

GROUND LEASE

(Harbor Terrace)

by and between

PORT SAN LUIS HARBOR DISTRICT
a California harbor district

("Landlord")

and

RTA HARBOR TERRACE, LLC,
a Delaware limited liability company

("Tenant")

Dated as of February 15, 2018

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LIST OF EXHIBITS

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Exhibit "C"	Scope of Development
Exhibit "D"	Site Plan
Exhibit "E"	Reserved
Exhibit "F"	Estoppel Certificate
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Exhibit "H"	Permitted Exceptions
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Exhibit "J"	Reserved
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Exhibit "L"	Guaranty
Exhibit "L2"	Budget of Phased Improvements
Exhibit "L3"	Completion Sign-Off of Phased Improvements

GROUND LEASE

(Harbor Terrace)

This Ground Lease ("**Lease**") is dated as of the ____ day of _____, 2018 (the "**Effective Date**"), and is entered into by and between the following (collectively, the "**Parties**"): PORT SAN LUIS HARBOR DISTRICT, a California harbor district ("**Landlord**" or "**District**"), and RTA HARBOR TERRACE, LLC, a Delaware limited liability company ("**Tenant**"). The Landlord and Tenant are at times collectively referred to herein as the "**Parties**" or individually as the "**Party**."

RECITALS

A. Landlord is fee owner of that certain real property consisting of approximately thirty-four (34) acres located at Avila Beach Drive and Diablo Canyon Road, in Avila Beach, San Luis Obispo County ("**County**"), California ("**State**"). In addition, the District is a subtenant under that certain sublease dated January 23, 2015, by and between the District and San Luis Bay Limited Partnership for certain real property consisting of approximately .7 acres of land (the "**.7 Acres**") located adjacent to the Site. Except as explicitly identified herein, the District's 34 acres site and the .7 Acres are collectively referred to as "**Harbor Terrace**", the "**Leased Premises**" or the "**Site**." Harbor Terrace currently consists of a recreational campground for RV camping (the "**RV Site**") and an area of approximately seven (7) acres which consists of (i) the Harbor District boat storage area/yard ("**Boat Storage Area**"), (ii) the Harbor District gear storage area/yard ("**Gear Storage Area**"), and (iii) the Harbor District lay down yard/District offices ("**District Yard**"), which are located immediately adjacent to and northerly of the RV Site, as depicted and legally described on Exhibit "A" attached hereto. The Boat Storage Area, the District Yard and the Gear Storage Area shall collectively be referred to as the "**District Use Areas**."

B. Landlord desires to lease to Tenant the Leased Premises, including the RV Site and the District Use Areas and to sub-sublease the .7 Acres to Tenant, provided that Tenant subleases back to Landlord the District Use Areas. Tenant intends to develop on the RV Site a new recreational facility for RV and tent camping, other lodging and related amenities, all in accordance with the terms and conditions contained in this Lease. The term "**Leased Premises**" shall collectively refer to the RV Site, the District Use Areas and the .7 Acres, together with all buildings, structures, improvements and fixtures now or hereafter existing or erected thereon.

C. Landlord intends that Harbor Terrace be developed and operated in a manner implementing the specific development goals and objectives adopted by the "Port Master Plan (May 2004), Revised Per Local Coastal Plan Update 2007" ("**Master Plan**") and the Local Coastal Plan for the San Luis Bay Area Plan (Coastal) ("**LCP**"). The development of the Leased Premises is referenced herein as "the Project". The Master Plan and the LCP were adopted by the Harbor Commission (the "**Harbor Commission**"), the County of San Luis Obispo and the California Coastal Commission (the "**Coastal Commission**") after extensive environmental review and are incorporated into and made a part of this Lease.

D. Landlord and the State Coastal Conservancy ("**SCC**") subsequently developed a coastal development permit application and environmental impact report ("**EIR**") for the development of Harbor Terrace into a first-class recreational facility for public camping, lodging, and other related activities (the "**Project**"), which application was submitted to the County on March 19, 2014.

E. The draft EIR for the Project was released for comment on September 15, 2014. Comments were accepted through November 14, 2014 and the final EIR (“FEIR”) was certified on January 27, 2015.

F. Subsequent to certification of the FEIR, a hearing on the coastal development permit (“CDP”) application was held before the County Planning Commission in March, 2015, and the CDP was approved on June 16, 2015, and is now final.

G. Landlord sought requests for proposals to lease and develop Harbor Terrace in order to implement the Project. Tenant, along with other interested parties, submitted a proposal in response to the request for proposals in 2014, and submitted an Addendum to such proposal dated September 16, 2015 (collectively, the “**Tenant Proposal**”). After due consideration and analysis of the submitted proposals, Landlord decided to negotiate with Tenant toward an agreement for the development and leasing of Harbor Terrace. On or about September 22, 2015, Landlord and Tenant (operating as Red Tail Acquisitions LLC, its related entity) entered an Agreement Establishing Exclusive Right to Negotiate (“**ERN**”), the purpose of which was to allow the Parties an opportunity to negotiate a final and binding development and lease agreement. The ERN was extended on multiple occasions by mutual agreement of the Parties.

H. The Parties have negotiated pursuant to the ERN and, as a result of those negotiations, desire to enter into this Lease with respect to the Leased Premises for the purposes of development, use and operation of Harbor Terrace.

I. The Master Plan, the LCP, the FEIR and the CDP are collectively referred to herein as the “**Existing Land Use Approvals.**”

NOW, THEREFORE, in consideration of the payments to be made hereunder and the covenants and agreements contained herein, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the real property hereinafter defined as the “Leased Premises” upon the following terms and conditions.

ARTICLE 1 LEASED PREMISES.

1.1. Leased Premises.

Landlord leases to Tenant and Tenant leases from Landlord the Leased Premises, together with all easements, rights and appurtenances relating thereto, for the consideration and subject to the terms and conditions set forth in this Lease.

Notwithstanding anything to the contrary in this Lease, it is the intent of the Landlord to reserve (and the Landlord does hereby reserve) from the estate and rights conveyed with this Lease, the sole and exclusive right to all water rights, coal, oil, gas, and other hydrocarbons, geothermal resources, precious metal ore, base metal ore, industrial-grade silicates and carbonates, and other like materials and minerals of every kind and character, metallic or otherwise, whether or not presently known of science or industry, now known to exist or hereafter discovered on, within, or underlying the surface of the Leased Premises regardless of the depth below the surface at which such substance may be found; provided, that Landlord, and its successors and assigns, shall not have the right to enter through the surface or the first two hundred (200) feet of the subsurface of the Leased Premises for the extraction of such materials or minerals.

1.2. District Subleased Premises. Tenant hereby agrees to sublease to Landlord and Landlord agrees to sublease from Tenant that portion of the Leased Premises known as the District Use Area, together with all easements, rights and appurtenances relating thereto, for the consideration and subject to the terms and conditions set forth in that certain sublease by and between the Parties, the form of which is attached hereto as Exhibit "K" and incorporated herein (the "**District Sublease**"). The term of the District Sublease shall run concurrently with the Term (as defined below) of this Lease and the District shall have the option to surrender all or any portion of the District Use Area to Tenant at any time during the term of the District Sublease. The District Sublease shall include reciprocal easements for ingress and egress through the Leased Premises to the District Use Area. Tenant acknowledges and agrees that the District Sublease is intended to allow Landlord to use, control, and occupy the District Use Areas pursuant to the terms and conditions contained in the District Sublease. Tenant waives its rights to argue or contend that the District Sublease is not valid for any reason whatsoever, including that the Landlord cannot lease its own fee interest property, and Tenant agrees to modify or amend the District Sublease, or restate its terms in another agreement as necessary to effectuate the intent of this Lease and/or the terms and conditions of the District Sublease to permit and allow Landlord use as stated therein.

ARTICLE 2 TERM.

2.1. Term.

The term of this Lease ("Term") shall begin on the "Effective Date" and shall end at midnight on the fiftieth (50th) anniversary of said Effective Date, unless the Term of this Lease is sooner terminated or extended as provided for herein. Notwithstanding the foregoing, the term of the .7 Acres will terminate in December 2067 (approximately one month prior to the 50th Anniversary date, unless the sublease between the District and San Luis Limited Partnership is extended by exercise of the District's option.

2.2. Possession and Covenant of Enjoyment.

2.2.1 Possession of the Leased Premises shall be delivered to Tenant on the Effective Date and Tenant shall take possession as of that date, subject to Landlord's right to enter upon the Leased Premises as expressly provided herein and in the District Sublease.

2.2.2 Except as expressly provided herein, Landlord has made no representations or warranties, express or implied, with respect to the Leased Premises and Tenant shall acquire no rights, easements or licenses in or to the Leased Premises by implication or otherwise except as expressly set forth herein. Landlord shall not be responsible for any latent or patent defect in, or the existence of any condition on, the Leased Premises, and the Rent hereunder shall in no case be withheld or diminished on account of any defect in the Leased Premises or because of the existence of any condition in, on or under the same, or for any damage occurring thereto.

2.2.3 Concurrently with the execution of this Lease, the Parties shall execute and thereafter record in the Official Records of the County Recorder Office, a Memorandum of Lease in the form of Exhibit "G" attached hereto (the "**Memorandum of Lease**"), giving notice of the existence of this Lease and the Term hereof. Tenant hereby acknowledges and represents to Landlord that Tenant has had ample opportunity to inspect and evaluate the Leased Premises and the feasibility of the uses and activities Tenant is entitled to conduct thereon; that Tenant is experienced in real estate development;

that, except as expressly provided in Section 15.2 below, Tenant will rely entirely on Tenant's experience, expertise and its own inspection of the Leased Premises in its current state in proceeding with this Lease.

2.2.4 In the event that this Lease is terminated for any reason prior to the end of the Term, Tenant shall execute and deliver to Landlord within ten (10) Business Days a quitclaim deed or such other document or documents terminating the Memorandum of Lease as Landlord may require in its reasonable discretion. Tenant shall pay the cost of recording said documentation.

2.2.5 Prior to the issuance of a grading permit to Tenant, the Parties mutually understand and agree that District shall be permitted to continue use of the Leased Premises in a manner consistent with its use prior to the execution of this Lease.

2.3. Due Diligence and Entitlements. Prior to commencement of construction of the Improvements (as defined in Section 4.3 below), Tenant shall, at Tenant's sole cost and expense, exercise commercially reasonable efforts to satisfy all requirements and conditions to Tenant's planned development of the Project on the Leased Premises, including without limitation, the following: conduct any and all additional due diligence of the Leased Premises as so desired by Tenant, including but not limited to, review of the Title Documents pursuant to Section 2.4 below, obtaining all additional entitlements and land use approvals or amendments or revisions to the Existing Land Use Approvals, from the applicable governmental agencies; obtaining design and plan approvals of the Improvements (as defined in Article 4 below) to be constructed on the Leased Premises; obtaining any necessary financing commitments; conducting economic feasibility studies and analysis; and all other matter related to the development and construction of Tenant's proposed Project. Tenant is aware of pending deadlines related to existing Land Use Approvals and expressly assumes the risks of expiration or non-renewal.

2.4. Review of Title Documents. Tenant acknowledges that prior to the execution of this Lease, it had the right to review and approve any and all conditions of title to the Leased Premises in addition to the preliminary title report, with copies of all exception documents referred to therein, and a copy of the latest ALTA Survey in Landlord's possession (the "**Title Documents**"). In addition, Tenant acknowledges that it has had the opportunity to obtain and/or review a current ALTA Survey prior to its execution of this Lease. Tenant accepts the condition of title of the Leased Premises subject only to the Permitted Exceptions attached hereto as Exhibit "H".

2.5. Right to Terminate. Tenant shall have the election in its reasonable discretion to terminate this Lease at any time before the Tenant's commencement of construction of the Project in the event that the construction of the Project is deemed economically unfeasible, due to (1) material changes to the Existing Land Use Approvals imposed by a third party with authority to make such changes (2) the discovery of Hazardous Materials in excess of the Cost Cap, as set forth in Section 4.7 below; or (3) any Challenges brought against the Project or a Force Majeure Event, each as set forth in Section 4.12 below.

ARTICLE 3 RENT. SEE EXHIBIT "I" ("RENT PAYMENTS").

ARTICLE 4 USES.

4.1. Use of the Leased Premises. Tenant covenants and agrees for itself, its successors and assigns, which covenants shall run with the land and bind every successor or assign in interest of Tenant, that during development and throughout the Term of the Leased Premises pursuant to this Lease, the Leased Premises shall not be improved, used or occupied in violation of any federal, state or local

governmental or quasi-governmental bodies and authorities having jurisdiction over the Parties or the Site, including without limitation, the County and the Port San Luis Harbor District (collectively, the "**Governmental Authorities**").

4.1.1 Furthermore, neither Tenant nor its successors or assigns shall maintain, commit, or permit the maintenance or commission on the Leased Premises, or any portion thereof, of any nuisance, public or private, as now or hereafter defined by any statutory or decisional law applicable to the Leased Premises, or any portion thereof. Notwithstanding anything to the contrary in this Lease, including the general provisions of this Section 4.1 and the provisions of Sections 4.2, 4.3 and 4.4 below, Tenant hereby covenants on behalf of itself, and its successors and assigns, which covenants shall run with the land and bind every successor and assign in interest of Tenant, that Tenant and such successors and assigns shall use the Leased Premises solely for the purpose of constructing and operating the Improvements generally described below and more particularly described in that certain Scope of Development attached hereto as Exhibit "C", and incorporated herein (the "**Scope of Development**"), in accordance with and of the quality prescribed by this Lease and the Scope of Development. Tenant hereby agrees that such use shall be conducted in compliance with all requirements of and conditions imposed by this Lease, all Governmental Authorities applicable to the Leased Premises and any approvals and permits issued by the County in connection with approval of the Improvements, including, without limitation, all conditions of approval or mitigation measures adopted or imposed by the County in connection with approval of the Improvements, which conditions and requirements are hereby incorporated by reference. Except as specifically provided herein, the Leased Premises shall be used by Tenant for no other purpose without the prior written consent of the Landlord.

4.1.2 Schedule of Performance; Improvement Plans. Tenant shall comply with the Schedule of Performance attached hereto as Exhibit "B", and incorporated herein (the "**Schedule of Performance**"), and shall specify, among other things, the timing and deadlines for the submission by Tenant to Landlord and the obtaining by Tenant of Landlord's approval of various submissions, including preliminary and final drawings, grading plans, site development plans, architectural, mechanical, electrical, structural and other plans, specifications, elevations and renderings, landscape plans, and parking plans (collectively, "**Plans**") for the Improvements to be constructed on the Leased Premises and the District Use Areas by Tenant. The Schedule of Performance also specifies outside dates for the commencement, progress and completion of the Improvements to be constructed by Tenant pursuant to this Lease. Tenant further agrees that, once Tenant commences construction of any of the Improvements (or any portion thereof), Tenant shall diligently prosecute the same to completion without substantial interruption, except as expressly excused by the provisions of this Lease. Without limiting the generality of the foregoing, Tenant acknowledges and agrees that, after Tenant commences construction of any of the improvements, the substantial cessation of construction for thirty (30) consecutive days shall, unless expressly excused by other provisions of this Lease, be deemed a failure by Tenant to prosecute the construction.

4.1.3 Site Plan for Proposed Project. Concurrent with execution of this Lease, the Site Plan attached hereto as Exhibit "D" has been approved by Landlord and Tenant, which may be replaced by the Parties from time to time, to guide the development of the Leased Premises and Harbor Terrace as a whole. The Parties understand that the Site Plan still requires substantial conformance approval from the Harbor Commission, the Coastal Commission and the SCC in accordance with the Schedule of Performance and may change accordingly. The Site Plan shall provide a conceptual framework for overall development of Harbor Terrace, including the District Use Areas, and, together with the Scope of Development, shall depict and describe the proposed land uses on the entire Site, including the general

area of the building pads and total square footage, and the proposed circulation system for the Site. Adjustments or changes in the Site Plan or Improvements which (i) reduce the number of recreational vehicle sites, tent camping sites, or other visitor occupied sites; (ii) materially reduce the anticipated revenue to be generated on the Leased Premises; (iii) materially alter the aesthetics of the Leased Premises or Improvements thereon; or (iv) are determined to be a material change in the reasonable judgment of the Harbor Manager (collectively, a **"Material Change"**) will be subject in each instance to approval by Landlord, which approval for each Material Change may be granted or withheld in the sole discretion of the Landlord.

4.1.4 Submission of Plans; Scope of Development. In compliance with Section 4.1.7 and Section 4.1.8 below, and no later than the applicable outside dates set forth in the Schedule of Performance, Tenant shall submit to Landlord the preliminary and final Plans for the Improvements to be constructed by Tenant, which Plans shall include, in addition to any other required documents or applications, any design review drawings or applications submitted by the Tenant to the County. All Plans must be acceptable to and approved by Landlord, provided that Landlord shall not unreasonably withhold approval of such Plans so long as they are consistent with the Site Plan, the Scope of Development, this Lease, any other Plans which have been previously approved by Landlord and all applicable Governmental Authorities, and so long as such Plans meet Landlord's architectural review requirements, land use mix objectives, and aesthetic and visitor serving commercial objectives and concerns relating to the appearance and use of the Improvements and all public spaces constructed in connection with those Improvements. Landlord and Tenant shall communicate and consult informally, as frequently as is necessary, to ensure that the formal submission of all documents and Plans to Landlord can receive reasonably prompt and speedy consideration. Any Plan, once approved by Landlord, shall not be subsequently disapproved by Landlord. Landlord approval shall not constitute the approval of the County and, in addition to any Landlord approvals hereunder, Tenant shall obtain all County approvals required for construction and operation of the Project. If Tenant desires to make any changes in the Plans after their review and approval by Landlord, Tenant shall submit such proposed changes to Landlord for its review and approval in accordance with the standards for approval set forth herein, except that, notwithstanding anything which is or appears to be to the contrary in Section 4.1.8, the proposed changes to the Plans shall not be required to be consistent with that aspect of the previously approved Plans which would be superseded by the proposed changes.

Notwithstanding anything herein to the contrary, any and all use of the Site, including the Leased Premises and the District Use Areas, shall meet all requirements, restrictions and provisions set forth in the Land Use Approvals, as the same may be revised or amended, and shall comply with all conditions of approval and mitigation monitoring measures adopted by or pursuant to the FEIR for the Project. Tenant shall be responsible for compliance with the foregoing Land Use Approvals and other development requirements, and all other governmental requirements or restrictions applicable to the Project, and Tenant represents and warrants that the construction and operation of the Improvements and all uses of the Leased Premises contemplated by or undertaken pursuant to this Lease are and shall remain consistent with all such requirements. Tenant further acknowledges that any modifications or amendments to the Land Use Approvals, or any conditions of approval or mitigation monitoring requirements, that Tenant may determine necessary or convenient, are within the sole and absolute discretion of Landlord and subject to the approval of other governmental agencies including, without limitation, the County and/or the Coastal Commission, and Tenant shall have no right to proceed with any such modifications or amendments without first securing all necessary approvals, including the discretionary approval of the Landlord.

4.1.5 Submission of Evidence of Financing.

4.1.5.1 Construction Loan and/or Evidence of Financing. Prior to the execution of this Lease, Tenant has represented and represents that Tenant is capitalized with non-restricted funds sufficient to fully complete the project anticipated by this Lease, as specifically set forth in the Guaranty attached hereto as Exhibit "L". In the event that Tenant decides to obtain construction financing, then prior to the execution of the loan documents and funding of the loan for any Improvements identified in the Schedule of Performance, Tenant agrees to deliver to Landlord, for its written approval, a written commitment(s) ("**Construction Commitment**") from an institutional lender (licensed to do business in California if legally required) by which Tenant confirms its ability to complete the development and construction of the Improvements in accordance with this Lease. Landlord review and approval or disapproval of said written commitments shall be solely for the purpose of determining the consistency of said written commitments with the terms and conditions of this Lease, any prior understanding or agreement reached by Landlord and such Construction Lender, and the Ground Lease. Tenant represents that any construction loan will not exceed more than fifty percent (50%) of the costs associated with the construction of the Improvements, including all related hard costs, soft costs, agency and development fees, and contingency, as are typically included in a construction loan. Tenant agrees to provide documentation demonstrating, to Landlord's satisfaction, the source of any funds providing the equity contribution and that (i) such funds are unqualifiedly available and irrevocably committed to funding the Development Costs, and (ii) the amount of funds committed is sufficient to cover all contemplated Development Costs (other than those financed by the Construction Loan) necessary to fully complete the Improvements.

4.1.6 Capitalization. Tenant will pre-fund (capitalize) the Development Costs in five (5) phases (each, a "**Phase**" and collectively, the "**Phases**") pursuant to the Phased Improvement Budget, as defined in this Section 4.1.6. Prior to the start of each Phase of work, Tenant will deposit the budgeted amounts in to the RTA Harbor Terrace LLC account and will deliver proof of funds to the District, in a total amount of \$7,956,921.00, as follows:

- A. Phase 1 = Design & Processing and Processing Fees in the amount of \$600,000.00.
- B. Phase 2 = Grading and Underground Utilities in the amount of \$1,722,689.00.
- C. Phase 3 = Site Improvements (Roads/Walls), Off-site Improvements, Lighting and Harbor Uses in the amount of \$1,671,014.00.
- D. Phase 4 = Commercial Buildings & Restrooms, Landscaping, Parking and Building Permits in the amount of \$1,957,373.00.
- E. Phase 5 = RV/Campsite Improvements in the amount of \$2,005,845.00.

4.1.7 Construction Contract. Prior to the commencement of any work identified in the Schedule of Performance, Tenant agrees to deliver to Landlord, for its review and approval, a fully executed and effective fixed price or guaranteed maximum price construction contract(s) (the "**Construction Contract**") for all of the Improvements, which Construction Contract shall obligate a reputable and financially responsible general contractor ("**General Contractor**"), capable of being bonded,

licensed in California and with experience in completing the type of Improvements contemplated by this Lease, to commence and complete the construction of the Improvements in accordance with this Lease at the price stated therein.

4.1.7.1 Subject to the requirements of all applicable Governmental Authorities, including California Civil Code Section 3268, each Construction Contract for any of the Improvements shall provide for a retention, until the final payment is due to the General Contractor, equal to at least ten percent (10%) of each progress payment, and shall provide that such retention shall not be paid to the General Contractor until the occurrence of both of the following events:

- (i) the expiration of thirty-five (35) days from the date of recording by Tenant as owner of a Notice of Completion for the applicable Improvements, which Tenant agrees to record promptly within the times specified by law for the recording of such Notice; and
- (ii) the settlement and discharge of all liens and charges claimed by persons who supplied either labor or materials for the construction of the applicable Improvements.

4.1.7.2 Each Construction Contract shall give Landlord the right, but not the obligation, to cure defaults thereunder and, upon termination of this Lease, to assume Tenant's obligations and rights under the contract; provided, that such right to cure and assume that contract shall be subject to the right, if any, of Tenant's Construction Lender with respect to such Construction Contract.

4.1.7.3 Landlord review and approval or disapproval of each Construction Contract shall be for the purpose of determining the consistency of said Construction Contract with the terms and conditions of this Lease. Landlord shall approve or disapprove said Construction Contract within ten (10) Business Days of its submission. Landlord approval of any Construction Contract shall not constitute a waiver by Landlord of any breach or violation of this Lease that is a result of acts that are or purport to be in compliance with or in furtherance of said Construction Contract.

4.1.7.4 Upon execution of this Lease, Tenant shall provide to Landlord that certain Limited Guaranty Agreement fully executed by Guarantor (as defined in the Guaranty) in the form attached hereto as Exhibit "L" (the "**Guaranty**"). The Guaranty shall unconditionally and absolutely guarantee for the benefit of Landlord the prompt payment of those costs of each of the five (5) Phases of construction of the improvements on the Leased Premises as specifically described in the Harbor Terrace – Budget – By Phase, attached hereto as Exhibit "L2" (the "**Phased Improvement Budget**"), up to a maximum total amount of \$7,956,921.00 (collectively, the "**Phased Improvements**"). The Guaranty guarantees completion of the Phased Improvements free from liens of materialmen, contractors, subcontractors, mechanics, laborers, and other similar liens. The total amount of the Guaranty shall be reduced following the completion and sign-off by Landlord of each of the five Phases of the Phased Improvements as specifically described in the Guaranty and pursuant to the Harbor Terrace Guaranty: Phases and Completion Sign-Off attached hereto as Exhibit "L3" (the "**Completion Sign-Off**"). Upon issuance by the County of San Luis Obispo of a Certificate of Occupancy or similar certificate issued by the County permitting an enterprise to open for business on the Leased Premises, the Guaranty shall terminate and become null and void.

4.1.8 Process for Landlord Approval of Plans. Landlord, as required by this Lease, shall approve or disapprove any Plans delivered to Landlord by Tenant with respect to any Improvements prior to the commencement of construction of those Improvements not later than fifteen (15) days after the submission of such Plans. Following commencement of construction of any Improvements, any Plans submitted by Tenant to Landlord pursuant to this Section for those Improvements shall be approved or disapproved by Landlord within ten (10) days of their submission. In the event Landlord, as required by this Lease, fails to approve or disapprove the Plans submitted prior to the commencement of construction of the affected Improvements within said fifteen (15) day period, or if Landlord fails to approve or disapprove the Plans for any Improvements submitted following the commencement of construction of those Improvements within said ten (10) day period, then Tenant shall deliver to Landlord written notice specifying the Plans previously submitted, the date of such submission, the approval or other action requested, and the fact that such notice constitutes the "second notice" under this Lease. Landlord shall thereupon approve or disapprove said Plans within five (5) Business Days of its receipt of the second notice from Tenant. If Landlord fails to notify Tenant of its approval or disapproval within such 5 Business Day period, then said Plans shall be deemed approved.

4.1.8.1 In the event of any disapproval, Landlord shall, concurrently with delivery of the notice of such disapproval to Tenant, inform Tenant in writing of the reasons for disapproval and the required changes to the Plans or other submissions ("**Plan Disapproval Notice**"). Tenant shall have ten (10) Business Days from receipt of any Plan Disapproval Notice from Landlord within which to notify Landlord that Tenant agrees to make such changes or objects to any requested changes. If Tenant does not notify Landlord in writing within such 10 Business Day period of its objections to the requested changes, Tenant shall be deemed to have approved of all such requested changes. If Tenant notifies Landlord within said 10 Business Day period of its objections to the requested changes, then Landlord and Tenant agree to meet to discuss the differences within ten (10) days after Tenant gives such notice. Following such meeting, Tenant shall revise such Plans or other submissions and resubmit them for approval to Landlord by the later of (i) thirty (30) days after receipt of the Plan Disapproval Notice, or (ii) ten (10) days after such meeting, unless the nature of such changes requires a longer period of time, in which case Tenant shall resubmit said Plans or other submissions as soon as possible, and, in any case, no later than seventy-five (75) days after receipt of the Plans Disapproval Notice. Any such resubmissions shall be approved or disapproved and revised within the times set forth herein with respect to the initial submission.

4.1.8.2 Notwithstanding the above time periods, if Landlord deems it appropriate or necessary to hold a public meeting of Landlord's Board of Commissioners (the "**District Board**") before the action specified is to be taken, the period for such action by Landlord, shall be extended by a reasonable amount of time, not to exceed thirty (30) days, in each case, for the holding of such public meeting; provided, that, the period of delay attributable to said public meeting shall extend the Schedule of Performance by a period of time equal to the period of delay caused by that meeting. In connection with any Plan revisions submitted for Landlord approval following commencement of construction on the Site, Landlord, in determining whether to hold a public hearing, and the appropriate scheduling of any public hearing, shall take due consideration of any delay expense that would be incurred by Tenant as a result of that hearing, and Landlord shall not unnecessarily call or unnecessarily delay any such hearing; provided, that, Landlord's good faith determination of the need for and scheduling of such hearing shall be conclusive and binding upon the Parties.

4.1.8.3 During the preparation of Plans and other submissions prior to their formal submission to Landlord and/or County, Tenant shall hold progress meetings to coordinate the preparation, submission and review thereof by Landlord. Landlord and Tenant shall communicate and consult informally as frequently as is necessary to ensure that the formal submission of all documents and Plans to Landlord can receive reasonably prompt and speedy consideration.

4.1.8.4 Notwithstanding any contrary provisions in Sections 4.1.7 and Section 4.1.8, the Landlord's Harbor Manager shall have authority to approve the Plans and any changes to the Plans unless the Harbor Manager determines the changes to be Material Changes requiring the approval of the Landlord's District Board.

4.2. Development of the Leased Premises: Tenant's Construction Obligations. Tenant shall commence construction of the Improvements on the Leased Premises in accordance with the following terms and conditions:

4.2.1 Plan Coordination and Implementation. The Parties shall consult and cooperate with each other with respect to the implementation of the Site Plan, the Plans and the construction of the Improvements so that the development of Site, including the Leased Premises and the District Property, can be accomplished in the most efficient and expeditious manner. Tenant acknowledges and understands that its failure to coordinate and cooperate with Landlord and/or to meet the deadlines contained in the Schedule of Performance for construction and completion of the Improvements would have an extremely adverse impact on Landlord, that time is of the essence with respect to the deadlines for performance of its obligations or exercise of its rights, and that Landlord will strictly enforce the Schedule of Performance and this Lease, subject to delays caused solely by Landlord and any Force Majeure Event pursuant to Section 13.9 below.

4.2.2 Construction of Improvements. Tenant shall construct the Improvements in accordance with the final Plans approved pursuant to Section 4.1.7 above, the Schedule of Performance, the Scope of Development, all applicable Governmental Authorities and Existing Land Use Approvals, and the terms and provisions set forth in this Lease, including construction and operation of the Improvements in accordance with all conditions of approval and environmental mitigation measures imposed upon the Tenant's project in connection with the Land Use Approvals, as may be amended or modified, and permits, which conditions of approval and mitigation measures are hereby incorporated by reference. Without limitation of the foregoing, Tenant specifically acknowledges and agrees that Tenant shall satisfy all conditions necessary to ensure that the Project conforms to all applicable CDP requirements and FEIR requirements.

4.2.3 Work of Improvement. Tenant shall carry out development, construction and operation of the Improvements, including, without limitation, any and all "Public Works" (as defined by applicable law), if any, comprised therein, in conformity with all applicable local, state and federal laws, including, without limitation, all applicable federal and state labor laws (including, without limitation, any applicable requirement to pay state prevailing wages). Tenant shall provide any and all disclosures, representations, statements, rebidding, and/or identifications which may be required by Labor Code Sections 1726 and 1781 (including, without limitation, any required to be made by the awarding body), as the same may be enacted, adopted or amended from time to time. Tenant shall provide and maintain or cause to be obtained and maintained any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by the Labor Code

(including, without limitation, Labor Code Section 1781), as the same may be enacted, adopted or amended from time to time. Tenant shall indemnify, protect, defend and hold harmless the Landlord and the Landlord Representatives with counsel reasonably acceptable to the Landlord, from and against any and all Claims (as defined in Section 4.7.2 below) (and including, without limitation, any suit, action, cause of action, demand, union challenge, administrative proceeding, wage award or fine) which, in connection with the development, construction and/or operation of the Improvements, including, without limitation, any and all Public Works, if any, comprised therein, results or arises in any way from any of the following, if applicable to the proposed Project: (1) the noncompliance by Tenant and/or District with any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages); (2) the implementation or the failure to properly implement the applicable provisions of Sections 1726 and 1781 of the Labor Code, as the same may be enacted, adopted or amended from time to time; (3) failure by Tenant and/or District to provide any required disclosure, representation, statement, rebidding and/or identification which may be required by Labor Code Sections 1726 and 1781 (including, without limitation, any required to be made by the awarding body), as the same may be enacted, adopted or amended from time to time; and/or (4) failure by Tenant and/or District to provide and maintain or cause to be provided and maintained any and all bonds to secure payment of contractors (including the payment of wages to workers performing any public work) which may be required by the Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time. Tenant hereby expressly acknowledges and agrees that Landlord has not represented to Tenant or its contractor(s) for the Improvements, in writing or otherwise, that the Improvements or the Project constitute or do not constitute a "Public Work," as defined in Section 1720 of the Labor Code. It is agreed by the Parties that, in connection with the development, construction and operation of the Improvements, including, without limitation, any Public Work, if any, comprised therein, Tenant shall bear all risks of payment or non-payment of state prevailing wages and/or the implementation of Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time. Tenant shall be solely responsible to seek a determination under California Labor Code Section 1773.5 to determine the applicability of prevailing wage applies to any portion of the project if Tenant deems appropriate. The foregoing indemnity shall survive the termination of this Lease and shall continue after recordation of the final Certificate of Completion, Certificate of Occupancy, or its equivalent with respect to the completion of the Project by or on behalf of Tenant pursuant to this Lease.

4.3. Definition of Improvements. Without limitation of the foregoing, Tenant acknowledges and agrees that the Project shall include the following, which shall be designed, developed, constructed and operated at Tenant's sole cost and expense (collectively, the "**Improvements**") unless specifically stated otherwise herein:

4.3.1 Any and all development of the Leased Premises (including the District Use Area and the .7 Acres) including, without limitation, grading, utility lines and connections, driveways, parking lots, retaining walls, drainage structures or facilities, lighting, curbs, gutters, sidewalks, and, and other necessary infrastructure;

4.3.2 A recreational vehicle facility with connections for no less than the number of units shown in the final Site Plan as approved by the Parties, the County and the Coastal Commission.

4.3.3 Tent sites consistent with the approved Site Plan or as otherwise agreed to by the parties to this Lease.

4.3.4 No less than Thirty-two (32) units, at final buildout, which will be hotel/motel units and/or RV Cabins (park model units), which number may be increased in a later phase of the development of the Site, but which may not exceed the approved number of hotel/motel and/or RV Cabins units as shown in the FEIR. Tenant will make every effort to increase number of such units to full capacity as allowed in the FEIR.

4.3.5 A main lodge, which may include visitor serving facilities and amenities such as restaurants, event uses, concession uses, a pool, recreation facilities, meeting rooms, and other similar facilities and amenities to enhance the Project and experience of its guests and visitors;

4.3.6 A market/store/café and/or restaurant;

4.3.7 Tenant shall grade the District Use Area to accommodate the District's installation of certain marine-harbor related uses as designated in the Master Plan and the LCP, and as shown on the Master Plan for the District's operations concurrent with Tenant's Lease of the Site, including a graded level pad in order for the District to provide storage of at least twenty (20) commercial fishermen's gear storage areas, each 20' x 40' separately secured, and a graded level pad in order for the District to provide storage of at least seventy (70) trailer boat storage spaces. Tenant shall also provide perimeter landscaping and fencing for the District Use Area. Following the installation and development identified in this Section 4.3, the Landlord shall assume ownership and control of the District Use Area pursuant to the District Sublease, unless otherwise specifically provided in this Agreement.

4.3.8 A Harbor Storage Yard/District Yard (1.05 acres) which may be used as a marine and District storage area for District supplies and equipment and which shall include all utility stub outs to the boundary as necessary to support a District office/multi-use building ("**District Office**") with an approximately three thousand (3,000) square feet footprint as described in the Scope of Development. Following the installation and development identified in this Section 4.3, the Landlord shall assume ownership and control of the District Use Area unless otherwise provided in this Agreement.

4.3.9 48,000 square feet of general public parking;

4.3.10 10,000 square feet of undefined, graded expansion area; and

4.3.11 Any and all off-site facilities and improvements necessary or convenient to the construction and operation of the utility lines, water/sewage, lift station #3 upgrades, cross walks, traffic control, steps, driveways, parking lots, retaining walls, drainage structures, facilities, lighting, curbs, gutters, sidewalks or necessary infrastructure. This Section 4.3.11 shall not apply to off-site facilities and improvements subject to separate agreements between Landlord and Tenant and related to projects benefiting both the Landlord and the Tenant, including but not limited to, the installation of wastewater and sewer facilities off-site, the costs of which may be shared by Landlord and Tenant, and shall be subject to prevailing wages if applicable.

Tenant acknowledges that Tenant's completion of construction of all Improvements referenced in this Section 4.3, including those which are not part of the Leased Premises, is a material consideration for this Lease and the failure to timely and diligently complete the construction of such Improvements which are not on the Leased Premises but which are for the Landlord's benefit is a material breach of this Lease.

4.4. Architectural Quality. Tenant acknowledges and understands that the materials, workmanship, design and general architectural quality of the Improvements to be constructed by Tenant under this Lease will have a significant and continuing impact on the surrounding areas. Accordingly, Tenant understands and agrees that it will be required to develop the Leased Premises by means of materials, workmanship and an overall design that will result in a Project that is consistent with and of benefit to the comparable developments now existing on and proposed for the surrounding areas, and that the Improvements constructed on the Leased Premises by Tenant will be required to be of a design and appearance which is of high quality and lasting benefit, consistent with industry standards. Notwithstanding approval of the general design, architectural quality, materials and costs of particular elements of the Improvements pursuant to this Section, such approval shall not preclude Landlord from requiring Tenant to comply with all applicable Governmental Authorities, including, without limitation, building codes, fire and safety codes, and parking requirements, as a condition to approval of any development Plans subsequently submitted by Tenant with respect to the Improvements approved. This Lease is not intended to nor shall it be construed to relieve Tenant of its obligations to submit and obtain all required County permits, including any applicable conditional use permit, required to comply with all applicable Governmental Authorities.

4.5. Costs of Development. Except as otherwise expressly set forth in this Lease and the Sublease with the District, Tenant shall bear the entire costs incurred in connection with or related to the construction and maintenance of all Improvements constructed by Tenant pursuant to this Lease, including without limitation all costs incurred in connection with the investigation and preparation of the Leased Premises for development, and all costs of investigation, acquisition and/or preparation of any Plans or other submissions made by Tenant pursuant to this Lease.

4.6. Ownership Of Improvements on Leased Premises.

For the purpose of this Section 4.6, Improvements shall mean any and all Improvements, including but not limited to those identified in Section 4.3, erected on the Leased Premises as permitted by this Lease, as well as any and all alterations or additions thereto or any other improvements or fixtures on the Leased Premises, shall be owned by Tenant until the expiration of the Term or sooner termination of this Lease; provided that Tenant shall not waste or destroy any of the above improvements or remove, alter or modify any improvements on the Leased Premises, except as permitted or contemplated by this Lease. Upon the expiration or sooner termination of this Lease, all improvements and all alterations, additions or improvements thereto that are made to or placed on the Leased Premises by Tenant or any other person shall be considered part of the real property of the Leased Premises and shall remain on the Leased Premises and become the property of Landlord without compensation therefor to Tenant; provided that Tenant shall retain ownership of and shall be entitled to remove furniture, trade fixtures and removable personal property ("**FF&E**") (which shall be deemed not to include tenant improvements affixed or attached to the premises such that they become a part of the realty under California law, including wall coverings, floor coverings, ceilings, or light fixtures, electronic, telephonic or computer wiring systems or hardware integrated into the structure of the Improvements on the Leased Premises, or heating, ventilation or air conditioning systems servicing the Leased Premises) as long as Tenant repairs and restores any damage to the Leased Premises caused by such removal. Except as otherwise expressly provided in this Lease, any non-disturbance agreement approved by Landlord, any easement approved by Landlord, or any written instrument executed by Landlord which expressly states that Landlord is waiving its rights under this Section 4.6 to receive such improvements free and clear of all other claims, said improvements shall become Landlord's property free and clear of any and all rights to possession and all claims to or against them by Tenant or any third person or entity claiming through or under Tenant, and Tenant shall defend

and indemnify Landlord and its Representatives against any and all Claims arising from such claims. Upon the expiration or earlier termination of the Lease, Tenant shall turn over the Improvements to Landlord in first class condition and repair, except as otherwise expressly provided herein. Landlord agrees to execute and deliver to Tenant, for the benefit of Tenant, any Lender, any Subtenant or any Person providing financing to a Subtenant a commercially reasonable waiver of any interest that Landlord may have in the FF&E promptly following request therefor; provided such waiver shall indemnify and hold Landlord and the Leased Premises harmless from any loss, expense or damage resulting from removal of the FF&E from the Leased Premises. Notwithstanding the foregoing, Landlord has right to require Tenant to remove and dispose of any and improvements, which shall be done at Tenant's sole expense. Notwithstanding anything to the contrary in this Section 4.6, any improvement located on District Use Areas shall be owned by Landlord at all times during and after this Lease.

4.7. Hazardous Materials. This Section 4.7 is intended to apply to the discovery of Hazardous Material during initial construction of the Improvements identified in Section 4.3 of this Lease (i.e., prior to the issuance of a certificate of occupancy or its equivalent). In the event that Tenant discovers the presence of Hazardous Materials (as hereinafter defined in Section 5.2) on or under the Site, Tenant shall, within five (5) Business Days of such discovery, notify Landlord in writing of such discovery and promptly thereafter provide Landlord with a reasonably detailed description of the location, extent and nature of the Hazardous Materials discovered. Tenant and Landlord shall then work to remediate the Hazardous Materials pursuant to a separate agreement between the Parties, which work shall be subject to prevailing wage if applicable, and in accordance with the following:

4.7.1 Mitigation. The Parties will work to mitigate any risks associated with the discovery of Hazardous Materials on the Leased Premises. To the extent Hazardous Materials of any kind are discovered during construction of the Improvements by or on behalf of Tenant, the Parties will first seek the most cost-effective solutions, including but not limited to, reducing the size and scope of the Project or making design changes to reduce or eliminate the impacts. Costs associated with mitigation and/or remediation of any Hazardous Materials in compliance with all Applicable Laws on the Leased Premises shall be borne in the following manner:

4.7.1.1 Aggregate costs up to \$300,000 to mitigate the Hazardous Materials on the Leased Premises shall be paid by Tenant.

4.7.1.2 Aggregate costs between \$300,001 and \$1,000,000 (the "**Cost Cap**") to mitigate the Hazardous Materials on the Leased Premises shall be paid one-half by each Landlord and Tenant.

4.7.1.3 Aggregate costs over the Cost Cap to mitigate the Hazardous Materials on the Leased Premises shall be negotiated between the Parties in good faith; provided however, that in such event, either Landlord or Tenant may terminate this Lease upon written notification to the other Party. In the event of such termination, neither Landlord nor Tenant shall have any further rights against or liability to the other under this Lease (except for those obligations hereunder which expressly provide that they survive such termination), and Tenant shall have no further rights with respect to the Leased Premises and any Improvements to be developed and constructed thereon.

4.7.2 Subject to the foregoing, except for any Hazardous Materials found on the Leased Premises in violation of Environmental Laws and generated, brought or placed upon the Leased

Premises prior to the issuance of a certificate of occupancy or its equivalent by or on behalf of Landlord, Landlord shall not have any liability to Tenant on account of the presence of any Hazardous Materials on the Leased Premises. Tenant, on behalf of itself and each successor, assign or sublessee acquiring any interest in the Leased Premises by or through Tenant, hereby releases, waives and discharges Landlord and the Landlord Representatives from all present and future claims, demands, suits, legal and administrative proceedings and from all claims, actions, causes of action, demands, orders, damages, liabilities, costs, expenses (including reasonable attorneys' fees, fees of expert witnesses and consultants, and court and litigation costs), costs and expenses attributable to compliance with judicial and regulatory orders and requirements, fines, penalties, liens, taxes, or any other type of compensation (collectively, "Claims"), to the extent arising out of or in any way connected with Landlord's ownership of the Leased Premises (including, without limitation, ownership of the Leased Premises or any portion thereof for the purposes of CERCLA and any other applicable Governmental Authorities), any condition of environmental contamination on, under or around the Leased Premises, or the existence of Hazardous Materials in any state on, under or around the Site, except to the extent any such Hazardous Materials found on the Leased Premises in violation of Environmental Laws were generated, brought or placed upon the Leased Premises by or on behalf of Landlord.

4.8. Active Public Use; Duty to Operate.

The Parties acknowledge that the ultimate objective of this Lease is the complete and continuous use of the facilities and amenities located on the Leased Premises without discrimination as to race, gender, national origin, or religion, for the generation and realization of revenue therefrom. Accordingly, Tenant agrees and covenants that, subject to Force Majeure Events described in Section 13.9, it will operate the Leased Premises fully and continuously (subject to temporary, partial interruptions reasonably required for periodic maintenance and repair) in light of these objectives, consistent with the operation of a Project for the permitted uses, and that it will use commercially reasonable efforts so that Tenant and Landlord may obtain maximum direct and indirect revenue therefrom as contemplated by this Lease. In the event of any dispute or controversy relating hereto, this Lease shall be construed with due regard to the aforementioned objectives. Any changes in the hours of operation from the initial proposed hours of operation or changes in public access from that provided by the Site Plan will be subject to and require prior written Landlord approval in its sole discretion. The term "Operate" means Tenant will diligently and continuously pursue all commercially reasonable efforts necessary to cause all leasable space within the Improvements to be occupied and any subtenants of Tenant to constitute a balanced and diversified mixture of commercial sublessees acceptable to Landlord under Subleases which require the Sublessees to operate their respective businesses (subject to interruptions arising from force majeure and periodic maintenance, repair, alterations and the taking of inventory) at fair market rental rates and otherwise consistent with the requirements of this Lease.

4.9. Grants of Easements.

Subject to Landlord approval, Tenant may enter into agreements granting easements over the Leased Premises provided they are limited to the expiration or sooner termination of this Lease, are subordinate to Landlord's interest in this Lease, and will not interfere with any rights and remedies of Landlord hereunder. Tenant must obtain Landlord's prior written consent to any agreement that would grant an easement extending beyond the Term hereof, permit access to, over, or through District Use Area, or that would interfere with any of Landlord's rights and remedies hereunder; provided, however, that Landlord agrees not to unreasonably withhold consent to any form or type of public or private utility

easement over the Leased Premises that is customarily requested by a public or private utility in connection with development or use of property including any such easement that would extend beyond the Term hereof. Tenant agrees that all utility lines will be underground and there will be no overhead utility lines of any kind. A grant of easement made in accordance with this Section 4.9 shall not be deemed a "Transfer" within the meaning of Section 8.2. Landlord agrees that it will not unreasonably withhold its consent to and will join in the execution of such easements over the Leased Premises as may be necessary to provide utilities to the Leased Premises; provided, Landlord shall not be obligated to incur any cost or expense in connection with such an easement during the Term of this Lease and Tenant shall indemnify, defend and hold Landlord and Landlord's Representatives harmless from any Claims arising from the creation or use of such easements during the Term of this Lease. Tenant expressly agrees that this Lease and all rights hereunder shall be subject to Landlord's continual right, ability, and authority, install, construct, maintain, service and operate utility lines, including but not limited to sanitary sewers, storm drains, drainage facilities, electric power lines, telephone lines and access and utility easements across, upon or under the Leased Premises, together with the right of the Landlord to convey such easements and transfer such rights to others, so long as they do not unreasonably interfere with Tenant's use of the Leased Premises for its permitted use.

Notwithstanding anything in this Lease which is to the contrary, Landlord expressly reserves from the Leased Premises, and the rights granted to the Tenant hereunder, a non-exclusive easement for access over, across and through any roadways, walkways or public access areas as they may be located on the Leased Premises from time to time for ingress, egress, use and enjoyment of the District Use Area, and any other areas owned, leased or occupied by Landlord adjacent or proximate to the Leased Premises, by the Landlord and its representatives, agents, employees, contractors, invitees, guests and patrons. Landlord, and its agents and assigns, shall also have the right to install, construct, maintain, and service said areas of access with any utility lines and/or service lines necessary or convenient for the benefit of the District Use Area, the Port San Harbor District, or the public in general, as deemed appropriate by Landlord.

4.10. Non-Discrimination.

Tenant, for itself and its successors, covenants that neither Tenant nor any of its successors shall discriminate against or segregate any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry, in the development, leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Leased Premises, nor shall Tenant or any of its successors, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, licensees, employees or vendees in the Leased Premises or the improvements thereon. The foregoing covenants shall run with the land.

4.11. Prohibited Uses; Coordination of Parking Uses.

4.11.1 Prohibited Uses. Notwithstanding anything herein to the contrary, Tenant agrees that, in connection with the use and operation of the Leased Premises, it will not knowingly:

(a) Except as expressly authorized by a special event permit issued by Landlord, if required, allow any exterior loudspeakers, public address systems, amplifiers or any outdoor music of any kind (exclusive of background music (that is not live music) that is played within the café or restaurant and also provided at background levels to dining patrons on adjacent dining areas, or played by

customers or guests to Harbor Terrace); provided, however, that Landlord agrees to issue to Tenant a permit to be renewed annually to allow Tenant to provide musical entertainment as a reoccurring weekly event at the restaurant, café or adjacent dining areas.

(b) Use the Leased Premises in any manner which might result in a significant environmental impact except for such impacts as identified in the FEIR for the Project and for which a statement of overriding considerations has been adopted;

(c) Use the Leased Premises in a manner which violates or exceeds any FEIR mitigation measure adopted or imposed by Landlord, the County, the Coastal Commission or any other applicable governmental agency. Tenant shall at all times comply with all mitigation measures identified by the FEIR as required to reduce impacts to a level of insignificance;

(d) Cause or permit reasonably objectionable odors to emanate or be dispelled from the Leased Premises for a significant period of time;

(e) Permit the unreasonable accumulation of garbage, trash, rubbish or any other refuse;

(f) Permit any materials provided to customers or guests for outdoor use, including beverage containers, implements and condiments, to be of any material except that which is biodegradable if such material is reasonably available and commercially and economically feasible;

(g) Conduct business operations on the Leased Premises which discredit or adversely impact Landlord or any of Landlord's other tenants, tend to injure the reputation of Landlord or its port operations or which are offensive to the public. Such prohibited business operations by Tenant would include, without limitation, adult entertainment, nightclubs, and the sale of paraphernalia generally associated with the use of illegal drugs. All employees working on the Leased Premises shall be clean, appropriately dressed and shall be courteous to the public. No employee shall be allowed to use foul or offensive language;

(h) Use any portion of the Leased Premises for exterior storage of any materials or vehicles except for vehicles actively used in operations conducted on the Leased Premises except as otherwise approved by Landlord;

(i) Allow the Leased Premises to be used as a headquarters or business office for any businesses or operations other than for Tenant's business or operations at the Leased Premises;

(j) Without the prior written consent of Landlord, which shall not be unreasonably withheld, allow any guest to remain on the Leased Premises for more than twenty nine (29) consecutive days or for more than forty-five (45) days out of any sixty (60) day period. Landlord will consider an exception to this restriction only in the case of emergency situations or in a situation where guests are required to remain in the area for work-related activities in excess of the period subject to this restriction and as may be allowed by the CDP;

(k) Allow any use of the Leased Premises which is in material violation of any land use permit or any land use ordinance or designation or the Land Use Approvals or Governmental Authorities;

(l) Deny the use of exterior areas or any parking areas on the Leased Premises to the general public except as such denial is allowed in the approved plans, the Master Plan, the LCP, the CDP and any applicable law. Nothing in this subsection shall be construed to prohibit Tenant from establishing reasonable rules, regulations and policies for conduct of visitors to the Leased Premises. All such rules and regulations shall be consistent with the goals/policies of the Landlord, the LCP, the CDP and the Coastal Commission, and shall be subject to the reasonable approval of the Landlord.

(m) Use the Leased Premises in any manner which is otherwise inconsistent with any authorization or permit issued by any applicable governmental agency.

4.11.2 Coordination of Parking Uses. Tenant also agrees to coordinate use of all public parking areas on the Leased Premises with the Landlord so as to maximize the effectiveness and utility of the available parking areas and facilities under the Landlord's management or control. In connection with the foregoing, upon Landlord's request from time to time, Tenant shall enter into, and periodically revise or update, a parking management plan in form and content reasonably acceptable to Landlord concerning the extent, cost, availability of capacity and manner of operation of the parking areas on the Leased Premises. Tenant's failure to reasonably cooperate in the preparation or modification of any such parking plan, or the Tenant's failure to comply with such parking plan in all material respects shall constitute a material Default under this Lease.

4.12. Remedies and Rights of Termination Due to a Land Use Challenge by a Third Party or Force Majeure Event.

4.12.1 If there is a land use lawsuit ("**Challenge**") brought against the development of the Leased Premises in the manner contemplated by this Lease, and said Challenge either legally prevents Landlord or Tenant from performing their obligations under this Lease, or, if successful, would prevent Tenant from constructing the Improvements in substantially the form contemplated by this Lease or materially increases Tenant's cost to complete the Project, and such Challenge is not eliminated within eighteen (18) months from the date of the filing of a civil lawsuit in state or federal court, then either Party may, at its option and upon written notice to the non-terminating Party, terminate this Lease. Tenant agrees to vigorously oppose all Challenges in cooperation with the Landlord.

4.12.2 In the event that either Landlord or Tenant is prevented from performing its obligations under this Lease for an uninterrupted period in excess of one hundred and eighty (180) days because of a Force Majeure Event described in Section 13.9 of this Lease, then either Party may, at its option and upon written notice to the non-terminating Party, terminate this Lease.

4.12.3 Upon termination of this Lease pursuant to this Section 4.12, neither Landlord nor Tenant shall have any further rights against or liability to the other under this Lease (except for those obligations hereunder which expressly provide that they survive such termination), and Tenant shall have no further rights with respect to the Leased Premises and any Improvements thereon.

4.13. Use and Rights to all Development Plans and Documents

4.13.1 Tenant shall provide the District with access to all Project documents (via a website or portal), including: a current set of schematic, design development, and construction documents, a County Building Department approved set of construction documents, a list of contractors/subcontractors/architects/engineers, and contracts/subcontracts for construction, inspection or correction notices, building permits, and any other documents requested by the District which are important to the progress, safety, or the District's title.

4.13.2 Upon termination of this Lease for any reason, including a Default by Tenant, Tenant shall assign to the District within ten (10) business days after District's request, all of Tenant's right, title and interest, to the extent assignable, in all drawings, specifications, reports, records, documents, studies, investigations and related work product prepared by or on behalf of Tenant concerning the Project, except for attorney work product; provided however, that such assignment shall be on an "as-is" basis without any representations or warranties from Tenant. Tenant agrees to timely execute any and all documents necessary to assist and/or enable the Landlord to use the Plans and Documents identified in this Section.

ARTICLE 5 HAZARDOUS MATERIALS DISCOVERED AFTER THE INITIAL DEVELOPMENT

5.1. Use of Leased Premises. Tenant covenants that it shall use and maintain the Leased Premises in compliance with all applicable Environmental Laws respecting Hazardous Materials. Tenant further covenants that, from and after the execution of this Lease, it shall not (i) deposit Hazardous Materials in, on or upon the Leased Premises in violation of Environmental Law, or (ii) permit the deposit of Hazardous Materials in violation of Environmental Law in, on or upon the Leased Premises, and Tenant hereby assumes any and all liability arising in connection with any such deposit of Hazardous Materials in violation of Environmental Law; provided, that this sentence shall not be construed or understood to prohibit Tenant from allowing Hazardous Materials to be brought upon the Leased Premises so long as they are materials which are customary and common to the normal course of business in the construction or operation of well-designed residential and commercial improvements and so long as such materials are used, stored and disposed of in accordance with all applicable Environmental Laws. Tenant agrees to indemnify, defend and hold Landlord harmless from and against any Claims to the extent arising out of or in any way connected with any Hazardous Materials in violation of Environmental Laws that are discovered after the Tenant receives a certificate of occupancy or equivalent document for the Project.

5.2. Definition of Hazardous Materials. For purposes of this Lease, the term "**Hazardous Materials**" means, without limitation, gasoline, petroleum products, explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, polychlorinated biphenyls or related or similar materials, asbestos or any other substance or material as may now or hereafter be defined as a hazardous or toxic substance by any federal, state or local environmental law, ordinance, rule or regulation, including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act (42 U.S.C. Section 6901 et seq.), (ii) the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), (iii) the Clean Air Act (42 U.S.C. Section 7401 et seq.), (iv) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. Section 6902 et seq.), (v) the Toxic Substances Control Act (15 U.S.C. Section 2601-2629), (vi) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), (vii) the Carpenter-Presley-Tanner Hazardous

Substance Account Act (CA Health & Safety Code Section 25300 et seq.), (viii) the Hazardous Waste Control Law (CA Health & Safety Code Section 25100, et seq.), (ix) the Porter-Cologne Water Quality Control Act (CA Water Code Section 13000 et seq.), (x) the Safe Drinking Water and Toxic Enforcement Act of 1986, (xi) the Hazardous Materials Release Response Plans and Inventory (CA Health & Safety Code Section 25500 et seq.), (xii) the Air Resources Law (CA Health & Safety Code Section 39000 et seq.), or (xiii) in any of the regulations adopted and publications promulgated pursuant to the foregoing.

5.3. Definition of Environmental Laws. For purposes of this Lease, the term "Environmental Law(s)" means any and all federal, state, or local environmental, health, or safety-related laws, regulations, standards, decisions of courts, ordinances, rules, codes, orders, decrees, directives, guidelines, permits, or permit conditions, currently existing and as amended, enacted, issued, or adopted in the future that are or become applicable to Tenant and the Site.

ARTICLE 6 REPAIRS, MAINTENANCE AND ALTERATIONS

6.1. Landlord's Nonresponsibility.

During the Term of this Lease, Landlord shall not be required to maintain or make any repairs or replacements of any nature or description whatsoever to the Leased Premises or the Improvements thereon built or maintained by Tenant except those improvements on the District Use Area pursuant to the District Sublease. Tenant hereby expressly waives the right to make repairs at the expense of Landlord as provided for in any statute or law in effect at the time of execution of this Lease, or in any other statute or law which may hereafter be enacted. To the extent reasonably necessary for health and safety, as determined in the sole and absolute discretion of the Landlord, Landlord shall have access to maintain, repair and/or upgrade any of its own utilities and facilities located on Leased Premises at Landlord's sole cost and expense.

6.2. Tenant's Duty to Maintain Premises.

Throughout the Term of this Lease, Tenant shall, at Tenant's sole cost and expense, maintain or cause to be maintained the Leased Premises (including the Improvements) and the improvements now or hereafter located on the Leased Premises in first class condition and repair comparable to other "5-Star" RV resort & campground complexes of a similar nature. Such improvements shall be maintained and operated in material compliance with all applicable state and local rules, regulations and codes and Tenant shall make or cause to be made whatever repairs and replacements are required by any applicable Governmental Authorities.

6.3. Permitted Alterations. Tenant shall make no alterations and additions to the Improvements ("**Alterations**") other than as approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Tenant may, without Landlord's prior consent, make any Alteration that is not a Material Change and is consistent with all applicable Governmental Authorities. For purposes of this Section, material and non-material changes and/or alterations shall be determined in accordance with Section 4.1.3 defining Material Change.

6.4. Repair; Destruction.

Except as otherwise expressly provided in this Lease, Tenant shall promptly and diligently repair, replace or restore all damage to or destruction of all or any part of the improvements (including the

Improvements) on the Leased Premises resulting from any cause except where resulting from the negligence, gross negligence, or intentional misconduct of Landlord. Said repair, replacement or restoration shall be commenced as soon as reasonably possible, and shall thereafter be pursued to completion with diligence. Tenant's failure to timely commence or diligently pursue each such repair, replacement or restoration shall constitute a Default under this Lease following Tenant's receipt of a Notice of Default and expiration of any applicable time to cure with respect thereto. Unless prohibited by a Governmental Restriction (and then, only to the extent so prohibited), the completed work of repair, restoration, or replacement shall be equal in value, quality, and use to the condition of the improvements before the event giving rise to such work, except as may be expressly provided to the contrary in this Lease. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations of any kind in or on the Leased Premises in connection with such work by Tenant. Landlord may elect to perform any obligation of Tenant under this Section upon Tenant's failure or refusal to do so in accordance with the provisions of Section 13.3 below.

Except as expressly provided in this Lease, no deprivation, impairment, or limitation of use resulting from any damage or destruction or event or work contemplated by this Section shall entitle Tenant to any offset, abatement, or reduction in rent, nor to any termination or extension of the Term hereof.

ARTICLE 7 LEASEHOLD FINANCING

7.1. Conditions To Obtaining Leasehold Mortgage.

Notwithstanding anything which is or appears to be to the contrary in this Lease, Tenant shall not encumber the estate created by this Lease, except as expressly provided in this Article 7.

Pursuant to the provisions of this Lease, and in accordance with the requirements set forth therein, Tenant may have obtained, or may obtain, construction loan financing for the purpose of financing construction of the Improvements ("**Construction Loan(s)**") subject to requirements of Section 4.1.5 and permanent financing to refinance any such Construction Loan(s) ("**Permanent Loan(s)**").

During the Term of this Lease and throughout, Tenant is hereby given the right (exercisable at any time and from time to time) by Landlord, in addition to any other rights given herein, without Landlord's prior written consent, approval or authorization, to hypothecate, pledge, encumber, or mortgage its interest in this Lease, the leasehold estate in the Leased Premises created hereby, the Improvements, or any part or parts thereof or interest therein (with the exception of the District Use Areas or the .7 Acres), under one or more leasehold mortgage(s) in favor of a lender ("**Leasehold Mortgage**") and to assign such interest in this Lease, the leasehold estate in the Leased Premises created hereby, the Improvements, or any part or parts thereof or interest therein, as collateral security for such Leasehold Mortgages(s); provided, that each such Leasehold Mortgage shall, at a minimum, meet each of the following terms, conditions and requirements:

- (a) Promptly upon the recording of the Leasehold Mortgage, Tenant shall, at its own expense, cause a copy of the Leasehold Mortgage to be delivered to Landlord and shall cause to be recorded in the Office of the County Recorder of San Luis Obispo County a written request executed and acknowledged by Landlord for a copy of all notices of default and all notices of sale under the Leasehold Mortgage as provided by applicable law. Inclusion of a request for notice having the effect described above in the body of the recorded Leasehold Mortgage shall constitute compliance with this provision;

(b) The Leasehold Mortgage shall be subordinate to the Landlord's interest in the Leased Premises, including but not limited to Landlord's rights of use and occupancy pursuant to the Sublease, shall not be cross-defaulted with any other loans to Tenant (other than a loan secured by another Leasehold Mortgage), and shall not cover any interest in real property other than the leasehold estate created by this Lease with respect to the Leased Premises and any easement, to the extent it benefits the Leased Premises;

(c) The Leasehold Mortgage shall not permit or authorize, or be construed to permit or authorize, any Lender to devote the Leased Premises to any uses, or to construct any improvements thereon, other than those uses and improvements provided for and authorized by this Lease;

(d) The Leasehold Mortgage shall secure a bona fide extension of credit to Tenant and shall not be for the purpose of avoiding or extending any obligations or restrictions on Tenant under this Lease, including restrictions on Transfer or periods for curing of Defaults.

(e) The Leasehold Mortgage shall have a debt service coverage ratio of not less than 1.25 to 1.00.

(f) The Leasehold Mortgage shall have a loan to value of not more than seventy-five percent (75%).

(g) The Leasehold Mortgage shall not encumber the real property, as collateral or otherwise, owed by the District and subject to this Lease.

In addition to all of the foregoing, Tenant shall use reasonable efforts to cause the Leasehold Mortgage to provide that any proceeds from fire and extended coverage insurance shall be first used for repair or reconstruction of the leasehold improvements to the extent Tenant is obligated to repair such leasehold improvements and not to repay all or a part of the Leasehold Mortgage unless additional insurance proceeds remain available for such use. Tenant shall reimburse Landlord for Landlord's actual costs, including attorneys' fees, incurred in connection with its review of a proposed financing, including any creation, alteration, amendment or refinancing of a Leasehold Mortgage, and any such costs in connection with any lease amendment or modification or estoppel agreement requested in connection with such financing.

7.2. Lender's Rights.

During the continuance of any Leasehold Mortgage permitted by this Lease, including any Construction Loan or Permanent Loan, and until such time as the lien of any Leasehold Mortgage has been extinguished:

(a) Landlord shall not agree to any mutual termination, nor accept any voluntary surrender or termination of this Lease, nor shall Landlord consent to any material amendment or modification of this Lease without the prior written consent of Lender; provided, that any rejection, termination, cancellation or surrender by Tenant or its trustee in bankruptcy occurring without Landlord's consent pursuant to the provisions of the United States Bankruptcy Code, 11 U.S.C. §101, et seq. (the "**Bankruptcy Code**") is not a violation of this

provision; and, provided, further, that the provisions of this Subsection shall not apply to any termination resulting from Tenant's breach of this Lease so long as Landlord shall have afforded Lender the rights to which it is entitled under this Article 8 below; and

(b) Following Lender's acquisition of Tenant's interest in this Lease pursuant to a foreclosure or an assignment in lieu of foreclosure, the Lender shall be entitled to assign its interest in this Lease without Landlord's prior consent, subject to compliance with Sections 7.3 and 7.6 below. All subsequent Transfers by the Transferee of Lender shall comply with the provisions of this Lease, including all restrictions on Transfer set forth in Article 8 hereof.

7.3. Obligations of Construction Lender.

Notwithstanding anything that is or appears to be to the contrary in this Lease, the Construction Lender shall also be subject to the following provisions of this Section 7.3 until the Improvements have been completed. If the Improvements have not been completed at the time of the Construction Lender's acquisition of Tenant's interest under this Lease (whether by foreclosure or deed in lieu of foreclosure), the Construction Lender's subsequent Transfer of the Leased Premises shall be subject to Landlord's prior written consent in accordance with Article 8 below, except that, notwithstanding anything to the contrary therein, such consent shall not be unreasonably withheld; provided, that, notwithstanding the foregoing, Construction Lender shall also have the right to Transfer the Leased Premises without obtaining Landlord's prior written consent, but, in that event, such Transfer shall not release the Construction Lender from liability under this Lease in the event the Tenant thereafter fails to perform its obligation to construct and complete the Improvements in accordance with the terms of this Lease.

7.4. Default Notice.

Landlord, upon providing Tenant with any Notice of Default (as defined in Section 13.2) under this Lease, shall, at the same time, provide a copy of such notice to each Lender then holding a Leasehold Mortgage encumbering the Leased Premises at its notice address previously provided to Landlord, provided such Lender has requested such notice, in writing, from Landlord. From and after such notice has been given to a Lender, such Lender shall have the same period for remedying the Default complained of as the cure period provided to Tenant pursuant to Section 13.2, plus the additional period provided to such Lender as specified below. Landlord shall accept performance by or at the instigation of such Lender as if the same had been done by Tenant.

7.5. Lender Cure Rights.

Notwithstanding anything to the contrary contained in this Lease, Landlord shall have no right to terminate this Lease on account of an Uncured Default of Tenant unless, following expiration of Tenant's applicable cure period, Landlord first provides each Lender not less than thirty (30) days' notice of its intent to terminate, if Tenant's Default can be cured by the payment of money (a "**Monetary Default**"), and not less than sixty (60) days' notice of its intent to terminate, if Tenant's Default is of any other type (a "**Non-Monetary Default**"), and Lender fails to cure such Monetary Default within thirty (30) days after receipt of such notice or cure or, in good faith and with reasonable diligence and continuity, commence to cure such Non-Monetary Default within said sixty (60) day period. If such Non-Monetary Default cannot reasonably be cured within said sixty (60) day period (or is such that possession of the Leased Premises is necessary

to remedy the Default), the date for termination shall be extended for such period of time as may be reasonably required to remedy such Default, if (i) Lender shall have fully cured any default in the payment of any monetary obligations of Tenant under this Lease within thirty (30) days after its receipt of notice of Landlord's intent to terminate, and shall continue to pay currently such monetary obligations as and when the same are due, and (ii) Lender continues its good faith and diligent efforts to remedy such Non-Monetary Default (including its acquisition of possession of the Leased Premises if necessary to the cure of such Default); provided, however, that Lender shall not be obligated to pursue the cure of any Non-Monetary Default until it has obtained possession of the Leased Premises if, but only if, (a) Lender fully complies with the obligation to cure any Monetary Default of Tenant and to keep current all monetary obligations under this Lease as provided in, and within the time set forth in, (i) above, and (b) Lender is diligently and continuously pursuing such actions as are necessary to enable it to obtain possession of the Leased Premises at the earliest possible date. Nothing in this Section 7.5 shall be construed to require a Lender to continue any foreclosure proceeding it may have commenced against Tenant after all Defaults have been cured by Lender, and if such Defaults shall be cured and the Lender shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

7.6. Obligations of Lender and Purchaser.

No Lender, acting in such capacity, shall be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Lender, in that capacity, to assume the performance of any of the terms, covenants or conditions on the part of the Tenant to be performed hereunder, unless and until it acquires the interest of Tenant hereunder. Except as provided in Section 7.3, upon acquiring Tenant's leasehold, Lender may, without the consent of Landlord, sell and assign the leasehold estate only to an entity affiliated with Lender on such terms as are acceptable to such Lender; provided that, such assignee of the Lender shall have delivered to Landlord an assumption agreement as provided by Section 8.2 of this Lease. Notwithstanding anything contrary stated herein, Landlord expressly reserves all rights to seek damages available in law, equity or otherwise available against Tenant and/or Lender for damages incurred as a direct or indirect result of any default of this Lease. Any such assignee of Lender or any other assignee of this Lease or of the leasehold estate created hereby by a conveyance in lieu of foreclosure or any purchaser at any foreclosure sale of this Lease or of the leasehold estate hereby created (other than the Lender), shall be deemed to be a Transferee of this Lease, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Tenant to be performed hereunder from and after the date of such purchase and assignment and, from and after such date, shall be subject to all the terms of this Lease, including all restrictions on further Transfer set forth in Article 8.

7.7. New Lease.

Except as expressly provided in the last sentence of this Section, in the event of a termination of this Lease by reason of a surrender, cancellation, or termination by Tenant, or as a result of the rejection or disaffirmance of this Lease pursuant to bankruptcy law or other law affecting creditor's rights, Landlord shall give prompt notice thereof to any Lenders who have requested notice from Landlord in writing and furnished their names and addresses to Landlord. Landlord shall, on written request of any such Lender, made at any time within thirty (30) days after the giving of such notice by Landlord, enter into a new lease of the Leased Premises with such Lender within sixty (60) days after the receipt of such request, which new lease shall be effective as of the date of such termination of this Lease and shall be for the remainder of the

Term of this Lease, at the rent provided for herein, and upon the same terms, covenants, conditions and agreements as are herein contained; provided that such Lender shall: (a) contemporaneously with the delivery of such request pay to Landlord all the installments of Rent payable by Tenant hereunder which are then due; (b) pay to Landlord at the time of the execution and delivery of said new lease any and all sums for Rent payable by Tenant hereunder to and including the date thereof, less the net amount of all sums received by Landlord from any sublessees in occupancy of any part or parts of the Leased Premises and/or Improvements up to the date of commencement of such new lease; (c) pay all reasonable costs resulting from the preparation and execution of such new Lease; and (d) on or prior to the execution and delivery of said new lease, agree in writing that promptly following the delivery of such new lease, such Lender will perform or cause to be performed all of the other covenants and agreements herein contained on Tenant's part to be performed to the extent that Tenant shall have failed to perform the same to the date of delivery of such new lease Nothing herein contained shall be deemed to impose any obligation on the part of Landlord to deliver physical possession of the Leased Premises to such Lender unless Landlord at the time of the execution and delivery of such new lease shall have obtained physical possession thereof.

7.8. Multiple Lenders.

If more than one Lender shall make written request upon Landlord for a new lease in accordance with the provisions of Section 7.7 above, then such new lease shall be entered into pursuant to the request of the Lender whose Leasehold Mortgage shall be junior in lien provided: (a) all Lenders senior in lien shall have been paid all installments of interest and amortization of principal then due and owing to such Lenders plus all expenses, including reasonable attorneys' fees, incurred by such senior Lenders in connection with the termination of this Lease and with the execution and delivery of such new lease; (b) the new lessee will assume, in writing, all of the covenants, agreements and obligations on the part of the mortgagor under such senior Leasehold Mortgages to be kept, observed and performed on the part of such mortgagor; (c) such new lease shall contain all of the same provisions and rights in favor of and for the benefit of Lenders holding leasehold mortgages thereon as are contained in this Lease, including but not limited to the right to obtain a new lease in the event of the termination of said lease, and the right to receive notices of default, and to cure the same, in the same manner as provided in this Lease; and (d) the senior Lenders shall have received from the respective title insurance companies insuring the respective senior Leasehold Mortgages assurances satisfactory to such senior Lenders that said senior Leasehold Mortgages and any assignment of rents and other security instruments executed in connection therewith will continue, with respect to such new lease, in the same manner and order of priority of lien as was in existence with respect to this Lease; and thereupon the leasehold estate of the new lessee created by such new lease shall be subject to the lien of the senior Leasehold Mortgages in the same manner and order of priority of lien as was in existence with respect to this Lease. In the event not all of the foregoing provisos shall have been satisfied by or with respect to any such junior Lender, the Lender immediately senior in lien to such junior Lender shall have paramount rights to the benefits set forth in Section 7.7 above, subject nevertheless to the provisions hereof respecting the senior Lenders, if any. In the event of any dispute as to the respective senior and junior priorities of any such Leasehold Mortgages, the certification of such priorities by a title company doing business in California, satisfactory to Landlord, shall be conclusively binding on all Parties concerned. Should there be a dispute among Lenders as to compliance with the foregoing provisions, Landlord may rely on the affidavit of the most senior Lender as to compliance by any junior Lender. Landlord's obligation to enter into a new lease with any junior Lender shall be subject to the receipt by Landlord of evidence reasonably satisfactory to it that the conditions of (a), (b) and (d) above have been satisfied with respect to each senior Lender.

(a) The right of a senior Lender under Section 7.7 above, to request a new lease may, notwithstanding any limitation of time set forth above in Section 7.7 or in this Section 7.8, be exercised by the senior Lender within twenty (20) days following the failure of the junior Lender to have exercised such right within the time provided by Section 7.7.

(b) If a junior Lender shall fail or refuse to exercise the rights set forth in this Section, said senior Lenders, in the inverse order of the seniority of their respective liens, shall have the right to exercise such rights subject to the provisions of this Lease.

7.9. New Lease Priority.

It is the intent of the Parties that any new lease made pursuant to Section 7.7 shall have the same priority with respect to any lien, charge or encumbrance on the fee of the Leased Premises as did this Lease and that the Tenant under such new lease shall have the same right, title and interest in and to the Leased Premises as Tenant had under this Lease.

The provisions of this Section 7.9 and Sections 7.7 and 7.8 shall survive the termination, rejection or disaffirmance of this Lease pursuant to the Bankruptcy Code and shall continue in full force and effect thereafter to the same extent as if Sections 7.7 and 7.8 and this Section 7.9 were a separate and independent contract made by Landlord, Tenant and such Lender.

7.10. Liability of New Tenant.

The Lender which becomes the Tenant under any such new lease made pursuant to Section 7.7 shall be liable to perform the obligations imposed on the tenant by such new lease, including the payment of any penalties, fees, past due rent, or costs of repair and maintenance, as well as those arising under Section 7.7 to the same extent as a Lender which acquires Tenant's estate under this Lease by the foreclosure thereof.

7.11. Sublease and Rents.

After the termination of this Lease and during the period thereafter during which any Lender is entitled to enter into a new lease of the Leased Premises, Landlord will not voluntarily terminate any Sublease or the rights of the subtenant thereunder (provided such Sublease is a permissible Sublease under this Lease), unless such subtenant is in default under such Sublease and has failed to cure same within the time provided under such Sublease. During such periods Landlord shall deposit such rents and payments in a separate and segregated account, but may withdraw and pay to Landlord such sums as are required or were required to be paid to Landlord under this Lease, at the time and in the amounts due hereunder, and may withdraw and expend such amounts as are necessary for the maintenance, operation, and management of the Leased Premises in accordance with the requirements of this Lease; and, upon the execution and delivery of such new lease, Landlord shall account to the lessee under the said new lease for the balance, if any (after application as aforesaid), of the rent and other payments made under said subleases. The collection of rent by Landlord pursuant to this Section shall not be deemed an acceptance by Landlord for its own account of the attornment of any subtenant unless Landlord shall have agreed in writing with such subtenant that its tenancy shall be continued following the expiration of any period during which a Lender may be granted a new lease, in which case such attornment shall take place upon such expiration but not before. If the Lender fails to exercise its right to enter into a new lease or fails to timely execute such new lease, all rents collected by Landlord pursuant to this Section shall become Landlord's

property free and clear of any claim by such Lender and such Lender shall have no further rights with respect thereto.

7.12. Reference and Legal Proceedings.

Landlord shall give each Lender who has given written notice of its interest in the leasehold estate to Landlord prompt notice of legal proceedings between Landlord and Tenant involving obligations under this Lease. Such notice shall be delivered to the Lender at the address provided by such Lender to Landlord in connection with such Lender's request for notice. Each said Lender shall have the right to intervene in any such proceeding to protect its interest and be made a party thereto, and the Parties hereto do hereby consent to such intervention. In the event that any such Lender shall not elect to intervene or become a party to any such proceedings, Landlord shall give such Lender notice of, and a copy of, any award or decision made in any such proceedings, which shall be binding on all Lenders not intervening after receipt of notice of the legal proceeding.

7.13. Notices.

Notices from Landlord to any Lender shall be delivered to the address of the Lender set forth in the Leasehold Mortgage furnished to Landlord or at such other address as may have been furnished to Landlord by such Lender. All notices from the Lender to Landlord shall be delivered to the address designated pursuant to the provisions of Section 15.4 or such other address as Landlord may designate in writing from time to time. Such notices shall be given in the manner described in Section 15.4 and shall in all respects be governed by the provisions of such Section.

ARTICLE 8 ASSIGNMENT AND TRANSFER

8.1. Assignment of Landlord's Interest in Lease or the Leased Premises.

8.1.1 Transfer of Landlord Interest.

Landlord may Transfer the Leased Premises, this Lease, all or a portion of its interest thereunder, and/or all or a portion of the payments that are payable to it by Tenant pursuant to this Lease. Tenant hereby consents and agrees to any such Transfer which Landlord considers necessary or proper, regardless of the reason or reasons for which Landlord makes such Transfer and regardless of the entity that is the Transferee thereunder, provided that the Transferee assumes in writing the obligations of Landlord hereunder first arising from and after such Transfer. Upon any Transfer that involves conveyance of Landlord's interest in the Leased Premises and assignment of Landlord's interest in the Lease, the Transferring Landlord shall be released from all obligations and liabilities under this Lease arising from and after such Transfer, provided such transferee assumes such obligations and liabilities in writing and such writing is provided to Tenant.

8.1.2 Fee Mortgage.

Landlord shall have the right to encumber its interest in the Leased Premises with a mortgage, revenue bond, deed of trust assignment and leaseback for financing purposes, or other established method of securing real property financing (a "**Landlord Mortgage**") from time to time. If requested by Landlord or the holder of a Landlord Mortgage, Tenant will either (i) subordinate its interest in this Lease to any Landlord Mortgage and to any and all advances made thereunder, all interest and other

charges thereunder and all renewals, replacements, supplements, amendments and extensions thereof, or (ii) make Tenant's rights and interests in this Lease superior to any Landlord Mortgage; and Tenant will execute and deliver such agreement or agreements, in form and substance as may be reasonably acceptable to Tenant, Landlord and such mortgagee; provided that in connection with Tenant's subordination of its interest in this Lease, Tenant or such mortgagee may require that the parties enter into a subordination, non-disturbance and attornment agreement, in form and substance reasonably acceptable to Tenant, Landlord and such mortgagee, providing that notwithstanding any default by Landlord under the Fee Mortgage, or any foreclosure or deed in lieu thereof, Tenant's rights under this Lease shall continue in full force and effect and its possession of the Leased Premises remain undisturbed, except as otherwise provided under the provisions of this Lease in the event of a Default or the expiration of the Term, and that Tenant will attorn to such mortgagee or purchaser at a foreclosure sale or grantee of a deed in lieu of foreclosure, and that such mortgagee, purchaser or grantee shall assume the obligations of Landlord under this Lease from and after the date of its acquisition of Landlord's interest in this Lease.

8.1.3 Landlord Mortgage Foreclosure.

Tenant further agrees that if any Landlord Mortgage is foreclosed or a deed in lieu thereof is given, the mortgagee, purchaser at a foreclosure sale or grantee of a deed in lieu of foreclosure, as the case may be, and their respective successors and assigns shall not be (i) liable for any act or omission of any prior Landlord; (ii) bound by any obligation to perform any work or make any improvements to the Leased Premises or any portion thereof; (iii) bound by any amendment or modification to this Lease to which the mortgagee under the Landlord Mortgage did not consent; (iv) bound by any prepayment of Monthly Rent for more than one (1) month in advance; or (v) liable for any obligations or liabilities of Landlord under this Lease arising from and after such mortgagee, purchaser or grantee has transferred its interest under this Lease. Tenant also agrees that this Lease shall not be modified, amended, cancelled or surrendered, without the prior written consent of the mortgagee under any Landlord Mortgage in each instance.

8.2. Transfer of Tenant's Interest in Lease and Tenant's Ownership; Subleases.

The restrictions contained in this Section 8.2 upon any Transfer to any Transferee are imposed because Tenant's qualifications are of particular concern to Landlord, and Landlord has entered into this Lease in reliance upon Tenant's qualifications, skill, reputation and experience. Any purported Transfer which is prohibited by this Section 8.2 shall be ipso facto null and void, and no voluntary or involuntary successor to any interest of Tenant under such a Transfer shall acquire any rights pursuant to this Lease. These restrictions on Transfer shall be binding on any successors, heirs or permitted Transferees of Tenant.

At any time Tenant desires to effect a Transfer under any provision of this Lease, Tenant shall, except as expressly provided below in this Section 8.2, request consent from Landlord in writing, which consent shall not be unreasonably withheld, conditioned or delayed, and Tenant shall submit to Landlord in connection with such request all proposed agreements and documents (collectively, the "**Transfer Documents**") memorializing, facilitating and/or evidencing such proposed Transfer. Landlord agrees to advise Tenant in writing of its decision on Tenant's request for consent to such Transfer, as promptly as possible. In the event Landlord consents to a proposed Transfer pursuant to this Section 8.2, Tenant and the Transferee shall deliver to Landlord promptly following the effective date thereof copies of all executed and binding Transfer Documents, which Transfer Documents shall conform with the proposed Transfer

Documents originally submitted by Tenant to Landlord, and a certificate, addressed to Landlord, setting forth the representation of Tenant, and, in the case of an assignment of Tenant's interest under this Lease, the Transferee, stating that all requirements of this Section 8.2 applicable to such Transfer have been met. Failure to promptly provide such Transfer Documents in the required form or to provide the required certificate shall constitute a Default under this Lease after Tenant's receipt of a Notice of Default and the expiration of the applicable time to cure (if specifically provided for in this Lease) with respect thereto.

Notwithstanding anything in this Lease to the contrary, Tenant agrees that, in addition to all other Landlord rights with respect to Transfers subject to Landlord approval under this Lease, Landlord shall have the right to refuse to consent to any Transfer pursuant to Section 8.2.1 or 8.2.2, if an Uncured Default of any of Tenant's monetary obligations under this Lease, or of any non-monetary obligations under this Lease, exists unless Tenant gives Landlord adequate assurances acceptable to Landlord that the Transferee will cure such Uncured Default on or before the effective date of the Transfer. In the event that a Default exists as of the date of any Transfer (but such Default has not yet become an Uncured Default as a result of the expiration of the cure period applicable thereto) such Transfer shall not extend the applicable cure period or otherwise limit or waive any rights of Landlord hereunder with respect thereto.

The provisions of this Section 8.2 shall apply to each successive Transfer and Transferee in the same manner as initially applicable to Tenant under the terms set forth herein.

8.2.1 Transfer of the Lease, the Leased Premises, or the Improvements to be Constructed Thereon.

8.2.1.1 Except as otherwise expressly provided in this Lease, Tenant shall not Transfer all or any part of its interest in or rights under this Lease and/or any part of its interest in or rights to the Leased Premises and/or any of the improvements constructed thereon, without the prior written consent of Landlord. In the three (3) years following the date that operations of the Leased Premises began, as evidenced by the issuance from the County of a certificate of occupancy or equivalent consent to conduct business on the Leased Premises (the "**Stabilized Occupancy Date**"), the Landlord's consent to any such transfer may be granted or withheld in the sole discretion of Landlord due to the unique characteristics and qualities of the Tenant that Landlord has relied upon in entering into this Lease. After the Stabilized Occupancy Date, the Landlord's consent shall not be unreasonably withheld with respect to a Transfer based upon the Landlord's reasonable business judgement including, but not limited to the following reasons. Under any circumstance, the Landlord's refusal to consent to a proposed Transfer shall be considered reasonable if such refusal is because (i) the proposed Transfer would, in Landlord's reasonable business judgment, result in a material reduction of the revenues received directly or indirectly by Landlord from the operation of the Leased Premises or (ii) the proposed Transferee is not, in Landlord's reasonable business judgment (a) adequately of a net worth to manage a successful development and of the type of this Project, (b) able to demonstrate the capability to manage or provide for the management of developments of the size and character of the Improvements located on the Leased Premises, (c) sufficiently experienced in the management of similar developments of like kind, quality, and character; or (d) of at least the same quality level and reputation as the existing Tenant.

8.2.1.2 Notwithstanding anything herein to the contrary, Landlord agrees that it shall not unreasonably withhold, condition or delay its consent at any time to any Transfer referred to in Section 8.2.1.1 above to an Affiliate of Tenant; provided, however, that (aa) any assignee pursuant to this paragraph shall expressly assume liability with Tenant under this Lease to the extent of said assignee's

interest; (bb) such assignment shall not relieve Tenant of day-to-day control of and responsibility for development, construction and/or management of the Leased Premises or any of its obligations hereunder; (cc) Tenant shall remain fully responsible to Landlord in accordance with the terms and provisions of this Lease; and (dd) Tenant (or the person(s) or entity(ies) that have a majority ownership interest in Tenant) shall retain majority beneficial ownership and control of the Affiliate taking an assignment hereunder.

8.2.1.3 From and after the effective date of an assignment of all of Tenant's rights and obligations hereunder to a party (other than an Affiliate of Tenant) which has been approved by Landlord, and provided the assignee thereof has assumed all of Tenant's obligations under this Lease first arising from and after the effective date of such assignment, Tenant shall be released from all obligations hereunder first arising from and after the effective date of such assignment; provided, however, that in no event shall Tenant be released from the obligation to construct the Improvements as a result of any such assignment or any obligations arising prior to the effective date of such assignment.

8.2.2 Transfer of Ownership and/or Control of Tenant.

8.2.2.1 For purposes of this Section 8.2.2, the term "**Ownership and/or Control**" means and includes, without limitation, all voting rights and beneficial ownership with respect to all classes of stock, interests in partnerships or limited liability companies and/or beneficial interests under a trust, as may be applicable to the type of entity which is prohibited from making the particular Transfer in question. The term "**Third Party**" shall mean and include any person or entity that has acquired or hereafter acquires any majority interest in Tenant, or any person or entity that is a joint venturer or Affiliate of Tenant with respect to all or any portion of the Leased Premises and/or this Lease, or any person or entity that is or becomes a limited and/or general partner or a member and/or manager of any such joint venturer or Affiliate of Tenant with respect to all or any portion of the Leased Premises and/or this Lease.

8.2.2.2 Except as otherwise provided herein, prior to the Stabilized Occupancy Date, Tenant shall not suffer or permit the Transfer of more than twenty-five percent (25%) of its present Ownership and/or Control, in the aggregate taking all Transfers into account on a cumulative basis (but without double counting of successive Transfers by Third Parties of the same interest in the Ownership and/or Control of Tenant), without the prior written consent of Landlord, which consent may be granted or withheld in the sole discretion of Landlord. Any Transfer of Tenant's Ownership and/or Control which, measured on the aggregate, cumulative basis provided above, does not exceed the twenty-five percent (25%) threshold specified in the preceding sentence, shall not require Landlord's consent.

8.2.2.3 Except as expressly provided in Article 8, and after Stabilized Occupancy Date, Tenant shall not Transfer more than 49% percent (49%) of its present Ownership and/or Control, in the aggregate taking all Transfers into account on a cumulative basis (but without double counting of successive Transfers by Third Parties of the same interest in the Ownership and/or Control of Tenant), without the prior consent of Landlord, which consent shall not be unreasonably withheld. Any Transfer of Tenant's Ownership and/or Control which, measured on the aggregate, cumulative basis provided above, does not exceed the forty nine percent (49%) threshold specified in the preceding sentence, shall not require Landlord's consent.

Landlord may refuse to consent to any proposed Transfer of the Ownership and/or Control of Tenant for which Landlord's reasonable consent is required pursuant to this Lease if the proposed Transfer (i) would, in Landlord's reasonable business judgment, result in a material reduction of

the revenues received directly or indirectly by Landlord from the operation of the Leased Premises or (ii) the proposed Transferee is not, in Landlord's reasonable business judgment (a) adequately of a net worth to manage a successful development and of the type of this Project, (b) able to demonstrate the capability to manage or provide for the management of developments of the size and character of the Improvements located on the Leased Premises (c) sufficiently experienced in the management of similar developments of like kind, quality, and character; or (d) of at least the same quality level and reputation as the existing Tenant.

Notwithstanding anything that is or appears to be to the contrary herein, the provisions of Sections 8.2.2.2 and 8.2.2.3 shall not apply to and Landlord's consent shall not be required in connection with public trading (including original issuance) of any stock or securities in any corporation, limited liability company, or partnership if the stock or securities of such party are (or will be, in the case of an original issuance) traded publicly on a national stock exchange or in the over-the-counter market and the price of such stock or securities are (or will be, in the case of original issuance) regularly quoted in a recognized national quotation service.

Notwithstanding any other provision of this Lease, in the event of the death or incapacity of (i) any person having an Ownership and/or Control interest in Tenant or (ii) any person who is a trustor of a revocable inter vivos trust that has any such interest, the interest held by such person or held in such trust may be transferred to such person's legal representatives, estate, heirs or a testamentary trust established for the sole and exclusive benefit of one (1) or more of the members of such person's family that are related to such person by blood (which members shall include, without limitation, the spouse, children, adopted children, step-children and other lineal descendants of such Member) (such persons being referred to as "**Family Members**"), without Landlord's prior written consent; provided that Landlord shall be provided with written notice of such Transfer of Ownership and/or Control.

Notwithstanding any other provision of this Lease, any person having an Ownership and/or Control interest in Tenant (whether directly or through any such interest held in a trust) may transfer such Ownership and/or Control interest to a trust for estate planning purposes so long as such person serves as the sole trustee (or, if such person is married, either such person serves as sole trustee or both such person and his or her spouse serve as the sole trustees) of that trust until such person's death or incapacity, without Landlord's prior written consent; provided that Landlord shall be provided with written notice of such Transfer of Ownership and/or Control.

8.2.3 Intentionally Omitted.

8.2.4 Subleases

Notwithstanding anything above which is or appears to be to the contrary, including any restrictions on Transfer contained in Section 8.2 of this Lease, but subject to the terms and conditions of this Section 8.2.4, Tenant shall be entitled to enter into Subleases of the Leased Premises.

Tenant shall secure Landlord's prior written approval of all Subleases. Such approval shall be secured prior to the entry of the affected Sublessee on the Leased Premises and such approval shall be a condition precedent to the effectiveness of that Sublease. Landlord may only refuse to consent to a proposed Sublease or the Sublessee thereunder if Landlord determines in its reasonable discretion that:

(a) The proposed licensee, concessionaire or sublessee is not of an acceptable quality pursuant to the same standards as qualifications of a proposed assignee pursuant to Section 8.2.1.1 above;

(b) The term of the Sublease would extend beyond the Term of this Lease, or the Sublease would otherwise limit, restrict or impede Landlord's exercise of any of its rights and remedies hereunder;

(c) If the proposed Sublessee is granted non-disturbance protection with respect to its Sublease, the proposed Sublease does not contain a provision satisfactory to Landlord in its reasonable discretion requiring the Sublessee, in the event of a termination of this Lease following an Uncured Default by Tenant, to attorn to Landlord or Landlord's successors or assigns, or, in the event of a foreclosure of a Leasehold Mortgage, to the Lender holding such Leasehold Mortgage.

(d) The execution of or operation under the proposed Sublease would result in the violation of any Governmental Authorities or unacceptable conflict with or competition to the then existing operations on the other property under Landlord's management or control;

(e) The proposed Sublease is not in writing;

(f) The proposed Sublease fails to prohibit Tenant from accepting, directly or indirectly, more than three (3) months prepaid rent from the Sublessee, not including any good faith bonafide security deposit or other security deposited with Tenant at the time of the execution of such Sublease, without the prior written consent of Landlord;

(g) The proposed Sublease fails to include provisions, acceptable to Landlord and for Landlord's benefit, prohibiting the Transfer of any direct or indirect interest in such Sublease or the premises subject thereto without the written consent of Landlord, which consent shall not be unreasonably withheld, including a transfer of more than 49% cumulatively of the Ownership and/or Control of such subtenant; provided, however, that subject to Landlord's approval of such provisions, which approval shall not be unreasonably withheld, such Sublease may allow for certain Transfers without Landlord's consent pursuant to commercially reasonable industry standard "permitted transfer" provisions customarily required by sophisticated retail operators.

(h) The proposed Sublease fails to explicitly provide that it shall not be amended or altered with respect to any matters for which Landlord's approval was originally required under this Lease, without Landlord's prior written consent;

(i) The proposed Sublessee would have a materially adverse impact on the quality or ambience of the Leased Premises or the operations thereon;

(j) The proposed Sublessee would have a material adverse economic impact on the Project or the direct and indirect revenues received therefrom by the Landlord;

(k) The Sublease fails to expressly prohibit those following prohibited uses and activities without the prior written approval of Landlord and Tenant: Any indecent or pornographic use, massage parlor, adult book or video store, peepshow store, or any other similar store or club; or any business devoted to the sale of articles and merchandise normally used or associated with illegal or unlawful activities, including, without limitation, the sale of paraphernalia used in connection with marijuana, cocaine or other controlled drugs or substances; any mortuary, funeral parlor, or similar establishment; any animal raising facility; any hotel, motel or other lodging facility; any junk yard or stock yard; any distillation, refining, smelting, agricultural, manufacturing, or industrial operations; any medical facility, clinic or office providing inpatient treatment for substance abuse or operating as a substance abuse treatment facility; any drilling for and/or removal of subsurface substances, or any dumping, disposal, incineration or reduction of garbage, other than in enclosed receptacles intended for such purpose; any flea market, swap meet, pawn shop, secondhand store, or auction operation; any bar or tavern, except in connection with a permitted restaurant use; off-track betting parlors, casinos or other gambling or bingo establishments; any billiard room, game arcade or amusement center, movie theater, night club or dance hall; places of religious worship; any school, training or educational facility, including, but not limited to, beauty schools, barber colleges, nursery schools, libraries, reading rooms, places of instruction, or other operations catering primarily to students or trainees rather than to customers; provided that this prohibition shall not be applicable to onsite employee training by a Sublessee incidental to the conduct of its business at the Project or to any training programs developed by a Sublessee of any space within the Project to train customers in the use of its retail products sold at the Sublessee's store or to train customers in activities associated with such Sublessee's business, so long as such training programs are incidental to the conduct of the Sublessee's retail business; any warehouse or public storage facility (excluding storage that is incidental to the operation of any permitted use); any use not allowed by any applicable Governmental Requirements; or any use that constitutes a public or private nuisance.

(l) The Sublease is otherwise inconsistent with the requirements and provisions of this Lease, including those requirements set forth in Section 8.2.5 below.

In the event that Tenant submits a written request to Landlord for its approval of (i) a Sublease, or (ii) a Transfer pursuant to Section 8.2.4(g), Landlord shall approve or disapprove said Sublease or Transfer, and the proposed Sublessee thereunder, in writing within ten (10) days after Landlord's receipt of Tenant's written request and all materials required by this Lease or otherwise reasonably requested by Landlord in order to enable it to act thereon; if such Sublease or Transfer request is required, in Landlord's reasonable discretion, to be approved by the District Board, Landlord's approval of Tenant's request shall be provided by Landlord to Tenant within thirty (30) days. In the event Landlord fails to approve or disapprove (with Landlord's reasons therefor as required below) a proposed Sublease and Sublessee within said thirty (30) day period, then Tenant may deliver to Landlord written notice specifying the Sublease previously submitted, the date of such submission, the approval or other action requested, the fact that such notice constitutes a "second notice" under this Section, and a statement that the failure of Landlord to approve or disapprove (with Landlord's reasons therefor as required below) such Sublease and Sublessee within thirty (30) days after delivery of such second notice will result in a deemed approval of such Sublease and Sublessee. Landlord shall approve or disapprove (with Landlord's reasons therefor as required below) of the proposed Sublease and the proposed Sublessee within thirty (30) days after its receipt of such second notice from Tenant. If Landlord fails to notify Tenant of its approval or

disapproval (with Landlord's reasons therefor as required below) within such 5-day period, then Landlord shall be deemed to have approved of such Sublease and proposed Sublessee. In the event of any disapproval, Landlord shall, concurrently with the delivery of notice of such disapproval, inform Tenant in writing of the reasons for disapproval of the proposed Sublease or Transfer and, if applicable, the conditions upon which Landlord may approve such Transfer or Sublease.

Promptly following execution of a Sublease by Tenant, a copy thereof shall be delivered to Landlord.

Each Sublease shall explicitly provide that it is subject and subordinate to the provisions of this Lease; provided that, with respect to a Sublease (which meets all applicable requirements of this Lease) Landlord agrees to enter into a form of subordination, non-disturbance and attornment agreement, in a form reasonably acceptable to the parties, which grants such Sublessee the rights therein provided, subject to the terms and conditions set forth therein. Landlord agrees to reasonably consider any Sublessee's requests for modification of the standard subordination, non-disturbance and attornment agreement provided that such modifications do not have a material, adverse effect upon Landlord's rights, the value of the Leased Premises or Landlord's interest under this Lease, or the revenues received directly or indirectly by Landlord as a result thereof, and do not increase the Landlord's obligations hereunder.

8.2.5 Investigation of Proposed Transferee: Costs.

In the event that Tenant requests Landlord's written consent to a proposed Transfer of Tenant's interest in this Lease pursuant to this Section 8.2, Tenant agrees to provide Landlord with such information, including financial statements, tax returns, and current credit reports, as Landlord may reasonably require in order to evaluate the solvency, financial responsibility and relevant business acumen and experience of any proposed Transferee.

Except as otherwise provided in this Section 8.2, if Landlord consents to any Transfer of Tenant's interest in this Lease pursuant to this Section, such consent shall not be effective unless and until any such Transferee assumes all of the obligations and liabilities of Tenant arising under this Lease, from and after the date of the Transfer to the extent of its interest. Landlord's consent to any one Transfer pursuant to this Section 8.2 shall not constitute a waiver or relinquishment of the Landlord's right to approve any other Transfer and each such other Transfer shall remain subject to the provisions of this Lease.

With respect to a Transfer of Tenant's interest in this Lease, Tenant shall pay within ten (10) Business Days of Landlord's written request therefor, all actual expenses incurred by Landlord in connection with the investigation of the proposed Transferee and the documentation of any Transfer, including attorneys' fees and costs and all consultant fees. Tenant shall also reimburse Landlord, within ten (10) Business Days after request, for any actual costs or expenses incurred by Landlord in reviewing, documenting or negotiating any subordination, non-disturbance and attornment agreement or estoppel with any Sublessee. Notwithstanding the above, such fees and costs shall not apply to any Foreclosure by or subsequent Transfer by the foreclosing Lender of all of the Lender's interest pursuant to Article 7.

ARTICLE 9 TAXES AND IMPOSITIONS

9.1. Tenant To Pay Impositions.

In addition to the Rents and other payments required to be paid under this Lease, Tenant shall pay any and all taxes, assessments, and other charges of any description including, without limitation, the possessory interest tax (collectively, "**Impositions**") levied or assessed from the Effective Date until the termination of this Lease by any governmental agency or entity on or against the Leased Premises or any portion thereof, or on or against any interest in the Leased Premises (including the leasehold interest created by this Lease), or any Improvements or other property in or on the Leased Premises. Landlord shall not be obligated to pay any Impositions related to the Leased Premises. The timely payment of the above referenced assessments or other charges is a material term of this Lease, and, to the extent the above-referenced items are payable to Landlord or its successors, they shall constitute additional Rent hereunder. In no event, however, shall Impositions include Landlord's general income, franchise, inheritance, estate, or gift taxes, or any transfer, documentary, stamp, mortgage, or similar tax levied on or payable by Landlord.

If, by law, any such Imposition is payable, or may, at the option of Tenant be paid, in installments, Tenant may pay the same, together with any accrued interest on the unpaid balance of such Imposition, in such installments as those installments respectively become due and before any fine, penalty, interest, or cost may be added thereto for the nonpayment of any such installment and interest.

Tenant expressly acknowledges that the property interest created by this Lease is subject to property taxation, and that the Tenant, being the party in whom the possessory interest is vested, will be subject to the payment of property taxes levied on that property interest.

9.2. Proration of Impositions.

All Impositions levied or assessed on or against the Leased Premises shall be prorated, based on a 365-day year, between Landlord and Tenant as if Landlord were a private party as of the Effective Date of this Lease, and as of the expiration or earlier termination of this Lease. On service of written request by Landlord, Tenant shall promptly pay to Landlord Tenant's share of such Impositions paid by Landlord on Tenant's behalf and, on service of written request by Tenant, Landlord shall promptly pay to Tenant Landlord's share of such Impositions paid by Tenant on Landlord's behalf.

9.3. Payment Before Delinquency.

Subject to Tenant's right to contest under Section 9.4, any and all Impositions and installments of Impositions required to be paid by Tenant under this Lease shall be paid by Tenant prior to delinquency, and copies of the original receipt for the payment of each such Imposition or installment thereof or other reasonably satisfactory evidence of payment shall promptly be given to Landlord.

9.4. Contest of Imposition.

Tenant shall have the right to contest, oppose, or object to the amount or validity of any Imposition levied on or assessed against the Leased Premises or any portion thereof and may in good faith diligently conduct any necessary proceeding to prevent or void or reduce the same; provided, however, that the contest, opposition, or objection must be filed before the Imposition at which it is directed becomes

delinquent if such contest, opposition or objection is required to be made or filed prior to payment of the Imposition being challenged, and written notice of the contest, opposition, or objection must be given to Landlord at least thirty (30) days before the date the Imposition becomes delinquent. No such contest, opposition, or objection shall be continued or maintained after the date on which the Imposition at which it is directed becomes delinquent unless Tenant has met one of the following conditions:

- (a) Paid such Imposition under protest prior to its becoming delinquent;
- or
- (b) Posted such bond or other security, satisfactory to Landlord, as is necessary to protect Landlord and the Leased Premises from any lien arising from such Imposition.

Landlord shall not be required to join in any proceeding or contest brought by Tenant unless the provisions of any law require that the proceeding or contest be brought by or in the name of Landlord or any owner of the Leased Premises. In that case, Landlord shall join in the proceeding or contest or permit it to be brought in Landlord's name, but such action shall be without cost to Landlord and Tenant shall reimburse Landlord upon demand for any reasonable attorneys' fees, costs, and any monetary obligations incurred therein.

9.5. Tax Returns And Statements.

During the term of this Lease, Tenant shall, as between Landlord and Tenant, have the duty of attending to, preparing, making, and filing any statement, return, report, or other instrument required or permitted by law in connection with the determination, equalization, reduction, or payment of any Imposition that is or may be levied on or assessed against the Leased Premises, or any portion thereof, or any interest therein, or any improvements or other property on the Leased Premises.

9.6. Indemnification.

Tenant shall indemnify, defend and hold Landlord and its Representatives, and Landlord's property (including the Leased Premises and any improvements now or hereafter located on the Leased Premises) free and harmless from any Claims resulting from any Impositions required by this Article to be paid by Tenant, and from all interest, penalties, and other sums imposed thereon, and from any sale or other proceeding to enforce collection of any such Imposition, except to the extent resulting from Landlord's gross negligence or intentional misconduct.

9.7. Payment By Landlord.

Should Tenant fail to pay within the time specified in this Article any Impositions required by this Article to be paid by Tenant, other than any Imposition(s) properly contested by Tenant pursuant to Section 9.4 above, Landlord may, upon ten (10) Business Days' notice to or demand on Tenant, pay, discharge, or adjust such Imposition for the benefit of Tenant. In such event, Tenant shall, on or before the first day of the next calendar month following any such payment by Landlord, reimburse Landlord for the full amount incurred by Landlord in so paying, discharging, or adjusting such Imposition, together with interest, penalties, and fees thereon,, from the date of payment by Landlord until the date of repayment by Tenant, and the above obligation of Tenant to reimburse Landlord shall be treated as additional Rent under this Lease.

ARTICLE 10 UTILITY SERVICES

10.1. Tenant's Responsibility.

During the term of this Lease, Tenant shall pay, or cause to be paid, and shall indemnify, defend and hold Landlord and the property of Landlord harmless from all charges for water, sewage, gas, heat, air conditioning, light, power, steam, telephone service and all other services and utilities used, rendered or supplied to, on or in the Leased Premises.

10.2. Landlord Has No Responsibility.

Landlord shall not be required to furnish to Tenant or any other occupant of the Leased Premises during the Term of this Lease, any gas, heat, air conditioning, light, power, steam, telephone, or any other utilities, equipment, labor, materials or services of any kind; provided however, Landlord shall allow Tenant to connect to water and sewer lines located on the Leased Premises. Tenant shall, at Tenant's sole cost and expense, install Landlord specified submeters for such water and sewer (quantity and quality) usage and pay to Landlord Tenant's actual usage pursuant to the submeters.

ARTICLE 11 INSURANCE

11.1. Property Insurance.

Throughout the term of this Lease, Tenant, at no cost or expense to Landlord, shall keep or cause to be kept, for the mutual benefit of Landlord and Tenant, a policy of standard fire insurance, with extended coverage and vandalism and malicious mischief endorsements, providing "all risk" coverage and insuring all improvements located on or used in connection with and appurtenant to the Leased Premises, except for foundations and footings. The amount of insurance required hereunder shall in no event be less than one hundred percent (100%) of the full replacement cost of the improvements on the Leased Premises. The policy shall also contain "business interruption", "rental interruption", and/or continuous operation coverage payable (collectively referred to as "Interruption") to Landlord equal to 1) if the Interruption occurs during the 1st five years of operation beginning after the certificate of occupancy or its equivalent is issued, two (2) years Rent of not less than \$725,000 per year 2) if the Interruption occurs beginning with the 6th year of operations after the certificate of occupancy or its equivalent is issued, two (2) year's Rent as determined by 1) for the first year, Rent is calculated using the average of the prior three (3) years' Annual Rent plus increasing such Rent based on the change in the Bureau of Labor Statistics CPI as determined by Los Angeles – Riverside - Orange County for the most recent 12 month period ending on the date of the Interruption and 2) Rent for the second year is determined by taking the Rent calculated in 1) of this paragraph and increasing such Rent based on the change in the Bureau of Labor Statistics CPI as determined by Los Angeles – Riverside - Orange County for the most recent 12 month period ending on the date of the Interruption. Tenant shall not be obligated to obtain earthquake or flood insurance as part of the extended coverage required hereunder.

11.2. Cooperation in Obtaining Proceeds of Property Insurance Coverage.

Landlord shall, at no cost or expense to Landlord, cooperate fully with Tenant to obtain the largest possible recovery under all policies described by Section 11.1. All such proceeds shall be paid to the Tenant as the insured party (with Tenant as additional insured) in accordance with the insurance policy, and shall allocate the proceeds in accordance with the rights and obligations set forth in this Lease.

11.3. Builder's Insurance Risk and Worker's Compensation

Before commencement of any construction work on the Leased Premises, Tenant shall procure or cause to be procured, and shall maintain or cause to be maintained in force until completion and acceptance of the work (i) "all risks" builder's risk insurance, including coverage for vandalism and malicious mischief, with a company meeting the requirements of Section 11.5, and (ii) worker's compensation insurance covering all persons employed in connection with work on the Leased Premises and with respect to whom death or bodily injury claims could be asserted against Landlord or the Leased Premises. Said builder's risk insurance shall cover improvements in place and all material and equipment at the job site furnished under contract, but may exclude contractor's, subcontractor's, and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees.

11.4. Public Liability Insurance.

Tenant, commencing on the Effective Date and continuing throughout the Term hereof, shall maintain or cause to be maintained, at no cost or expense to Landlord, for the mutual benefit of Landlord and Tenant, commercial general liability insurance against claims and liability for personal injury, death, or property damage arising from the use, occupancy or condition of the Leased Premises, the improvements thereon, or any abutting public rights-of-way, which insurance shall provide combined single limit protection of at least Two Million Dollars (\$2,000,000) per occurrence, and Five Million Dollars (\$5,000,000) annual aggregate; provided, that, on the fifth anniversary of the Effective Date of this Lease and every five (5) years thereafter ("**Insurance Coverage Adjustment Dates**"), the above prescribed minimum coverages shall be increased to an amount equal to the amounts customarily carried by developments of the size, character and nature of the development on the Leased Premises if such amounts exceed the minimum coverages required above. Provided it meets all applicable requirements set forth in this Section, a portion of such coverage may be provided pursuant to the terms of a customary umbrella coverage policy applicable to the Leased Premises. The liability policy shall provide that it may not be cancelled or materially modified without at least thirty (30) days prior written notice to Landlord.

11.5. Policy Form, Content And Insurer.

All insurance required by the provisions of this Lease shall be carried only with insurance companies authorized to do business in this state with Best's Financial Rating of A- VIII or better or otherwise acceptable to Landlord. Tenant shall ensure that all subtenants and/or licensees shall procure and maintain insurance sufficient to meet the provisions of this Lease.

All such policies required by the provisions of this Lease shall be nonassessable and shall contain language to the effect that (i) any loss shall be payable notwithstanding any act or negligence of Landlord that might otherwise result in a forfeiture of the insurance, (ii) the policies are primary and noncontributing with any insurance that may be carried by Landlord, (iii) the policies cannot be canceled or materially changed except after thirty (30) days' notice by the insurer to Landlord and (iv) Landlord shall not be liable for any premiums or assessments. If such waiver is available at commercially reasonable rates, the insurer under the policy of property insurance for the Leased Premises shall also waive its rights of subrogation against Landlord and against Landlord's Representatives.

Upon Tenant's execution and delivery of this Lease, Tenant shall deliver to Landlord certificates of insurance evidencing the insurance coverages specified in this Article. Tenant shall thereafter deliver to

Landlord certificates of insurance evidencing the insurance coverages required by this Article upon renewal of any insurance policy or changes thereto. Tenant may provide any insurance required under this Lease by blanket insurance covering the Leased Premises and any other location or locations, provided that the specific policy of blanket insurance proposed by Tenant provides the coverages required by this Lease taking into account the other properties, persons and risks covered by such blanket policy. All insurance policies required by the provisions of this Lease shall name Landlord and its board members, officers and employees as additional insureds as their interests may appear. All insurance policies required hereunder shall have deductibility limits of not more than Fifty Thousand Dollars (\$50,000), which amount shall be increased upon the commencement of each Lease Year by the percentage increase, if any, in the CPI (as defined in Section 11.1) between the Effective Date of this Lease and the commencement of the applicable Lease Year.

11.6. Indemnification.

Tenant shall indemnify, defend and hold Landlord and its Representatives, including but not limited to the District and its Board members, employees, officers, agents, servants, consultants and all related parties and the property of Landlord, including the Leased Premises and any improvements thereon, free and harmless from any and all losses, claims, demands, damages, liabilities, obligations, injuries, fines, penalties, causes of action, lawsuits, costs and expenses (including reasonable attorneys' fees) (collectively, "**Indemnified Claims**"), resulting from the use, occupancy or enjoyment of the Leased Premises by Tenant or any person thereon or holding under Tenant to the extent arising from any action, inaction, events or facts occurring during the Term from any cause. The above indemnification includes, but is not limited to, any Claims arising by reason of:

(a) The death or injury of any person, including Tenant or any person who is an employee or agent of Tenant, or damage to or destruction of any property, including property owned by Tenant or by any person who is an employee or agent of Tenant, from any cause whatever while such person or property is in or on the Leased Premises;

(b) The death or injury of any person, including Tenant or any person who is an employee or agent of Tenant, or damage to or destruction of any property, including property owned by Tenant or any person who is an employee or agent of Tenant, caused or allegedly caused by either (i) the condition of the Leased Premises or some improvement on said premises, or (ii) some act or omission on the Leased Premises by Tenant or any person in, on, or about the Leased Premises with the permission and consent of Tenant;

(c) Any work performed on the Leased Premises or materials furnished to said premises at the instance or request of Tenant or any person or entity acting for or on behalf of Tenant;

(d) Tenant's failure to perform any provision of this Lease or to comply with any Governmental Restriction or any state or local regulations, laws, codes or requirements; or

(e) Any Hazardous Materials placed or discovered on or under the Leased Premises, excepting any Hazardous Materials that were placed on the Leased Premises by Landlord after the execution of this Lease.

However, the foregoing indemnification shall not extend to any Losses or Liabilities to the extent (i) it arises out of the gross negligence or intentional misconduct of Landlord or any Landlord Representative acting on behalf of Landlord, or (ii) it arises from a breach of any representation or obligation of Landlord under the terms of this Lease.

ARTICLE 12 CONDEMNATION

12.1. Definitions.

As used in this Article, the following words have the following meanings:

(a) "Award": means the compensation paid for the Taking, as hereinafter defined, whether by judgment, agreement or otherwise.

(b) "Taking": means the taking or damaging of the Leased Premises or any portion thereof as the result of the exercise of the power of eminent domain, or for any public or quasi-public use under any statute. Taking also includes a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation, in avoidance of an exercise of eminent domain, or while condemnation proceedings are pending.

(c) "Taking Date": means the date on which the condemning authority takes actual physical possession of the Leased Premises or any portion thereof, as the case may be.

(d) "Total Taking": means the taking of the title to all of the Leased Premises and the improvements thereon.

(e) "Substantial Taking": means the taking of so much of the Leased Premises or improvements thereon or access thereto or a combination of the foregoing that the conduct of Tenant's business on the Leased Premises would be rendered economically impracticable.

(f) "Partial Taking": means any Taking of title that is not either a Total or a Substantial Taking.

(g) "Notice of Intended Taking": means any notice or notification on which a prudent person would rely as expressing an existing intention of taking as distinguished from a mere preliminary inquiry or proposal. It includes but is not limited to the service of a condemnation summons and complaint on a party to this Lease.

12.2. Total or Substantial Taking of Leased Premises.

In the event of a Total Taking, except for a Taking for temporary use, Tenant's obligation to pay rent shall terminate on, and Tenant's interest in the Leased Premises shall terminate on, the Taking Date. In the event of a Taking, except for a Taking for temporary use, which Tenant considers to be a Substantial Taking, Tenant may, provided that all Lender(s) consent in writing thereto, deliver written notice to Landlord within sixty (60) days after Tenant receives Notice of Intended Taking, notifying Landlord of the Substantial Taking. If Tenant does not so notify Landlord, or any of Tenant's Lenders refuse to consent thereto, the

Taking shall be deemed a Partial Taking. If Landlord does not dispute Tenant's contention that there has been a Substantial Taking within ten (10) days of Landlord's receipt of Tenant's written notice, or if it is determined, by order of the judicial referee, that there has been a Substantial Taking, then the Taking shall be considered a Substantial Taking, and Tenant shall be entitled to terminate this Lease effective as of the Taking Date if (i) Tenant delivers possession of the Leased Premises to Landlord within sixty (60) days after determination that the Taking was a Substantial Taking, (ii) Tenant complies with all Lease provisions concerning apportionment of the Award and (iii) Tenant has complied with all Lease provisions concerning surrender of the Leased Premises, including, without limitation, all applicable provisions concerning removal of improvements. If these conditions are not met, the Taking shall be treated as a Partial Taking.

12.3. Apportionment And Distribution of Total Taking and Substantial Taking.

In the event of a Total Taking or Substantial Taking, all sums, including damages and interest, awarded for the fee or the leasehold or both shall be distributed and disbursed between Landlord and Tenant in proportion to their respective interests as follows:

(i) Tenant's portion of the Award shall be based upon the sum of (aa) any excess at the Taking Date of the fair market rental value of the Premises, exclusive of Tenant's improvements or alterations for which Tenant is compensated under clause (bb) below, for the remainder of the Term, over the fair market rental value at the Taking Date of the Rent payable to Landlord for the remainder of the Term under this Agreement; and (bb) the fair market value at the Taking Date of its interest for the balance of the Term in all improvements or alterations made to the Premises by Tenant; and (cc) the portion of the Award, if any, allocated to relocation and removal costs of Tenant, if any; and (dd) the portion of the Award, if any, attributable to loss of goodwill or lost profits or damages because of detriment to Tenant's business, if any.

(ii) Landlord's portion of the Award shall be based upon the sum of the fair market value at the Taking Date of the Premises as unimproved land encumbered by this Agreement including, without limitation, the fair market value at the Taking Date of all Rent payable to Landlord for the remainder of the Term under this Agreement, and the fair market value at the Taking Date of Landlord's reversionary interest in the Premises, including all improvements or alterations thereon with consideration of Landlord revenues that would accrue upon expiration of the Lease.

(iii) If a court fails or refuses to grant separate awards to Landlord and Tenant upon a Taking, Landlord and Tenant will have sixty (60) days to agree on the allocation of the award. If Landlord and Tenant cannot agree then the determination of the allocation will be made in accordance with the following procedure. Landlord and Tenant will each promptly appoint one (1) appraiser. Those two (2) appraisers will promptly appoint a third (3rd) appraiser. Each appraiser appointed will be a member of the American Institute of Real Estate Appraisers (or successor organization) having at least ten (10) years' experience in appraisal of real estate for similar commercial use as the use of the Premises and in the metropolitan and coastal area in which the Land is located or in a similar metropolitan and coastal area. The three (3) appraisers so appointed will jointly make the required appraisals of the values of Landlord's and Tenant's interests in the Premises and will allocate the award based upon the appraisals. If they cannot agree, the appraisals of the third (3rd) appraiser will be accepted by Landlord and Tenant. If either Landlord or Tenant fails, within a period of sixty (60) days after receiving notice, to appoint an appraiser, then the appraiser so appointed by the party giving the notice will have the power to proceed as

the sole appraiser. Landlord will pay its appraiser, Tenant will pay its appraiser, and Landlord and Tenant will each pay one half (1/2) of the fees and expenses of the third (3rd) appraiser.

12.4. Partial Taking; Abatement and Restoration.

If there is a Partial Taking of the Leased Premises, except for a Taking for temporary use, the following shall apply. This Lease shall remain in full force and effect on the portion of the Leased Premises not Taken, except that, notwithstanding anything in this Lease which is or appears to be to the contrary, the Monthly Rent due under this Lease shall be reduced as calculated by the average revenue generated (based on the prior 12 months) by the property subject to the Partial Taking of the Leased Premises taken prior to the Taking. The reduction in value of the Leased Premises shall take into account and shall be determined subject to any permitted Sublease then in effect, and shall be determined upon completion of any repairs, modifications, or alterations to the Improvements on the Leased Premises to be made hereunder following the Partial Taking. Notwithstanding anything contained herein to the contrary, if any portion of the rent payable under this Lease is computed solely on the basis of a percentage or participation rental, there shall be no abatement of such percentage or participation rental because any necessary abatement shall have already been effected by the reduced percentage or participation rental payable to Landlord. Within a reasonable time period after a Partial Taking, at Tenant's expense and in the manner specified in the provisions of this Lease relating to construction, maintenance, repairs, and alterations, Tenant shall reconstruct, repair, alter, or modify the improvements on the Leased Premises so as to make them an operable whole to the extent allowed by Governmental Authorities. If Tenant does not repair, alter, modify, or reconstruct as required above, such failure shall, following written notice thereof to Tenant, constitute a Default by Tenant under this Lease and the portion of the Award necessary for the repair, modification or reconstruction shall be promptly applied by the Insurance Trustee as described in Section 12.5 below to the reconstruction of the improvements on the Leased Premises as provided in Section 12.5 below. Any such construction, repairs, alterations or modifications shall be undertaken and completed in compliance with all of the provisions of Article 6 of this Lease applicable to Changes to the Improvements, including all provisions contained therein relating to consent of or approval by Landlord.

12.5. Apportionment and Distribution of Award for Partial Taking.

On a Partial Taking, all sums, including damages and interest, awarded for the title or the leasehold or both, shall be distributed and disbursed to the Insurance Trustee and are to be disbursed by the Insurance Trustee, first, as necessary to cover the cost of restoring the improvements on the Leased Premises to a complete architectural unit of a quality equal to or greater than such improvements before the Taking (to the extent allowed by Governmental Authorities), and, thereafter, for apportionment between Landlord and Tenant based upon the formula set forth in Section 12.3.

12.6. Taking for Temporary Use.

If there is a Taking of the Leased Premises for temporary use for a period equal to or less than six (6) months, this Lease shall continue in full force and effect, Tenant shall continue to comply with Tenant's obligations under this Lease not rendered physically impossible by such Taking, neither the Term nor the Rent shall be reduced or affected in any way, but the Monthly Rent shall continue at the level of the last Monthly Rent (regardless of whether computed on a fixed or percentage basis) paid prior to the Taking (including any subsequent increases in such Monthly Rent provided for under this Lease), and Tenant shall

be entitled to any Award for the use or estate taken. If any such Taking is for a period extending beyond such six (6) month period, the Taking shall be treated under the foregoing provisions for Total, Substantial and Partial Takings, as appropriate.

12.7. Waiver of Code of Civil Procedure Section 1265.130.

Each party waives the provisions of Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court to terminate the Lease in the event of a Partial Taking of the Premises.

ARTICLE 13 DEFAULT

13.1. Default.

The occurrence of any one or more of the following events shall constitute a default ("**Default(s)**") under this Lease by Tenant or Landlord, as applicable:

(a) any failure by Tenant to pay Rent or make any other payment required to be made by Tenant hereunder within ten (10) Business Days following Tenant's receipt of the Notice of Default as set forth in Section 13.2 below, including, without limitation, failure to pay any amount payable as additional rent under the terms of this Lease or failure to pay any Impositions payable hereunder on the date the payment of such amount is required to be paid hereunder;

(b) a failure by Tenant or Landlord to observe and perform any other material condition, restriction, covenant, obligation or provision of this Lease to be observed or performed by Tenant or Landlord, as applicable, including but not limited to the material inaccuracy of any material representation or warranty set forth herein, and a failure by Tenant to perform any of its material obligations under or to observe the restrictions of Article 8 with respect to Transfer, after receipt of Notice of Default and time to cure as set forth in Section 13.2 below; or

(c) the abandonment, vacation or discontinuance of use of a substantial portion of the Leased Premises for a period of thirty (30) days after written notice of Tenant's breach of this subsection 13.1(c), except when such cessation of use or operation is caused by the Force Majeure Events described in Section 13.9 below and Tenant has timely invoked that provision and except when such cessation is due to closure of the Project for the performance of scheduled renovations or repairs required or permitted to be made under this Lease, provided such closure for renovations or repairs shall, once such repairs are commenced, be continuously and diligently pursued to completion, subject only to delays caused by Force Majeure Events described in Section 13.9 below.

(d) If Tenant shall file a petition in bankruptcy or for reorganization or for any arrangement pursuant to any present or future federal bankruptcy act or under any similar federal or state law, or shall be adjudicated as bankrupt or insolvent or shall make an assignment for the benefit of its creditors or shall admit in writing its inability to pay its debts generally as they become due, or if a petitioner or answer proposing the adjudication of Tenant as a bankrupt or its re-organization under any present or future federal bankruptcy act

or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof.

(e) If a receiver, trustee or liquidator of Tenant or of all or substantially all of the Premises leased by Tenant pursuant to this Lease shall be appointed in any proceeding brought by Tenant, or if any such receiver, trustee or liquidator shall be appointed in any proceeding brought against Tenant and if such receiver, trustee or liquidator shall not be discharged within sixty (60) days after such appointment, or if Tenant shall acquiesce in or consent to such appointment; or

(f) If Tenant shall be liquidated or dissolved or shall begin proceedings toward its liquidation or dissolution; or

(g) If Tenant shall fail:

- i. To timely pay any taxes when due; or
- ii. To observe or perform any of Tenant's other covenants, agreements or obligations under any Lease with District relating to taxes; or

(h) If Tenant shall fail to maintain insurance as required by this Lease; or

(i) If Tenant shall engage in any construction or ground lease financing except as permitted by the terms of this Lease or with prior written approval of District, or any other transaction creating any mortgage on the Premises; or

(j) If Tenant uses the Premises for purposes other than those provided for in this Lease without the prior written approval of District; or

(k) If Tenant fails to obtain permission of the District before substantial construction, renovation or repair of any material portion of the Premises (outside of normal repair, maintenance and restoration) and fails to conform to and abide by all rules and regulations relative to the Premises and uses herein authorized, which Premises and uses are subject at all times to applicable rules, regulations, resolutions, ordinances and statutes of the Harbor District, County of San Luis Obispo, State of California, the Federal Government and all other governmental agencies when applicable; or

(l) If Tenant fails to obtain or violates any and all required permits or licenses for repair, construction or renovation of any material portion of the Premises or use therein from the regulatory body having jurisdiction thereof before such repair or use is undertaken; or

(m) Failure to materially adhere to the Schedule of Performance pursuant to Section 4.1.2 and Exhibit B, subject to Force Majeure; or

(n) If Tenant breaches any other material term of this Lease.

13.2. Notice of Default: Tenant's Right to Cure.

If Tenant is in breach of this Lease as described above in Section 13.1, Landlord shall give written notice of said breach ("**Notice of Default**") to Tenant. Each such Notice of Default shall specify the alleged Default. As provided in Section 13.1, following the giving of such notice, the non-performance within the applicable cure period as set forth below which is complained of shall constitute a Default by Tenant under this Lease.

If the alleged Default is nonpayment of Rent, Impositions or other sums to be paid by Tenant as provided in this Lease, or is a failure to maintain the insurance coverages required by this Lease, Tenant shall have ten (10) Business Days after the Notice of Default is given to cure the Default. For any other Default, Tenant shall, after the Notice of Default, promptly and diligently commence curing the Default and shall have thirty (30) days after the Notice of Default to complete the cure of said Default; provided, however, that if the nature of said Default is such that the same cannot reasonably be cured within said thirty (30) day period, Tenant shall have such additional time as is reasonably necessary to cure such Default up to an additional ninety (90) days, provided that at all times prior to the expiration of said additional sixty (60) day period, Tenant is diligently and continuously pursuing the cure of such Default.

13.3. Landlord's Right to Cure Tenant's Defaults.

After expiration of the applicable time for curing a particular Default and if such Default remains uncured, Landlord may, at Landlord's election, make any payment required of Tenant under this Lease or perform or comply with any covenant or condition imposed on Tenant under this Lease, and the amount so paid, plus the reasonable cost of any such performance or compliance, plus interest on such sum at the rate of ten percent (10%) from the date of payment, performance, or compliance until the date of repayment by Tenant, shall be due and payable by Tenant as additional Rent hereunder on the first day of the next calendar month following any such payment, performance or compliance by Landlord. No such act shall constitute a waiver of any Default or of any remedy for Default or render Landlord liable for any loss or damage resulting from any such act (except to the extent such loss or damage arises from Landlord's gross negligence or intentional misconduct).

13.4. Notice of Landlord's Default: Tenant Waiver.

If Landlord is in breach of this Lease, as described in Section 13.1, Tenant may deliver a Notice of Default to Landlord. Each such Notice of Default shall specify the alleged Default. As provided in Section 13.1, following the giving of such notice, the non-performance which is complained of shall constitute a Default by Landlord under this Lease.

If the Default is the non-payment of sums to be paid by Landlord to Tenant hereunder, Landlord shall have ten (10) Business Days after the Notice of Default is given to cure the Default. For any other Default, Landlord shall, after notice, promptly and diligently commence curing the Default and shall have thirty (30) days after notice is given to complete the cure of said Default; provided, however, that if the nature of said Default is such that the same cannot reasonably be cured within said thirty (30) day period, Landlord shall have such additional time as is reasonably necessary to complete the cure of said Default so long as it continuously and diligently pursues such cure up to an additional sixty (60) days. Tenant hereby waives the protections of California Civil Code Sections 1932 and 1933, or any other successor statute containing like protections.

13.5. Mediation During Development/Legal Proceedings

13.5.1 Mediation During Development. During the development of the Project (prior to the issuance of a Certificate of Occupancy or its equivalent), the Parties will use good faith efforts to informally resolve any and all disputes between them. However, should the Parties be unable to resolve said disputes, the Parties agree to formal non-binding mediation prior to engaging in litigation. Following the issuance of a Certificate of Occupancy or its equivalent, the Parties agree to use good faith efforts to informally resolve any disputes, however, no obligation to mediate shall apply.

13.5.2 Legal Proceedings: Choice of Forum. The provisions of Section 13.5.1 shall in no way limit the following before, after, or during the pendency of any mediation: (a) the right of Landlord to obtain a judgment for unlawful detainer, ejectment or the like from a court of competent jurisdiction; or (b) the right of any Party to exercise self-help remedies; or (c) the right of any Party to obtain equitable, provisional or ancillary remedies (such as, but not limited to, temporary restraining orders or preliminary or permanent injunctions) from a court of competent jurisdiction. The Parties each acknowledge and agree that to the extent any legal proceeding proceeds between the parties, the Superior Court of the State of California shall have exclusive jurisdiction over such legal proceeding, and venue shall only be proper in San Luis Obispo County.

13.6. Landlord's Remedies.

13.6.1 Right to Terminate.

If any Default by Tenant shall continue uncured, following the giving of a Notice of Default as required by this Lease, for the cure period applicable to that Default under the provisions of this Lease ("**Uncured Default**"), then Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder by giving written notice of such termination and Landlord may take immediate control, possession, and title to the Leased Premises and Improvements. In the event that Landlord shall so elect to terminate this Lease then, Landlord may recover from Tenant:

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

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award based on either i) if the time of award occurs during the 1st five years of operation beginning after the certificate of occupancy or its equivalent is issued, annual rent shall be \$725,000 per year plus the average annual change in the last three years CPI based on the Bureau of Labor Statistics CPI as determined by Los Angeles – Riverside - Orange County for each of the years or ii) if the time of award occurs beginning with the 6th year of operation after the certificate of occupancy or its equivalent is issued, the average annual rent of the past three (3) prior years plus the average change in the last three years CPI based on the Bureau of Labor Statistics CPI as determined by Los Angeles – Riverside - Orange County, computed for each year exceeds iii) the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount of the unpaid Rent for the balance of the Term computed as i) if the time of award occurs during the 1st five years of

operation beginning after the certificate of occupancy or its equivalent is issued, annual rent shall be \$725,000 per year plus the average change in the last three years CPI based on the Bureau of Labor Statistics CPI as determined by Los Angeles – Riverside - Orange County, compounded for each year remaining in the Term or ii) if the time of award occurs beginning with the 6th year of operation after the certificate of occupancy or its equivalent is issued, the average annual rent of the past three (3) prior years plus the average change in last three years CPI based on the Bureau of Labor Statistics CPI as determined by Los Angeles – Riverside - Orange County compounded for each year remaining in the Term; and

(d) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

As used herein above, the "worth at the time of award" is computed by allowing interest at the maximum lawful rate. As used in subparagraph (c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco plus one percent (1%).

A Lessor shall also have the remedy described in California Civil Code Section 1951.4 (Lessor may continue the Lease in effect after Lessee's breach and abandonment and recover rent as it becomes due, if Lessee has the right to sublease or assign, subject only to reasonable limitations). Any election by Lessor to utilize the remedy in California Civil Code Section 1951.4 shall not preclude Lessor from at any later time deciding to utilize the termination and recovery of damages remedy first provided above.

13.7. Tenant Remedies: Remedies Cumulative.

Except as otherwise expressly provided in this Lease, Tenant shall have all rights and remedies at law or equity upon the occurrence of an Uncured Default by Landlord hereunder. Notwithstanding anything herein to the contrary, Landlord's liability to Tenant for damages arising out of or in connection with Landlord's breach of any provision or provisions of this Lease shall not exceed the value of Landlord's equity interest in the Leased Premises. Each right and remedy of Landlord and Tenant provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease except as otherwise limited by this Lease, and the exercise or the beginning of the exercise by Landlord or Tenant of any one or more of the rights or remedies provided for in this Lease, except as otherwise limited by this Lease, shall not preclude the simultaneous or later exercise by Landlord or Tenant of any or all other rights or remedies provided for in this Lease, except as otherwise limited by this Lease.

13.8. No Waiver.

Landlord's or Tenant's failure to enforce any provision of this Lease with respect to a Default hereunder shall not constitute a waiver of Landlord's or Tenant's right to enforce such provision or any other provision with respect to any future Default. The acceptance of Rent by Landlord shall not be deemed a waiver of Landlord's right to enforce any term or provision hereof. The waiver of any term or condition of this Lease shall not be deemed to be a waiver of any other term or condition hereof or of any subsequent failure of any term or condition hereof.

13.9. Delays in Performance.

The time within which the Parties hereto shall be required to perform any act under this Lease (other than the payment of Monthly Rent, any amount payable as additional rent under the terms of this Lease, Impositions, taxes, insurance, or other obligations that may be discharged by the payment of money or relate to a payment of money that is treated as Rent) shall be extended by a period of time equal to the number of days during which performance of such act is delayed due to an act of God, supernatural causes, strikes, lockouts, fire, earthquake, flood, explosion, war, terrorism, invasion, insurrection, riot, mob violence, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, unusually severe weather, application of Governmental Authorities, regulations or controls not contemplated by this Lease or otherwise reasonably foreseeable, court order, delays or inaction of independent contractors, delays suffered by a party as a result of a breach by the other party of its material obligations under the Lease, delays in the issuance of any governmental approvals or authorizations necessary to proceed with development or operation of the Improvements, which are not presently known or is an expressly assumed obligation under this Lease, (provided that the party asserting such delay as an excuse for performance has filed all applications, submitted all required documents and fees and taken all other actions reasonably necessary to obtain such governmental approvals or authorizations and that party is not responsible in any way for the delay in the issuance of such governmental approvals or authorizations), remediation of Hazardous Materials located upon the Leased Premises, litigation brought against the Leased Premises or a Party without that Party's consent, or other like events which are beyond a Party's reasonable control (collectively, "**Force Majeure Events**"). A Party wishing to invoke this Section with respect to a specified cause of delay shall notify in writing the other Party to this Lease within thirty (30) days of the date on which the event causing such delay occurs and shall, at that time, specify the cause of the delay, the specific provision of this Lease which will be delayed as a result, and the period of such extension, if known, or if not known, a reasonable estimate thereof. If a Party timely gives such notice, such extension shall run from the occurrence of such event causing the delay until the cessation of that cause of delay. If a Party fails to timely give notice of such delay, it shall have no further right to rely upon that Force Majeure Event as a basis for delay. Any Party is also entitled, as often as reasonably required, to request in writing any other Party to confirm the then applicable deadlines for performance of each Party's obligations or the exercise of each Party's rights under this Lease, and each Party shall within twenty (20) days after receipt of such a written request, respond thereto. The failure of a Party to respond to a request from another Party under this Section as required above (provided the request informed the Party of such 20-day time requirement and the consequences of a failure to respond) shall constitute a waiver of any right to later rely on any asserted extension(s) of any deadlines inconsistent with any earlier deadlines set forth in such written request.

ARTICLE 14 EXPIRATION; TERMINATION

14.1. Tenant's Duty To Surrender.

At the expiration or earlier termination of this Lease, Tenant shall surrender to Landlord possession of the Leased Premises free and clear of all liens, encumbrances and Leasehold Mortgages other than those, if any, created by Landlord. Surrender or removal of improvements, fixtures and trade fixtures shall be as directed in the provisions of this Lease on ownership of improvements at termination or expiration of the Term. Tenant shall leave the Leased Premises and any other property surrendered in good order, first class condition, and state of repair, ordinary wear and tear, aging, and obsolescence excepted. All property that Tenant is required to surrender shall become Landlord's property at termination or expiration of this

Lease. All property that Tenant is not required to surrender but that Tenant does abandon by failure to remove said property upon the expiration or earlier termination of this Lease shall, at Landlord's election, become Landlord's property.

Subject to the rights, if any, of a Subtenant under a non-disturbance agreement entered into by Landlord, upon the expiration or earlier termination of this Lease, Landlord shall have the right to demand the removal, at Tenant's sole cost and expense, from the Leased Premises of any improvements or certain specified improvements, if such improvements are not at that time, in good order, first class condition, and state of repair, ordinary wear and tear, aging, and obsolescence excepted. A demand for the removal of said improvement(s) shall be made by Landlord giving notice to Tenant within the last six (6) months before the expiration, or at the time of the earlier termination, of this Lease. For removal of improvements at the expiration of the Term, Tenant shall comply with said notice not later than the later of (i) the expiration of this Lease, or (ii) ninety (90) days after Landlord gives Tenant written notice of Landlord's election to have the improvements removed. For removal of improvements in the event of earlier termination, such removal shall be completed not later than ninety (90) days after such earlier termination of this Lease. Such deadlines shall be extended for any period of delay in issuance of the necessary demolition permits which occurs notwithstanding Tenant's diligent effort to obtain such permits and Tenant's satisfaction of all requirements applicable thereto. Tenant shall demolish and remove all such buildings in compliance with applicable demolition permits.

If Tenant fails to surrender the Leased Premises at the expiration or sooner termination of this Lease, Tenant shall indemnify, defend and hold Landlord and its Representatives, and the property of Landlord, harmless from all Claims resulting from the delay or failure to surrender, including, without limitation, claims made by any succeeding tenant founded on or resulting from Tenant's failure to surrender the Leased Premises. If Tenant holds over after the expiration of the Term for any cause, with or without the express or implied consent of Landlord, such holding over shall be deemed to be a tenancy from month-to-month only, and shall not constitute a renewal or extension of the Term. During any such holdover period, the Rent rates in effect at the end of the Term shall be increased to one hundred fifty percent (150%) of such previously effective amounts. Such holdover shall otherwise be subject to the same terms, conditions, restrictions and provisions as herein contained. Such holding over shall include any time employed by Tenant to remove machines, appliances and other equipment during the time periods herein provided for such removal. Nothing contained herein shall be construed as consent by Landlord to any holding over by Tenant, and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Section 14.1 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided at law or in equity.

If requested to do so, Tenant shall, upon the expiration or earlier termination of this Lease, execute, acknowledge and deliver to Landlord such instruments of further assurance as are necessary or reasonably requested by Landlord to confirm or perfect Landlord's right, title and interest in and to the Leased Premises, and any other property surrendered to Landlord pursuant to this Lease, free and clear of any claim by Tenant.

ARTICLE 15 MISCELLANEOUS

15.1. Tenant's Representations and Warranties.

Tenant covenants, represents and warrants to Landlord, as of the date of execution of this Lease, as follows:

(a) Tenant is a limited liability company duly organized, qualified and validly existing and in good standing under the laws of California, and has all requisite power and authority to enter into and perform its obligations under this Lease.

(b) The execution, delivery and performance of this Lease is consistent with the articles of organization and operating agreement of Tenant and has been duly authorized by all necessary action of Tenant's members. All consents or approvals of Tenant's members required in connection with the execution, delivery and performance by Tenant of this Lease have been obtained and delivered to Landlord on or before the Effective Date of this Lease. This Lease has been duly and validly executed by the Tenant and, subject to applicable laws concerning bankruptcy and other creditor's rights, is enforceable against Tenant in accordance with its terms.

(c) Tenant shall obtain and maintain, or cause to be obtained and maintained, all material licenses, permits, consents and approvals required by all applicable governmental authorities to own and operate the Leased Premises and the Improvements to be constructed thereon.

(d) All material filings, reports and tax returns of Tenant which are required to be made or filed with any governmental authority with respect to the Leased Premises have been and will continue to be duly made and filed, and all taxes, assessments, fees and other governmental charges upon Tenant, which are due and payable by Tenant, have been, and will continue to be, paid when due, other than those which are presently payable without penalty or interest, or which Tenant is contesting in good faith.

(e) To Tenant's actual knowledge, there are no suits, other proceedings or investigations pending or threatened against Tenant which could materially impair Tenant's ability to perform under this Lease, nor is Tenant, to Tenant's actual knowledge, in violation of any laws or ordinances which could materially impair Tenant's performance of its obligations under this Lease.

(f) To Tenant's actual knowledge, there are no facts now in existence which would, with the giving of notice or the lapse of time, or both, constitute a "Default" hereunder.

(g) To Tenant's actual knowledge, Tenant has not received any notice from any governing jurisdiction of any violation of laws or ordinances with respect to any Improvements to be constructed on the Leased Premises.

(h) To Tenant's actual knowledge, there is no existing adverse condition, circumstance, pending or threatened litigation, governmental action, or other existing

condition which could prevent or materially impair Tenant's ability to develop the Leased Premises as contemplated by the terms of this Lease.

(i) Tenant has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Lease, other than the normal cost of conducting business and the costs of professional services such as architects, engineers and attorneys, and brokers' commissions payable in connection with any proposed subleases.

The term "actual knowledge", as used with reference to Tenant, shall mean the actual knowledge then possessed, without duty of inquiry, investigation or research, of Benton J. Ketel. The fact that such individuals are used for purposes of establishing the actual knowledge of Tenant shall not create any personal liability to such individuals under this Lease for the representations and warranties set forth herein, except for such liability as may arise from any Guarantees provided pursuant hereto.

15.2. Landlord's Representations and Warranties.

Landlord covenants, represents and warrants to Tenant, as of the date of execution of this Lease, as follows:

(a) The persons executing this Lease on behalf of Landlord are duly authorized to do so, and by their execution bind Landlord thereto.

(b) Landlord owns the entire interest in the Leased Premises (except for the .7 Acres) and has all requisite power and authority and has taken all actions necessary to authorize it to enter into and perform its obligations to Tenant under this Lease.

(c) To Landlord's actual knowledge, the execution, delivery and performance of this Lease by Landlord does not result in a violation of, or constitute a default under, any provision of any existing agreement, judgment, court order or Governmental Restriction concerning the Leased Premises not disclosed to Tenant in writing.

(d) To Landlord's actual knowledge, the Leased Premises are free and clear of, and are not subject to, any laborer, mechanic's or materialman's liens (either perfected or unperfected) resulting from any work thereon performed by or on behalf of Landlord, (except those liens, if any, resulting from Tenant's entry on or actions on the Leased Premises).

(e) To Landlord's actual knowledge, there are no suits, other proceedings or investigations pending or threatened against, or affecting the operations or the properties of Landlord which could materially impair Landlord's ability to perform under this Lease.

(f) To Landlord's actual knowledge, there are no facts now in existence which would, with the giving of notice or the lapse of time, or both, constitute a "Default" hereunder.

(g) To Landlord's actual knowledge, Landlord has not received any written notice from any governing jurisdiction of any violation of laws or ordinances that would result from construction of the completed Improvements on the Leased Premises.

(h) To Landlord's actual knowledge, no order, permission, consent, approval (except for approvals required in the ordinary course of business), license, authorization, registration, or validation of, or filing with or exemption by, any governmental agency, commission, board, or public authority is required to authorize, or is required in connection with, the execution, delivery, and performance by Landlord of this Lease that has not been obtained prior to the Effective Date hereof.

(i) Landlord and affiliates of Landlord have not granted any right or option or first refusal to purchase or acquire or to lease all or any part of the Site, the Leased Premises, or any interest therein except for permittees and licensees using District Use Areas for Gear Storage and Trailer Boat Storage.

(j) Except as otherwise disclosed in the Study (as defined in Section 15.19.1.2 below) provided to Tenant, to Landlord's actual knowledge, there is no material violation of any applicable fire, health, safety, building, pollution, environmental, zoning, land use, or other federal, state or local laws, ordinances, orders, or requirements of any governmental authority having jurisdiction over all or any portion of the Site or the Leased Premises.

(k) Except as otherwise disclosed in the Study provided to Tenant, to Landlord's actual knowledge, (i) there has been no discharge, spillage, uncontrolled loss, seepage, or filtration of any Hazardous Materials at, on, under, or from the Site; (ii) there has not been any manufacture, storage, or any handling of Hazardous Materials at the Site; (iii) any remedial work, if any, performed at the Leased Premises relating to the removal of Hazardous Materials has been performed in material compliance with all Environmental Laws; (iv) no asbestos has been located at the Site; (v) no underground fuel storage tanks have been located at the Site; and (vi) there is no material violation of any Environmental Laws that affects the Site.

When used in this Section 15.2, the term "Landlord's actual knowledge" or similar phrases shall refer to the actual present knowledge of Phillip J. Sexton as of the Effective Date of this Lease without any duty of investigation or inquiry of any kind or nature whatsoever. The individual named in this Section is the representative of Landlord most familiar with the subject matter of the representations and warranties made in this Section 15.2. There shall be no personal liability of such individual in connection with this Lease or the representations or warranties in this Section 15.2.

15.3. Estoppel Certificate.

Within ten (10) days after request by Landlord or Tenant (which request may be from time to time as often as reasonably required by Landlord or Tenant) Landlord or Tenant shall execute and deliver to the other, without charge, a statement in the form of Exhibit "F" attached hereto or in such other similar form as Landlord or Tenant may reasonably request. Any such statement may be conclusively relied upon by any prospective purchaser, tenant, subtenant or encumbrancer of the Leased Premises.

So long as the Landlord is the Landlord under this Lease, the District Harbor Manager is hereby authorized to execute any certificate requested by Tenant under this Section on behalf of Landlord.

15.4. Notices.

All notices, requests, demands and other communications under this Lease shall be in writing and shall be deemed to have been given on (i) the date of service if served personally on the Party to whom notice is to be given, (ii) the date of actual or attempted delivery provided such attempted delivery is made on a Business Day, if sent by Federal Express, Express Mail or another like overnight delivery service, (iii) the date of delivery, if sent by fax or electronic mail; provided that, if such fax or electronic transmission is sent on a weekend or after 5:00 p.m. on a Business Day, then it shall be deemed sent on the next Business Day, and provided that any notice sent by fax or electronic mail shall also be sent by one of the other modes of permissible delivery, which alternate method of delivery shall be initiated not more than one (1) Business Day after such transmission by fax or electronic mail, or (iv) the date of actual delivery (or refusal) as shown by the addressee's registry or certification of receipt, if mailed to the person to whom notice is to be given, by first class U.S. mail, registered or certified, postage prepaid, return receipt requested and properly addressed as follows (or to such other address as either Party may from time to time direct by written notice given in the manner herein prescribed) :

If to Landlord: Port San Luis Harbor District
P.O. Box 249
Avila Beach, CA 93424
Attn: Andrea Lueker, Harbor Manager
Email: andreal@portsanluis.com

with a copy to: Adamski Moroski Madden Cumberland & Green
P.O Box 3835
San Luis Obispo, California 93403-3835
Attn: Jeffrey A. Minnery
Email minnery@ammglaw.com

and, If to Tenant: RTA Harbor Terrace, LLC
2082 Michelson Drive, Suite 400
Irvine CA 92612
Attn: Ben Ketel
Email: bketel@rtacq.com

with a copy to: Nancy Dubonnet, APC
2082 Michelson Drive, Suite 400
Irvine CA 92612
Attn: Nancy Dubonnet, Esq.
Email: nancy@dubonnet.law

15.5. Headings.

The headings used in this Lease are inserted for reference purposes only and do not affect the interpretation of the terms and conditions hereof.

15.6. Rights of Successors.

All of the rights and obligations of the Parties under this Lease shall bind and inure to the benefit of their respective heirs, successors and assigns; provided, however, that nothing in this Section 15.6 shall be construed to limit or waive the provisions concerning restrictions on Transfer set forth in Article 8 hereof.

15.7. Amendments in Writing.

This Lease cannot be orally amended or modified. Any modification or amendment hereof must be in writing and duly executed by both Parties.

15.8. No Brokers.

Each Party shall defend, indemnify, and hold the other harmless from all costs and expenses, including attorneys' fees, arising out of any and all claims for broker's, agent's or finder's fees or commissions in connection with the negotiation, execution or consummation of this transaction incurred as a result of any statement, representation or agreement alleged to have been made or entered into by the indemnifying Party. Neither Tenant nor Landlord is entitled to receive any brokerage commission as a consequence of this transaction.

15.9. Time of Essence.

Time is of the essence of each provision in this Lease, and applies to all terms, restrictions, conditions and limitations contained herein.

15.10. Interpretation.

When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural, and the masculine shall include the feminine and neuter and vice versa. The term "Person" as used in this Lease means a natural person, corporation, association, partnership, organization, business, trust, individual, or a governmental authority, agency, instrumentality or political subdivision, and whenever the word "day" or "days" is used herein, such shall refer to calendar day or days, unless otherwise specifically provided herein. Whenever a reference is made herein to a particular Section of this Lease, it shall mean and include all sub-Sections and subparts thereof. The word "include" or "including" shall describe examples of the antecedent clause, shall mean "including without limitation", and shall not be construed to limit the scope of such clause. The word "or" is inclusive and means "and/or" unless the context expressly indicates otherwise. "Business Day" or "Business Days" shall mean and refer to any day other than a Saturday, Sunday, or a day which is a legal holiday for national banks in California.

15.11. Applicable Law: Severability.

The interpretation and enforcement of this Lease shall be governed by the laws of the State of California, regardless of any laws on choice of law or conflicts of laws of any jurisdiction. Should any part,

term, portion or provision of this Lease, or the application thereof to any person or circumstances be held to be illegal or in conflict with any Governmental Authorities, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions, or the application thereof to other persons or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by law.

15.12. Exhibits.

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

15.13. Waiver of Subrogation.

Landlord and Tenant hereby release the others and their Representatives from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to the Leased Premises, any improvements thereon, or any of Tenant's personal property thereon caused by or arising from a fire or any other event with respect to which insurance is required to be carried pursuant to Article 11 hereof or with respect to which insurance is actually carried, to the extent such loss is insured against or required to be insured against hereunder, even if such fire or other casualty shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible; provided, that the above provision does not limit or waive, in any way, Tenant's repair and reconstruction obligations set forth in this Lease.

15.14. Attornment by Tenant.

In the event that Landlord assigns its interest in the Leased Premises and this Lease, Tenant shall attorn to the assignee of Landlord, and shall recognize same as Landlord under this Lease.

15.15. Landlord's Rights of Inspection.

Landlord and its authorized agents and representatives shall have the right during business hours, upon not less than 48 hours' oral or written notice to Tenant (except that in the case of an emergency, the existence of which shall be determined by Landlord in its reasonable discretion, no advance notice shall be required) to enter upon the Leased Premises for purposes of inspecting the same and exercising its rights under this Lease, provided that such inspections shall not unreasonably interfere with Tenant's construction or business activities. If any work or materials are not in conformity in all material respects with any Plans approved pursuant to this Lease, any Governmental Authorities, or any other provisions of this Lease, Landlord may, following receipt of a Notice of Default of same by Tenant and failure of Tenant to correct such by the expiration of the applicable cure period, stop the work and order correction of any such work or materials. Inspection by Landlord of the Leased Premises or any improvements thereon is for the sole purpose of protecting the rights of Landlord and is not to be construed as an acknowledgment, acceptance or representation by Landlord that there has been compliance with any Plans, the Schedule of Performance, or any terms or provisions of this Lease, or that the Leased Premises or any Improvements thereon will be free of faulty materials or workmanship. Any holder of any encumbrance on any portion of the Leased Premises shall make or cause to be made such other independent inspections as it deems necessary for its own protection, and nothing contained herein shall be construed as requiring Landlord to construct or supervise construction of any improvements on the Leased Premises or any portion thereof. Nonmerger of Fee and Leasehold Estates.

If both Landlord's and Tenant's estates in the Leased Premises become vested in the same owner (other than by termination of this Lease following an Uncured Default hereunder), this Lease shall not be terminated by application of the doctrine of merger except at the express election of Landlord and with the consent of any Lender(s) on a Leasehold Mortgage.

15.16. Nonliability of Landlord and Tenant Representatives

No Landlord Representatives shall be personally liable to Tenant, or any successor in interest, in the event of any Default or breach by the Landlord, or for any amount which may become due to the Tenant or successor, or on any obligation under the terms of this Lease. No Tenant Representative shall be personally liable to Landlord, or any successor in interest, in the event of any Default or breach by Tenant, or for any amount which may become due to Landlord, or any successor, or on any obligation under the terms of this Lease.

15.17. Counterparts.

This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

15.18. Authority.

Each person executing this Lease on behalf of Tenant and Landlord hereby represents and warrants (i) his authority to do so on behalf of that Party, (ii) that such authority has been duly and validly conferred, and (iii) that Tenant or Landlord, as appropriate, has full right and authority to enter into this Lease.

15.19. Landlord Disclosure and Tenant's Waiver.

15.19.1 Disclosures and Waiver.

15.19.1.1 "AS IS". Subject to Landlord's representations and warranties set forth in this Lease, Tenant hereby accepts the Leased Premises in an "**As Is/Where Is**" condition without warranty of any kind, express or implied, including, without limitation, any express or implied warranty of merchantability or fitness for any intended purpose or any warranty as to title, physical condition or the existence or absence of Hazardous Materials (as defined in Section 5.2) on the Leased Premises, and, thereafter, if the Leased Premises are not in all respects entirely suitable for the use or uses to which the Leased Premises or any part thereof will be put, then, except as expressly provided herein, it is the sole responsibility and obligation of the Tenant to take such action as may be necessary to place the Leased Premises in a condition entirely suitable for such use or uses. Without limitation of the foregoing, and except as expressly provided herein, Tenant is not relying on any representation or warranty of any kind whatsoever, express or implied, from Landlord or any other governmental authority or public agency, or their respective agents or employees, as to any matters concerning the Leased Premises and/or any Improvements located or to be located thereon, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Leased Premises and/or any such Improvements, including, but not limited to, the structural elements, foundation, roof, erosion, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, HVAC, plumbing, sewage and utility systems, facilities and appliances, and the square footage of the land, (ii) the quality, nature, adequacy and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical

condition of utilities serving the Leased Premises and/or any Improvements located or to be located thereon, (iv) the development potential of the Leased Premises, and the use, habitability, merchantability or fitness, or the suitability, value or adequacy of the Leased Premises and/or any Improvements located or to be located thereon for any particular purpose, (v) the zoning or other legal status or entitlement or lack thereof of the Leased Premises or any other public or private restrictions on use of the Leased Premises, with respect to which matters Tenant has performed or shall have the opportunity to perform to its own due diligence and for which Landlord shall not have any liability or responsibility notwithstanding anything in this Lease to the contrary, except as expressly provided herein, (vi) the compliance of the Leased Premises and/or any Improvements located or to be located thereon with any applicable codes, laws, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions of the County, State, the United States of America, and/or any other governmental or quasi-governmental entity or of any other person or entity (including, without limitation, relevant provisions of the Americans with Disabilities Act (“**ADA**”), (vii) the presence of any underground storage tank or Hazardous Materials on, under or about the Leased Premises or the adjoining or neighboring property, (viii) the quality of any labor and materials used or to be used in any Improvements, (ix) the condition of title to the Leased Premises, including the impact, if any, of that certain agreements described above, and (x) the economics of the operation of the Leased Premises and/or any Improvements located or to be located thereon. In connection with the above, and subject to the Landlord’s representations and warranties set forth in Section 15.2 above, Tenant hereby acknowledges and represents to Landlord that Tenant has had ample opportunity to inspect and evaluate the Leased Premises and the feasibility of the uses and activities Tenant is entitled to conduct thereon; that Tenant is experienced in real estate development; that, except as expressly provided in Section 15.2 above, Tenant will rely entirely on Tenant’s experience, expertise and its own inspection of the Leased Premises in its current state in proceeding with this Lease; that, except as expressly provided in Section 15.2 above, Tenant will accept the Leased Premises in its present condition as known at the time of the Effective Date; and that, to the extent that Tenant’s own expertise with respect to any of the foregoing is insufficient to enable Tenant to reach an informed conclusion, Tenant has engaged the services of persons qualified to advise Tenant with respect to such matters. Tenant is not relying on any express or implied, oral or written representations or warranties made by Landlord or its representatives, other than those expressly set forth in this Lease.

15.19.1.2 Without limitation of the foregoing, as of the Effective Date, Tenant acknowledges that it is, or shall be given the opportunity to become, intimately familiar with all aspects of the Leased Premises, including soil condition, slope, grading, and any and all risks associated with the operation of this Lease. Tenant further acknowledges that it has been informed that the soil on a portion of the Leased Premises contains Hazardous Material as shown by that Summary of Geological/Geotechnical Conditions Harbor Terrace Planning Sub-Area, prepared by Earth Systems Pacific, dated October 16, 2008 (the “**Study**”), which Study was provided to Tenant in connection with its due diligence review of the Leased Premises. Tenant also acknowledges that it has been informed of the existence of underground storage tanks on the Site, including one or more USTs used for waste disposal storage or discharge. Subject to Section 4.7 and Article 5 above, Tenant has expressly agreed that it will be responsible for any remediation, removal or other resolution, if required by the applicable Governmental Authorities, of any Hazardous Materials in violation of Environmental Laws found in connection with Tenant’s development of the Leased Premises, in a manner satisfactory to the Landlord and in compliance with all applicable Governmental Authorities.

Tenant’s Initials

15.19.1.3 Tenant acknowledges that it may incur additional engineering and construction costs above and beyond those contemplated by either party to this Lease at the time of the execution hereof and Tenant agrees that it will make no demands upon Landlord for any construction, alterations, or any kind of labor that may be necessitated in connection therewith.

15.19.1.4 Tenant hereby waives, withdraws, releases, and relinquishes any and all claims, suits, causes of action (other than a right to terminate as otherwise provided in this Lease), rights of rescission, or charges against Landlord, its officers, agents, employees or volunteers which Tenant now has or may have or assert in the future which are based upon any defects in the physical condition of the Leased Premises and the soil thereon and thereunder, regardless of whether or not said conditions were known at the time of the execution of this instrument.

15.19.1.5 California Civil Code Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

By initialing this paragraph, Tenant acknowledges that it has read, is familiar with, and waives the provisions of California Civil Code §1542 set forth above, and agrees to all of the provisions of Section 15.19 above.

Tenant's Initials

Notwithstanding anything contained in this Section 15.19 to the contrary, the waivers and releases of Tenant under this Section 15.19 shall not apply to limit Landlord's responsibility for a breach of Landlord's representations and warranties set forth in this Lease or intentionally fraudulent conduct or gross negligence by Landlord.

15.20. Authorized Right of Entry.

In any and all cases in which provision is made herein for termination of this Lease, or for exercise by Landlord of right of entry or re-entry upon the Leased Premises, or in case of abandonment or vacation of the Leased Premises by Tenant, Tenant hereby irrevocably authorizes Landlord to enter upon the Leased Premises and remove any and all persons and property whatsoever situated upon the Leased Premises and place all or any portion of said property, except such property as may be forfeited to Landlord, in storage for the account of and at the expense of Tenant. Tenant agrees to indemnify, defend and save harmless Landlord from any cost, expense, loss or damage arising out of or caused by any such entry or re-entry upon the Leased Premises and the removal of persons and property and storage of such property by Landlord and its agents pursuant to this Section.

15.21. No Rights Of Third Parties Other Than Lender.

None of the promises or undertakings made herein are for the benefit of any person or entity which is not a party to this Lease, except (i) with respect to a Lender owning or holding a Leasehold Mortgage encumbering the Leased Premises, such Lender shall be entitled to the benefit of the Lender protection

rights included herein expressly for its benefit, and (ii) with respect to the estoppel certificate provisions set forth in Section 15.4 above, the third Parties described therein shall be entitled to rely upon the provisions expressly provided for their benefit in that Section.

15.22. No Deemed Approvals.

Notwithstanding anything to the contrary in this Lease, except as expressly set forth in this Lease, under no circumstance shall any consent and/or approval of a Party required under this Lease, including, without limitation, any consents rendered in connection with the construction of the Improvements as contemplated by this Lease pursuant to Article 5 or in connection with any Transfers by Tenant pursuant to Article 8, be deemed to have been rendered absent the written consent or approval of the Party providing such consent. Except as expressly set forth in this Lease, in no event shall the failure to approve or disapprove any submission within the time provided by this Lease result in a deemed approval of such submission, although, in that event, the Party who has made such submission shall be entitled to exercise all other remedies provided by this Lease in order to compel the other party's timely approval or disapproval of any such submission.

Except as otherwise provided herein, the time within which Landlord or Tenant has to respond to a request for any consent or approval under this Lease shall be ten (10) Business Days following receipt of the other Party's written request and all materials required by this Lease or otherwise reasonably requested by the Party receiving such request in order to enable it to act thereon. With respect to any such additional matters that the Party receiving such request may reasonably require, such Party shall notify the other Party of such request within five (5) Business Days of its receipt of the request for consent or approval and all materials expressly required to be provided to the Party receiving such request by this Lease in connection with such request. In the event the Party making such request fails to approve or disapprove (with a statement of the reasons therefor as required below) the request within the ten (10) Business Day period, then the Party making such request may provide to the Party receiving such request written notice specifying the request previously submitted, the date of such submission, the action requested, the fact that such notice constitutes a "second notice" under this Section 15.22, and a statement that the failure of the Party receiving such request to approve or disapprove (with a statement of the reasons therefor as required below) such request within five (5) Business Days after receipt of such second request will result in daily liquidated damages thereafter of Two Hundred Fifty Dollars (\$250.00) per day until the response approving or disapproving such request (with a statement of the reasons therefor) is delivered by the Party receiving such request. The Party receiving such request shall approve or disapprove (with a statement of the reasons therefor as required below) the request within five (5) Business Days after its receipt of such second notice. If the Party receiving such request fails to notify the other Party of its approval or disapproval (with a statement of the reasons therefor as required below) within such five (5) Business Day period, then the Party receiving such request shall be liable to the other Party for the sum of Two Hundred Fifty Dollars (\$250.00) for each day following said five (5) Business Day period that the Party receiving such request fails to deliver such approval or disapproval (with a statement of reasons therefor as required below). In the event of any disapproval, the Party receiving such request shall, concurrently with the delivery of notice of such disapproval, inform the other Party in writing of the reasons for disapproval and, if applicable, the conditions upon which the Party receiving such request may approve such request. The provisions of this paragraph shall not apply to consents or approvals under Sections 4.2 or 4.3 in connection with the construction of the Improvements, or Section 7.1 in connection with Leasehold Mortgages, or Sections 8.2.4 and 8.2.5 in connection with subletting, or any other provisions of this Lease that expressly set forth the procedure for submission and processing of any requests for approval (and the

specific timeframes applicable thereto), as those Sections already specify the procedure to obtain Landlord's consent or approval and the remedy for Landlord's failure to timely respond.

15.23. Reasonableness Standard.

Except as otherwise expressly provided herein, any time the consent of Landlord or Tenant is required by this Lease, such consent shall not be unreasonably withheld, conditioned or delayed. Except as otherwise expressly provided herein, whenever this Lease grants Landlord or Tenant the right to take action, exercise discretion, establish rules and regulations or make allocations or other determinations, Landlord and Tenant shall act reasonably.

ARTICLE 16 SUBDIVISION OF THE LEASED PREMISES.

Landlord and Tenant hereby acknowledge and agree, that during the Term of this Lease, Tenant may, at Tenant's sole cost and expense, cause the Leased Premises to be subdivided into a separate legal parcel in compliance with the applicable provisions of the California Subdivision Map Act. All conditions, restrictions, covenants, and easements and other agreements that shall be imposed on the Leased Parcel by governmental authorities having jurisdiction over the subdivision of the Leased Premises shall be subject to the reasonable prior written approval of Landlord. Landlord shall, within thirty (30) days following Landlord's receipt of any proposed conditions, restrictions, covenants, easements and agreements, notify Tenant of any objections or suggested revisions thereto that Landlord may have. If Landlord fails to so notify Tenant of any objections or suggested revisions within such thirty (30) day period, Landlord shall be conclusively deemed to have approved the proposed conditions, restrictions, covenants, easements and agreements.

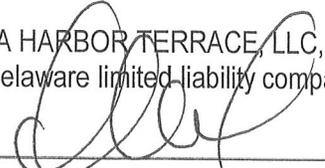
Landlord shall reasonably cooperate with Tenant in connection with Tenant's desire to subdivide the Leased Premises, which reasonable cooperation shall include, without limitation, the execution and submittal of applications, attending required hearings, and like matters; provided however, that under no circumstances shall Landlord be required to make any out-of-pocket expenditures to any third parties or governmental authorities in connection with Landlord's cooperation with Tenant as provided herein.

[SIGNATURES ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the Parties have executed this Lease as of the date first above written.

TENANT:

RTA HARBOR TERRACE, LLC,
a Delaware limited liability company

By: 
Name: Michael B. Earl
Title: Vice President

LANDLORD:

PORT SAN LUIS HARBOR DISTRICT,
a California harbor district

By: 
Name: DREW BRADY
Title: President, Board of Commissioners

ATTEST:

APPROVED AS TO FORM:

ADAMSKI MOROSKI MADDEN
CUMBERLAND & GREEN, LLP
Landlord's Special Counsel

By: _____

[Attach copy of the resolutions of the District
Board.]