

Sanchez, Roswitha

From: Max Maher <Max@driscollinc.com>
Sent: Thursday, January 23, 2025 3:13 PM
To: Sanchez, Roswitha
Cc: Samantha Maher; Sonia Patino
Subject: [EXTERNAL] RE: Subtenant question
Attachments: Offshore Blue Adv Sublease 2025 - signed.pdf; Cooney, Evan City Questionnaire 1-23-25.pdf

Follow Up Flag: Follow up
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Hi Rose,

Sorry for the delay the year is moving faster than me. I got the completed questionnaire in the new owners information and a new sublease. If you have any questions feel free to reach out I will do my best to answer or get whatever you need.

Max Maher

General Manager
Driscoll Mission Bay
1500 Quivira Way
Direct: (619)222-4972
Ph: (619) 221-8456
Fax: (619) 374-1301



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From: Sanchez, Roswitha <RoswithaS@sandiego.gov>
Sent: Monday, December 2, 2024 11:21 AM
To: Max Maher <Max@driscollinc.com>
Subject: RE: Subtenant question

Hi Max,

Sorry for my late response! Just send me any of the documents regarding the change of ownership you guys have and I will add it to my file.

Thank you,

Rose

From: Max Maher <Max@driscollinc.com>
Sent: Friday, November 22, 2024 2:35 PM
To: Sanchez, Roswitha <RoswithaS@sandiego.gov>
Subject: [EXTERNAL] Subtenant question

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Hello Rose,

I wanted to ask you if there was any special requirement from the city in the event of a change in ownership with a subtenant of ours?

Max Maher
General Manager
Driscoll Mission Bay
1500 Quivira Way
Direct: (619)222-4972
Ph: (619) 221-8456
Fax: (619) 374-1301



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DRISCOLL MISSION BAY, LLC.

STANDARD SUBLEASE

Between

DRISCOLL MISSION BAY, LLC.

1500 Quivira Way
San Diego, California 92109

as Sublandlord

And

**Offshore Blue
Adventures, LLC**

as Subtenant,

Dated: January 1, 2025

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DRISCOLL MISSION BAY, LLC. STANDARD SUBLEASE
MODIFIED GROSS

THIS DRISCOLL MISSION BAY LLC. STANDARD SUBLEASE ("**Sublease**"), dated for reference purposes only as of {DATE}, is entered into by and between DRISCOLL MISSION BAY, LLC. a California limited partnership ("**Sublandlord**") and Sail San Diego ("**Subtenant**"), with reference to the following facts:

A. Master Lease. Sublandlord is the successor "Lessee" under that certain Lease between the CITY OF SAN DIEGO, public corporation ("**CITY**"), as Lessor, and DRISCOLL MISSION BAY LLC., as Lessee, the terms of which are incorporated herein by reference (as amended from time to time, the "**Master Lease**"), for certain leased premises in the City of San Diego, California and more particularly described in the Master Lease (the "**Master Premises**").

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

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

1. Sublease. Sublandlord hereby subleases the Subleased Premises to Subtenant, and Subtenant hires and takes the Subleased Premises from Sublandlord, on the terms and conditions set forth in this Sublease. This Sublease shall be deemed and construed as a modified gross lease as that term is used in the real estate industry. Being a modified gross lease, the Subtenant shall be responsible for any and all obligation related to and to pay for all costs, expenses, charges, and/or fees associated with, arising from or related to (a) the interior of the Subleased Premises, (b) those specifically metered or charged service or utility that directly and only serve the Subleased Premises, and (c) Additional Rent (as described in Section 3.2 below). In the event of any inconsistency, ambiguity or conflict with any provision of the Sublease related to the payment of any cost, expense, charge, and/or fee under this Sublease the irrebuttable presumption is that Subtenant shall be fully responsible for that payment or reimbursement to the Sublandlord.

2. Term.

2.1 Primary Term. The term of this Sublease (the "**Term**") shall commence on January 1, 2025 (the "**Commencement Date**") and shall expire at midnight three years (3) thereafter, on December 31, 2027 (the "**Expiration Date**"), subject to earlier termination as provided in this Sublease.

2.2 Right to Terminate. The Sublandlord has the right without any restriction or limitation with thirty (30) days written notice sent pursuant to Section 24.11 below to terminate

this Sublease. The notice shall state the date of the termination of this Sublease (the "**Termination Date**") which date shall not be less than the 90-day notice period. Upon the receipt of said notice the Subtenant shall take all steps necessary to totally vacate the Subleased Premises in a timely manner, timely expressly being of the essence. After Subtenant vacates the Subleased Premises, properly tenders possession to the Sublandlord and leaves the Subleased Premises in the condition required pursuant to the terms of this Sublease (the "**Turnover Date**"), the future obligation to pay Rent of the Subtenant shall cease. Except for the cessation of the future obligation to pay Rent, the Subtenant shall remain responsible and liable for any obligations of the Subtenant that accrued prior to the Turnover Date. Unless the Sublandlord agrees in writing and accepts possession of the Subleased Premises prior to the Termination Date, the Subtenant may not vacate prior to the Termination Date. Any Rent due under this Sublease shall be prorated to the Turnover Date. The provision of this Section 2.1 shall control over any other Section of this Sublease in the event of any conflict, inconsistency or ambiguity.

3. Rent.

3.1 Base Rent. Subtenant agrees to pay Sublandlord monthly rent ("**Base Rent**") in advance according to the schedule set forth in Schedule 3.1 which is attached hereto and fully incorporated by this reference, beginning on the Commencement Date, and continuing on the first day of every month thereafter, during the Term of this Sublease. Rent is due on the first day of each month and there is no grace period in the payment of Rent. If the first day falls on a weekend or holiday in which the CITY closes its non-essential offices, the Rent shall be due on the preceding business day.

3.2 Additional Rent. In addition to Base Rent, Subtenant agrees to pay to Sublandlord as additional rent ("**Additional Rent**"), at times specified in this Sublease: any other amounts that Subtenant assumes or agrees to pay under the provisions of this Sublease that are owed to Sublandlord, including, without limitation, any and all other sums that may become due by reason of any Default of Subtenant or Subtenant's failure to comply with the agreements, terms, covenants and conditions of this Sublease to be performed by Subtenant. It is further noted that any increase in fees, charges, expenses, costs, taxes or assessments, including any real property tax or assessment increase affecting the Master Premises, the Subleased Premises and/or the Building due to Subtenant's actions related to or improvements to the Subleased Premises, or any supplemental assessment that is caused by the actions or inactions of the Subtenant shall be the sole obligation of the Subtenant as Additional Rent. If it is impractical or difficult for the Sublandlord to segment the fee, charge, expense, cost, assessment or tax to be the sole responsibility of Subtenant, Sublandlord may reasonably determine such expense, cost, assessment or tax to be assessed to Subtenant as Additional Rent. In light of the fact this is a modified gross lease, any increase in any cost of the operation or maintenance of the Master Premises, the Subleased Premises, or the Building which arises due to the actions or omissions of the Subtenant shall be allocated to the Subtenant as Additional Rent, and this provision of the Sublease shall be interpreted as broadly as possible to achieve that end and result.

3.3 Percentage Rent. Subtenant acknowledges and agrees that Subtenant may be subject to the timely payment of percentage rent that arises from Subtenant's operations and use of the Subleased Premises including, but not limited to, percentage rent set forth in the Master Lease (the "**Percentage Rent**"). Subtenant further acknowledges and agrees that the City has the right and authority to add and increase Percentage Rent from time to time as set forth in the Master Lease. In addition to the Base Rent and Additional Rent, Subtenant shall pay to the Sublandlord the Percentage Rent as part of the Rent at the same time the Base Rent is to be paid. Any negotiations or discussions of the Percentage Rent shall be solely between the City and Sublandlord. Subtenant has no right to participate in the foregoing discussions or to contact the City regarding Percentage Rent. The Percentage Rent due from Subtenant is solely an obligation of Subtenant, and Subtenant shall hold harmless, defend and indemnify the Sublandlord from any Percentage Rent obligation of Subtenant or liability created by Subtenant's failure to pay the Percentage Rent. In addition, Landlord may charge Tenant additional Percentage Rent over and above what the City charges. The Tenant's obligation to pay the Percentage Rent shall survive the termination of this Sublease.

3.4 Rent. Base Rent, Additional Rent, and Percentage Rent shall together be referred to in this Sublease as "**Rent**." Rent shall be paid to Sublandlord in lawful money of the United States of America at the office of Sublandlord or to such other person or at such other place as Sublandlord may from time to time designate in writing. All Rent and other monetary obligations shall be paid by Subtenant without notice or demand and without set-off, counterclaim, recoupment, abatement, suspension, deferment, diminution, deduction, reduction or defense. All payments of Rent shall be by check issued by a financial institution with offices in San Diego County. At the sole discretion and election of the Sublandlord, the Rent shall be paid pursuant to Section 16.1 below or via automated clearing house ("**ACH**") procedures to the account designated by the Sublandlord. Any ACH cost incurred by the Sublandlord due to or arising from the actions of the Subtenant or the processing of the Subtenant's account shall be reimbursed by the Subtenant to the Sublandlord upon demand and shall be deemed Additional Rent.

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

4. Security Deposit. On execution of this Sublease, Subtenant shall deposit with Sublandlord a cash "**Security Deposit**" in the amount of one month's office rent. The Security Deposit shall be held by Sublandlord as security for the timely and faithful performance by Subtenant of all of Subtenant's obligations under this Sublease.

(a) Sublandlord may apply all or part of the Security Deposit to any unpaid Rent or other charges due from Subtenant, to cure any other Subtenant Default(s) after expiration of any applicable cure period, or to clear or repair damages to the Subleased Premises upon expiration or earlier termination of this Sublease.

(b) If Sublandlord uses any part of the Security Deposit, Subtenant shall restore the Security Deposit to its full amount within ten (10) days after Sublandlord's written request.

(c) The Sublandlord has the right in Sublandlord's sole discretion to increase the Security Deposit by an amount equal to any new agreed upon rent as approved in an Assignment under Section 17 below, (ii) the imposition of any Late Charge under Section 16.1 below, or (iii) the return to the Sublandlord of any payment made to Sublandlord by the Subtenant for non-sufficient funds or any other reason.

(d) No interest shall be paid on the Security Deposit. Sublandlord shall not be required to keep the Security Deposit separate from its other accounts, and no trust relationship is created with respect to the Security Deposit.

(e) After both (i) the termination of this Sublease and (ii) Subtenant's vacation of the Subleased Premises, Sublandlord, within a reasonable time, shall refund or credit to Subtenant (or Subtenant's successor) the unused portion of the Security Deposit and any advance Rent or other advance payments made by Subtenant to Sublandlord after deduction for any purposes permitted by this Section 4.

5. Master Premises.

5.1 Obligation for Master Premises. Except as those costs and expenses specifically the obligating Subtenant as set forth herein in exchange for the full and timely payment by Subtenant of the Base Rent and the Additional Rent, Sublandlord, except for those items noted herein as the obligation or responsibility of Subtenant, shall pay the expenses associated with the operation and maintenance of the Master Premises.

6. Use.

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

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

nature of Subtenant's use or occupancy of the Subleased Premises, impose any duty upon Subtenant or Sublandlord with respect to the Subleased Premises or with respect to the use or occupation thereof.

6.3 Insurance Requirements. The insurance to be initially carried by Sublandlord and Subtenant pursuant to the provisions of Article 13 below shall be consistent with the actual use of the Subleased Premises. Thereafter, if the use of the Subleased Premises changes to another use permitted under Section 6.1 above such insurance, to the extent available, shall be consistent with such changed use. Subtenant shall not do or permit to be done anything which will invalidate or increase the cost of any fire, extended coverage or any other insurance policy covering the Master Premises. Subtenant shall comply with all rules, orders, regulations and requirements of the insurers of the Master Premises. Subtenant shall promptly, upon demand, reimburse Sublandlord for any additional premium charged for any policy by reason of Subtenant's failure to comply with the provisions of this Section.

6.4 Key to Subleased Premises. Subtenant shall deliver to Sublandlord all keys to locks to doors in the Subleased Premises for the purpose of emergency access. Additionally, if requested by Sublandlord, or required by a government agency, Subtenant agrees to maintain a duplicate set of keys in a fire department controlled lock box located on the Subleased Premises or at a central location on the Master Premises as directed by Sublandlord. Sublandlord shall not be liable for the loss of any property on the Subleased Premises, and Subtenant shall take any and all precautions to safeguard any valuable property of the Subtenant located in the Subleased Premises.

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

6.6 Signs. No sign, advertisement or notice which is visible outside the Subleased Premises shall be exhibited, painted or affixed by Subtenant or any part of the Subleased Premises, or on any part of the exterior of the Building, without the prior written consent of Sublandlord, which consent may be withheld in Sublandlord's sole and unfettered discretion. All such signage shall be in compliance with applicable laws and the Master Lease. Such signs shall be installed at Subtenant's sole cost, and the cost of removing such signs and repairing the Building at the end of the term of the Sublease shall be paid by Subtenant. Subtenant acknowledges that Sublandlord has made no representation as to the availability of any sign rights. Upon the termination of this Sublease for any reason, Subtenant shall remove any signage of Subtenant at Subtenant's sole expense and repair any damage caused thereby.

6.7 Load Rating. No equipment weighing in excess of the load per square foot which such floor was designed to carry, or which is allowed by law, shall be placed upon the Subleased Premises. Sublandlord shall determine the load per square foot for the Subleased Premises and such may be done at any time during the Term. The requirement to remove

equipment during the Term shall not provide Subtenant for any basis to terminate this Sublease, abate rent or change the use of the Subleased Premises.

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

6.9 Subtenant's Security Responsibilities. Subtenant shall (1) lock the doors to the Subleased Premises and take other reasonable steps to secure the Subleased Premises and the personal property of the Subtenant and any of Subtenant's transferees, contractors or licensees in the Common Areas and parking facilities of the Building and Master Premises, from unlawful intrusion, theft, fire and other hazards; (2) keep and maintain in good working order all security and safety devices installed in the Subleased Premises by or for the benefit of Subtenant (such as locks, smoke detectors, video systems and burglar alarms); and (3) fully cooperate with Sublandlord and other subtenants in the Building on Building safety matters. Subtenant acknowledges that Sublandlord is not obligated to provide security personnel or measures for the protection of Subtenant or Subtenant's employees, invitees or their property. Subtenant further acknowledges that any security or safety measures employed by Sublandlord are for the protection of Sublandlord's own interests; that Sublandlord is not a guarantor of or surety for the security or safety of the Subtenant or Subtenant's employees, invitees or their property; and that such security and safety matters are the sole responsibility of Subtenant and the local law enforcement authorities.

6.10 Energy Conservation; New Climate Measures: LEED.

(a) Subtenant shall not waste electricity, water, or other utilities or services, and agrees to cooperate fully with Sublandlord and comply with any applicable laws to assure the most effective and energy efficient operation of the Subleased Premises, the Building, the Common Area and the Master Premises.

(b) Sublandlord and Subtenant acknowledge that it is likely that new laws will be enacted dealing with energy conservation, CO2 emissions, transportation and other matters related to global climate change ("**Climate Measures**") and that existing Climate Measures policies will be implemented through the adoption of governmental rules and regulations (such laws, rules and regulations being collectively referred to herein as "**New Climate Measures**") which could increase the obligations of, and restrictions on, Sublandlord related to the Subleased Premises, the Building, the Common Area and the Master Premises from those which existed on the date of this Sublease. Subtenant covenants to comply with the requirements of New Climate Measures applicable to Subtenant and to fully cooperate with Sublandlord in connection with satisfying Sublandlord's compliance requirements with respect to the climate measures and to any LEED measures implemented by Sublandlord, including, but not limited to, providing Sublandlord with monitoring data and reporting duties related to the Subleased Premises, provided that Subtenant is not required to incur materially greater costs, and is not otherwise materially adversely impacted in Subtenant's use and enjoyment of the Sublease Premises, in connection with such compliance measures.

(c) Subtenant acknowledges that the Building, the Common Area and the Master Premises may become in the future certified under the LEED rating system. Sublandlord's sustainability practices address whole-building operations and maintenance issues including chemical use; indoor air quality; energy efficiency; water efficiency; recycling programs; exterior maintenance programs; and systems upgrades to meet green building energy, water, indoor air quality, and lighting performance standards. Nothing contained in this Sublease shall require Sublandlord to build out the Subleased Premises' current configuration to LEED standards or ratings. Subtenant shall utilize commercially reasonable efforts to cooperate with Landlord in order to comply with Landlord's sustainability practices.

6.11 Recycling and Waste Management. Subtenant covenants and agrees, at Subtenant's sole cost and expense, to (1) comply with all present and future laws, orders and regulations of the Federal, state, county municipal or other governing authorities, departments, commissions, agencies and boards regarding the collection, sorting, separation, and recycling of garbage, trash, rubbish and other refuse (collectively, "trash"); (2) comply with Sublandlord's recycling policy, if any, as part of Sublandlord's sustainability practices where it may be more stringent than applicable laws; (3) sort and separate Subtenant's trash and recycling into such categories as are provided by law or Sublandlord's sustainability practices, and/or (4) place each separately sorted category of trash and recycling in separate receptacles as directed by Sublandlord. Sublandlord reserves the right to refuse to collect or accept from Subtenant any trash and recycling that is not separated and sorted as required by law and to require Subtenant to arrange for such collection at Subtenant's sole cost and expense, utilizing a contractor approved by Sublandlord. Subtenant shall pay all costs, expenses, fines, penalties or damages that may be imposed on Sublandlord or Subtenant by reason of Subtenant's failure to comply with the provisions of this Section.

6.12 Service Interruptions. For purposes of this Sublease, a "Service Failure" shall mean any interruption, suspension or termination of services being provided to Subtenant by Sublandlord or by third-party providers, whether engaged by Subtenant or pursuant to arrangements by such providers with Sublandlord, which are due to (1) the application of laws; (2) the failure, interruption or malfunctioning of any electrical or mechanical equipment, utility or other service to the Subleased Premises, the Building, the Common Area or the Master Premises; (3) the performance of repairs, maintenance, improvements or alterations; or (4) the occurrence of any other event or cause whether or not within the reasonable control of Sublandlord. No Service Failure shall render Sublandlord liable to Subtenant, constitute a constructive eviction of Subtenant, give rise to an abatement of Rent, or relieve Subtenant from the obligation to fulfill any covenant or agreement. In no event shall Sublandlord be liable to Subtenant for any loss or damage, including the theft of Subtenant's or Subtenant's affiliates property, arising out of or in connection with any Service Failure or the failure of any Building, Common Area and Master Premises safety services, personnel or equipment.

6.13 Third Party Services. If Subtenant desires any service which Sublandlord has not specifically agreed to provide in this Sublease, such as private security systems,

telecommunications services, wireless systems or separately metered electricity or other utilities serving only the Subleased Premises, Subtenant shall procure such service directly from a reputable third party service provider ("**Provider**") for Subtenant's own account and at Subtenant's sole expense. Subtenant shall require each Provider to comply with the Building's, Common Area and Master Premises rules and regulations, all laws, and Sublandlord's reasonable policies and practices for the Building, Common Area and Master Premises. Subtenant acknowledges Sublandlord's current policy that requires all Providers utilizing any area of the Common Area outside the Subleased Premises to be approved by Sublandlord and to enter into a written agreement acceptable to Sublandlord prior to gaining access to, or making any installations in or through, such area. Accordingly, Subtenant shall give Sublandlord written notice sufficient for such purposes.

6.14 Utility Company Consent. Within five (5) business days of Sublandlord's request at any time during the Term and within twelve (12) months following the expiration or earlier termination of this Sublease, Subtenant shall provide written consent to disclosure of Subtenant's energy usage records at the Subleased Premises to all applicable utility companies, and any other information or documentation as such utility companies may require or as may be required under applicable law (collectively, the "**Energy Usage Disclosure Consent**"), in order to enable Landlord to comply with the reporting requirements under California Public Resources Code Section 25402.10 and applicable regulations issued in connection therewith. The terms and provisions of this Section shall survive the expiration or earlier termination of this Sublease.

6.15 Energy Disclosure. If this is a lease of the entire building, Sublandlord shall provide subtenant, at least 24-hours prior to execution of this Sublease, the Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist, and the Facility Summary for the building as required by Public Resources Code Section 25402.10 and California Code of Regulations, Title 20, Sections 1680 through 1685. This requirement is effective for a building with total gross floor area square footage as follows: more than 50,000 square feet, July 1, 2013; more than 10,000 square feet and up to 50,000 square feet, January 1, 2014; and at least 5,000 square feet up to 10,000 square feet, July 1, 2014. For more information, see <http://www.energy.ca.gov/ub1103/index.html>.

7. Common Area.

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

exclude any portion of the Building and Master Premises other than the Subleased Premises from the Common Area under this Sublease.

7.2 Common Area, Master Premises and Building - Rules and Regulations.

Subtenant agrees to abide by and conform to the rules and regulations adopted by Sublandlord from time to time with respect to the Common Area, the Master Premises and the Building, and to cause Subtenant's employees, suppliers, shippers, customers, and invitees to so abide and conform. Sublandlord or such other person(s) as Sublandlord may appoint shall have the exclusive control and management of the Common Area, the Master Premises and the Building, and shall have the right, from time to time, to modify, amend and enforce said rules and regulations. Sublandlord shall not be responsible to Subtenant for the non-compliance with said rules and regulations by other subtenants of the Master Premises, their agents, employees and invitees. Attached to this Sublease as Addendum N/A, and fully incorporated by this reference are the rules and regulations for the Common Area, the Master Premises, the Building and the Subleased Premises ("**General Rules**") . Unless specifically in conflict or inconsistent with this Section the General Rules shall control the use of the Common Area, the Master Premises, the Building and the Subleased Premises. The Sublandlord reserves the right in the Sublandlord's sole discretion at any time with or without notice to modify or terminate the General Rules.

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

(a) To make changes to the interior and exterior of the Building and to the Common Area, including, without limitation, changes in the location of structures in Common Area, construction of additional buildings and other structures in the Common Area and changes to the size, shape, and appearance of the Common Area, including but not limited to the driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, decorative walls, landscaped areas and walkways.

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

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

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

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

7.4 Parking

Sublandlord will provide (1) parking space.

8. Condition of Subleased Premises Subtenant acknowledges that units are received in "as is" condition and holds no expectation of additional improvements. Upon termination of the lease, units shall be relinquished in well maintained condition with no intentional or negligent damage.
- 8.1 No Representation. Subtenant acknowledges that neither Sublandlord nor any agent of Sublandlord has made any representations or warranties, express or implied with respect to (i) the condition of the Subleased Premises, the Common Area, the Building or the Master Premises, (ii) the suitability of the Subleased Premises for Subtenant's purposes (iii) the location, use, design, merchantability, fitness for use for a particular purpose, condition or durability of the Subleased Premises, the Common Area or the Building, (iv) the prospect or ability to make a profit in the operation of a business in the Subleased Premises, (v) the existence of Hazardous Materials (as define in Section 23.6 below) in, on or adjoining the Building, the Common Area, or the Master Premises, (vi) the quality of the material or workmanship in the Building, the Common Area, or the Subleased Premises, (vii) the future use or uses of the Building, the Common Area, or the Master Premises, and/or (viii) the continuation of any current business or the prospect for new or additional businesses in the Building, in the Master Premises, or on properties adjacent to or near the Master Premises.

(a) All risks incidental to the condition and use of the Subleased Premises shall be borne by Subtenant. Except as expressly provided in this Sublease, **IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE SUBLEASED PREMISES OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, SUBLANDLORD SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.**

(b) **SUBTENANT AGREES AND ACKNOWLEDGED THAT SUBTENANT IS TAKING THE SUBLEASED PREMISES IN AN "AS-IS, WHERE-IS" CONDITION WITH ALL FAULTS AND WITH ABSOLUTELY NO REPRESENTATIONS AND WARRANTIES.** Subtenant is making the foregoing statement based in part on Subtenant's full opportunity to inspect the Subleased Premises and after consultation with Subtenant's legal representatives.

- 8.2 Walk-Through Inspection. Subtenant acknowledges and agrees that at or before the signing of this Sublease, Subtenant inspected the Subleased Premises and, as set forth in Section 7.6 above, accepted the Subleased Premises in their then existing condition. On or before the Commencement Date, Sublandlord and Subtenant shall conduct a walk-through inspection of the Subleased Premises and prepare a list of those items relating to the Subleased Premises which are not then in substantially the same condition as existed at the time of the signing of the Sublease

normal wear and tear excepted. The taking of possession of the Subleased Premises by Subtenant shall establish conclusively that the Subleased Premises existed on the Commencement Date in substantially the same condition as of the date of the signing of the Sublease, except for list items set forth in this list. Sublandlord may perform any maintenance and repairs as are required to bring the items on the list to a condition substantially the same as existed at the time of the signing of the Sublease normal wear and tear excepted but is not required to do so or adjust the Rent unless the substantially different adverse condition is due solely to the intentional misconduct or gross negligence of the Sublandlord. The sole purpose of the inspection on the date of possession is only to note the condition as of such date for use when the Subleased Premises are returned to the Sublandlord.

9. Utilities and Services.

9.1 Utilities Provided. Sublandlord shall furnish to the Subleased Premises reasonable quantities of water, sewer, and office generated trash removal (the "Utilities") as required for Subtenant's reasonable use as part of the Base Rent.

(a) Notwithstanding the foregoing, Subtenant shall be responsible for the payment of any metered Utilities that service the Subleased Premises as Additional Rent. If there is more than one subtenant on the Utilities meter(s), the subtenants shall be allocated the percentage by which their subleased premises floor area bears to all of the subleased premises sharing the same Utilities meter. For example, if there are two (2) subtenants on a Utilities meter and one subtenant's subleased premises is equal to sixty percent (60%) of the total floor area of the subleased premises sharing the Utilities meter, that subtenant shall be responsible for sixty percent (60%) of the total monthly Utilities costs.

(b) Notwithstanding the foregoing, for Utilities not serviced by a meter, Subtenant shall be responsible for the payment of any Utilities as Additional Rent, if Sublandlord determines in Sublandlord's reasonable discretion that Subtenant is utilizing the Utilities in an inordinate or excess amount, Sublandlord may charge the Subtenant Additional Rent in an amount reasonably determined by Sublandlord to cover the inordinate or excess usage. The Sublandlord determination shall be deemed to be reasonable if the Subtenant use of the Subleased Premises includes cold or other refrigerated storage, the use is not solely for standard business offices, or the Subtenant operations is based on the use of electronic hardware and/or computers.

(c) Notwithstanding the foregoing, for Utilities which are not separately metered, Subtenant shall be responsible for the payment of any Utilities not covered under the foregoing subsections (a) and (b) which shall be allocated as Additional Rent based upon the percentage by which Subtenant's Subleased Premises floor area bears to all of the subleased premises floor area sharing the Building. For example, if there are three (3) subtenants and one

subtenant's subleased premises floor area is equal to sixty percent (60%) of the total floor area of the Building, that subtenant shall be responsible for sixty percent (60%) of the total monthly costs of the non-metered Utilities for the Building.

(d) The Subleased Premises may or may not have existing air conditioning and/or a heating system. If the Subleased Premises has no air conditioning or heating system, the Subtenant may only install such upon the approval of the Sublandlord which approval may be granted or withheld in the Sublandlord's sole discretion. If Sublandlord grants permission, the installation shall be handled as Work under Section 10 below. Subtenant shall be responsible for all costs, fees and expenses related to the installation (including any permitting) and will fully hold harmless, defend and indemnify the Sublandlord and the CITY from any cost, expense, liability or obligation arising therefrom. The foregoing hold harmless, defense and indemnity shall survive the termination of this Sublease. The costs, fees and expenses of the permitting, installation, operation, repair, replacement and maintenance of the air conditioning and/or heating system including any electricity, shall be solely borne by the Subtenant.

(e) If the Subleased Premises has an existing air conditioner and/or heating system, the cost and expense of the operation, repair, replacement and maintenance of the air conditioning and/or heating system including any electricity, shall be solely borne by the Subtenant. Sublandlord in Sublandlord's sole discretion shall allocate as Additional Rent and cost of the operating, repair, replacement and maintenance of the existing air conditioning and/or heating system not directly paid by Subtenant. If Subtenant shares an existing air conditioning and/or heating system with another subtenant(s) the cost shall be allocated among the subtenants as set forth in subsection (c) above.

(f) Nothing in this Sublease shall be interpreted or construed to require the Sublandlord to provide any Utilities, air conditioning, or heating system not existing on the Commencement Date. If Sublandlord is required by law or its lease with the CITY to install any Utilities or other system the cost shall be borne entirely by Subtenant if the item only services the Subleased Premises, or if shared with another subtenant(s) the cost shall be allocated among the subtenants as set forth in subsection (c) above.

9.2 Utilities and Services Not Provided. Subtenant shall arrange, and pay the supplier directly, for all telephone, CATV, internet and (except as provided in Section 8.1 above) all other utilities and services supplied to the Subleased Premises, together with any connection charges and taxes thereon. Subtenant shall not install any antenna or dish-type receiver on the Building or the roof of the Building or in the Common Area without the express consent of the Sublandlord in the Sublandlord's sole and unfettered discretion. Subtenant shall not install any wireless or remote receivers in the Subleased Premises that interfere with the wireless or remote systems of any other subtenant in the Master Premises or outside of the Master Premises. The foregoing restrictions shall not apply to Sublandlord or any subtenant who has a system approved by the Sublandlord. Any and all wiring, conduits and cables permitted to be placed upon the Subleased Premises shall be at the end of the Term the property of the Sublandlord unless the

Sublandlord notifies Subtenant to remove the same at the end of the Term. Any removal by Subtenant shall be at the sole cost and risk of Subtenant who shall hold harmless, defend and indemnify Sublandlord from any cost, claim, expense, liability or charge arising from or due to the removal of the wiring, conduits, or cables.

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

9.4 No Increase in Requirements. Subtenant shall not, without the prior written consent of Sublandlord, use any device in the Subleased Premises, including without limitation special equipment or machines, which will in any way unreasonably increase the amount of electricity or water used in or other services provided to the Subleased Premises over that provided to the Subleased Premises at the Commencement Date. Subtenant shall pay to Sublandlord as Additional Rent an amount equal to all costs incurred by Sublandlord to provide such excess services and utilities, which payment shall be made by Subtenant within ten (10) days of the date of the invoice for these costs. The foregoing is in addition to Section 8.1 above and not in lieu of.

10. Repairs and Maintenance; Common Area. Sublandlord shall maintain the Master Premises in the condition as required in the Master Lease, ordinary wear and tear excepted.

10.1 Structural and Mechanical Elements. Sublandlord shall repair and maintain the exterior of the Building, the Building's foundation, the Building's mechanical elements (i.e., the ventilating system servicing the Subleased Premises, and the unexposed electrical, plumbing, and sewage systems), the structural components of the exterior walls and the structural components of the roof of the Building. The costs for repair and maintenance of these elements shall be an obligation of the Sublandlord. Notwithstanding the foregoing to the contrary, if the loss, damage or cost is due to the actions of Subtenant or an invitee, agent or employee of Subtenant, Subtenant shall be allocated the cost or expense as Additional Rent due with the next due installment of Rent. Sublandlord in performing any maintenance shall not be required to incur any undue expense (i.e. overtime, work only after normal business hours, etc.) to undertake such action. In doing any maintenance Sublandlord shall not be liable for any inconvenience or loss of any type or nature to the Subtenant arising from the work. Subtenant shall cooperate and assist Subtenant in a full and timely manner when Sublandlord makes any repairs or maintains any portion of the Master Premises, including allowing the Sublandlord to enter the Subleased Premises at any time to undertake any and all necessary work. Nothing in this Section shall serve in any way to excuse Subtenant from any liability caused in any way by the actions of the Subtenant or the Subtenant's agents to any item or system which is the Sublandlord's obligation to repair or maintain.

10.2 Subtenant's Maintenance Obligations. Except for Sublandlord's obligations

pursuant to Section 9 above, Subtenant shall, at Subtenant's sole cost and expense, keep the interior of the Subleased Premises and every part thereof in good order, condition and repair, and in compliance with all applicable laws, ordinary wear and tear excepted and regardless of the condition of the Subleased Premises on the Commencement Date (except for Sublandlord's obligations to repair under Section 7.7 above, if any).

(a) Subtenant shall, upon the expiration or sooner termination of the Term, surrender the Subleased Premises to Sublandlord in good order, condition and repair and in compliance with all applicable laws. Subtenant's obligations shall include restorations, replacements or renewals, including capital expenditures for restorations, replacements or renewals which will have a useful life beyond the expiration of the Term, when necessary to keep the Building and the Subleased Premises and all improvements thereon or a part thereof in good order, condition and repair and in compliance with all applicable laws.

(b) Except as expressly set forth in this Sublease, it is intended by the parties hereto that Sublandlord shall have no obligation, in any manner whatsoever, to repair or maintain the Subleased Premises, including the improvements or equipment located therein, whether structural or nonstructural, all of which obligations are intended to be the sole expense of Subtenant, whether or not such repairs, maintenance or restoration shall have a useful life extending beyond the expiration of the Term.

(c) Subtenant shall further be responsible for the cost of all alterations and/or repairs to the interior of the Subleased Premises required to bring the Subleased Premises into compliance with any law, ordinance or regulation, including, without limitation, the Americans with Disabilities Act.

(d) Any repairs and alterations shall become the property of Sublandlord upon the expiration or earlier termination of this Sublease. Sublease shall fully warrant any repairs and alterations made by Subtenant for a period that is two (2) years beyond the end of the Term and if in doing the repairs and alteration, a third party provides Subtenant with any warranty or representation, the same shall be assigned to Sublandlord.

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

circumstances or situation shall the Sublandlord be liable for any consequential or punitive damages.

10.4 Damage or Destruction. Notwithstanding any of the foregoing, in the event of fire, earthquake, flood, war or similar cause of damage or destruction, this Article 9 shall not be applicable and the provisions of Article 14 below entitled "Damage or Destruction" shall apply and control.

11. Alterations.

(a) No Alterations. Without Sublandlord's prior written consent, which consent shall not be unreasonably withheld, Subtenant shall make no alterations, additions or improvements in or to the Subleased Premises (the "Work"). Sublandlord shall be deemed acting in a reasonable manner if the approval is denied if the Work (i) requires other upgrades to the Building or the Common Area, (ii) mandates that the Building or the Common Area be modified for ADA or any other governmental standards, (iii) results in the Subleased Premises to be made difficult to re-lease, reconfigure or repurposed at the end of the Term, (iv) creates a different use of the Subleased Premises other than the approved use, or (v) leads to the reasonable belief of the Sublandlord that the Work will increase or complicate the future maintenance or repair expense of the Subleased Premises or Common Area after the end of the Term. All such alterations, additions or improvements shall be made only by licensed and qualified contractors or mechanics and with all required permits.

(b) Subtenant shall deliver to Sublandlord all plans and specifications (initial, as-built and as filed with the building authority) in both hard copies and CAD format.

(c) Subtenant shall maintain all costs records for the Subtenant's improvements for a minimum of six (6) years no matter the length of the Term.

(d) Subtenant shall fully warrant any Subtenant improvement for three (3) years after the date of installation no matter the length of the Term. Any warranty received by Subtenant for any Subtenant improvement shall be assigned by Subtenant to Sublandlord and the party providing the warranty shall specifically name Sublandlord as a covered party under the warranty.

(e) Sublandlord at Sublandlord's option may require bonds for completion as Sublandlord deems appropriate in Subtenant's sole and unfettered discretion.

(f) Any contractor for performing any alterations, additions or improvements shall be subject to Sublandlord's reasonable approval and shall maintain appropriate insurance as reasonably required and approved by Sublandlord naming Sublandlord and the CITY as additional named insureds. In approving any contractors used by the Subtenant for any alterations or any other work on or at the Subleased Premises, the Sublandlord is not being unreasonable to disapprove any contractor, worker, agent, consultant or other person who may

come on the Master Premises if the Sublandlord reasonably believes or if the presence of such person or group may cause labor disharmony, unrest, protest or otherwise disturb the general peace, harmony and calm of the Master Premises. If Sublandlord is found by a court of law to have acted unreasonably, the sole remedy of Subtenant is to be allowed to use the person or group to service Subtenant and/or the Subleased Premises.

(g) The Sublandlord in the Sublandlord's sole and unfettered discretion may set working place rules and conditions for the Work, including but not limited to the hours allowed to do the Work, site clean-up, parking for workers, safety and other matter relevant to a construction project and site.

(h) Subtenant acknowledges that any such alterations and repairs may also require the approval of the CITY and that the CITY may have other conditions and requirements.

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

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

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

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

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

herein as if said space were otherwise occupied by Subtenant and without any offset, credit or delay.

11.7 Personal Property. All articles of Subtenant's personal property, including, but not limited to, detachable machinery and equipment, furniture, fixtures and movable partitions, which are owned by Subtenant and installed by Subtenant at Subtenant's own expense in the Subleased Premises, shall be and remain the property of Subtenant and may be removed by Subtenant at any time during the term of this Sublease when Subtenant is not in Default hereunder.

(a) If Subtenant shall fail to remove all of its personal property from the Subleased Premises at the expiration or earlier termination of the Term, then Sublandlord may, at Sublandlord's option, remove the same in any manner that Sublandlord may deem appropriate and store this personal property without liability to Subtenant for loss thereof or damage thereto. Subtenant agrees to pay Sublandlord, upon demand, any expenses incurred in such removal and storage or Sublandlord may, at Sublandlord's option, without notice, sell this personal property or any of it, at a public or private sale and without legal process, for such price as Sublandlord may obtain; and Sublandlord may apply the proceeds of such sale against any amounts due under this Sublease from Subtenant to Sublandlord and against any expenses incident to the removal, storage and sale of this personal property, with any balance of the sales proceeds delivered to Subtenant.

(b) Subtenant agrees that this Sublease constitutes a "security agreement" under the provisions of Section 9203 of the Uniform Commercial Code - Secured Transactions, or any successor statute and, as such, Subtenant grants to Sublandlord a security interest in all Subtenant's personal property described in this Section 10.7, as well as all tenant improvements made to the Subleased Premises pursuant to this Article 10. Subtenant acknowledges and agrees that Sublandlord may file a notice of the foregoing interest in the public records of the County of San Diego and the State of California.

12. Liens.

12.1 No Liens. Subtenant shall keep the Subleased Premises and the Master Premises free from any liens arising out of work performed, materials furnished and obligations incurred by Subtenant. Subtenant covenants and agrees that any mechanic's lien or lien of any other type filed against the Subleased Premises or any part of the Master Premises for work claimed to have been done for, or materials claimed to have been furnished to Subtenant, will be discharged by Subtenant, by bond or otherwise, within thirty (30) days after the filing thereof, at the cost and expense of Subtenant. Subtenant shall be responsible for any cost or expense of Sublandlord created by the existence of a lien and such cost or expense shall be immediately due from Subtenant as Additional Rent.

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

from Subtenant as Additional Rent.

12.3 Financing Statements. In the event Subtenant shall lease or finance the acquisition of equipment, furnishings or other personal property of a removable nature utilized by Subtenant, Subtenant warrants that any Uniform Commercial Code Financing Statement executed by Subtenant or Subtenant's secured party/holder will, upon its face or by exhibit thereto, indicate that the personal property listed on any such Financing Statement is located solely within the Subleased Premises. In no event shall the address of the Building be furnished on the statement without qualifying language as to applicability of the lien only to Subtenant's removable personal property.

(a) Should any holder of a Financing Statement executed by Subtenant or Subtenant's secured party/holder record or place of record a Financing Statement which appears to constitute a lien against any interest of Sublandlord or against equipment which may be located other than within the Subleased Premises, Subtenant shall, within ten (10) days after the filing of such Financing Statement, cause (i) copies of the Security Agreement or other documents to which the Financing Statement pertains to be furnished to Sublandlord to show that such lien is not applicable to Sublandlord's interest, and (ii) its lender to amend documents of record so as to clarify that such lien is not applicable to any interest of Sublandlord in the Subleased Premises.

(b) Sublandlord shall execute such documents as are reasonably required by Subtenant or Subtenant's lenders or equipment lessors provided the same do not in any way alter the rights of Sublandlord under this Sublease. The foregoing is subject to the right to file such a lien by a third party being allowed by the SDUPD and the terms of the Master Lease.

13. Indemnification and Exculpation.

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

and shall have no limitation in scope or duration. A Sublandlord's Indemnified Party shall not have to incur any cost or expense to have the right to enforce the terms of this Section. The rights of the Sublandlord's Indemnified Parties set forth in this Section shall survive the Term.

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

13.3 Assumption of Risk. Additionally, Sublandlord shall not be liable to Subtenant or any other party, and Subtenant assumes all risk of damage and liability (other than as may be covered by insurance or by a third party), resulting from any defect or malfunction of any Building system, any component of a Building system or any system on the Master Premises or Common Area (such as ventilation, mechanical, plumbing, electrical, waste disposal, or sewer).

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

14. Insurance.

14.1 Insurance on Master Premises. Sublandlord shall carry insurance on the Building and the Master Premises as required in the Master Lease, including the Subleased Premises and its improvements, to the extent such is insurable as part of the Master Premises (excluding improvements made to the Subleased Premises made by Subtenant)

14.2 Liability Insurance. Subtenant, at Subtenant's own cost, shall procure and continue in effect, from the Commencement Date or the at such time as Subtenant occupies the Subleased Premises, whichever first occurs, and continuing throughout the Term and thereafter until Subtenant has fully and finally surrendered the Subleased Premises to Sublandlord, comprehensive public liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence for death, bodily injury or property damage with respect to the Subleased Premises and insurance on all of its personal property. The deductible amounts of such policy of insurance shall not exceed Five Thousand Dollars (\$5,000). Subtenant shall provide Sublandlord a full copy of the insurance policy(ies) obtained by Subtenant. The form and contents

of the insurance policy(ies) are subject to Sublandlord's approval. Furthermore, it is specifically noted that if the Subleased Premises sell any alcoholic beverages that the Subtenant at the Subtenant's own cost shall obtain and carry liquor liability insurance coverage in the form and amount acceptable to Sublandlord. It is further agreed by Subtenant that the CITY may impose additional insurance requirement for the Master Premises and therefore the Subtenant shall acquire any additional coverage required by the CITY.

14.3 Additional Insureds. The aforesaid insurance required of Subtenant shall name as additional named insureds the CITY, Sublandlord and the Sublandlord's members, managers, officers, and lenders, and Sublandlord's property manager, agents and representatives for the Subleased Premises.

(a) The Subtenant's insurance shall be with companies having a policyholder rating of not less than A+ and financial category rating of Class IX in "Best's Insurance Guide." Subtenant shall cause any insurance companies issuing policies to Subtenant to furnish certificates evidencing such coverage to Sublandlord. No such policies shall be cancelable or subject to reduction of coverage or other modification or cancellation except after thirty (30) days prior written notice to Sublandlord from the insurer.

(b) All such policies shall be written as primary policies, not contributing with and not in excess of the coverage which Sublandlord may carry.

(c) Any of Subtenant's policies may be in the nature of a "blanket policy" which specifically provides that the amount of insurance shall not be prejudiced by other losses covered by the policy.

(d) Subtenant shall, at least twenty (20) days prior to the expiration of any such policies, furnish Sublandlord with renewals or binders.

(e) Subtenant agrees that if Subtenant fails to procure and maintain such insurance, Sublandlord may (but shall not be required to) procure said insurance on Subtenant's behalf and charge Subtenant the premiums for any such policies, together with a ten percent (10%) handling charge, payable upon demand.

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

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

14.6 Waiver of Subrogation. Sublandlord and Subtenant each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, on account of loss or damage occasioned to such waiving party or its property or the property of others under its control to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which either party may have in force at the time of such loss or damage, such waivers to continue as long as their respective insurers to permit. Any termination of such a waiver shall be by written notice of circumstances as hereinafter set forth. Sublandlord and Subtenant, upon obtaining the policies of insurance required or permitted under this Sublease, shall give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Sublease. If such policies are unobtainable with such waiver or obtainable only at a premium over that chargeable without such waiver, the party seeking such policy shall notify the other thereof, and the latter shall have ten (10) days thereafter to either (i) procure such insurance in companies reasonably satisfactory to the other party or (ii) agree to pay such additional premium. If neither (i) nor (ii) are done, this Section 13.6 shall have no effect during such time as such policies are unobtainable or the party in whose favor a waiver of subrogation is desired shall refuse to pay the additional premium. If such policies shall at any time be unobtainable, but subsequently shall be obtainable, neither party shall be subsequently liable for a failure to obtain such insurance until a reasonable time after notification thereof by the other party. If the release of either Sublandlord or Subtenant, as set forth in the first sentence of this Section 13.6 shall contravene any law with respect to exculpatory agreements, the liability of the party in question shall be deemed not released but shall be secondary to the other's insurer.

14.7 Increases in Insurance. At reasonable times or if required under the Master Lease or by the CITY, Sublandlord may require insurance policy limits of the Subtenant's insurance to be raised to conform with reasonable requirements of Sublandlord's lender and/or the CITY, or to bring coverage limits to the level then being required of similar tenants of similar properties; provided, however, that Sublandlord, in any event, may require insurance policy limits of the Subtenant's insurance to be increased in proportion to any increase in the Consumer Price Index from the date of this Sublease to the date of the requested adjustments or if there is a change in the law, statutory or case law, that may make changes reasonably necessary.

15. Damage or Destruction.

15.1 Destruction Due to Risk covered by Insurance.

(a) If, during the Term unless Sublandlord elects to terminate the

Sublease as allowed herein, the Subleased Premises or the Building are totally or partially destroyed from a risk covered by the insurance described in Section 13.1 above, rendering the Subleased Premises totally or partially inaccessible or unusable, Sublandlord shall restore the Subleased Premises or the Building to substantially the same condition as they were in immediately before destruction, but not including any leasehold improvements made by Subtenant. Such destruction shall not terminate this Sublease. If the existing laws do not permit restoration and repair of the Building or the Subleased Premises, either party can terminate this Sublease immediately by giving notice to the other party.

(b) If the cost of the restoration exceeds the amount of proceeds received from the insurance required under Section 13.1 above, Sublandlord may elect to terminate this Sublease by giving notice to Subtenant within fifteen (15) days after determining that the restoration cost will exceed the insurance proceeds. In the case of destruction to the Subleased Premises only, if Sublandlord elects to terminate this Sublease, Subtenant, within fifteen (15) days after receiving Sublandlord's notice to terminate, can elect to pay to Sublandlord, at the time Subtenant notifies Sublandlord of its election, the difference between the amount of insurance proceeds and the cost of restoration, in which case Sublandlord shall restore the Subleased Premises. Sublandlord shall give Subtenant reasonably satisfactory evidence that all sums contributed by Subtenant as provided in this Section 14.1 have been expended by Sublandlord in paying the cost of restoration.

(c) If Sublandlord elects to terminate this Sublease and Subtenant does not elect to contribute toward the cost of restoration as provided in this Section 14.1, this Sublease shall terminate.

15.2 Destruction Due to Risk Not Covered by Insurance.

(a) If, during the Term, unless the Sublandlord does not elect to terminate the Sublease as allowed herein, the Subleased Premises or the Building are totally or partially destroyed from a risk not covered by the insurance described in Section 13.1 above, rendering the Subleased Premises totally or partially inaccessible or unusable, Sublandlord shall restore the Subleased Premises or the Building to substantially the same condition as they were in immediately before destruction. Such destruction shall not terminate this Sublease. If the existing laws do not permit the restoration, either party can terminate this Sublease immediately by giving notice to the other party.

(b) The provisions of Section 14.2(a) above notwithstanding, if the cost of restoration exceeds five percent (5%) of the then replacement value of the Subleased Premises or the Building that are destroyed, Sublandlord can elect to terminate this Sublease by giving notice to the Subtenant within fifteen (15) days after determining the restoration cost and replacement value.

(c) In the case of destruction to the Subleased Premises only, if Sublandlord elects to terminate this Sublease, Subtenant, within fifteen (15) days after receiving

Sublandlord's notice to terminate, can elect to pay to Sublandlord, at the time Subtenant notifies Sublandlord of its election, the difference between the then replacement value of the Subleased Premises and the actual cost of restoration, in which case Sublandlord shall restore the Subleased Premises. Sublandlord shall give Subtenant reasonably satisfactory evidence that all sums contributed by Subtenant as approved in this Section 14.2 have been expended by Sublandlord in paying the cost of restoration.

(d) If Sublandlord elects to terminate this Sublease and Subtenant does not elect to perform the restoration or contribute toward the cost of restoration as provided in this Section 14.2, this Sublease shall terminate.

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

15.4 Release. Upon any termination of this Sublease under any of the provisions of this Article 14, the parties each shall be released from further obligation to the other under this Sublease for Rent and other claims arising from and after the date of termination. However, termination of this Sublease shall not relieve either party from any obligation to the other existing prior to the date of termination, which obligations shall remain in full force and effect.

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

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

15.7 Action by the CITY. Notwithstanding any other provision of this Article, if the CITY takes action contra to or incompatible with the actions to be taken by the parties hereto as allowed under the Master Lease, then the action of the CITY shall supersede the actions of the parties.

15.8 Sublandlord's Rights. Nothing in this Article 14 shall limit, restrict or modify the Sublandlord's right to terminate this Sublease pursuant to Section 2.1 above.

16. Eminent Domain.

16.1 Taking. If the Subleased Premises or any material portion of the Subleased Premises are taken under the power of eminent domain or similar governmental action, Sublandlord party may terminate this Sublease effective as of the date possession is required to be surrendered to the condemning authority. If the Subleased Premises are subject to power of eminent domain or similar government action, and the result is that the Subleased Premises are totally made unusable for the stated use of the Subtenant in this Sublease, the Subtenant may terminate this Sublease effective as of the date of the possession is required to be surrender to the condemning authority.

16.2 Restoration. Upon any taking, if this Sublease is not terminated pursuant to Section 15.1 above, then Sublandlord promptly shall proceed to restore the Subleased Premises to substantially their same condition, to the extent reasonably possible, prior to such partial taking. If such restoration has been completed, thereafter Base Rent shall be abated proportionately based on the percentage of the rental value of the Subleased Premises after such taking as compared to the rental value of the Subleased Premises prior to such taking.

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

17. Defaults and Remedies.

17.1 Late Charge. Late payment by Subtenant to Sublandlord of Rent or other sums due will cause Sublandlord to incur costs not contemplated by this Sublease, the exact amount of which is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, attorneys' charges, and/or late payment charges on a mortgage, payment due under the Master Lease and so forth.

(a) Subtenant shall tender all payments due hereunder from Subtenant to Sublandlord to "DRISCOLL MISSION BAY LLC, 1500 Quivira Way, San Diego, CA 92109, or such other place as may be designated by Sublandlord from time to time in accordance

with Section 24.11 below. Payments of all Rents, fees and/or charges are due on the first (1st) day of each month, or upon being invoiced by the Sublandlord. Non-payment of all Rents, fees and/or charges by the te (th) day of the month shall be regarded as delinquent, late and overdue. Interest shall accrue on all arrearages at the rate of one percent (1%) per month, or the maximum amount allowable by law if less from the date due. Such interest shall be calculated from the date such amount was due and payable until the same shall have been fully paid. A partial payment shall not halt the accruing of interest on any unpaid portion of the Rent due.

(b) Rent, fees and/or charges not paid by the tenth (1st) calendar day of the month due, shall result in imposition of a ten percent (10%) late charge of the entire amount then due to partially compensate Sublandlord for the loss of the use of the funds and not as a penalty. There will be a One Hundred Dollar (\$100.00) administrative fee charged for any check returned as un-payable, for any reason. After tender of a returned check Sublandlord may require Subtenant to thereafter tender payment by cashier's or certified check, money order or ACH as set forth in Section 3.3 above. If Rents, fees and/or charges that are due have not been paid by the fifteenth (15th) calendar day of the month in which they are due, such non-payment shall constitute a material breach of this Sublease, in which event the Sublandlord may immediately terminate this Sublease and pursue all remedies available in admiralty, at law or in equity.

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

17.3 Performance by Sublandlord. If Subtenant fails to perform any other act on its part to be performed hereunder, Sublandlord may, without waiving or releasing Subtenant from any obligations of Subtenant, perform such act on behalf of Subtenant. Any costs incurred by Sublandlord in performing the obligations of Subtenant under this Section 16.3 shall be paid by Subtenant as Additional Rent within ten (10) days of the date of an invoice for such costs.

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

(a) The failure by Subtenant to make any payment of Rent, as and when due without set-off or deduction unless expressly authorized in writing by the Sublandlord; or

(b) The failure by Subtenant to fully and completely observe or perform any obligation other than described in Section 16.4(a) above, to be performed by Subtenant where such failure shall continue for a period of thirty (30) days after written notice thereof from Sublandlord to Subtenant unless such cure is noted to be of an emergency nature and such is to be done immediately and in not less than twenty-four (24) hours. Such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure 1161; provided that, if the nature of Subtenant's Default is such that it reasonably requires more than thirty (30)

days to cure, then Subtenant shall not be deemed to be in Default if Subtenant shall commence such cure within said thirty (30) day period and thereafter diligently prosecute the same to completion, subject to weekly written reports to Sublandlord detailing Subtenant's actions and expenditures; or

(c) Violation of any law or ordinance; or

(d) Violation of any term, condition or provision of the Master Lease;

or

(e) Subtenant files a voluntary petition under any section of the Bankruptcy Code of the United States or for any protection under any debtor relief provisions of the California Codes; or

(f) Subtenant makes a voluntary assignment for the benefit of creditors;

or

(g) A receiver, trustee or custodian is appointed to, or does, take title, possession or control of all, or substantially all, of Subtenant's assets, or any involuntary petition is filed against the Subtenant under any chapter of the Bankruptcy Code of the United States, and such petition or receiver, trustee or custodian is not dismissed within thirty (30) days; or

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

(i) Subtenant fails to comply fully with all provisions of Article 23 below, concerning Hazardous Materials; or

(j) Subtenant fails to pay Rent, fails to pay any other monetary obligation arising under this Sublease, or fails to perform any obligation or duty under any other agreement with the Sublandlord or an affiliate of the Sublandlord.

Notices given under this Section 16.4 shall specify the alleged Default and shall demand that Subtenant perform the provisions of this Sublease within the applicable period of time, or quit the Subleased Premises. No such notice shall be deemed a forfeiture or a termination of this Sublease unless Sublandlord elects otherwise in such notice. Once the time for any cure, if there is any expressed time to cure, by the Subtenant has passed and Sublandlord has provided any notice or termination, Subtenant shall have no right of cure, and any action of the Subtenant shall be only to mitigate damages and not serve to reinstate or continue the Sublease. Time is expressly of the essence in all of the performances of the Subtenant to cure any Default.

17.5 Remedies. In the event of a Default by Subtenant, and at any time thereafter, with or without notice or demand and without limiting Sublandlord in the exercise of any right or remedy which Sublandlord may have, Sublandlord shall be entitled to terminate

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

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

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

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

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

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

As used in Sections 16.5(a) and 16.5(b) above, "worth at the time of award" shall be computed by allowing interest at the rate specified in Section 16.1 above. As used in Section 16.5(c) above, the "worth at the time of award" shall be computed by determining the present value of such amount using the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percentage point.

Subtenant in exchange for valid consideration, hereby waives any and all rights conferred by California Civil Code Section 3275 and by California Code of Civil Procedures Sections 1174(c) and 1179 and any and all other laws and rules of law from time to time in effect during the Term providing that Subtenant has any right to redeem, reinstate or restore this Sublease following the termination by reason of Subtenant's breach. Also, to the extent allowed by law, Subtenant and Sublandlord, waive the right to trial by jury arising out of or related to this Sublease. Additionally, Subtenant specifically waives all rights to pursuant to any law to contest any taxes

or other levies or protest appraisal values or receive notice of reappraisal regarding the Master Premises irrespective whether Sublandlord contests the same.

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

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

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

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

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

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

17.8 Remedies Non-Exclusive. All rights, options and remedies of Sublandlord contained in this Sublease shall be construed and held to be nonexclusive and cumulative.

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

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

17.10 Sublandlord Default and Right to Cure. Sublandlord shall not be in default hereunder unless Sublandlord fails to perform a material obligation required of Sublandlord within a reasonable time, but in no event later than sixty (60) days after written notice by Subtenant specifically identifying the obligation Sublandlord has failed to perform; provided, however, that if the nature of Sublandlord's obligation is such that more than sixty (60) days are required for performance, then Sublandlord shall not be in default if Sublandlord commences performance within such sixty (60) day period and thereafter diligently prosecutes the same to completion. Notwithstanding any other provision of this Sublease, the sole source of any recovery against Sublandlord shall be the assets related to Sublandlord's interest in the Master Premises and from no other source. No member or manager of Sublandlord shall have any personal obligation under this Sublease or to Subtenant. Any damage found to be owed by Sublandlord after a final judgment that is non-appealable, shall only be for actual monetary damages suffered by the Subtenant and not of any form or type of consequential or punitive damages. Under no circumstances shall Subtenant have any recourse against the CITY for any actions of the Sublandlord and hereby waives and releases any rights thereto. Notwithstanding any applicable statute of limitations, since the sole source of recovery of the Subtenant is the Sublandlord's interest in the Master Premises, the Sublandlord's liability for any refund, deposit or credit shall cease immediately upon the sale, termination of the Master Lease, foreclosure of Sublandlord's interest in the Master Premises, receivership of Sublandlord or Sublandlord's interest in the Master Premises or any other action that divests Sublandlord of any interest in the Master Premises.

17.11 Lender's Right to Cure. In the event of any default on the part of Sublandlord, Subtenant shall give notice, by registered or certified mail, at any address provided to Subtenant, to any beneficiary of a deed of trust or mortgagee of a mortgage covering the Building or Subleased Premises whose address shall have been furnished to Subtenant and Subtenant shall offer such beneficiary or mortgagee a reasonable opportunity to cure the default, not to exceed Sublandlord's cure period plus sixty (60) days.

17.12 Sublandlord's Lien. To secure Subtenant's obligations under this Sublease, Subtenant grants Sublandlord a contractual security interest on all of Subtenant's office equipment now or hereafter situated in the Subleased Premises which are owned by Subtenant and all

proceeds therefrom, including insurance proceeds (collectively, "Collateral"). At no time shall Sublandlord have a contractual security interest in Subtenants new or used vessel inventory due to Subtenants commercial floorplan terms. No Collateral, except new and used vessels, shall be removed from the Subleased Premises without Sublandlord's prior written consent until all of Subtenant's obligations are fully satisfied (except in the ordinary course of business and then only if replaced with items of same or greater value and quality). Upon any event of Default, Sublandlord may, to the fullest extent permitted by law and in addition to any other remedies provided herein, enter upon the Subleased Premises and take possession of any Collateral without being held liable for trespass or conversion, and sell the same at public or private sale, after giving Subtenant at least ten (10) days written notice (or more if required by law) of the time and place of such sale, time expressly being of the essence. Such notice is to be sent as provided herein for the delivery of notice to a party. Unless prohibited by law, the Sublandlord or any affiliate of the Sublandlord may purchase any Collateral at such sale. Subject to applicable law, the proceeds from such sale, less Sublandlord's expenses, including reasonable attorneys' fees and other expenses, shall be credited against Subtenant's obligations. Any surplus shall be paid to Subtenant (or as otherwise required by law) and any deficiency shall be paid by Subtenant to Sublandlord upon demand. Subtenant hereby authorizes Sublandlord to file a financing statement sufficient to perfect the foregoing security interest, or to file a copy of this Sublease as a financing statement, as permitted under Law.

18. Assignment.

18.1 Assignment. Except as expressly provided in this Article 17, Subtenant shall not, either voluntarily or by operation of law, assign, sell, hypothecate or transfer this Sublease or permit all or any part of the Subleased Premises to be used or occupied as work space, storage space, mailing privileges, concession or otherwise by anyone other than Subtenant or Subtenant's employees (all of these events collectively referred to as an "Assignment"), without the prior written consent of Sublandlord in each instance, which consent may be withheld by Sublandlord in Sublandlord's sole and absolute discretion. Sublandlord shall never be required to inform Subtenant of any reason why Sublandlord exercised its sole and absolute discretion to grant any assignment of the Sublease.

(a) A transfer of more than fifty percent (50%) of the equity ownership of Subtenant during any two-year period to a party (or to an affiliated group of parties) or the change in management control shall also constitute a prohibited Assignment; provided, however, this provision shall not be applicable if such transfers occurred on a public stock exchange. If Sublandlord consents to an Assignment, Subtenant and its successors and assigns, and any guarantors of Subtenant's obligations under this Sublease, shall not be released from liability under this Sublease. Subtenant acknowledges that an Assignment must be approved by the CITY, as evidenced by formal resolution.

(b) As a condition of Sublandlord's consent to an Assignment, the assignee and Subtenant shall execute an agreement in favor of Sublandlord and in a form

acceptable to Sublandlord, pursuant to which the assignee shall agree to faithfully perform and assume and be bound by all of the terms, covenants, conditions, provisions and agreements of this Sublease. As used in this Article 17, the term "assignee" shall include the person or entity who is the transferee in any form of Assignment, as defined above.

(c) In addition, Subtenant and the assignee shall, upon not less than three (3) days prior written notice from Sublandlord, execute, acknowledge and deliver to Sublandlord a statement in writing (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; (ii) acknowledging that there are not, to Subtenant's and the assignee's knowledge, any uncured defaults under this Sublease on the part of Sublandlord or Subtenant, or specifying such defaults if any are claimed; (iii) setting forth the Commencement Date and Expiration Date; and (iv) certifying as to such other matters as Sublandlord may reasonably request.

(d) Any guarantor of this Sublease shall execute a reaffirmation of such guarantee in a form reasonably acceptable to Sublandlord agreeing to continue to be a guarantor of the terms and conditions of this Sublease following an Assignment. Furthermore, any Assignment shall be subject to the assignee obtaining third party guarantors for the Sublease who are acceptable to Sublandlord in Sublandlord's sole and absolute discretion.

18.2 Transfer Premium. As a mandatory condition to Sublandlord's consent to any Assignment, Subtenant shall pay to Sublandlord fifty percent (50%) of any Transfer Premium, as defined in the following:

(a) "**Transfer Premium**" means all Rent and other consideration actually received by Subtenant from the assignee (including key money, consulting fees, covenant not to compete payments and bonus money and any payment in excess of fair market value for services rendered by Subtenant to the assignee, or assets, fixtures, inventory, equipment, or furniture transferred by Subtenant to the assignee in connection with the Assignment (collectively, the "**Assignment Rent**"), after deducting:

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

b. Reasonable leasing commissions paid by Subtenant; and, Other reasonable out-of-pocket costs paid by Subtenant (including attorneys' fees, advertising costs, and expenses of readying the Subleased Premises for occupancy by the assignee) approved by the Sublandlord.

c. The costs referred to in subsections (a) through (c) are referred to as the "**Transfer Costs**."

(b) Subtenant shall pay the Transfer Premium to Sublandlord on a monthly basis, as Additional Rent under this Sublease.

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

(d) A failure to abide the provision of this Article 17 shall be a non-curable event of Default.

18.3 Notice of Proposed Assignment. In the event Subtenant desires Landlord to review and approve an Assignment, then at least forty-five (45) days, but not more than ninety (90) days, prior to the date when Subtenant desires the Assignment to be effective (the "Assignment Date"), Subtenant shall give Sublandlord written notice (the "Assignment Notice") which shall set forth the name, address and business of the proposed assignee, a certified financial statement of the proposed assignee and its principals if it is an entity, information (including references) concerning the business experience, financial reputation and character of the proposed assignee, the Assignment Date, any ownership or commercial relationship between Subtenant and the proposed assignee or sublessee, and the consideration paid for the Assignment, and all other material terms and conditions of the proposed Assignment, all in such detail as Sublandlord shall reasonably require. Additionally, Subtenant shall furnish to Sublandlord a copy of the audited financial statements for the most recently past fiscal year, as well as the most recent unaudited quarterly financial statements for both Subtenant and the proposed assignee. Sublandlord has no duty to review any request until all required documents are submitted in legible condition and the Transfer Fee is paid.

18.4 Unapproved Transfer Void. Any Assignment not in compliance with the provisions of this Article 17 shall be void, and shall, at the option of Sublandlord, be a breach of this Sublease.

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

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

18.7 Assignment Fee, Other Payments and Conditions. The Assignment Notice shall be accompanied by a "Transfer Fee" in the amount of \$1,000 payable to Sublandlord upon the submission of the information on the proposed assignee. No application shall be considered without the Transfer Fee. The Transfer Fee shall be deemed earned when received and is non-refundable and shall not be returned for any reason. The Transfer Fee is in addition to and not in lieu of any Transfer Premium.

(a) In addition to the Transfer Fee the Subtenant shall reimburse the Sublandlord for any attorney's fees or other professional costs incurred.

(b) Any approved Assignment is conditioned on the principals of the assignee executing, in a form acceptable to Sublandlord in Sublandlord's sole and unfettered discretion of a personal guaranty of the Sublease.

(c) All payment shall be a pre-condition to the effectiveness of any approval of any Assignment.

18.8 Sublandlord's Option to Recapture the Space. Despite any other provision of this Article 17, Sublandlord has the option to recapture the Subleased Premises, by written notice to Subtenant ("Recapture Notice") within thirty (30) days after receiving an Assignment Notice from Subtenant. A timely Recapture Notice terminates this Sublease and Subtenant's obligations regarding the Subleased Premises for the remaining Term and as of the Assignment Date. The Recapture Notice shall be void, however, if Subtenant notifies Sublandlord, within ten (10) days after receipt of the Recapture Notice, that Subtenant withdraws the Assignment Notice. If Sublandlord declines or fails timely to elect to recapture the Subleased Premises, Sublandlord shall have no further right to the Subleased Premises under this Section 17.8 unless it becomes available again in connection with any subsequently proposed Assignment.

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

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

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

c. A cash deposit in an amount at least equal to the Security Deposit, if any,

originally required at time of execution of this Sublease;

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

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

20. Subordination and Attornment

20.1 Subordination. This Sublease shall be subject and subordinate to the lien of any mortgage, deed of trust or lease in which Sublandlord is the Lessee or tenant (including the Master Lease), now or hereafter in force against the Subleased Premises, and to all advances made or hereafter to be made upon the security thereof without the necessity of the execution and delivery of any further instruments on the part of Subtenant to effectuate such subordination; provided, however, that for the lien of any mortgage, deed of trust or lease executed by Sublandlord after the date of this Sublease to be subordinate to this Sublease, the holder of any such mortgage, deed of trust or lease shall execute, acknowledge and deliver to Subtenant a non-disturbance agreement in a form acceptable to the holder providing that so long as Subtenant performs all of Subtenant's obligations under the Sublease, Subtenant's quiet enjoyment and use of the Subleased Premises shall not be disturbed.

20.2 Additional Instruments. Notwithstanding the foregoing, Subtenant shall execute and deliver upon demand a subordination agreement in the form requested by Sublandlord, the CITY and/or Sublandlord's lender or such further instrument or instruments evidencing such subordination of the Sublease to the lien of any such mortgages, deeds of trust or leases in which Sublandlord has an interest. The Subtenant shall execute (and notarize if required) and return the instrument within ten (10) days of presentation. Failure by the Subtenant to comply is a material and non-curable Default. However, if any such mortgagee, beneficiary or landlord under a lease wherein Sublandlord is tenant so elects, this Sublease shall be deemed prior in lien to any such lease, mortgage or deed of trust upon or including the Subleased Premises, regardless of date, and Subtenant shall execute a statement in writing to such effect at Sublandlord's request.

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

20.4 Corporation. If Sublandlord obtains a loan commitment from a lender for the financing or refinancing of the Subleased Premises, and said loan commitment requires some amendments to this Sublease, then Subtenant shall cooperate fully with Sublandlord for no consideration to Subtenant in executing said amendments, so long as the amendments do not

materially adversely affect any of the material rights or obligations of Subtenant under this Sublease.

21. Surrender.

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

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

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

22. Holding Over

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

22.2 Holding Over without Consent. If Subtenant remains in possession of the Subleased Premises after the expiration or earlier termination of the Term hereof without the express written consent of Sublandlord, Subtenant shall become a tenant at sufferance upon all the terms of this Sublease applicable to a tenant at sufferance, except that the monthly installments of Base Rent shall be equal to one hundred fifty percent (150%) of the monthly installment of the Base Rent in effect during the immediately preceding thirty (30) days.

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

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

23. Taxes on Subtenant's Property.

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

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

24. Hazardous Materials

24.1 Prohibition/Compliance. Subtenant, at Subtenant's sole cost, shall comply with all federal, state and local laws, statutes, ordinances, codes, regulations and orders relating to the receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release and disposal of any Hazardous Material as defined in this Article 23 in or about the Subleased Premises or the Building or Common Area. Subtenant shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept or used in or about the Subleased Premises by Subtenant, Subtenant's agents, employees, contractors or invitees in a manner or for a purpose prohibited by any federal, state or local law, rule or regulation.

(a) The disposal of Hazardous Material shall be in approved containers and removed from the Subleased Premises by duly licensed carriers.

(b) Subtenant shall immediately provide Sublandlord with telephonic notice, which shall promptly be confirmed by written notice, of any and all spillage, discharge, release and disposal of Hazardous Materials onto or within the Subleased Premises, the Master Premises, the Building, or the Common Area, which by law must be reported to any federal, state or local agency, and any injuries or damages resulting directly or indirectly therefrom. A failure of Subtenant to give to Sublandlord the notices required in this Section 23.1 shall constitute a Default under this Sublease.

(c) Subtenant shall deliver to Sublandlord each and every notice or order received from any federal, state or local agency concerning Hazardous Materials and the possession, use and/or disposal thereof promptly upon receipt of each such notice or order.

(d) Subtenant shall be responsible for and shall indemnify, protect, defend, and hold harmless the CITY, Sublandlord and Sublandlord's agents, employees, representatives, directors and officers, and Sublandlord's lender(s) from any and all claims, costs, penalties, fines, liability and losses, including without limitation, (i) temporary or permanent diminution in value of the Subleased Premises, the Master Premises, the Building or the Common Area, (ii) damages for the temporary or permanent loss of restriction on use of rentable or usable

space or of any amenity of the Subleased Premises, the Master Premises, the Building, or the Common Area, and (iii) sums paid in settlement of claims, consultant fees and expert fees, liabilities, attorneys' fees, damages, injuries, causes of action, judgments and expenses, which arise during or after the Term of this Sublease and which (a) result from Subtenant's use and occupancy of the Subleased Premises, the Master Premises, the Building, or the Common Area, or (b) result from Subtenant's receiving, handling, use, storage, accumulation, transportation, generation, spillage, migration, discharge, release or disposal of Hazardous Materials in, upon or about the Subleased Premises, the Master Premises, the Building, or the Common Area. The indemnifications of Sublandlord and indemnities by Subtenant above include, to the extent Subtenant is responsible for such costs and expenses under the provisions above, without limiting the generalities thereof, reasonable costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work lawfully required by any federal, state or local governmental agency or political subdivision because of any Hazardous Materials present in the soil, subsoil, ground water, or elsewhere at, on or under the Subleased Premises or the Building or the Common Area. The foregoing indemnification shall survive the end of the Term.

24.2 Termination of Sublease. Notwithstanding the provisions of this Article 23, Sublandlord shall have the right to terminate the Sublease in the event that (i) Subtenant uses the Subleased Premises or any portion of the Master Premises for the generation, storage, use, treatment or disposal of Hazardous Material in a manner or for a purpose prohibited by applicable law (unless Subtenant is diligently pursuing compliance therewith), (ii) Subtenant has been required by any governmental authority to take remedial action in connection with Hazardous Material contaminating the Subleased Premises, the Master Premises, the Building, or the Common Area if the contamination resulted from Subtenant's action or use of the Subleased Premises or any portion of the Master Premises and such remedial action has a material adverse effect on Sublandlord, the Subleased Premises, the Master Premises, the Building, or the Common Area, or (iii) Subtenant is subject to an enforcement order issued by any governmental authority in connection with the use, disposal or storage of a Hazardous Material on the Subleased Premises or any portion of the Master Premises and such enforcement order has a material adverse effect on Sublandlord, the Subleased Premises, the Master Premises, or the Building. Each of the foregoing events shall be deemed to be a material Default by Subtenant under this Sublease.

24.3 Assignment. Notwithstanding the provisions of Article 17 above, if (i) any anticipated use of the Subleased Premises or any portion of the Master Premises by any proposed assignee involves the generation or storage, use, treatment or disposal of Hazardous Material in any manner or for a purpose prohibited hereunder or by any applicable law, (ii) the proposed assignee has been required by any governmental authority to take remedial action in connection with a Hazardous Material if the contamination resulted from such party's action or use of the property in question and has failed to take such action, or (iii) the proposed assignee is subject to an enforcement order issued by any governmental authority in connection with the use, disposal or storage of a Hazardous Material of a type such proposed assignee intends to use in, on or at the Subleased Premises and the proposed assignee has failed to fully comply with such enforcement

order, it shall not be unreasonable for Sublandlord to withhold its consent to an Assignment.

24.4 Sublandlord's Right to Perform Tests

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

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

24.5 Survival of Subtenant's Obligations. Subtenant's obligations under this Article 23 shall survive the termination of this Sublease. During any period of time employed by Subtenant after the termination of this Sublease to complete the removal from the Subleased Premises or the Building of any such Hazardous Materials, Subtenant shall continue to pay the full Rent in accordance with this Sublease.

24.6 Definition of "Hazardous Material". As used herein, the term "**Hazardous Material**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, the County of San Diego or the United States of America. The term "Hazardous Materials" shall also mean toxic or hazardous substances, including without limitation, asbestos or any substance containing asbestos and deemed hazardous under any Hazardous Material Law (defined below), the group of organic compounds known as polychlorinated biphenyls, flammable explosives, radioactive materials, chemicals known to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions or related materials and any items included in the definition of hazardous or toxic waste, materials or substances under any law relating to environmental conditions and industrial hygiene, including without limitation, the Resource Conservation and Recovery Act of 1976 ("**RCRA**"), 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability

Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601 - 9657, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 6901, et seq., the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 741 et seq., the Clean Water Act, 33 U.S.C. § 7401, et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 -2629; the Safe Drinking Water Act, 42 U.S.C. §§ 300f - 300j; the Carpenter-Presley- Tanner Hazardous Substances Account Act; the Hazardous Waste Control Act; the Porter-Cologne Water Quality Control Act; and all similar federal, state and local environmental statutes, ordinances, and the regulations, orders, decrees now or hereafter promulgated thereunder (collectively the "**Hazardous Material Laws**").

24.7 Binding on Parties Related to Subtenant. For the purposes of this Article 23, the term "Subtenant" shall include Subtenant and Subtenant's Members, agents, employees, invitees, sub-subtenants, assigns, and guests, as well as their successors and assigns.

25. Miscellaneous

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

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

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

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

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

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

25.7 Severability. Any provision of this Sublease which shall be deemed or

prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and all such other provisions shall remain in full force and effect.

25.8 Independent Counsel. Subtenant acknowledges that: (i) Subtenant has had the opportunity to be represented by independent counsel in connection with this Sublease; and (ii) this Sublease is the result of negotiations between Sublandlord and Subtenant and the advice and assistance of Subtenant's counsel. The fact that this Sublease was prepared by Sublandlord's counsel as a matter of convenience, and such shall have no impact or significance and any presumption against the drafter shall be totally disregarded. Any uncertainty or ambiguity in this Sublease shall not be construed against Sublandlord because Sublandlord's counsel prepared this Sublease in its final form. This Sublease shall be deemed to have been drafted jointly and equally by the parties.

25.9 Inurement. Each of the covenants, conditions and agreements herein contained shall inure to the benefit of and shall apply to and be binding upon the parties hereto and their respective heirs, legatees, devisees, executors, administrators, successors, assigns, sublessees or any person who may come into possession of said Subleased Premises or any part thereof in any manner whatsoever. Nothing contained in this Section 24.9 shall in any way alter the provisions against Assignment provided in this Sublease.

25.10 Force Majeure. If Sublandlord cannot perform any of Sublandlord's obligations hereunder due to events beyond Sublandlord's control, the time provided for performing such obligations shall be extended by a period of time equal to the duration of such events and a reasonable time thereafter. Events beyond Sublandlord's control include, but are not limited to, acts of God, war, civil commotion, labor disputes, strikes, fire, flood or other casualty, shortages of labor or material, government regulation or restriction and weather conditions. It is specifically noted that Sublandlord has no control over the CITY and therefore any action required by the CITY is not within the control of Sublandlord and Sublandlord shall have no responsibility therefor.

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

For Rent Payment and Notices
to Sublandlord: DRISCOLL MISSION BAY LLC.

1500 Quivira Way suite 2 San Diego, California 92109

Attention: Thomas A. Driscoll

DRISCOLL MISSION BAY LLC/ Offshore Blue Adventures, LLC
Standard Sublease, Modified Gross

ver.01012025

For Subtenant: Offshore Blue Adventures, LLC

2720 Shelter Island Drive San Diego, California 92106

Attention: Evan Cooney

Either party may, by notice to the other pursuant to this Section, specify additional or different addresses for notice purposes. Subtenant may not add more than one other location then as noted above. If Subtenant elects to have notice delivered to another physical location than the Subleased Premises, the Sublandlord may also elect, but is not required to do so, to provide an additional notice to the Subleased Premises. If the Subtenant does not accept or receive service of notice at the Subleased Premises, such will be the sole risk of the Subtenant and any attempted delivery at the Subleased Premises shall be deemed to be valid delivery and shall commence the running of the notice period. If after the Term has ended and Subtenant has not provided Sublandlord with a new location to deliver notice, a mailing to the Subleased Premises shall be deemed notice as Subtenant is deemed to have taken the precaution to have any and all mail forwarded. It is specifically noted that any monthly mailing of any Rent statement or of general information circulated to all subtenants is not governed by the provisions of this Section.

Subtenant shall provide to Sublandlord the name of an on-site contact person. The on-site contact person shall provide the Sublandlord with a seven (7) day a week, twenty-four (24) hours a day contact information including a current phone number, electronic mail delivery address or other current form of instant communications. If the contact person does not respond to any contact within twenty-four (24) hours for a non-emergency matter or within thirty (30) minutes for an emergency matter the Sublandlord may take any action which is reasonable under the circumstances and shall be held harmless and indemnified by the Subtenant.

25.12 Exhibits and Documents. All exhibits, addenda, and schedules referred to herein and attached hereto are a part hereof, and incorporated herein by this reference. The Sublandlord may scan and destroy the original of the Sublease. The Sublandlord need never produce an original counterpart unless expressly required by law.

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

25.14 Periods of Time. All periods of time referred to in this Sublease shall include all Saturdays, Sundays and state or United States holidays recognized by the CITY, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice with respect to this Sublease shall fall on a Saturday, Sunday or state or

national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday, or state or national holiday.

25.15 Choice of Law. This Sublease shall be construed and enforced in accordance with the laws of the State of California, and venue for any legal action under this sublease shall be in the City of San Diego, San Diego County, California. ~~Merger~~. There shall be no merger of the leasehold estate created by this Sublease with the fee interest in any of the Subleased Premises by reason of the fact that the same person may acquire or hold or own, directly or indirectly, (a) the leasehold estate created hereby or any part thereof or interest therein, and (b) the fee estate in any of the Subleased Premises or any part thereof or interest therein.

25.16 Real Estate Brokers; Finders. Subtenant and Sublandlord each represent to the other that they have not entered into any agreement or incurred any obligation in connection with this transaction that might result in the obligation to pay a brokerage commission or finder's fee to any broker, finder or other person. Each party agrees to defend, indemnify and hold the other party harmless from and against any liability, damages, claim or demand by any other broker or other person for bringing about this Sublease who claims to have dealt with such indemnifying party, including any expenses (including reasonable attorney fees) incurred in defending any such claim or demand. At any time during the final twelve (12) months of the Term Sublandlord may advertise the Subleased Premise for rent and may upon reasonable notice (not to exceed two (2) days) to Subtenant show or inspect the Subleased Premises for any reason including any LEED qualification or maintenance. Failure to allow the Sublandlord to show or inspect the Subleased Premises is a material non-curable Default.

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

25.18 Arbitration All claims and disputes arising under or relating to this Agreement between Sublandlord and Subtenant are to be settled by binding arbitration in the state of California. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any such arbitration shall be conducted by an arbitrator experienced in subleases

and shall include a written record of the arbitration hearing. The parties reserve the right to object to any individual who shall be employed by or affiliated with a competing organization or entity. An award of arbitration may be confirmed in a court of competent jurisdiction.

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

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

25.21 Limitation of Sublandlord's Liability

(a) If Sublandlord is a limited partnership or joint venture, neither the general partner or any limited partner(s) of such partnership shall not be personally liable and no general partner or limited partner of Sublandlord shall be sued individually or named individually as a party in any suit or action or service or process be made against any limited partner of Sublandlord.

(b) If Sublandlord is a corporation, the shareholders, directors, officers, employees and/or agents of such corporation shall not be personally liable and no shareholder, director, officer, employee or agent of Sublandlord shall be sued or named as a party in any suit or action or service of process be made against any shareholder, director, officer, employee or agent of Sublandlord.

(c) If Sublandlord is a limited liability company, the members, managers, employees and/or agents of such limited liability company shall not be personally liable and no member, manager, employee or agent of Sublandlord shall be sued or named as a party in any suit or action or service of process be made against any member, manager, employee or agent of Sublandlord.

(d) No general partner, limited partner, shareholder, director, officer, member, manager, employee or agent of Sublandlord shall be required to answer or otherwise plead to any service of process and no judgment will be taken or writ of execution levied against any general partner, limited partner, shareholder, director, officer, member, manager, employee or agent of Sublandlord.

(e) Each of the covenants and agreements of this Section 24.22 shall be applicable to any covenant or agreement either expressly contained in this Sublease or imposed by statute or by common law. Subtenant expressly understands the limitations imposed by this Section and agrees to the same.

25.22 Subleased Premises Control by Sublandlord. Sublandlord reserves full control over the Master Premises, the Building, Subleased Premises, and the Common Areas to the extent not inconsistent with Subtenant's quiet enjoyment and use of Subleased Premises. This reservation includes but is not limited to right of Sublandlord to grant easements and licenses to others, provided any grant of an easement by Sublandlord does not interfere with Subtenant's quiet enjoyment and use of the Subleased Premises, except to the extent the grant of any such easement is approved by Subtenant, required by law, or permitted pursuant to the terms of this Sublease. The covenant of quiet enjoyment reference in this Section shall not apply or be in effect during any time the Subtenant is in Default of this Sublease.

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

25.24 No Recording. Subtenant shall not for any reason record this Sublease or a memorandum of this Sublease. Sublandlord at the option of the Sublandlord may record a memorandum of this Sublease, but the recording shall not change the terms of this Sublease.

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

25.26 Estoppel Certificate. From time to time as reasonably requested by Sublandlord, Subtenant, within five (5) days of written notice from Sublandlord, shall execute, acknowledge, and deliver to Sublandlord a statement in writing in a form reasonably requested by a proposed lender or purchaser (i) certifying that this Sublease is unmodified and in full force and effect, (or, if modified, stating the nature of such modification and certifying that this Sublease as so modified is in full force and effect) and the dates to which the Rent and other charges are paid in advance, if any, (ii) acknowledging that there are not, to Subtenant's knowledge, any uncured defaults on the part of Sublandlord hereunder or specifying such defaults if any are claimed, and (iii) setting forth such further reasonable information with respect to this Sublease or the Subleased Premises as may be requested thereon. Any such statement may be relied upon by any prospective purchaser or encumbrance of all or any portion of the Subleased Premises.

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

27. Master Lease. This Sublease shall be, and remain, subject and subordinate to the terms, covenants, and conditions of the Master Lease, and furthermore, in the event of any conflict or inconsistency between the Sublease and the Master Lease, the provisions of the Master Lease shall govern and prevail. If the Master Lease should terminate for any reason, this Sublease shall likewise terminate with no liability to Sublandlord. Subtenant and Sublandlord agree that the terms and conditions of the Master Lease are incorporated herein by reference, and shall, as between Sublandlord and Subtenant, constitute the terms, covenants, conditions, and provisions of this Sublease, except to the extent that they are inapplicable to, inconsistent with, or modified by the provisions of this Sublease. Subtenant shall strictly comply with each term and condition of the Master Lease. Any breach by Subtenant of any terms of the Master Lease shall be a deemed breach under this Sublease. It is expressly noted that the term of the Master Lease is not the same as the Term of this Sublease. The foregoing does not provide to Subtenant any rights to extend the Term of the Sublease, to only pay the rents due to the CITY from the Sublandlord, to contact the CITY or claim privity with the CITY regarding this Sublease or the Master Lease, or to take the benefit of any provision of the Master Lease enjoyed by the Sublandlord for any reason, including any alleged default by the Sublandlord. The Subtenant expressly waives any right to contest any provision of the Master Lease in existence as of the commencement of the Term of any time during the Term or any modification to the Master Lease. Subtenant shall not commence any litigation or file any claim against the CITY without the express prior approval of the Sublandlord with any approval subject to the sole and absolute discretion of the Sublandlord. Even if the Sublandlord grants consent, the Subtenant shall hold harmless, defend and indemnify the Sublandlord from any claim, expense, liability or action of the CITY regarding the claim of Subtenant.

28. Subtenant Representations, Warranties and Disclaimers. Subtenant as an integral part of this Sublease, the absence thereof would have prevents Sublandlord from entering into this Sublease represents, warrants and acknowledges as follows:

(a) Subtenant has an obligation of continuous operations of the Subleased Premises during regular business hours. Failure to maintain operations by the Subtenant shall substantially damage Sublandlord and shall be a Default of this Sublease.

(b) Subtenant is not relying on the tenancy of any other subtenant or that the Master Premises shall have any level of occupancy or any particular type of subtenant.

(c) Subtenant acknowledges that neither Sublandlord nor anyone acting on the behalf of Sublandlord has made any promises or inducements related to the amount of business or other benefits that Subtenant shall enjoy or recognize as a result of the occupancy of the Subleased Premises.

(d) Subtenant acknowledges that in the event Subtenant leases, utilizes or hires any other portion of the Master Premises that there will be separate lease, license and/or agreement and that the other lease, license and/or agreement shall not merge with this Sublease and shall be limited strictly to its own terms and conditions.

(e) Subtenant acknowledges that the Master Premises are part of a marina and that a marina setting creates potential of injury and accidents which are not associated with other type of commercial properties. Therefore, Subtenant assumes the risk of loss, damage and injury by electing to hire real property in a nautical and maritime related property.

(f) Subtenant acknowledges that although Subtenant is required to maintain the confidentiality of this Sublease, subject to any requirement of the CITY to make its terms public record, Sublandlord may share at the sole election of the Sublandlord information related to the Subtenant in the possession of the Sublandlord and that Subtenant waives any claim to privacy or confidentiality. In executing this Sublease, Subtenant hereby gives to Sublandlord the continuing license and right to inquire upon the credit and financial standing of the Subtenant, which inquiry includes but is not limited to credit checks and other investigations related to the Subtenant.

29. Prohibited Persons. Neither Subtenant nor any of its respective officers, directors, shareholders, partners, members or affiliates (including without limitation indirect holders of equity interests in Buyer) is or will be an entity or person (i) that is listed in the Annex to, or is otherwise subject to the provisions of Executive Order 13224 issued on September 24, 2001 ("EO13224"), (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of "Specifically Designated National and Blocked Persons" (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>), (iii) who commits, threatens to commit or supports "terrorism," as that term is defined in EO13224, (iv) is subject to sanctions of the United States government or is in violation of any federal, state, municipal or local laws, statutes, codes, ordinances, orders, decrees, rules or regulations relating to terrorism or money laundering, including, without limitation, EO13224 and the Uniting and Strengthening America

by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, or (v) who is otherwise affiliated with any entity or person listed above (any and all parties described in clauses (i) – (v) above are herein referred to as a "**Prohibited Person**"). Subtenant covenants and agrees that neither Subtenant nor any of Subtenant's respective officers, directors, shareholders, partners, members or affiliates (including without limitation indirect holders of equity interests in Subtenant) shall (aa) conduct any business, nor engage in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person, or (bb) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO13224. The provisions of this Section shall survive the Term or termination of this Sublease.

30. Offer. The presentation of this Sublease to Subtenant shall not be deemed an offer by Sublandlord but is merely a part of negotiation. No part of this Sublease shall be binding on Sublandlord until it is signed by both Sublandlord and Subtenant.

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

Date of Execution: {DATED}

Sublandlord: DRISCOLL MISSION BAY,
LLC.

By: Thomas A. Driscoll

Thomas A. Driscoll,
Its: President

Date of Execution: {DATED}

Subtenant: Offshore Blue Adventures

By: Evan Cooney

Evan Cooney
Its: President

Exhibit and Schedule List

Exhibit A.....	Subleased Premises
Schedule 3.....	Base Rent..
Schedule 3.2.....	Percentage Rent
Schedule 3.4.....	Rent
Exhibit C.....	Port Percentage Rent Rates
Exhibit D.....	Guaranty of Sublease
Exhibit E.....	Contract for Commercial Wharfage

EXHIBIT A

Subleased Premises

Driscoll Mission Bay

1500 Quivira Way, San Diego, CA 92109

DRISCOLL MISSION BAY LLC/ Offshore Blue Adventures, LLC
Standard Sublease, Modified Gross

ver.01012025

Schedule 3

BASE RENT

Sublease square footages and rates are as follows:

Amount	Type	Rate	Total	
100 sqft	Office Space	\$2.50 per foot	\$250.00	
	Office Utilities	20% office space	\$50.00	
			\$300.00	Base Rent Total

The Base Rent shall be as follows:

From January 1, 2025, to December 31, 2025, the Base Rent shall be:

Three Hundred Dollars Per month without set-off or credit. Each year the rent will increase by three percent (3%) resulting in the following schedule:

Year	Beginning Date	End Date	Monthly Rent
2	January 1, 2026	December 31, 2026	\$309
3	January 1, 2027	December 31, 2027	\$318.27

SCHEDULE 3.2

PERCENTAGE RENT

Subtenant agrees to pay to Sublandlord as Percentage Rent an amount equal to 10% of all gross revenue resulting from Subtenant's charter boat operations. Percentage Rent shall be paid monthly by Subtenant commencing upon the generation of any gross sales from Charter Boat Operations. Subtenant shall furnish or cause to be furnished to Sublandlord a statement of the monthly gross income within five (5) business days after the end of each month and a statement of the annual gross income within thirty (30) days after the expiration of each year of the Term. Such statements shall be in a form mutually acceptable to Sublandlord and Subtenant but shall provide sufficient detail for Sublandlord's certified public accountant to be able to accurately determine the gross income. Such statements shall be certified as an accurate accounting of Subtenant's gross income by an authorized representative of Subtenant and shall be determined according to generally accepted accounting principles; provided, however, if Subtenant does not maintain books and records according to GAAP, the statements of gross income shall also be certified by an independent certified public accountant reasonably approved by Sublandlord.

All sales originating at the Subleased Premises shall be deemed made and completed from the Premises, even though bookkeeping or payment of the account is transferred to another location for collection or filling of the sale or service order and actual delivery of the merchandise is made from a location other than the Subleased Premises. Subtenant shall use good faith efforts to maximize gross income from the Subleased Premises. At the time of a sale or other transaction, Subtenant shall record the transaction in the presence of the customer, either in a cash register or computer with sealed continuous tape or by using any other method of recording sequentially numbered purchases and keeping a cumulative total. For a period of three (3) years following the expiration of the Term, Subtenant shall keep full and accurate books of account and records relative to transactions from the Subleased Premises in accordance with generally accepted accounting principles consistently applied. The books of account and records kept and maintained by Subtenant for audit purposes will include all records, receipts, journals, ledgers and documents reasonably necessary to enable Sublandlord or its auditors to perform a complete and accurate audit of gross income in accordance with generally accepted accounting principles.

Sublandlord, at any time within three (3) years after receipt of any statement of monthly gross income or statement of annual gross income and upon no less than five (5) business days' advance written notice delivered to Subtenant, may cause an audit to be made of Subtenant's gross income and all of Subtenant's records and books regarding gross income. Subtenant shall make available for the audit at the Subleased Premises all of the books and records including, without limitation, such records, books or accounts as would normally be examined or prepared by an independent accounting firm pursuant to generally accepted accounting principles consistently applied in order to ascertain, document or substantiate gross income and Percentage Rent. Subtenant will make all such books and records available for the audit at Subtenant's Accountant's office in San Diego

County, California. Subtenant may maintain such records and accounts in digital (non-paper) format, as long as Sublandlord has access to such records and accounts in exercising its rights pursuant to this Lease. If the audit discloses an underpayment of Percentage Rent, Subtenant shall immediately pay to Sublandlord the amount of the underpayment, with interest at the rate of ten percent (10%) per annum from the date the payment should have been made through and including the date of payment within five (5) business days of such determination.

SCHEDULE 3.4

RENT

The monthly rent owed under the Sublease will be Base Rent, Percentage Rent of 10%, and any additional rent allowed under the sublease.

EXHIBIT C

PERCENT RENT RATES

Listed below are the existing rental rates for Driscoll Mission Bay

Revenue Category

Existing Rental Rate

Charter Boat Sales

10%

Non approved uses

20%

Percentage rent will apply to only uses approved uses in this sublease. Any other uses must be approved in writing by Sublandlord

EXHIBIT D

GUARANTY OF SUBLEASE

This Guaranty of Sublease (the "Guaranty") is dated as of January, 10, and is made and entered into by Evan Cooney, an individual, and Lauren Cooney, an individual (collectively the "Guarantors" and individually each a "Guarantor").

RECITALS

A. This Guaranty is being executed and delivered by each Guarantor as a guaranty of that certain Sublease – Modified Gross dated as of January 10, (the "Sublease") between Driscoll Mission Bay LLC, a California limited liability company, as Sublessor, and Offshore Blue Adventures, a limited liability company, as Sublessee, covering the Premises as described in the Sublease.

B. Unless otherwise defined in this Guaranty, all capitalized terms used in this Guaranty have the same definitions as are set forth in the Sublease.

AGREEMENT

In consideration of the recitals (which are incorporated herein and made a part hereof), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Guarantor agrees, covenants, represents and warrants as set forth below.

1. Guaranty. Guarantors hereby jointly, severally, unconditionally (but subject to the terms set forth herein) and irrevocably guaranty the timely payment and performance of all rent, charges, and obligations of Sublessee under the Sublease and all other documents evidencing or securing the obligations under the Sublease (collectively, the "Guaranteed Obligations"). This Guaranty is a guaranty of payment and performance and not of collection. This Guaranty will survive the termination of the Sublease and will continue in full force and effect with respect to any of Sublessee's obligations under the Sublease which are not fully performed upon the termination of the Sublease.

2. Rights of Sublessor. Each Guarantor authorizes Sublessor to, at any time and from time to time, in Sublessor's discretion: (a) take and hold, and apply, any security for the Guaranteed Obligations; (b) accept additional or substituted security; (c) subordinate, compromise or release any security; (d) release Sublessee or any other person from its liability for all or any part of the Guaranteed Obligations; (e) participate in any settlement offered by Sublessee or any guarantor, whether in liquidation, reorganization, receivership, bankruptcy or otherwise; (f) release, substitute or add any one or more guarantors or endorsers; (g) assign this Guaranty and/or the Guaranteed Obligations in whole or in part; or (h) modify, extend and/or amend the Guaranteed Obligations. Sublessor may take any of the foregoing actions upon any terms and conditions as Sublessor may elect, without giving notice to Guarantors or obtaining the consent of Guarantors and without affecting the liability of Guarantors to Sublessor.

3. Independent Obligations. Guarantors' obligations under this Guaranty are independent of those of Sublessee or of any other guarantor. Sublessor may bring a separate action against Guarantors without proceeding (either before, after or concurrently) against Sublessee or any other guarantor or person or any security held by Sublessor and without pursuing any other remedy. Sublessor's rights under this Guaranty will not be exhausted by any action of Sublessor until all of the Guaranteed Obligations have been fully performed.

4. Waiver of Defenses. Each Guarantor waives: (a) any right to require Sublessor to proceed against Sublessee or any other person or any security now or hereafter held by Sublessor or to pursue any other remedy whatsoever, including, without limitation, any such right or any other right set forth in or arising out of Sections 2845, 2848, 2849, 2850, 2855 or 3433 of the California Civil Code; (b) any defense based upon any legal disability of Sublessee or any guarantor, or any discharge or limitation of the liability of Sublessee or any guarantor to Sublessor, or any restraint or stay applicable to actions against Sublessee or any other guarantor, whether such disability, discharge, limitation, restraint or stay is consensual, or by order of a court or other governmental authority, or arising by operation of law or any liquidation, reorganization, receivership, bankruptcy, insolvency or debtor-relief proceeding, or from any other cause; (c) all setoffs, counterclaims, presentment, demand, protest or notice of any kind, except for any notice which may be expressly required by the provisions of this Guaranty; (d) any defense based upon the modification, renewal, extension or other alteration of the Guaranteed Obligations, or of the documents executed in connection therewith; (e) any defense based upon the negligence of Sublessor, including, without limitation, the failure to file a claim in any bankruptcy of the Sublessee or any guarantor; (f) any defense based upon a statute of limitations and any defense based upon Sublessor's delay in enforcing this Guaranty; (g) all rights of subrogation, reimbursement, indemnity, all rights to enforce any remedy that Sublessor may have against Sublessee, and all rights to participate in any security held by Sublessor for the Guaranteed Obligations including, without limitation, any such right or any other right set forth in Sections 2845, 2848 or 2849 of the California Civil Code, until the Guaranteed Obligations have been paid and performed in full; (h) any defense based upon or arising out of any defense that the Sublessee or any other person may have to the performance of any part of the Guaranteed Obligations other than Sublessor's prior material breach; (i) any defense based upon the death, incapacity, lack of authority or termination of existence or revocation hereof by any person or entity, or the substitution of any party hereto; (j) any defense based upon or related to Guarantors' lack of knowledge as to Sublessee's financial condition; (k) any defense based upon Section 2809 of the California Civil Code; (l) any and all rights to revoke this Guaranty in whole or in part, and all rights and benefits of Section 2815 of the California Civil Code; (m) any defense based upon any action taken or omitted by Sublessor in any bankruptcy or other insolvency proceeding involving Sublessee, including any election to have Sublessor's claim allowed as secured, partially secured or unsecured, any action taken by the Sublessor in connection with a motion to assume, assign or reject the Sublease, any extension of credit by the Sublessor to the Sublessee in any such proceeding, and the taking and holding by the Sublessor of any security for any such extension of credit; (n) any right or defense that is or may become available to the Guarantors by reason of California Civil Code Sections 2787 to California Civil Code Sections 2855, 2899 and 3433; and (o) all

rights and defenses arising out of an election of remedies by Sublessor, even though that election of remedies destroys or impairs Guarantors' right of subrogation and/or reimbursement against Sublessee.

5. Bankruptcy. Until all of the Guaranteed Obligations have been paid and performed in full, Guarantors will not, without the prior written consent of Sublessor, commence, or join with any other person in commencing, any bankruptcy, reorganization, or insolvency proceeding against Sublessee. The obligations of Guarantors under this Guaranty will not be altered, limited, or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation, or arrangement of Sublessee, or by any defense Sublessee may have by reason of any order, decree, or decision of any court or administrative body resulting from any such proceeding. No limitation upon or stay of the enforcement of any obligation of Sublessee by virtue of any such proceeding will limit or stay Sublessor's enforcement of Guarantors' payment or performance of such obligation under this Guaranty. In furtherance of the foregoing, each Guarantor agrees that if acceleration of the time for payment of any amount payable by Sublessee under the Sublease or in respect of the other Guaranteed Obligations is stayed for any reason, all such amounts which would be subject to acceleration will nonetheless be deemed to be accelerated for purposes of this Guaranty and the full amount thereof will be payable by Guarantors hereunder forthwith upon demand, except as otherwise specifically provided in this Guaranty. Guarantors will file in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law all claims that Guarantors may have against Sublessee relating to any indebtedness of Sublessee to Guarantors, and will, upon request, assign to Sublessor all rights of Guarantors thereunder. In all such cases, whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim will pay to Sublessor the amount payable on such claim. Guarantors hereby assign to Sublessor all of the Guarantors' rights to any such payments or distributions to which Guarantors would otherwise be entitled; provided, however, that Guarantors' obligations hereunder will not be satisfied except to the extent that Sublessor receives cash by reason of any such payment or distribution. If Sublessor receives anything hereunder other than cash, the same will be held as collateral for amounts due under this Guaranty.

6. Costs and Expenses. Each Guarantor agrees to pay, jointly and severally, upon Sublessor's demand, Sublessor's reasonable out-of-pocket costs and expenses including, but not limited to, attorneys' fees, costs and disbursements incurred in any effort to collect or enforce any of the Guaranteed Obligations or this Guaranty, regardless whether any lawsuit is filed, and in the representation of Sublessor in any insolvency, bankruptcy, reorganization or similar proceeding relating to Sublessee or Guarantors. Until paid to Sublessor, such sums will bear interest from the date such costs and expenses are incurred at the rate set forth in the Sublease for past due obligations. The obligations of the Guarantors under this section will include payment of all such costs and expenses incurred by Sublessor in enforcing any judgments.

7. Reinstatement. The liability of Guarantors hereunder will be reinstated and revived, and the rights of Sublessor will continue, with respect to any amount at any time paid on account of the Guaranteed

Obligations which Sublessor is thereafter required to restore or return or which is avoided in connection with the bankruptcy, insolvency or reorganization of Sublessee or otherwise, all as though such amount had not been paid. The determination as to whether any such payment or performance must be restored or returned will be made by Sublessor, in its sole discretion; provided, however, that if Sublessor chooses to contest any such matter, each Guarantor agrees to indemnify, defend and hold harmless Sublessor from all costs and expenses (including, without limitation, reasonable legal fees and disbursements) of such contest. Further, upon demand from Sublessor, Guarantors will restore or return such payment or performance directly on Sublessor's behalf in furtherance of Guarantors' obligations hereunder. Sublessor will be under no obligation to return or deliver this Guaranty to Guarantors, notwithstanding the payment of the Guaranteed Obligations. If this Guaranty is nevertheless returned to Guarantors or is otherwise released, then the provisions of this Guaranty will survive such return or release, and the liability of Guarantors under this Guaranty will be reinstated and continued under the circumstances provided herein notwithstanding such return or release.

8. Subordination. Any indebtedness of Sublessee to Guarantors now or hereafter existing will be, and such indebtedness hereby is, deferred, postponed and subordinated to payment and performance of the Guaranteed Obligations. Any payment made to Guarantors by Sublessee or any third party with respect to the indebtedness subordinated hereunder at any time when a default exists under the Sublease or while any Guaranteed Obligations are otherwise then payable or performable will be held in trust by Guarantors for the benefit of Sublessor and will be turned over to Sublessor immediately upon receipt thereof for application by Sublessor against the Guaranteed Obligations. Any lien, charge or claim which Guarantors now have or hereafter may have on or to any real or personal property of Sublessee (including, without limitation, any real property subject of the Sublease, the personal property located thereon, any rights therein and related thereto, and the revenue and/or income realized therefrom) and any security for any loans, advances or other indebtedness of Sublessee to Guarantors, will be, and hereby is, subordinated to the payment and performance of the Guaranteed Obligations.

9. Representations and Warranties. Each Guarantor makes the following representations and warranties, which are deemed to be continuing representations and warranties until payment and performance in full of the Guaranteed Obligations: (a) Guarantor has all the requisite power and authority to execute, deliver and be legally bound by this Guaranty on the terms and conditions herein stated; (b) Guarantor has all the requisite power and authority to transact any other business with Sublessor as necessary to fulfill the terms of this Guaranty; (c) this Guaranty constitutes the legal, valid and binding obligations of Guarantors enforceable against Guarantors in accordance with its terms; (d) neither the execution and delivery of this Guaranty nor the consummation of the transaction contemplated hereby will, with or without notice and/or lapse of time: (i) constitute a breach of any of the terms and provisions of any note, contract, document, agreement or undertaking, whether written or oral, to which Guarantor is a party or to which Guarantor's property is subject; (ii) accelerate or constitute any event entitling the holder of any indebtedness of Guarantor to accelerate the maturity of any such indebtedness; (iii) conflict with or result in a breach of any writ, order, injunction or decree

against Guarantor of any court or governmental agency or instrumentality; or (iv) conflict with or be prohibited by any federal, State, local or other governmental law, statute, rule or regulation; (e) no consent of any other person not heretofore obtained, and no consent, approval or authorization of any person or entity, is required in connection with the valid execution, delivery or performance by Guarantor of this Guaranty; (f) Guarantors presently have and will at all times maintain sufficient assets and tangible net worth to timely pay and perform all of the Guaranteed Obligations, and Guarantors will not take any action or participate in any transaction which would materially impair Guarantors' ability to so pay and perform the Guaranteed Obligations; and (g) neither this Guaranty nor any other statement furnished by Guarantors to Sublessor in connection with the transactions contemplated hereby (including, without limitation, any financial statements or other business information) contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements contained herein or therein true and not misleading.

10. No Assignment. Each Guarantor's obligations hereunder are personal to such Guarantor, and such Guarantor may not assign or delegate any of his, her or its obligations under this Guaranty without Sublessor's prior written consent, which consent may be withheld in Sublessor's sole, absolute and arbitrary discretion.

11. Guarantor Information. Each Guarantor will promptly supply such financial statements and business information regarding such Guarantor as may reasonably be requested from time to time by Sublessor or any lender or prospective purchaser of Sublessor for the purpose of evaluating the creditworthiness of each Guarantor and each Guarantor's ability to perform his or her obligations under this Guaranty, but not more than one (1) time per calendar year.

12. Sublessee's Financial Condition. Each Guarantor is relying upon his, her or its own knowledge and has made such investigation as Guarantor has deemed necessary with respect to Sublessee's financial condition. Guarantor assumes full responsibility for keeping fully informed of the financial condition of Sublessee and all other circumstances affecting Sublessee's ability to pay and perform its obligations under the Sublease, and agrees that Sublessor will have no duty to report to Guarantor any information which Sublessor receives about Sublessee's financial condition or any circumstances bearing on Sublessee's ability to perform. Each Guarantor agrees that Sublessor has made no representations or assurances regarding Sublessee's financial condition or Sublessee's ability to pay and perform Sublessee's obligations under the Sublease.

13. Default. The occurrence of any one or more of the following events will, at the election of Sublessor, be deemed an event of default under this Guaranty: (a) Guarantors fail to pay any monetary Guaranteed Obligation within five (5) days after demand from Sublessor; (b) Guarantors fail to perform any non-monetary Guaranteed Obligation within fifteen (15) days after demand therefor from Sublessor (or, Guarantors are not able, through the use of commercially reasonable efforts, to perform such Guaranteed Obligation within a fifteen (15) day period, if Guarantors do not commence to perform such obligation within such fifteen (15) day period and diligently pursue such performance to completion within an additional ninety (90) days after the expiration of the initial fifteen (15) day

period); (c) Guarantors fail or neglect to perform, keep or observe any other term, provision, agreement or covenant contained in this Guaranty within fifteen (15) days following written notice by Sublessor; (d) the commencement of any liquidation, reorganization, receivership, bankruptcy, assignment for the benefit of creditors or other similar proceeding by or against either Guarantor; (e) if any representation or warranty made in this Guaranty will be or become false in any material respect; or (f) the death or legal incapacity of either Guarantor. Upon the occurrence of an event of default under this Guaranty, at the option of Sublessor, the Guaranteed Obligations will be accelerated and will all be due and payable and enforceable against Guarantors (regardless whether the Guaranteed Obligations are then due and payable under the Sublease or otherwise) and Sublessor may, in its sole discretion, in addition to any other right or remedy provided by law or at equity, all of which are cumulative and non-exclusive, proceed to suit against the Guarantors.

14. Transfer by Sublessor. Sublessor may sell, assign, or otherwise transfer its interest in the Premises, the Sublease or this Guaranty at any time. If Sublessor transfers (other than for collateral security purposes) the ownership of Sublessor's interest in the Sublease, this Guaranty will, unless Sublessor elects otherwise, in writing, automatically apply in favor of the transferee with respect to all Guaranteed Obligations arising or accruing from and after the date of the transfer. In addition, this Guaranty will remain in full force and effect in favor of the transferor with respect to all Guaranteed Obligations arising or accruing under the Sublease prior to the date of the transfer including, without limitation, all Guaranteed Obligations relating to Sublessee's indemnity and insurance obligations (and similar obligations) under the Sublease with respect to matters arising or accruing during the transferor's period of ownership.

15. Severability. If any one or more of the covenants, provisions or terms of this Guaranty is, in any respect, held to be invalid, illegal or unenforceable for any reason, the remaining portion thereof and all other covenants, conditions, provisions, and terms of this Guaranty will not be affected by such holding, but will remain valid and in force to the fullest extent permitted by law.

16. Notices.

16.1 All notices, demands and other communications with, to, from or upon the Guarantors and the Sublessor required or permitted hereunder will be in writing, addressed to the parties at their respective addresses as follows: (a) with respect to Sublessor, to the notice address(es) for Sublessor under the Sublease; and (b) with respect to Guarantors, unless a separate notice address is specified on the signature page of this Guaranty, to Guarantors in care of Sublessee at the notice address(es) for Sublessee under the Sublease; or (c) as to either, at such other address as will be designated in a written notice to the other complying with the terms of this section.

16.2 All notices required or permitted to be given hereunder will be deemed to be duly given upon receipt if such notice is deposited with the United States Postal Service, postage prepaid by the sender, for mailing via U.S. certified mail, return receipt requested or sent by a nationally recognized overnight delivery service, such as Federal Express, with next day delivery charges prepaid by the sender. If any notice is not received or cannot be delivered due to a change in address of the intended

recipient, of which notice was not properly given to the sending party, or due to a refusal to accept by the intended recipient, such notice will be effective on the date delivery is attempted.

17. General Terms. No provision of this Guaranty or Sublessor's rights hereunder may be waived or modified or can Guarantors be released from their obligations hereunder except by a writing executed by Sublessor. No such waiver will be applicable except in the specific instance for which given. No delay or failure by Sublessor to exercise any right or remedy against Sublessee or Guarantors will be construed as a waiver of that right or remedy. All remedies of Sublessor against Sublessee and Guarantors are cumulative. This Guaranty will be governed by and construed under the laws of the State of California. The provisions of this Guaranty will bind and benefit the successors and assigns of Guarantors and Sublessor. The term "Sublessee" will mean not only the Sublessee named herein but also any other person or entity at any time occupying all or any portion of the Premises or assuming or otherwise becoming liable (other than as a guarantor) for all or any part of the Guaranteed Obligations. This Guaranty constitutes the entire agreement between Guarantors and Sublessor with respect to its subject matter, and supersedes all prior or contemporaneous agreements, representations and understandings.

18. Termination. This Guaranty shall terminate at such time as all of the following have occurred: (a) the Sublease has expired; (b) all of Sublessee's obligations under the Sublease have been satisfied in full, and no default by Sublessee then exists under the Sublease; and (c) no default exists under this Guaranty.

19. Joint and Several Liability. The obligations of the Guarantors will be joint and several and the unenforceability of this Guaranty or Sublessor's election not to enforce this Guaranty against one of the Guarantors will not affect the obligations of the other Guarantor or the enforceability of this Guaranty against the other Guarantor.

All headings in this Guaranty are for convenience only and will be disregarded in construing the substantive provisions of this Guaranty.

IN WITNESS WHEREOF, this Guaranty has been duly executed by Guarantors and delivered to Sublessor as of the date referenced above.

GUARANTORS:

Evan Cooney

Evan Cooney
Evan Cooney (Jan 10, 2025 2:36 PST)

Telephone: () 6198062663

Telephone: (____) _____

EXHIBIT D

Contract for Commercial Wharfage

See Attached



Driscoll Mission Bay Marina

Maritime Contract for Commercial Wharfage

1500 Quivira Way, San Diego, CA 92109

Marina: 619-321-3887 | Fax: 619-374-1301 |

info@driscollmissionbay.com

Owner's Name: Evan Cooney

Alternate Phone: 6198062663

Co-Owner Name: _____

Driver's License #: _____

Billing Address: 1225 Pacific Beach Dr. Unit

Social Security No: 524917918

E-mail: evancooney12@gmail.com

Owner Bank Reference, Acct Type & Number: _____

Phone: _____

Proof of Residence Provider and Acct #: _____

Have you ever been evicted from a previous marina? Yes or No – if yes, please explain:

Vessel Information

Vessel Name: Unnamed

Hull #: XDCR242BB101

Make: Zodiac Model: 650 Pro Color: _____ Construction: Zodiac Year: 200

Length (LOA): 22ft Beam: _____ Draft: _____ CF #: CF672E Expiry Date: 01/01/

☐ Power, Single Screw ☐ Power, Twin Screw ☐ Sail (Rig: _____) Gas ☐ Diesel ☐

Holding Tank: ☐ Yes ☐ No Type: _____ Bottom Paint: ☐ Yes ☐ No Type: _____ Age: _____

Current Mooring Location: _____ Phone #: _____

Reason for Leaving Current Location: _____

I authorize Driscoll Mission Bay to contact and/or verify any of the above

Dinghy Information: Length: _____ Beam: _____ Color: _____ Make: _____ H/P Outboard: _____

Vehicle Information: Silver Mazda Sport (Year, Make, Model, Color, License Plate)

_____ (Year, Make, Model, Color, License Plate)

****LIVEABOARDS NOT ALLOWED AT DRISCOLL MISSION BAY MARINA****

Office Use Only:

Start Date: _____ 4-month min. ☐ Month to Month ☐

Slip No. _____

Fees per ft. _____ by Slip Length ☐ by Vessel Length ☐

****Slip & utility fees calculated at the greater of slip or vessel length**

Deposits

Slip Rent (Wharfage): _____

PFD x 1.5 Security Deposit _____

30 amp = \$1/foot: _____

PFD x _____ Security Deposit _____

50 amp = \$2/foot: _____

\$100 per key card _____

\$50 per locker # _____

\$50 per locker _____

Holders of Mortgage /Other Liens Against Vessel:

Name: N/A Phone#: N/A

Insurance: Company: Markel (Overseas Insurance) Policy # TBD - Binding ag Renewal Date
Insurance Agent: Melissa Garcia Phone # (619) 222-1111

Before locating a vessel at the marina a Certificate of Insurance must be provided.

Contract Acknowledgement:

This Maritime Contract for Private Wharfage is executed this day of , 20, between Driscoll Mission Bay, LLC (the "Marina") and the Owner(s) identified above, and whose signature(s) appears below.

*****Please note there is a minimum stay of four months on all month to month contracts*****

This Contract does not become effective or enforceable until Owner's Application has been approved and this Contract has been executed by an authorized Marina representative.

It is understood and agreed this is a commercial contract and does not create a bailment or a residential landlord-tenant relationship. This contract may be cancelled by the Owner or the Marina, with 30 day notice, and the Vessel must be removed from the marina at the end of that period. With 30-day notice, the Performance Fee will be applied to the last month's slip rent. This contract may be cancelled for cause by the Marina, with no notice, and the Vessel must be removed from the marina immediately.

The terms of this Contract appear herein, and in the Additional Terms and Conditions, and in the Rules and Regulations, all of which are integral and material parts of the Contract and are fully incorporated herein. It is understood that this Contract specifies rights and obligations of the parties to this Contract, and that it contains important terms, including ones exonerating Driscoll Mission Bay, LLC from liability not occasioned by gross negligence or willful misconduct.

By signing below Owner affirms he/she is legally permitted and authorized by all owners of the above described Vessel (the "Vessel") to enter into this Contract for their benefit and the benefit of the above Vessel. Owner shall signify by signing where indicated below that he/she has received a complete copy of this Contract, has read it and agrees to abide by all its terms. In addition, for the convenience of vessel owners, copies of this Contract are available at the Marina Office upon request by the Owner.

In the event the Vessel is owned by a corporation or other business entity rather than a single individual, the person whose signature appears below denotes he or she agrees to be held *personally and severally liable*, together with such business entity, for satisfaction of the duties of the Owner and Vessel hereunder, including but not limited to the obligations pertaining to payment of wharfage and other fees.

Dated: 01/10/25, 20

Evan Cooney

Dated: 14/01/25, 20

Vessel Owner's Signature

Authorized Marina Representative

ACH/ Bank Debit Use Authorization:

I, the undersigned, hereby authorize on a standing (ongoing) basis Driscoll Mission Bay, LLC's authorized representative to charge to the following bank account any and all charges/fees which are due and have not been received by the 1st calendar day of any month in which such charges/fees are due, and I further agree to indemnify, defend and hold the Marina harmless from and against any liability that arises or might arise in connection with the Marina's use or attempted use of such bank account for the above stated purpose, and I further represent that the following information is true and correct and that I will immediately inform the Marina Manager in the event any such information changes:

Bank Routing Number TBD - In process of opening Account Number TBD - In process of opening

Name as It Appears on the Account Evan Cooney / Lauren Cooney Bank Name American Express

Evan Cooney
Evan Cooney (Jan 10, 2025) (07:26 PST)
Authorized Account Holder/Owner

10/01/25
Date

MARITIME CONTRACT FOR PRIVATE WHARFAGE
TERMS and CONDITIONS

1. **Space Assignment / Slip Use and Condition.** The Marina hereby assigns to owner the slip identified above for Owner's exclusive use in connection with the Vessel described herein. Owner may relocate to another slip only upon obtaining the advance express written permission of the Marina. Marina shall have the right at any time, in its sole discretion and without compensation to Owner, to reassign Owner's Vessel to a different slip. Owner further agrees that Marina shall have the right, in the event of emergency or operational necessity, to immediately, and without prior notice to Owner, relocate Owner's Vessel to another suitable slip or end tie. Owner hereby grants to Marina permission in such circumstances to board the Vessel for the purpose of moving the Vessel to another slip, in which event it is understood and agreed neither the Marina, nor its employees, officers or agents shall be liable for any loss/damage resulting from such movement of the Vessel, or failure to move her. Vessel Owner hereby acknowledges that he/she has inspected the Slip, its surrounding environs and those portions of the Marina associated with the Slip, including without limitation, the floats, walks, and gangways, and that they are in good and safe order, and that the Marina has made no statement or representation as to condition of such areas. Owner understands the Marina does not warrant the condition of the slip or surrounding environs, and that, except as otherwise provided herein, users of the docks, ramps and all other waterfront areas do so at their own sole risk.
2. **Fee Structure, Monthly Term, Fee/Deposit Increases.** The wharfage fee structure is based in part upon the maximum allowable vessel size of the slip assigned. All Vessels are subject to measurement by the Marina, and the wharfage fee will be determined by computations using the then-current fee schedule in effect. Fees are payable in advance at the time of the final execution of the Wharfage Contract ("Contract") and on the FIRST (1st) DAY of each succeeding calendar month thereafter. If the date of commencement of the term occurs on a day other than the first day of the calendar month, the rent shall be prorated by multiplying the number of days remaining in such initial month times the monthly rent and dividing the total by 30. Owner shall, upon final execution of the Contract and the assignment of a berthing space tender the restroom and access key/card/fob deposit(s), the security and performance deposits, and other deposits described herein, and in addition tender a sum equal to the fees due for the first month. The Owner understands that the Marina may increase wharfage and/or other fees at any time upon thirty (30) day notice to Owner. Notice of fee increases shall be deemed effective 10 calendar days after posting notice on the bulletin board, which is located at the main public entrance to the docks. The Marina may elect, alternatively or additionally, to provide notice of any fee increase by way of written notification tendered through the U.S. mail, in which event fee increases shall become effective thirty (30) calendar days after the written notification is deposited in the U.S. mails. Adjustments in slip fees shall become effective on the first day of the calendar month next following. For example, if notice of an increase is provided on January 15, the new rates would become effective March 1. Upon notification of an increase in fees, Owner may elect to provide 30 days written notice of termination of this Contract, in the manner specified herein. If in the event the Owner fails to pay any new slip fee after its effective date, the parties agree that such failure shall constitute a material breach, and that the Marina may immediately terminate this Contract as of the effective date of the fee increase. If the Marina elects to increase fees as herein provided, Owner may be required to either execute a new Contract for Private Wharfage or (at the Marina's option) execute an Amendment or other writing evidencing the new rate and any new or revised terms. Owner's contractual right to occupy his/her assigned slip is not automatically renewable but can only be renewed if Owner abides by each and all his/her contractual duties detailed in this Contract, including the duty to make timely monthly payment of fees.
3. **Security Deposit.** Owner shall, before locating his or her vessel at the Marina, tender to the Marina the sum identified above as the security deposit (the "Deposit"). Upon termination of this Contract, but only after and upon the condition that Owner has vacated the space in an undamaged condition (save ordinary wear and tear) and performed all of Owner's promises under the Contract (including payment of all fees, utility charges and other charges) and returned all access keys/cards/fobs before the vessel vacates, the Marina shall refund to Owner the total Deposit received by Owner, less any amount necessary to pay for repairing or cleaning the Slip or any other fees or charges owed by Owner within the next 30 days. Owner may not use the Deposit as, nor deduct it from, the slip fee for any month. However, the Marina may elect at any time to apply the Deposit to wharfage or other account arrearages, or for purposes of effecting repairs necessary due to damage to the Marina's property caused by Owner (or his/her guest/invitee), in which event the Owner shall immediately become obligated to tender the sum necessary to replace any security deposit funds applied to wharfage fee or other arrearages, or used for such repairs and/or cleaning. Should Marina increase the monthly wharfage fee or Owner transfers to a larger slip, there will be a proportional increase in the amount of the Deposit to correspond with the new monthly fee. Owner acknowledges and agrees that no interest shall be payable by the Marina on any Deposit held by the Marina, and that the Marina shall not be required to keep the Deposit separate from its general funds.
4. **Performance Deposit.** Owner shall, before locating his or her vessel at the Marina, tender to the Marina the sum identified above as the Performance Deposit. Upon termination of this Contract, if all wharfage and other fees are current, the

Performance Deposit may be applied to the last month's wharfage fee. Should Marina increase the monthly wharfage fee or Owner transfers to a larger slip, there will be a proportional increase in the amount of the Deposit to correspond with the new monthly fee. Owner acknowledges and agrees that no interest shall be payable by the Marina on any Deposit held by the Marina, and such deposit shall not be required to be kept separate from its general funds.

5. **Utilities fee for each slip.** For vessels with 30 Amp shore power systems, utility fees will be calculated at \$1.00 per ft. per plug by the greater of slip length or vessel length. For vessels with 50 Amp shore power systems, utility fees will be calculated at \$2.00 per ft. per plug by the greater of slip length or vessel length. Owner shall pay to the Marina the sum invoiced for utilities, together with wharfage and any other fees due. Electricity may be metered separately if determined by the marina to be necessary depending on the individual vessel. Owner agrees that if he or she challenges the accuracy of said meter used to quantify the electricity used, he/she will pay all costs associated with verifying the accuracy of the meter.
6. **Time and Place for Payment of Monthly Wharfage Fees.** Owner shall tender all payments hereunder to Driscoll Mission Bay, LTD, 1500 Quivira Way, San Diego, CA 92109, or such other place as may be designated. Payments of all fees and charges are due on the **FIRST (1st)** day of each month, or upon being invoiced by the marina. **Non-payment of all Fees by the THIRD (3rd) Day of the month shall be regarded as delinquent.** Interest shall accrue on all arrearages at the rate of one percent (1%) per month, or the maximum amount allowable by law if less. **Fees and charges not paid by the 3rd calendar day, shall result in imposition of a Ten Percent (10%) late charge.** There will be a \$100 administrative fee charged for any check returned as un-payable, for any reason. After tender of a returned check Marina may require Owner to thereafter tender payment by bank check or money order. Owner shall, if requested by the Marina, provide credit card information (above) and he/she specifically authorizes the Marina to utilize such information to make charges against the listed credit card, should Owner's fail to pay fees due by the 15th calendar day of a month in which such fees are due, and he/she specifically authorizes charges to continue to such card as necessary to maintain the account current. If fees and charges that are due have not been paid by the 15th calendar day of the month in which they are due, such nonpayment shall constitute a material breach of this Contract, in which event the Marina may immediately terminate this Contract and pursue all remedies available in admiralty, at law or in equity. Unless otherwise agreed to in writing by the parties, this Contract shall terminate automatically and without further notice if for any reason the account for the Vessel becomes two or more months in arrears, in which event Owner shall immediately remove his/her Vessel from the Marina's premises. If the Vessel is not so removed, she will be regarded as a trespasser and wharfage fees will be assessed at the then current trespasser transient vessel rates of 5.00 per ft. per day.
7. **Remedies Available to the Marina in the Event of Non-Payment.** Owner specifically agrees that if fees due are not paid by the **TWENTIETH (20th)** calendar day of each month or if the Owner in Marina's opinion has abandoned the Vessel, the Marina shall become entitled, without providing advance notice, to chain the Vessel to the slip where she lies, otherwise disable her, and/or move the Vessel to any other location in the water or on land and chain the vessel at her new location. Owner specifically agrees that if the Marina elects to move, chain or otherwise disable the vessel as herein provided, Owner shall indemnify, defend and hold the Marina harmless from and against all liability arising from or in any way connected with the chaining, disablement or movement of the Vessel. Owner shall in such event remain liable for the full amount of the monthly fees as they become due, notwithstanding the vessel has been moved and/or chained or disabled. In the event Owner fails to pay all fees due by the **TWENTIETH (20th) DAY** of a month when they are due, the Marina may, at its sole election, take all measures available to enforce its remedies available in admiralty, at law and/or equity, including vessel arrest or attachment, sale of the Vessel pursuant to federal maritime law, the California Boaters Lien Law, and any other available remedy, without prior notice to Owner, and may exercise other rights herein detailed. Owner understands that maritime law provides a vessel may be arrested by the U.S. Marshal to satisfy a maritime lien arising from the provision of maritime necessities, including wharfage services. By execution of this Contract, Vessel Owner acknowledges that pursuant to Harbors and Navigation Code Section 501 and by the terms of this Contract, the Marina shall have a lien on the Vessel for money which may become due under this Contract. Owner agrees the Marina has the right to take possession and control of and remove and store the Vessel, at Owner's sole risk and expense, for the purpose of perfecting and executing upon Marina's statutory lien rights in the Vessel. Owner further understands and agrees that if all fees due are not paid by the **TWENTIETH (20th)** day of a month in which they are due, the Marina may, without advance notice or liability to Owner, restrict Owner's access to the Marina and require him or her to check in at the Marina Office before being allowed onto the docks, and to restrict access to the Vessel to permit only maintenance and work to maintain her in seaworthy condition.
8. **Termination/Removal of Vessel Upon Breach.** All terms of this Contract are deemed by the parties to be material and fundamental to its purposes. The Marina's obligation to provide wharfage under the Contract may be unilaterally and immediately terminated by the Marina in the event of Owner's breach of any term herein, at which time Marina may pursue any or all its legal, equitable and/or admiralty remedies. If Vessel Owner fails to perform any of the terms, conditions and promises as set forth in this Contract, Vessel Owner immediately shall remove the Vessel from the Slip, shall remove all personal property, if any, from the Marina, and shall surrender to the Marina the Slip and all parking passes and bathroom

keys. If after termination of this Contract by the Marina the Owner fails to remove his or her Vessel, such Vessel shall be regarded as a trespasser and wharfage fees will, without waiving objections to the Vessel's trespass, be charged based on the then current transient rate.

9. **Termination in Good Standing.** Assuming Owner has not breached any term of the Contract and the Contract is for a monthly period, it can only be terminated by either party by giving thirty (30) days or more written notice of termination to the other. The date specified in such notice as the termination date shall be either the first or the fifteenth day of a calendar month. In terminating the Contract pursuant to 30 days advance notice, the party terminating the Contract is not required to specify any cause for the termination. Deposit of a letter, postage prepaid, in the United States mail, postmarked to allow normal first-class delivery to the Marina within the thirty (30) day notification period, or addressed to Owner at the address given above, shall constitute notice to Owner. Oral termination of this Contract shall NOT be effective. If the Contract is terminated in good standing, the Performance Fee may be used for all or part of the last month's slip fee. If the In the event the Vessel is vacated without the required 30 days' notice, Owner shall be liable for thirty (30) days wharfage fees above any fees owing at the time of the Vessel's removal.
10. **Key Replacement & Deposit.** The bathroom access key/card/fob, has a deposit of \$100.00 per key card due when received by the owner, this is for the use of the Owner or legal spouse of the Owner only. Guests using bathroom facilities must be accompanied by the Owner or the Owner's legal spouse. The key/card/fob is non-transferable. Use by an unauthorized person is strictly forbidden and the parties agree that such unauthorized use is cause for immediate termination of this Contract. There will be one hundred dollars (\$100.00) charge for replacement of lost or misplaced or forfeit keys/cards/fobs. If the locks are changed, the Owner will be provided a new key/card/fob at no cost only a deposit per key card, provided the old one is first returned to the Marina within one month of receiving new key or old key deposit will be forfeit.
11. **Rules and Regulations/Clean Marina Program.** Many of the Rules and Regulations and other terms of this Contract are intended to comport with best environmental practices, and to assure compliance with federal, state and local environmental protection statutes and regulations. Owner agrees that Marina's Rules and Regulations attached hereto and incorporated herein, and the current version of the Rules and Regulations posted at the Marina, and any amendments thereto, are integral parts of this Contract. Owner understands and agrees the Rules and Regulations may be modified by posting revised Rules and Regulations on the bulletin board located outside the Marina office; in such event, the revised/modified Rules and Regulations shall become effective seven (7) calendar days after they are so posted. Owner understands and agrees that Marina may provide notice of modifications to Rules and Regulations, alternatively or additionally, by way of written notification tendered by U.S. mail, in which event the modification(s) shall become effective the TENTH (10th) calendar day after such notification is deposited into the U.S. mails. Owner shall comply, and shall cause Owner's family, agents, licensees and invitees to comply with the then current Marina Rules and Regulations. Should any such person violate any Marina Rule or Regulation, Marina may at its election either provide an oral or written warning or alternatively terminate this Contract immediately and give Owner notice to remove the Vessel from the Slip. If Owner fails to remove the Vessel from the Slip within five (5) business days following such notice, Marina may remove the Vessel from the Slip at Owner's risk and expense, retake possession of the Slip and take such other actions as provided herein and/or exercise remedies available at law, in equity and/or in admiralty. In the event a vessel is not removed from her slip following termination of this Contract, she will be regarded as a trespasser and wharfage fees will accrue at the then current transient vessel rate. The Marina is committed to preserving the marine environment so others can continue to enjoy the unique and irreplaceable waters in which the Marina is situated. Accordingly, we participate in Clean Marina and other programs designed to preserve and protect waters in and around marinas.
12. **Injury/Property Damage Caused by Irresistible Forces.** Under no circumstances shall the Marina be held liable for any personal injury or property loss occasioned by fire, storm, theft, winds, tsunamis, acts of God or any other irresistible force.
13. **Boarding of Vessels by Dockmaster.** Dockmaster or any of his/her assistants may board any vessel at any time, without prior notice, regardless of documentation, for health, environmental or safety purposes, or to protect the Marina or other property, and/or the public peace. Owner shall not permit anyone, other than regular employees of the Marina (and others authorized by the Marina for work deemed by it to be necessary) and fulltime hands regularly employed on the Vessel while it is in the slip assigned hereunder, to access the Marina's premises. The Marina does not engage in public wharfage. It is a private marina and it reserves the right to refuse access to the Marina with or without cause for any purpose that is not legally recognized as unlawfully discriminatory.
14. **Assignment/Use of Slip Only by Designated Vessel.** The Contract and Owner's rights hereunder cannot be assigned or subleased by Owner without the advance written approval of the Marina. Owner understands that Owner maintains no ownership interest of any kind in the Marina and that he/she is not permitted to represent or imply to any prospective buyer of his/her Vessel that the sale of the Vessel includes a right to occupy a slip at the Marina, and shall indemnify and hold Marina harmless for any damages resulting from any representation that the Slip is transferable. In the event Owner elects

to sell his/her Vessel, Owner agrees to inform all prospective buyers and involved brokers that this Contract terminates automatically upon the transfer of any ownership interest in the Vessel (or corporation, if the Vessel is corporate owned), and that the Vessel must (except as otherwise herein provided) vacate the Marina prior to or simultaneous with the new owner assuming ownership rights. In the event the prospective new owner wishes to maintain the Vessel at the Marina, the Marina may but is not required to consider permitting the Vessel to continue occupying the Slip, pursuant to such terms and conditions as the Marina may in its discretion mandate, including such slip transfer fee as the Marina may in its discretion require. Before the Marina will consider permitting the Vessel to continue occupying the Slip following transfer of ownership, the prospective new owner will be required to complete an Application for review and approval, which approval the Marina shall be free to withhold for any reason or no reason. Unless advance permission is secured from the Marina, Owner shall not post any "For Sale" or similar sign(s) or notices on the Vessel or floats, gangways, docks or on any other Marina property. Only the Vessel identified above, and one dinghy (subject to advance approval by the Marina), may occupy the Slip.

15. **Marina Right to Interrupt Utilities During Repairs, Renovation, Construction.** It is understood that, from time-to-time, in order to maintain, replace, and/or improve the docks, ramps and other components of Marina, it will be necessary to interrupt power and other utility services provided to slips. Owner therefore represents and warrants the Vessel does not leak and is otherwise seaworthy in all respects, and that all Vessel batteries used to power her bilge pump(s) or other dewatering equipment shall be maintained in a fully charged condition, sufficient that the vessel can be unplugged from dockside electricity for a minimum of 10 days, with sufficient battery power to drive bilge pump(s) and any other dewatering equipment aboard the Vessel. Owner also understands it is possible refrigeration systems might be temporarily inoperable during periods of construction or renovation, and that Owner's responsibility to remove perishable food items from refrigerators/freezers during such periods. If the Marina deems it necessary or prudent to interrupt power for emergency or urgent repairs, it may do so without prior notice to Owner. Owner shall hold Marina harmless from and against liability arising or potentially arising as a result of damage to the Vessel caused or occasioned by power interruptions, unless occasioned by the Marina's gross negligence or willful misconduct, which must be affirmatively established, and which may not be presumed.
16. **Marina Rights to Move Vessel During Construction, Renovation, Other Construction.** Owner understands and agrees that in order to accomplish maintenance, replacement and/or improvements to the docks, ramps and other Marina components, from time to time it will be necessary to move the Vessel temporarily to a location other than the assigned Slip to another location designated by the Marina. During such periods it might be necessary to move the Vessel to a less desirable location, and/or to secure the Vessel to another vessel. In the event it becomes necessary or desirable to move Owner's Vessel during such work, Marina shall provide Owner at least five (5) calendar days' advance notice. Within three (3) calendar days following Owner's receipt of such notice, which will be presumed three (3) days after mailing, Owner shall either: (1) within the period specified in the notice move his or her Vessel to the space designated at the Marina; or (2) permit the Marina or its authorized agent to move the Vessel to the designated space, with actual costs to be borne by Owner. Whether Owner moves the Vessel or the Marina or its authorized agent does so, Owner shall indemnify, protect, defend and hold Marina harmless from and against any and all actual or potential liability that might arise in connection with such movements. If Owner elects not to move his Vessel or fails to do so within the period specified in the notice, Marina and/or its designated agent shall be permitted to do so, without further notice to Owner. Owner understands that it will be necessary during the course of such work to temporarily locate Owner's Vessel to another place within the Marina, and that during such period the Vessel might be side-tied to a wharf or rafted together with another vessel or vessels, and that as a result the Vessel might not be readily accessible during the temporary period of relocation. Owner agrees to indemnify, protect and defend Marina from and against all actual or potential liability arising or potentially arising as a result of the relocation, side-tying or rafting of the Vessel with other vessels. Owner further agrees that, in the event his/her Vessel is not readily accessible, he/she shall contact the Marina Office at least 24 hours in advance of intended use to obtain assistance in gaining access. Owner further understands that during periods of construction, renovation or other construction it will be difficult or impossible to accurately predict how long such work will take, or how long the Vessel will be located in temporary accommodations, and therefore he/she agrees Marina shall be held harmless from and against any liability actually or potentially arising from such temporary displacement, including but not limited to liability for loss of use. The Marina reserves the right, following completion of such work, to assign the Vessel to any slip or space it deems suitable.
17. **Marina Security.** The Marina provides no security protection and assumes no responsibility whatever for the personal safety of Owner or his/her guests, or for the safety of any vessels or their appurtenances. If the Marina elects to do so, it is understood such security is solely for the protection of the Marina's property.
18. **Release from Damages Due To Soot, Smoke, Oil or Wake.** Owner does hereby release the Marina from any and all claims, damages or liabilities arising out of the injury or damage to Owner, his/her guests or employees, or his/her Vessel or her contents, from soot, smoke, oil, wake or any other substance existing upon, in or over waters in Owner's anchorage or other portion of its premises in San Diego, California. Owner further agrees to indemnify the Marina and save it harmless

against any liabilities the Marina may now or hereafter incur, and to indemnify any third party against claims or expenses or loss out of injury or damage caused by such substances existing upon, in or over the water within Owner's anchorage or other portion of the Marina.

19. **No General Waiver.** Waiver of any provision or condition herein by the Marina shall not be deemed to be a continuing waiver or a waiver of any other provision or condition. The exercise for failure to exercise any remedy provided herein for any breach hereof shall not be deemed as a waiver of Marina's right to have that or any other remedy specified above for any other breach of the same or any other provision of this Contract. Failure by Marina to exercise any of its rights under this Contract or Marina's acceptance of fees or other monies after any default shall not be considered or construed to waive any right of the Marina or to affect any notice or legal proceedings theretofore given or commenced.
20. **Lien Rights/Appointment of Marina as Attorney in Fact to Record Lien.** Both possessory and nonpossessory liens may arise against Owner's Vessel in favor of the Marina by operation of both state and federal law respectively. Owner agrees and understands that attorneys' fees and all other costs associated with collecting sums due under this Maritime Contract for necessities shall be deemed for all purposes as part of the Marina's lien against the Vessel, notwithstanding the general rule providing attorneys' fees arising from actions based on necessities liens are not ordinarily recoverable directly against a vessel. Owner represents and warrants that there is no existing sales Contract or other Contract, such as a finance Contract, which would limit the Marina's ability to impose or enforce such liens, and that Owner is fully authorized to enter into contractual Contracts such as the instant one which may give rise to a lien upon the Vessel under the Commercial Instruments and Federal Maritime Lien Act or pursuant to state law. If Owner is without such authority or is unsure as to his/her authority then the following must be supplied: the name, address and telephone number of the individual or agency, if any, whom Owner believes should be contacted and informed of the possibility of imposition of liens encumbering the Vessel. Nothing in this paragraph shall be construed as limiting Owner's personal duty to pay attorney's fees specified elsewhere in this Contract.
21. **State Registration of Vessel.** If Owner's vessel is not documented with the United States Coast Guard but instead is registered by the State of California or another State, and Owner fails to timely tender wharfage fees, it is agreed that the Marina shall be entitled to cause a lien to be recorded against Owner's Vessel on State Motor Vehicle records. The Marina reserves the right to require Owner to execute a Limited Power of Attorney to facilitate the recordation of such lien, or to dispose of the Vessel if her fair market value is less than \$7,500.00, and Owner agrees execute such Limited Power of Attorney within 10 calendar days following written request.
22. **No Waiver of Lien Rights.** No action taken by the Marina in equity or at law, whether in state or federal court, shall be construed as a waiver of the Marina's maritime statutory or contractual or other rights at law, in equity or in admiralty, including its right to recover as part of its lien directly against the Vessel all costs incurred in connection with collection of fees due under the Contract, including attorneys' fees.
23. **Liability and Indemnity:**
- a. Except as otherwise herein provided, during the term of this Contract or while the Vessel remains on the Marina's premises or in the possession of the Marina or its assignee, all risk of loss or damage to property and of personal injury and/or death shall be upon the Owner. Except as otherwise herein provided, additional to all other liability limitation and indemnity provisions herein contained, Owner, as a material part of the consideration to be rendered to the Marina under this Contract, hereby waives all claims against Marina and its officers, agents and employees for interruption of or interference with utilities, claims for damage to the Vessel, her gear and her equipment, or any goods, wares, or equipment in, upon, or about the Vessel or the Common Areas, and for injuries or death to persons including, but not limited to, Owner's family, agents, licensees or invitees, including those occurring on, in or about the Vessel or the Common Areas, from any cause whatsoever arising at any time including, but not limited to, theft, fire, storm, riots, strikes, collision, insufficiencies involving the electrical and other utility systems, chaffing, sinking, Marina negligence or otherwise. Owner agrees to indemnify, protect and defend the Marina from and against all such claims. Solely for the purpose of this Paragraph, the term "Common Areas" shall include but not be limited to all areas in, on or around the Vessel, the Slip, the dock areas, the walks, floats, ramps, gangways, convenience facilities, parking areas, walkways, and roads in, around and leading to and around Marina's premises.
- b. In the absence of gross negligence or willful misconduct by the Marina, which shall not be presumed and must be affirmatively established, neither it nor its respective officers, directors, agents or employees shall under any circumstances whatsoever be charged with or liable for direct, consequential or any other damages sustained, no matter how occurring, by Owner or his/her family, employees, agents, invitees, charterers or underwriters, including but not limited to loss of or damage to the Vessel or any other personal property caused by theft, fire, collision, chaffing, dock maintenance or faulty repair, or by reason of any other cause, or for personal injury or death, even if occasioned by the negligence of the Marina or its employees, officers or agents. Owner agrees to indemnify, protect and defend the Marina from and against any and

all actual or potential liability arising or potentially arising from any such damage, injury, death or other loss by Owner and/or his her/family, employees, agents, invitees, charterers and/or underwriters. In the event Owner does not wish to be bound by the exonerations from and limitations of liability inuring to the benefit of the Marina hereunder, the Marina shall and does agree not to enforce any such provisions herein, provided Owner agrees to and does pay wharfage fees in a sum equal to the transient rates currently in effect, or twice the current usual wharfage fees for non-transient vessels, which ever fee is higher. If the Owner elects to pay the higher fee and opt out of the said exoneration and limitation terms, it is understood all other terms and conditions herein shall remain fully enforceable, including the right to terminate this Contract without cause upon providing 30 days advance notice. **Should the Owner elect to avail him/herself of the above opt out provision, he/she shall so denote by initialing here:**_____

c. The Marina contracts for wharfage and sets rates only upon the basis of insured and limited liabilities as set forth herein. It is therefore agreed that in the event any exoneration of liability provided herein in favor of the Marina is determined by a Court of competent jurisdiction to be unenforceable, or determines damages have occurred as a result of the Marina's gross negligence or willful misconduct, the Marina's liability shall be strictly limited to a sum equal to the per occurrence limit of the policy of insurance which the Owner is required hereunder to obtain naming the Marina as an additional insured. Owner is strongly encouraged to consult with his/her broker as to the advisability of maintaining coverage limits and types additional to those required hereunder. In no event shall Marina be liable for any consequential damages whatsoever, including, but without limitation, delay, loss of use, detention, demurrage, towing and pilotage.

24. **Insurance/Proof of Current Registration.** Owner shall have in effect limited liability bodily injury, property damage, pollution and salvage insurance, as well as insurance covering contractual liability the Owner assumes under this Contract, for the protection of the Marina and others, with a minimum coverage limit of \$500,000 per occurrence. The Marina, including its employees and agents, and the City of San Diego shall be named as additional insured. The policy or policies obtained by Owner as required hereunder shall be primary to any policy of insurance maintained by the Marina. A current Certificate of Insurance shall be maintained on file with the Marina at all times during the term of the Contract, and Owner agrees it is his/her sole responsibility to ensure a current Certificate of Insurance is tendered to the Marina. The Certificate of Insurance must specifically list each coverage defined above. Owner's insurers must be domiciled in the United States of America and must meet a minimum A.M. Best & Co. rating of A-: VII and a Standard and Poors Rating (if rated) of at least BBB: If in the event that a proposed insurer is not rated by A.M. Best & Co. or Standard and Poors, such insurer must be domiciled in the State of California and approved by DRISCOLL, at its sole discretion. Such insurance policies shall provide for notice to be given to the Marina in the event the policy is canceled or not renewed. Owner shall be responsible, with or without demand, for tendering a copy of the Vessel's current registration/documentation and Certificate of Insurance, so current copies are always maintained by the Marina. Owner agrees to provide written notice to Marina of any change in insurance carrier, insurance agent or policy number, within five days of the occurrence of such change.
25. **Physical Inspection.** The Marina reserves the right to inspect the Vessel before owner is permitted to locate her at the Marina, and to immediately terminate (or decline to execute) this Contract if the Vessel is not in a condition that is, in the Marina's sole opinion, satisfactory and that the vessel is generally suitable to be located at the Marina. The Marina also reserves the right to require a Vessel owner to provide a copy of a marine survey of Owner's Vessel detailing the condition of the Vessel, prepared by an accredited marine surveyor within 365 days preceding the Marina's request. The Marina shall also be permitted upon the arrival of the Vessel and from time to time thereafter, as the Marina may in its sole discretion determine is necessary for purposes of health and/or safety, or to inspect the Vessel to evaluate overall condition. A failure to permit such inspections will be regarded as a fundamental breach of the Contract and such failure will automatically terminate the Marina's obligation under the Contract to provide wharfage services.
26. **Documentation/Registration and Condition of Vessel.** Owner warrants that the Vessel is properly documented or registered pursuant to the laws of the United States and/or the State of California, or a foreign nation, and that the Vessel is in compliance with all applicable U.S. Coast Guard safety regulations. Owner shall keep his/her Vessel in a clean, well maintained and operable condition at all times during the term of the Contract. The determination of adequacy of a Vessel's appearance is within the sole discretion of the Marina. If equipped with an engine or motor, it must be operable and capable of producing sufficient way to make the Vessel maneuverable. If the Vessel is a sailboat without an engine, she must be equipped with sails, and her standing and running rigging must be seaworthy. Owner shall maintain the Vessel's appearance, including regular cleaning, maintenance and replacement of all painted and varnished surfaces, all bright work, rigging, safety equipment and any other appurtenances of the Vessel. Marina shall be the sole judge of the adequacy of the Vessel's condition and maintenance.
27. **Salvage Services.** The Marina has no obligation to dewater or provide any salvage service to the Vessel should she spring a leak or otherwise need assistance in remaining afloat or in seaworthy condition. It is agreed that the Marina, in its sole election, may elect to dewater or provide the Vessel with other salvage services. In the event the Marina determines the Vessel is in need of such services and elects to provide such services, Owner shall be obligated to pay all material/labor

costs associated with the rendering of such services or \$150 plus material costs for each hour such services are provided, whichever sum is greater, and Owner shall indemnify, protect and defend the Marina from and against all actual or potential liability there from arising or relating.

28. **Removal of Un-Seaworthy Vessel.** If Owner's Vessel is in a sinking condition, in a state of disrepair as determined by the Marina, or if she is deemed by the Marina to pose a health, safety or pollution risk, the Marina may, but is not required to, remove the Vessel from the water and dry store her, both at Owner's sole risk and expense.
29. **Living Aboard/Limited Overnight Accommodations.** Liveaboard boats are not allowed in this Marina. For purposes of this Paragraph, being aboard a Vessel while at the Marina for more than a total of 12 days within any 30-day period shall be construed and regarded for all purposes as living aboard and shall constitute a fundamental breach of this Contract. The Marina may immediately terminate this Contract in the event Owner is living aboard or permitting others to live aboard his or her Vessel.
30. **Slip Vacancy/Extended Absence.** Owner agrees that Marina may use the Slip when temporarily not in use by Owner, without compensation to Owner. Further, Owner shall notify the Marina in writing if the Vessel will not be in the assigned space at the Marina for any period exceeding seven consecutive (7) days. In such event, Owner agrees Marina may assign another vessel to the Slip during the period of the absence of Owner's Vessel; even if another vessel is so assigned to the Slip during such period of temporary absence Owner understands and agrees Owner will remain responsible for payment of the current monthly slip fees. To assure the assigned slip is available upon a Vessel's return, in the event the Vessel is absent from her slip for seven (7) or more consecutive days, Owner is required to provide Marina at least 72 hours advance notice of the date and time the Vessel will return to her slip. In the event the Vessel is absent from her assigned slip for a period exceeding 30 days, and the Owner has failed to notify the Marina of an extended absence as herein required, the Marina may elect to terminate this Contract without advance notice and assign the slip or wharf space to another vessel. In such event of non-notification, Owner shall remain liable, in addition to other fees then owing, to tender a sum equal to 30 days wharfage fees.
31. **Reporting of Damage.** Any damage to Marina property or another's property located on Marina property caused by Owner's Vessel or Owner's guests/invitees must be reported by Owner to the Marina immediately. In the event Marina property is damaged or destroyed by any negligent conduct by Owner or his/her guests or invitees, or the negligent failure of Owner to maintain or operate his/her Vessel, Owner shall immediately, upon demand by the Marina and presentation to Owner of a statement of damages, tender full payment to the Marina to cover the cost of such damage(s) or loss(s).
32. **Securing Vessel.** At all times during which the Vessel is berthed at the Slip, Vessel Owner shall cause it to be safely and properly secured in her slip in a manner acceptable to the Marina. This is the Owner's duty alone. However, if the Marina deems it necessary to re-secure the Vessel for any reason, Vessel Owner agrees to pay the Marina a reasonable service charge, in the minimum amount of \$25.00, for doing so plus the cost of all materials used. However, the Marina assumes no responsibility for the safety of the Vessel and will not be liable for fire, theft or any damage to said Vessel, its equipment, or any property in or on said Vessel by reason of Marina's decision either to re-secure said Vessel or to not re-secure said Vessel.
33. **Effect of Damage or Destruction of Marina.** In the event of damage to or destruction of the Marina or the Slip by fire, flood, earthquake, or any other cause or causes, the Marina shall have the option to: (1) treat this Contract as continuing and repair or restore the Marina or Slip to substantially their condition before such damage or destruction within sixty (60) days of the final approval of required permits or, if insured, within sixty (60) days following final approval of required permits, whichever period is longer; or (2) terminate this Contract and all further obligations hereunder of either party by written notice to Vessel Owner. After the occurrence of such damage or destruction, the Marina shall attempt, within reasonable operational constraints (which shall be within the discretion of the Marina), to provide a temporary slip or temporary wharf space for the Vessel until repairs to the assigned slip have been made to the Marina's satisfaction. If a temporary slip or wharf space is not available and the Vessel's assigned slip remains partially useable (even if parts of the slip area are damaged), the Vessel shall remain in or be returned to the slip when the Marina deems it safe to do so, and in such event the Vessel Owner's obligation to pay fees hereunder shall be abated in an amount which the Marina, in its sole discretion, shall determine to be proportionate to the area of the Slip rendered unfit for use by Vessel Owner during the period of repair or restoration.
34. **Owner Responsibility for Storm Protection.** Owner is solely responsible for the safety of his/her Vessel, and Owner agrees that the Marina shall have no obligation whatever to take action(s) in advance of or during a storm, or otherwise, to preserve or protect Owner's Vessel. It is further agreed, however, that the Marina may, at its sole election, undertake such

actions during or in advance of a storm or other threatened unfavorable weather as it alone deems appropriate and/or necessary to preserve or protect any or all vessels located on its premises. In such event it is agreed that Owner shall indemnify and hold the Marina harmless from any and all personal injury or property damage occurring in connection with the Marina's efforts to preserve or protect vessels during or in advance of a storm. It is further agreed that if the Marina provides such preservative/protective services during or in advance of a storm, all costs associated with such rendering of such services shall be apportioned equally among all Vessel owners.

35. **Failure to Vacate.** If Owner fails to pay wharfage or other fees as required herein, or if he/she fails to remove the vessel from the Marina's premises following termination of this Contract, it is agreed the Vessel will be regarded for all purposes as a trespasser. It is agreed that in such event the Marina shall charge wharfage fees for the Vessel at the then current transient rates until such time as the Vessel is removed or disposed of as provided by state and/or federal law.
36. **Vessel Abandonment-Disposal At Owner Cost.** In the event Marina terminates this Contract by providing written notice to Owner (at his/her last known address) of such termination, or in the event of an automatic termination of this Contract as provided for above, Owner shall immediately remove his/her Vessel from the Marina's premises. After the date of such termination wharfage rates for the Vessel, which will be regarded as a trespasser, will be calculated at the then current transient vessel rate. If for any reason the Vessel is not removed within 60 days of the date of termination of this Contract, it is agreed the Vessel shall be conclusively regarded for all purposes as having been abandoned. The Vessel shall also be conclusively deemed abandoned if wharfage fees are two or more months in arrears, unless the Owner notifies the Marina in writing the Vessel has not been abandoned; in such event the Vessel shall be deemed abandoned if the Owner fails to remove the Vessel from the Marina within 30 days of the date the Owner provides notification the Vessel is not abandoned. If the Vessel is deemed abandoned as provided herein, the Marina shall become entitled, without liability, to dispose of the vessel in any manner, including but not limited to destruction, public or private sale, or any other means. If the Vessel is disposed of in such manner, Owner shall indemnify, protect and defend the Marina and its employees, officers and agents from and against all actual or potential liability (including but not limited to legal claims, liens and judgments) arising from or in any way pertaining to such Vessel disposal. If the Marina elects to dispose of a Vessel by way of destruction it will cause an in-water condition and valuation survey to be completed in advance and will cause public notice of the intended disposal to be published in a publication of general circulation in San Diego County, California for at least seven (7) days in advance of such disposition. In addition to wharfage fees, the Owner shall be liable for and indemnify the Marina from and against all actual or potential liability relating in any way to the removal and/or disposal of Owner's Vessel, and for the costs of such disposal, including but not limited to surveying costs, disposal costs, storage costs, and legal fees.
37. **Dispute Resolution.** In the event a claim arises under or pertaining in any way to this Contract that is not resolved by negotiation, the parties agree they shall submit such dispute for non-binding mediation prior to commencing litigation. Such mediation shall take place in San Diego County, California before a single mediator selected mutually by the parties. The foregoing does not apply to any claims the Marina has against the vessel for her debts or torts. Nothing in this Contract shall be construed to limit in any way the Marina's right to seek recovery directly against the vessel in an in rem action in a U.S. District Court for liens based on the debts and/or torts of the Vessel; unless the Marina agrees to do so in writing, such claims against the Vessel are not restricted by or subject to the mediation provisions herein. The intention of this Paragraph is to require mediation only of claims the Owner(s) might have against the Marina or claims the Marina might have against the Owner(s), and not claims the Marina might have against the Vessel.
38. **Marina's Right to Eject Owner for Noncompliance with Terms of the Contract.** Each and every term herein contained is fundamental to the Contract, and it is therefore agreed that if Owner fails to comply with any provision herein contained, such failure shall be deemed a fundamental breach of the Contract. It is agreed that, in such event, the Marina shall have the unfettered right to immediately terminate this Contract and require the Owner to remove the Vessel from the Marina's premises. Except as otherwise provided herein, in the event Owner fails to comply with any term appearing in any part of this Contract, the Marina shall be entitled to require the Owner to vacate his/her vessel within 24 hours of the time of the notice. In the event Owner breaches any term of this Contract which in the Marina's sole opinion results in an actual or potential hazard or security risk to persons or property located at the Marina, the Marina may require Owner to remove his/her Vessel immediately and without further notice. In addition to other remedies available to it and without waiving such remedies, if the Marina requires a Vessel Owner to remove his/her Vessel from the Marina and the Owner fails to do so after demand is made pursuant to the terms of this Contract, the Marina may elect to move the Vessel to another location either in or out of the water and store her there, all at Owner's sole risk and expense. In such event, Owner shall indemnify, protect and defend the Marina from and against all actual or potential liability related in any way to such vessel movement and/or storage.

39. **Tender of Required Notice(s).** All written notices to Owner required by this Contract shall be mailed first class regular mail to the Owner's address indicated above. It is Owner's sole responsibility to notify Marina of any change of this address, and Owner agrees that notice sent to the Owner's address as listed above shall be conclusively deemed as legally effective. Notice by Owner to Marina shall be mailed via First Class U.S. mail to: Driscoll Mission Bay, LLC, 1500 Quivera Way, San Diego, CA 92109. The Marina reserves the right to change its address for notification purposes by providing written notice of such change to Owner at his/her last known address.

Contract As Complete Expression Parties' Understandings. The Contract contains a complete expression of the Contract between the parties hereto and there are no promises, representation, Contracts, 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 the Contract 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. The Section headings of the Contract are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

40. **Waiver & Severability.** The failure of Marina to insist upon the performance of any term hereof, or the waiver of any breach of any term hereof, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred. The invalidity of any portion of this Contract will not and shall not be deemed to affect the validity of any other provisions. In the event any term or condition herein contained is held to be invalid, the parties agree the remaining provisions shall be deemed to be in full force and effect, as if they had been executed by both parties subsequent to the expungement of the invalid provision(s).
41. **Owner's Legal Capacity.** The person signing below as the Owner attests that he/she is legally entitled to bind the Vessel and all of her owners to all terms of this Contract, that in the event the person signing below is not the sole owner of the Vessel he/she has obtained the express permission of all persons with an ownership or equitable interest in the Vessel, and that he/she at the time of reviewing/executing this Contract is not under the influence of alcohol or any legal or illicit drug, and that he/she has reached the legal age of majority, and that he/she is not legally incapacitated or otherwise unable to fully understand and appreciate the terms contained herein.

01/10/25
Dated: _____, 20____

Evan Cooney

Owner Name - Printed

Evan Cooney
Evan Cooney (Jan 10, 2025 20:36 PST)
Owner's Signature

14/01/25
Dated: _____, 20____

[Signature]
Authorized Marina Representative

MARINA RULES AND REGULATIONS

These Rules and Regulations Constitute an Integral Part of the Contract for Private Wharfage

1. **Safe Mooring.** All boats shall be moored in a safe manner.
2. **Notification of Unsafe Conditions.** Tenants shall promptly notify Marina of any unsafe or hazardous condition that comes to their attention.
3. **Unauthorized Moorage.** No vessel may be moored at Marina unless a current Contract for Private Wharfage is in effect between the Owner of the Vessel and the Marina.
4. **Responsibility for Damages.** The Marina is not responsible for any losses on or damage to boats at the Marina. Each tenant will be held responsible for any damage to the Marina premises and/or structures (including docks, ramps, electrical pedestals and/or utilities) caused by tenants, his guests, agents and/or employees. Such damage will be repaired or corrected solely by Marina at the expense of the tenant.
5. **Speed Limit / Improper Vessel Handling / Engine Operation.** The speed limit within Marina is steerage only, with no wakes and not greater than 5 knots. Improper or unsafe boat handling shall be just cause for immediate termination of this Contract. Engines may not be operated in gear while boats are secured to dock.
6. **Offensive or Harmful Conduct.** Disorderly, offensive or indecorous conduct by a tenant or his visitors that might injure a person, disturb other berth tenants, cause damage to the property or harm the reputation of the Marina shall be just cause for immediate termination of this Contract. Owner assumes full responsibility for his/her guests' conduct and agrees to be held jointly and severally liable for all consequences of his/her guests' actions.
7. **Noise.** Owner shall not make or allow any disturbing noises on the docks or anywhere on the premises, with particular emphasis between the hours of 10:00 p.m. and 7:00 a.m., either by Owner or his/her family or guests, nor shall Owner permit such persons to engage in any conduct which will interfere with the rights, comforts or convenience of others. Except for entering or leaving the slip, or as necessary in an emergency, main engines, power-generation equipment, or other noise-making machinery shall not be operated between the hours of 10:00 p.m. and 7:00 a.m. Halyards shall be secured to eliminate noise.
8. **Pets.** One cat or dog pet per boat is allowed in the marina – no other pets are allowed. Such pets are not permitted to roam outside the owner's boat. Dogs are permitted on the docks only if they are leashed at all times, and provided they do not bark, growl or create any disturbance. Dogs may not relieve themselves anywhere on marina property. Cats must be carried in a cat carrier. The Marina reserves the right, within its complete discretion, to prohibit any pet from accessing the Marina premises. The boat/pet owner is responsible for immediately cleaning up any mess from his/her pet and washing the affected dock area. Any violation of these pet rules will be grounds for the immediate removal of the pet, and may be cause for immediate termination of this Contract.
9. **Parking.** The marina does not have unlimited parking space. One parking placard per slip will be issued, if the placard is lost or stolen there will be a \$100 replacement fee, if the lost or stolen placard is used again the vehicle displaying the placard will be towed without notice. Parking is not guaranteed. It is available on a first-come, first-serve basis. No guest parking is allowed unless written permission is given by an official marina representative. Vehicles using the parking lot must be currently registered and operational. No trailers, RVs or oversize vehicles are allowed. The parking lot may not be used to repair vehicles. Neither the Marina nor its agents shall be liable for any loss or damage of any kind to any personal property, including vehicles (and/or the content thereof), left in the parking lot. Vendors, contractors and boat workers are not allowed to park in the parking lot – they may enter to leave off or pick up materials. Vehicles may not be parked for a period exceeding 48 hours without the written permission of the Marina. Vehicles in violation of the above are subject to being towed at the risk and expense of the owner of such vehicle.
10. **Children / Life Jackets.** Children under 12 years are not permitted in the Marina without the immediate presence of their parents or other responsible adults. Children under 18 must have adult supervision while on the Marina docks. All non-swimmers or children under the age of 12 must wear a life jacket at all times while on the docks.
11. **Projections beyond End of Berth.** No vessel or part of any vessel (including extensions such as swim steps, booms, bait tanks, etc.) may project beyond the end of the berth into the waterway, unless otherwise authorized by the Marina in writing. No part of the boat shall extend over the main head walk.
12. **Water/Power Lines.** Water, telephone, cable or power lines shall not cross main docks.
13. **Electrical Extensions/Dock Power Connections.** All electrical cords and adaptors connected to the dockside power receptacle must be of a type approved for marine use. The use of electrical extensions, cords, connectors and similar items are at the sole risk of Owner or other user and the Marina shall not be liable for damages caused by or as a result of the use of any such item or any electrical appliance. All shorelines, adapters and dock-side male plugs MUST be unmodified and equipped with an acceptable ground and weather-proofing in accordance with Article 555 (or successor Article) of the National Electrical Code. Wiring must be of adequate size for the power provided. Cords may not be affixed to the docks. GFI protection is not provided at the electrical pedestal. The Owner is responsible for providing GFI protection when using the provided electricity. Neither Owner nor anyone at his/her direction is permitted to alter electrical or other utilities in any manner under any circumstances.

14. **Hose-Nozzles.** Hoses present on a dock can present a trip hazard, and hoses can burst if deteriorated and the water is turned on. Hoses may not be physically connected to boats in any way. Any hose seen connected to a boat will be removed by marina staff. Hoses may only be used for wash downs and filling of water tanks and turned when not in use. Automatic shut-off nozzles must be attached to hoses to conserve water.
15. **Hazardous Activities/Barbecues.** All high-risk fire hazards, i.e., refueling boats at dock side, storing flammable material on docks, etc. is strictly prohibited. Barbecues are strictly prohibited on all dock areas. Use of charcoal barbecues is not allowed on vessels.
16. **No Smoking:** No smoking is allowed anywhere on the docks, boat yard, restrooms and laundry room areas at Driscoll Mission-Bay's facility and Marina.
17. **Flammable Materials & Fuel Leaks.** Owner agrees not to store any flammable materials anywhere on the Marina premises, including within any boarding steps, except that as deemed necessary by the Owner such materials may be placed below decks aboard Owner's vessel, at his/her sole risk and liability. Owner agrees that in the event his/her Vessel experiences the leak or spill of any fuel or other combustible liquid within the interior of the Vessel, he/she shall immediately contact the San Diego Fire Department and the Marina Office to report such leak or spill. Owner agrees in such event, further, to immediately contact an emergency vessel towing service to arrange for the removal of the Vessel from the Marina, provided it has been determined this can be safely accomplished. Owner shall, before returning the Vessel to the Marina, arrange to have the problem(s) causing any leak permanently corrected.
18. **Discharges from Vessels/Disposal of Liquids.** Owner shall not throw, discharge or deposit from any boat or float any refuse matter, oil, spirits, flammable liquid, oily bilges into the water on Marina premises. All such matter shall be deposited at appropriate disposal sites. Vessels with automatic bilge pumps shall be maintained in such a manner as to prevent the discharge of contaminants overboard. Marina prohibits the use of detergents and emulsifiers on fuel or oil spills. Marina requires tenants to use oil-absorbing materials in vessel bilges and in boat slips. In the event of a spill, the Vessel Owner is required to immediately notify the U.S. Coast Guard and all other agencies, as required by law. Owner shall also immediately take all necessary actions to remove spilled substances from the water and from all pilings, vessels and other surfaces impacted by the spill and shall, if necessary, retain the services of a professional pollution response company.
19. **Overboard Discharges/Use of Marine Toilets.** This Marina has a "zero tolerance" policy with respect to overboard discharges. Overboard discharges of heads or holding tanks are forbidden by law and by Marina's rules; violation of these terms is grounds for immediate eviction and termination of the Marina's obligations to Owner under the Contract. If the Vessel is equipped with a head or other permanent installation designed to hold human waste, the Vessel must be equipped with a marine holding tank, which will receive and retain sewage from the boat's head to preclude discharge of sewage or chemicals into the waters of the Marina. In the alternative, Vessel Owner shall have all toilets aboard the Vessel rendered inoperable at all times while the Vessel is at the Marina. Owner agrees to permit inspection of such heads/installations upon demand by Marina and agrees to permit a marina representative to deposit a dye tablet into any waste holding tank if the Marina deems it appropriate for any reason. A failure to use the holding tank or equivalent devices, or a failure to render the toilets inoperable when no holding tank is available, shall entitle the Marina to immediately terminate this Contract.
20. **Disposal of Refuse.** Do not dispose of any fuel, paint, oil, other liquid waste, absorbent pads/rags, batteries, engine parts, or other contaminated materials into the Marina's trash dumpster. These materials must be removed from the Marina's premises and disposed of properly at a facility authorized to dispose of such materials.
21. **Vessel Repairs and Maintenance.** No rebuilding, hull painting, power tools, sander use, spray gun use, engine / generator overhauls or other refurbishment efforts are permitted. However, normal and customary maintenance shall be permitted, provided preventative measures are in place to keep debris from entering the water.
22. **Contractors Working on Vessels.** Work of any kind aboard the Vessel, to be undertaken by other than Owner, must be approved in advance of such work, in writing, by the Marina. Companies and/or workers hired by Owner to accomplish tasks aboard a vessel are required to sign in with the Marina office and execute an Independent Contractors Agreement. All contractors and boat workers hired by Owner must show proof of insurance in the amount of \$1,000,000 w/ Worker's Comp coverage, a current business license and must register with and receive prior approval from the Marina before beginning work on the Marina's premises. Such contractors are restricted to weekdays, 0800 – 1800 hours. Contractors shall check in/out with the Marina office for each entry. Marina requires the use of Best Management Practices for a clean environment.
23. **All Owners are reminded that the Marina is a recreational area and not a boat yard or repair facility.**
24. **No contractor has any presumed right to work in the marina.**
25. **Fishing/Swimming.** Fishing or swimming from Marina premises shall not be permitted. No fish cleaning is permitted on the docks or in the slips.
26. **Bicycles/Skates, Etc.** No person shall roller skate, roller blade, skateboard, ride bicycles, motor scooters or motorcycles on the docks or gangways located at the Marina.
27. **Boarding Steps, Dock Boxes and Other Dock Obstructions.** Anything left on docks or other areas of the Marina pose potential hazards to all on the premises. Therefore, apart from boarding steps that have been approved by the Marina, nothing may be left on the docks or other places located on the Marina's premises. Water hoses must be coiled on the hose holders on the dock pedestals. Power cords may not be placed on docks in such a manner as to present a possible

trip hazard. Temporary, removable, non-affixed, non-secured dock steps used for ingress to and egress from a vessel shall not be wider than one-half of the width of the finger to which the Vessel is moored, and no more than three feet in length. The steps must be of a light weight construction and approved in advance by the Marina. The Marina reserves the right to prohibit storage within dock steps.

28. **Small Boat Storage.** Sabots, inflatables, kayaks, canoes, dinghies and other auxiliary craft must be stored on the Vessel and not in the water or on the docks. The Marina reserves the right, on a case-by-case basis, to permit a dinghy to occupy a slip, provided it does not extend beyond the confines of the slip
29. **Storage of Equipment.** Owner shall not store or leave any items on the floats, docks, fingers or landings, including plants, bicycles, dinghies and other items. Bicycles must be stored on the Vessel or in the bike racks.
30. **Laundry.** There shall be no laundering or drying of clothes on deck or rigging at the Marina.
31. **Television Antennas.** No television antennas may be attached to marina docks or pilings.
32. **Bumpers, Approved Equipment/Alterations to Docks & Premises.** All equipment used on floats by tenants must be of a type approved by Marina. Boat Owners may not install additional items of any kind within slips or in any way make alterations to the dock and fingers. Any installation within a slip must be approved by the Marina on an individual basis. All installations on the floats shall be installed by Marina personnel. Cost of such additional and approved installations will be charged to the Vessel Owner.
33. **Maintenance of Slip and Surrounding Environs.** Owner agrees to maintain the Slip, the walks, floats, ramps, gangways and docks in, about and surrounding the Slip in a neat, clean and unobstructed condition at all times. Should it become necessary for Marina to maintain the area in said condition, it will be done at Owner's expense.
34. **Solicitations.** It shall be unlawful for any unauthorized person to solicit business or offer for sale goods, wares, merchandise or services, or solicit orders for such sales on the premises of the Marina.
35. **Posting of Signs.** Unauthorized advertising signs, for-sale signs or notices are prohibited aboard any boat.
36. **Commercial Activities.** Use of any boat moored at the Marina for commercial or charter purposes is not permitted without the prior written approval of the Marina. No commercial or business activities may be conducted in/from the marina.
37. **Messages.** It is not reasonably practical for the Marina Staff to accept or deliver messages to any Owner or Vessel. No mail, packages, deliveries, or special orders can or will be accepted on behalf of Vessel Owners.
38. **Bottom Cleaning.** Any dive service operating in the Marina must follow Best Management Practices to minimize discharge of bottom paint. In addition, any dive service company operating in the Marina must be approved by the Marina as an Independent Contractor, and have an approved Independent Contractor Agreement, with requisite insurance, on file in the Marina office.
39. **Holding Tank Pump Outs.** The Marina does not provide pump out facilities. Holding tanks must be pumped out at one of a number of public pump out stations in the area. Any holding tank pump out and cleaning service operating in the Marina must be approved by the Marina as an Independent Contractor, and have an approved Independent Contractor Agreement, with requisite insurance, on file in the Marina office.

Dated: 01/10/25, 20

Evan Cooney
Owner Name - Printed

EC
EC
Owner's Signature

Dated: 14/01/25, 20

max maher
Authorized Marina Representative

Offshore Blue Adventures Sublease agreement 2025

Final Audit Report

2025-01-14

Created:	2025-01-09
By:	Max Maher (max@driscollinc.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAJdUJP4ZuLRBJQUollmaDffB7gTk2EAbZ

"Offshore Blue Adventures Sublease agreement 2025" History

-  Document created by Max Maher (max@driscollinc.com)
2025-01-09 - 0:00:21 AM GMT
-  Document emailed to Evan Cooney (evancooney12@gmail.com) for signature
2025-01-09 - 0:00:35 AM GMT
-  Document emailed to Tom Driscoll (tom@driscollinc.com) for signature
2025-01-09 - 0:00:35 AM GMT
-  Document emailed to Max Maher (max@driscollinc.com) for signature
2025-01-09 - 0:00:35 AM GMT
-  Email sent to dmbmarina@driscollinc.co bounced and could not be delivered
2025-01-09 - 0:00:45 AM GMT
-  Email viewed by Evan Cooney (evancooney12@gmail.com)
2025-01-09 - 0:01:00 AM GMT
-  Email viewed by Tom Driscoll (tom@driscollinc.com)
2025-01-10 - 5:45:10 PM GMT
-  Document e-signed by Tom Driscoll (tom@driscollinc.com)
Signature Date: 2025-01-10 - 5:45:36 PM GMT - Time Source: server
-  Email viewed by Evan Cooney (evancooney12@gmail.com)
2025-01-11 - 1:01:52 AM GMT
-  Document e-signed by Evan Cooney (evancooney12@gmail.com)
Signature Date: 2025-01-11 - 4:36:51 AM GMT - Time Source: server

 Email viewed by Max Maher (max@driscollinc.com)

2025-01-14 - 1:44:55 PM GMT

 Document e-signed by Max Maher (max@driscollinc.com)

Signature Date: 2025-01-14 - 5:54:05 PM GMT - Time Source: server

 Agreement completed.

2025-01-14 - 5:54:05 PM GMT



Adobe Acrobat Sign

CITY OF SAN DIEGO

LESSEE'S AND SUBLESSEE'S QUESTIONNAIRE FOR ALL LEASES, ASSIGNMENTS AND SUBLEASES

Pursuant to the City of San Diego City Charter Section 225: "Mandatory Disclosure of Business Interests," before the City will process requests to (Sub)Lease, all information requested in this Questionnaire must be completed by the proposed (Sub)Lessee. Even though a proposed Sublessee may complete the Questionnaire, the Questionnaire must be delivered or mailed to the City with a cover letter signed by the City-Lessee or proposed-Lessee. ~~THE CITY WILL NOT ACCEPT THE QUESTIONNAIRE, DOCUMENTS, OR~~
OTHER INFORMATION DIRECTLY FROM A SUBLESSEE.

All information furnished in this Questionnaire must be complete and accurate. Omissions, inaccuracies, or misstatements may cause the rejection and/or subsequent revocation of the City's Lease, consent to Sublease, or consent to Assignment of (Sub)Lease.

In submitting this Questionnaire, the proposed (Sub) Lessee completing the Questionnaire authorizes the City to make any inquiry or investigation it believes necessary to substantiate or supplement the information furnished in the Questionnaire and authorizes others to release such information to the City.

Exact name of existing Lessee (always complete):

Driscoll Mission Bay

Exact name of proposed Lessee (complete only if applicable):

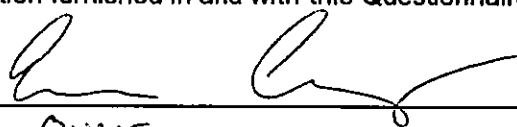
Exact name of existing Sublessee (complete only if applicable):

Exact name of proposed Sublessee (complete only if applicable):

Offshore Blue Adventures

Date this Questionnaire completed: 8/15/25

The information furnished in and with this Questionnaire is true, complete, and correct to the best of my knowledge.

Signature: 

Title: Owner

Thank you for taking the time to complete the Questionnaire. Lessees may contact Real Estate Assets if they have any questions. Please return the completed Questionnaire, with any additional information or documents to:

DEPARTMENT OF REAL ESTATE AND AIRPORT MANAGEMENT
1200 THIRD AVENUE STE. 1700
SAN DIEGO, CA 92101
TEL.: (619) 236-6020 FAX: (619) 236-6706

This Questionnaire contains 15 pages.

PROPOSED (SUB)LESSEE

1. Name of proposed (Sub)Lessee exactly as it will appear on the actual tenancy document:

Offshore Blue Adventures

2. Mailing Address of proposed (Sub)Lessee for purposes of notice or other communication relating to the proposed tenancy:

1225 Pacific Beach Dr. Unit 3C

San Diego, CA 92109

Telephone No.: 619-806-2663 Fax. No.: _____

E-mail Address: evancooney12@gmail.com

3. Billing Address (*only if different from Mailing Address*);

Telephone No.: _____

Fax. No.: _____

4. Proposed (Sub)Lessee intends to operate as a:

Sole Proprietorship (☐); Partnership (☐); Corporation (☐);

Limited Liability Company (☒); Other _____

Explain if necessary:

5. Effective date of assignment (complete only if applicable): 01/10/25

PARTNERSHIP STATEMENT

If proposed (Sub)Lessee is a partnership, please answer the following: N/A

1. Date of Organization: 08/14/2011

2. General Partnership ☐

Limited Partnership ☐

Other ☒

Explain LLC - Single Membership

3. Statement of Partnership recorded: Yes ☐ No ☒

Date

Book

Page

County

4. Has the partnership conducted business in San Diego County?

Yes ☐

No ☐

If so, when?

If so, where?

5. Name, address, and partnership share of each general and limited partner. If a general partner is another partnership, a corporation, or a limited liability company (LLC), please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page for identification purposes). If a limited partner holding a 10% or greater interest is another partnership, a corporation, or an LLC, pages 3; or 4 and 5; or 6 must also be completed for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page).

General/Limited	Name	Address	Share %

6. Attach a complete copy of the Partnership Agreement. If a Partnership Agreement has been previously submitted, a new Partnership Agreement need be submitted only if the Partnership Agreement on file with the City is no longer current.

CORPORATION STATEMENT

If proposed (Sub)Lessee is a corporation, please answer the following:

1. Type of corporation: C ☐ Subchapter S ☐
2. When incorporated? _____
3. Where incorporated? _____
4. Is the corporation authorized to do business in California? Yes (☐) No (☐)
If so, as of what date? _____
5. The corporation is held:
 - a. Publicly ☐ Privately ☐
 - b. If publicly held, how and where is the stock traded?

- | | | | |
|-------------------------------------|-------------------|---------------|--------------------|
| 6. Please list the following: | <u>Authorized</u> | <u>Issued</u> | <u>Outstanding</u> |
| a. Number of voting shares: | _____ | _____ | _____ |
| b. Number of nonvoting shares: | _____ | _____ | _____ |
| c. Number of shareholders: | | | _____ |
| d. Value per share of Common Stock: | | Par | \$ _____ |
| | | Book | \$ _____ |
| | | Market | \$ _____ |

7. Please furnish the name, title, address, and the number of voting and nonvoting shares of stock owned by each officer and, in addition, the same information for each stockholder owning more than 10% of any class of stock.

Name: _____

Title: _____

Address: _____

No. of Shares: _____

Name: _____
Title: _____
Address: _____

No. of Shares: _____

Name: _____
Title: _____

Address: _____

No. of Shares: _____

Name: _____
Title: _____
Address: _____

No. of Shares: _____

Name: _____
Title: _____
Address: _____

No. of Shares: _____

(Additional page(s) may be added if needed to complete list of stockholders [type proposed (Sub)Lessee name (from page 2) on the top of each page].)

8. Attach complete copies of the Articles of Incorporation (and any Certificate(s) of Amendment there to, as the case may be) of the Corporation, and the Bylaws of the Corporation (and any Amended and Restated Bylaws, as the case may be), and any other applicable Corporate documents.

Any partnership, corporation, or LLC owning more than a 10% ownership interest must also complete separate pages 3; or 4 and 5; or 6, as appropriate for each entity (type proposed [Sub]Lessee name [from page 2] on the top of each page for identification purposes). Also, furnish the financial data for such partnership, corporation, or LLC, as required on page 7. If there is an ownership chain of additional partnerships, corporations, or LLCs, the above requirements extend to each such entity having either: (1) a 10% or greater direct, indirect, beneficial ownership, or membership interest in the proposed (Sub)Lessee; or (2) effective control of the proposed (Sub)Lessee, regardless of the percentage of ownership or membership interest.

LIMITED LIABILITY COMPANY STATEMENT

If the proposed (Sub)Lessee is an LLC, please answer the following:

1. Date of Organization: 03/11/2011
2. Where Organized: San Diego County
3. Is the Company authorized to do business in California?
 - a. Yes (☒) No (☐)
 - b. If so, as of what date? 01/10/25
4. Has the Company conducted business in San Diego County?
 - a. Yes (☒) No (☐)
 - b. If so, when? 2011-2025
 - c. If so, where? Mission Bay Marina
5. Please furnish the name, address, and membership share held by each manager and officer, and each member owning more than a 10% membership interest. If a member is a partnership, corporation, or another LLC, please complete separate pages 3; or 4 and 5; or 6, as appropriate for such entity (type proposed [Sub]Lessee name [from page 2] on the top of each page).

Manager/Officer/ Member	Name	Address	Share %
Manager	Evan Cooney	1225 Pacific Beach Dr. Unit 3C San Diego CA 92109	100%

6. Attach a complete copy of the Operating Agreement. If an Operating Agreement has been previously submitted, a new Operating Agreement need be submitted only if the Operating Agreement on file with the City is no longer current.

FINANCIAL AND OTHER BACKGROUND INFORMATION

FINANCIAL STATEMENT

(Sub)Lessee, general partners of (Sub)Lessee, owner-corporations of (Sub)Lessee, members of (Sub)Lessee owning more than a 10% membership interest, and any person or business entity guaranteeing the performance of (Sub)Lessee **must attach a complete report prepared in accordance with good accounting practice, reflecting current financial condition.** The report **must** include a balance sheet and annual income statement. The person or entity covered by the report must be prepared to substantiate all information provided.

OTHER INFORMATION

Each (Sub)Lessee, each general partner of (Sub)Lessee, each owner-corporation of (Sub)Lessee, each member of (Sub)Lessee owning more than a 10% membership interest, any person or business entity guaranteeing the performance of (Sub)Lessee, any person or entity owning more than a 10% interest of (Sub)Lessee, and any guarantor of (Sub)Lessee must answer the following questions:

1. **Surety Information** - Has a surety or bonding company ever been required to perform on the default of any of the individuals or entities?
 - a. Yes (☐) No (☒)
 - b. If yes, please attach a statement naming the surety or bonding company, date, amount of bond, and the circumstances surrounding said default and performance.
2. **Bankruptcy Information** - Have any of the individuals or entities ever been adjudicated bankrupt or are any presently a debtor in a pending bankruptcy action?
 - a. Yes (☐) No (☒)
 - b. If yes, please give dates, court jurisdiction, and amount of liabilities and assets.
3. **Pending Litigation** - Are any of the individuals or entities presently a party to **ANY** pending litigation?
 - a. Yes (☐) - No (☒)
 - b. If yes, please provide detailed information for each action.
4. **Claims, Liens, or Judgments** - Are any of the individuals or entities now subject to any outstanding claims, liens, or judgments?
 - a. Yes (☐) No (☒)
 - b. If yes, please provide detailed information for each claim, lien, or judgment.

REFERENCES FOR PROPOSED (SUB)LESSEE

Please list four persons or firms with whom you have conducted business transactions during the past three years. Two of the references must have knowledge of your debt payment history, with at least one being a financial institution. Two of the references must have knowledge of your business experience.

REFERENCE NO. 1

Name: Susan Sayer
Firm: Offshore Blue Adventures
Title: Ex-Owner
Address: PO: 60004 San Diego, 92166
Telephone: 619-301-30760

Nature and magnitude of purchase, sale, loan, business, association, etc.:

Completed purchase and paid owner for
her LLC (Offshore Blue Adventures)

REFERENCE NO. 2

Name: Aaron Thom
Firm: California Business Advisers
Title: Senior Broker
Address: 4225 Executive Square #600 La Jolla, CA 92037
Telephone: 858-585-6351

Nature and magnitude of purchase, sale, loan, business, association, etc.:

Broker responsible for the closing
of Offshore Blue Adventures

REFERENCE NO. 3

Name: Michael Hart
Firm: Peer and Hart
Title: Attorney
Address: 5650 El Camino Real Suite 155 Carlsbad, CA 92008
Telephone: 760-239-0229

Nature and magnitude of purchase, sale, loan, business, association, etc.:

Closed the purchase of Offshore Blue Adventures and acted as attorney of record throughout the transaction.

REFERENCE NO. 4

Name: Liam Clancy
Firm: Kanbrick
Title: Manager
Address: 615 Old Hickory Blvd Nashville, TN 37209
Telephone: 503-734-5006

Nature and magnitude of purchase, sale, loan, business, association, etc.:

Acted as advisor during purchase of Offshore Blue Adventures. Also, acts as personal finances strategy/advisement.

CITY OF SAN DIEGO PERSONAL DESCRIPTION AND RELEASE

PLEASE NOTE: All partners, both general and limited; all stockholders owning more than 10% of any class of stock of corporations; all members of a limited liability company; and sole proprietors requesting to (sub)lease, must each complete this page before the tenancy request can be processed. (You may reproduce and use copies of this page, if necessary.)

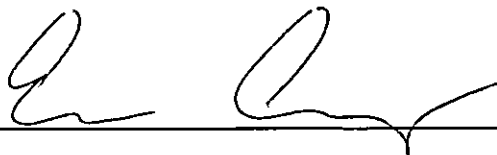
The following personal information is required to initiate a credit investigation. The business and personal reputation of principals, partners, and members will be considered in qualifying Lessees or in consenting to Sublessees.

First, Middle, & Last Name	<u>Evan Michael Cooney</u>
Date of Birth	<u>03-22-1994</u>
Place of Birth	<u>Lowland, Colorado</u>
Social Security Number	<u>574-91-7918</u>
Driver's License Number/State	<u>2562595</u>
Home Address	<u>1225 Pacific Beach Dr. Unit 3C</u> <u>San Diego, CA 92109</u>
Previous Address	<u>246 Condo Lane #814</u> <u>Tamuning, Guam 96913</u>
Home Telephone No.	<u>619-806-2663</u>
Employer	<u>Offshore Blue Adventures</u>
Occupation	<u>Owner</u>
Business Address	<u>1500 Quivira Way Suite 2 San Diego CA</u>
Business Telephone No.	<u>310-974-2176</u>
Business Fax No.	<u>N/A</u>

The City is hereby authorized to request a credit report and other information covering my financial and business history.

Date 01/15/25

Signed



Print or type exact name of proposed (Sub)Lessee from page 2 of Questionnaire:

OFFSHORE BLUE ADVENTURES

METHOD OF OPERATION

Please describe your proposed business operation on the property to be (Sub)Leased.

Discuss any optional services and uses which you propose to provide.

We offer whale and dolphin viewing charters
and operate out of Mission Bay Marina. The
company launched in 2011 and completes
the charter via a 22 foot Zodiac
RIB boat.

**PROPOSED METHOD OF FINANCING
DEVELOPMENT OR LEASEHOLD PURCHASE**

Describe the method of financing for the Leasehold purchase or any new or additional development on the Leasehold. Include a schedule of approximate dates when construction of each significant improvement is expected to be commenced and completed.

N/A

ESTIMATE OF GROSS RECEIPTS

If this Questionnaire is being completed by a prospective Lessee, please show the best estimate of the average annual gross sales for each significant use or service, and for each significant optional use or service which the Lessee and its Sublessees (if any) plan to conduct on or from the property. (If the Questionnaire is being completed by a Sublessee, only the estimate of the Sublessee's gross sales is required.) This data will be used by the City to analyze the proposed Lease or Sublease Consent application. The time periods shown should not be assumed to necessarily represent the term of a (Sub)Lease that may be granted or consented to by the City.

Average annual gross sales for each proposed significant use during each of the first five operating years:

Year of Operation	Uses (Identify Each Use)				
	Whale Watching Tours				
1	\$ 130k	\$	\$	\$	\$
2	\$ 135k				
3	\$ 140k				
4	\$ 145k				
5	\$ 150k				

EXPERIENCE STATEMENT

Please describe in detail the duration and extent of your business experience, with special emphasis upon experience with the type of business which you propose to conduct on City property. Also state in detail the pertinent experience of the persons who will be directly involved in development and management of the business.

Business degree with experience working on San Diego Tourism Authority marketing account. Personal experience with boats for the past 20+ years. Currently, studying and logging sea hours in order to get 6-pack charter license.

**TERMS AND CONDITIONS OF PURCHASE, SALE,
OR TRANSFER OF (SUB)LEASEHOLD INTEREST**

(NOTE: Complete this page only if the transaction involves a Lease assignment.)

Please summarize the terms and conditions of the purchase, sale, or transfer of Leasehold interest(s) which requires City consent, as specified in the Assignment-Sublease provisions of the City Lease. Please attach copies of the applicable sales agreement(s), escrow instructions, assignment agreement(s), or other documents in conjunction with the sale, purchase, or transfer of the (Sub)Leasehold interest(s).

I purchased the LLC with a down payment of \$41k. The rest of the purchase price will be paid to the ~~current~~ old owner over a 36 month term.