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San Diego Unified Port District

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Office of the District Clerk

SAN DIEGO UNIFIED PORT DISTRICT

LEASE TO

EICHENLAUB MARINE, INC

OF PROPERTY LOCATED AT

2608 SHELTER ISLAND DRIVE

SAN DIEGO, CALIFORNIA

FOR THIRTY (30) YEARS

COMMENCING NOVEMBER 1, 2008

AND ENDING OCTOBER 31, 2038

ORIGINAL

TABLE OF CONTENTS

<u>Paragraph/Exhibit</u>	<u>Page Number(s)</u>
PREAMBLE.....	1
1. TERM	1
2. USE.....	1
2.1 UNAUTHORIZED USE CHARGE	2
3. RENT	2
3.1 COST OF LIVING RENT ADJUSTMENTS	4
3.2 RENT REVIEW	5
4. IMPROVEMENTS.....	7
5. CONSTRUCTION OF IMPROVEMENTS	8
6. TITLE TO IMPROVEMENTS.....	10
7. LIENS	11
8. LEASE ENCUMBRANCE	12
9. ASSIGNMENT - SUBLEASE	18
10. DEFAULTS AND REMEDIES	20
11. BANKRUPTCY	25
12. EMINENT DOMAIN	25
13. TERMINATION OF PRIOR AGREEMENTS	25
14. USE OBLIGATION.....	26
15. MAINTENANCE AND REPAIR.....	26
16. PERFORMANCE BOND.....	27
17. TAXES AND UTILITIES	27
18. CONFORMANCE WITH LAWS AND REGULATIONS	27
19. EQUAL EMPLOYMENT OPPORTUNITY AND NONDISCRIMINATION	28
20. PARTIAL INVALIDITY	28
21. HOLD HARMLESS	29
22. SUCCESSORS IN INTEREST	29
23. EASEMENTS.....	29
24. TITLE OF LESSOR	29
25. INSURANCE	29
26. POLICY OF LESSOR.....	33
27. WARRANTIES-GUARANTEES-COVENANTS	33
28. DAMAGE TO OR DESTRUCTION OF LEASED PREMISES	33
29. QUITCLAIM OF LESSEE'S INTEREST UPON TERMINATION	34
30. PEACEABLE SURRENDER.....	34
31. WAIVER.....	34
32. HOLDOVER	35
33. PARAGRAPH HEADINGS.....	35
34. ENTIRE UNDERSTANDING.....	35
35. TIME IS OF THE ESSENCE.....	36
36. NOTICES.....	36
37. REMOVAL OF MATERIALS	36
38. WASTE/NUISANCE.....	37

39. NUMBER AND GENDER.....	37
40. APPLICABLE LAW	37
41. ATTORNEY FEES	37
42. HAZARDOUS MATERIALS.....	37
43. STORAGE TANKS	41
44. ENVIRONMENTAL DISCLOSURES	43
45. "AS-IS" LEASE AND WAIVERS	44
46. JOINT AND SEVERAL LIABILITY	47
47. SECURITY DEPOSIT	47
48. DISPUTE RESOLUTION	48
49. MEMORANDUM OF LEASE.....	50

Exhibit "A"

Exhibit "B"

Guaranty

LEASE

THIS LEASE, made and entered into this 23rd day of December, 2008, between the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter "Lessor," and EICHENLAUB MARINE, INC, a California Corporation, hereinafter "Lessee," WITNESSETH:

Lessor, for the consideration hereinafter set forth, hereby leases to Lessee for the term and upon the conditions hereinafter set forth, a portion of those lands conveyed to the San Diego Unified Port District by that certain Act of the Legislature of the State of California entitled "San Diego Unified Port District Act," Stats. 1962, 1st Ex. Sess., c. 67, as amended, which lands are more particularly described as follows:

Approximately 11,401 square feet of land area and approximately 18,377 square feet of water area located at 2608 Shelter Island Drive in the City of San Diego, California, more particularly described and delineated as Parcel Nos. 1 and 2 on Drawing No. 003-033 dated September 25, 2007, attached hereto as Exhibits "A" and "B," and by this reference made a part hereof, hereinafter "Leased Premises".

TO HAVE AND TO HOLD said Leased Premises for the term of the Lease and upon the conditions as follows:

1. **TERM:** The term of the Lease shall be for a period of thirty (30) years, commencing on the 1st day of November 2008, hereinafter called the "Commencement Date," and ending on the 31st day of October 2038, hereinafter called the "Termination Date," unless sooner terminated as herein provided.
2. **USE:** Lessee agrees that the Leased Premises shall be used only and exclusively for the construction, maintenance, repair and painting of boats up to sixty-five (65) feet in length; the sale and installation of marine supplies, equipment, machinery and accessories on said boats; marine sales and service berthing; and the sale of boats, and for no other purposes whatsoever. This restriction on use of the Leased Premises absolutely prohibits a change in use.

ORIGINAL

2.1 UNAUTHORIZED USE CHARGE: Lessee shall pay Lessor Twenty Percent (20%) of the gross receipts for any service or use that is not permitted under this Lease. This payment is subject to the due date for rent and the provisions for delinquent rent provided in Paragraph 3 herein. The existence of the Twenty Percent (20%) charge in this Paragraph and the payment of this charge or any part thereof, does not constitute an authorization for a particular service or use, and does not waive any Lessor rights to terminate a service or use or to default Lessee for participating in or allowing any unauthorized use of the Leased Premises.

3. RENT: Lessee agrees to pay to Lessor rent in accordance with the following:

- (a) The term of this Lease shall be divided into the following rental periods, hereinafter "Rental Periods":

November 1, 2008- October 31, 2018

November 1, 2018 - October 31, 2028

November 1, 2028 - October 31, 2038

- (b) The rent for the first Rental Period of this Lease shall be the sum of Two Thousand Fifty-Nine Dollars (\$2,059) per month, of which Eighty-Three Dollars (\$83) is for the 300 square feet of land area that is devoted to boat sales on the Commencement Date, from November 1, 2008 through the eighteen (18) months following the Commencement Date, Four Thousand One Hundred Seventeen Dollars (\$4,117) per month, of which One Hundred Sixty-Six Dollars and Twenty-Five Cents (\$166.25) is for the 300 square feet of land area that is devoted to boat sales on the Commencement Date, thereafter through October 31, 2018, calculated on the basis of Four Dollars and Four Cents (\$3.04) per square foot per year for 11,001 square feet of Parcel No. 1 that is used for boatyard purposes and Six Dollars and Sixty-Five Cents (\$6.65) per square foot per year for 300 square feet of Parcel No. 1 that is used for boat sales purposes; and Seventy-Six Cents (0.76¢) per square foot per year for Parcel No. 2, subject to adjustment described in Paragraph 3.1 herein. A surcharge of Three Dollars and Sixty-One Cents (\$3.61) per square foot per year shall apply to each additional square foot of Parcel No. 1 that is used for boat sales purposes. Said rent shall be payable in advance on or before the first (1st) day of each month.

The rent for each successive Rental Period and any extension hereof shall be adjusted in accordance with Paragraphs 3.1 and 3.2 herein.

- (c) All payments shall be delivered to Lessor's Treasurer. Checks shall be made payable to the San Diego Unified Port District and mailed to the Treasurer's Office, San Diego Unified Port District, Post Office Box 120488, San Diego, California 92112-0488, or delivered to the Treasurer's Office, San Diego Unified Port District, 3165 Pacific Highway, San Diego, California. Lessor may change the designated place of payment and filing at any time upon ten (10) days' written notice to Lessee. Lessee assumes all risk of loss and responsibility for late charges, as herein described, if payments are made by mail.
- (d) Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease. Accordingly, in the event Lessee is delinquent in remitting the rent due in accordance with the rent provisions of this Lease, Lessee shall pay, in addition to the unpaid rent, five percent (5%) of the delinquent rent. If rent is still unpaid at the end of fifteen (15) days, Lessee shall pay an additional five percent (5%) [being a total of ten percent (10%)] (collectively, "Late Charges"). The parties hereby agree that said Late Charges are additional rent and are not interest, and that said Late Charges are appropriate to compensate Lessor for loss resulting from rent delinquency including, without limitation, lost opportunities and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payment for rent be less than Twenty-Five Dollars (\$25). Acceptance of such late charges and any portion of the late payment by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of its other rights and remedies. The Executive Director of Lessor shall have the right to waive for good cause any late charges upon written application of Lessee for any such delinquency period.
- (e) All payments by Lessee to Lessor shall be by a good and sufficient check. No payment made by Lessee or receipt or acceptance by Lessor of a lesser amount than the correct amount of rent due under this Lease shall be deemed to be other than a payment on account of the earliest rent due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance or pursue any other available remedy.

3.1 COST OF LIVING RENT ADJUSTMENTS:

- (a) This Lease shall provide for the following mid-term Rental Period adjustment dates, hereinafter "Adjustment Dates":

November 1, 2013

November 1, 2023

November 1, 2033

- (b) On the referenced Adjustment Dates, the rent specified in Paragraph 3(b) herein shall be adjusted by the increase, if any, in the Consumer Price Index for All Urban Consumers for Los Angeles//Riverside/Orange County, CA/All Items based on the period 1982-84 = 100 as published by the United States Department of Labor's Bureau of Labor Statistics, hereinafter "CPI".

The monthly rent payable pursuant to Paragraph 3(b) of this Lease shall be multiplied by a fraction, the numerator of which shall be the CPI for the calendar month which is three months prior to the Adjustment Date under consideration, and the denominator of which shall be the CPI for the calendar month which is three months prior to commencement of the then-current Rental Period. The sum so calculated shall constitute the new monthly rent herein, but in no event shall such new monthly rent be less than the monthly rent payable for the month immediately preceding said Adjustment Date.

In the event the CPI is no longer published, the index for the Adjustment Date shall be the one reported in the U. S. Department of Labor's comprehensive official index most nearly corresponding to the foregoing description of the CPI. If the herein-described Department of Labor indices are no longer published, another index generally recognized as authoritative shall be substituted by agreement of the parties. If they are unable to agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the San Francisco Regional Office of the Bureau of Labor Statistics or its successor.

3.2 RENT REVIEW:

- (a) Beginning with the Rental Period which commences November 1, 2018, and at the commencement of each Rental Period thereafter as described in Paragraph 3(a) herein, the rent as specified in Paragraph 3(b) herein shall be mutually agreed upon by Lessor and Lessee; provided, however, the rent shall be further adjusted in accordance with Paragraph 3.1 herein.
- (b) In the event the parties cannot agree to the rent for a Rental Period, the rent for said Rental Period shall be determined by three arbitrators in accordance with Sections 1280 through 1294.2 of the California Code of Civil Procedure.

The parties agree that, after notice by either party to the other requesting arbitration, each party shall appoint one arbitrator within thirty (30) days. Notice of the appointment shall be given by each party to the other party when made. Should either party fail to appoint its arbitrator within said time period, then the party that has appointed its arbitrator may petition the Superior Court of the state of California, county of San Diego, to appoint the second arbitrator. The party making the application shall give the other party notice of its application. All costs, including attorney fees associated with the court's appointment of the second arbitrator, shall be borne by the party which failed to appoint its arbitrator.

The two arbitrators shall immediately choose a third arbitrator to act with them. If they fail to select a third arbitrator within thirty (30) days following the appointment of the second arbitrator, on application by either party, the third arbitrator shall be promptly appointed by the then-presiding judge of the Superior Court of the state of California, county of San Diego, acting in his/her individual capacity. The party making the application shall give the other party notice of its application. All of the arbitrators shall be qualified real estate appraisers that are licensed to practice in the state of California.

By no later than thirty (30) days following the appointment of the third arbitrator, Lessor and Lessee shall each provide the other and each of the three arbitrators with (i) its rent proposal which shall consist of the Minimum Annual Rent and the percentage rents (and/or gallonage and/or flat rents if applicable) for the pending Rental Period under arbitration (the "Rent Proposal") and (ii) its appraisal report prepared by a qualified real

estate appraiser licensed to practice in the state of California. In the event the Rent Proposal and the opinion of fair market rent expressed in the appraisal report differ, the Rent Proposal shall control. The appraisal reports shall consider: (1) the Leased Premises as if vacant of Lessee-owned improvements and available for new construction but with street access, utility services, and shoreline protection (if the Leased Premises are located on the waterfront) regardless of who paid for the installation of the street improvements, utility services and/or shoreline protection; (2) the Leased Premises as having all regulatory entitlements and development rights for the types of uses permitted in Paragraph 2 above which includes, but is not restricted to, the design, construction and size of the existing improvements; (3) the highest and best use of the Leased Premises as if available for new leasing purposes under optimal development assumptions that are consistent with the uses provided in Paragraph 2 herein and to the other terms, conditions and restrictions of the Lease; (4) as if held by a private party in fee simple with all of the rights to sell, lease or transfer the owner's interest, and shall disregard any limitation resulting from public ownership; and (5) as if offered for lease in the open market. No diminution in value shall be taken as a result of any existing Contaminants, as herein described, or improvements, or lack of improvements, on the Leased Premises. The appraisers shall use and analyze only the market data that is found in the marketplace, such as is demanded and received by other lessors for the same or similar types of uses allowed on the Leased Premises. In all cases, the appraisal reports shall be based upon recognized real estate appraisal principles and methods.

Within thirty (30) days following the selection of the third arbitrator, the three arbitrators shall conduct an arbitration hearing in the city of San Diego, California. The three arbitrators shall hear and consider the testimony of the Lessor and Lessee and their appraisal witnesses and any additional written information furnished by Lessor or Lessee. The amount and kind of evidence allowed and the rules of discovery and testimony shall be decided solely by the third arbitrator after consultation with the arbitrators appointed by the Lessor and Lessee.

The award determined by the arbitrators shall be effective and retroactive to the first day of the Rental Period under arbitration. The award shall be in writing and shall be made no later than fifteen (15) days following the arbitration hearing. The award shall be either Lessor's Rent Proposal or Lessee's Rent Proposal. The arbitrators shall not possess any right or

authority to propose a compromise between Lessor's Rent Proposal and Lessee's Rent Proposal or the modification of either Rent Proposal. The arbitrators shall select whichever of the two Rent Proposals sets forth the rent that the majority of the arbitrators believe is closest to the market rent for the Leased Premises for the Rental Period under arbitration. A unanimous decision of the three arbitrators is not required. Within ten (10) days of the date the award is made, the underpayment of the rent, if any, shall be paid by Lessee to Lessor.

- (c) Lessor and Lessee shall each pay for its own attorney's fees, transcriptions, and the cost of its appointed arbitrator. Lessor and Lessee shall equally share the third arbitrator's fee and expenses and the cost of the hearing including, but not limited to, cost for using the facilities at which the hearing is conducted and the cost of the recorder of the testimony.

4. IMPROVEMENTS:

- (a) In accordance with the procedures described herein, Lessee may, at its own expense, make alterations or changes, or cause to be made, built, installed, or removed any structures, machines, appliances, utilities, signs, or other improvements necessary or desirable for the authorized use of the Leased Premises. Provided, however, said work shall be in accordance with plans and specifications, including but not limited to working drawings, hereinafter "Plans," previously submitted to and approved in writing by Lessor.
- (b) No construction, installation, or removal of any improvement upon the Leased Premises shall commence without Lessor's prior written approval. All construction, installations, and removals shall be in accordance with Plans submitted to and approved in writing by Lessor prior to the commencement of any such work. All Plans are subject to changes as may be approved by Lessor, in Lessor's sole discretion. Further, all work shall be in accordance with all applicable laws, regulations, ordinances, and codes.
- (c) Notwithstanding the foregoing, within the interior of any enclosed building structure, and without Lessor's prior consent, Lessee shall have the right to install and/or remove machines, equipment, appliances, and trade fixtures that are necessary or desirable for the authorized use of the Leased Premises.

- (d) When required by Lessor, Lessee shall, at its sole cost and expense, pave or landscape the entire portion of the Leased Premises not covered by structures. All paving and/or landscaping shall be in accordance with Plans which must be submitted to and approved in writing by Lessor prior to the commencement of any such paving and/or landscaping.
- (e) Lessee shall notify Lessor prior to submitting application(s) to any governmental regulatory agency for any development or construction permit or license pertaining to the Leased Premises. Lessee shall also provide Lessor with a copy of all application(s) within five (5) days of making said application(s), along with copies of all Plans submitted as part of the application(s). Lessee shall also provide Lessor, within ten (10) days of Lessee's receipt, a copy of all permits, licenses, or other authorizations subsequently issued.
- (f) Lessee agrees that no banners, pennants, flags, spinners, or other advertising devices, nor any temporary signs, shall be flown, installed, placed, or erected on the Leased Premises without Lessor's prior written consent.

5. CONSTRUCTION OF IMPROVEMENTS:

- (a) On or before January 1, 2009, Lessee shall commence the construction of and diligently proceed to completion, (i) refurbishing existing 3,625 square foot building to meet current building codes, changing the façade and reconfiguring the shop spaces; (ii) constructing an additional new building of approximately 2,600 square feet with high bay shop space and office space; (iii) replace existing floating docks with new docks, and new electrical and water lines; (iv) replace existing marginal wharf; (v) remove existing riprap and replace with new filter fabric and quarry granite rock; and (iv) increase on-site parking from four (4) spaces to ten (10) to include one (1) electric vehicle and one (1) handicap space, hereinafter "Project." The Project shall be substantially in accordance with plans and specifications, including but not limited to working drawings, hereinafter "Plans," previously approved in writing by Lessor, subject to changes thereto as may be approved by Lessor, in Lessor's sole discretion. Said Plans, and any approved changes thereto, are by this reference made a part hereof. Construction of the Project shall be completed by no later than April 30, 2010. Provided, however, the commencement and completion dates may be extended pursuant to Paragraph 5(e) herein. In the event of any inconsistency between the Plans and the terms and conditions of this Lease, the terms and conditions of this Lease shall prevail.

- (b) Lessee shall, as a condition of this Lease, make an investment in the Project improvements in an amount which shall exceed One Million Two Hundred Thousand Dollars (\$1,200,000). Such investment is qualification for the term of this Lease and is not a portion of the rent obligations provided in Paragraph 3 herein. Further, neither such investment, nor such improvements, nor any other Lessee investment or improvement shall be considered by the parties hereto or any arbitrator (in the event of arbitration) in determining any rent during the term of this Lease.
- (c) The investment in the Project improvements referenced in Paragraph 5(b) above shall include an investment of not less than Twelve Thousand Dollars (\$12,000) in public artworks. No public artwork shall be installed on the Leased Premises unless the written approval of the Lessor has been granted. Acceptable forms of public artworks are described in Lessor's Board of Port Commissioners' Policy No. 609 and include, but are not limited to, paintings, sculptures, works of visual art, and artist-designed landscapes.
- (d) Within sixty (60) days following completion of any substantial improvement within the Leased Premises, but at not less than quarterly intervals, Lessee shall furnish Lessor an itemized statement of the actual construction cost of such improvement. The statement shall be sworn to and signed, under penalty of perjury, by Lessee or its responsible agent.

Lessee shall maintain true, accurate, and complete records to support said statement. Such records shall include, but are not limited to a general ledger, vendor invoices, cancelled checks, construction loan documentation, agreements with third-party contractors, and contractor progress payment billings. Additionally, should Lessee perform any construction in-house, Lessee shall substantiate the actual work performed by maintaining a payroll journal, copies of cancelled payroll checks, and timecards or other payroll documents which show dates worked, hours worked, and pay rates.

Books and records herein required shall be maintained and made available either at the Leased Premises or at such other location as is agreeable to Lessor. Further, Lessor shall have the right at any and all reasonable times to examine and audit said books and records without restriction for the purpose of determining the accuracy thereof, and the accuracy of the aforesaid statement. In the event Lessee does not make available the

original books and records at the Leased Premises or within the limits of San Diego County, Lessee agrees to pay all necessary expenses incurred by Lessor in conducting an audit at the location where said books and records are maintained.

- (e) The time(s) during which Lessee's construction is delayed by acts of God, war, invasion, rebellion, revolution, insurrection, riots, labor problems, unavailability of materials, government intervention, or acts or omissions of Lessor, shall be added to the times for the commencement and completion of construction established in Paragraph 5(a) herein. Provided, however, in no event shall the period of excused delay exceed 180 days in the aggregate.
- (f) Failure to comply with this Paragraph is a breach of this Lease and cause for termination in accordance with Paragraph 10 herein.

6. TITLE TO IMPROVEMENTS: For the purpose of this Paragraph, "improvements" shall include, but are not limited to subsurface improvements. On the Commencement Date of this Lease, all existing structures, buildings, installations, and improvements located on the Leased Premises are owned by and title thereto is vested in Lessee. All said existing structures, buildings, installations, and improvements, as well as structures, buildings, installations, and improvements of any kind placed on the Leased Premises by Lessee subsequent to the Commencement Date of this Lease shall, at the option of Lessor, be removed by Lessee at Lessee's expense. Lessor may exercise said option as to any or all of the structures, buildings, installations, and improvements either before or after the Termination Date or sooner termination of this Lease. If Lessor exercises such option, Lessee shall remove such structures, buildings, installations, and/or improvements within sixty (60) days after the Termination Date of this Lease or sooner termination thereof, whichever occurs earlier. Provided, however, Lessee agrees to repair any and all damage occasioned by their removal. Title to any such structures, buildings, installations, and/or improvements not so removed within said sixty (60) days shall vest in Lessor, without cost to Lessor and without any payment to Lessee, except that Lessor shall have the right to have them removed and to repair any and all damage occasioned by their removal, all at the expense of Lessee.

On the Commencement Date of this Lease, all existing machines, appliances, equipment, trade fixtures, and portable public artworks (i.e., artworks that are not architecturally integrated into the structures and buildings and are capable of being removed and transported to another location without being damaged) located on the Leased Premises are owned by and title thereto is vested in Lessee. Furthermore, all machines, appliances, equipment, trade fixtures, and portable public artworks placed on the Leased Premises by Lessee subsequent to the Commencement Date of this

Lease are owned by and title thereto is vested in Lessee. All machines, appliances, equipment, trade fixtures, and portable public artworks shall be removed by Lessee, at Lessee's expense, within sixty (60) days after the Termination Date of this Lease or sooner termination thereof, whichever occurs earlier. Provided, however, Lessee agrees to repair any and all damage occasioned by their removal.

Notwithstanding the foregoing, any machines, appliances, equipment, trade fixtures, and portable public artworks placed on the Leased Premises by Lessee as qualification for the term of this Lease pursuant to Paragraph 5 herein, as well as portable public artworks located on the Leased Premises on the Commencement Date of this Lease, may only be removed by Lessee, at Lessor's option. If machines, appliances, equipment, trade fixtures, and portable public artworks required by Lessor to be removed are not removed by Lessee within sixty (60) days after the Termination Date of this Lease or sooner termination thereof, whichever occurs earlier, the same may be considered abandoned and shall thereupon become the property of Lessor, without cost to Lessor and without any payment to Lessee, except that Lessor shall have the right to have them removed and to repair any and all damage occasioned by their removal, all at the expense of Lessee.

During any period of time employed by Lessee under this Paragraph to remove structures, buildings, installations, improvements, machines, appliances, equipment, trade fixtures, and portable public artworks, Lessee shall continue to pay the full rent to Lessor in accordance with this Lease, which said rent shall be prorated daily.

7. **LIENS:** Lessee shall defend, indemnify, and hold harmless Lessor against all claims and liens for labor, services, or materials in connection with improvements, repairs, or alterations made by Lessee or Lessee's sublessees, contractors, and agents on the Leased Premises, and the costs of defending against such claims and liens, including reasonable attorneys' fees.

In the event any such claim or lien, or any other claim(s), lien(s) or levy(ies) whatsoever of any nature caused by Lessee or Lessee's sublessees, contractors, and agents, is filed against the Leased Premises or the leasehold interests of Lessee therein, Lessee shall, upon written request of Lessor, deposit with Lessor a bond conditioned for the payment in full of all claims upon which said lien(s) or levy(ies) have been filed. Such bond shall be acknowledged by Lessee, as principal; and by an entity licensed by the Insurance Commissioner of the state of California to transact the business of a fidelity and surety insurance company, as surety. Lessor shall have the right to declare this Lease in default in the event the bond required by this Paragraph has not been deposited with Lessor within ten (10) days after written request has been delivered to Lessee.

This provision shall not apply to a foreclosure of a trust deed or mortgage encumbering the leasehold if the encumbrance has previously received Lessor consent in accordance with Paragraph 8 herein.

8. LEASE ENCUMBRANCE:

- (a) Lessor's Consent to Encumbrance. Lessee shall not encumber the Lease, leasehold interest, and the improvements thereon by a deed of trust, mortgage, or other security instrument to assure the payment of Lessee's promissory note, without Lessor's prior written consent, in each instance. If Lessee enters into any deed of trust, mortgage, or other security instrument that encumbers the Lease, leasehold interest, or the improvements thereon without Lessor's prior written consent, Lessor shall have the right to declare this Lease in default.

In the event Lessee requests Lessor's consent to any Lease encumbrance, hereinafter referred to as a "transaction" in this Paragraph 8, Lessee shall reimburse Lessor for all Lessor's reasonable costs and expenses associated with said transaction. Said costs shall include reasonable legal fees and disbursements relating to or arising out of any such transaction, regardless of whether such transaction is consummated.

In the event Lessor consents to any Lease encumbrance, said consent shall be conditioned upon the following: (i) if, on the effective date of such proposed encumbrance, the rent being paid under this Lease is less than market rent, Lessor shall thereafter be paid additional rent to equal market rent; and (ii) if deemed necessary by Lessor, a Lease amendment shall be executed which will include new or revised lease provisions.

In the event of a consented-to encumbrance, if the parties cannot agree to an amount that is equal to the market rent, the rent shall be determined by the arbitration procedure described in Paragraph 3.2 herein, except that the award shall be effective and retroactive to the effective date of the consented-to encumbrance. Because of this provision, underpayment of rent, if any, shall be paid to lessor within ten (10) days of the date that the market rent is determined by said arbitration procedure.

- (b) Definition of "Consented-to-Lender". The term "Consented-to-Lender" as hereinafter used in this Lease, means the lender holding an encumbrance consented to by Lessor. It may include one or more lenders holding obligations of the Lessee secured by a single deed of trust, mortgage, or other security instrument.
- (c) Voluntary Lease Surrender. Without the prior written consent of the Consented-to-Lender, should Lessee owe the Consented-to-Lender any amounts under any security instrument encumbering this Lease, leasehold interest, or the improvements thereon, Lessor will not accept the voluntary surrender, cancellation, or termination of this Lease before the expiration of the term thereof.
- (d) Loan Default. If a deed of trust, mortgage, or other security instrument consented to by Lessor is in default at any time, the Consented-to-Lender shall, as provided by law, have the right, without Lessor's prior consent, to:
 - (1) Accept an assignment of the Lease in lieu of foreclosure; or
 - (2) Cause a foreclosure sale to be held pursuant to either judicial proceedings or power of sale as provided in its deed of trust, mortgage, or other security instrument.

Provided, however, with the exception of said Consented-to-Lender, no assignment to the successful bidder shall be effective without Lessor's prior written consent.

- (e) Assume Lease Obligations. Before said Consented-to-Lender, or any other future consented-to assignee, acquires the leasehold interest, it shall, as an express condition precedent, agree in writing to assume each and every obligation under the Lease. Furthermore, before any said Consented-to-Lender, or any other future consented-to assignee or purchaser, may subsequently assign or sublease all or any portion of the leasehold interest, it shall, in each instance, obtain Lessor's prior written consent.

Further, a Consented-to-Lender that has: (i) acquired the leasehold interest and assumed the Lessee's obligations, or (ii) entered into a new lease pursuant to Paragraph 10 herein, concurrently with a termination of this Lease, shall be released from all further obligations under this Lease after it assigns the leasehold interest to an assignee consented to by Lessor, in accordance with this Paragraph 8.

(f) Lessor's Consent to Assignment. Whenever a Consented-to-Lender is required by the provisions of this Paragraph 8 to obtain Lessor's prior consent to an:

- (1) Assignment to the successful bidder upon a foreclosure by said Consented-to-Lender; or
- (2) Assignment or sublease of all or substantially all of the Leased Premises by said Consented-to-Lender should it become the lessee by reason of: (i) being the successful bidder upon said foreclosure, or (ii) an assignment in lieu of foreclosure, or (iii) under a new lease entered into pursuant to Paragraph 10 herein; then Lessor will grant such consent if:
 - (i) The principal(s) of such assignee, purchaser, or sublessee are reputable (meaning the absence of reputations for dishonesty, criminal conduct, or association with criminal elements -- "reputable" does not mean "prestigious," nor does the determination of whether one is reputable involve considerations of personal taste or preference);
 - (ii) The principal(s) of such assignee, purchaser, or sublessee possess sufficient business experience and financial means to perform Lessee's obligations under this Lease--according to the then-current standards for business experience and financial means that Lessor generally requires of new or renewed lessees at the time of the request; and
 - (iii) The assignee, purchaser, or sublessee agrees in writing to assume each and every obligation under this Lease.

Further, Lessor will not unreasonably or arbitrarily withhold such consent. Provided, however, no such assignee, purchaser, or sublessee shall subsequently: (i) assign, transfer, or sublease any or all of the Leased Premises without Lessor's prior written consent, in accordance with Paragraph 9 herein; or (ii) encumber the Lease, leasehold interest, and improvements thereon without Lessor's prior written consent, in accordance with this Paragraph 8.

Provided further, if said Consented-to-Lender becomes the lessee by reason of: (i) being the successful bidder upon foreclosure, or (ii) an assignment in lieu of foreclosure, or (iii) being the lessee of a new lease

entered into pursuant to Paragraph 10 herein, then said Consented-to-Lender may, upon a subsequent assignment or subleasing of all or substantially all of the Leased Premises, take back from its assignee, purchaser, or sublessee, a purchase money deed of trust, mortgage, or security instrument. Provided, however, said Consented-to-Lender must execute and submit to Lessor documentation substantially in the same form and content as was originally submitted to Lessor when consent was granted to the earlier encumbrance. Only said Consented-to-Lender or the successful bidder upon said foreclosure may enforce the provisions of this Paragraph 8. Further, no other third party shall have the rights or remedies, as third-party beneficiaries, or otherwise, hereunder.

The burden of producing evidence and the burden of proof showing Lessor that a prospective assignee, purchaser, or sublessee meets each and all of the aforesaid qualifications and standards shall be on said Consented-to-Lender or successful bidder upon foreclosure. Lessor's decision shall be based upon Lessor's high duty of care in administering a valuable public resource, which it holds in trust for the people of the state of California. In the absence of fraud or arbitrary or unreasonable action in applying or failing to apply said standards, Lessor's decision shall be final.

- (g) If Lessor Rejects Lease Transferee. In the event Lessor rejects: (i) the successful bidder upon foreclosure, or (ii) a proposed assignee or sublessee of the Consented-to-Lender (said successful bidder or Consented-to-Lender being sometimes referred to hereinafter as the "Aggrieved Party," and said successful bidder, or proposed assignee or sublessee from the Consented-to-Lender being sometimes referred to hereinafter as the "Applicant"), the sole remedy of the Aggrieved Party shall be to seek relief in the nature of specific performance through the arbitration procedure hereinafter established. Further, in no event shall Lessor be liable to the Aggrieved Party or Applicant, or any person or entity whatsoever, for money damages. Provided, however, the Aggrieved Party shall be entitled to recover such damages, if any, it may sustain as a result of Lessor's failure or refusal to comply with a Superior Court order confirming an award in favor of the Aggrieved Party in said arbitration.

The issue to be submitted to arbitration shall be whether Lessor's Board of Port Commissioners' record contains substantial evidence to support the decision to reject the Applicant in accordance with the standards of reputation, business experience, and/or financial means, as provided herein. The Aggrieved Party may submit said issue to arbitration.

The arbitration shall be conducted pursuant to Title 9 of Part 3 of the California Code of Civil Procedure (section references herein shall be to the Code of Civil Procedure), as amplified and modified by the following provisions:

- (1) Arbitration shall be initiated by the Aggrieved Party filing a written demand for arbitration with Lessor no later than thirty (30) days following Lessor's adoption of a resolution rejecting the Applicant. If the Aggrieved Party so elects, Lessor shall be deemed to have adopted a resolution rejecting an Applicant if Lessor has not acted within ninety (90) days after the Aggrieved Party files a written application for Lessor to approve the Applicant;
- (2) Said arbitration shall be conducted by a single neutral arbitrator who shall not be a County of San Diego resident;
- (3) If the parties have not agreed on the selection of the arbitrator within five (5) days after said demand for arbitration is filed, either party may petition the Superior Court of the state of California, county of San Diego, to select the arbitrator pursuant to Section 1281.6;
- (4) Each party shall submit its nominees, if any, to the court within five (5) days after said petition is served and filed;
- (5) Said arbitrator shall not conduct a trial de novo, but shall consider only said record before Lessor's Board of Port Commissioners. Provided, however, said arbitrator may consider evidence outside said record if the arbitrator believes that the Board's decision was affected by Lessor's fraudulent action which was not reasonably discoverable prior to the Board's decision;
- (6) Said arbitrator shall make the award in writing within forty-five (45) days of being appointed;
- (7) The right of any party to take depositions for discovery purposes, as provided in Section 1283.05, shall be waived;
- (8) Certain time periods established in said Title 9 shall be shortened as follows:

- (i) Sections 1284, 1288.4, 1290.2, and 1290.6--halved;
 - (ii) Section 1288--four years to 30 days and 100 days to 15 days; and
 - (iii) Section 1288.2--100 days to 15 days;
- (9) San Diego, California shall be the venue of the arbitration hearing and any court proceedings;
- (10) The decision of the Superior Court in any proceeding to confirm, correct, or vacate the award shall be final, and the parties to said arbitration waive any rights to appeal therefrom, as provided in Sections 1294 and 1294.2, or otherwise; and
- (11) The parties shall bear their costs, fees, and expenses incurred in connection with said arbitration, in accordance with the provisions of Section 1284.2.
- (h) Notice of Foreclosure Sale. Said Consented-to-Lender shall include a statement in any Notice of Foreclosure Sale covering the foregoing requirements for Lessor's consent to an assignment upon said foreclosure.
- (i) Subsequent Encumbrance. Except for subleases, utility easements, and other necessary rights-of-way, Lessor shall not expressly consent to a subsequent lien or encumbrance against the Leased Premises without said Consented-to-Lender's prior written consent.
- (j) Assignment of Security Interest. Said Consented-to-Lender shall not assign its security interest in the Leased Premises in whole or in part without Lessor's prior written consent, in each instance. Provided, however, Lessor's consent to such an assignment shall be deemed granted (and such assignee will for all purposes of this Lease be deemed to be a Consented-to-Lender) if the assignment is to:
 - (1) A financial institution in good legal standing under the laws of its jurisdiction of incorporation having assets exceeding Five Hundred Million Dollars (\$500,000,000); or

- (2) The United States of America or any state thereof, or any agency thereof; or
- (3) An assignee by operation of law; e.g., a state insurance department engaged in supervising the liquidation or rehabilitation of an insurance company lender.

Provided, however, for purposes of the foregoing provisions "financial institution" shall mean: (i) an insurance company qualified to do business in the state of California; or (ii) a federally- or state-chartered bank, savings bank, or savings and loan association; or (iii) a pension or retirement fund operated for the employees and former employees of, and regulated and controlled by, the United States of America or any state thereof, or any agency thereof; e.g., the California State Teachers' Retirement System.

Provided, further, no subsequent assignment by such assignee will be permitted unless:

- (1) The assignment conforms to all requirements of this Paragraph 8;
- (2) A duplicate original(s) of such assignment is furnished Lessor; and
- (3) In case of an assignment where Lessor's consent is deemed granted: (i) assignee promptly furnishes Lessor reasonably satisfactory evidence that said assignee complies with the foregoing requirements, and (ii) said assignee expressly agrees to take such assignment subject to all Lessor's rights under this Lease.

9. ASSIGNMENT – SUBLEASE: Lessee shall not, without the prior written consent of Lessor:

- (a) Assign or transfer the whole or any part of this Lease or any interest therein;
- (b) Sublease (which shall also include management and/or operating agreements covering the Leased Premises) the whole or any part of the Leased Premises;
- (c) Permit transfer of the Lease or possession of the Leased Premises by merger, consolidation, or dissolution of Lessee;

- (d) Notwithstanding the provisions contained in Paragraph 8 herein, permit hypothecation, pledge, encumbrance, transfer or sale, voluntary or involuntary, in whole or in part, of this Lease or any interest therein; or
- (e) Permit the occupancy of the whole or any part of the Leased Premises by any other person or entity.

Notwithstanding the foregoing, nothing herein shall be construed to prevent the occupancy of said Leased Premises by any employee or business invitee of Lessee.

Further, Lessee shall not, without the prior written consent of Lessor:

- (a) Permit assignment, hypothecation, withdrawal, admittance, dissolution, change, pledge, encumbrance, transfer or sale, voluntary or involuntary, of any interest of a member's managing interests, limiting interests or membership interests;
- (b) Contract for the management or operation of the whole or any part of the Leased Premises; or
- (c) Permit the transfer of the Lease or possession of the Leased Premises by any changes in the respective interests of the parties comprising Lessee.

It is mutually agreed that the personal qualifications of the parties controlling Lessee, specifically including, but not limited to, members of the limited liability company, are a part of the consideration for granting this Lease. Said parties do hereby specifically agree to maintain active control and supervision of the operations conducted on the Leased Premises.

In the event Lessee requests Lessor's consent to any Lease assignment, Lease transfer, Lease amendment, and/or sublease, hereinafter referred to as a "transaction," Lessee shall reimburse Lessor for all Lessor's reasonable costs and expenses associated with said transaction. Said costs shall include reasonable legal fees and disbursements relating to or arising out of any such transaction, regardless of whether such transaction is consummated.

In the event Lessor consents to any Lease assignment or transfer, said consent shall be conditioned upon the following: (i) if, on the effective date of such proposed assignment or transfer, the rent being paid under this Lease is less than market rent, Lessor shall thereafter be paid additional rent to equal market rent; (ii) assignee shall

agree and assume each and every obligation under the Lease; (iii) if deemed necessary by Lessor, a Lease amendment shall be executed which will include new or revised lease provisions; and (iv) assignee shall comply with other conditions and qualifications determined by the Board of Port Commissioners of Lessor. Notwithstanding, items (i), (iii), and (iv) shall not apply in the event of: (a) a Lease assignment or transfer to a third party from a Consented-to-Lender which acquired title to the Lease by foreclosure or deed in lieu of foreclosure or a new Lease pursuant to the provisions of Paragraph 10 herein, or (b) assignment or transfer of the Lease to a Consented-to-Lender by deed in lieu of foreclosure, or to a Consented-to-Lender or a third party as the successful bidder at a foreclosure sale. Upon the effective date of any said consented-to Lease assignment or transfer, assignee shall thereafter pay to Lessor the market rent as referenced herein, subject to adjustments and rent reviews as provided in Paragraph(s) 3.1 and 3.2 herein.

In the event Lessor consents to any sublease, said consent shall be conditioned upon the following: (i) if, upon the effective date of any said consented-to sublease, the rent being paid for the sublease area is less than market rent, Lessor shall thereafter be paid additional rent to equal market rent for the sublease area as long as said sublease is in effect; (ii) if deemed necessary by Lessor, a Lease amendment shall be executed which shall include new or revised lease provisions; and (iii) Lessee shall comply with other conditions and qualifications determined by the Board of Port Commissioners of Lessor. Furthermore, as long as said sublease is in effect, rent for the sublease area shall be subject to adjustments and rent reviews as provided in Paragraph(s) 3.1 and 3.2 herein. For purposes of this Paragraph 9, the term sublease shall not include the temporary and intermittent rental of boat slips and dock lockers to transient boaters.

In the event of a consented-to assignment or sublease, if the parties cannot agree to an amount that is equal to the market rent, the rent shall be determined by the arbitration procedure described in Paragraph 3.2 herein, except that the award shall be effective and retroactive to the effective date of the assignment or sublease. Because of this provision, underpayment of rent, if any, shall be paid to Lessor within ten (10) days of the date that the market rent is determined by said arbitration procedure.

10. DEFAULTS AND REMEDIES:

- (a) Defaults. The occurrence of any one (1) or more of the following events shall constitute a default hereunder:
 - (1) Abandonment of the Leased Premises. Abandonment is herein defined to include, but is not limited to, any absence by Lessee from the Leased Premises for ten (10) consecutive days or longer.

- (2) Failure by Lessee to pay, when due, any Lease-required rent, other payment, and/or charge herein, where such failure continues for a period of ten (10) days after written notice thereof. Provided, however, any such notice provided in this Paragraph 10(a)(2) or in subsequent Paragraph 10(a)(3) shall be in lieu of, and not in addition to, any notice required under Section 1161 of the California Code of Civil Procedure, as amended.
- (3) Failure by Lessee to perform any other express or implied covenants or conditions in this Lease (other than any breach under Paragraph 9, for which immediate notice of termination may be given), should such failure continue for thirty (30) days after written notice thereof.
- (4) Subject to any restrictions or limitations placed on Lessor by applicable laws governing bankruptcy, Lessee's: (a) applying for, consenting to, or suffering the appointment of a receiver, trustee, or liquidator for all or a substantial portion of its assets; (b) making a general assignment for the benefit of creditors; (c) admitting in writing its inability to pay its debts or its willingness to be adjudged a bankrupt; (d) becoming unable to, or failing to, pay its debts as they mature; (e) being adjudged a bankrupt; (f) filing a voluntary petition or suffering an involuntary petition under any bankruptcy, arrangement, reorganization, or insolvency law (unless in the case of an involuntary petition, the same is dismissed within thirty (30) days of such filing); (g) convening a meeting of its creditors, or any class thereof, for purposes of effecting a moratorium, extension, or composition of its debts; or (h) suffering, or permitting to continue unstayed and in effect for ten (10) consecutive days, any attachment, levy, execution, or seizure of all or a substantial portion of Lessee's assets or of Lessee's interest in this Lease.

This Paragraph 10(a)(4) shall not be applicable or binding on the beneficiary of any deed of trust, mortgage, or other security instrument on the Leased Premises which is of record with Lessor and has been consented to by resolution of Lessor, or to said beneficiary's successors in interest consented to by resolution of Lessor, as long as there remains any monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided that such beneficiary or its successors in interest,

continuously and timely pays to Lessor all rent due or coming due under the provisions of this Lease and the Leased Premises are continuously and actively used in accordance with Paragraph 14 of this Lease, and provided that said beneficiary agrees in writing to assume and perform each and every obligation under the Lease.

(5) Failure by Lessee to comply with all time periods specified in this Lease.

(6) Notwithstanding Paragraph 10(a)(5), failure by Lessee to timely comply with all other provisions of this Lease.

(b) Remedies. In the event of any default, Lessor may exercise the following remedies:

(1) Termination: Terminate Lessee's right to possession of the Leased Premises whereupon this Lease shall terminate and Lessee shall immediately surrender possession of the Leased Premises to Lessor. In such event, Lessor shall be entitled to recover from Lessee:

(i) The "Worth at the Time of Award", as hereinafter defined, of the unpaid rent which had been earned at the time of termination;

(ii) The "Worth at the Time of Award" of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such loss that Lessee proves could have been reasonably avoided;

(iii) The "Worth at the Time of Award" of the amount by which the unpaid rent for the balance of the term of this Lease after the time of award exceeds the amount of such loss that Lessee proves could have been reasonably avoided; and

(iv) Any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease, or which would ordinarily be likely to result therefrom, including but not

limited to the cost of recovering possession of the Leased Premises, expenses of reletting (including necessary repair, renovation and alteration of the Leased Premises), reasonable attorneys' fees, and any other reasonable costs.

The "Worth at the Time of Award" of the amounts referred to in Paragraphs 10(b)(1)(i) and 10(b)(1)(ii) shall be computed by charging interest at ten percent (10%) per annum from the dates such amounts accrued to Lessor. The "Worth at the Time of Award" of the amount referred to in Paragraph 10(b)(1)(iii) shall be computed by discounting such amount at one (1) percentage point above the Discount Rate of the Federal Reserve Bank of San Francisco at the time of the award.

- (2) Reletting: Without terminating or effecting a forfeiture of the Lease, or otherwise relieving Lessee of any obligation herein, Lessor may, but need not, relet the Leased Premises or any portion thereof, at any time or from time to time, for such terms and upon such conditions and rent as Lessor, in its sole discretion, deems proper. Regardless of whether the Leased Premises are relet, Lessee shall continue to pay to Lessor all Lease-required amounts up to the date that Lessor terminates Lessee's right to possession of the Leased Premises; provided, however, following a default, Lessor shall not unreasonably withhold its consent to any Lessee-requested assignment of this Lease or subletting of the Leased Premises, unless Lessor shall also elect to terminate this Lease and Lessee's right to possession of the Leased Premises, as provided in Paragraph 10(b)(1). Such payments shall be due at the times provided in this Lease and Lessor need not wait until the termination of the Lease to recover said amounts. If Lessor relets the Leased Premises, or any portion thereof, such reletting shall not relieve Lessee of any obligations herein, except that Lessor shall apply the rent or other proceeds actually collected for such reletting against amounts due from Lessee herein, to the extent such proceeds compensate Lessor for Lessee's nonperformance of any obligation herein. Lessor may execute any lease made pursuant thereto in its own name. Further, Lessor shall be under no obligation to reveal to new lessee how these proceeds were applied, nor shall said new lessee have any right to collect any such proceeds. Lessor shall not, by any reentry or other act, be deemed to have accepted Lessee's surrender of the Leased

Premises or Lessee's interest therein, nor be deemed to have terminated this Lease or to have relieved Lessee of any obligation herein, unless Lessor shall have furnished Lessee with express written notice of Lessor's election to do so, as set forth herein.

- (3) Other: Any and/or all other rights or remedies of Lessor specified elsewhere in this Lease or provided by law.

In the event Lessor has consented to an encumbrance of this Lease for security purposes in accordance with Paragraph 8 of this Lease, it is understood and agreed that Lessor shall furnish copies of all notice(s) of default(s) to the beneficiary or mortgagee under said encumbrance by certified mail (provided Lessee has delivered to Lessor written request, therefore, together with the name and address of any such beneficiary or mortgagee) contemporaneously with the furnishing of such notices to Lessee. Furthermore, in the event Lessee fails to cure such default(s) within the time permitted herein, said beneficiary or mortgagee shall be permitted to cure such default(s) at any time within fifteen (15) days following the expiration of the period within which Lessee may cure said default(s); provided, however, Lessor shall not be required to furnish any further notice(s) of default(s) to said beneficiary or mortgagee.

In the event this Lease is terminated pursuant to the provisions of this Paragraph 10, Lessor shall continue to have all rights provided in Paragraph 6 of this Lease.

Notwithstanding the foregoing, should a default not be cured within the cure periods referred to above, said Lease shall not be terminated as to said beneficiary or mortgagee unless Lessor first legally offers to enter into a valid lease with said beneficiary or mortgagee, and said offer is not accepted in writing within (30) days after said offer is made. Furthermore, such new lease must be entered into as a condition concurrent with such termination for the then-remaining term of this Lease. Furthermore, the new lease must contain the same terms, conditions, and priority as this Lease, provided the mortgagee or beneficiary promptly cures all then-existing defaults under this Lease when and to the extent it is able to cure them. Such new lease may be entered into even though possession of the Leased Premises has not been surrendered by the defaulting Lessee. In such event, unless legally restrained, Lessor shall promptly proceed to obtain possession of the Leased Premises and to deliver possession to said mortgagee or beneficiary as soon as the same is obtained. Should the mortgagee or beneficiary fail to accept said offer in writing within said thirty- (30) day period, or, having so accepted said offer, should it fail promptly to cure all existing defaults under this Lease when and to the extent it is able to cure them, then such termination shall also be effective as to said mortgagee or beneficiary.

11. **BANKRUPTCY:** Lessor shall have the right to declare this Lease in default if Lessee: (i) becomes insolvent; (ii) makes an assignment for the benefit of creditors; (iii) becomes the subject of a bankruptcy proceeding, reorganization arrangement, insolvency, receivership, liquidation, or dissolution proceeding; or in the event of any judicial sale of Lessee's leasehold interest.

The conditions of this Paragraph shall not be applicable or binding on: (1) Lessee; or (2) the beneficiary in any deed of trust, mortgage, or other security instrument encumbering the leasehold interest which Lessor has consented to in writing; or (3) the aforesaid beneficiary's successors in interest which Lessor has consented to in writing, as long as there remains any monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided Lessee, such beneficiary, or such beneficiary's successors in interest continuously pay to Lessor all rent due or coming due under the provisions of this Lease, and the Leased Premises are continuously and actively used in accordance with Paragraph 14 herein.

12. **EMINENT DOMAIN:** If any public authority takes the whole or a substantial part of the Leased Premises under the power of eminent domain, then the term of this Lease shall cease as to the part so taken from the day the possession of that part is taken. Further, the rent shall be paid up to that day. Lessee shall then have the right either to: (i) cancel this Lease and declare the same null and void; or (ii) continue in possession of the remainder of the Leased Premises under the then-current Lease terms. Provided, however, the Rent shall be reduced in proportion to the value of the portion of the Leased Premises taken. All damages awarded for such taking shall belong to and be the property of Lessor, whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the Leased Premises. Provided, however, Lessor shall not be entitled to any award made for the taking of any of Lessee's installations or improvements on the Leased Premises.

13. **TERMINATION OF PRIOR AGREEMENT(S):** Any and all existing permits, leases, or rental agreements between Lessor and Lessee for the Leased Premises which have not already expired or terminated, are hereby terminated on the effective date of this Lease. Any rights, duties, and obligations of the parties, if any, pursuant to the terms, covenants, and conditions in any such hereby terminated agreements shall remain enforceable and subject to all defenses, including without limitation any applicable statute of limitations. Further, said statute shall not be waived or extended because of this Lease. Nothing herein is intended nor shall be construed as a waiver of any such rights, or as a release of any such duties or obligations, whether known or unknown at this time or upon the effective date of this Lease.

14. USE OBLIGATION: Lessee shall actively and continuously use and operate the Leased Premises for the limited particular exclusive use expressly provided for in Paragraph 2, herein, except for failure to so use caused by wars, strikes, riots, civil commotion, acts of public enemies, and acts of God. Said active and continuous use and operation enhances the value of the lands within Lessor's jurisdiction; provides needed public service; and provides additional employment, taxes, and other benefits to the general economy of the area. Lessee, however, shall not and is expressly prohibited from using the Leased Premises for any other purpose or use whatsoever, whether it is purported to be in addition to or in lieu of the particular exclusive use expressly provided in Paragraph 2, herein.

15. MAINTENANCE AND REPAIR: As part of the consideration for this Lease, Lessee shall assume full responsibility for operation and maintenance of the Leased Premises throughout the term and without expense to Lessor. Lessee shall perform all maintenance, which includes all painting, repairs, and replacements necessary to maintain and preserve the Leased Premises in a good, safe, healthy, and sanitary condition, satisfactory to Lessor and in compliance with all applicable laws. Provided, however, prior to Lessee performing any extraordinary repairs, plans and specifications must first be submitted to Lessor and receive Lessor approval, pursuant to the procedures provided in Paragraph 4 herein. Further, Lessee shall provide approved containers for trash and garbage and keep the Leased Premises free and clear of rubbish, litter, and any other fire hazards. Lessee waives all rights to make repairs at the expense of Lessor, as provided in Section 1942 of the California Civil Code, and all rights provided by Section 1941 of said Code.

For the purpose of keeping the Leased Premises in a good, safe, healthy, and sanitary condition, Lessor always shall have the right but not the duty to enter, view, inspect, determine the condition of, and protect its interests in the Leased Premises. Provided, however, Lessor or its representatives shall: (a) conduct such entry in a manner that causes the least inconvenience and disruption to Lessee's operation as practicable; and (b) comply with all safety and security requirements of Lessee. It is not intended, however, that Lessee's safety and security requirements be used to bar Lessor's right of inspection. Further, Lessee shall provide Lessor reasonable access to the Leased Premises for such purpose.

If inspection discloses the Leased Premises are not in the condition required herein, Lessee immediately must commence the necessary maintenance work, and complete said work within ten (10) days after written notice from Lessor. Further, if at any time Lessor determines the Leased Premises are not in the condition required herein, Lessor may require Lessee to file and pay for a faithful performance bond to assure prompt correction, without additional notice. The amount of said bond shall be adequate, in Lessor's opinion, to correct all unsatisfactory conditions.

Notwithstanding, Lessor shall not be required to perform any maintenance, including painting, repairs, or replacements; or to make any improvements whatsoever on or for the benefit of the Leased Premises.

The rights reserved in this Paragraph shall not create any obligations or increase any obligations for Lessor elsewhere in this Lease.

16. PERFORMANCE BOND: Lessee shall not commence any major construction upon the Leased Premises until performance bonds in the amount of the total estimated construction cost of the proposed improvements have been secured and submitted to Lessor. In lieu of said performance bonds, the Executive Director of Lessor may, in his sole discretion, accept performance and labor and material bonds supplied by Lessee's contractor or subcontractors, performance guarantees, or other satisfactory evidence that said construction will be timely completed. Said bonds must be in a form acceptable to Lessor and have been issued by a company qualified to do business in the state of California.

17. TAXES AND UTILITIES: This Lease may result in a taxable possessory interest and be subject to the payment of property taxes. Lessee shall pay before delinquency all taxes and assessments of any kind assessed or levied upon Lessee or the Leased Premises by reason of: (i) this Lease; (ii) any buildings, machines, or other improvements of any nature whatsoever erected, installed, or maintained by Lessee; or (iii) the business or other activities of Lessee upon or in connection with the Leased Premises. Lessee also shall pay any fees imposed by law for licenses or permits for any business or activities of Lessee upon the Leased Premises, or under this Lease, and shall pay before delinquency any and all charges for utilities at or on the Leased Premises.

18. CONFORMANCE WITH LAWS AND REGULATIONS: Lessee agrees that, in all activities on or in connection with the Leased Premises, and in all uses thereof, including the making of any alterations, changes, installations, or other improvements, it will abide by and conform to all laws and regulations. Said laws and regulations shall include, but are not limited to those prescribed by the San Diego Unified Port District Act; any ordinances of the city in which the Leased Premises are located, including the Building Code thereof; any ordinances and general rules of Lessor, including tariffs; and any applicable laws of the state of California and federal government, as any of the same now exist or may hereafter be adopted or amended. In particular and without limitation, Lessee shall have the sole and exclusive obligation and responsibility to comply with the requirements of: (i) Article 10 of Lessor Code entitled "Stormwater Management and Discharge Control," and (ii) the Americans With

Disabilities Act of 1990, including but not limited to regulations promulgated thereunder, and Lessor shall have no such obligations or responsibilities as to the Leased Premises.

19. EQUAL EMPLOYMENT OPPORTUNITY AND NONDISCRIMINATION: Lessee shall comply with Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the California Constitution; the California Fair Employment and Housing Act; the Americans with Disabilities Act of 1990; and any other applicable federal, state, or local laws and regulations now existing or hereinafter enacted, requiring equal employment opportunities or prohibiting discrimination. This shall include without limitation, laws and regulations prohibiting discrimination because of race, color, religion, sex, national origin, ancestry, physical or mental disability, veteran status, medical condition, marital status, age, sexual orientation, pregnancy, or other non-job related criteria. In complying with all such laws, including without limitation the Americans with Disabilities Act of 1990, Lessee shall be solely responsible for such compliance and required programs, and there shall be no allocation of any such responsibility between Lessor and Lessee.

Annually, Lessee shall formulate and file with Lessor an approved: (i) "Equal Employment Opportunity and Nondiscrimination Program," and (ii) "Statement of Compliance" for the promotion of equal employment opportunities and nondiscrimination. Lessee shall make such progress reports as required by Lessor, and, upon Lessor's reasonable notice, Lessee shall make available for inspection and copying all of its records relevant to compliance with this Paragraph. Provided, however, Lessee is only required to file the Program and Statement when the average annual employment level operating on the Leased Premises exceeds fifty (50) employees. Provided further, should Lessee be subject to a federally-mandated affirmative action program for employees, Lessee may, in lieu of filing the Program and Statement, annually certify in writing to Lessor that Lessee is subject to such a program, and, upon Lessor's request, Lessee shall furnish evidence thereof.

For the purposes and provisions of this Paragraph, a sublessee shall be considered the Lessee should the sublessee become the prime operator of the Leased Premises.

Lessee's compliance with this Paragraph is an express condition hereof, and any failure by Lessee to so comply and perform shall be a default as provided in this Lease, and Lessor may exercise any right as provided herein, and as otherwise provided by law.

20. PARTIAL INVALIDITY: If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions herein shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated thereby.

21. **HOLD HARMLESS:** Lessee shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless Lessor and its officers, employees, and agents for any and all liability, claims, judgments, damages, proceedings, orders, directives, costs, including reasonable attorneys' fees, or demands arising directly or indirectly out of the obligations undertaken in connection with this Lease, or Lessee's use, occupancy, possession or operation of the Leased Premises, except claims or litigation arising through the sole negligence or willful misconduct of Lessor. It is the intent of this Paragraph that Lessee indemnify and hold harmless Lessor for any actions of Lessee or Lessor, including duties that may be legally delegated to Lessee or to third parties, except for those arising out of the sole negligence or willful misconduct of Lessor. This indemnity obligation shall apply for the entire time that any third party can make a claim against or sue Lessor for liabilities arising out of Lessee's use, occupancy, possession or operation of the Leased Premises, or arising from any defect in any part of the Leased Premises.

22. **SUCCESSORS IN INTEREST:** Unless otherwise provided in this Lease, the terms, covenants, conditions, and agreements herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

23. **EASEMENTS:** This Lease and all rights granted hereunder are subject to all easements and rights-of-way previously granted or reserved by Lessor in, upon, over, and across the Leased Premises for any purpose whatsoever. Said Lease and granted rights shall be subject to future easements and rights-of-way for access, gas, electricity, water, sewer, drainage, telephone, telegraph, television transmission, and such other Lessor or public facilities as Lessor may determine from time to time to be in the best interests of the development of the lands within Lessor's jurisdiction. Lessor agrees to make an effort to locate future easements and rights-of-way, and to install associated public facilities, so as to produce a minimum amount of interference with Lessee's business. Further, Lessee shall not be entitled to any monetary payment or other remuneration for any such future easements and rights-of-way.

24. **TITLE OF LESSOR:** Lessor's title is derived from the provisions of the San Diego Unified Port District Act, Appendix 1, Harbors & Navigation Code, and is subject to the provisions of said Act. This Lease is granted subject to the terms and conditions of said Act.

25. **INSURANCE:** Lessee shall maintain insurance acceptable to Lessor in full force and effect throughout the term of this Lease. The policies for said insurance shall, as a minimum, provide the following:

(a) Forms of Coverage

(1) "OCCURRENCE" form Commercial General Liability covering the Leased Premises, operations, and contractual liability assumed by Lessee in this Lease in the amount of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage. The general aggregate shall be Four Million Dollars (\$4,000,000) unless a Two Million Dollars (\$2,000,000) per location aggregate limit is provided separate by endorsement.

(2) Fire and Extended Coverage, including water damage and debris cleanup provisions, in an amount not less than ninety percent (90%) of full replacement value of all improvements located within the Leased Premises. The fire and extended coverage policies shall be endorsed with a Loss Payee endorsement in favor of Lessor. It is agreed that any insurance proceeds in excess of Twenty-Five Thousand Dollars (\$25,000) resulting from a loss under said policies shall be payable jointly to Lessor and Lessee to ensure that said proceeds will be reinvested in rebuilding and/or repairing the damaged portions of the Leased Premises and any damaged or destroyed improvements located thereon. Provided, however, if there is a Lessor-consented to mortgage or deed of trust encumbering the leasehold, then all fire and extended coverage policies shall be made payable jointly to the mortgagee or beneficiary and Lessee, to ensure that any proceeds shall be held by said mortgagee or beneficiary for the following purposes:

- (i) As a trust fund to pay for the reconstruction, repair, or replacement of the damaged or destroyed improvements, in kind and scope, in progress payments as the work is performed. Any funds remaining after completion of said work shall be retained by said mortgagee or beneficiary and applied to reduce any debt secured by such mortgage or deed of trust. Furthermore, any funds remaining after full payment of said debt shall be paid to Lessee; or
- (ii) In the event that this Lease is terminated with consent of both Lessor and said mortgagee or beneficiary, and the improvements are not reconstructed, repaired, or replaced, the insurance proceeds shall be retained, without liability,

by said mortgagee or beneficiary to the extent necessary to fully discharge the debt secured by said mortgage or deed of trust. Furthermore, said mortgagee or beneficiary shall hold the balance thereof to restore the Leased Premises to a neat and clean condition. Any remaining funds shall lastly be paid to Lessor and Lessee, as their interests may appear.

- (3) In the event underground storage tanks are located on the Leased Premises, Lessee is required to comply with Code of Federal Regulations, Title 40, Chapter I, Subchapter H or Title 23, Division 3, Chapter 18 of California Code of Regulations, collectively, herein "UST Law." At the time Lessee is required to comply with any provisions of UST Law requiring financial assurance mechanisms, Lessee shall provide Lessor with a certified copy of its Certification of Financial Responsibility. If Lessee's program for financial responsibility requires insurance, then Lessee's policy(ies) shall name Lessor and its officers, employees, and agents as additional insureds, and all other terms of Subparagraph (b), below, shall apply. Should Lessee change its financial assurance mechanisms, Lessee shall immediately provide Lessor with a certified copy of its revised Certification of Financial Responsibility.

(b) General Requirements

- (1) All required insurance shall be in force the first day of the term of this Lease, and shall be maintained continuously in force throughout the term of this Lease. In addition, the cost of all required insurance shall be borne by Lessee. During the entire term of this Lease, Lessee shall provide Lessor with Certificates, in a form acceptable to Lessor, evidencing the existence of the necessary insurance policies and original endorsements effecting coverage required by this Paragraph. The Certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind insurance on its behalf. Notwithstanding the forgoing, Lessor reserves the right to require complete, certified copies of all required policies at any time.
- (2) All liability insurance policies shall name, or be endorsed to name Lessor and its officers, employees, and agents as additional insureds and protect Lessor and its officers, employees, and agents against any legal costs in defending claims. All liability policies shall provide cross-liability coverage. All insurance policies

shall be endorsed to state that coverage will not be suspended, voided, cancelled, or reduced in coverage or in limits, except after Lessee has furnished Lessor with thirty (30) days' prior written notice by certified mail. All insurance policies shall be endorsed to state that Lessee's insurance is primary and not excess or contributory to any insurance issued in the name of Lessor. Further, all insurance companies must be satisfactory to Lessor.

- (3) Any deductibles or self-insured retentions must be declared and acceptable to Lessor. If the deductibles or self-insured retentions are unacceptable to Lessor, then Lessee shall have the option to either: (i) reduce or eliminate such deductibles or self-insured retentions as respects the Lessor and its officers, employees, and agents; or, (ii) procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- (4) Lessor shall retain the right at any time to review the coverage, form, and amount of insurance required herein. If, in the opinion of Lessor, the insurance provisions in this Lease do not provide adequate protection for Lessor and/or members of the public using the Leased Premises or using services connected with Lessee's use or occupancy of the Leased Premises, Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. Lessor's requirements shall be reasonable, but shall be designed to ensure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.
- (5) Lessor shall notify Lessee in writing of changes in the insurance requirements. With respect to changes in insurance requirements that are available from Lessee's then-existing insurance carrier, Lessee shall deposit Certificates evidencing acceptable insurance policies with Lessor incorporating such changes within sixty (60) days of receipt of such notice. With respect to changes in insurance requirements that are not available from Lessee's then-existing insurance carrier, Lessee shall deposit Certificates evidencing acceptable insurance policies with Lessor, incorporating such changes, within one hundred twenty (120) days of receipt of such notice. In the event Lessee fails to deposit insurance Certificates as required herein, this Lease shall be in default without further notice to Lessee, and Lessor shall be entitled to exercise all legal remedies.

- (6) If Lessee fails or refuses to maintain insurance as required in this Lease, or fails to provide proof of insurance, Lessor has the right to declare this Lease in default without further notice to Lessee, and Lessor shall be entitled to exercise all legal remedies.
- (7) The procuring of such required policies of insurance shall not be construed to limit Lessee's liability hereunder, nor to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policies of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Lease, or with the use or occupancy of the Leased Premises.
- (8) Lessee agrees not to use the Leased Premises in any manner, even if use is for purposes stated herein, that will result in the cancellation of any insurance Lessor may have on the Leased Premises or on adjacent premises, or that will cause cancellation of any other insurance coverage for the Leased Premises or adjoining premises. Lessee further agrees not to keep on the Leased Premises or permit to be kept, used, or sold thereon, anything prohibited by any fire or other insurance policy covering the Leased Premises. Lessee shall, at its sole expense, comply with all reasonable requirements for maintaining fire and other insurance coverage on the Leased Premises.

26. POLICY OF LESSOR: It is Lessor's policy that prevailing wage rates shall be paid all persons employed on the lands within Lessor's jurisdiction.

27. WARRANTIES-GUARANTEES-COVENANTS: Lessor makes no warranty, guarantee, covenant, including but not limited to covenants of title and quiet enjoyment, or averment of any nature whatsoever concerning the condition of the Leased Premises, including the physical condition thereof, or any condition which may affect the Leased Premises. It is agreed that Lessor will not be responsible for any loss, damage, and/or costs, which may be incurred by Lessee by reason of any such condition or conditions.

28. DAMAGE TO OR DESTRUCTION OF LEASED PREMISES: Should Lessee-owned improvements be: (i) damaged or destroyed by fire, the elements, acts of God, or by any other cause; or (ii) declared unsafe or unfit for occupancy or use by a public entity with the appropriate authority, (i) and/or (ii) hereinafter "event," Lessee shall, within

ninety (90) days of such event, commence and diligently pursue to completion the repair, replacement, or reconstruction of the improvements necessary to permit full occupancy and use of the Leased Premises for the uses required herein. Repair, replacement, or reconstruction of such improvements shall be accomplished in a manner and according to Plans approved by Lessor. Provided, however, Lessee shall not be obligated to repair, reconstruct, or replace the improvements following their destruction in whole or substantial part, except to the extent the loss is covered by insurance required pursuant to Paragraph 25 herein (or would be covered regardless of whether such required insurance is actually in effect).

If Lessee elects not to restore, repair, or reconstruct as herein required, then this Lease shall terminate. Further, Lessor shall have any rights to which it would be entitled under the provisions of Paragraph Nos. 6 and 25 herein.

No event described herein shall relieve Lessee of its obligations to pay all rent and other amounts otherwise due hereunder.

29. QUITCLAIM OF LESSEE'S INTEREST UPON TERMINATION: Upon termination of this Lease for any reason, including but not limited to termination because of default by Lessee, Lessee shall execute, acknowledge, and deliver to Lessor within thirty (30) days after receipt of written demand therefor, a good and sufficient deed whereby all Lessee's right, title, and interest in the Leased Premises is quitclaimed to Lessor. Should Lessee fail or refuse to deliver the required deed to Lessor, Lessor may prepare and record a notice reciting the failure of Lessee to execute, acknowledge, and deliver such deed. Said notice shall be conclusive evidence of the termination of this Lease and of all right of Lessee, or those claiming under Lessee, in and to the Leased Premises.

30. PEACEABLE SURRENDER: Upon expiration of this Lease or earlier termination or cancellation thereof, as herein provided, Lessee shall peaceably surrender the Leased Premises to Lessor in as good condition as the Leased Premises were at the Commencement Date of this Lease, except as the Leased Premises were repaired, rebuilt, restored, altered, or added to as permitted or required by the provisions of this Lease, ordinary wear and tear excepted, and subject to Paragraph 6 herein. If Lessee fails to surrender the Leased Premises at the expiration of this Lease or the earlier termination or cancellation thereof, Lessee shall defend and indemnify Lessor from all liability and expense resulting from the delay or failure to surrender, including without limitation any succeeding lessee claims based on Lessee's failure to surrender.

31. WAIVER: Should either Lessor or Lessee waive any breach by the other of any Lease covenant, condition, or agreement, such waiver shall not be, nor be construed to be, a waiver of any subsequent or other breach of the same or any other Lease covenant, condition, or agreement. Further, failure on the part of either party to

require or exact the other's full and complete compliance with any of the Lease covenants, conditions, or agreements shall not be, nor be construed as in any manner changing the terms, or preventing the enforcement in full, of the provisions hereof. In addition, Lessor's subsequent acceptance of rent hereunder shall not be deemed to be a waiver of any preceding Lessee breach of any Lease term, covenant, or condition, other than Lessee's failure to pay the particular rent so accepted, regardless of Lessor's knowledge of Lessee's preceding breach at the time rent is accepted.

32. HOLDOVER: This Lease shall terminate without further notice at expiration of the term. Any holding over by Lessee after either expiration or termination shall not constitute a renewal or extension, or give Lessee any rights in or to the Leased Premises.

If Lessee, with Lessor's consent, remains in possession of the Leased Premises after Lease expiration or termination, such possession shall be deemed a month-to-month tenancy terminable upon thirty (30) days' notice furnished at any time by either party to the other. In addition, all provisions of this Lease, except those pertaining to term, shall apply to the month-to-month tenancy, and Lessee shall continue to pay all rent required by this Lease. Provided, however, if percentage rent is required by this Lease, it shall be paid monthly on or before the tenth (10th) day of each month, including the tenth (10th) day of the month following the expiration of any such holdover period.

33. PARAGRAPH HEADINGS: The Table of Contents and Paragraph Headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

34. ENTIRE UNDERSTANDING: This Lease contains the entire understanding and agreement of the parties. Lessee acknowledges there is no other written or oral understanding or agreement between the parties with respect to the Leased Premises, and that this Lease supersedes all prior negotiations, discussions, obligations, and rights of the parties hereto. No waiver, modification, amendment, or alteration of this Lease shall be valid unless it is expressly in writing and signed by authorized representatives of the parties hereto. Each of the parties to this Lease acknowledges that no other party, agent, or representative has made any promise, representation, waiver, or warranty whatsoever, expressed or implied, which is not expressly contained in writing in this Lease. Each party further acknowledges it has not executed this Lease in reliance upon any collateral promise, representation, waiver, or warranty, or in reliance upon any belief as to any fact not expressly recited in this Lease.

35. **TIME IS OF THE ESSENCE:** Time is of the essence of each and all of the terms and provisions of this Lease. This Lease shall inure to the benefit of and be binding upon the parties hereto and any successors of Lessee as fully and to the same extent as though specifically mentioned in each instance. All covenants, conditions, and agreements in this Lease shall extend to and bind any assigns and sublessees of Lessee.

36. **NOTICES:** All notices provided for by this Lease or by law to be given or served upon Lessor or Lessee shall be in writing and: (i) personally served upon Lessor or Lessee, or any person hereafter authorized by either party in writing to receive such notice, or (ii) served by certified letter addressed to the appropriate address hereinafter set forth, or to such other address designated in writing by the respective party.

To Lessor

Executive Director
San Diego Unified Port District
Post Office Box 120488
San Diego, CA 92112-0488

To Lessee

Managing Member
Eichenlaub Marine , Inc
2608 Shelter Island Drive
San Diego, CA 92106

Should any consented-to assignee, consented-to purchaser, or Consented-to-Lender notify Lessor in writing of its desire to receive notices, such party shall also be personally served, or served by certified letter at such appropriate address designated in writing by the respective party.

Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served; provided, however, if served by certified mail, service will be considered completed and binding on the party served forty-eight (48) hours after deposit in the U.S. Mail.

37. **REMOVAL OF MATERIALS:** Lessee shall, upon expiration of this Lease or sooner termination as herein provided, remove within sixty (60) days all materials, including without limitation all ships, vessels, barges, hulls, debris, and surplus and salvage items, hereinafter "Materials," from the Leased Premises and adjacent property, so as to leave the same in as good condition as when first occupied by Lessee, subject to reasonable wear and tear. Provided, however, if Lessee fails to remove all Materials within sixty (60) days, Lessor may remove, sell, or destroy said Materials at the expense of Lessee. Further, Lessee agrees to pay Lessor the reasonable cost of such removal, sale, or destruction; or, at the option of Lessor, said Materials not removed, sold, or destroyed by Lessee shall become the property of Lessor, without cost to Lessor, and without any payment to Lessee.

During any period of time required to remove said Materials, or to test for and/or remediate Hazardous Materials as required in Paragraph 42 herein, Lessee shall continue to pay the full rent to Lessor in accordance with this Lease, which said rent shall be prorated daily.

38. **WASTE/NUISANCE:** Lessee shall not use the Leased Premises in a manner that constitutes waste or nuisance.

39. **NUMBER AND GENDER:** Words of any gender used in this Lease shall include any other gender and each word in the singular number shall include the plural whenever the tense requires.

40. **APPLICABLE LAW:** The Lease will be governed by and construed and enforced in accordance with the laws of the State of California.

41. **ATTORNEY FEES:** Should any suit be commenced to enforce, protect, or establish any right or remedy of any of the terms and conditions hereof, including without limitation a summary action commenced by Lessor under the laws of the state of California relating to the unlawful detention of property, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney fees and costs of suit.

42. **HAZARDOUS MATERIALS:**

- (a) Definition of "Hazardous Material." The term "Hazardous Material" shall mean any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, including oil and petroleum products, which now or in the future may be within the meaning of any applicable, federal, state, or local law, regulation, ordinance, or requirement at any concentration that is or has become regulated by the United States, the State of California, or any local government authority having jurisdiction over the Leased Premises.
- (b) Lessee Use of Hazardous Materials. Lessee shall not cause or permit any Hazardous Material, or products or materials which include any hazardous substance as a component, to be generated, brought onto, used, stored, emitted, released or disposed of in or about the Leased Premises by Lessee or its agents, employees, contractors, sublessees, or invitees unless expressly approved, at Lessor's sole discretion, in writing by Lessor after submittal by Lessee of Material Safety Data Sheets ("MSDS") or other information requested by Lessor. Limited quantities of equipment, materials and supplies customarily used in connection with the construction of improvements and standard office, food service and

janitorial supplies customarily used in places of business which contain chemicals categorized as Hazardous Material are excluded from this requirement. Lessee shall use, store, and dispose of all such Hazardous Materials in strict compliance with all applicable statutes, ordinances, regulations, and other requirements in effect during the Lease Term that relate to public health and safety and protection of the environment ("Environmental Laws"); and shall comply at all times with all Environmental Laws.

- (c) Notice of Release or Investigation. If during the term of this Lease (including any extensions), Lessee becomes aware of (i) any actual or threatened release of any Hazardous Material on, in, under, from, or about the Leased Premises; or (ii) any inquiry, investigation, proceeding, or claim (collectively "Inquiry") by any government agency or other person regarding the presence of any Hazardous Material on, in, under, from or about the Leased Premises, Lessee shall give Lessor written notice of the release or Inquiry within five (5) days after Lessee learns or first has reason to believe there has been a release or Inquiry and shall simultaneously furnish to Lessor copies of any claims, notices of violation, reports, warning or other writings received by Lessee that concern the release or Inquiry.
- (d) Lessor Right to Inspect. If Lessee has in the past or continues to use, dispose, generate, or store Hazardous Materials on the Leased Premises, Lessor or its designated representatives, at Lessor's sole discretion, may at any time during the term of this Lease, but is no way obligated to, enter upon the Leased Premises and make any inspections, tests or measurements Lessor deems necessary to determine if a release of Hazardous Materials has occurred. Lessor shall furnish Lessee a minimum of twenty-four (24) hours' notice in writing prior to conducting any inspections or tests, unless, in Lessor's sole judgment, circumstances require otherwise. Such tests shall be conducted in a manner so as to attempt to minimize any inconvenience and disruption to Lessee's operation as is practicable. If such tests indicate a release of Hazardous Materials, then Lessor, at Lessor's sole discretion, may require Lessee, at Lessee's sole expense and at any time during the term of this Lease, to have such tests for such Hazardous Materials conducted by a qualified party or parties on the Leased Premises. If Lessor has reason to believe any Hazardous Materials originated from a release on the Leased Premises have contaminated any area outside the Leased Premises, including but not limited to surface and groundwater, then Lessor, at Lessor's sole discretion, may require Lessee, at Lessee's sole expense

and at any time during the term of this Lease, to have tests for such Hazardous Materials conducted by a qualified party or parties on said area outside the Leased Premises. Lessor's failure to inspect, test or take other actions pursuant to this Paragraph 42(d) regarding the Leased Premises, shall in no way relieve Lessee of any responsibility for a release of a Hazardous Material.

- (e) Clean-up Obligations. If the presence of any Hazardous Material brought onto the Leased Premises by Lessee or Lessee's employees, agents, sublessees, contractors, or invitees, or generated by same results in contamination of the Leased Premises, adjacent properties or the San Diego Bay, Lessee shall promptly take all necessary actions, at Lessee's sole expense, to remove or remediate such Hazardous Materials. Lessee shall provide notice to Lessor prior to performing any removal or remedial action. Lessee shall not propose nor agree to any covenant of use restriction as part of any removal or remediation required as a result of this Paragraph 42(e). To the extent Lessor incurs any costs or expenses in performing Lessee's obligation to clean-up contamination resulting from Lessee's operations or use of the Leased Premises, Lessee shall promptly reimburse Lessor for all costs and expenses incurred within thirty (30) days. Any amounts not so reimbursed within thirty (30) days after Lessee's receipt of an itemized statement therefore shall bear interest at the Prime Rate plus Five Percent (5%) per annum compounded monthly. This provision does not limit the indemnification obligation set forth in Paragraph 42(f). The obligations set forth in this Paragraph 42(e) shall survive any expiration or other termination of this Lease.

- (i) Clean-up Extending Beyond Lease Term. Should any clean-up of Hazardous Materials for which Lessee is responsible not be completed prior to the expiration or sooner termination of the Lease, including any extensions thereof, then: (A) Lessee shall deposit into an escrow account an amount of money equal to the balance of the estimated costs of the clean-up, together with instructions for the disbursement of such amount in payment of the costs of any remaining clean-up as it is completed, and (B) if the nature of the contamination or clean-up required of Lessee is of such a nature as to make the Leased Premises untenable or unleaseable, then Lessee shall be liable to Lessor as a holdover lessee until the clean-up has been sufficiently completed to make the Leased Premises suitable for lease to third parties. The estimated cost of the clean-up shall require approval of the Lessor.

- (ii) Financial Security. If Lessor determines, in its reasonable discretion, that Lessee does not have insurance or other financial resources sufficient to enable Lessee to fulfill its obligations under this Paragraph 42(e), whether or not accrued, liquidated, conditional, or contingent, then Lessee shall, at the request of Lessor, procure and thereafter maintain in full force and effect such environmental impairment liability and/or pollution liability insurance policies and endorsements, or shall otherwise provide such collateral or security reasonably acceptable to Lessor as is appropriate to assure that Lessee will be able to perform its duties and obligations hereunder.
- (f) Indemnification. Lessee shall, at Lessee's sole expense and with counsel reasonably acceptable to Lessor, indemnify, defend, and hold harmless Lessor and Lessor's directors, officers, employees, partners, affiliates, agents, successors, and assigns with respect to all losses, including reasonable attorneys' and environmental consultants' fees, arising out of or resulting from Lessee's occupancy or use of the Leased Premises, or the violation of any Environmental Law, by Lessee or Lessee's agents, assignees, sublessees, contractors, or invitees. This indemnification applies whether or not the concentrations of any such Hazardous Material is material, the concentrations exceed state or federal maximum contaminant or action levels, or any government agency has issued a clean-up or other order. This indemnification shall survive the expiration or termination of this Lease. This indemnification includes, but is not necessarily limited to:
 - (i) Losses attributable to diminution in the value of the Leased Premises;
 - (ii) Loss or restriction of use of rentable space(s) in the Leased Premises;
 - (iii) Adverse effect on the marketing of any space(s) in the Leased Premises;
 - (iv) All other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant, and expert fees and expenses) resulting from the release or violation; and,

- (v) All costs (including reasonable attorneys' fees, consulting fees and subcontracted costs) incurred by Lessor in undertaking any assessment or remediation of the Leased Premises that might not have been fully resolved by Lessee by the time this Lease terminates or expires.

Lessor shall have a direct right of action against Lessee even if no third party has asserted a claim. Furthermore, Lessor shall have the right to assign said indemnity.

- (g) Termination of Lease. Upon the expiration or earlier termination of the term of the Lease, Lessee shall: (i) cause all Hazardous Materials previously owned, stored, or used by Lessee to be removed from the Leased Premises and disposed of in accordance with all applicable provisions of law; (ii) remove any underground or aboveground storage tanks or other containers installed or used by Lessee, or its predecessors, to store any Hazardous Material on the Leased Premises, and repair any damage to the Leased Premises caused by such removal; (iii) cause any soil or other portion of the Leased Premises which has become contaminated by any Hazardous Material stored or used by Lessee, or its predecessors, to be decontaminated, detoxified, or otherwise cleaned-up in accordance with the applicable requirements of any relevant government authorities; and (iv) surrender possession of the Leased Premises to Lessor free of contamination attributable to Hazardous Materials generated or used by Lessee or stored or disposed of by any party other than Lessor in or on the Leased Premises.

43. STORAGE TANKS:

- (a) Underground Storage Tanks. No underground storage tanks ("USTs") shall be permitted to be installed on the Leased Premises during the term of this Lease without the prior written consent of the Lessor's Executive Director in his or her sole and absolute discretion. In the event Lessee obtains such approval to install a UST on the Leased Premises, Lessee shall be responsible for complying with all laws and regulations pertaining to such UST, including tank monitoring of such UST as required by the County of San Diego Hazardous Material Management Division (HMMD) or any other responsible agency. Lessee further agrees to take responsibility for reporting unauthorized releases from USTS to HMMD and the Lessor within twenty-four (24) hours of such unauthorized release. Lessee will be responsible for all fees and costs related to the unauthorized release of any Hazardous Material including, but not limited to: investigative, surface and groundwater clean-up, and expert and

agency fees. Lessee shall maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and/or property damage caused by a release from a UST. Lessee further agrees to be responsible for maintenance and repair of the USTs; obtaining tank permits; filing a business plan with HMMD or other responsible agency; and for paying UST fees, permit fees, and other regulatory agency fees relating to USTs.

Lessee agrees to keep complete and accurate records on the Leased Premises for a period of not less than thirty-six (36) months from the applicable events including, but not limited to, permit applications, monitoring, testing, equipment installation, repairing and closure of the USTs, and any unauthorized releases of Hazardous Materials. Lessee also agrees to make such records available for Lessor or responsible agency inspection. Lessee further agrees to include a copy of Health and Safety Code, Chapter 6.7, Section 25299, as part of any agreement between Lessee and any operator of USTs.

Furthermore, Lessee shall be responsible for compliance with all other laws and regulations presently existing, or hereinafter enacted, applicable to USTs, including without limitation any such laws and regulations which alter any of the above requirements.

- (b) Aboveground Storage Tanks. No aboveground storage tanks ("ASTs") shall be permitted to be installed on the Leased Premises during the term of this Lease without the prior written consent of the Lessor's Executive Director in his or her sole and absolute discretion. In the event Lessee obtains such approval to install an AST, Lessee shall be responsible for complying with all laws and regulations pertaining to such AST. Lessee shall, in accordance with this Lease and applicable laws and regulations, secure and pay for all necessary permits and approvals, prepare a spill prevention control counter measure plan and conduct periodic inspections to ensure compliance therewith, including conformance with the latest version of said applicable laws and regulations. In addition, Lessee shall maintain and repair said tanks to conform and comply with all other applicable laws and regulations for ASTs, including without limitation all of the requirements of Health & Safety Code, Chapter 6.67, Sections 25270 through 25270.13 as presently existing or as hereinafter amended, including without limitation conducting daily visual inspection of said tanks, allowing the San Diego Regional Water Quality Control Board ("SDRWQCB"), Lessor, and/or responsible agency, to conduct

periodic inspections. Lessee also shall comply with valid orders of the SDRWQCB, filing the required storage tank statement and payment of the fee therefor, establishing and maintaining the required monitoring program and systems, reporting spills as required, and payment of lawfully imposed penalties as provided therein and as otherwise provided by law. The Lessee shall be responsible for all costs associated with any unauthorized release from ASTS, including but not limited to, investigative, surface and groundwater clean-up, and expert and agency fees.

44. ENVIRONMENTAL DISCLOSURES: Lessee understands and agrees that the Leased Premises are being leased in an "as is, with all faults" condition and that improvements, grading, filling, removal of existing improvements, and relocation of utility lines shall be made and performed by Lessee at the sole cost and expense of Lessee. Lessee further understands and agrees that the "as-is, with all faults" condition of the Leased Premises includes any contamination of the Leased Premises, including structures, soils, groundwater, and adjacent San Diego Bay water and sediment, and that information received from Lessor regarding such matters may not be complete or accurate and should not be accepted as such.

Lessee hereby acknowledges that excavation of soils from the Leased Premises could result in exportation of a regulated waste requiring appropriate characterization, handling, transport and disposal (together "Regulated Waste Removal"). Lessor takes no responsibility and assumes no liability whatsoever for Regulated Waste Removal. Accordingly, Lessee hereby waives any claim, or potential claim, it may have to recover costs or expenses arising out of or associated with Regulated Waste Removal and agrees to indemnify, defend and hold harmless Lessor from and against any and all claims, liabilities, losses, damages, costs, and expenses arising from, out of, or in any way related to Regulated Waste Removal.

Lessor accepts no liability or responsibility for ensuring that Lessee's workers, including without limitation those conducting testing, construction and maintenance activities on the Leased Premises, are satisfactorily protected from residual contaminants in 29 Code of Federal Regulations ("CFR"). Lessee shall assess all human health risks from vapor transport or direct contact with residual hazardous substances or contaminants and incorporate such engineering and institutional controls as may be required to sufficiently protect human health of onsite workers and transient visitors. Lessee hereby waives any claim, or potential claim, it may have to recover any damages, losses, costs and expenses related to worker exposure or alleged exposure to any residual onsite contamination and to indemnify, defend and hold harmless Lessor from and against any and all such claims, liabilities, losses, damages, costs, and expenses.

45. **"AS-IS" LEASE AND WAIVERS:** Lessee's execution of the Lease shall fully and finally constitute:

- (a) Lessee's Acknowledgment. Lessee's acknowledgment that Lessor has given to Lessee sufficient opportunity to consider, inspect and review, to Lessee's complete satisfaction: (1) any and all rights, appurtenances, entitlements, obligations, and liabilities concerning the Leased Premises; (2) the physical condition of the Leased Premises, including, without limitation, the condition of the buildings (if any) and the soils, subsoil media, and groundwaters at or under the Leased Premises; (3) the effect upon the Leased Premises of any and all applicable federal, state or local statutes, ordinances, codes, regulations, decrees, orders, laws or other governmental requirements (collectively, "Applicable Laws"); (4) the development potential of the Premises including without limitation on the preceding clause (3), the effect of all Applicable Laws concerning land use, environmental quality and maintenance, endangered species, and traffic regulation; (5) the financial prospects of the Leased Premises and local market conditions; (6) Lessee's determination of the feasibility of Lessee's intended use and enjoyment of the Leased Premises; and (7) all other facts, circumstances, and conditions affecting, concerning or relating to the Leased Premises. The land use; the environmental, biological, physical and legal condition of the Leased Premises; the feasibility of Lessee's intended use and enjoyment of the Leased Premises and such other facts, circumstances and conditions being collectively referred to herein as the "Condition of the Leased Premises"; and, without limitation on any other provision of this Lease, Lessee expressly assumes the risk that adverse conditions affecting the Leased Premises have not been revealed by Lessee's investigations.
- (b) Only Lessor's Express Written Agreements Binding. Lessee acknowledges and agrees that no person acting on behalf of Lessor is authorized to make, and that except as expressly set forth in this Lease, neither Lessor nor anyone acting for or on behalf of Lessor has made, any representation, warranty, statement, guaranty or promise to Lessee, or to anyone acting for or on behalf of Lessee, concerning the Condition of the Leased Premises or any other aspect of the Leased Premises. Lessee further acknowledges and agrees that no representation, warranty, agreement, statement, guaranty or promise, if any, made by any person acting on behalf of Lessor which is not expressly set forth in this Lease will be valid or binding on Lessor.

- (c) As-Is Lease. Lessee further acknowledges and agrees that Lessee's execution of this Lease shall constitute Lessee's representation, warranty and agreement that the Condition of the Leased Premises has been independently verified by Lessee to its full satisfaction, and that, except to the extent of the express covenants of Lessor set forth in this Lease, Lessee will be leasing the Leased Premises based solely upon and in reliance on its own inspections, evaluations, analyses and conclusions, or those of Lessee's representatives; and that LESSEE IS LEASING THE LEASED PREMISES IN ITS "AS-IS, WITH ALL FAULTS" CONDITION AND STATE OF REPAIR INCLUSIVE OF ALL FAULTS AND DEFECTS, WHETHER KNOWN OR UNKNOWN, AS MAY EXIST AS OF THE LESSEE'S EXECUTION OF THIS LEASE. Without limiting the scope or generality of the foregoing, Lessee expressly assumes the risk that the Leased Premises do not or will not comply with any Applicable Laws now or hereafter in effect.
- (d) Waivers, Disclaimers and Indemnity.
- (i) Waiver and Disclaimer. Lessee hereby fully and forever waives, and Lessor hereby fully and forever disclaims, all warranties of whatever type or kind with respect to the Leased Premises, whether expressed, implied or otherwise including, without limitation, those of fitness for a particular purpose, tenantability, habitability or use.
- (ii) Lessor's Materials. Lessee further acknowledges that any information and reports including, without limitation, any engineering reports, architectural reports, feasibility reports, marketing reports, soils reports, environmental reports, analyses or data, or other similar reports, analyses, data or information of whatever type or kind which Lessee has received or may hereafter receive from Lessor or its agents or consultants have been furnished without warranty of any kind and on the express condition that Lessee will make its own independent verification of the accuracy, reliability and completeness of such information and that Lessee will not rely thereon. Accordingly, subject to terms of Paragraph 45(e) below, Lessee agrees that under no circumstances will it make any claim against, bring any action, cause of action or proceeding against, or assert any liability upon, Lessor or any of the persons or entities who prepared or furnished any of the above information or materials as a result of the inaccuracy, unreliability or incompleteness of, or any defect or

mistake in, any such information or materials and Lessee hereby fully and forever releases, acquits and discharges Lessor and each person furnishing such information or materials of and from, any such claims, actions, causes of action, proceedings or liability, whether known or unknown.

(e) Release and Waiver.

- (i) Release. Except to the extent of Claims (as defined below) against Lessor arising from any breach by Lessor of its covenants and obligations expressly provided in this Lease, Lessee, on behalf of Lessee, its successors and assigns, hereby fully and forever releases, acquits and discharges Lessor of and from, and hereby fully forever waives:

Any and all claims, actions, causes of action, suits, proceedings, demands, rights, damages, costs, expenses, losses, judgments, provisional relief, fines, penalties, and fees, including, without limitation, any and all claims for compensation, reimbursement, or contribution whatsoever (individually and collectively, "Claims"), whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, that Lessee or any of Lessee's successors or assigns now has or may have or which may arise or be asserted in the future arising out of, directly or indirectly, or in any way connected with: (A) any act or omission of Lessor (or any person acting for or on behalf of Lessor or for whose conduct Lessor may be liable), whether or not such act be the active, passive or sole negligence of Lessor, in connection with prior ownership, maintenance, operation or use of the Leased Premises; (B) any condition of environmental contamination or pollution at the Leased Premises (including, without limitation, the contamination or pollution of any soils, subsoil media, surface waters or groundwaters at the Leased Premises); (C) to the extent not already included in clause (B) above, the prior, present or future existence, release or discharge, or threatened release, of any Hazardous Materials at the Leased Premises, (including, without limitation, the release or discharge, or threatened release, of any Hazardous Materials into the air at the Leased Premises or into any soils, subsoils, surface waters or groundwaters at the Leased Premises); (D) the violation of, or noncompliance with, any Environmental Requirement or other Applicable Law now or

hereafter in effect, however and whenever occurring; (E) the condition of the soil at the Leased Premises; (F) the condition of any improvements located on the Leased Premises including, without limitation, the structural integrity and seismic compliance of such improvements; (G) any matters which would be shown on an accurate ALTA land survey of the Leased Premises (including, without limitation, all existing easements and encroachments, if any); (H) all Applicable Laws now or hereafter in effect; (I) matters which would be apparent from a visual inspection of the Leased Premises; or (J) to the extent not already covered by any of the foregoing clauses (A) through (I) above, the use, maintenance, development, construction, ownership or operation of the Leased Premises by Lessor or any predecessor(s)-in-interest in the Leased Premises of Lessor.

- (ii) Waiver of Civil Code Section 1542. With respect to all releases made by Lessee under or pursuant to this Paragraph 45, Lessee hereby waives the application and benefits of California Civil Code § 1542 and hereby verifies that it has read and understands the following provision of California Civil Code § 1542:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Lessee: 

46. JOINT AND SEVERAL LIABILITY: If Lessee, as a party to this Lease, is a partnership; joint venture; or is comprised of more than one party or entity, or a combination thereof; the obligations imposed on Lessee under this Lease shall be joint and several, and each general partner, joint venturer, party or entity of Lessee shall be jointly and severally liable for said obligations. Furthermore, nothing herein shall be deemed or construed as creating a partnership or joint venture between Lessor and Lessee, or between Lessor and any other entity or party, or cause Lessor to be responsible in any way for the debts or obligations of Lessee, or any other party or entity.

47. SECURITY DEPOSIT: A security deposit in the sum of Twelve Thousand Three Hundred Fifty-One Dollars (\$12,351) shall be provided Lessor by Lessee, on or before the Commencement Date of this Lease. The security deposit shall be held by Lessor and used for the purpose of remedying Lessee's defaults under this Lease.

Except as provided below, the security deposit shall be in the form of an Irrevocable Stand-By Letter of Credit drawn on a bank having a branch located in San Diego County or having a Moody's Long Term Letter of Credit rating of single A or higher and a Moody's Long Term Deposit rating of single A or higher. The principal sum shall be made payable to Lessor or order. Each Letter of Credit provided during the term of this Lease shall be valid for a minimum of twelve (12) months from date of issuance. Each Letter of Credit shall be extended or renewed at least ninety (90) days prior to its expiration.

All or any portion of the principal sum of the Letter of Credit shall be available unconditionally to Lessor for the purposes and uses provided herein. The bank, and the form and provisions of the Letter of Credit shall be acceptable to the Executive Director of Lessor, in his sole discretion, and if not so acceptable, may be rejected. The Letter of Credit and Drawing Certificate shall not be acceptable if it requires Lessor to send written notice of default or request or demand payment from Lessee after default, prior to Lessor drawing on any funds under the Letter of Credit.

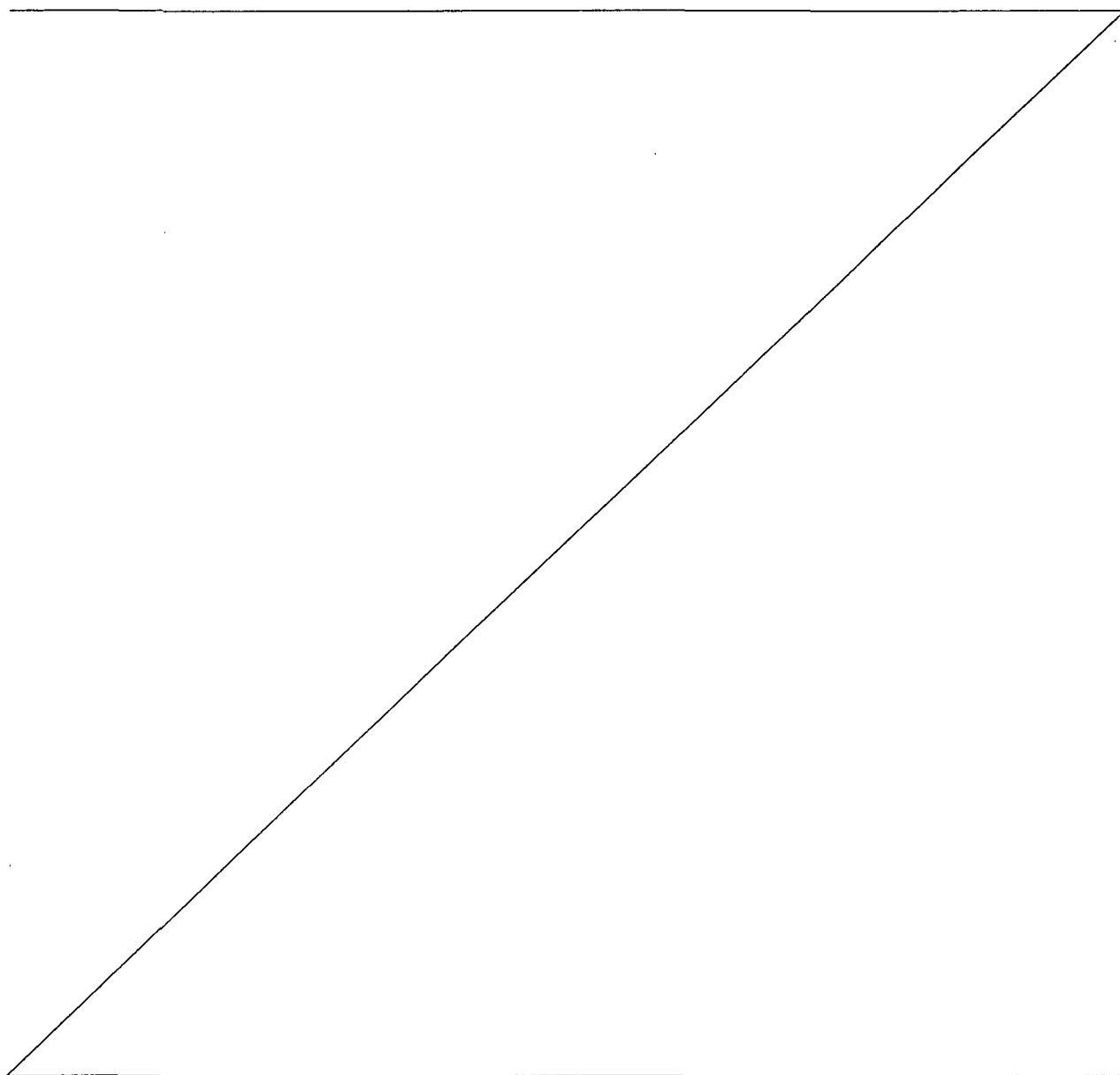
Notwithstanding the above, if said security deposit or the cumulative total amount of security deposits required by Lessor under this Lease and other leases, permits and agreements between Lessor and Lessee does not exceed Twenty-Five Thousand Dollars (\$25,000), Lessee may elect to provide said security deposit in the form of cash.

Failure to maintain the required security deposit shall be deemed a default and shall be grounds for immediate termination of this Lease in accordance with Paragraph 10 herein. The security deposit or the remaining portion thereof, shall be rebated, released, assigned, surrendered, or endorsed to Lessee or order, as applicable, upon completion of all the Project improvements or the third (3rd) anniversary of the Commencement Date of this Lease, whichever occurs last

48. DISPUTE RESOLUTION: Except for (i) a dispute or disagreement as to the amount of rent that Lessee is to pay Lessor or (ii) a default in the payment of rent, all other disputes or disagreements between or among the parties arising out of or relating to the terms, conditions, interpretation, performance, default or any other aspect of this Lease, such parties shall first attempt to resolve the dispute informally. In the event the dispute is not resolved informally, prior to and as a precondition to the initiation of any legal action or proceeding, the parties shall refer the dispute to mediation before a retired State or Federal judge mutually selected by the parties. The dispute shall be mediated through informal, nonbinding joint conferences or separate caucuses with an impartial third party mediator who will seek to guide the parties to a

consensual resolution of the dispute. The mediation proceeding shall be conducted within thirty (30) days (or any mutually agreed longer period) after referral, and shall continue until any party involved concludes, in good faith, that there is no reasonable possibility of resolving the dispute without resort to a legal action or proceeding. All costs of the mediation shall be shared equally by the parties involved. Each party shall bear its own attorneys' fees and other costs incurred in connection with the mediation. In the event the parties are unable to resolve the dispute through mediation, in addition to any other rights or remedies, any party may institute a legal action.

(MEMORANDUM OF LEASE FOLLOWS)



MEMORANDUM OF LEASE

49. MEMORANDUM OF LEASE: This is the final Paragraph and Memorandum of Lease, hereinafter "Memorandum," dated December 3, 2008, between SAN DIEGO UNIFIED PORT DISTRICT, Lessor, and EICHENLAUB MARINE, INC, Lessee, concerning the Leased Premises described in Exhibits "A" and "B," attached hereto and by this reference made a part hereof.

For good and adequate consideration, Lessor leases the Leased Premises to Lessee, and Lessee hires them from Lessor, for the term and on the provisions contained in the Lease dated December 3, 2008, including without limitation provisions prohibiting assignment, subleasing, and encumbering said leasehold without the express written consent of Lessor in each instance, all as more specifically set forth in said Lease, which said Lease is incorporated in this Memorandum by this reference.


The term is thirty (30) years, beginning November 1, 2008, and ending October 31, 2038.

This Memorandum is not a complete summary of the Lease. Provisions in this Memorandum shall not be used in interpreting the Lease provisions. In the event of conflict between this Memorandum and other parts of the Lease, the other parts shall control. Execution hereof constitutes execution of the Lease itself.

Port Attorney

By 
DEPUTY PORT ATTORNEY

SAN DIEGO UNIFIED PORT DISTRICT

By 
Randa J. Coniglio
Director, Real Estate

EICHENLAUB MARINE, INC

By 
Carl M. Eichenlaub, Jr.

(FOR USE BY SAN DIEGO UNIFIED PORT DISTRICT)

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

On 12/2/2008 before me, Ralph M. Carpio, Notary Public, personally appeared Randa J. Coniglio, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)

OPTIONAL

Though the information below is not required by law, it may prove valuable to person relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Lease to Eichenlaub Marine, Inc.

Document Date: _____

Number of Pages: 59

Signer(s) Other Than Named Above: Carl M. Eichenlaub, Jr

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

- ☐ Individual
☐ Corporate Officer --Title(s): _____
☐ Partner -- ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer's Name _____

- ☐ Individual
☐ Corporate Officer --Title(s): _____
☐ Partner -- ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

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54213

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**Legal Description for
EICHENLAUB MARINE, INC.
TIDELAND LEASE
Parcel / Drawing No 003-033
Within Corporate Limits of San Diego**

All that certain portion of land conveyed to the San Diego Unified Port District by that certain Act of Legislature of the State of California pursuant to Chapter 67, Statutes of 1962, First Extraordinary Session, as amended, and delineated on that certain Miscellaneous Map No. 564, filed in the Office of the San Diego County Recorder on May 28, 1976, File No. 76-164686, in the City of San Diego, County of San Diego, State of California, and more particularly described as follows:

PARCEL NO. 1 LAND AREA

Commencing at a 3" diameter brass disk monument stamped "SDUPD-002" as shown on R.O.S. 16668, filed in the Office of the San Diego County Recorder on July 25, 2000; thence leaving said monument South 62°33'23" East a distance of 316.23 feet (calculated) to a point on the northeasterly line of Shelter Island Drive, said point also being the TRUE POINT OF BEGINNING of Parcel No. 1; thence along said northeasterly line of Shelter Island Drive North 53°44'06" West a distance of 95.01 feet; thence leaving said northeasterly line North 36°15'54" East a distance of 120.00 feet; thence South 53°44'06" East a distance of 95.01 feet; thence South 36°15'54" West a distance of 120.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 1, containing 11,401 square feet or 0.26 acre of tidelands area.

PARCEL NO. 2 WATER AREA

Commencing at the True Point of Beginning of the above described Parcel No. 1; thence North 36°15'54" East a distance of 120.00 feet; thence North 53°44'06" West a distance of 20.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 2; thence North 53°44'06" West a distance of 75.01 feet; thence North 36°15'54" East a distance of 245.00 feet a point on the U.S. Pierhead Line, as said U.S. Pierhead Line is now established for the Bay of San Diego, and delineated on the map entitled "Harbor Lines, San Diego Bay, California, File No. (D.O. Series) 426", approved by the Secretary of the Army, April 29, 1963, filed in the Office of the District Engineer, Los Angeles, California; thence along said U.S. Pierhead Line South 53°44'06" East a distance of 75.01 feet; thence leaving said U.S. Pierhead Line South 36°15'54" West a distance of 245.00 feet to the TRUE POINT OF BEGINNING of Parcel No. 2, containing 18,377 square feet or 0.42 acre of water covered tidelands area.

The above described land and water areas are delineated on the San Diego Unified Port District Drawing No. 003-033, dated September 25, 2007 and made a part of this agreement.

All bearings and distances in the above legal description are grid, and based upon the California Coordinate System, Zone 6, N.A.D. 83, Epoch 1991.35.

Charles J. Sefkow 9-25-07

Charles J. Sefkow Date

L.S. 7876 Expires 31 Dec. 2008
Land Surveyor
San Diego Unified Port District

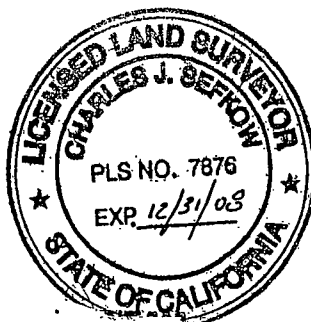
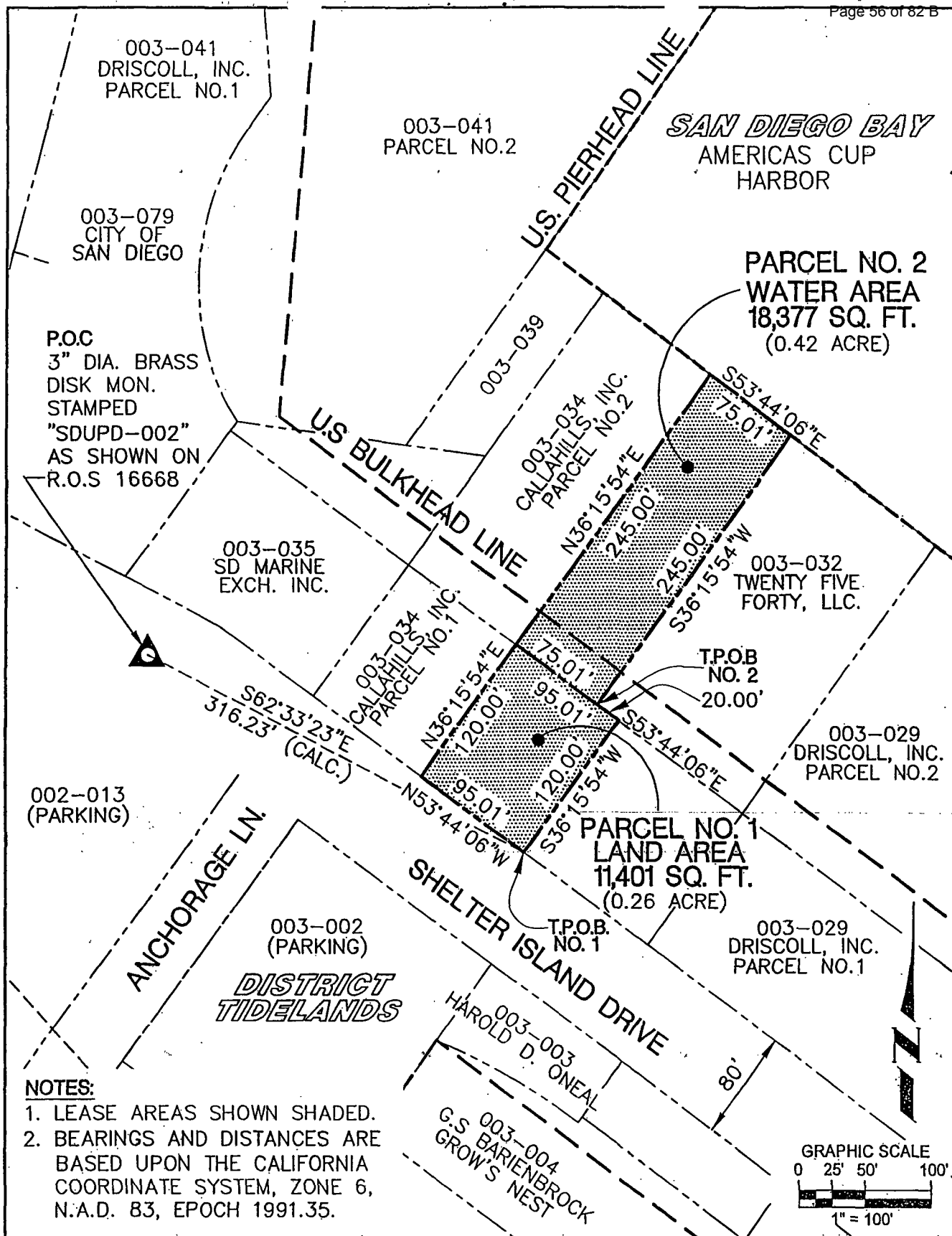


EXHIBIT "A"

54213

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DRAWN DARWIN VASQUEZ
 CHECKED A. SANTONIL
 REVIEWED W. WINCHELL

APPROVED

Charles J. Eichenlaub

LAND SURVEYOR, S.O.U.P.D.

SAN DIEGO UNIFIED PORT DISTRICT

TIDELAND LEASE

WITHIN CORPORATE LIMITS OF SAN DIEGO

EICHENLAUB MARINE, INC.

DATE SEPT. 25, 2007

SCALE 1"=100'

REF. FIELD SURVEY

DRAWING NO.

SHEET 1 OF 1

003-033

GUARANTY

CARL M. EICHENLAUB, JR., hereinafter "Guarantor," whose address is 2608 Shelter Island Drive, San Diego, CA 92106, as a material inducement to and in consideration of the SAN DIEGO UNIFIED PORT DISTRICT, hereinafter "Lessor," entering into a written Lease, hereinafter "the Lease" with EICHENLAUB MARINE, INC, a California corporation, hereinafter "Lessee," dated the same date as this Guaranty, pursuant to which Lessor leased to Lessee, and Lessee leased from Lessor, premises located at 2608 Shelter Island Drive in the City of San Diego, County of San Diego, California, in accordance with the Lease on file in the Office of the Clerk of Lessor, Document No. 54213, attached to this Guaranty, and made a part of it, unconditionally guarantees and promises to and for the benefit of Lessor, that Lessee shall perform the provisions of the Lease for which it is responsible.

Guarantor waives the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

The provisions of the Lease may be changed by agreement between Lessor and Lessee at any time, without the consent of or without notice to Guarantor. The Guarantor shall guaranty the performance of the Lease, as changed. Assignment of the Lease (as permitted by the Lease) shall not affect this Guaranty. Lessor's failure or delay in the enforcement of any of its rights also shall not affect this Guaranty.

If Lessee defaults under the Lease, Lessor can proceed immediately against Guarantor, Lessee, or both, or Lessor can enforce against Guarantor, Lessee, or both, any rights that it has under the Lease or pursuant to applicable laws. If the Lease terminates and Lessor has any rights it can enforce against Lessee after termination, Lessor can enforce those rights against Guarantor without giving prior notice to Lessee, Guarantor, or both, or without making any demand on either of them.

Guarantor waives the right to require Lessor to: (1) proceed against Lessee; (2) proceed against or exhaust any security that Lessor holds from Lessee; or (3) pursue any other remedy in Lessor's power. Guarantor waives any defense by reason of any disability of Lessee, and waives any other defense based on the termination of Lessee's ability from any cause.

Until all Lessee's obligations under the Lease have been discharged in full, Guarantor has no right of subrogation against Lessee. Guarantor waives: (i) its right to enforce any remedies that Lessor now has, or later may have, against Lessee; (ii) any right to participate in any security now or later held by Lessor; (iii) all presentments, demands

for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty; and (iv) all notices of the existence, creation, or incurrence of new or additional obligations.

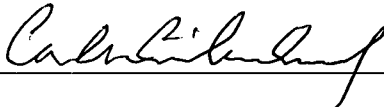
If Lessor is required to enforce Guarantor's obligations by legal proceedings, Guarantor shall pay Lessor all costs incurred, including but not limited to reasonable attorney fees.

Guarantor's obligations under this Guaranty shall be binding on any successor of Guarantor. As used herein, a successor of Guarantor shall mean any assignee, transferee, personal representative, heir, or other person or entity succeeding lawfully, and pursuant to the provisions of said Lease, to the rights or obligations of Guarantor. Also as used herein, Lessor shall mean Lessor's successors and assigns, if any.

This Guaranty shall only be effective up to and including the third (3rd) anniversary of the Commencement Date as that term is defined in Paragraph 1 of the Lease.

CARL M. EICHENLAUB, JR.

DATED: 9/29, 2008



54213

(FOR USE BY CARL M. EICHENLAUB, JR.)

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

On 29 SEP 08 before me, RICHARD MANN JR, Notary Public, personally appeared CARL M. EICHENLAUB, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)

OPTIONAL

Though the information below is not required by law, it may prove valuable to person relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

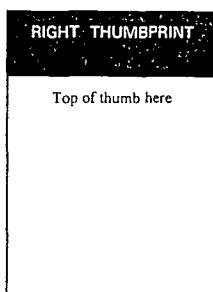
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name _____

- ☐ Individual
☐ Corporate Officer --Title(s): _____
☐ Partner -- ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

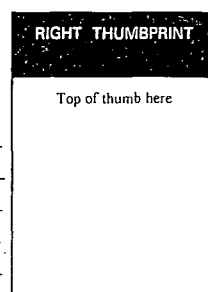
Signer is Representing: _____



Signer's Name _____

- ☐ Individual
☐ Corporate Officer --Title(s): _____
☐ Partner -- ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer is Representing: _____



Reference Copy:
Document No. 54213

Re Encumbrance of Lease of]
]
 Eichenlaub Marine, Inc.,]
]
 Shelter Island Drive]
 _____]

RESOLUTION 2008-163

WHEREAS, the San Diego Unified Port District (District) and Eichenlaub Marine, Inc. (Eichenlaub) are parties to a lease, dated 4 February 1992, as assigned, for premises located at 2608 Shelter Island Drive in the City of San Diego for the exclusive use of construction, maintenance, repair and painting of boats up to Sixty Five (65) feet in length, sale and installation of marine supplies, equipment, machinery and accessories on said boats, the sale of boats, and for no other purpose whatsoever, said lease is on file in the office of the District Clerk as Document No. 27962; and

WHEREAS, the District and Eichenlaub are also parties to an Option to Lease Agreement (Option), dated 11 December 2007, whereby the District and Eichenlaub have agreed to enter into a proposed new lease for said premises conditioned upon Eichenlaub meeting certain terms, covenants and conditions contained therein, said Option is on file in the office of the District Clerk as Document No. 52735, and said proposed new lease is attached to said Option as Exhibit 1 and is a part thereof; and

WHEREAS, in the event Eichenlaub timely exercises its Option for said proposed new lease, Eichenlaub desires to encumber said proposed new lease with a Leasehold Interest Deed of Trust to secure a Loan of Six Hundred Fifty Nine Thousand One Hundred Ninety Dollars (\$659,190.00) from Regents Bank, which said encumbrance is subject to consent from the District, NOW, THEREFORE,

BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

That in the event Eichenlaub meets all of the terms, covenants and conditions contained in said Option, and executes the proposed new lease, the District hereby consents to the encumbrance of said proposed new lease in favor of Regents Bank, subject to the following conditions:

1. Upon the execution of said proposed new lease, the District consents to the encumbrance of Eichenlaub's leasehold estate by a Leasehold Interest Deed of Trust in favor of Regents Bank securing a loan in the maximum amount of Six Hundred Fifty Nine Thousand One Hundred Ninety Dollars (\$659,190.00).

2. Upon the execution of said proposed new lease, all of the terms, conditions, provisions and covenants contained therein shall remain and continue in full force and effect, and on the further express condition that there shall be no further encumbrance of said leasehold estate or any part thereof, nor any transfer of an encumbered interest except in accordance with and as specifically provided for in said proposed new lease.

3. It is understood that the District has not reviewed or approved the terms and conditions of the proposed encumbrance documents such as the Leasehold Interest Deed of Trust, the note secured thereby or other loan documents and is not agreeing to be a party to the Leasehold Interest Deed of Trust, note or any other such documents.

4. Nothing contained in this resolution is intended or shall be construed to waive, modify or amend any of the provisions of said proposed new lease, attached to said Option as Exhibit 1, between the District and Eichenlaub.

BE IT FURTHER RESOLVED that this consent shall not become effective unless the District and Eichenlaub enter into the proposed new lease, attached to said Option as Exhibit 1, by December 31, 2008, and in the event the District and Eichenlaub do not enter into said proposed new lease by December 31, 2008, this consent shall be null and void and of no force or effect.

ADOPTED this 2nd day of September, 2008.

sw
9/2/08

Reference Copy:
Document No. 54213

Re Proposed Art Installation -]
Eichenlaub Marine, Inc.,]
Shelter Island Drive, San Diego]
_____]

RESOLUTION 2008-164

WHEREAS, the San Diego Unified Port District (District) and Eichenlaub Marine, Inc. (Eichenlaub) are parties to a lease, dated 4 February 1992, as assigned, for premises located at 2608 Shelter Island Drive in the City of San Diego for the exclusive use of construction, maintenance, repair and painting of boats up to Sixty Five (65) feet in length, sale and installation of marine supplies, equipment, machinery and accessories on said boats, the sale of boats, and for no other purpose whatsoever, said lease is on file in the office of the District Clerk as Document No. 27962; and

WHEREAS, the District and Eichenlaub are also parties to an Option to Lease Agreement (Option), dated 11 December 2007, whereby the District and Eichenlaub have agreed to enter into a proposed new lease for said premises conditioned upon Eichenlaub meeting certain terms, covenants and conditions contained therein, said Option is on file in the office of the District Clerk as Document No. 52735, and said proposed new lease is attached to said Option as Exhibit 1 and is a part thereof; and

WHEREAS, pursuant to said Option, the District and Eichenlaub have agreed to enter into a proposed lease for the construction, maintenance, repair and painting of boats up to Sixty Five (65) feet in length, the sale and installation of marine supplies, equipment, machinery and accessories on said boats, marine sales and service berthing, and the sale of boats, conditioned upon Eichenlaub meeting certain terms, covenants and conditions contained therein, and said proposed lease is attached to said Option as Exhibit No. 1 and is a part thereof; and

WHEREAS, as part of said development, Eichenlaub desires to install a public artwork consisting of a functional artistic gate constructed of stainless steel tubing and

three (3) imagery panels depicting the Star, Lighting and Snipe classes of sailboats racing;
and

WHEREAS, in accordance with BPC Policy 609, Port Public Art Program, under Policy Guidelines, Eichenlaub is required to incorporate a public art plan in its design submittals and provide public artwork(s) equal to One Per Cent (1%) of the total proposed development budget; and

WHEREAS, in accordance with said BPC Policy 609, Eichenlaub is further required to prepare a report and conceptual plans suggesting appropriate locations(s), if any, within the leased premises for inclusion of art and submit it to the District; and

WHEREAS, the District's Public Art Committee shall promptly consider the submitted information and recommend approval, rejection or amendment to the design recommendations; and

WHEREAS, the Public Art Committee has recommended approval of the public artwork to the Board of Port Commissioners of the District, NOW, THEREFORE,

BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

That in the event Eichenlaub meets all of the terms, covenants and conditions contained in said Option, and executes the proposed lease, the Board concurs with the recommendation of the Public Art Committee and hereby approves of the installation of the artwork consisting of a functional artistic gate constructed of stainless steel tubing and three (3) imagery panels depicting the Star, Lighting and Snipe classes of sailboats racing.

ADOPTED this 2nd day of September, 2008.

sw
9/2/08

AGENDA ITEM 16**SAN DIEGO UNIFIED PORT DISTRICT**

Reference Copy:
Document No. 54213

DATE: September 2, 2008

SUBJECT: EICHENLAUB MARINE

- A) RESOLUTION CONSENTING TO \$659,190 ENCUMBRANCE OF EICHENLAUB MARINE, INC. DBA EICHENLAUB MARINE'S LEASEHOLD ESTATE IN FAVOR OF REGENTS BANK WITH CONDITIONS**
- B) RESOLUTION APPROVING PUBLIC ART FOR EICHENLAUB MARINE, INC. DBA EICHENLAUB MARINE**

EXECUTIVE SUMMARY:

Eichenlaub Marine, Inc. dba Eichenlaub Marine (Eichenlaub) operates a boatyard located at 2608 Shelter Island Drive. In November 2007, the Board granted Eichenlaub an Option to lease and redevelop the boatyard (Option).

Regents Bank has agreed to loan Eichenlaub \$659,190 to finance the redevelopment project, which would satisfy one of the conditions to the Option agreement. The bank's appraisal indicates a prospective leasehold value of \$2,135,000. The loan-to-value ratio is approximately 30%, which is less than the 75% loan-to-value ratio required under Administrative Practices of Board Policy 355. The Board is requested to consent to the encumbrance of Eichenlaub's new lease (subject to exercise of the Option).

The Eichenlaub project includes a public art component which has been reviewed and recommended by the Public Art Committee. Eichenlaub's public art design is for installing a functional artistic gate constructed of stainless steel tubing and three imagery panels depicting the Star, Lightning and Snipe classes of sailboats racing. The Board is requested to approve the public art as this is a condition of the Option.

RECOMMENDATION:

- A) Adopt Resolution consenting to \$659,190 encumbrance of Eichenlaub Marine, Inc. dba Eichenlaub Marine's leasehold estate (subject to Option exercise) in favor of Regents Bank with conditions.
- B) Adopt Resolution approving proposed public art for Eichenlaub Marine, Inc. dba Eichenlaub Marine.

FISCAL IMPACT:

This Board action will not result in any fiscal impact. However, when the option is exercised and the new lease commences, rent to the District is projected to increase from \$45,600 per year to approximately \$49,400 upon completion of construction.

ACTION TAKEN: 09-02-08 - Resolutions 2008-163 and 2008-164

DISCUSSION:

Eichenlaub has occupied property on Shelter Island since 1950, and currently has a 19-year lease with the District expiring in 2011. In November 2007, the Board approved Eichenlaub's redevelopment project and granted Eichenlaub a 12-month, 17-day Option to enter into a new 30-year lease and to redevelop the boatyard. The terms of the Option agreement, which expires November 30, 2008, are summarized on the attached OPTION AGREEMENT INFORMATION SUMMARY. The terms of both the existing lease and the new 30-year lease attached to the Option are summarized on the attached EXISTING AND PROPOSED LEASE INFORMATION SUMMARY.

FINANCING:

In order to exercise its Option and enter into the new lease, Eichenlaub is required to obtain financing for its redevelopment project. Board consent is requested for a \$659,190 loan to be made by Regents Bank. Based on the bank's appraised stabilized leasehold value of \$2,135,000, the loan-to-value ratio is approximately 30%. This ratio comports with District leasing policy which requires a loan-to-value ratio of less than 75%. The loan will be a fixed rate loan for a seven (7)-year period amortized over 25 years with an interest rate of 7.11%.

Staff recommends that the District's consent for the lease encumbrance be conditioned on the following:

1. The amount of the leasehold interest deed of trust will not exceed \$659,190.
2. It is understood that the District has not reviewed or approved the terms and conditions of the proposed encumbrance documents, such as the leasehold deed of trust and note secured thereby, and is not agreeing to be a party to the leasehold deed of trust, note or other document.
3. All terms, conditions, provisions and covenants of the lease (when granted) will remain and continue in full force and effect and no further encumbrance of the lease or any part thereof shall be made without the prior written consent of the District in each instance, as provided in the lease.
4. Nothing contained in the District's consent shall be construed to modify, amend or waive any provisions of the lease.
5. The District's consent for the encumbrance shall be null and void and of no further force and effect if Eichenlaub has not entered into the new lease with the District by the date the Option terminates.

PUBLIC ART:

To fulfill its public art requirement pursuant to BPC Policy 609, Eichenlaub proposes the installation of a functional artistic gate constructed of stainless steel tubing and three imagery panels depicting the Star, Lightning and Snipe classes of sailboats racing. Attached are copies of the Artists' drawing of the artwork. Eichenlaub is required to spend \$15,000 as a percentage of the redevelopment costs. The project cost is estimated to be equal to or greater than \$15,000 and will therefore meet or exceed the public art requirement. The Public Art Committee determined that the project meets the requirements of BPC Policy 609 and recommended approval at its December 12, 2007 meeting.

CONCLUSION:

Eichenlaub Marine, Inc. dba Eichenlaub Marine is a long-term District tenant in good standing and has demonstrated its commitment to invest in its leasehold as envisioned by the Administrative Practices of Board Policy 355. The Public Art Committee has reviewed the proposed public art and the project meets the requirements of BPC Policy 609. Staff recommends adopting the resolution consenting to the \$659,190 encumbrance and adopting the resolution approving the proposed public art as described above.

Port Attorney's Comments:

Not applicable.

Environmental Review:

Not applicable.

Equal Opportunity Program:

Not applicable.

PREPARED BY: William C. Miller
Asset Manager, Real Estate

OPTION AGREEMENT INFORMATION SUMMARY

Optionee: Eichenlaub Marine, Inc. dba Eichenlaub Marine

Location: 2608 Shelter Island Drive, San Diego

Area: 11,301 square feet - land
18,377 square feet - water

Project: Project consists of (i) refurbishing existing 3,625 square foot building to meet current building codes, changing the façade and reconfiguring the shop spaces; (ii) constructing an additional new building of approximately 2,600 square feet with high bay shop space and office space; (iii) replace existing floating docks with new docks, and new electrical and water lines; (iv) replace existing marginal wharf; (v) remove existing riprap and replace with new filter fabric and quarry granite rock; and (vi) increase on-site parking from four (4) to ten (10) spaces to include one (1) electric vehicle and one (1) handicap space

Term: 11/14/2007 – 11/30/2008 (12 months, 17 days)

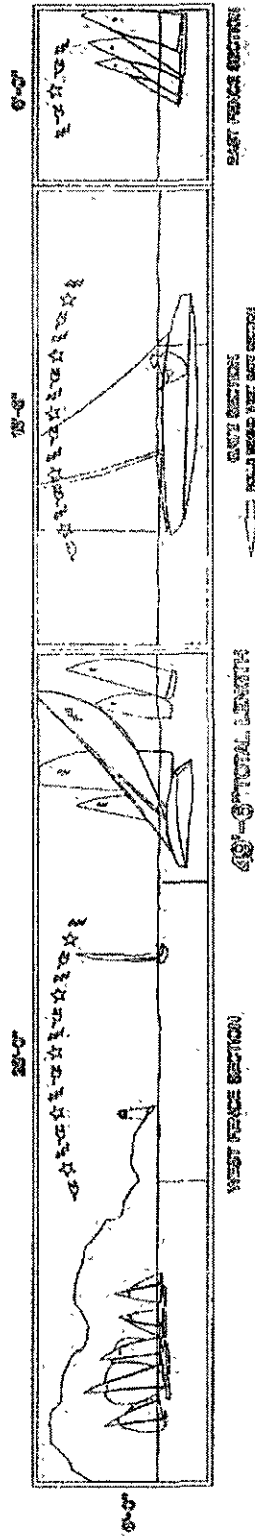
Option Consideration: \$500

Option Conditions Precedent to Option Exercise: Satisfy CEQA requirements, working drawings approved by District; obtain project financing; obtain development permits and performance bond; enter into construction contract; and provide Equal Employment Opportunity Program

EXISTING AND PROPOSED LEASE INFORMATION SUMMARY

	Existing	Proposed
Lessee:	Eichenlaub Marine, Inc. dba Eichenlaub Marine	Same
Location:	2608 Shelter Island Drive	Same
Area:	11,301 sq. ft. – land; 18,377 square feet – water	Same
Use:	Construction, maintenance, repair and painting of boats up to 65 feet in length; sale and installation of marine supplies, equipment, machinery and accessories on said boats and the sale of boats	Same
Term:	3/1/1992 – 2/28/2011 (19 years)	30 years
Rent:	\$3,800 per month (\$45,600 per year)	\$2,059 per month during the initial 18 month construction period and \$4,117 per month during the next forty-two months of the lease
Rent Reviews:	9/1/2009 is the last CPI adjustment	10 th and 20 th lease anniversaries with CPI adjustments every 5 th , 15 th and 25 th anniversaries
Construction Obligation:	None	<p>\$1,500,000 minimum investment in improvements of which \$15,000 is to be for public artworks. The improvements consist of (i) refurbishing existing 3,625 square foot building to meet current building codes, changing the façade and reconfiguring the shop spaces; (ii) constructing and additional new building of approximately 2,600 square feet with high bay shop space and office space; (iii) replace existing floating docks with new docks, and new electrical and water lines; (iv) replace existing marginal wharf; (v) remove existing riprap and replace with new filter fabric and quarry granite rock; and (vi) increase on-site parking from four (4) spaces to ten (10) to include one (1) electric vehicle and one (1) handicap space.</p> <p>Construction of improvements to be completed within 18 months of lease commencement</p>

	EXISTING (continued)	PROPOSED (continued)
Improvement Summary:	Two-story office/boatyard building, pier and boat slips and approximately 4 parking spaces.	Upon completion of construction, substantially the same improvements except upgraded and renovated, new high bay building, and 6 additional on-site parking spaces



EICHENLAUB BOATYARD PUBLIC ART PROPOSAL



REFERENCE COPY
#54213

Re Proposed Art Installation - }
Eichenlaub Marine, Inc., }
Shelter Island Drive, San Diego }
_____ }

RESOLUTION 2009-166

WHEREAS, the San Diego Unified Port District (District) and Eichenlaub Marine, Inc., a California corporation, (Eichenlaub) are parties to a lease dated 3 December 2008 for premises located at 2608 Shelter Island Drive in the City of San Diego for the exclusive use of construction, maintenance, repair and painting of boats up to Sixty Five (65) feet in length, sale and installation of marine supplies, equipment, machinery and accessories on said boats, marine sales and service berthing, and the sale of boats, and for no other purpose whatsoever, said lease is on file in the office of the District Clerk as Document No. 54213; and

WHEREAS, pursuant to Resolution 2008-164, adopted 2 September 2008, the Board of Port Commissioners (Board) of District concurred with the recommendation of the Public Art Committee and approved the installation of a public artwork consisting of a functional artistic gate constructed of stainless steel tubing and three (3) imagery panels depicting the Star, Lighting and Snipe classes of sailboats racing; and

WHEREAS, Eichenlaub has determined that the functional artistic gate will no longer be needed to secure the yard and therefore a new public art component is required to replace said gate; and

WHEREAS, Eichenlaub desires to install a new public artwork consisting of a mural which will be painted on the upper east wall of the existing Two (2) story building, depicting the image of a Cadenza sailboat owned and built by Carl Eichenlaub, showing the concept drawings fading into the sailboat's finished hull, with an accompanying depiction of the Cadenza sailboat in racing event; and

2009-166

WHEREAS, in accordance with BPC Policy 609, Port Public Art Program, under Policy Guidelines, Eichenlaub is required to incorporate a public art plan in its design submittals and provide public artwork(s) equal to One Per Cent (1%) of the total proposed development budget; and

WHEREAS, in accordance with said BPC Policy 609, Eichenlaub is further required to prepare a report and conceptual plans suggesting appropriate locations(s), if any, within the leased premises for inclusion of art and submit it to the District; and

WHEREAS, the District's Public Art Committee shall promptly consider the submitted information and recommend approval, rejection or amendment to the design recommendations; and

WHEREAS, the Public Art Committee has recommended approval of the public artwork to the Board of Port Commissioners of the District, NOW, THEREFORE,

BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

The Board concurs with the recommendation of the Public Art Committee and hereby approves of the installation of the artwork consisting of a mural which will be painted on the upper east wall of the existing Two (2) story building, depicting the image of a Cadenza sailboat owned and built by Carl Eichenlaub, showing the concept drawings fading into the sailboat's finished hull, with an accompanying depiction of the Cadenza sailboat in racing event.

ADOPTED this 1st day of September, 2009.

sw
9/1/09

AGENDA ITEM 10**SAN DIEGO UNIFIED PORT DISTRICT**REFERENCE COPY
#54213**DATE:** September 1, 2009**SUBJECT: RESOLUTION APPROVING PROPOSED PUBLIC ART FOR
EICHENLAUB MARINE, INC. DBA EICHENLAUB MARINE****EXECUTIVE SUMMARY:**

Eichenlaub Marine, Inc. dba Eichenlaub Marine ("Eichenlaub") operates a boatyard located at 2608 Shelter Island Drive. In November 2007, the Board granted Eichenlaub an option to lease and redevelop the boatyard ("Option"). In September 2008, the Board approved the installation of a functional artistic gate to satisfy the public art component of the Option. In November 2008, Eichenlaub exercised its Option and entered into a new 30-year lease and began construction of the landside improvements. Eichenlaub has decided that a gate will no longer be needed to secure the yard; therefore, a new public art component is required to replace the functional artistic gate.

Eichenlaub has recently proposed a new public art component, which is a mural to be painted on the upper east wall of the existing two-story building, depicting a 45-foot sailboat owned and built by Carl Eichenlaub. Eichenlaub's new public art design has been reviewed and recommended by the Public Art Committee.

RECOMMENDATION:

Adopt Resolution approving proposed public art for Eichenlaub Marine, Inc. dba Eichenlaub Marine.

FISCAL IMPACT:

The Board action will not result in any fiscal impact.

COMPASS STRATEGIC GOALS:

The mural project will help to enhance the visual effect of sustaining a dynamic and diverse waterfront through the use of public art.

This agenda item supports the following Strategic Goal(s).



- ☐ Promote the Port's maritime industries to stimulate regional economic vitality.
- ☒ Enhance and sustain a dynamic and diverse waterfront.
- ☐ Protect and improve the environmental conditions of San Diego Bay and the Tidelands.
- ☐ Ensure a safe and secure environment for people, property and cargo.

ACTION TAKEN: 09-01-2009 - Resolution 2009-166
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Page 2 of 2

- ☐ Develop and maintain a high level of public understanding that builds confidence and trust in the Port.
- ☐ Develop a high-performing organization through alignment of people, process and systems.
- ☐ Strengthen the Port's financial performance.
- ☐ Not applicable.

DISCUSSION:

Eichenlaub has occupied property on Shelter Island since 1950 and currently has a new 30-year lease with the District expiring in 2038. The terms of the new 30-year Lease are summarized on the attached LEASE INFORMATION SUMMARY. In order to fulfill its public art requirement pursuant to BPC Policy 609, Eichenlaub proposes to have a mural painted on the upper east wall of an existing two-story building. The mural will include an image of a Cadenza sailboat showing the concept drawings fading into the sailboat's finished hull, with an accompanying depiction of the Cadenza in a racing event. Attached is the artist's drawing of the artwork. Eichenlaub is required to spend \$12,000 as a percentage of its redevelopment costs. The project cost is estimated to be equal to or greater than \$12,000 and will therefore meet or exceed the public art requirement. The Public Art Committee determined that the project meets the requirements of BPC Policy 609 and recommended approval at its July 29, 2009 meeting.

Eichenlaub has demonstrated its commitment to invest in its leasehold as envisioned by the Administrative Practices of Board Policy 355. The Public Art Committee has reviewed the newly proposed public art and the mural project meets the requirements of BPC Policy 609. Staff recommends adopting the resolution approving the proposed public art as described above.

Port Attorney's Comments:

Not applicable.

Environmental Review:

Not applicable.

Equal Opportunity Program:

Not applicable.

PREPARED BY: William Miller
Asset Manager, Real Estate

Re Encumbrance of Lease]
of Eichenlaub Marine, Inc.,]
Shelter Island Drive]
_____]

RESOLUTION 2010-66

WHEREAS, the San Diego Unified Port District (District) and Eichenlaub Marine, Inc., a California corporation, (Eichenlaub Marine) are parties to a lease dated 3 December 2008 covering approximately 11,401 square feet of land area and approximately 18,377 square feet of water area located at 2608 Shelter Island Drive in the City of San Diego, said lease is on file in the office of the District Clerk as Document No. 54213; and

WHEREAS, pursuant to Resolution 2008-163, adopted 2 September 2008, the District consented to the encumbrance of Eichenlaub Marine's leasehold estate by a Leasehold Interest Deed of Trust in favor of Regents Bank, N.A. securing a Six Hundred Fifty Nine Thousand One Hundred Ninety Dollar (\$659,190.00) loan; and

WHEREAS, Eichenlaub Marine desires to replace said loan from Regents Bank, N.A. with a new loan from said Regents Bank, N.A.; and

WHEREAS, Eichenlaub Marine intends to encumber said lease with a Deed of Trust to secure a loan of Eight Hundred Fifty Thousand Dollars (\$850,000.00) from Regents Bank, N.A.; and

WHEREAS, said encumbrance requires the consent of the District, NOW, THEREFORE,

BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

1. The District consents to the encumbrance of Eichenlaub Marine's leasehold estate by a Leasehold Interest Deed of Trust in favor of Regents Bank, N.A., securing a loan not to exceed Eight Hundred Fifty Thousand Dollars (\$850,000.00).

2010-66

2. The loan term will not exceed beyond the lease expiration date of October 31, 2038.

3. That all of the terms, conditions, provisions and covenants of said lease shall remain and continue in full force and effect and there shall be no further encumbrance of said leasehold estate or any part thereof nor any transfer of an encumbered interest except in accordance with and as specifically provided for in said lease.

4. It is understood that the District has not reviewed or approved the terms and conditions of the proposed encumbrance documents such as the Leasehold Interest Deed of Trust, the note secured thereby or other loan documents and is not agreeing to be a party to the Leasehold Interest Deed of Trust, note or any other such documents.

5. Nothing contained in this resolution is intended or shall be construed to waive, modify or amend any of the provisions of said lease between the District and Eichenlaub Marine.

6. In the event Eichenlaub Marine does not obtain financing from Regents Bank, N.A., as confirmed by receipt of final loan documents signed by both Eichenlaub Marine and Regents Bank, N.A., within Ninety (90) days of the date of adoption of this Resolution, the above consent shall be null and void and of no force or effect.

7. Eichenlaub Marine acknowledges that it will not seek rent relief as a result of not being able to meet its debt service or debt repayment obligations.

BE IT FURTHER RESOLVED that this consent is based upon the Eichenlaub Marine leasehold having no other loans in effect, as confirmed by receipt of a full reconveyance recorded in the Office of the Recorder of San Diego County within Ninety (90) days of the date of adoption of this Resolution, and in the event the District does not receive a copy of said recorded reconveyance within said time period, this consent shall be null and void, and of no force or effect.

ADOPTED this 4th day of May, 2010.

sw
5/4/10

SAN DIEGO UNIFIED PORT DISTRICTReference Copy
Document No. 54213**DATE:** May 4, 2010**SUBJECT: RESOLUTION CONSENTING TO \$850,000 ENCUMBRANCE OF EICHENLAUB MARINE, INC., DBA EICHENLAUB MARINE LEASEHOLD IN FAVOR OF REGENTS BANK, N. A., WITH CONDITIONS****EXECUTIVE SUMMARY:**

Eichenlaub Marine, Inc., dba Eichenlaub Marine (Eichenlaub) operates a boatyard located at 2608 Shelter Island Drive. Regents Bank, N. A., (Regents) has agreed to loan Eichenlaub \$850,000 to replace its existing construction loan used to redevelop the leasehold which has now been completed. Staff has reviewed the terms of the loan in accordance with the Administrative Practices of Board of Port Commissioners Policy No. 355 and recommends Board consent to the lease encumbrance with conditions.

RECOMMENDATION:

Adopt Resolution consenting to \$850,000 encumbrance of Eichenlaub Marine, Inc., dba Eichenlaub Marine leasehold in favor of Regents Bank, N. A., with conditions.

FISCAL IMPACT:

The proposed Board action has no fiscal impact to the District.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goals:

- ☐ Promote the Port's maritime industries to stimulate regional economic vitality.
- ☒ Enhance and sustain a dynamic and diverse waterfront.
- ☐ Protect and improve the environmental conditions of San Diego Bay and the Tidelands.
- ☐ Ensure a safe and secure environment for people, property and cargo.
- ☐ Develop and maintain a high level of public understanding that builds confidence and trust in the Port.
- ☐ Develop a high-performing organization through alignment of people, process and systems.
- ☐ Strengthen the Port's financial performance.
- ☒ Not applicable.

DISCUSSION:

Eichenlaub has a 30-year lease with the District to operate a boatyard which commenced on November 1, 2008. Currently, Eichenlaub pays flat rent of \$49,404 annually. Pursuant to the lease, the District has the right to adjust rent to market in lieu of a share of the proceeds from financing, however, staff does not recommend a rent increase at this time because the current rent reflects market rates. The lease is summarized in the attached LEASE INFORMATION SUMMARY.

Eichenlaub has a \$659,190 construction loan with Regents secured by Eichenlaub's leasehold interest. Eichenlaub is requesting the District's consent to permanent financing in the amount of \$850,000 provided by Regents and secured by Eichenlaub's leasehold interest to replace the existing construction loan.

The loan is equal to 52% of the appraised leasehold value of \$1.63 million and therefore complies with the maximum 75% loan-to-value ratio required under the Administrative Practices of BPC No. 355. The terms of the loan are as follows:

Lender:	Regents Bank, N. A.
Purpose:	Replace existing construction loan with Regents Bank, N. A.
Amount:	\$850,000
Rate:	Fixed at 6.5%
Term:	20-year amortization

Staff recommends that the District's consent be conditioned on the following:

1. The loan amount will not exceed \$850,000.
2. The loan term will not extend beyond the lease expiration date of October 31, 2038.
3. All other terms, conditions, provisions and covenants of the lease shall remain and continue in full force and effect and no further encumbrance of the lease or any part thereof shall be made without the prior written consent of the District in each instance, as provided in the lease.
4. It is understood that the District has not reviewed or approved the terms and conditions of the proposed encumbrance documents, such as the leasehold deed of trust or note secured thereby and is not agreeing to be a party to the leasehold deed of trust, note or other documents.
5. Nothing contained in the conditions of approval shall be construed to modify, amend or waive any provisions of the lease.

6. The District's consent to the encumbrance shall be null and void and of no further force and effect if Lessee does not obtain financing from Regents, as confirmed by receipt of final loan documents signed by both Eichenlaub and Regents, within ninety (90) days of District's consent.
7. Eichenlaub acknowledges that it will not seek rent relief as a result of not being able to meet its debt service or debt repayment obligations.
8. The District's consent to this encumbrance is conditioned upon the leasehold having no other loans in effect, as confirmed by receipt of a full reconveyance recorded in the Office of the Recorder of San Diego County within ninety (90) days of District's consent.

Port Attorney's Comments:

Not applicable.

Environmental Review:

This proposed Board action does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) guidelines Section 15378 and is not subject to CEQA, as amended.

Equal Opportunity Program:

Not applicable.

PREPARED BY: William C. Miller
Asset Manager, Real Estate

LEASE INFORMATION SUMMARY

Lessee:	Eichenlaub Marine, Inc., dba Eichenlaub Marine
Guarantor:	Carl M. Eichenlaub, Jr.
Location:	2608 Shelter Island Drive
Area:	11,401 square feet – land 18,377 square feet – water
Use:	Construction, maintenance, repair and painting of boats up to 65 feet in length; sale and installation of marine supplies, equipment, machinery and accessories on said boats and the sale of boats.
Term:	30 years, commencing on November 1, 2008 and ending on October 31, 2038.
Rent:	\$49,404 per year.
CPI Rent Adjustments of Minimum Rent:	Every 5 th , 15 th and 25 th lease years commencing on November 1, 2013.
Rent Reviews:	Every 10 th and 20 th lease years commencing November 1, 2018.
Improvement Summary:	Two story office/boatyard, high bay building, pier and boat slips and 10 on-site parking spaces.

