



STAFF REPORT

SAUSALITO CITY COUNCIL

AGENDA TITLE:

Sausalito Yacht Harbor Bulkhead Project; Lease and Agreement Amendments

RECOMMENDATION:

Receive Report and Provide Direction to Staff

BACKGROUND:

In 1992 the City and Sausalito Yacht Harbor (SYH) entered into a Lease Agreement for the lease of certain City owned property. (**Attachment No. 1**) In addition, SYH is entitled to utilize other property pursuant to a Settlement Agreement entered into in 1975. (**Attachment No. 2**) Attached hereto (**Attachment No. 3**) is a picture depicting the City property utilized by SYH under these agreements.

The Lease clearly indicates that the City is responsible for maintenance and repair of the existing Bulkhead. At the City Council meeting held on September 28, 2010 the Council received a report on the deterioration of the Bulkhead and the urgent need for replacement. A recent inspection revealed the presence of deteriorated and severely rotten timber piles and the erosion of the artificial fill. Failure of the Bulkhead is a threat to existing revenue generating uses including:

- Sausalito Yacht Harbor (~\$130 thousand per year in lease revenue),
- Spinnaker Restaurant (~\$340 thousand per year in lease revenue), and
- Sausalito Yacht Club (~\$80 thousand per year in lease revenue).
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On top of lease revenues, there are substantial Sales Tax Revenues to the City from the Spinnaker Restaurant and the Sausalito Yacht Club. That is, there could also be substantial negative economic impact to the City as well as any third party liability resulting from a failure of the bulkhead. A copy of the power point presentation given at the September 28th Council meeting is attached. (**Attachment No. 4**).

Replacement cost of the Bulkhead is estimated at approximately \$5 million (construction and construction management).

Under the Council's direction staff has entered into negotiations with SYH regarding the replacement of the Bulkhead. In addition, specifications and plans were prepared and invitations to bid were sent out for the replacement of the Bulkhead. Attached are photos/plans which depict the extent of the replacement project. (**Attachment No. 5**).

The purpose of the item before the Council is to provide an update of those negotiations and the bid process.

DISCUSSION:

SYH has agreed to partner with the City for the replacement of the Bulkhead and is prepared to pay one half of the cost of the replacement in consideration of extensions of both the Lease and the Agreement. At the next City Council meeting scheduled for January 25, 2011 staff anticipates bringing the Council amendments to both agreements in open session for approval which include the following terms which have been agreed upon by SYH:

- **Term:** The Lease and the Settlement Agreement (with respect to the property used by SYH) will both be extended to 2061. Currently under the Lease SYH has the unilateral right to extend the term to August, 2041. The terms of the Settlement Agreement currently remain in effect until 2027.
- **Payment:** The rent payments to be made by SYH under the Lease will remain the same provided however, that the percentage rent will be fixed at 25% for the entire term – thus eliminating the need to attempt to calculate fair market rent and providing for more certainty and stability in the rental income stream. The payments due under the Settlement Agreement will remain at 5%.
- **Bulkhead Replacement Costs:** The City will be contributing \$1,000,000 “up front” for the cost of replacing the Bulkhead. SYH will be providing the remaining funds (estimated to be approximately \$4,000,000). SYH will be entitled to a rent credit equal to the amount that the City’s ½ of the replacement costs exceed \$1,000,000.
 - The rent credit will apply over a 25 year period
 - A 5% escalator will be applied after the first year on the outstanding amount of the rent credit
 - Once the construction is finalized and the total expenditures are known a rent credit schedule which will be attached to the lease
 - SYH will pay any amount of rent that exceeds the applicable credit; if the amount of the credit exceeds the rent due such “excess” credit will be carried forward; this amount will be offset against the annual payment due under the Settlement Agreement. Any additional excess amount(s) will be carried forward – subject to the 5% escalator. Any excess credit remaining at the end of the 25 year rent credit period will be paid to SYH by the City.
 - The City can “pay off” all or any portion of the outstanding amount of the rent credit at any time without any penalty. If the City elects to “pre-pay” the credit the 5% escalator will only apply up to the date of the payment.

With respect to the actual replacement of the Bulkhead, Notice to Bidders was issued on December 8, 2010. Bid opening is anticipated to occur on January 21st (it has been extended from January 14th) and an item will be brought to Council for award of a construction contract on February 1st. Attached is the preliminary Pre-Bid Construction Schedule (**Attachment No. 6**).

FISCAL IMPACT:

The City's cost of replacing the Bulkhead is being substantially reduced by SYH's agreement to share in the cost of the replacement. In addition, the extension of both the Lease and the Settlement Agreement provides for the continuation of the existing revenue stream to the City. The actual impact of the replacement will be more fully know when the bids are opened for the project and more detailed fiscal impact information will be included in the staff report for the award of the construction contract.

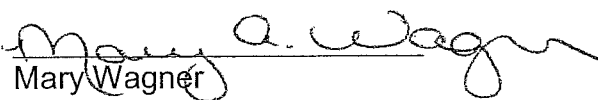
RECOMMENDATION:

Staff recommends that the Council receive the staff report, take public comment and give direction to staff if any.

ATTACHMENTS:

- No. 1 – Lease Agreement
- No. 2 – Settlement Agreement
- No. 3 – Picture Depicting Area subject to Lease and Agreement
- No. 4 – September 28, 2010 Power Point Presentation
- No. 5 – Bulkhead Replacement Project – Photo/Plan
- No. 6 – Preliminary Pre-Bid Construction Schedule


PREPARED BY:


Mary Wagner
City Attorney

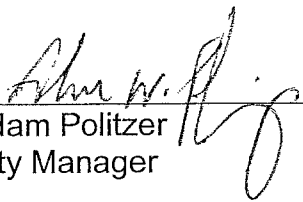
REVIEWED BY:


Charlie Francis
Administrative Services Director

REVIEWED BY:


Jonathon Goldman
Director of Public Works

SUBMITTED BY:



Adam Politzer
City Manager

Attachment No. 1

Lease Agreement

Item #: 6c
Meeting Date: _____
Page #: 5

LEASE
of
PUBLIC TIDES AND SUBMERGED LANDS

This Lease is executed as of September 1, 1991, between The City of Sausalito, a municipal corporation ("Lessor") and Sausalito Yacht Harbor, Inc., a California corporation ("Tenant"), who agree as follows:

This Lease is made with reference to the following facts and objectives:

A. Lessor is the grantee of certain tide and submerged lands, filled and unfilled, within the city limits of The City of Sausalito, California by grants from the State of California under Statutes of 1953, chapter 534, page 1795 and statutes of 1957, chapter 791, page 2002. Lessor holds title to these lands subject to the public trust which limits their use to purposes consistent with commerce, navigation and fisheries ("public trust"). The state grants are subject to a pre-existing lease between the state and Madden & Lewis Company, a partnership ("Madden") described in paragraph C (1) and (2). The grants further provide that the City may lease the granted lands for limited periods but not to exceed 50 years.

B. Tenant is the successor-in-interest to Madden, and desires to enter into this lease for the purpose of using the premises for the continued operation of the Sausalito Yacht Harbor ("SYH") in Sausalito. The existing operation of SYH includes the public tide and submerged lands which are the subject of this Lease as described in Exhibit B as Parcel One. Tenant's present and proposed use of the premises is consistent with the public trust.

C. Tenant presently occupies tide and submerged lands (more specifically described in Exhibit A) under a lease from Lessor terminating on February 23, 2002. Tenant's present occupancy, including Exhibit A areas subleased by Tenant, has devolved under conveyances and agreements described as follows:

(1) March 25, 1952 - State of California leased to Madden & Lewis Company, a partnership ("Madden"), 9.2 acres of filled breakwater ("peninsula"), on submerged land in Richardson Bay adjacent to the City of Sausalito for a term of 15 years commencing February 25, 1952, with the right to renew for 2 additional periods of 10 years each.

(2) July 1, 1953 - By mutual agreement the area covered by the lease to Madden was increased to 11.22 acres.

(3) March 14, 1955 - Madden exercised its option to renew the 1952 lease for two additional periods of 10 years each, thus extending the term of its lease until February 24, 1987.

(4) June 18, 1957 - Madden subleased to Sausalito Yacht Club a site on a portion of the Exhibit A lands for a yacht clubhouse and berthing through February 23, 2002.

(5) December 26, 1958 - Madden and Wetco, Inc. (subsequently MacMarin, Inc.) entered into an option agreement, with a sublease attached, allowing MacMarin to sublease a portion of the peninsula for the maximum term permitted Madden under its lease from the state for the purpose of developing a first class restaurant.

(6) May 5, 1959 - The Sausalito City Council, by Resolution No. 1475, approved the sublease from Madden to MacMarin commencing July 1, 1959 and terminating February 24, 2007 (later modified to terminate on February 23, 2002), on condition of Madden's payment to the City of 3% of the annual gross receipts of MacMarin under the sublease commencing February 24, 1987 and ending February 24, 2007 (later modified to terminate on February 23, 2002).

(7) July 2, 1959 - The Sausalito City Council, by Resolution No. 1485, extended the 1952 Madden lease for 15 years from February 24, 1987 to February 23, 2002 on condition of the payment of percentage rent of 3% of the annual gross receipts to Madden from the leased area during the 15 year extended term. The Resolution increased the area leased to Madden by adding 4.77 acres immediately adjoining the tide and submerged lands originally leased and incorporated the conditions and provisions of Resolution No. 1475 (but modifying the termination date to February 23, 2002).

D. In 1974, the Golden Gate Bridge, Highway and Transportation District ("District") condemned Madden's interest in a portion of the property described in Exhibit A.

E. Lessor and Tenant have agreed to the within terms for a new lease of the "premises" described in Exhibit B as Parcel One. The premises are a portion of the area granted Madden under the current lease, as amended. The execution and delivery of this Lease is conditioned on the following:

1) Tenant's concurrent surrender (with Lessor's consent) of the current lease of Exhibit A lands, subject to the provisions hereof, and excepting those portions of Exhibit A

lands which are the subject of the sublease to the Sausalito Yacht Club referred to in paragraph C(4) above, the sublease to MacMarin referred to in paragraphs C(5) and C(6) above, and the interest of the District referred to in paragraph D above;

2) Tenant's agreement that upon request by Lessor and the Sausalito Yacht Club, Tenant will immediately surrender to Lessor the current lease of the Exhibit A lands which are the subject of the sublease to the Sausalito Yacht Club;

3) Tenant's agreement that upon request by Lessor and the District, Tenant will immediately surrender to Lessor any interest it has in the current lease of the Exhibit A lands which are the subject of the interest of the District;

4) Tenant's agreement that upon request by Lessor and MacMarin, Tenant will immediately surrender to Lessor any interest it has in the current lease of the Exhibit A lands which are the subject of the sublease to MacMarin, subject to Tenant's right to continue to receive percentage rent payments from MacMarin as provided in section 19.02 of this Lease; and

5) Tenant's assignment to Lessor of any and all rights it may have under the current lease to rents payable by the Sausalito Yacht Club, the District, and MacMarin on account of their sublease or other interest in the current lease, except as specifically provided otherwise in section 19.02 of this Lease.

F. This Lease has been concluded through negotiations under which Lessor has required that the consideration to be paid by Tenant for its Lease of the premises reflect the present fair market rental value of the premises with periodic adjustments through the term of this lease.

G. By Tenant's present occupancy of property which includes the premises, Tenant acknowledges and accepts the premises as being in good and sanitary order, condition and repair and takes possession of the premises under this Lease subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the premises.

Tenant is willing to lease the premises from Lessor in accordance with the provisions set forth in this Lease and, concurrently, to surrender and terminate its Lease with Lessor of the lands described in Exhibit A (subject to the provisions of paragraph E above), provided this Lease is duly executed and delivered.

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W I T N E S S E T H

ARTICLE I- PREMISES

1.01 Description:

Lessor leases to Tenant and Tenant leases from Lessor the real property located in the City of Sausalito, Marin County, State of California, described as Parcel One in Exhibit B and shown in the record of survey attached to this Lease as Exhibit C. The property consists of tide and submerged lands, filled and unfilled, held by Lessor subject to the public trust requiring the lands be used for purposes consistent with commerce, navigation and fisheries.

ARTICLE II- TERM

2.01 Term:

The term shall commence September 1, 1991 and shall expire December 31, 2002 unless extended pursuant to the provisions of §§ 2.02, 2.03 or 2.04.

2.02 First Option to Extend - January 1, 2003 to December 31, 2029

Tenant is granted an option to extend the term of this lease on all the provisions contained in this lease for an extended term of 27 years, after the expiration of the original term. Tenant shall be deemed to have exercised this option to extend unless written notice is given to Lessor at least 180 days prior to December 31, 2002 that Tenant does not exercise this First Option to Extend.

2.03 Second Option to Extend - January 1, 2030 to December 31, 2035

In the event of an exercise of the first option to extend, Tenant is hereby granted a second option to extend the term of this lease on all the provisions contained in this lease for an extended term of six (6) years from January 1, 2030 through December 31, 2035. Tenant shall exercise this second option to extend by giving written notice to Lessor at least 180 days prior to December 31, 2029.

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2.04 Third Option to Extend - January 1, 2036 to August 31, 2041

In the event of an exercise of the second option to extend, Tenant is hereby granted a third and final option to extend the term of this Lease on all the provisions contained in this lease for a further term from January 1, 2036 through August 31, 2041. Tenant shall exercise this third option to extend by giving written notice to Lessor at least 180 days prior to December 31, 2035.

2.05 Option to Extend Rescinded Upon Default.

If Tenant is in default on the date notice is given of its intent to extend any term of this lease pursuant to the provisions of §§ 2.03 and 2.04, or if Tenant is in default upon the date an extended term is to commence pursuant to the provisions of §§ 2.02, 2.03 or 2.04, such notice shall be ineffective and the extended term shall not commence and the term shall expire at the end of the then current term, unless any of the following circumstances occur:

(A) Such default is cured within thirty days of receiving notice of default; or

(B) The circumstances of the default are arbitrated pursuant to Article XIII of this Lease and, as a result of arbitration, the arbitrator determines that no default has occurred; or

(C) The circumstances of the default are arbitrated pursuant to Article XIII of this Lease and, as a result of arbitration, the arbitrator determines that a default has occurred, and Tenant cures such default within 30 days following notice to Tenant of the arbitrator's decision.

ARTICLE III - USE

3.01 Use.

Tenant is presently using the premises for parking for the patrons, subtenants, concessionaires, guests, invitees, employees and volunteers of the Sausalito Yacht Harbor and its related operations that occur either on the premises or on the contiguous fee properties owned or controlled by Tenant (referred to throughout the remainder of this Lease as "SYH Parking"), and for the maintenance and operation of a marina and marina support facilities ("present uses") as follows:

- (A) Maintenance and rental of 66 boat berths;
- (B) Boat carry-lift, repair facilities and related boat yard activities.
- (C) Activities customarily incident or convenient to operation of the marina.

In addition to using the premises for parking, boat berths, boat yard activities and incidental marina activities, Tenant may use the premises for the purpose of providing non-SYH parking, provided such use shall conform with the City of Sausalito's zoning and planning code requirements applicable to such parking in effect at the time of Tenant's proposed use of the premises for such parking, which requirements may require that such non-SYH parking take place only to the extent that the total amount of parking at SYH exceeds the amount required as a result of all SYH operations, and which non-SYH parking shall take place only in those parking spaces which exceed the required number. For the purpose of this Lease, "non-SYH parking" refers to the parking of vehicles on the Premises by or for the primary benefit of individuals not doing business at, not employed by or not using the facilities of the Sausalito Yacht Harbor and its related operations.

Any other use of the premises than those described above shall require the written consent of Lessor, which consent shall not be withheld unreasonably.

3.02 Compliance With Law.

Tenant shall, at Tenant's expense, comply promptly with all applicable and legally binding statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the term or any part of the term hereof, regulating the use by Tenant of the premises. Tenant shall not use nor permit the use of the premises in any manner that will tend to create waste or a nuisance.

3.03 Prohibited Use.

In no event will Tenant use or permit the premises to be used in any manner inconsistent with the public trust. Nor will Tenant use or permit the premises to be used in any manner that will adversely affect the physical integrity of the peninsula, the peninsula bulkhead and walkway thereon, or wave baffles, on the premises, or which poses a threat to the ability of the bulkhead to serve the purpose it presently serves given the uses to which the premises are now devoted. In this connection, the parties affirm that the bulkhead and walkway thereon, and wave baffles, which Lessor is obligated to maintain hereunder, are

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intended to support and serve the present and allowed uses to which the premises, the peninsula and SYH are now being or may be devoted and Lessor's maintenance obligation is not intended, nor will it be extended to support other than the present and allowed uses of these properties.

3.04 Continuous Operations.

Tenant expressly agrees (and it is of the essence of this Lease) that Tenant will, except as set forth in §4.04(A)2 below, continuously conduct its marina business on the premises throughout the lease term and will in general use its best efforts to reasonably produce gross receipts from the premises. Tenant shall be considered to be complying with its obligation to "reasonably produce gross receipts," if Tenant is operating its marina business on the premises as would a reasonably prudent business person.

In the event Tenant disagrees with a determination by Lessor that Tenant is not complying with its obligation to reasonably produce gross receipts, Tenant may arbitrate such determination pursuant to the provisions of Article XIII of this Lease, and in any such arbitration, Lessor shall carry the burden of proof.

ARTICLE IV - CONSIDERATION/RENT AND OTHER PAYMENTS

4.01 Consideration/Rent- September 1, 1991 through December 31, 2002.

As full payment for the use and occupancy of the premises for present uses from September 1, 1991 through December 31, 2002, Tenant will pay Lessor the sum of \$450,000. Tenant agrees to pay this sum upon the execution and delivery of this Lease. Any apportionment of this sum shall occur only in the event the Lease is terminated as a result of Lessor's default. ✓

4.02 Consideration For Bulkhead Maintenance.

Lessor has agreed in section 5.01 of this Lease to maintain the peninsula, the peninsula bulkhead and walkway thereon, and wave baffles, located on the premises. Tenant currently has this maintenance obligation until February 23, 2002 under its existing lease of Exhibit A lands. In consideration of Lessor's consent to relieve Tenant from its obligation to maintain said bulkhead and walkway thereon, and wave baffles, from January 1, 1992 through February 23, 2002, Tenant agrees to pay Lessor the additional sum of \$150,000 payable upon the execution and delivery of this Lease. Any apportionment of this sum shall occur only in the event the Lease is terminated as a result of

Lessor's default.

4.03 Minimum Monthly Rent - January 1, 2003 to December 31, 2039.

In the event the lease is extended as provided in sections 2.02, 2.03, or 2.04, for the lease year beginning on January 1, 2003 and each lease year thereafter for the remainder of the term of any extension period, Tenant will pay each month, as minimum monthly rent, a sum equivalent to 1/12th of 75% of the average annual rent for the 3 preceding lease years. For the purposes of this section, the "average annual rent" for said 3 lease years shall be one-third of the total rent required to be paid under the terms of the Lease for the use of the premises during the preceding 3 lease years. The average annual rent for the 3 lease years prior to January 1, 2003 will be computed on the basis of the rent which Tenant would have been obligated to pay under the terms of this Lease based on gross receipts from use of the premises for those 3 lease years, computed by using the percentage rent rates applicable to such use or uses for the lease year beginning January 1, 2003. Tenant will submit statements of its gross receipts from the leased premises for the three lease years prior to 2003 as necessary to determine a 3 Lease year average in establishing minimum monthly rent commencing January 1, 2003.

Minimum monthly rent shall be due and payable on or before the 20th day of each month.

Years in which a substantial interruption occurs in the conduct of Tenant's business on the premises shall be excluded from the 3 lease year average. A "substantial interruption" for purposes of this paragraph shall be limited to substantial physical interruptions of Tenant's business and shall not include any decreases in the volume or gross receipts of Tenant's business due to general or local economic factors.

In the event that Tenant is required to hold any berths vacant for the purpose of performing major repairs and/or rebuilding thereof, then during such period of vacancy, the minimum monthly rental provided herein shall be temporarily reduced in proportion to the reduction in scheduled monthly income from the leased premises on account of the berths held vacant, provided that such abatement of minimum rent shall be limited to a total of six months per berth every ten years during the term of this Lease and any extension thereof, commencing on January 1, 1992.

4.04 Percentage Rent - January 1, 2003 through August 31, 2041

(A) Percentage Rent Rates. For each lease year of any extended term from January 1, 2003 through August 31, 2041, Tenant will pay to Lessor a percentage of Tenant's gross receipts computed at the percentage rent rates set forth below or at rates

established as set forth below. Each percentage rent period Tenant will pay to Lessor the amount by which the aggregate percentage rent computed on Tenant's gross receipts during the percentage rent period exceeds the minimum monthly rent (as provided in section 4.03) that Tenant has paid during the percentage rent period.

(1) Boat Berths. During the first extension period, commencing January 1, 2003 through December 31, 2029, Tenant will pay percentage rent equivalent to 25% of the annual gross receipts derived from the use of boat berths located on the premises.

For the second extension period, commencing January 1, 2030 through December 31, 2035, the parties will agree on a current market percentage rent rate to apply to gross receipts from the use of boat berths on the premises. In determining a current percentage rent rate for boat berths, the parties intend to establish a market rate for the use of boat berths based on current rates paid by lessees in marinas in California comparable to SYH in size, location, facilities and quality. If the parties are unable to agree on a current rate, the rate shall be established by the appraisal process provided in section 4.04(F). Commencing January 1, 2030, through December 31, 2035, Tenant will pay Lessor percentage rent on Tenant's gross receipts from boat berths at the percentage rate established pursuant to this paragraph.

For the third extension period, commencing on January 1, 2036 through August 31, 2041, the parties will establish a current percentage rent rate to apply to gross receipts from the use of boat berths on the premises in the same manner as provided for the second extension period. Commencing January 1, 2036 through August 31, 2041, Tenant will pay Lessor percentage rent on Tenant's gross receipts from boat berths at the current rate established pursuant to this paragraph.

Throughout each extension term, Tenant agrees to conduct its operation of the marina so that the annual vacancy rate in the boat berths located on the premises does not exceed the vacancy rate of boat berths located in Sausalito Yacht Harbor on marina property owned or used by Tenant exclusive of the premises. Tenant shall, upon Lessor's demand, provide Lessor with a statement of the current annual vacancy rate for the premises and for the portion of SYH owned or used by Tenant exclusive of the premises.

(2) Boat Yard. During the first extension period, commencing January 1, 2003 through December 31, 2029, Tenant will pay percentage rent equivalent to 5% of the annual gross receipts derived from the boat carry-lift, repair facilities and other

boat yard activities conducted on the premises. It is agreed that Tenant is not obligated to conduct boat carry-lift, repair facilities and/or other boat yard activities on the Premises and Tenant may cease and abandon such activities or any part thereof, at any time, and from time to time, in its absolute discretion.

For the second and third extension periods Tenant will pay Lessor percentage rent for boat yard activities reflecting current percentage rent rates for boat yard activities determined in the same manner as described in paragraph (A)(1).

(3) Parking. As partial consideration for the granting of this Lease and as full payment for use of the premises for SYH-parking during the term of this Lease and the first, second and third extension periods, Tenant will pay Lessor the sum of \$200,000.00. Tenant agrees to pay this sum on ~~April~~ 1, 1992. Any apportionment of this sum shall occur only in the ~~event~~ the Lease is terminated as a result of Lessor's default.

(4) Pay Parking. In the event the premises are used for parking for which a separate charge is assessed or a fee collected (referred to in this Lease as "pay parking"), Tenant will pay percentage rent on the gross receipts derived from pay parking as provided in this section. During the initial term of this Lease (concluding on December 31, 2002), Tenant shall pay percentage rent in the amount of 25% of gross receipts for non-SYH parking for individuals who are authorized to park on a monthly or extended basis (non-hourly parking). During the initial term of this Lease (concluding on December 31, 2002) Tenant will pay the percentage rent rate determined by agreement of the parties or through appraisal as provided in section 4.04(F) for any non-SYH pay parking for which a fee is assessed on an hourly, daily or similar short-term, parking lot style basis. For all pay parking occurring during the first, second and/or third extensions, the percentage rent rate to be paid by Tenant will be determined by agreement of the parties or through appraisal as provided in section 4.04(F). The percentage rent rate to be negotiated shall reflect a market rate based on current percentage rates paid by parking operators in similar locations/operations (but not limited to marinas) in the San Francisco Bay Area. If Tenant conducts a pay parking operation which involves use of both the premises and other property owned or used by Tenant, the gross receipts from use of the premises for pay parking shall reflect an equitable allocation of gross parking receipts between the premises and Tenant's other property used for pay parking.

During the first, second and third extension periods of this Lease, any gross receipts derived as a result of levying a fee or collecting a charge from Tenant's boat berth sub-tenants for any SYH-parking shall be considered an element of the "gross receipts

derived from the use of boat berths" and shall thereby incur percentage rent in accordance with the provisions of paragraph (A) (1), above.

(5) Parking Percentage Rate Adjustments. The percentage rent rates determined and applied to gross receipts from pay parking on the premises will be periodically adjusted at five (5) year intervals throughout the effective term of this Lease and any extension periods. Periodic adjustments shall reflect current market rates as described in section 4.04(A) (3) and (4), and may be adjusted downward as well as upward.

(6) Other Permitted Uses. If any portion of the premises is used for permitted uses other than boat berths, boat yard activities, or parking, Tenant agrees to pay percentage rent on the gross receipts from such use, commencing with the date of such use. The parties shall agree on a current percentage rent rate for the use or the rate shall be set through the appraisal process provided in section 4.04(F). To the extent relevant and determinable, the rate shall reflect percentage rates then prevailing at comparable marinas in California for the permitted use. The percentage rent rate so established will be reviewed and adjusted by the parties at five (5) year intervals throughout the effective term of this lease and any extension periods. By this adjustment procedure, the parties intend to maintain a current market rate for percentage rent on gross receipts from permitted uses of the premises based on rates for similar uses in marinas comparable to SYH in size, location, facilities and quality.

(B) Percentage Rent Payments. Percentage rent shall be computed each percentage rent period (as defined in paragraph 4.04(C)). On or before the forty-fifth (45th) day following the close of each percentage rent period, Tenant shall pay to Lessor the amount by which the sum computed as a percentage rent on Tenant's gross receipts during the percentage rent period exceeds the minimum monthly rent that Tenant has paid during that percentage rent period.

Within sixty (60) days after the end of each lease year Lessor shall determine the amount of percentage rent based on the gross receipts of Tenant during the lease year, and the sums paid to Lessor as minimum monthly rent and percentage rent. If Tenant has paid to Lessor an amount of percentage rent greater than the percentage rent it is in fact obligated to pay for the lease year as determined in this paragraph, Tenant shall be entitled to an immediate refund of the sum determined. If Tenant has paid to Lessor an amount of percentage rent less than Tenant is required to pay, Tenant shall immediately pay the difference to Lessor.

(C) Percentage Rent Period. The percentage rent period

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shall be semi-annual. The last percentage rent period shall end on the date the term expires or terminates.

A "lease year" is the calendar year, except that the first and last lease years may be shorter than a calendar year.

"Semi-annual" rent periods are periods within each lease year ending on the last day of June and the last day of December.

(D) Gross Receipts Defined. "Gross receipts" means all receipts from the conduct of all business in, on, from or through the use of the premises and all transactions in or from the premises, including the gross amount received from the use of marina facilities, from merchandise, products or the performance of services sold, leased, or licensed in or from the premises by Tenant, its permitted subtenants (other than individual boat berth subtenants), licensees, or concessionaires, whether for cash or on credit, including the gross amount received by reason of orders for merchandise or services taken on the premises although filled or performed elsewhere, and whether made by marina personnel or vending machines. Any transaction on an installment basis or otherwise involving the extension of credit, shall be treated as a sale for the full price at the time of the transaction, irrespective of the time of payment or when title passes. Gross receipts also shall include any sums that Tenant receives from pay telephones, stamp machines, music machines, amusement machines, or public toilet locks located on the premises. Gross receipts in credit card transactions shall include only the actual amount received by Tenant from the credit card issuer.

Provided however, notwithstanding the foregoing, there shall not be included in gross receipts the gross receipts of any licensee of Tenant who performs work on the premises at the request of and/or as a service to individual boat berth tenants or boat yard customers if Tenant receives no rent or other consideration for such license or work. In addition, there shall not be included in Tenant's gross receipts any rent or other consideration received by Tenant from a subtenant, licensee, or concessionaire whose gross receipts have been included in computing Tenant's gross receipts.

In addition, gross receipts shall not include, or if included there shall be deducted (but only to the extent they have been included): Sales and use taxes, so-called luxury taxes, consumers' excise taxes, gross receipts taxes, and other similar taxes now or in the future imposed on the sale of merchandise or services, but only if such taxes are added to the selling price, separately stated, collected separately from the selling price of merchandise or services, and collected from customers; sales of fixtures, trade fixtures, or personal property that are not

merchandise as allowed in this Lease; all cash or credit refunds made on any sale or transaction that took place on or from the premises; any amount due Tenant as a result of any transaction made on an installment basis or otherwise involving the extension of credit which amount has previously been included as "gross receipts," and which amount has not been paid to Tenant when due and which amount has been charged off by Tenant as a bad debt, so long as, in the event the amount is subsequently paid to Tenant, it shall be included as "gross receipts"; any sums collected by Tenant from its subtenants, licensees or concessionaires as reimbursement for payments made by Tenant for utility services provided to such subtenants, licensees or concessionaires on the premises, the amount received from sale or lease of merchandise returned by customers and accepted for full credit, or the amount of discounts, refunds, and allowances made on such merchandise; any sums paid to third parties for the use or rental of pay telephones, stamp machines, music machines, amusement machines, or public toilet locks; sums and credits received in the settlement of claims for loss of or damage to merchandise; and refundable deposits collected from customers or subtenants of Tenant.

(E) Statement of Gross Receipts. Tenant shall furnish to Lessor a statement of Tenant's gross receipts within forty-five (45) days after the end of each percentage rent period. Each statement shall be signed and certified to be correct by Tenant or its authorized representative, and if Tenant is a corporation the statement shall be signed and certified to be correct by an officer of Tenant.

Tenant shall keep at the premises full and accurate books of account, records, cash receipts, and other pertinent data showing its gross receipts from its use of the leased premises. Tenant shall: (a) install and maintain accurate receipt-printing cash registers and shall record on the cash registers every sale and other transaction made from the premises; or (b) if Tenant does not install receipt-printing cash registers, Tenant can use serialized sales slips if such sales slips are kept and maintained as required in this paragraph and if Tenant records every sale and other transaction made from the premises on such sales slips. Such books of account, records, cash receipts, and other pertinent data shall be kept for a period of eighteen (18) months after the end of each lease year. The receipt by Lessor of any statement, or any payment of percentage rent for any period, shall be binding and conclusive on Lessor after the expiration of eighteen (18) months following receipt of the same by Lessor except in the event of the showing described below.

Lessor, either on its own behalf or represented by an independent Certified Public Accountant (independent CPA) appointed by Lessor, shall be entitled during the term and within

eighteen (18) months after expiration or termination of this Lease to inspect and examine all Tenant's records relating to the leased premises, including Tenant's books of account, records, cash receipts, and other pertinent data, so Lessor can ascertain Tenant's gross receipts from the premises. Tenant shall cooperate fully with Lessor in making the inspection.

Lessor shall also be entitled, once during each lease year and once within six months after expiration or termination of this Lease, to an independent audit of Tenant's books of account, records, cash receipts, and other pertinent data relating to the leased premises to determine Tenant's gross receipts from the leased premises, by an independent CPA appointed by Lessor. The audit shall be confidential, shall be limited to the determination of gross receipts from the leased premises, and shall be conducted only after reasonable advance notice and during usual business hours at the premises.

If in the opinion of the independent CPA, an audit shows that there is a deficiency in the payment of any percentage rent, the deficiency shall become immediately due and payable. The costs of the audit shall be paid by Lessor unless the audit shows that Tenant understated gross receipts by more than six percent (6%), in which case Tenant shall pay Lessor's costs of the audit, not to exceed \$3,500. In the event Tenant disagrees with the opinion of the independent CPA, Tenant may request arbitration of the CPA's determination pursuant to Article XIII.

The independent CPA and the parties hereto shall keep information gained from such statement, inspection, or audit confidential and shall not disclose it other than as necessary to carry out the purposes of this Lease.

Lessor's rights to inspect, examine and/or audit Tenant's books of account, records, cash receipts, and other pertinent data shall be limited to those documents relating to Tenant's operations of SYH on the leased premises. Any such records kept by Tenant in connection with the operation of SYH on other premises not subject to this Lease ("private SYH records") shall not be available to Lessor or Lessor's representatives for any purpose under this Lease. In the event of any arbitration or litigation ("proceeding") between the parties concerning, relating to, or arising from this Lease, discovery of private SYH records shall only be allowed to the extent such information is first determined by the arbitrator or court to be relevant, material and necessary to the determination of the issue or issues in the proceeding. Any information so obtained shall be kept confidential by the parties to the proceeding and shall not be used by Lessor for any purpose outside of such proceeding. The arbitrator or judge allowing access to such information shall make such orders in regard thereto as may be necessary to insure

confidentiality.

Notwithstanding any provision in this section to the contrary which would limit Lessor's right to inspect or review Tenant's accounts or books, or challenge any payment made on account of the passage of time, Lessor shall be entitled to inspect such books or challenge such payment after such period upon a showing that any statement of gross receipts was made with fraudulent or deceitful intent, or includes any material, intentional misstatement by Tenant. Lessor shall be entitled to make such showing only until barred by an applicable statute of limitations.

(F) Setting Percentage Rent Rates by Appraisal. If the parties are unable to agree on percentage rent rates to be established and periodically adjusted during the lease term or any extension thereof, the percentage rent rate on which the parties cannot agree will be set by appraisal. If the parties have not agreed on a percentage rent rate(s) within 180 days prior to the effective date of the rate to be determined, each party, at its cost and by giving notice to the other party, shall appoint a real estate appraiser with at least 5 years of full time commercial and marina appraisal experience in the San Francisco bay area to appraise and set the percentage rent rate in issue. When giving such notice to the other party, the party giving notice shall make explicit reference to this paragraph 4.04(F). If a party does not appoint an appraiser within 14 days after the other party has given notice of the name of its appraiser, the single appraiser appointed shall be the sole appraiser and shall set the percentage rent rate for the applicable use and term. If the two appraisers are appointed by the parties as stated in this paragraph, they shall meet promptly and attempt to set the percentage rent rate for the applicable use and term. If they are unable to agree within 30 days after the second appraiser has been appointed, they shall attempt to elect a third qualified appraiser within 10 days thereafter. If they are unable to agree on the third appraiser, either of the parties to this Lease by giving written notice to the other party can elect to have the third appraiser appointed through arbitration as provided in Article XIII. Each of the parties shall bear one half of the cost of appointing the third appraiser and of paying the third appraiser's fee. The third appraiser, however selected, shall be a person who has not been previously acted in any capacity for either party.

Within 20 days after the selection of the third appraiser, a majority of the appraisers shall set the percentage rent rate in issue. In setting the applicable rate, the appraisers shall be guided by the criteria that the parties have agreed the rate will reflect. If a majority of the appraisers are unable to set the market rate within the stipulated period of time, the two closest

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of the three rate appraisals shall be added together and their total divided by two; the resulting quotient shall be the percentage rent rate for the use and period in question. The rate established by appraisal under this paragraph 4.04(F) will be binding on the parties, and the appraisers shall promptly serve written notice of the established rate(s) on the parties.

Except for the appointment and limited arbitration by appraisers as provided in this paragraph 4.04 (F), and the independent CPA's determination of deficiency in payment of percentage rent, as provided in paragraph 4.04(E) of this Article, Tenant's obligations for consideration and rent, under this Article IV, are not subject to arbitration.

In the event that the parties are or have been proceeding under this paragraph 4.04(F) to determine a percentage rent rate or rates for an extension of this Lease, but such rate(s) have not been fully determined at the scheduled commencement date of the extended term, then Tenant shall be deemed to be holding over with Lessor's consent until the determination of such rate(s) is completed, and the provisions of Article XVIII shall apply. Once determined, the percentage rent rate(s) shall become effective as of the scheduled commencement date of the extended term, and the parties shall, within 20 days of written notice of the new rate(s), make appropriate adjustments between the amount of rent paid during the holdover period and the amount actually owing for such period under the new rate.

Notwithstanding anything contained herein to the contrary, if Tenant is not satisfied with the percentage rents established by appraisal pursuant to this section for any extension of the lease term pursuant to §§ 2.02, 2.03 or 2.04, Tenant may within 20 days of receipt of written notice of the rate established advise Lessor that the percentage rent is not satisfactory, and may, by written notice to Lessor, elect to terminate the lease rather than exercising its option pursuant to §§ 2.02, 2.03, or 2.04, whichever is applicable, even if Tenant has previously notified Lessor that it will exercise its option or is otherwise deemed to have exercised its option under said sections. Upon such election by Tenant, this Lease shall finally expire and terminate at the end of the then-current lease period, provided however, that Tenant shall have 90 days from and after the date of Tenant's written election to vacate the Premises. If Tenant makes this election after the appraisal process has determined a percentage rent rate within five percent of Lessor's last best and final offer, Tenant shall pay all expenses incurred by City in undertaking to establish an acceptable rent under this appraisal method, up to a maximum of \$3,500. For example, if Tenant makes this election after Lessor has offered a percentage rental rate of 28%, then Tenant shall be liable for City's cost of the appraisal if the appraisal process determines a percentage

rental rate between 26.6% and 29.4%. If Tenant makes this election during any hold over period, Tenant shall pay percentage rent at the rate established for the time that it has been holding over.

4.05 Rent Includes All Tenant Payment Obligations.

It is understood that the Lessor shall receive the rent set forth in Article IV free and clear of any and all other taxes, liens, charges or expenses of any nature whatsoever in connection with the ownership and operation of the premises which may otherwise be provided under this Lease as an obligation of Tenant. All of such charges, costs and expenses shall constitute additional rent, and upon the failure of Tenant to pay any of such costs, charges or expenses, Lessor shall have the same rights and remedies as otherwise provided in this Lease for the failure of Tenant to pay rent. Any present or future law to the contrary shall not alter this agreement of the parties.

ARTICLE V - MAINTENANCE, REPAIRS, ALTERATIONS AND ADDITIONS

5.01 Lessor's Obligation - Peninsula Bulkhead.

(A) Maintenance of Bulkhead. In consideration of the execution of this Lease and the performance of Tenant's obligations hereunder, Lessor agrees to perform such ordinary maintenance and repair as is necessary to maintain the present physical integrity of the peninsula, the peninsula bulkhead and walkway thereon, and wave baffles located on the premises. Commencing January 1, 1992 and continuing at all times throughout the term of this Lease, Lessor will perform ordinary maintenance and repair on the peninsula, the peninsula bulkhead and walkway thereon, and wave baffles, in accordance with this section. "Ordinary maintenance and repair" as used herein means and includes the periodic replacement of deteriorated pilings and other bulkhead, wave baffle, and walkway elements; periodic inspection and component repair and replacement of back cables and deadmen, the correction of settlement of the bulkhead and paved area behind and the replacement of major components on which the structural integrity of the bulkhead depends, i.e., vertical and batter piles subject to dry rot and marine borer action; and it shall include periodic checking of the horizontal alignment of the bulkhead and wave baffles and the making of all reasonably necessary repairs thereto. Lessor shall take reasonable precautions to minimize any interference with the conduct of Tenant's business during the course of any such repair work. Lessor's obligation to perform ordinary maintenance and repair under this paragraph is not intended to obligate Lessor to restore the peninsula, the peninsula bulkhead or the walkway

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thereon, or the wave baffles from damage or destruction due to fire, earthquake, tidal wave, unforeseen acts of God, or other catastrophic event.

(B) Survey by Independent Engineer. In addition to the above, at least once every two years, and more often if recommended by the independent engineer, Lessor at its sole expense, will have the peninsula bulkhead and the walkway thereon, and the wave baffles, surveyed by an independent qualified engineer who will prepare a written report of recommendations for maintenance and repair. Lessor shall promptly complete the recommended maintenance and repair as certified by the engineer. Except for damage or destruction due to fire, earthquake, tidal wave, unforeseen acts of God, or other catastrophic event, nothing in this Article shall be construed to limit Lessor's obligation to perform ordinary maintenance and repair to the peninsula itself, or to the peninsula bulkhead or walkway thereon, or wave baffles, as provided in paragraph 5.01(A) when and as necessary.

Lessor shall provide Tenant with a copy of the survey report. If Tenant does not agree with the conclusion and recommendation of the survey, Tenant at its sole cost may, within 15 days, appoint an independent qualified engineer to conduct a similar survey. If the two engineers are unable to agree on recommendations for the ordinary maintenance and repair of the peninsula and the bulkhead and walkway thereon, and wave baffles, either party may refer the matter for decision by arbitration as provided in Article XIII.

(C) "Independent Qualified Engineer" Defined. An independent "qualified engineer" means a civil or structural engineer licensed by the State of California who has at least 15 years experience in supervising the design, construction or inspection of marina structures of a character similar to the peninsula, the peninsula bulkhead and walkway thereon, and the wave baffles, and who is not a regular employee of Lessor or Tenant, or such other engineer who is mutually agreed to by the Parties.

(D) Bulkhead, Walkway, and Wave Baffle Replacement. Lessor may from time to time elect to replace the existing bulkhead and/or walkway thereon, and/or wave baffles, on the premises with a new bulkhead and/or a new walkway, and/or new wave baffles. Tenant agrees that its possession of the premises under this Lease is subject to Lessor's right to replace the existing bulkhead and/or walkway and/or wave baffles with a new bulkhead and/or new walkway and/or new wave baffles. Lessor reserves the right to enter and encroach on the premises to the extent necessary to perform ordinary maintenance and repair and to construct a new replacement bulkhead, a new walkway thereon

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and new replacement wave baffles.

If Lessor elects to replace the bulkhead and/or walkway thereon, and/or wave baffles, Lessor shall notify Tenant in writing and Lessor and Tenant shall, thereafter, confer and agree on an expeditious construction schedule for the replacement to minimize any interruption to Tenant in the conduct of Tenant's business. Lessor shall prosecute such work diligently to completion. Tenant's obligation to continuously conduct its business from the premises shall be suspended as necessary to accommodate the contemplated bulkhead and/or walkway and/or wave baffle replacement, and the minimum monthly rental payable by Tenant shall be abated during such replacement, in proportion to the scheduled income from the number of berths which Tenant is required to hold vacant during such replacement.

5.02 Tenant's Obligations.

Except as provided in section 5.01, Tenant shall keep in good order, condition and repair the premises and every part thereof, including all landscaping, driveways, parking lots, fences and signs located on the premises.

On the last day of the term hereof, or on any sooner termination, Tenant shall surrender the premises to Lessor in the same condition as when received, ordinary wear and tear excepted, clean and free of debris. Tenant shall repair any damage to the premises occasioned by the installation or removal of Tenant's trade fixtures, furnishings and equipment. Tenant shall leave all air lines, power panels, electrical distribution systems, lighting fixtures, plumbing and fencing on the premises in good operating condition.

5.03 Parties's Rights.

(A) If Tenant fails to perform Tenant's obligations under this Article V, or under any other paragraph of this Lease, Lessor may at its option (but shall not be required to) enter upon the premises after thirty (30) days' prior written notice to Tenant (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Tenant's behalf and put the same in good order, condition and repair, and the reasonable cost thereof together with interest thereon at ten percent (10%) per annum or at the maximum rate an individual is allowed by law to charge, whichever is less, shall become due and payable as additional rental to Lessor together with Tenant's next rental installment.

(B) If Lessor fails to perform its obligations under this Article V, Tenant may at its option (but shall not be required to) upon thirty (30) days prior written notice to Lessor (except

in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessor's behalf and put the same in good order, condition and repair, and the reasonable cost thereof together with interest thereon at ten percent (10%) per annum or at the maximum rate an individual is allowed by law to charge, whichever is less, shall become immediately due and payable in full and, unless paid when due, Tenant may deduct the same from the next and succeeding rental payments until all sums due Tenant have been paid in full.

In addition, if Tenant has given the thirty days written notice to Lessor required under this section and Lessor nevertheless fails to perform its obligations under this Article V, and if Tenant notifies Lessor in writing and demonstrates to Lessor that as a result of Lessor's said failure, Tenant is unable to obtain public liability insurance for any portion of the leased premises, or that any portion of the premises is otherwise unusable for safety or other reasons, then Tenant may at Tenant's option terminate this Lease as to the affected premises only. Such default by Lessor may be cured if, within thirty (30) days from and after Tenant's notice that it is unable to use the affected premises or to obtain public liability insurance therefor, Lessor commences to perform its maintenance and repair obligations under this Article V, and diligently completes such maintenance and repair thereafter.

5.04 Alterations and Additions.

(A) Tenant shall not, without Lessor's prior written consent, make any major alterations, improvements, additions, or utility installations in, on or about the premises, provided however that Lessor's consent shall not be unreasonably withheld. "Major Alterations" mean any alteration the cost of which is estimated to exceed \$50,000 or any alteration which, when completed, will have the effect of reducing gross revenues produced from the premises for more than two consecutive months, but shall not include repairs or replacements in, on, or about the premises. Lessor may require that Tenant remove any or all of said alterations, improvements, additions or utility installations at the expiration of the term, and restore the premises to their prior condition. As used in this §5.04, "cost" shall mean the costs and expenses incurred by SYH as a result of employing or contracting with others to do the work and any cost and expense to SYH in labor and materials expended making the alteration, improvement, addition, or utility installation by use of its own employees and materials.

(B) Major alterations, improvements, additions or utility installations in, or about the premises that Tenant shall desire to make and which require the consent of the Lessor may be presented to Lessor in written form, with proposed detailed

plans. Lessor shall promptly act on Tenant's request for consent, and shall notify Tenant of its action. Upon Lessor's failure to act and notify Tenant within forty-five (45) days of the date of Tenant's request, Lessor shall be deemed to have given the requested consent. Consent shall be deemed conditioned upon Tenant acquiring any necessary permits for such work from appropriate governmental agencies, the furnishing of a copy thereof to Lessor prior to the commencement of the work and the compliance by Tenant of all conditions of said permit in a prompt and expeditious manner.

(C) Tenant shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Tenant at or for use in the premises, which claims are or may be secured by any mechanics' or materialmen's lien against the premises or any interest therein. Where work is performed or materials furnished by persons other than Tenant, Tenant shall give Lessor not less than ten (10) days' notice prior to the commencement of any such work or material supplied to the premises, the cost of which is estimated will be in excess of \$25,000, and Lessor shall have the right to post notices of non-responsibility in or on the premises as provided by law. If Tenant shall, in good faith, contest the validity of any such lien, claim or demand, then Tenant shall, at its sole expense defend itself and Lessor against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Lessor or the premises, upon the condition that if Lessor shall reasonably determine that protection of its interest so requires, Tenant shall furnish to Lessor a surety bond satisfactory to Lessor in an amount equal to such contested claim or demand indemnifying Lessor against liability for the same and holding the premises free from the effect of such lien or claim.

(D) Unless Lessor requires their removal, all alterations, improvements, additions and utility installations (whether or not such utility installations constitute trade fixtures of Tenant), which may be made on the premises subsequent to the date of this Lease, shall become the property of Lessor and remain upon and be surrendered with the premises at the expiration of the term.

Notwithstanding anything in this lease to the contrary, Tenant's boat berths and access ways and fixtures attached thereto, and Tenant's machinery and equipment, other than that which is affixed to the premises so that it cannot be removed without material damage to the premises, whether installed before or after the date of this Lease, shall remain the property of Tenant and may be removed by Tenant at Tenant's option, except that in the case this Lease terminates as a result of default or abandonment, Tenant boat berths and access ways and fixtures thereon shall become the property of Lessor and shall not be

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removed from the premises.

ARTICLE VI- ASSIGNMENT AND SUBLETTING

6.01 Assignment, Subletting and Encumbering.

(A) Lessor's Written Consent. Tenant shall not voluntarily assign or encumber its interest in this Lease or in the premises, or sublease all or any part of the premises, other than individual boat berths, or allow any other person or entity (except Tenant's authorized representatives, licensees and concessionaires) to occupy or use all or any part of the premises, without first obtaining Lessor's consent, which consent shall not be unreasonably withheld. Within twenty-five (25) days after the date of Tenant's request, Lessor may make written demand for reasonable financial information necessary to make a determination as to the suitability of the assignee. Upon receipt of such requested information from Tenant and in light of the information so obtained, Lessor may make written demand for such reasonable, additional financial information necessary to make a determination as to the suitability of the assignee. Upon receipt of all such requested information from Tenant, Lessor shall promptly act on Tenant's request for consent, by approving or disapproving said request, and shall notify Tenant of its action. Upon Lessor's failure to act and notify Tenant within forty-five (45) days of receipt of the financial information submitted by Tenant, Lessor shall be deemed to have given the requested consent, except that no approval shall be deemed to be given until ten working days after notice has been given to Lessor and to the City Council of the City of Sausalito that Lessor has failed to respond within the 45 day period and that upon the expiration of the tenth day following such notice, such approval shall be deemed given.

Any such assignment, encumbrance, or sublease without Lessor's prior consent shall be voidable and, at Lessor's election, shall constitute a default. Any such default shall be cured, if at all, only if within 10 days of written notification of such default Tenant immediately seeks Lessor's consent to such assignment, encumbrance or sublease, which consent shall not be unreasonably withheld. In the event Tenant so requests Lessor's consent, but such consent is not given, then the assignment, encumbrance or sublease shall be rescinded forthwith, or if not, shall be deemed void, and Lessor shall be entitled to pursue its remedies through Article XI. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph.

Any assignment permitted pursuant to this Article shall be

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effective only upon the execution of an agreement required by Lessor by which the Assignee assumes the obligations of Tenant under this Lease.

On any assignment made in accordance with the provisions and conditions of this subsection (A) and approved by the City Council after due consideration of the assignment, Tenant shall have no further obligation under this Lease and, as between Lessor and Tenant, shall be considered to have assigned to the Assignee all claims against Lessor arising under this Lease. Nothing herein contained shall be construed to release Tenant from any liability or obligation arising before the effective date of the assignment.

(B) Assignment to Partnership and Corporation. If Tenant is a corporation, any dissolution, merger, consolidation, or other reorganization of Tenant, or the sale or other transfer, of a controlling percentage of the capital stock of Tenant, or the sale of at least 51% of the value of the assets of the Tenant, shall be deemed a voluntary assignment; provided however, that a transfer by testacy or intestacy or other transfer as a result of death, from a shareholder to the executor or administrator of that shareholder's estate or to a member of that shareholder's family, or a transfer by an individual shareholder to an inter vivos trust for the benefit of said shareholder and/or said shareholder and members of his/her immediate family, shall not constitute a voluntary transfer. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least 51% of the total combined voting power of all classes of Tenant's capital stock issued, outstanding, and entitled to vote for the election of directors. This paragraph shall not apply to corporations the stock of which is traded through an exchange or over the counter.

Tenant shall have the right, without Lessor's consent, to sublease or assign this lease to a partnership or corporation with a comparable net worth and whose members or shareholders are the same persons or entities as those who own the common stock in Tenant at the date of such sublease or assignment and there is executed, upon demand of Lessor, an agreement required by Lessor assuming Tenant's obligations.

Tenant shall have the right, without Lessor's consent, to assign this lease to a corporation if (1) Tenant owns at least 51% of the outstanding capital stock of the corporation for a period of three (3) years following the assignment and (2) the corporation executes an agreement required by Lessor assuming Tenant's obligations.

(C) Costs Incurred. If Tenant requests Lessor to consent to a proposed assignment or subletting, Tenant shall pay to

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Lessor, whether or not consent is ultimately given, Lessor's reasonable expenses, costs and fees incurred in connection with and responding to each such request, which costs and fees will not exceed \$5,500 without the mutual consent of the parties.

6.02 Subleases; Concessions; Licenses.

Subject to the provisions of section 6.01, Tenant may enter into subleases, concessions, or licenses for the operation of any portion of the business conducted on the premises. Each sublease, concession, or license that is entered into by Tenant shall be subject to the provisions of this Lease. The gross receipts of each such sublessee, concessionaire, or licensee shall be a part of Tenant's gross receipts for the purpose of determining any percentage rent payable by Tenant to Lessor; provided, however, that there shall not be included in Tenant's gross receipts any rent or other consideration received by Tenant from such sublessee, concessionaire or licensee whose gross receipts are or have been included in computing Tenant's gross receipts.

Additionally, there shall not be included in Tenant's gross receipts the gross receipts of any licensee of Tenant who performs work on the premises at the request of and/or as a service to individual boat berth tenants or boat yard customers if Tenant receives no rent or other consideration for such license or work.

6.03 Involuntary Assignment.

No interest of Tenant in this Lease shall be assignable by operation of law (including, without limitation, the transfer of this Lease by testacy or intestacy, except that a transfer by testacy or intestacy from a person who is a shareholder of Tenant to the executor or administrator of that shareholder's estate or to a family member of that shareholder shall not be considered an involuntary assignment). Each of the following acts shall be considered an involuntary assignment.

(A) If Tenant is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which Tenant is the bankrupt; or if Tenant is a partnership or consists of more than one person or entity, if any partner of the partnership or other person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors; the provisions of this paragraph shall apply only to the extent they are not in conflict with or preempted by Federal or State Bankruptcy Laws.

(B) If a writ of attachment or execution is levied on this Lease;

(C) If, in any proceeding or action to which Tenant is a party, a receiver is appointed with authority to take possession of the premises.

If a writ of attachment or execution is levied on this Lease, Tenant shall have sixty (60) days in which to cause the attachment or execution to be removed. If any involuntary proceeding in bankruptcy is brought against Tenant, or if a receiver is appointed, Tenant shall have sixty 60 days in which to have the involuntary proceeding dismissed or the receiver removed.

An involuntary assignment not cured as set forth above shall constitute a default by Tenant and Lessor shall have the right to elect to terminate this Lease, in which case this Lease shall not be treated as an asset of Tenant.

ARTICLE VII- INSURANCE, EXCULPATION AND INDEMNITY

7.01 Public Liability, Property Damage and Marina Operator's Legal Liability.

Tenant shall procure and maintain for the duration of the Lease insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Tenant's operation and use of the leased premises. The cost of such insurance shall be borne by the Tenant.

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as:

(1) Insurance Services Office's Commercial General Liability form commonly used to insure against risks similar to those of Tenant in its operation of SYH, which requirement shall be deemed satisfied if Tenant maintains coverage as broad as Insurance Services Office Commercial General Liability coverage ("occurrence") form CG 0001.

(2) Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

(B) Minimum Limits of Insurance. Tenant shall maintain limits no less than:

1. General Liability: \$3,000,000 combined single limit per occurrence/aggregate for bodily injury, personal injury and property damage.

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2. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

3. Marina Operator's Legal Liability: \$1,000,000 combined single limit per occurrence/aggregate.

(C) Deductibles and Self-insured Retentions. Any deductibles or self-insured retentions in excess of \$10,000 must be declared to and approved by Lessor. With respect to any deductible or self-insured retention in excess of \$10,000, at the option of the Lessor, either: the insurer shall reduce such deductibles or self-insured retentions to \$10,000 or less as respects the Lessor, its officers, officials, employees, and those volunteers duly authorized to act, and acting pursuant to such authority, for Lessor; or the Lessee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses for such deductible in excess of \$10,000.

(D) Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

(1) General Liability

a. The Lessor, its officers, officials, employees, and those volunteers duly authorized to act, and acting pursuant to such authority for Lessor, are to be covered as insureds as respects: liability arising out of premises owned, occupied or used by the Tenant. The coverage shall contain no special limitations on the scope of protection afforded to the Lessor, its officers, officials, employees, or volunteers duly authorized to act, and acting pursuant to such authority, for Lessor.

b. Tenant's insurance coverage shall be primary insurance as respects the Lessor, its officers, officials, employees, or those volunteers duly authorized to act, and acting pursuant to such authority, for Lessor. Any insurance or self-insurance maintained by the Lessor, its officers, officials, employees, or those volunteers duly authorized to act, and acting pursuant to such authority for Lessor, shall be excess of the Tenant's insurance and shall not contribute with it.

c. Any failure on behalf of Tenant to comply with reporting provisions of the policies shall not affect coverage provided to the Lessor, its officers, officials, employees, or those volunteers duly authorized to act, and acting pursuant to such authority for Lessor.

d. Coverage shall state that the Tenant's

insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(2) All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested has been given to the Lessor.

(E) Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than "A-:VII".

(F) Verification of Coverage. ~~Tenant shall furnish the~~ Lessor with certificates of insurance and with original ~~endorsements~~ endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Lessor reserves the right to require complete, certified copies of all required policies, at any time, upon a showing of good cause therefor.

7.02 Increase in Amount of Public Liability and Property Damage Insurance.

It is understood that the insurance requirements listed above are intended to be and are considered reasonably adequate as of the date this lease is entered into to protect Lessor from foreseeable risks resulting from the use of the premises by Tenant in the regular course of operating SYH. It is the intent at the time of entering into this Lease that the level of protection provided by the above limits of insurance be maintained during the term of this Lease and any extension of it.

Not more frequently than each three (3) lease years, if, in the opinion of Lessor's insurance consultant, the amount of liability damage insurance coverage under section 7.01 at that time is not adequate as it relates to the premises, the amount of insurance coverage shall be subject to adjustment. Such adjustment shall not increase the required amount of insurance coverage by more than the average amount of increase in insurance coverage maintained by other similar marinas within the State of California between the date the amount of such insurance coverage was last set or adjusted and the date of the adjustment, or by the percentage increase in the cost of living between the date the amount of such insurance coverage was last set or adjusted and the date of the adjustment determined according to the provisions of §19.16 of this Lease, whichever is greater. Lessor

shall bear the burden of demonstrating what is the average amount of increase in insurance coverage maintained by other similar marinas within the State of California for the relevant period of time.

7.03 Waiver of Subrogation.

The parties release each other, and their respective authorized representatives, from any claims for damage to any person or to the premises and to the fixtures, personal property, improvements, and alterations of either Lessor or Tenant in or on the premises that are caused by or result from risks insured against under any insurance policies carried by the parties and in force at the time of any such damage.

Each party shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy. Neither party shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policy required by this Lease. If any insurance policy cannot be obtained with a waiver of subrogation, or is obtainable only on the payment of an additional premium charge above that charged by insurance companies issuing policies without waiver of subrogation, the party undertaking to obtain the insurance shall notify the other party of this fact. The other party shall have a period of 10 days after receiving the notice either to place the insurance with a company that is reasonably satisfactory to the other party and that will carry the insurance with a waiver of subrogation, or to agree to pay the additional premium if such a policy is obtainable at additional cost. If the insurance cannot be obtained or the party in whose favor a waiver of subrogation is desired refuses to pay the additional premium charged, the other party is relieved of the obligation to obtain a waiver of subrogation rights with respect to the particular insurance involved.

7.04 Other Insurance Matters.

All the insurance required under this Lease shall:

- (A) Be issued by insurance companies authorized to do business in the State of California, with a rating of at least "A-:VII" as rated in the most recent edition of Best's Rating.
- (B) Be issued as a primary policy in relation to any insurance of Lessor, if any.
- (C) Contain an endorsement requiring 30 days' written notice from the insurance company to both parties before

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cancellation or change in the coverage, scope, or amount of any policy.

Each policy, or a certificate of the policy, together with evidence of payment of premiums, shall be deposited with the Lessor at the commencement of the term, and on renewal of the policy not less than 20 days before expiration of the term of the policy.

7.05 Exculpation of Lessor.

Tenant hereby agrees that Lessor shall not, by reason of this Lease, be liable for injury to Tenant's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Tenant, Tenant's employees, invitees, customers, or any other person in or about the premises, nor shall Lessor be liable for injury to the person of Tenant, Tenant's employees, agents or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the said damage or injury results from conditions arising upon the premises or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant. Lessor shall not be liable for any damages arising from any act or neglect of any other occupant of the premises. Notwithstanding the foregoing, nothing in this paragraph is intended to hold Lessor harmless from any injuries to Tenant, Tenant's employees, agents or contractors or to any property of Tenant, Tenant's employees, invitees, customers, or any other person in or about the premises caused by or arising from Lessor's breach or default under the terms of this Lease, or from the negligence or intentional wrongful acts of Lessor, its employees, officers, contractors, agents or volunteers.

7.06 Indemnity.

Tenant shall indemnify and hold harmless Lessor from and against any and all claims, damages, losses or liabilities arising from Tenant's use of the premises, or from the conduct of Tenant's business or from any activity, work or things done, permitted or suffered by Tenant in or about the premises or elsewhere and shall further indemnify and hold harmless Lessor from and against any and all claims, damages, losses or liabilities arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any negligence of the Tenant, or any of Tenant's agents, contractors, or employees, and from and against all costs, attorney's fees, expenses and

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liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Lessor by reason of any such claim, Tenant upon notice from Lessor shall defend the same at Tenant's expense. Tenant, as a material part of the consideration to Lessor, hereby assumes all risk of damage to property or injury to persons, in, upon or about the premises arising from any cause and Tenant hereby waives all claims in respect thereof against Lessor. Provided, however, that nothing in this paragraph shall be deemed to require Tenant to assume the risk of or indemnify Lessor from any claims of damage, injury, losses or liabilities arising from or related to Lessor's failure to maintain the peninsula, the bulkhead, the walkway thereon, and/or the wave baffles as required under this Lease, or Lessor's negligent maintenance of the same.

Lessor shall indemnify and hold harmless Tenant from and against any and all claims damages, losses or liabilities arising from Lessor's failure to maintain and repair the peninsula bulkhead, the walkway thereon, and/or the wave baffles as required under this Lease; from and against any and all claims, damages, losses or liabilities arising from any breach or default in the performance of any obligation on Lessor's part to be performed under the terms of this lease, or arising from any negligence or intentional wrongful acts of Lessor, or any of Lessor's officers, agents, contractors, employees, or volunteers, and from and against all costs, attorney's fees, expense and liabilities incurred in the defense of any such claims or proceedings brought against Tenant thereon. Lessor upon written notice from Tenant shall defend the same at Lessor's expense.

ARTICLE VIII- DESTRUCTION

8.01 Obligation to Rebuild.

(A) In the event that some or all of the improvements constituting a part of the premises, other than all or part of the bulkhead, the walkway thereon, the peninsula itself, the wave baffles, and the boat lift facilities, are damaged or destroyed, partially or totally from any cause whatsoever, whether or not such damage or destruction is covered by any insurance required to be maintained under Article VII, then Tenant shall repair, restore and rebuild the premises to its condition existing immediately prior to such damage or destruction and this Lease shall remain in full force and effect. Such repair, restoration and rebuilding (all of which are herein called "repair") shall be commenced within three months after such damage or destruction has occurred and shall be diligently pursued to completion. For purposes of this paragraph, Tenant shall be deemed to have

commenced the required repair if it has begun the process of obtaining required permits for such repair; delays in the permitting process not caused by Tenant shall not be a basis for determining that Tenant is failing to diligently complete the required repairs.

In the event Tenant fails to commence such repair within three months after such damage or destruction, Lessor may, at any time thereafter prior to Tenant's commencement of such repair, terminate this Lease by giving written notice to Tenant. In addition, Lessor may terminate this Lease by giving written notice to Tenant if, after commencing such repair, Tenant fails thereafter to diligently complete such repair. Except as provided in §8.02, in the event Lessor elects to so terminate this Lease, Tenant shall be obligated to continue payment of rent until twelve (12) months after such notice of termination, or until the Premises are relet, whichever comes sooner; such post Lease termination payments shall discharge Tenant from any future duties and obligations that otherwise would have resulted from this Lease (however they shall not discharge Tenant from any then outstanding, unsatisfied or delinquent duties or obligations under this Lease).

The proceeds of any applicable insurance maintained under Article VII of this Lease shall be used by Tenant for payment of costs and expense of repair. In the event the insurance proceeds are insufficient to cover the cost of repair, then any amounts required over the amount of the insurance proceeds received that are required to complete said repair shall be paid by Tenant.

(B) If the bulkhead, the walkway thereon, or the wave baffles located on the premises, or the peninsula itself, or any part thereof are damaged due to any cause, Tenant shall have no obligation to repair, restore or rebuild such structures. If any repairs which Tenant is required to make under this Lease cannot reasonably be made prior to repair, restoration or rebuilding of the bulkhead and/or the walkway thereon and/or the wave baffles, then Tenant shall not be required to make such repairs prior to the repair, restoration or rebuilding of the bulkhead, walkway, and/or wave baffles; and in such event, any time period within which Tenant is obligated to make any repairs as set forth above shall be tolled, and minimum monthly rent shall be abated in proportion to the reduction in scheduled income from the premises which Tenant cannot reasonably use, until such time as Lessor completes such repair to the bulkhead and/or walkway thereon and/or wave baffles. In the event Lessor elects not to repair, restore or rebuild such structures or fails to commence and diligently complete such repair within three (3) months after such damage or destruction, Tenant may, at any time thereafter and prior to Lessor commencing such work, by giving written notice to Lessor, terminate this Lease as to all the premises or

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as to the portion thereof rendered economically unusable by the damage to such structures.

8.02 Damage Near End of Term.

If a part of the premises which Lessor is otherwise required to repair or replace is damaged or destroyed, either partially or totally, within the last 180 days of the term of this Lease, or within 180 days of an extended term of this Lease, and Tenant has not exercised an option to extend the Lease pursuant to §§ 2.02, 2.03, or 2.04 prior to such damage or destruction, Lessor may at Lessor's option cancel and terminate this Lease as of the date of occurrence of such damage by giving written notice to Tenant of Lessor's election to do so within 30 days after the date of occurrence of such damage.

If a part of the premises which Tenant is otherwise required to repair or replace is damaged or destroyed, either partially or totally, within the last 180 days of the term of this Lease, or within 180 days of an extended term of this Lease, and Tenant has not exercised an option to extend the Lease pursuant to §§ 2.02, 2.03, or 2.04 prior to such damage or destruction, Tenant may at Tenant's option elect not to undertake such repair or replacement but rather to cancel and terminate this Lease as of the date of occurrence of such damage by giving written notice to Lessor of Tenant's election to do so within 30 days after the date of occurrence of such damage.

8.03 No Abatement or Reduction of Rent.

Except as provided below, in section 4.03 above, and in section 8.01(B) above for cases of damage or destruction of the peninsula bulkhead, the walkway thereon or the wave baffles on the premises, in case of destruction of a part of the premises which Tenant is required to repair, restore or rebuild, there shall be no abatement or reduction of rent.

In the event the reconstruction or repair of destroyed premises or any portion thereof reasonably requires more than twelve months to complete and Tenant commences such repairs within three months of such destruction, or immediately upon completion of Lessor required repairs to the bulkhead, the walkway thereon, or the wave baffles required prior to the making of such Tenant reconstruction or repairs, and if Tenant is proceeding diligently to complete such repairs, then, beginning with thirteenth month after such destruction and continuing until the repair or reconstruction is complete or until 24 months after the destruction, whichever occurs sooner, there shall be an abatement or reduction of any minimum monthly rent due in proportion to the extent to which such remaining destroyed

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portion of the premises reduces Tenant's income from the premises. Beginning with the twenty-fifth (25th) month after such destruction, the right to any abatement or reduction in rent pursuant to this section shall terminate.

8.04 Waiver of Civil Code sections.

Tenant waives the provisions of Civil Code section 1932(2) and Civil Code section 1933(4) with respect to any destruction of the premises.

ARTICLE IX- TAXES AND UTILITIES

9.01 Taxes, Assessments, Licenses, Permit Fees and Liens.

Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that this Lease may be subject to the payment of property taxes levied on such interest. During the term of this Lease, Tenant agrees to pay, when due, to the proper authority any and all taxes, assessments and similar charges on the premises in effect at the time this Lease is entered into or which become effective thereafter, including all taxes levied or assessed on the possession, use or occupancy as distinguished from the ownership of the premises. Tenant shall not permit any such taxes, charges or other assessments to become a defaulted lien on the premises, or the improvements thereon; provided, however, that in the event any such tax, assessment or similar charges is payable in installments, Tenant may make, or cause to be made, payment in installments; provided, further, that Tenant may, through such proceeding as Tenant considers necessary or appropriate, contest the legal validity or the amount of any tax, assessment or similar charge and, if Tenant contests any such tax, assessment or similar charge, Tenant shall, nevertheless, pay all such charges when due. In the event of any such contest, Tenant shall protect and indemnify Lessor against all losses, damages, costs or expenses, including attorneys' fees resulting therefrom.

9.02 Utilities.

Tenant shall pay for all water, gas, heat, lights, power, telephone service, garbage service, sanitary service, and all other services supplied to the premises, whether the same are furnished or supplied by private individuals, public utilities or municipal corporations together with any taxes thereon. If any such utility services are not separately metered to Tenant, Tenant shall pay a reasonable proportion to be determined by Lessor of all charges jointly metered with other premises. Sums collected by Tenant from its subtenants, licensees or

concessionaires as reimbursement for payments Tenant has made to provide utility service to such subtenants, licensees and concessionaires, shall not be included in Tenant's gross receipts.

ARTICLE X- CONDEMNATION

10.01 Definitions.

(A) "Condemnation" means (a) the exercise of any governmental power, whether by legal proceedings or otherwise, by a condemnor and (b) a voluntary sale or transfer by Lessor to any condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

(B) "Date of taking" means the date the condemnor has the right to possession of the property being condemned.

(C) "Award" means all compensation, sums, or anything of value awarded, paid, or received on a total or partial condemnation.

(D) "Condemnor" means any public or quasi-public authority, or private corporation or individual, having the power of condemnation.

10.02 Parties' Rights and Obligations To Be Governed by Lease.

If, during the term or during the period of time between the execution of this Lease and the date the term commences, there is any taking of all or any part of the premises or any interest in this Lease by condemnation, the rights and obligations of the parties shall be determined pursuant to this Article X.

10.03 Total Taking.

If the premises are totally taken by condemnation, this Lease shall terminate on the date of the taking.

10.04 Partial Taking.

If less than all of the premises is taken by condemnation this Lease shall remain in effect, except that Tenant can elect to terminate this Lease if the remaining portion of the improvements or the parking area that are a part of the premises is rendered unsuitable for Tenant's continued use of the premises. If Tenant elects to terminate this Lease, Tenant must exercise its right to terminate pursuant to this paragraph by

giving notice to Lessor within 30 days after the nature and the extent of the taking have been finally determined. If Tenant elects to terminate this Lease as provided in this paragraph, Tenant also shall notify Lessor of the date of termination, which date shall not be earlier than 30 days nor later than 90 days after Tenant has notified Lessor of its election to terminate; except that this Lease shall terminate on the date of taking if the date of taking falls on a date before the date of termination as designated by Tenant. If Tenant does not terminate this Lease within the 30-day period, this Lease shall continue in full force and effect, except that minimum monthly rent shall be reduced pursuant to section 10.05.

10.05 Effect on Rent.

If any portion of the premises is taken by condemnation and this Lease remains in full force and effect, on the date of taking the minimum monthly rent shall be reduced by an amount that is in the same ratio to minimum monthly rent as the value of the area of the portion of the premises taken bears to the total value of the premises immediately before the date of taking.

10.06 Waiver of CCP Section 1265.130.

Each party waives the provisions of Code of Civil Procedure section 1265.130 allowing either party to petition the superior court to terminate this Lease in the event of a partial taking of the premises.

10.07 Award- Distribution.

In the event of a total, substantial, or partial taking, the rights of the parties with respect to the award shall be as the parties then agree to be just and equitable under all circumstances, regardless of any technical rule of law, having in mind the economics of operating any remaining portion of the premises and improvements, the cost of restoration, and the balance of the term remaining, among other relevant considerations. If Lessor and Tenant do not agree within 30 days after the amount of the award is finally determined, the undecided questions shall be decided by arbitration.

10.08 Taking for Temporary Use.

On any taking of the temporary use of all or any part or parts of the premises or improvements or both for a period not to exceed one year, neither the term nor the rent shall be reduced or affected in any way, and Tenant shall be entitled to any award for the use or estate taken. If a result of the taking is to necessitate expenditures for changes, repairs, alterations, modifications, or reconstruction of the improvements to make them

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economically viable and a practical whole, Tenant shall receive, hold, and disburse the award in trust for such work. At the completion of the work and the discharge of the premises and improvements from all liens and claims, Tenant shall be entitled to any surplus and shall be liable for any deficit.

If any such taking is for a period extending beyond the expiration date of the term, the taking shall be treated under the foregoing provisions for total, substantial, and partial takings.

ARTICLE XI- DEFAULT

11.01 Tenant's Default.

The occurrence of any of the following shall constitute a default by Tenant:

(A) Failure to pay rent when due, if the failure continues for twenty (20) days after written notice has been received by Tenant.

(B) Abandonment and vacation of the premises (failure to occupy and operate the premises without good cause for 10 consecutive days shall be deemed an abandonment and vacation).

(C) Failure to perform any other provision of this Lease if the failure to perform is not cured within 30 days after notice has been served on Tenant. If the default cannot reasonably be cured within 30 days, Tenant shall not be in default of this Lease if Tenant commences to cure the default within the 30-day period and diligently and in good faith continues to cure the default.

Notices given under this paragraph shall specify the alleged default and the applicable Lease provisions, and shall demand that Tenant perform the provisions of this Lease or pay the rent that is in arrears, as the case may be, within the applicable period of time, or quit the premises. No such notice shall be deemed a forfeiture or a termination of this Lease unless Lessor so elects in the notice.

The purpose of the notice requirements set forth in this paragraph is to extend the notice requirements of the unlawful detainer statutes of California.

11.02 Lessor's Remedies.

Lessor shall have the following remedies if Tenant commits a

default and said default is not cured within any specific time limits that may be provided and as otherwise provided in this Lease. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law.

(A) Tenant's Right to Possession Not Terminated. Lessor can continue this Lease in full force and effect, and the Lease will continue in effect as long as Lessor does not terminate Tenant's right to possession, and Lessor shall have the right to collect rent when due.

(B) Termination of Tenant's Right to Possession. Lessor can terminate Tenant's right to possession of the premises at any time upon a default constituting a material breach of this Lease, provided that termination of the right to possession shall terminate this Lease. During the period Tenant is in such default constituting a material breach, Lessor can enter the premises and relet them, or any part of them, to third parties for Tenant's account. Reletting of the premises by Lessor under this paragraph shall terminate Tenant's right to possession and shall terminate this Lease. Tenant shall be liable immediately to Lessor for all costs Lessor incurs in reletting the premises, including, without limitation, brokers' commissions, expenses of remodeling the premises required by the reletting, and like costs. Reletting can be for a period shorter or longer than the remaining term of this Lease. Acts of maintenance, efforts to relet the premises, or the appointment of a receiver on Lessor's initiative to protect Lessor's interest under this Lease shall not constitute a termination of Tenant's right to possession.

On termination of possession and the Lease, Lessor has the right to recover from Tenant:

(1) The worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Lease;

(2) The worth, at the time of the award, of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease until the time of award exceeds the amount of the loss of rent that could have been reasonably avoided;

(3) The worth, at the time of the award, of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of the loss of rent that could have been reasonably avoided; and

(4) Any other amount, and court costs, necessary to compensate Lessor for all detriment proximately caused by Tenant's default.

"The worth, at the time of the award," as used in (1) and (2) of this paragraph, is to be computed by allowing interest at the maximum rate an individual is permitted by law to charge. "The worth, at the time of the award," as referred to in (3) of this paragraph, is to be computed by discounting the amount at the prime rate as published in the Wall Street Journal or other comparable publication at the time of the award.

(C) Appointment of Receiver. If Tenant is in default of this Lease Lessor shall have the right to have a receiver appointed to collect rent and conduct Tenant's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Lessor to terminate this Lease.

(D) Lessor's Right to Cure Tenant's Default. Subject to the provisions of section 5.03 of this Lease, Lessor, at any time after Tenant commits a default, can cure the default at Tenant's cost. If Lessor at any time, by reason of Tenant's default, is reasonably required to pay any sum or to do any act that requires the payment of any sum, the reasonable amount thereof paid by Lessor shall be due immediately from Tenant to Lessor at the time the sum is paid, and if paid at a later date shall bear interest at the maximum rate an individual is permitted by law to charge from the date the sum is paid by Lessor until Lessor is reimbursed by Tenant. The sum, together with interest on it, shall be additional rent.

11.03 Interest on Unpaid Rent.

Rent not paid when due shall bear interest from the date due until paid at ten percent (10%) per annum or the maximum rate an individual is permitted by law to charge, whichever is less.

11.04 Late Charge.

Tenant acknowledges that late payment by Tenant to Lessor of rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of such cost being extremely difficult and impracticable to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Lessor by the terms of any encumbrance and note secured by any encumbrance covering the premises. Therefore, if any installment of rent due from Tenant is not received by Lessor when due, Tenant shall pay to Lessor an additional sum of five percent (5%) of the overdue rent as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Lessor will incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, or prevent Lessor from exercising

any of the other rights and remedies available to Lessor.

11.05 Lessor's Default.

Lessor shall be in default of this Lease if it fails or refuses to perform any provision of this Lease that it is obligated to perform if the failure to perform is not cured within 30 days after notice of default has been given by Tenant to Lessor.

If the default cannot reasonably be cured within 30 days, Lessor shall not be in default of this Lease if Lessor commences to cure the default within the 30-day period and diligently and in good faith continues to cure the default. Subject to such right to cure, and subject to section 5.03 of this Lease, Tenant, at any time after Lessor commits a default, can cure the default at Lessor's cost. If Tenant at any time, by reason of Lessor's default, is reasonably required to do any act that requires the payment of any sum, the reasonable amount thereof paid by Tenant shall be due immediately from Lessor to Tenant at the time the sum is paid, and if paid at a later date shall bear interest at ten percent (10%) per annum or the maximum rate an individual is permitted by law to charge, whichever is less, from the date the sum is paid by Tenant until Tenant is reimbursed by Lessor. If Lessor fails to reimburse Tenant as required by this paragraph, Tenant shall have the right to withhold from future rent due the sum Tenant has paid until Tenant is reimbursed in full for the sum and interest thereon.

These remedies are not exclusive but are in addition to any other remedies provided in other specific provisions of this Lease.

ARTICLE XII- ADVERTISING

12.01 Signs.

Tenant shall not place or permit to be placed any projecting sign, marquee, letterings or awning on the front of the premises without approval and written consent of Lessor, which consent shall not be unreasonably withheld. Tenant shall be responsible for all costs related to signs, marquees, awnings, and letterings including, not by way of limitation, costs associated with erection, installation, maintenance, and servicing. All signs, marquees, awnings or letterings shall be subject to all statutes, rules and regulations of any and all applicable governmental authorities.

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ARTICLE XIII- ARBITRATION

13.01 Disputes Subject to Arbitration.

Either party may require the arbitration of any matter and enforcement of the rights and obligations of the parties under this Lease except Tenant's obligations under Article IV, other than as expressly provided for in said Article IV.

13.02 Initial Mediation.

With respect to any dispute between the parties that is to be resolved by arbitration as provided in section 13.01 the parties shall attempt in good faith first to mediate such dispute and use their best effort to reach agreement on the matters in dispute. Within 5 days of the request of any party, the requesting party shall attempt to employ the services of a third person mutually acceptable to the parties to conduct such mediation within 5 days of his appointment. If the parties are unable to agree on such third person, or, if on completion of such mediation, the parties are unable to agree and settle the dispute, then the dispute shall be referred to arbitration in accordance with section 13.03.

13.03 Arbitration.

Any dispute between the parties that is to be resolved by arbitration as provided in section 13.01 shall be settled and decided by arbitration conducted by Judicial Arbitration and Mediation Services or other arbitration service agreed to by the parties, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held and conducted in Sausalito, California before one arbitrator who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of an arbitrator within 15 days, then such arbitrator shall be appointed by the presiding judge of the superior court of the county in which the arbitration is to be conducted.

The provisions of the Commercial Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however, to the following:

(A) Any demand for arbitration shall be in writing and must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute, or other matter would be barred by the applicable statute of

limitations.

(B) The arbitrator appointed must be a former or retired judge or an attorney with at least 10 years experience in real property and commercial matters, or a non-attorney with like experience in the area of dispute.

(C) All proceedings involving the parties, at the request of either party, shall be reported by a certified shorthand court reporter and written transcripts of the proceedings shall be prepared and made available to the parties.

(D) The arbitrator shall prepare in writing and provide to the parties factual findings and the reasons on which the decision of the arbitrator is based.

(E) Final decision by the arbitrator must be made within 90 days from the date the arbitration proceedings are initiated.

(F) In the event the arbitrator determines that the non-prevailing party caused the issue to be arbitrated without substantial merit, or that the prevailing party reasonably responded to the issue during pre-arbitration proceedings or the proceeding conducted pursuant to §13.02, then, unless the arbitrator for good cause determines otherwise, the non-prevailing party shall pay the costs and fees of the arbitrator, and the prevailing party shall be awarded some or all of its reasonable attorneys' fees, expert and nonexpert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration. However, if the arbitrator determines that the issues raised and resolved through arbitration resulted from an ambiguity in the lease or a reasonable misunderstanding of a provision in it, or as a consequence of changed circumstances not anticipated at the execution of the lease or adequately reflected in it, then each side shall bear its own costs, fees and expenses, and shall share the costs and fees of the arbitrator resulting from such arbitration.

(G) The award or decision of the arbitrator, which may include equitable relief, shall be final and judgment may be entered on it in accordance with applicable laws in any court having jurisdiction over the matter.

ARTICLE XIV- NOTICES

14.01 Notices.

All notices to be given to either party hereto pursuant to the provisions of this Lease, or pursuant to any applicable

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provisions of this Lease, or pursuant to any applicable provisions of law, shall be in writing, and shall be served upon Tenant or Lessor personally, or by United States registered or certified mail, postage prepaid, and addressed to Tenant at 100 Bay Street, Sausalito, CA 94965. or to the Lessor as follows: City of Sausalito, 420 Litho Street, P.O. Box 1279, Sausalito, California 94966. Either party may change such address by like similar address.

ARTICLE XV- WAIVER

15.01 Waiver.

No delay or omission in the exercise of any right or remedy of either party on any default by the other party shall impair such a right or remedy or be construed as a waiver.

The receipt and acceptance by Lessor of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular rent payment involved.

No act or conduct of Lessor, including, without limitation, the acceptance of the keys to the premises, shall constitute an acceptance of the surrender of the premises by Tenant before the expiration of the term. Only a notice from Lessor to Tenant shall constitute acceptance of the surrender of the premises and accomplish a termination of the Lease.

Either party's consent to or approval of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary the consenting party's consent to or approval of any subsequent act by the other party.

Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Lease.

ARTICLE XVI- ATTORNEY'S FEES

16.01 Attorneys Fees.

If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys fees and costs of suit. Notwithstanding the foregoing, any award of attorneys fees and costs in any

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arbitration pursuant to Article XIII of this Lease shall be governed by the provisions of Article XIII.

ARTICLE XVII- SURRENDER

17.01 Surrender.

Unless provided otherwise by other specific provisions of this lease, on expiration of thirty (30) days after termination of the term, Tenant shall surrender to Lessor the premises and all Tenant's improvements and alterations in good condition (except for ordinary wear and tear) other than alterations that the Tenant has the right to remove or is obligated to remove under the provisions of Article V. Tenant shall remove all its personal property within the above stated time. Tenant shall perform all restoration made necessary by the removal of any alterations or Tenant's personal property within the time period stated in this paragraph.

Lessor can elect to retain or dispose of in any manner any alterations or Tenant's personal property that Tenant does not remove from the premises on expiration or termination of the term as allowed or required by this Lease by giving at least ten (10) days notice to Tenant. Title to any such alterations or Tenant's personal property that Lessor elects to retain or dispose of on expiration of the 10-day period shall vest in Lessor. Tenant waives all claims against Lessor for any damage to Tenant resulting from Lessor's retention or disposition of any such alterations or Tenant's personal property. Tenant shall be liable to Lessor for Lessor's costs for storing, removing, disposing of any alterations or Tenant's personal property.

If Tenant fails to surrender the premises to Lessor on expiration of thirty (30) days after termination of the term as required by this paragraph, Tenant shall hold Lessor harmless from all damages resulting from Tenant's failure to surrender the premises, including, without limitation, claims made by a succeeding Tenant resulting from Tenant's failure to surrender the premises.

ARTICLE XVIII- HOLDING OVER

18.01 Holding Over.

If Tenant, with Lessor's consent, remains in possession of the premises after expiration or termination of the term, or

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after the date in any notice given by Lessor to Tenant terminating this Lease, such possession by Tenant shall be deemed to be a month-to-month tenancy terminable on 30 days notice given at any time by either party. During any such month-to-month tenancy, Tenant shall pay all rent required by this Lease in effect for the period immediately preceding the expiration or termination of the term, and percentage rent required by this Lease shall be paid monthly on or before the 15th day of each month. All provisions of this Lease except those pertaining to term shall apply to the month-to-month tenancy.

ARTICLE XIX- MISCELLANEOUS PROVISIONS

19.01 Existing Sublessees and Interests.

(A) Lessor has consented to Tenant's surrender of the current lease of Exhibit A lands, excepting those portions of Exhibit A lands which are the subject of the sublease to the Sausalito Yacht Club referred to in paragraph C(4) on page 2 of this Lease, and the interest of the District referred to in paragraph D on page 2 of this Lease, and has agreed to accept the return of tide and submerged lands not included in the premises under this lease, subject to the following agreements:

(1) Upon written request by Lessor and the Sausalito Yacht Club, Tenant will immediately surrender to Lessor the current lease of the Exhibit A lands which are the subject of the sublease to the Sausalito Yacht Club;

(2) Upon written request by Lessor and the District, Tenant will immediately surrender to Lessor any interest it has in the current lease of the Exhibit A lands which are the subject of the interest of the District;

(3) Upon written request by Lessor and MacMarin, Tenant will immediately surrender to Lessor any interest it has in the current lease of the Exhibit A lands which are the subject of the sublease to MacMarin, except as provided in section 19.02 of this Lease; and

(4) By execution of this Lease, Tenant hereby irrevocably assigns to Lessor any and all rights it may have under the current lease of Exhibit A lands to rents payable by the Sausalito Yacht Club, the District, and MacMarin on account of their sublease or other interest in the current lease, except as specifically provided otherwise in section 19.02 of this Lease.

(B) Lessor further agrees that it will defend and hold

Tenant harmless from and against any claims or actions which may be brought by MacMarin and/or the Sausalito Yacht Club and/or the District, or by any of their successors-in-interest, concerning the effect of this Lease on their respective subleases (or other interests in the premises by virtue of the current lease) with Tenant, and from and against any judgments, awards, or liabilities of any kind, including reasonable attorneys' fees, against Tenant by reason of such claims or actions.

19.02 MacMarin Percentage to Madden to Continue.

The present sublease between Madden and MacMarin referred to in paragraph (C)(5) and (C)(6) page 2 above ("the sublease") provides, in part, for the payment of a percentage rental to Madden from the gross receipts of MacMarin, as more particularly set forth in the sublease. Notwithstanding anything else herein contained to the contrary, it is agreed that Tenant, as Madden's successor-in-interest, shall, through the date of February 23, 2002, continue to receive the percentage payments provided for in the sublease, the same as if the lease between City and Tenant referred to in paragraph C, page 2 of this Lease remained in full force and effect, and the same as if this Lease had not been executed. Such payments shall be made to Tenant in the following manner: under the terms of a separately executed lease to be entered into between MacMarin and City, MacMarin is obligated to pay to City certain percentage payments. Each such percentage payment shall be made to City itemizing the amount and percentage due Tenant under the sublease, and the remaining amount separately due City. From the total amount received from MacMarin, City shall immediately remit to Tenant at the address shown in Article XIV, the amount due Tenant under the sublease and as indicated in the MacMarin provided itemization. City's obligation under this section shall be solely to make payments out of the payments made to City by MacMarin, and in the event MacMarin fails to make any payment for any reason, City shall not be obligated to make any payment to Tenant; City shall cooperate fully with Tenant in the event that Tenant is obligated to bring legal action against MacMarin to enforce Tenant's right to continuing percentage payments under this section.

19.03 Grant of Easement.

Lessor, by execution of this Lease, hereby grants to Tenant a nonexclusive easement over the lands described as 'Parcel Two' in Exhibit B hereto, for the use of Tenant and its authorized sublessees, licensees, concessionaires, agents, and employees, for ingress and egress, (including for maintenance and repairs) and utilities, to and for Tenant's leased premises adjacent thereto during the term of this Lease and any extension hereof. Notwithstanding such grant of easement, Tenant shall have no obligation to maintain or repair said easement or any

improvements located thereon.

19.04 Emergency Use of Bay Street.

During the term of this lease and any extension of it, City reserves, on behalf of itself and all public agencies called upon from time to time to provide emergency response service to individuals or property located on or about the peninsula and improvements located on it and outboard from it, and on or about Richardson and San Francisco Bay, the right to make public agency emergency use of that portion of the premises located on Bay Street as described in Exhibit B and shown on Exhibit C.

19.05 Claims of Parties.

Lessor and Tenant each claim ownership of the fee title or other legal interest in certain underwater and other streets, including Railroad Avenue, that intersect or are adjacent to fee land owned by Tenant. Nothing contained in this lease or any document or letter used in negotiating this lease, shall be construed for any purpose by any of the persons or entities named herein at any time to be deemed an admission or acquiescence by any party hereto that any other party hereto has any interest whatsoever in the fee title to said streets. This lease and the documents used in negotiating same shall not be used in any future proceedings between any of the parties hereto in any manner that would serve to prejudice any party's claim to fee ownership or any other interests it may claim to have in said streets.

Notwithstanding the above paragraph, during the term of this Lease and any extension thereof, Tenant and Lessor agree that neither of them shall initiate any action against the other or make any claim against the other for any purpose by which claim or action either asserts any ownership interest in the premises or the streets that comprise a portion of the premises and which claim or action if successful would work to abrogate or render ineffective this Lease or any provision of it.

19.06 Time of Essence.

Time is of the essence of each provision of this Lease.

19.07 Successors.

This Lease shall be binding on and inure to the benefit of the parties and their successors.

19.08 Covenants and Conditions.

All provisions, whether covenants or conditions, on the part

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of Tenant shall be deemed to be both covenants and conditions.

19.09 Captions.

The captions of this Lease shall have no effect on its interpretation.

19.10 Singular and Plural.

When required by the context of this Lease, the singular shall include the plural.

19.11 Joint and Several Obligations.

"Party" shall mean Lessor or Tenant; and if more than one person or entity is Lessor or Tenant, the obligations imposed on that party shall be joint and several.

19.12 Severability.

The unenforceability, invalidity, or illegality of any provision shall not render the other provisions unenforceable, invalid, or illegal.

19.13 Exhibits.

All exhibits referred to are attached to this Lease and incorporated by reference.

19.14 Recitals.

Each of the recitals set forth in the preface to this Lease are incorporated into this Lease, and where necessary, shall be referred to in interpreting this Lease and its intent.

19.15 California Law.

This Lease shall be construed and interpreted in accordance with the laws of the State of California.

19.16 Cost of Living Escalator

Maximum recoverable or chargeable amounts established in §§ 4.04(E), 4.04(F) and 6.01(C) of this Lease shall be subject to occasional (but not more frequently than once every five (5) years) increase in the maximum amount stated in those sections, which increase shall equal the increase in the cost of living computed as follows: The base for computing the adjustment is the Consumer Price Index (All Items) for the San Francisco-Oakland Metropolitan Area, published by the U.S. Department of

Labor, Bureau of Labor Statistics ("Index") which is published for the date nearest the date of the beginning of the third lease year immediately preceding the adjustment ("Beginning Index"). If the Index published nearest the adjustment date ("Extension Index") has increased over the Beginning Index, the maximum amount recoverable or chargeable shall be increased by multiplying the existing maximum amount by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. If the Index is discontinued or revised during the term of this Lease, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the index had not been discontinued or revised. Whenever any maximum amount is increased in accordance with the provisions of this section 19.15, the section in which such maximum amount is established shall be read as if the maximum amount stated in that section is the amount established by the provisions of this section, and otherwise the provisions of the affected section shall remain unchanged.

19.17 Memorandum of Lease

This Lease shall not be recorded, except that if either party requests the other party to do so, the parties shall execute a memorandum of lease in recordable form.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the day and year set forth below.

For Lessor: City of Sausalito

Date: 1-27, 1992 By: Raymond M. Buddie
Raymond M. Buddie, Mayor

Attest:
Vicki L. Ziel
for: Janet F. Tracy, City Clerk

For Tenant: Sausalito Yacht Harbor, Inc.

Date: 01-27, 1992 By: J.H. Madden, Jr.
J.H. Madden, Jr., President

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List of Exhibits

Exhibit A: Lands of the current lease

Exhibit B: Description of the lands of this lease

Exhibit C: Record of survey of the lands of this lease

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That certain real property situated in the City of Sausalito, County of Marin, State of California described as follows:

LANDS DESCRIBED
IN PARAGRAPHS
C.(1) and C.(2)
OF THIS LEASE

Beginning at a point which bears N.71° 38' 25" W., 343.34 feet from a brass cap set in a concrete monument in the City of Sausalito Park at Bridgeway Blvd., El Portal Avenue and Park Avenue, said brass cap being marked "Sausalito Azimuth Station" and running thence N. 56° 12' 00" W., 64.07 feet to a point; thence N. 7° 30' 00" W., 42±.15 feet; thence S. 82° 30' 00" W., 200 feet; thence N. 7° 30' 00" W., 262.27 feet; thence S. 33° 48' W., 197.03 feet; thence N. 56° 12' 00" W., 60.00 feet; thence N. 33° 48' 00" E 265.33 feet; thence N. 7° 30' 00" W., 232.51 feet; thence N. 56° 12' 00" W., 26.62 feet; thence N. 58° 04' 00" E., 21.98 feet; thence N. 7° 30' 00" W., 465.6 feet; thence S. 56° 12' 00" E., 464.99 feet; thence N. 58° 04' 00" E., 66.00 feet; thence S. 56° 12' 00" E., 280.00 feet; thence S. 33° 48' 00" W., 153.93 feet; thence S. 7° 30' 00" E., 125.00 feet; thence S. 53° 06' W., 193.02 feet; thence S. 7° 30' 00" E., 735.06 feet; thence West, 99.75 feet; thence South, 22.79 feet to the point of beginning, consisting of 11.22 acres, more or less.

All that certain land situate, lying and being in the County of Marin, State of California, and more particularly described as follows:

LANDS DESCRIBED
IN PARAGRAPH C.(7)
OF THIS LEASE

BEGINNING at a point which bears N71° 38' 25" W. 343.34 feet from a brass cap set in a concrete monument in the City of Sausalito Park at Bridgeway Boulevard, El Portal Avenue and Park Avenue, said brass cap being marked "Sausalito Azimuth Station" and running North for a distance of 27.79 feet; thence East 99.75 feet to the true Point of Beginning, of the parcel herein described; running thence N.7° 30' W. 735.06 feet, N. 53° 06' 50" E. 193.02 feet, N. 7° 30' W. 125.0 feet, N. 33° 48' E. 139.561 feet, S. 7° 13' 10" E. 1093.20 feet, West 248.68 feet to the Point of Beginning, containing 4.77 acres, more or less;

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JAN 27 1992

DESCRIPTION
PROPOSED LEASE
FROM CITY OF SAUSALITO
TO SAUSALITO YACHT HARBOR
BEING A PORTION OF GRANT TO CITY OF SAUSALITO
AS SHOWN UPON THAT CERTAIN GRANT MAP
ENTITLED "GRANT TO CITY OF SAUSALITO"
PREPARED BY CALIFORNIA STATE LANDS COMMISSION
FILED IN CAN "A"; #16835; CORRECTED 20 JULY 1966
MARIN COUNTY RECORDS
CITY OF SAUSALITO

MARIN COUNTY

CALIFORNIA

PARCEL ONE:

Beginning at the westerly corner of Block Two in the Town of New Sausalito, as shown upon that certain map entitled "Map No. 1 of Salt Marsh and Tide Lands"; copy on file with the Marin County Recorder; from which City of Sausalito monument "M-224" bears S34°00'W 60.183 feet and N56°00'W 29.782 feet and a railroad spike in Humbolt Avenue and Johnson Street bears S34°00'W 60.183 feet and N56°00'W 1230.052 feet; thence leaving said corner along westerly line of said Block Two, also being the easterly line of Bay Street, N34°00'E 195.10 feet (called 195.33 feet 1524-OR-581) to the westerly line of Railroad Avenue, also being the northerly corner of said Block Two; thence leaving said corner along the westerly line of Railroad Avenue, S7°13'11"E 259.38 feet (called 259.42 feet 1524-OR-581) to the northerly line of Humbolt Avenue, also being the southeasterly corner of said Block Two; thence leaving said corner along a former lease-line N34°00'E 205.10 feet; northeasterly 101.75 feet along a tangent curve, concave northwesterly, having a radius of 316 feet and a central angle of 18°26'55"; N56°00'W 154.68 feet; N34°00'E 338.37 feet; N56°51'E 101.65 feet; thence leaving former lease-line N31°04'W 54.74 feet to POINT "A"; thence leaving said point N52°49'E 180.99 feet; N56°00'W 648.21 feet more or less to a point which bears N34°00'E from the easterly projection of Dolphin Street; thence S34°00'W 51.53 feet more or less to the westerly line of Railroad Avenue and the eastely line of Dolphin Street, also being the northerly corner of Block 270; thence leaving said point, along the westerly line of Railroad Avenue S7°13'11"E (called S7°30'E 1524-OR-584) 819.49 feet to a point on the westerly line of Bay Street, also being the easterly corner of Block One; thence leaving said point, along the westerly line of Bay Street S34°00'W 263.59 feet (called 264 feet 165-Deeds-403) to the northerly line of Humbolt Avenue; thence along said northerly line S56°00'E 60.00 feet to the Point of Beginning.

Containing an area of approximately 6.670 acres.

EXHIBIT B. PAGE ONE.

PARCEL ONE. THE PREMISES DESCRIBED IN PARAGRAPH 1.01

PARCEL TWO. THE EASEMENT DESCRIBED IN PARAGRAPH 19.03

JAN 27 1992

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PARCEL TWO:

An easement for ingress, egress and utilities purposes, ten-feet in width, over the following described lands (portion of which may be submerged):

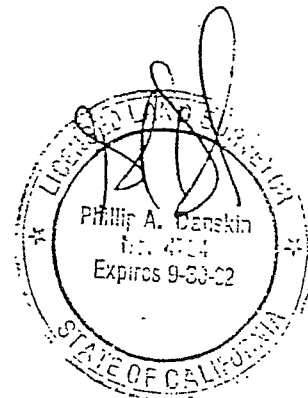
Beginning at POINT "A" in aforesaid Parcel One; thence leaving said point N52°49'E 91.78 feet; S10°30'E 11.19 feet S52°49'W 87.82 feet to a point which bears S31°04'E from the point of beginning; thence N31°04'W 10.06 feet more or less to the Point of Beginning.

Containing an area of approximately 898 square feet.

19 June 1991

Survey No. 269

Prepared by
Phillip A. Danskin & Associates
Land Surveyor
Sonoma, California



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JAN 27 1992

A RESOLUTION OF THE SAUSALITO CITY COUNCIL APPROVING THE
LEASE OF CITY OWNED TIDELANDS TO THE
SAUSALITO YACHT HARBOR

The City Council of the City of Sausalito does resolve as follows:

WHEREAS, the City of Sausalito and the Sausalito Yacht Harbor have conducted and concluded extensive negotiations concerning the grant of a new lease to Sausalito Yacht Harbor concerning certain city owned tidelands northeast of Humboldt Avenue; and

WHEREAS, the lease as negotiated is for a maximum period of fifty years and is made for good and proper consideration, in satisfaction of state law; and,

WHEREAS, it is in the best interest of the City of Sausalito that the lease as negotiated be approved and executed, and that its provisions be fulfilled in compliance with the terms of the lease; and,

WHEREAS the City Council concurs with staff that this project has been determined to be and is categorically exempt from the provisions of CEQA, pursuant to section 15301 of the State CEQA Guidelines as a consequence of the fact that this lease only authorizes the maintenance of existing facilities and does not contemplate or approve any construction of new or expanded facilities.

NOW, THEREFORE, THE CITY COUNCIL hereby approves the November 20, 1991 Final Draft lease of City owned state granted tidelands to the Sausalito Yacht Harbor and authorizes the Mayor to execute that lease on behalf of the City of Sausalito.

The City Manager is directed to file a notice of Exemption from CEQA with the County Clerk.

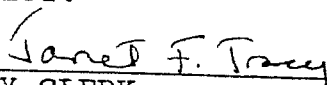
PASSED AND ADOPTED at a regular meeting of the City Council of the City of Sausalito on the 17th day of December, 1991, by the following vote:

AYES: Councilmembers: Mitchell, Suckle, Sweeny Mayor Buddie
NOES: Councilmembers: none
ABSTAIN: Councilmembers: none
ABSENT: Councilmembers: Rose



Mayor, City of Sausalito

ATTEST:



CITY CLERK

JAN 27 1992

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SAUSALITO YACHT HARBOR

A CORPORATION
501 HUMBOLDT (lower)
SAUSALITO, CALIFORNIA 94965
PHONE (415) 332-5000
FAX (415) 332-8473

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAUSALITO YACHT HARBOR, INC. APPROVING NEW LEASE WITH THE CITY OF SAUSALITO.

WHEREAS, Sausalito Yacht Harbor, Inc. has come to agreement with the City of Sausalito regarding the terms of a new fifty (50) year lease of the premises described in Exhibit A hereto; and

WHEREAS, the City Council of the City of Sausalito approved the form of said lease on December 17, 1991.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of the Sausalito Yacht Harbor, Inc., hereby consents to and approves the form of lease approved by the City of Sausalito on December 17, 1991 including any nonsubstantive changes thereto recommended by the Corporation's attorneys as being required to prepare the lease for execution; and the President of the corporation is hereby authorized to execute said lease.

PASSED AND ADOPTED by the following vote of the Directors present Friday, January 3, 1992

AYES: Frances Clifford, Gertrude Fuetsch
Jean Merz Marjorie Rankin
J. H. Madden, Jr.

NOES: None

ABSTAIN: None

J. H. Madden, Jr.
President, Board of Directors
Sausalito Yacht Harbor, Inc.

Marjorie L. Rankin
Secretary, Board of Directors
Sausalito Yacht Harbor, Inc.

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Attachment No. 2

1975 Agreement

Item #: 6c
Meeting Date:
Page #: 861

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RAGGHIANI, FREITAS, ET AL
Lisa Goldfien

(415) 332-3400 NO. 054 P.2/8

ACREBMENT

WHEREAS, the City of Sausalito (hereafter City) has heretofore filed suit against the Golden Gate Bridge, Highway and Transportation District (hereafter District), Madden & Lewis Company, a California corporation (hereafter Madden), MacMarin, Inc., a California corporation (hereafter MacMarin), Sausalito Yacht Club, Inc., a California corporation (hereafter Yacht Club); and

WHEREAS, said litigation (Marin Superior Court Action No. 73356) is presently set for trial to commence on September 27, 1976; and

WHEREAS, Madden has heretofore filed Action No. 80645 against City in Marin County Superior Court; and

WHEREAS, Sausalito Yacht Harbor, Inc., a California corporation (hereafter Yacht Harbor) has heretofore filed Action No. 77999, and Action 80645, against City in Marin County Superior Court; and

WHEREAS, Madden, MacMarin and Yacht Club claim to have additional claims against City which they intend to perfect by filing suits against City upon the conclusion of City's Action No. 73356; and

WHEREAS, the parties hereto desire by this Agreement to compromise and settle all of said litigation and all of said claims; and

WHEREAS, Madden presently leases certain real property from City (hereafter Madden leasehold) by virtue of a lease originally entered into in 1952 with the State of California, and which has been subject to various amendments and modifications thereafter (hereafter Madden lease); and

WHEREAS, District has heretofore filed Action No. 73255 in Marin County Superior Court whereby it obtained a judgment in condemnation of approximately 1.55 acres of Madden's said leasehold interest; and

WHEREAS, City has filed Notice of Appeal of the judgment in said Action No. 73255;

NOW, THEREFORE, in consideration of the promises and the mutual promises herein contained, it is hereby agreed:

1. Madden agrees to forthwith dismiss, with prejudice, Marin Superior Court Action No. 80646 against all defendants named therein;

2. Yacht Harbor agrees to forthwith dismiss, with prejudice, Marin Superior Court Action No. 77799 against all defendants named therein;

3. Yacht Harbor agrees to forthwith dismiss, with prejudice, Counts I and III of Action No. 80645 and, without prejudice, Count II of Action No. 80645, against all defendants named therein;

4. City agrees to forthwith dismiss, with prejudice, Marin Superior Court Action No. 73356 against all defendants named therein;

5. It is agreed by all parties that as to those issues raised in Action No. 73255 pertaining to the validity of the Madden lease and as to whether said condemnation action constituted, caused or resulted in any breach of said lease, the dismissal in Action 73356 shall constitute a full, final and complete waiver of any claim that said lease is invalid or that said condemnation action constituted, caused or resulted in a breach of said lease.

It is agreed that the parties to the appeal in Action No. 73255 will not raise as an issue on appeal any of the issues that were raised by the pleadings in Action No. 73356. That is, it is

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RAGGHIANI, FREITAS, ET AL
Lisa Goldfien

(415) 332-3040.054

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Agreed that any issues as to whether the Madden lease is valid, or whether said condemnation action caused or resulted in a breach of the covenant against voluntary assignment contained in said lease, are res judicata, and may not be raised as matters to be considered, or decided, by the Appellate Court on said appeal;

6. The parties hereto agree that they, and each of them, will, and do hereby, release and relinquish any claims which they may now have, or causes of action which they may acquire, against City or against each other, as the result of, or arising out of, the fact that City filed Action No. 73356, including any claim they may have incurred for costs or attorneys fees in defending said litigation;

7. City agrees that certain conditions imposed upon the granting of C.C.P. No. 469 are hereby amended to read as follows:

(a) Condition 4 is amended to read in full as follows:

Proposed parking spaces and access drives shall meet all City standards as set forth in the applicable provisions of the Sausalito Zoning Ordinance [§10.210.1(a)] as said ordinance reads on September 21, 1976; the term "parking space" as used in this conditional use permit is as defined or used in the Zoning Ordinance as it reads as of September 21, 1976.

(b) Condition 6 is amended to read in full as follows:

Any debris on wetted property within the proposed marina including any debris on such parts of Ensign Street, Dolphin Street and Donohue Street located within the proposed marina shall be removed by the applicant to the mudline. All debris made of wood within the area which applicant proposed for use as dry boat storage shall be removed to the mudline.

(c) Condition 8 is amended to read in full as follows:

Maximum number of berths for the proposed marina No. 2 shall be no more than three (3) berths for every parking space installed pursuant to applicable provisions of the Sausalito Zoning Ordinance.

(d) Condition 12 is amended to read in full as follows:

If, for any reason, parking space for the proposed marina should drop below one space for each 1 berths, applicant shall remove an appropriate number of berths included in this Conditional Use Permit.

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RAGGHIANI, FREITAS, ET AL
Lisa Goldfien

(415) 332-340.054 P.5/8.0

(e) Condition 14 is amended to read in full as follows:

Daytime public access (other than to 'finger piers') shall be available to the proposed marina and such portion of the existing marina as is necessary to carry out this condition. Provided, that public access shall be subject to reasonable control, regulation, and policing by applicant and the premises may be closed to the public during such periods of time as applicant may reasonably deem it necessary in order to protect the quiet enjoyment of tenants of the harbor or to protect said tenants and property of the harbor from conduct reasonably deemed detrimental to the safety of persons or property. Nothing herein shall give the public or any person or persons any right of easement by prescription in the proposed marina, or any other private property.

(f) Condition No. 15 is eliminated. (See Condition No. 4.)

(g) Condition 19 is amended to read in full as follows:

Applicant shall proceed with due diligence to obtain the necessary permits and entitlements necessary to construct the proposed marina. All necessary building permits and entitlements by the City shall have been issued and construction initiated within 18 months of the effective date of this agreement. Provided, however, that if through no fault of applicant, it is unable to comply with the provisions of this condition, it shall be entitled to a reasonable extension of time within which to commence construction.

(h) Condition 20 is deleted.

(i) Condition 21 is deleted.

(j) Condition 22 is amended to read in full as follows:

Approval of this use permit shall not be deemed an acknowledgment by the City of Sausalito that the applicant's present use of the streets which the City claims it owns and or other property to which City claims ownership is valid or has been legally authorized.

} *

(k) Condition 25 is amended to read in full as follows:

The number of berths in the proposed expansion area of 4.55 acres owned in fee shall not exceed 200.

8. Yacht Harbor and City each claim ownership of the fee title to certain underwater streets that intersect, or are adjacent to, fee land owned by Yacht Harbor. Nothing contained in this agreement shall be construed for any purpose, by any party, at any time, to be deemed an admission, or acquiescence, by any party hereto,

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that any other party hereto has any interest whatsoever in the fee title to said underwater streets. The mutual promises and provisions provided for in this agreement are made for the sole purpose of settling numerous pending, and threatened, lawsuits, and claims, involving numerous complex issues of law and fact, between the parties hereto; and this agreement shall not be used in any future litigation between any of the parties hereto in any manner that would serve to prejudice any party's claim to fee ownership of the said underwater streets. It is further understood that both City and Yacht Harbor claim ownership to the fee title to a certain portion of Humboldt Street, more particularly described as:

The northeasterly one-half of the following described real property located in the City of Sausalito, County of Marin, State of California.

All that portion of Humboldt Avenue commencing at the intersection of the northeasterly line of Humboldt Avenue with the southeasterly line of Johnson Street; thence southwesterly along the southeasterly line of Johnson Street to the southwesterly line of Humboldt Avenue; then southeasterly along said line of Humboldt Avenue, a distance of one thousand three hundred seventy and ninety-two hundredths (1370.92) feet to a point; thence at right angles northeasterly to the point of intersection of the northeasterly line of Humboldt Avenue with the westerly line of Railroad Avenue; thence northwesterly along the northeasterly line of Humboldt Avenue to the point of beginning;

to which the provisions of this paragraph are applicable.

9. Madden agrees to pay to City, annually, on or before January 1st of each year, commencing January 1, 1977, a sum of money to be calculated by the following formula:

5% of the gross annual rental received by Yacht Harbor from any boat berths that are located on Channel, Dolphin, Ensign, Johnson or Donohue Streets.

It is further agreed that so long as Madden pays to City the monies provided to be paid herein, City will not, for a period of not less than 50 years, attempt to evict Yacht Harbor from said streets or otherwise interfere with the peaceful possession of said streets enjoyed by Yacht Harbor marinas No. 1 and No. 2.

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RAGGHIANI, FREITAS, ET AL
Lisa Goldfish

(415) 332-3040.054 P.7/8

10. City has installed a pay parking facility on a portion of that part of Humboldt Street described in paragraph 8 above. Yacht Harbor agrees that so long as it is in peaceful possession of the streets referred to in paragraph 9 above, that it will not prosecute litigation against City (unless litigation is first commenced against it) for inverse condemnation resulting from City's action in installing said parking facility and otherwise possessing said property; or for recovery of rentals received by City from said parking facility; and that it will not otherwise interfere with City's peaceful possession of said portion of Humboldt Street on which said parking facility is now located. Except as otherwise provided herein, however, Yacht Harbor reserves the right to reinstate any claims, or causes of action which it may have against City, as of the date hereof, as the result of the conduct of City hereinabove described, and in the event of future litigation between Yacht Harbor and City involving title, or the right to possession of, any of the streets referred to in paragraphs 9 and 10, City agrees that it will not raise any defenses to any such litigation, including the defense of the statute of limitations or laches, which it could not have raised if Count II of Action No. 80645 had not been dismissed and had proceeded to trial in due course.

11. It is agreed that so long as the provisions of paragraph 9 and 10 above remain in effect, Yacht Harbor shall have assigned to it two parking spaces in the aforementioned Humboldt Street parking lot which shall at all times be available exclusively to it at no cost. It is further agreed that garbage and other service vehicles will be allowed free access to and through the parking lot when on official Yacht Harbor business; and that persons having berths in the Yacht Harbor, access to which is adjacent to the Humboldt Street parking area, will be allowed to use said parking lot at no cost for purposes of receiving and discharging passengers and property destined for said berths, the period of time for which access is to be allowed not to exceed 15 minutes.

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JUL 15 2002 12:22PM FAX STATION LAW OFFICE OF MARY WAGNER

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12. It is understood that applicant will be required to comply with the regulations and requirements of and/or obtain entitlements from, other agencies having jurisdiction over various aspects of the project, e.g., BCDC, Corps of Engineers, etc. It is agreed that upon appropriate compliance with all of said rules and regulations and upon submission of the required plans and compliance with applicable zoning ordinance provisions relating to design review, that City will issue the necessary building, encroachment, dredging, etc. permits to enable construction of the proposed marina to proceed.

13. It is understood that paragraphs 1, 2, 3, 7, 8, 9, 10, 11 and 12 apply to and affect only City, Madden and Yacht Harbor.

Executed in sextuplicate this 24th day of September, 1976, at Sausalito, California.

CITY OF SAUSALITO

MADDEN & LEWIS

By Sally Stanford, Mayor

By J.W. Mauld

GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTATION DISTRICT

SAUSALITO YACHT HARBOR, INC.

By Peter Jarama

By J.W. Mauld

SAUSALITO YACHT CLUB, INC.

MAC MANIN, INC.

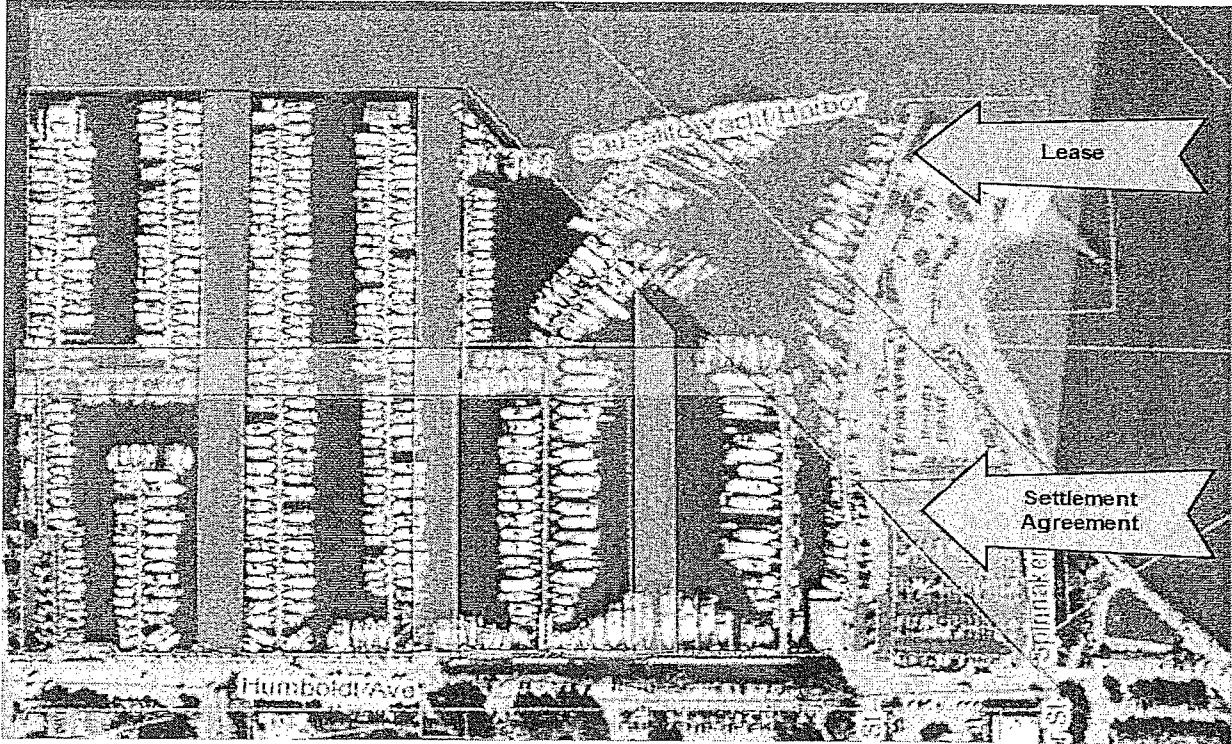
By Allen S. Deberry
Commuter

By _____

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Attachment No. 3

Picture Depicting City Property Subject to Lease and Settlement Agreement



Item #: 60
Meeting Date:
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