMBINED SINGLE LIMIT LIABILITY. A copy of the policy of insurance shall be filed with The City of San Diego and shall name "THE CITY OF SAN DIEGO" as an additional insured. Said policy shall specify that the policy may not be terminated, altered or canceled without 30 days prior written notice to Lessor and The City of San Diego by the insurance company.

Lessee at its cost shall maintain public liability insurance, and property damage insurance, maritime insurance with specific conditions of coverage and liability limits to be comparable to existing coverage for the Marina Facility but subject to the minimum coverage requirement specified above. All public liability, maritime and property damage insurance shall insure performance by Lessee of the provisions of this Section; and Lessor, Lessee and The City of San Diego shall be named as co-insureds with the policy containing cross-liability endorsements in form satisfactory to Lessor.

6.4 Payment of Premiums. Lessee shall be required to pay the premiums for maintaining the insurance required under this Section directly to the insurance companies providing such coverage. However, if it is determined by Lessor that it is more economical to combine the insurance coverage required hereunder with other insurance coverage maintained by Lessor, such sums shall be paid by Lessor and shall be paid to Lessor by Lessee.

7. Lessee's Covenants and Conditions.

7.1 Compliance with Master Lease. Lessee covenants and promises to obey all terms and conditions of the Master Lease and agrees to immediately notify in writing of the occurrence of any event which may reasonably be construed by any party to be a breach of said Master Lease or the receipt of any notification from the City as to the breach of the Master Lease.

7.2 Records. Lessee shall keep true, accurate and complete records in a manner or form satisfactory to Lessor. Such records shall show all transactions relative to the conduct of operation of the Premises and such transactions shall be supported by documents of original entry such as sales slips, cash register tapes, purchase invoices or other such documentation satisfactory to Lessor. Said records shall be maintained separate from all other accounts not relating to Lessee's use of the Premises. Not later than the thirtieth (30) day of each month, Lessee shall render to Lessor a detailed statement as to the source of the receipts showing all gross income and all operations rental of the preceding calendar month together with

the amount payable to Lessor as provided in this Lease and shall accompany same with a remittance of the amount so shown to be due Lessor. Lessor shall have the right to inspect such books and records including documents of original entry at any and all reasonable times.

7.3 Entry and Inspection. Lessee shall permit Lessor and its authorized representatives to enter upon the Premises at any reasonable time to inspect the Premises, to do any necessary maintenance or repair work, to serve past or keep posted any notices required or allowed under the provisions of this Lease, to show the Premises to prospective brokers, agents, buyers, tenants or persons otherwise interested in the Premises.

7.4 Management. Lessee shall at all times engage the services of a competent dock master acceptable to Lessor and the City Manager of the City, who shall administer the dockside affairs of boaters within the Marina Facility constituting a part of the Premises. Acceptance of the dock master shall not be unreasonably withheld. If Lessee shall fail to provide competent management of the Premises as a whole, then Lessee shall upon written request of Lessor either (i) hire, at Lessee's expense, a property manager acceptable to Lessor and the City Manager of the City or (ii) hire, at Lessee's expense, the property manager retained by Lessor for the restaurant and retail specialty center known as Marina Village. Acceptance of a marina property manager shall not be unreasonably withheld.

8. Defaults and Remedies.

8.1 Defaults. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessee:

(a) The vacating or abandonment of the Premises by Lessee.

(b) The failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof from Lessor to Lessee. In the event that Lessor serves Lessee with a Notice

to Pay Rent or Quit pursuant to applicable unlawful detainer statutes such Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph.

(c) The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than described in Paragraph (b) above, where such failure shall continue for a period of ten (10) days after written notice thereof from Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than ten (10) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commenced such cure within said ten (10) day period and thereafter diligently prosecutes such cure to completion.

(d) (i) The making by Lessee of any general arrangement or assignment for the benefit of creditors; (ii) Lessee becomes a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days; (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days. Provided, however, in the event that any provision of this Paragraph 8.1(d) is contrary to any applicable law, such provision shall be of no force or effect.

(e) The discovery by Lessor that any financial statement given to Lessor by Lessee, any assignee of Lessee, any subtenant of Lessee, or any successor in interest of Lessee was materially false.

(f) Upon the notification of Lessee of any event of default under the Master Lease with the City, which event of default is directly attributable to Lessee.

(g) The failure to maintain the Marina Facility in "first class" condition.

(h) Violation by Lessee of any rules of the U.S. Coast Guard, City of San Diego, or other applicable governmental agencies, which goes uncured for a period of thirty (30) days from Lessee's receipt of written notice of such violation.

8.2 Remedies. In the event of any such material default or breach by Lessee, Lessor may at any time thereafter, with or without notice or demand and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such default or breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. In such event Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of Lessee's default including, but not limited to, the cost of recovering possession of the Premises; expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees and any real estate commission actually paid; the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided.

(b) Maintain Lessee's right to possession in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Premises. In such event Lessor shall be entitled to enforce all of Lessor's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder.

(c) Pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the State of California. Unpaid installments of rent and other unpaid monetary obligations of Lessee under the terms of this Lease shall bear interest from the date due at the maximum rate then allowable by law.

(d) Exercise the right of offset of any delinquencies in rent against any amounts owing Lessee under the Limited Partnership Agreement as more specifically set forth in Paragraph 3.6 herein.

9. Assignments and Subletting.

9.1 Lessee shall not voluntarily assign or encumber its interest in this Lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity (except Lessee's authorized representatives) to occupy or use all or any part of the Premises, without first obtaining Lessor's consent. However, any sublease of the boat slips on the form attached hereto as Exhibit E at prevailing market rates and terms shall be deemed to have been approved by Lessor. Any assignment, encumbrance, or sublease without Lessor's consent shall be voidable and, at Lessor's election, shall constitute a default. No consent to any assignment, encumbrance or sublease shall constitute a further waiver of the provisions of this Section.

9.2 A withdrawal or change, voluntary, involuntary or by operation of law of any partner owning fifty percent (50%) or more of the partnership, or the dissolution of the partnership, shall be deemed a voluntary assignment.

9.3 Lessee shall not assign this Lease or sublet the Premises or any part thereof (except with respect to boat slip rentals permitted pursuant to Paragraph 9.1) without the prior written consent of The City of San Diego. An assignment by operation of law shall automatically terminate this Lease.

10. Damage, Destruction, Obligation to Rebuild. If, during the Term, the Premises are damaged or totally or partially destroyed from a risk covered by the insurance described in Section 6, rendering the Premises totally or partially inaccessible or unusable, Lessee shall, with the insurance proceeds available, restore the Premises to substantially the same condition as they were in immediately before destruction. Lessee's liability to restore the Premises shall be limited to the insurance proceeds obtained from the insurance coverage required hereby. Such destruction shall not terminate this Lease; however, all rent due

hereunder shall be prorated and abated from the occurrence date to the date of full restoration with respect to that portion of the Premises which are damaged or destroyed. If the existing law does not permit the restoration, either party may terminate this Lease immediately by giving notice to the other party.

11. Destruction Due to Risk Not Covered by Insurance. If, during the Term, the Premises are damaged totally or partially destroyed from a risk not covered by the insurance described in Section 6, rendering the Premises totally or partially inaccessible or unusable, Lessee shall not be required to restore such damaged portion of the Premises. In the event of such destruction, either party may terminate this Lease immediately by giving notice to the other party.

12. Miscellaneous Provisions.

12.1 Severability. The invalidity of any provision of this Lease as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

12.2 Incorporation of Prior Agreements; Amendments. This Lease contains all agreements of the parties with respect to the lease of the Marina Facility. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modifications. Lessee hereby acknowledges that neither the Lessor nor any employees or agents of any of said person has made any oral or written warranties or representations to Lessee relative to the condition or use by Lessee of the Premises, and Lessee acknowledges that Lessee assumes all responsibility regarding the legal use and adaptability of the Premises and the compliance thereof with all applicable laws and regulations in effect during the term of this Lease.

12.3 Waivers. No waiver by Lessor of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Lessee of the same or any other provision. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's

consent to or approval of any subsequent act by Lessee. The acceptance of rent hereunder by Lessor shall not be a waiver of any preceding breach by Lessee or any provision hereof, other than the failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

12.4 Holding Over. If Lessee, with Lessor's consent, remains in possession of the Premises or any part thereof after the expiration of the Term hereof, such occupancy shall be a tenancy from month to month upon all the provisions of this Lease pertaining to the obligations of Lessee.

12.5 Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

12.6 Successors; Choice of Law. Subject to any provisions hereof restricting assignment or subletting by Lessee and subject to the provisions of this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the State of California.

12.7 Attorneys' Fees. If either party named herein or The City of San Diego brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to his reasonable attorneys' fees to be paid by the losing party as fixed by the court. The provisions of this paragraph shall inure to the benefit of any party named herein who seeks to enforce a right hereunder.

12.8 Quiet Possession. Upon Lessee paying the rent for the Premises and observing and performing all of the covenants, conditions and provisions on Lessee's part to be observed and performed hereunder, Lessee shall have quiet possession of the Premises for the entire Term hereof subject to all of the provisions of this Lease. The individuals executing this Lease on behalf of Lessor represent and warrant to Lessee that they are

fully authorized and legally capable of executing this Lease on behalf of Lessor and that such execution is binding upon all parties holding an ownership interest in the Premises.

12.9 Easements. Lessor reserves to itself the right, from time to time, to grant such easements, rights and dedications that Lessor deems necessary or desirable so long as such easements, rights, dedications, and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee shall sign any of the aforementioned documents upon request of Lessor and failure to do so shall constitute a material breach of this Lease.

12.10 Subordination. This Agreement is in effect a sublease of a portion of the Premises covered by that certain Master Lease dated April 1, 1977, as amended, between the Lessor herein and The City of San Diego. This Lease is subject and subordinate to the covenants and conditions of the Master Lease notwithstanding any provision hereof contrary to or in conflict with said agreement.

This Agreement is executed upon the date indicated above.

"Lessor"

MARINA VILLAGE, LTD.,
a California limited partnership

By: RETIREMENT FUND TRUST OF THE
PLUMBING, HEATING AND PIPING
INDUSTRY OF SOUTHERN CALIFORNIA
Its General Partner

By: Stuart H. Mair
Its Chairman,
Board of Trustees

By: Don Fisher
Its Co-Chairman,
Board of Trustees

"Lessee"

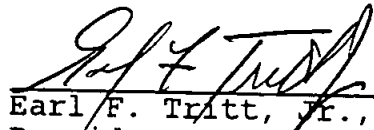
HIGH FLIERS, LTD.,
a general partnership

By: Its General Partners



Earl F. Tritt, Jr.

FLIERS, INC.,
a California corporation

By 

Earl F. Tritt, Jr.,
President

EXHIBIT A

LEGAL DESCRIPTION OF MARINA PORTION OF THE PREMISES

PARCEL 2

That portion of the tidelands and submerged or filled lands of Mission Bay - formerly False Bay - and a portion of the Pueblo Lands of San Diego, according to Map thereof made by James Pascoe in 1870, a copy of which was filed in the office of the County Recorder of San Diego County, November 14, 1921 and is known as Miscellaneous Map No. 36, all being in the City of San Diego, County of San Diego, State of California, and described as a whole as follows:

Commencing at the abovesaid "Point A" being also the TRUE POINT OF BEGINNING; thence South 50°00'00" East 406.88 feet to coordinates North 4065.64 feet and West 14,811.19 feet; thence South 08°09'38" East 8.12 feet to coordinates North 4057.60 feet and West 14,810.04 feet; thence South 08°09'38" East 694.75 feet to coordinates North 3369.88 feet and West 14,711.43 feet; thence South 81°50'22" West 1202.00 feet; thence North 08°09'38" West 480.00 feet; thence North 81°50'22" East 800.00 feet; thence North 08°09'38" West 152.88 feet; thence North 87°08'14" West 113.99 feet to coordinates North 3944.99 feet and West 15,313.03 feet; thence North 50°00'00" West 100.00 feet; thence North 40°00'00" East 415.00 feet to the TRUE POINT OF BEGINNING.

Excepting from that portion of said Parcels 1 and 2 lying within the natural boundaries of Mission Bay - formerly False Bay - all the deposits of minerals, including oil and gas, together with the right to prospect for, mine and remove such deposits and to occupy and use so much of the surface as may be required thereto, as reserved by the State of California in an act of the legislature approved April 27, 1945; Statutes of California, Chapter 142.

EXHIBIT A

LEGAL DESCRIPTION OF MARINA PORTION OF THE PREMISES

PARCEL 2

That portion of the tidelands and submerged or filled lands of Mission Bay - formerly False Bay - and a portion of the Pueblo Lands of San Diego, according to Map thereof made by James Pascoe in 1870, a copy of which was filed in the office of the County Recorder of San Diego County, November 14, 1921 and is known as Miscellaneous Map No. 36, all being in the City of San Diego, County of San Diego, State of California, and described as a whole as follows:

Commencing at the abovesaid "Point A" being also the TRUE POINT OF BEGINNING; thence South 50°00'00" East 406.88 feet to coordinates North 4065.64 feet and West 14,811.19 feet; thence South 08°09'38" East 8.12 feet to coordinates North 4057.60 feet and West 14,810.04 feet; thence South 08°09'38" East 694.75 feet to coordinates North 3369.88 feet and West 14,711.43 feet; thence South 81°50'22" West 1202.00 feet; thence North 08°09'38" West 480.00 feet; thence North 81°50'22" East 800.00 feet; thence North 08°09'38" West 152.88 feet; thence North 87°08'14" West 113.99 feet to coordinates North 3944.99 feet and West 15,313.03 feet; thence North 50°00'00" West 100.00 feet; thence North 40°00'00" East 415.00 feet to the TRUE POINT OF BEGINNING.

Excepting from that portion of said Parcels 1 and 2 lying within the natural boundaries of Mission Bay - formerly False Bay - all the deposits of minerals, including oil and gas, together with the right to prospect for, mine and remove such deposits and to occupy and use so much of the surface as may be required thereto, as reserved by the State of California in an act of the legislature approved April 27, 1945; Statutes of California, Chapter 142.

DESCRIPTION OF PROPERTY ADJACENT TO MARINA

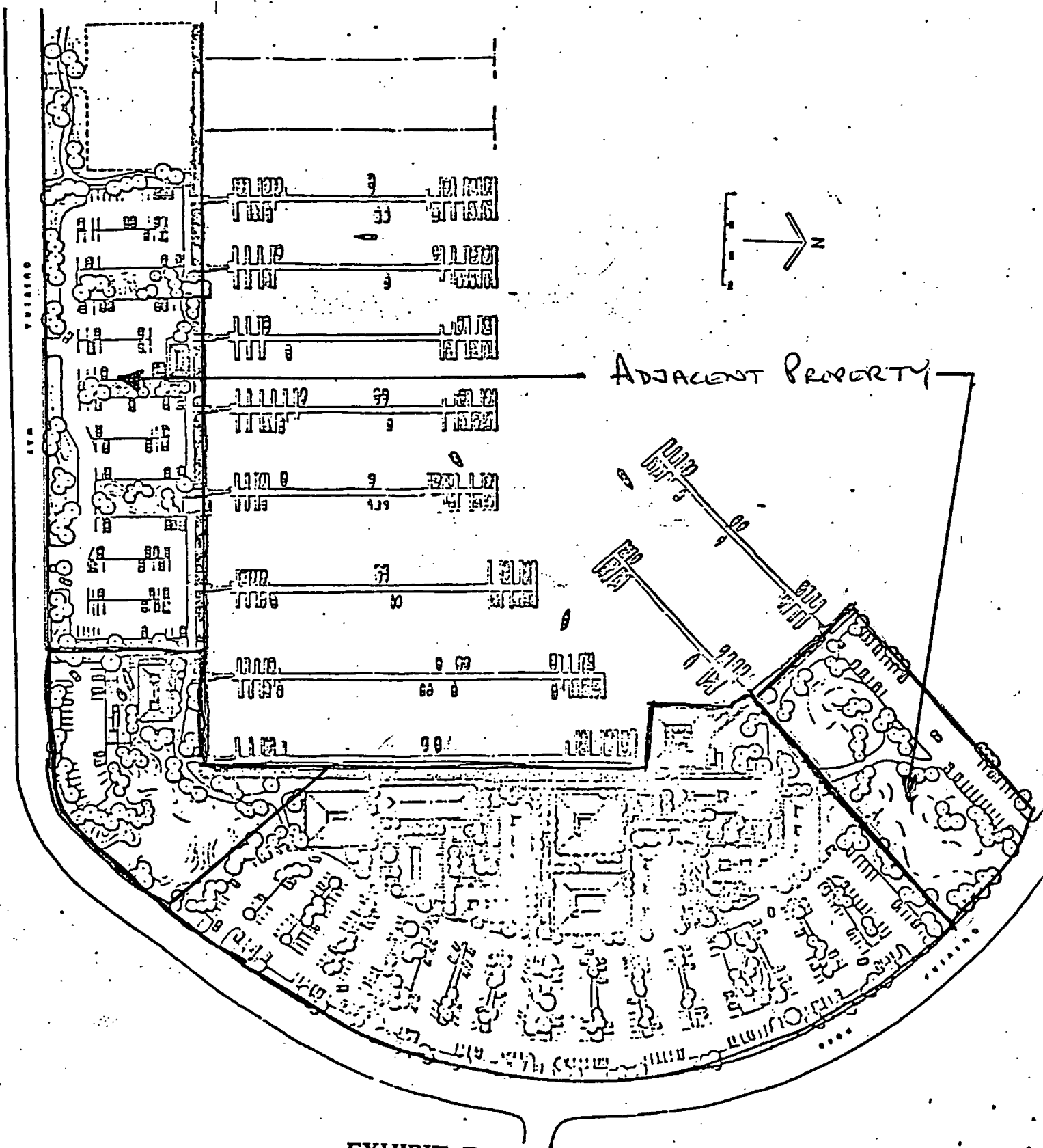


EXHIBIT B

LEGAL DESCRIPTION OF LAND PORTION OF MARINA VILLAGE

PARCEL 1

That portion of the tidelands and submerged or filled lands of Mission Bay - formerly False Bay - and a portion of the Pueblo Lands of San Diego, according to Map thereof made by James Pascoe in 1870, a copy of which was filed in the office of the County Recorder of San Diego County, November 14, 1921 and is known as Miscellaneous Map No. 36, all being in the City of San Diego, County of San Diego, State of California, and described as a whole as follows:

Commencing at the Southeast corner of Lot 24 in Block 10 of Resubdivision of Blocks 7, 8, 10 and a portion of Block 9 and Lot "A", Inspiration Heights, according to Map thereof No. 1700, filed in the office of the County Recorder of San Diego County, December 27, 1917; thence along the Southerly line of said Lot 24, South 89°55'56" West - Record South 89°59'00" West - 25.00 feet to a point of tangent curve in the boundary of said Lot 24; thence South 00°04'04" East 2.00 feet to an intersection with a line which is parallel with and 2.00 feet southerly at right angles to the Southerly line of said Block 10; thence along said parallel line North 89°55'56" East 249.70 feet; thence North 05°30'02" West 104.06 feet to the United States Coast and Geodetic Survey Triangulation Station "Old Town" - the Lambert Grid Coordinates, California Zone 6, for said Station "Old Town" are X equals 1,712,415.7 and Y equals 213,819.22 - and said triangulation station is located at latitude 32°45'02.45" North and longitude 117°11'07.200" West, being also the point of origin for the San Diego City Engineer's Mission Bay Park Coordinate System; thence North 5160.53 feet and West 16,030.79 feet, being at Mission Bay Coordinates; North 5160.53 feet and West 16,030.79 feet; thence South 66°35'46" East 352.89 feet being at Mission Bay Park Coordinates North 5020.42 feet and West 15,706.89 feet; thence continuing South 66°35'46" East 618.76 feet being at Mission Bay Coordinates North 4774.57 feet and West 15,139.07 feet; thence continuing South 66°35'46" East 313.04 feet to a point, for reference the coordinates hereinafter mentioned are said Mission Bay Park Coordinate System, said last mentioned point being also the TRUE POINT OF BEGINNING; thence South 40°00'00" West 421.74 feet to a point herein called "Point A"; thence South 50°00'00" East 406.88 feet to coordinates North 4065.64 feet and West 14,811.19 feet; thence South 08°09'38" East 8.12 feet to coordinates North 4057.60 feet and West 14,810.04 feet; thence South 08°09'38" East 694.75 feet to coordinates North 3369.88 feet and West 14,711.43 feet; thence South 81°50'22" West 1202.00 feet; thence South 08°09'38" East 217.76 feet; thence North 81°50'22" East 1133.01 feet to a tangent 239.52 foot radius curve, concave Northwesterly; thence Northeasterly along said curve 219.05 feet through an angle of 52°24'00"; thence tangent to said curve North 29°26'22" East 273.89 feet to a tangent 805.00 foot radius curve, concave Westerly; thence Northeasterly, Northerly and Northwesterly along the arc of said curve 1349.29 feet through an angle of 96°02'08"; thence tangent to said curve North 66°35'46" West 33.68 feet to the TRUE POINT OF BEGINNING.

EXHIBIT C

HIGH FLIERS, LTD.

Furniture & Fixtures Inventory - Marina Offices

- 1 executive desk
- 1 exec. desk chair on castors
- 2 exec. arm chairs
- 1 brown fabric stack chair
- 1 chair mat
- 1 waste basket
- 1 space heater
- 2 levelor blinds @ large windows

- 1 desk
- 1 desk chair
- 1 counter chair - high
- 2 chair mats
- 2 brown fabric stack chairs
- 2 Toshiba calculators
- 2 legal size file cabinets - 4-drawer
- 1 low table - small
- 1 boater/phone index stand
- 2 ledger card holders
- 1 flat floor ext. cord
- 2 waste baskets
- 1 large trash can w/swing lid
- 1 marina dock map - wall hung
- 1 small bulletin board
- Assorted planters & plants
- Various small office equip.: pencil sharpener,
postal scale, desk calendars, clip boards,
pencil organizers, letter divider, in/out basket,
rolldex, book ends, 2-hole punch, 3-hole punch, etc.
- Assorted office supplies: stationery, envelopes, ledger
cards, accounting sheets and pads, file folders, pens,
tape, labels, etc.

Equipment Inventory - Marina

- 4 power mowers
- 1 seated power mower
- 1 sidewalk sweeper
- 1 fertilizer spreader
- Assorted ladders, small tools, brooms, rakes, trash
containers, dock carts, lines, janitorial and gardening
supplies, etc.

EXHIBIT D

Page 1 of 1



MARITIME CONTRACT FOR PRIVATE WHARFAGE

THIS AGREEMENT executed in duplicate this _____ day of _____, 19____, by and between _____ who is either the legal or registered owner of the vessel described in Paragraph 15 of this Agreement or its duly authorized agent hereinafter referred to as "Owner" and MARINA VILLAGE hereinafter referred to as "Marina".

IT IS AGREED AS FOLLOWS:

1. That the Marina operates, leases and maintains a private wharfage at San Diego, California, for the rental of dock space to vessel owners and operators and for its own use and benefit in the operation of various departments and services, but it is not engaged in the business of public wharfing.

2. This Agreement shall be for the term set forth below in either Paragraph 3a or 3b below, commencing on _____, 19____, and continuing until terminated in accordance with this Agreement.

3a. The Owner agrees to pay to Marina the sum of \$ _____ per rental period for wharfage fees hereinafter referred to as "fees." The fee period shall be based on a MONTH-TO-MONTH tenancy. This period of tenancy is not automatically renewable but can only be renewed by the timely payment of fees as provided herein. Fees are payable in advance at the time of the execution of this Agreement and on the FOURTH DAY of the month commencing on _____, 19____, and each succeeding month thereafter. Owner shall pay upon the execution of this Agreement, a pro rata share of the above monthly fees in the amount of \$ _____ prorated for the remaining portion of the month the Agreement is executed and prorated on the basis of a 30-day month. This payment is non-refundable. The Owner further agrees, in consideration of the use of the space, to abide by all covenants and conditions hereof.

3b. Alternatively, if this Agreement is for a period not to exceed twenty-nine days (29) the Owner agrees to pay \$ _____ per day for _____ days for a total of \$ _____. The total fees are payable in advance upon the execution of this Agreement and this Agreement shall be for A FIXED TERM, which shall terminate on _____, 19____, at 12:00 P.M. noon. The Owner further agrees, in consideration of the use of the dock, to abide by all the covenants and conditions hereof.

4. If the Owner has agreed to pay on a monthly basis as provided for by Paragraph 3a above, then the Owner also agrees to pay the Marina the sum of \$ _____ upon execution of Agreement, as and for the last month's fees.

5. Owner agrees that fees are due and payable by the FOURTH (4th) DAY of each month with or without a billing statement even though one month's fees may be held in reserve. Failure to pay such fee by the FIFTEENTH (15th) DAY of the month will result in an additional charge of TEN DOLLARS (\$10.00) late fee. Failure to pay fees by the last day of the month in which the payment is due will result in THE VESSEL BEING PLACED IN STORAGE OR DRY DOCK OR CHAINED TO ITS MOORINGS AND paying a charge of \$30.00 per day. Owner agrees and gives his permission for Marina to move the vessel to another dock space, to place the vessel in dry dock, or to chain the vessel to its moorings if Owner fails to pay fees by the last day of the month in which due. Once the vessel is acted upon in this manner by Marina, it shall be classified as a "stored vessel." If the Owner wishes to have the fees paid in accordance with Paragraph 4 hereof apply towards the last monthly payment without incurring the fees and charges provided for in this Paragraph FIVE (5), then the Owner must comply with requirements for termination of this Wharfage Contract as provided for in Paragraph 7 below.

6. Upon notification to Owner that Vessel is being classified as "stored vessel," Owner shall have ten (10) days in which to pay all fees and storage charges and remove vessel from the Marina. After that ten (10) day period has passed, Marina may proceed with its remedies at law without further notice to Owner.

7. If this Agreement is for a monthly tenancy as described in Paragraph 3a above, then it can only be terminated by either party giving thirty days (30) written notice or by vessel being classified as a "stored vessel." In the event the Owner gives the notice he may apply the fee held in reserve under Paragraph Four (4) of this Agreement but fees to and including the date fixed for termination must be paid before such notice is given to the Marina. Deposit of a letter, postage prepaid, in the United States mail, addressed to the Owner at the address given below shall constitute notice to the Owner hereunder.

8. If this Agreement is for a fixed term as provided for in Paragraph 3b above it shall terminate without notice at the end of the term. Failure to leave the premises at the end of the term will result in the vessel being placed in STORAGE OR DRY DOCK OR CHAINED TO ITS MOORINGS and paying a fee of thirty dollars (\$30.00) a day for storage charges.

9. Definitions

A. Legal Action - For purposes of this Agreement, commencement of legal action means giving written notice to either the legal title holder or to Owner that the Marina has terminated this Agreement for failure to pay fees or other breach on the part of the Owner and has classified the vessel as a "stored vessel."

B. Prevailing Party means any party to whom an obligation is owed under this Agreement and in the event of a cross-complaint, prevailing party shall mean any party to whom the greater obligation was owed.

10. If any legal action is required to enforce the terms of this Agreement or to enforce the Marina's lien rights as existing under both Federal and State law, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other relief which he may be entitled.

11. Lien Rights - It is understood by Owner and acknowledged that both possessory and non-possessory liens exist in favor of the Marina under both State and Federal law respectively. It is further agreed that if Owner fails to pay any obligation due hereunder that Marina may place a notice upon owner's boat that states;

NOTICE: A POSSESSORY LIEN HAS BEEN PLACED UPON THIS VESSEL IN ACCORDANCE WITH CALIFORNIA LAW AS AUTHORIZED BY CALIFORNIA HARBORS AND NAVIGATIONS CODE. THE HARBORS AND NAVIGATION CODE STATED THAT IT IS A CRIMINAL OFFENSE ".....FOR ANY PERSON TO OBTAIN ANY VESSEL OR PART THERE OF SUBJECT TO A LIEN UNDER THIS ARTICLE THROUGH SURREPTICIOUS REMOVAL OR BY TRICK, FRAUD, OR DEVICE PERPETRATED UPON THE LIEN HOLDER."

Owner verifies that there is no existing sales agreement or other agreement, such as a finance agreement, which would limit owner's authority to contract for the services being offered herein by MARINA, and that Owner is fully authorized to enter into contractual agreements such as the instant one which may give rise to a lien upon the vessel under the Federal Maritime Act. If Owner is without such authority or is unsure as to his authority then the following must be supplied:

Name and address of individual or agency whom Owner feels should be contacted and informed of impending liens;

12. It is further understood that if Owner obtains possession of the vessel while in breach of this Agreement, that after an itemized bill for services rendered including but not limited to wharfage and storage fees that Owner has ten days to satisfy the obligation. If the Owner fails to pay the amount demanded in the itemized bill, Owner realizes that the Marina may enforce its lien rights under Federal law by obtaining a warrant for the arrest of the vessel and having the Federal Marshal execute thereon.

13. Any other action taken by the Marina at equity or at law, whether in State or Federal Court, shall not be construed as a waiver of the lien rights.

14. Failure to pay fees or charges as provided for in this Agreement will be deemed a breach of this Maritime Contract and at the Marina's option may result in automatic termination of this Agreement notwithstanding any other provision in this Agreement.

15. Owner agrees to pay TEN DOLLAR (\$10.00) deposit to Marina upon execution of the Agreement for the key to slip entrance and restrooms.

OWNER(s) NAME _____	BOAT NAME _____
RES. ADDRESS _____	LENGTH OVERALL _____
CITY _____	BEAM _____ DRAFT _____
HOME PHONE _____	MAKE _____ TYPE _____
BUS. PHONE _____	YEAR _____
BUS. ADDRESS _____	CF# _____
CITY _____	Check One () Power, single screw () Power, twin screw () Sail () Auxillary sail

BANK REFERENCE _____ BRANCH _____
PREVIOUS MOORING LOCATION _____
BOAT INSURANCE BY _____
ADDRESS _____ CITY _____
PHONE _____ SLIP NO. _____
RADIO CALL LETTERS _____

16. (Photocopy of registration to be attached here.)

17. This Agreement is for the rental of space only. Such space shall be used at the sole risk of Owner. The Company shall not be liable or responsible for the care or protection of the boat (including her gear, equipment and contents), nor for any loss or damage of what ever kind or nature to said boat, her contents, gear or equipment, however occasioned. There is no warranty of any kind as to the condition of the floats, walks, gangways, ramps or mooring gear. Owner holds the Company free and harmless from any liability for any damage or destruction to the boat or any of her equipment, fitting or fixtures thereon through fire, theft, sinking or any other cause or for any liability for injuries to persons or damages to property howsoever occasioned.

18. Owner agrees that upon the arrival of his boat, it is subject to physical inspection and approval by the Company, and failure to obtain said approval will automatically terminate this Agreement. The Company shall not unreasonably withhold such approval.

19. The Owner agrees during the term of this Agreement, to keep his boat in "good condition" at all times, and that determination of the boat's condition is in the sole discretion of the Company.

20. It is agreed that if Owner's boat is in a sinking condition, or disrepair, the Company may remove the boat from the water at Owner's expense.

21. It is agreed the Company reserves the right to assign or move the boat to another mooring or slip at any time.

22. Owner warrants that the boat will be used for pleasure only and not in any commercial undertaking, or use, without written permission of the Company, and agrees to vacate the premises whenever said boat is used for other than pleasure.

23. Owner agrees not to store or leave equipment on the floats, docks, fingers or landings without the Company's written permission first being obtained.

24. Owner agrees not to permit any dogs to be brought on the premises, by him or his guests, without leash, or to commit any nuisance on the Company's ramps, docks, slips or fingers. This includes all pets. Violation may constitute grounds for cancellation of this Agreement.

25. Except by mutual written agreement between them, neither the Company nor the Owner shall permit solicitors, brokers, salesmen or workmen, other than regular employees of the Company and full time hands regularly employed on the boat while it is in the rented space on the anchorage premises. There shall be no posting of "For Sale" signs on the boat or floats, gangways or docks of the Company area by the boat Owner or agent(s).

26. Owner agrees that there shall be no working on boats while at the dock. This includes but is not limited to painting, heavy sanding, use of paint remover, spray guns, or the burning off of paint on the topsides or above the decks. However, ordinary maintenance shall be permitted.

27. Owner agrees that there shall be no living aboard his boat while on Company property, and to further comply with all posted rules and regulations of the Company and the City of San Diego governing mooring and use of facilities in the Mission Bay area.

28. Owner agrees that there shall be no storing of trailers, campers or similar items on the Company parking lot.

29. Owner agrees not to store any flammable materials in locker storage space (if such is provided him). The Company will use every reasonable effort to protect the Owner's possessions, but assumes no responsibility for same. If Owner uses a lock on said storage locker, he must provide the Company with a duplicate key. The Company shall keep the duplicate key to enable the City fire inspector to make his periodic checks on the contents of the lockers.

30. The Owner agrees that the Company is not responsible for any article remaining in Owner's storage locker, once Owner has moved, or abandoned his boat. Owner further agrees that the Company may remove and dispose of any such articles left behind.

31. Owner agrees to furnish Company with a copy of the insurance policy providing coverage for the boat, and a copy of the survey report.

32. Should the Owner sell or part with possession of the boat, the new owner and/or possessor shall have no right to the space occupied by the boat, and this Agreement, at the Company's option, may be terminated.

33. The Harbor Master or any of his assistants may board any vessel at any time, regardless of documentation, for health and safety checks, or to protect property and the public peace.

34. This contract cannot be assigned or subleased by the Owner.

Owner understands that he is not allowed under the terms of this contract to bring any other vessel into the assigned moorage space. If Owner sells the boat the space assigned herein does not pass to the new owner of the vessel. This agreement is for the Owner named herein and the vessel named herein, together. A new contract must be negotiated if either the owner or the vessel mentioned herein is changed.

Owner further agrees to notify Marina if the vessel named herein will not be in the assigned space at the Marina for any period exceeding three days. During such period of non-occupancy by Owner Marina may assign the vessel's space to another vessel for the period of time during which the owner has specified that the vessel will be gone.

35. Waiver of any provision or condition herein by the Company shall not be deemed to be a continuing waiver or a waiver of any other provision or condition.

36. Owner agrees to hold the Company harmless and indemnify it for all loss, damage or liability of any kind or claimed by reason of any acts or failures to act on the part of Owner or his agents, employees or guests, or in the use of the moorings or mooring space for the boat.

37. Owner does hereby release the Company from any and all claims, damages or liabilities arising out of the injury or damage to Owner, his guests or employees, or the boat or its contents, from soot, smoke, oil, wake or any other substance existing upon, in or over waters in Owner's anchorage or landing in San Diego, California. Owner further agrees to indemnify the Company and save it harmless against any liabilities the Company may now or hereafter incur, to indemnify any third party against claims or expenses or loss out of injury or damage to Owner, his guests or employees, or the boat or its contents, from soot, smoke, oil, wake or any other foreign substances existing upon, in or over the waters within the Owner's anchorage or landing at San Diego, California.

38. Except as otherwise set forth herein, failure of either party to comply with the terms and provisions of this Agreement shall be a breach of this Agreement and allow the non-breaching party to terminate this Agreement upon twenty-four (24) hours written notice. Termination of this Agreement shall in no way release either party from damages incurred pursuant to this Agreement.

39. This Agreement contains a complete expression of the Agreement between the parties hereto, and there are no promises, representations, agreements, warranties or inducements except such as are made herein and fully set forth. No alterations of any of its terms, covenants or conditions shall be binding unless reduced to writing and signed by the parties hereto. It is agreed that all of the rights, remedies and benefits provided by this Agreement shall be cumulative, and shall not be exclusive of any other of said rights, remedies, and benefits, or of any other rights, remedies and benefits allowed by law.

OWNER

BY

MARINA VILLAGE

OWNER