

L E A S E

by and between

the CITY OF MORRO BAY

("CITY")

and

[insert tenant name here]

("TENANT")

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L E A S E

This LEASE is made and entered into by and between the CITY OF MORRO BAY, a municipal corporation of the State of California herein called CITY, and _____, herein called TENANT. (CITY and TENANT, at times, are referred to herein individually as Party and collectively as Parties)

WITNESSETH

WHEREAS, the State of California granted certain tide and submerged lands located within the CITY limits of CITY to the County of San Luis Obispo and to its successors, being Chapter 1076, Statutes of 1947, as amended by Chapter 413, Statutes of 1955, Chapter 1874, Statutes of 1957, and Chapter 70, Statutes of 1960, first extraordinary session; which Statutes may be amended from time to time by the Legislature of the State of California; all of which Statutes are expressly recognized and agreed to be in full force and effect by the Parties; and

WHEREAS, the Parties hereto recognize and agree, on July 17, 1964, CITY succeeded to all of the right, title and interest of the County of San Luis Obispo in and to all of the tide and submerged lands conveyed to said County by the State of California pursuant to the above mentioned acts; and

WHEREAS, judgment has been entered on October 14, 1968, in the case of City of Morro Bay, Plaintiff, versus County of San Luis Obispo, and State of California, Defendants, by the Superior Court of the State of California in and for the County of San Luis Obispo, #30417, adjudging and decreeing, among other things, the title to said tide and submerged lands so conveyed by the State of California to the County of San Luis Obispo in trust, as set forth above, passed automatically to CITY upon the date of its incorporation as a city on the 17th day of July, 1964; and

WHEREAS, TENANT accepts the within Lease with full knowledge there is no warranty of title in and to the within described premises by CITY to TENANT; and

WHEREAS, in order to develop and improve Morro Bay Harbor and to assist in carrying out the provisions of the tideland grant as aforesaid, and in order to provide facilities for the accommodation of those using Morro Bay Harbor, CITY desires to lease to TENANT the within described property upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the covenants to be performed and the rental to be paid by TENANT to CITY, CITY leases to TENANT, and TENANT leases from CITY, all of the following premises (herein collectively referred to as the "Premises") in the CITY of Morro Bay, County of San Luis Obispo, State of California, described as follows:

Lease Site _____

This Premises is delineated on Parcel Map of the CITY of Morro Bay No. 68-30, which map was recorded on October 10, 1968, in Book 3, Page 10 of Parcel Maps in the Office of the County Recorder, San Luis Obispo County, California. A copy of said Map is attached hereto as Exhibit A and made a part hereof by reference.

Article 1 FIXED TERM

Section 1.01 Term.

The term of this Lease is a period of ___ years, commencing _____, 20__ (the "Commencement Date"). The term of this Lease will terminate without notice on _____, 20__, unless sooner terminated as herein provided.

Section 1.02 No Extensions.

The term of this Lease will not be extended nor will this Lease be renewed. Requests for continued use of the Premises will be treated as an application for a new lease and will require appropriate application to the CITY with all required supporting information and documents, CITY Council approval and the execution of a new CITY lease, containing the then most current terms, covenants, conditions and rent schedules.

Section 1.03 Hold Over.

If TENANT holds the Premises after the expiration of the term of this Lease with the consent of the CITY, express or implied, then such holding over (in the absence of a written agreement between CITY and TENANT with respect thereto) will be deemed to create a tenancy from month-to-month, terminable on 30-days' written notice from either Party to the other, at a monthly rental equal to two hundred percent (200%) of the average total Rent per month for the twelve (12) months immediately preceding the expiration of this Lease, and otherwise subject to each and every term, covenant and condition of this Lease.

Section 1.04 Replacement.

Subject to the next paragraph, as of the Commencement Date, this Lease will extinguish and replace every prior lease between CITY and TENANT respecting the Premises, if any. Any right or interest held by the TENANT pursuant to any existing lease with respect to the Premises, which is not granted pursuant to this Lease, will be extinguished as of the Commencement Date of this Lease.

(Note: the following paragraph to be included only if the lease is associated with a development/redevelopment project on the site)

If on or before _____, 20__, TENANT does not provide satisfactory evidence, as approved by CITY'S Harbor Director and City Attorney, TENANT has obtained all the financing necessary to commence and complete the Project (as defined in Section 13.__), then (i) this Lease will automatically terminate, without any notice to TENANT, and be of no force and effect and (ii) the lease between CITY and TENANT for the Premises that was in effect prior to this Lease, if any, will be automatically reinstated and remain in full force and effect subject to all of that lease's terms and conditions.

Article 2 RENT

Section 2.01 Annual Minimum Rent.

TENANT agrees to pay to CITY a minimum guaranteed annual rental for the use and occupancy of the Premises, in an initial amount of \$_____ per year (the "Minimum Rent"), payable in advance and at the option of TENANT either in equal semiannual installments or equal monthly instalments. If paid in equal semiannual installments, then such installments must be on January 1 and July 1 each year during the term of the Lease. If the Commencement Date is other than January 1 or July 1, then TENANT must pay, on the Commencement Date, the proportionate amount of the Minimum Rent payable for the period from the Commencement Date until the next payment date of January 1 or July 1, as the case may be. If the term of the Lease expires on a date other than December 31 or June 30, then TENANT'S final installment of Minimum Rent must be proportionate to the time remaining in the term. If paid in equal monthly installments, then each\ monthly installment must be paid no later than the tenth day of each applicable month. All Rent, including the Minimum Rent and the Percentage Rent, must be paid in lawful money of the United States of America, without offset or deduction and must be paid to CITY at City Hall located at 595 Harbor Street, Morro Bay, California, or at such other place or places CITY may from time to time designate by written notice delivered to TENANT.

Section 2.02 CPI Adjustment to Annual Minimum Rent.

(1) The Parties agree, as of every July 1 following the Commencement Date (each, a "CPI Adjustment Date"), except as outlined in section 2.03 hereof, the annual Minimum Rent will be adjusted in direct proportion to any upward or downward movement in the Consumer Price Index for January 1, 20__, which is hereby agreed to be _____ (Base Index). The percentage adjustment for any given year will be based on the monthly average Index for the calendar year immediately preceding the CPI Adjustment Date as compared with the Base Index. The Consumer Price Index referred to herein is the Consumer Price Index (all items indexes, all urban consumers) for Los Angeles – Long Beach – Anaheim, California, compiled and published by the United States Department of Labor, Bureau of Labor Statistics, 1982-84 Base Year = 100 (the "Index")

(2) The Annual Minimum Rent will be adjusted as of each CPI Adjustment Date, and will remain in effect as adjusted until the next CPI Adjustment Date. As an illustration only, if the Base Index (Jan. 1, 1999 CPI) is 166.1 and the monthly average CPI for 2000 is 171.6, then the percentage increase is equal to 3.31%. Therefore, the Minimum Rent would be increased by 3.31% as of July 1, 2001, and would continue at that rate through June 30, 2002.

(3) If the United States Department of Labor, Bureau of Labor Statistics, ceases to compile and make public the Index as now constituted and issued, but substitutes another index in its place, then said substituted index must be used for the purpose of adjusting the Minimum Rent for the Premises. If the Index is changed so the base year differs from that in effect on the Lease Commencement Date, then the Index must be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics.

Section 2.03 Calculation of New Minimum Rent.

At the end of the initial five years and of each five-year period thereafter, a new Minimum Rent will be calculated for the following five-year period (each, a "Subsequent Rental Period") as follows:

A. The Minimum Rent will be subject to adjustment by appraisal as of the fifth anniversary of the Commencement Date and every five years thereafter (each, an "Appraisal Adjustment Date"). CITY, at its own cost and expense, will retain an independent qualified appraiser for determination of the fair market value of the Premises. Not more than nine months prior to each Appraisal Adjustment Date, CITY will provide written notice to TENANT of the pending appraisal and the appraiser selected by the CITY to determine the fair market value of the Premises, excluding fixtures and improvements, unless such are expressly included in the

description of the leasehold interest created by this Lease. If TENANT does not reject CITY's appraiser in writing and within thirty days after CITY's notice of its determination, then the Minimum Rent for the Subsequent Rental Period will be in the amount determined by CITY as outlined in this Section 2.03. If TENANT rejects CITY's appraiser within 30 days following CITY's notice to TENANT, then within 15 days after such 30-day period, each Party, at its own cost, will select an independent professionally designated appraiser who is a member of the American Institute of Real Estate Appraisers, or the Society of Real Estate Appraisers with a designation of MAI (Member of American Institute), SRPA (Senior Real Estate Analysis), to appraise the fair market value of the Premises. CITY may rely on its original appraisal, or select a new appraiser, at its cost. If a Party does not appoint an appraiser within 15 days after the other Party has given notice of the name of its appraiser, then the single appraiser appointed will be the sole appraiser. Each appraiser will conduct an independent appraisal within 30 days after appointment. If the Parties are unable to agree on the Minimum Rent for the Subsequent Rental Period within 30 days after receiving the appraisal(s), then each Party will select one member of a three-member committee. The two so selected members will select the third member, and this committee will, by majority vote, select one or the other of the appraisals. The Minimum Rent determined on the basis of the selected appraisal will be final and binding and all costs associated with the three-member committee will be paid equally by CITY and TENANT.

B. In the event the appraisal process is not concluded on or before the Appraisal Adjustment Date, the Minimum Rent will be adjusted retroactively to such Appraisal Adjustment Date as set out hereinbelow when said appraisal process is completed.

C. The total Rent payable, including both the Minimum Rent and the Percentage Rent for each year within the applicable previous five-year period, will be averaged to produce the average annual total Rent payable for such previous period.

D. The new Minimum Rent for the five-year period commencing on each Appraisal Adjustment Date will be eight percent of the fair market value of the Premises (as established in paragraph A. above.) The new Minimum Rent will be divided by two to determine the semiannual payments and will be paid by TENANT to CITY on the first of each January and July thereafter, or paid monthly at the option of TENANT. This new Minimum Rent will be adjusted each following year in proportion to any increase in the Consumer Price Index as set out in Section 2.02 of this Lease. The Base Index will be adjusted upon each Calculation of new Minimum Rent as set out in this section so the Base Index for CPI adjustment will be the Consumer Price Index for January 1 of the year of the calculation of new Minimum Rent.

Section 2.04 Percentage Rent.

A. In addition to the Minimum Rent, TENANT agrees to pay to CITY, at the time and in the manner hereinafter specified, as additional Rent for the use and occupancy of the Premises, a sum equal to the following for all TENANT'S Gross Sales as hereinafter defined: _____, less the amount of the Minimum Rent paid pursuant to this Lease (the "Percentage Rent").

B. The term "Gross Sales," as used herein, means (subject to the exceptions and authorized deductions as hereinafter set forth), the total selling price and the total gross amount received by TENANT from all rentals, merchandise sold and services rendered in, on or from the Premises by TENANT, its sublessees, licensees, or concessionaires, both for cash and on credit including, but not limited to, rentals of dockage space, leasing and servicing operations and ticket sales, and if on credit whether or not payment be actually made therefore, all charges for services, alterations or repairs made in or upon the Premises; the gross amount received by TENANT for merchandise sold pursuant to orders received in the Premises, though filled elsewhere; and the gross amount received by TENANT from any and all other sources of income derived from the business conducted upon the Premises.

C. Notwithstanding the other provisions of Section 2.04, the term "Gross Sales" does not include the following items, and such items may be deducted from Gross Sales to the extent they have been included therein or have been included in a prior computation of Gross Sales or for which a Percentage Rent has been paid under this Lease to CITY:

- (1) Credits and refunds made to customers for merchandise returned or exchanged;
- (2) Any sales or excise taxes otherwise includable in Gross Sales as defined in this Section because such taxes are part of the total selling price of merchandise or services rendered in, from, or on the Premises, where TENANT must account for and remit the taxes to the government entity or entities by which they are imposed; and
- (3) With respect to credit card sales, fees retained or withheld by the issuer and/or merchant bank pursuant to TENANT'S credit card acceptance agreement, and
- (4) Rental payments to TENANT from sublessees whose total gross sales are included in gross sales computations.

D. TENANT ,must keep or cause to be kept full, complete, and accurate records, and books of account in accordance with accepted accounting practices showing the total amount of Gross Sales, as defined herein, made each calendar month in, on or from the Premises. TENANT must keep said records and books of account within San Luis Obispo County and will notify CITY in advance of their location at all times. Furthermore, TENANT must, at the time of sale and in the presence of the customer, cause the full selling price of each piece of

merchandise, each rental received and each service rendered in, on or from the Premises to be recorded in a cash register or cash registers that have cumulative totals and are sealed in accordance with standard commercial practices. Said records, books of account and cash register tapes, including any sales tax reports or income tax returns TENANT may be required to furnish any government or governmental agency, and income and bank statements must, at all reasonable times, be open to the inspection of CITY, CITY'S auditor, or other authorized representative or agent of CITY, if necessary. TENANT consents to the release of sales tax information to CITY and on demand will furnish to CITY a copy of the sales tax reports, quarterly reports and any audit reports of sales for confidential internal use of the CITY in determining Gross Sales for TENANT. TENANT consents and authorizes CITY to request such information directly from the State Board of Equalization or other state agency with which sales tax information is filed.

E. By July 31 of each year, TENANT must furnish CITY with a statement, to be certified by TENANT as current, true and accurate, which must set forth the Gross Sales of each department, sublessee, licensee and concession operating in, on or from the Premises for the previous 12 calendar months, ending June 30, just concluded, and the authorized deductions, if any, therefrom; and with it TENANT must pay to CITY the amount of the Percentage Rent, which is due to CITY as shown thereby. If TENANT, at any time, causes an audit of sales of TENANT'S business to be made by a public accountant, then TENANT must furnish CITY with a copy of said audit without cost or expense to CITY. CITY may, once in any twelve-month period, cause an audit of the business of TENANT to be made by a certified public accountant or CITY personnel of CITY'S own selection. TENANT must, upon receiving written notice of CITY'S desire for such an audit, deliver and make available all such books, records and cash register tapes to the certified public accountant or CITY personnel selected by CITY. Furthermore, TENANT must promptly, on demand, reimburse CITY for the full cost and expense of said audit, if the audit discloses the questioned statement or statements understated Gross Sales by 5 percent or more but less than ten percent. In the event an audit performed at CITY'S request discloses TENANT understated Gross Sales by less than 5 percent, the cost of such audit will be paid by CITY. In the event any audit or other review of records discloses the amounts reported as Gross Sales were understated by TENANT by 10 percent or more, CITY will not only be entitled to recover from TENANT all costs of audit and review, but will also be entitled to recover from TENANT a penalty equal to two times the Percentage Rent due pursuant to this Lease on such unreported amounts. Whenever any audit discloses that Gross Sales were understated by any amount, TENANT must immediately pay the additional Percentage Rent therein shown to be payable by TENANT to CITY, together with interest at the Default Rate thereon, from the date the Percentage Rent was payable until the date paid.

F. CITY will be entitled at any time within five years after the receipt of any such Percentage Rent payment, to question the sufficiency of the amount thereof or the accuracy of the statement or statements furnished by TENANT to justify the same. For the purpose of enabling CITY to check the accuracy of any such statement or statements, TENANT must, for said period of five years after submission to CITY of any such statement, keep all of TENANT'S records, including sales tax returns, all cash register tapes, income tax returns and income and bank statements and other data which in any way bear upon or are required to establish in detail TENANT'S Gross Sales and any authorized deductions therefrom as shown by any such statements and must, upon request, make the same available to CITY for examination.

Section 2.05 Reimbursements.

If TENANT fails to perform any term or covenant of this Lease, then CITY may, but is not obligated to, perform such term or covenant, and TENANT must reimburse CITY therefore as additional Rent hereunder. As an illustration and not as a limitation, if TENANT fails to procure the insurance required by this Lease, then CITY may, but is not obligated to, obtain such insurance, with the cost of the premiums being due to CITY upon demand as additional Rent.

Section 2.06 Penalty and Interest.

(1) If any Rent is not received within ten days following the date on which the Rent first became due, then TENANT must pay a late penalty of ten percent of the amount of the Rent in addition to the Rent.

(2) In addition to the penalty, TENANT must pay interest at the rate of one percent per month or fraction thereof or the maximum amount permitted by law as of the date this Lease is signed, whichever is greater (the "Default Rate"), on the amount of the Rent, exclusive of the penalty, from the date on which Rent first became delinquent until paid. The term "Rent" includes any sums advanced by the CITY and any unpaid amounts due from TENANT to the CITY.

Article 3 USE OF PREMISES

Section 3.01 Permitted Uses.

The Premises must, during the term of this Lease, be used for the purpose of operating and conducting thereon and therein the uses permitted by, and in compliance with, Conditional Use Permit No. _____, or any other use permits approved by CITY in its governmental capacity, as they may be amended from time to time, and for no other purpose. At the Commencement Date, such uses include _____.

Section 3.02 Unauthorized Use.

TENANT agrees to allow only those uses authorized in Section 3.01, hereinabove and any unauthorized use thereof constitutes a breach of this Lease and may, at the option of CITY, terminate this Lease.

Section 3.03 Operation of Business - Hours of Operation.

Failure to actively and diligently conduct the business authorized herein constitutes a breach of this Lease and may, at the option of CITY, terminate this Lease.

(1) TENANT must, during the term of this Lease, conduct business of the nature specified in Section 3.01 of this Lease on the Premises in an efficient and diligent manner and keep the Premises open for the conduct of business continuously and without interruption for at least six hours each day of the year, except one day each week and legal holidays. This provision does not apply if the Premises is closed and the business of TENANT is temporarily shut down for a period not to exceed 14 calendar days in any calendar year to make necessary repairs, maintenance or other construction deemed necessary by TENANT. This provision does not apply if the Premises is closed and the business of TENANT is temporarily shut down as authorized or required by the City Manager or on account of strikes, walkouts, or causes beyond the control of TENANT or for not more than three days out of respect to the memory of an officer, employee, or close relative of any officer or employee of TENANT.

(2) TENANT must operate TENANT'S business on the Premises with due diligence and efficiency and in like manner as comparable businesses operated in CITY or the coastal area of San Luis Obispo County, so as to produce the maximum amount of Gross Sales and gross receipts from services, which may be produced from TENANT'S business; and TENANT at all times must carry on Premises, a stock or merchandise of such size, character, and quality as is reasonable, designed to produce the maximum return to TENANT, when the sale of merchandise is a permitted use under this Lease.

Section 3.04 Competition.

During the term of this Lease, TENANT must not directly nor indirectly acquire or establish any similar or competing business within a radius of five miles from the location of the Premises; provided, however, that TENANT may, with prior written approval from CITY, own or operate more than one business, whether or not competing and similar, along the Embarcadero upon one or more CITY lease sites. The purpose of this section is to prevent and prohibit TENANT from reducing revenue to CITY by diverting business from the operation at the

Premises to another similar business owned by TENANT within the CITY, but not upon a CITY lease site from which CITY is paid rent based on Gross Sales.

Section 3.05 Environmental Considerations and Hazardous Materials.

(1) TENANT must, at all times, comply with applicable environmental regulations, including, where applicable and practical, government- and industry-adopted environmental best management practices and programs.

(2) TENANT must not transport, use, store, maintain, generate, dispose, release, treat or discharge any "Hazardous Material" (as defined below) upon or about the Premises (such activities being hereafter referred to as "Hazardous Materials Activities"), nor permit TENANT'S employees, agents, or contractors to engage in Hazardous Materials Activities upon or about the Premises, except as allowed by applicable law. The term "Hazardous Material" for purposes hereof means any chemical, substance, material or waste or component thereof which is now or hereafter listed, defined or regulated as a hazardous or toxic chemical, substance, material or waste or component thereof by any federal, state or local governing or regulatory body having jurisdiction, or which would trigger any employee or community "right-to-know" requirements adopted by any such body. All Hazardous Materials Activities at the Premises must be conducted strictly in accordance with all applicable laws and regulations. If TENANT transports, or has transported, any hazardous waste from the Premises, then such transportation must be done only by a contractor duly licensed to haul hazardous waste and only a duly licensed site approved by TENANT'S liability insurer must be used for disposal of that hazardous waste.

(3) TENANT must promptly notify CITY of: (i) any enforcement, cleanup or other regulatory action taken or threatened by any governmental or regulatory authority with respect to the presence of any Hazardous Material on the Premises or the migration thereof from or to other property, (ii) any demands or claims made or threatened by any party against TENANT or the Premises relating to any loss or injury resulting from any Hazardous Material on or from the Premises, and (iii) any matters where TENANT is required by applicable law to give a notice to any governmental or regulatory authority respecting any Hazardous Material on the Premises. CITY has the right (but not the obligation) to inspect the Premises, to take such remedial action on the Premises, as CITY may deem appropriate, and to join and participate, as a party, in any legal proceedings or actions affecting the Premises initiated in connection with any environmental, health or safety law.

(4) If any Hazardous Material is released, discharged or disposed of by TENANT or its employees, agents or contractors, on or about the Premises in violation of the foregoing provisions, TENANT must immediately notify CITY. CITY may elect either to take such remedial action as CITY deems appropriate, in which event TENANT must reimburse CITY for all costs thereof within ten days after demand, or direct TENANT to perform such remediation. If CITY directs TENANT to perform the remediation, then TENANT must immediately take such remedial action, as CITY directs. TENANT must, properly and in compliance with applicable laws, clean up and remove the Hazardous Material from the Premises and any other affected property at TENANT'S expense. If CITY directs TENANT to perform remediation hereunder and if TENANT fails to comply with the provisions of this Section within five days after written notice by CITY, or such shorter time as may be required by applicable law or in order to minimize any hazard to persons or property, then CITY may (but is not be obligated to) arrange for such compliance directly or as TENANT'S agent through contractors or other parties selected by CITY at TENANT'S expense (without limiting CITY'S other remedies under this Lease or applicable law).

Section 3.06 Tidelands Trust.

In addition to the obligations set forth in this Article, TENANT must use and occupy the Premises in strict compliance with the Tidelands Trust purposes, as established by law or interpretation of the California State Lands Commission.

Section 3.07 Compliance with Law.

TENANT must, at no cost to CITY, comply with all of the requirements of all local, municipal, county, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, and faithfully observe in the use of the Premises all local, municipal and county rules, regulations and ordinances and state and federal statutes, rules, regulations and orders now in force or which may hereafter be in force (collectively, "Legal Requirements"); provided, that TENANT will not be required to comply with any Legal Requirement imposed by CITY that would substantially deprive TENANT of a material benefit under this Lease, unless such Legal Requirement has been imposed or required (i) by a county, state or federal authority or (ii) to preserve public health and safety and applied to similar businesses within CITY'S jurisdiction.. The judgment of any court of competent jurisdiction, or the admission of TENANT in any action or proceeding against TENANT, whether CITY be a party thereto or not, that TENANT has violated any such Legal Requirement in the use of the Premises will be conclusive of that fact as between CITY and TENANT.

Section 3.08 Waste or Nuisance.

TENANT must not commit or permit the commission by others of any waste on the Premises; TENANT must not maintain, commit, or permit the maintenance or commission of any nuisance as defined by law on the Premises; and TENANT must not use or permit the use of the Premises for any unlawful purpose.

Section 3.09 Use by CITY.

(1) Subject to TENANT's rights hereunder to possession of the Premises, CITY may grant licenses to, or otherwise authorize, other persons and entities permitting uses of the Morro Bay Harbor.

(2) CITY also retains and reserves for itself, its successors and assigns, all oil, gas, petroleum and other mineral or hydrocarbon substances in and under the lands leased hereby together with right to prospect and extract all such substances.

Article 4 CONSTRUCTION, ALTERATION AND REPAIRS

Section 4.01 Construction Approval.

(1) TENANT must not make or permit any other person to make any alterations or structural additions or structural modifications to the Premises or to any structure thereon or facility appurtenant thereto if the cost thereof exceeds Ten Thousand Dollars (\$10,000), without the prior written consent of CITY. The consent to be obtained pursuant to this Section 4.01(1) must be requested from the Harbor Director, or the City's designee, for CITY. If the Harbor Director or any future successor to the duties of the City's Harbor Director, or the City's designee, gives such consent to proceed, then it is understood such consent is given by CITY only in its capacity as the landlord under this Lease and not as the permit-issuing authority. TENANT remains obligated to obtain any needed building permits and comply with all applicable land use entitlement processes.

(2) Where required by the Morro Bay Municipal Code, California Coastal Act, Corps of Engineers or any other state or federal agency having authority over the proposed project, then all Conditional Use Permits, Concept Plans, Precise Plans, Coastal Development Plans, and any other required plans or permits must be applied for and approved prior to any construction, alteration or repairs.

Section 4.02 Construction Bond.

(1) Prior to the commencement of any construction the cost of which is greater than the amount of One Hundred Thousand Dollars (\$100,000), TENANT must file, with CITY'S City Clerk, a final detailed Civil Engineer's, Registered Architect's or Licensed and Bonded General Contractor's estimate of the cost of construction and installation of improvements on the Premises. Said estimate must be submitted to CITY'S City Engineer for approval. TENANT must file with the City Clerk a faithful performance bond, in a form and issued by a corporate surety company satisfactory to CITY, in an amount satisfactory to CITY, but not in excess of 100% of the final detailed cost estimate, securing the faithful performance of TENANT or its contractor in the completion of said construction.

(2) TENANT must also file with the City Clerk a labor and materials bond, in a form and issued by a corporate surety company satisfactory to CITY, in an amount satisfactory to CITY, but not in excess of 100% of the final detailed cost estimate, securing the payment of all claims for the performance of labor or services on, or the furnishing of materials for, the performance of said construction.

(3) In lieu of the above referenced bonds, TENANT may post cash deposits or may make other mutually satisfactory arrangements to guarantee the completion of construction projects. In the event the contractor bonds the project, CITY may be named as additional indemnitee to comply with these requirements.

Section 4.03 Mechanics' Liens.

At all times during the term of this Lease, TENANT must keep the Premises and all buildings, installations and other improvements now or hereafter located on the Premises free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises. TENANT further agrees to, at all times, save CITY free and harmless and indemnify and defend CITY against all claims for labor or materials in connection with any improvement, repairs, or alterations on the Premises, and the cost of defending against such claims, including reasonable attorneys' fees. If TENANT fails to pay and discharge or cause the Premises to be released from such liens or claim of liens within 10 days after the filing of such lien or levy, then TENANT must, upon written notification, immediately deposit with CITY a bond conditioned for payment in full of all claims on which said lien or levy has been filed. Such bond must be acknowledged by TENANT as principal and by a company or corporation, licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety. The beneficiary of any security instrument, which instrument is on record with CITY, must have the right to file a claim for

payment from such a bond on behalf of TENANT. CITY has the right to post and keep posted on the Premises notices of non-responsibility and any other notices that may be provided by law or which CITY may deem proper for the protection of CITY and Premises from such liens. TENANT must give CITY notice at least 20 days prior to commencement of any work on the Premises to afford CITY the opportunity to post such notices.

Section 4.04 Ownership of Improvements.

The Parties agree CITY has the option and right to require TENANT to remove all buildings, structures, installations, improvements of any kind or other property belonging to or placed upon the Premises by TENANT at the termination of this Lease, however occurring, providing CITY gives notice, in writing, no later than thirty days prior to the termination of this Lease, of its decision to require such improvements be removed. The Parties agree, if CITY exercises its option, then at the termination of this Lease, however occurring, TENANT will have sixty days thereafter to remove all buildings, structures, facilities, installations, improvements and other property belonging to TENANT from the Premises. If CITY exercises such option and TENANT fails to remove all such improvements and other property within sixty days after the termination of this Lease, then CITY has the right to have any or all such improvements and other property removed at the expense of TENANT. If CITY does not exercise its option to remove (or require the removal of) the improvements and other property, then title to such improvements and other property vests in CITY and TENANT must not remove same.

Article 5 LEASEHOLD MORTGAGES

Tenant must not mortgage, securitize or hypothecate the leasehold interest created by this Lease, in whole or any part, without the prior written approval of CITY, as evidenced by a resolution of the City Council of CITY.

CITY will not approve financing related to or using that leasehold interest created by this Lease as collateral, unless such financing is (i) to install or construct capital improvements on the Premises, (ii) to install or construct CITY-requested public improvements or provide other benefits in the Tidelands Trust area, the latter as approved by the Harbor Director or (iii) to reduce the interest rate of existing, approved debt secured by leasehold interest created by this Lease without redeeming any equity in the leasehold interest.

Article 6 REPAIRS, MAINTENANCE AND RESTORATION

Section 6.01 Maintenance by TENANT.

At all times during the term of this Lease, TENANT must, at TENANT'S own cost and expense, keep and maintain, in good order and repair and in a safe and "broom clean" condition, all improvements now or hereafter on the Premises, including any public spaces, common areas, rights-of-way, sidewalks and other areas or spaces, even if not on the Premises but utilized as part of TENANT'S business operations. Furthermore, TENANT must, at TENANT'S own cost and expense, maintain at all times during the term of this Lease the whole of the Premises and other areas utilized for TENANT'S business operations as described above in a clean, sanitary, neat and orderly "broom clean" condition. CITY may, at the sole option of CITY, but not obligation,, clean, clear, maintain or repair the Premises, any improvements thereon or areas used by TENANT, as described above, at TENANT'S cost and expense, in the event TENANT fails to clean, clear maintain or make repairs, in accordance with this Section to the satisfaction of CITY, after 15-days' written notice to TENANT from CITY of CITY'S intent to exercise this option.

Section 6.02 Seawalls and Revetment.

At all times during the term of this Lease, TENANT must, at TENANT'S own cost and expense, repair, maintain, replace and rebuild, as necessary, the improvements, pilings, bulkheads, seawalls, revetment, piers, posts and any structures or other improvements located in the water portion of the Premises. Further, TENANT must, at TENANT'S own cost and expense, conduct maintenance and structural inspections, evaluations or surveys, by a qualified individual or firm, at reasonable intervals not to exceed ten years, to locate and determine needed maintenance, repairs or replacements of these improvements.

Section 6.03 Legal Requirements.

At all times during the term of this Lease, TENANT, at no cost to CITY, must:

- (1) Make all alterations, additions, or repairs to the Premises or the improvements or facilities on the Premises required by any Legal Requirements (as defined in Section 3.07, above);
- (2) Observe and comply with all Legal Requirements respecting the Premises or the improvements or facilities located thereon;
- (3) Obtain all required permits pursuant to the Morro Bay Municipal Code or State law prior to the initiation of any repair or maintenance activity; and

(4) Indemnify, defend and hold harmless CITY and the property of CITY, including the Premises, from any and all liability, loss, damages, fines, penalties, claims and actions resulting from TENANT'S failure to comply with and perform the requirements of this section.

Section 6.04 Failure to Repair.

In the event failure to repair results in a hazardous or unsafe condition, CITY has the right and option, but not the obligation, to close and prohibit access to the unsafe portion of the Premises until such repairs are completed and accomplished and the Premises rendered safe for public use. In addition, if TENANT fails to repair any hazardous or unsafe condition within ten days after written notice thereof from CITY, then CITY has the right, but not the obligation, to perform such repair at TENANT'S expense. TENANT must reimburse CITY for any such repair undertaken by CITY, promptly upon CITY'S demand, as additional Rent. Failure by CITY to enforce any of the provisions of this Article does not constitute a waiver of these provisions and CITY may, at any time, enforce all of the provisions of this Article, requiring all necessary repairs, rebuilding or replacement.

Section 6.05 Inspection by CITY.

CITY or CITY'S agents, representatives, or employees may enter the Premises at all reasonable times for the purpose of inspecting the Premises to determine whether TENANT is complying with the terms of this Lease and for the purpose of doing other lawful acts that may be necessary to protect CITY'S interest in the Premises under this Lease or to perform CITY'S duties under this Lease or in its governmental capacity.

Section 6.06 TENANT'S Duty to Restore Premises.

(1) Except as provided in Section 6.07 below, if at any time during this Lease, any improvements now or hereafter on the Premises are destroyed in whole or in part by the elements, or any other cause not the fault of TENANT or CITY, then this Lease will continue in full force and effect and TENANT, at TENANT'S own cost and expense, must repair and restore the damaged or destroyed improvement(s) according to the original plan thereof or according to such modified plans therefor as are approved in writing by CITY. The work of permitting, repair and restoration must be (i) commenced by TENANT within 180 days after the damage or destruction occurs, (ii) pursued with due diligence, and (iii) completed not later than 12 full calendar months after the work is commenced, unless the Parties mutually agree, in writing, to an extension. In all other respects, the work of repair and restoration must be done in accordance with the requirements for construction work on the Premises set forth in Article 4 of this Lease.

Any failure by TENANT either to commence or to complete repair and restoration as required by this Section 6.06 constitutes a material default under this Lease.

(2) Any and all insurance proceeds that become payable at any time during the term of this Lease because of damage to or destruction of any improvements on the Premises will be paid to TENANT and applied by TENANT toward the cost of repairing and restoring the damaged or destroyed improvements in the manner required by this Section 6.06, or, if this Lease is terminated, then applied as provided in Section 6.07. Except as set forth in Section 6.08 below, TENANT'S obligation to restore pursuant to this Section exist whether or not funds are available from insurance proceeds.

Section 6.07 Termination of Lease for Destruction.

(1) Notwithstanding the provisions of Section 6.06 of this Lease, TENANT has the option of terminating this Lease as provided in this Section 6.07 if:

(a) During the last 15 years of the term of this Lease, any improvement now or hereafter on the Premises are so damaged or destroyed by the elements or any cause, not the fault of TENANT or CITY, the improvement cannot be repaired and restored as required by Section 6.06 of this Lease at a cost not exceeding 35 percent of the cost of replacing all improvements if they had been totally destroyed at the time of such damage; or

(b) During the last 10 years of the term of this Lease, any improvement now or hereafter on the Premises are so damaged or destroyed by the elements or any cause, not the fault of TENANT or CITY, the improvement cannot be repaired and restored as required by Section 6.06 of this Lease at a cost not exceeding 15 percent) of the cost of replacing all improvements if they had been totally destroyed at the time of such damage.

(2) TENANT may exercise its right to terminate pursuant to this Section 6.07 by providing written notice to CITY within 180 days following damage or destruction as described herein. Such termination is effective on the last day of the calendar month following the month in which TENANT provides its notice.

(3) If TENANT fails to commence or complete repair and restoration as required by Section 6.06, then CITY has all rights and remedies with respect to TENANT'S default, including, but not limited to, termination of this Lease pursuant to Article 11.

(4) If this Lease is terminated as a result of damage or destruction, then any insurance proceeds received with respect to the improvements will be applied or distributed in the following order:

(a) first, to the demolition of the improvements and removal of all demolition debris; then

(b) to any accrued and unpaid Rent as of the effective date of the termination; then

(c) to each Lender under a Leasehold Encumbrance, in order of lien priority, an amount not to exceed the amount due under such Leasehold Encumbrance; then

(d) to CITY, an amount equal to the present value, as of the date of termination, of the total Minimum Rent for the remainder of the Term; then

(e) the remaining proceeds, if any, to TENANT.

Section 6.08 Destruction Due to Risk Not Covered by Insurance.

Notwithstanding anything to the contrary in Section 6.06 of this Lease, TENANT has the right to terminate this Lease, at any time, if the improvements on the Premises are damaged or destroyed by a casualty for which TENANT is not required under this Lease to carry insurance and the cost to repair or restore such improvements exceeds 50 percent of the fair market value of all the improvements on the Premises immediately prior to the damage or destruction.

Article 7 INDEMNITY AND INSURANCE

Section 7.01 Indemnity Agreement.

(1) TENANT hereby agrees to indemnify, defend and hold harmless CITY, and the property of CITY (including the Premises and any improvements now or hereafter on the Premises), and CITY'S officers, officials, employees and volunteers from any and all liability, claims, loss, damages, and expenses, including reasonable attorney's fees and litigation expenses, resulting from TENANT'S occupation and use of the Premises or any negligent act or omission of the TENANT or any of its officers, subtenants, employees, contractors, invitees or anyone for whom TENANT may be liable, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

(a) The death or injury of any person, including TENANT or any person who is an officer, employee, contractor, subtenant, invitee or agent of TENANT, or by reason of the 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 Premises or in any way connected with the Premises or with any of the improvements or personal property on the Premises;

(b) The death or injury of any person, including TENANT or any person who is an officer, employee, contractor, subtenant, invitee or agent of TENANT, or by reason of the damage to or destruction of any property, including property owned by TENANT or any person who is an officer, employee, contractor, subtenant, invitee or agent of TENANT, caused or allegedly caused by either (i) the condition of the Premises or any improvement placed on the Premises by TENANT, or (ii) any act or omission on the Premises by TENANT or any person in, on, or about the Premises with or without the permission and consent of TENANT;

(c) Any work performed on the Premises or materials furnished to the Premises at the insistence 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 Legal Requirement imposed on TENANT or the Premises.

(2) TENANT'S obligations pursuant to this Section to indemnify and hold harmless do not extend to any liability, claim, loss, damage or expense arising from CITY'S active negligence or willful misconduct.

Section 7.02 Liability Insurance.

During the term of this Lease, TENANT must maintain at its cost Commercial General Liability insurance with coverages as described in CITY'S HARBOR DEPARTMENT LEASE MANAGEMENT POLICY, as may be updated or changed from time to time at the sole discretion of the CITY. Such coverages must insure against claims for bodily injury (including death), property damage, contractual liability, personal injury and advertising injury occurring on the Premises or from operations located in any part of the Premises. Such insurance must afford protection in amounts no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage; provided, that if insurance with a general aggregate limit is used, then either the general aggregate limit will apply separately to the Premises or the general aggregate limit will be twice the occurrence limit stated in this Section. All liability insurance carried by TENANT hereunder will name CITY, its officers, officials, employees and volunteers as additional insureds, and be primary insurance with respect to such additional insureds. TENANT must include all its subtenants as insureds under TENANT's liability policies or furnish separate certificates and endorsements for each subtenant. All coverages for subtenants must comply with all requirements of this Article Seven.

Section 7.03 Worker's Compensation.

TENANT must maintain at TENANT'S own expense and keep in full force and effect during the term of this Lease, Worker's Compensation Insurance as provided by law. Said insurance must contain a waiver of subrogation rights against CITY. TENANT must also maintain employer's liability insurance with minimum coverage of \$1,000,000 per accident for bodily injury or disease.

Section 7.04 Property Insurance.

TENANT must, at its cost, at all times during the term of this Lease keep all improvements and other structures on the Premises, as well as any and all additions, improvements and betterments thereto, insured for 100 percent) of their full replacement cost with no co-insurance provision against loss or destruction by the perils covered by "all risk" (excluding earthquake) property damage insurance policies. Any loss coverage under such insurance must be payable to TENANT, CITY, and any Lender under a Leasehold Encumbrance approved pursuant to Article 5 of this Lease, as their interests may appear, and such proceeds must be used and applied in the manner required by Article 6 of this Lease.

Section 7.05 Additional Coverage.

TENANT must also maintain, at its sole expense, the insurance described in this Section 7.05.

(1) If TENANT has (or is required by any Legal Requirement to have) a liquor license and is selling or distributing alcoholic beverages on the Premises, then TENANT must maintain liquor liability coverage in appropriate amounts. TENANT must require any subtenant who has (or is required by any Legal Requirement to have) a liquor license and who is selling or distributing alcoholic beverages on the Premises, to maintain such coverage.

(2) TENANT must maintain "all risk" (excluding earthquake) property damage insurance covering TENANT's personal property located at the Premises, in amounts not less than the full replacement value of such personal property. CITY has no interest in the proceeds of such insurance.

(3) TENANT must obtain and maintain any additional insurance coverages CITY may reasonably require. As illustration only and not as a limitation, in appropriate circumstances such additional insurance may include increased general liability limits, business interruption coverage, business automobile liability, boiler and machinery insurance or builder's risk

insurance. TENANT, however, is not required to maintain additional coverages that are in excess of those typically maintained by similarly situated tenants in the Morro Bay area.

Section 7.06 General Requirements.

Except as specifically provided to the contrary, all the insurance required pursuant to this Article Seven is subject to the requirements of this Section 7.06.

(1) Maintenance of proper insurance coverage is a material element of this Lease and failure to maintain or renew coverage or to provide evidence of coverage and/or renewal may be treated by the CITY as a material breach of contract. TENANT must forward CITY'S specifications and forms to TENANT'S insurance agent for compliance.

(2) CITY may, at any time, require TENANT to increase the minimum coverage limits for insurance required by this Lease, but every such increase must be reasonable under the circumstances.

(3) All policies must be issued by insurance companies authorized to issue such insurance in California, with an A.M. Best's rating of no less than A:VII.

(4) Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either: (i) the insurer must reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees and volunteers or (ii) TENANT must provide a financial guarantee satisfactory to CITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(5) Each insurance policy required by this Lease must be endorsed to state coverage will not be cancelled or reduced, except after 30-days' prior written notice by certified mail, return receipt requested, has been given to CITY.

(6) TENANT must furnish CITY with certificates and amendatory endorsements effecting the coverage required by this Lease. The endorsements must be on forms provided by CITY or on other than CITY's forms; provided, that those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by CITY before use of the Premises, and promptly following any renewal or replacement. CITY reserves the right, at any time, to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

(7) TENANT'S insurance coverage must be primary insurance as respects CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by

CITY, its officers, officials, employees, or volunteers will be excess of TENANT'S insurance and will not contribute with it.

Section 7.07 No Subrogation.

TENANT agrees, in the event of loss due to any of the perils for which it has agreed to provide insurance, TENANT will look solely to its insurance for recovery. TENANT hereby grants to the CITY, on behalf of any insurer providing insurance to either TENANT or CITY with respect to TENANT'S occupancy of the Premises, a waiver of any rights to subrogation, which any such insurer of TENANT may acquire against CITY by virtue of the payment of any loss under such insurance. Each insurance policy required under this Lease, including those insuring TENANT against claims, expense, or liability for injury to persons or property, must provide the insurer will not acquire by subrogation any right to recovery.

Section 7.08 TENANT'S Waiver.

TENANT hereby waives any right of recovery against CITY for each claim, expense, liability, or business interruption, or other loss, except where caused by CITY'S active negligence or willful misconduct. TENANT agrees, to the extent TENANT fails to acquire insurance, TENANT will not have any claim against CITY for any loss that results from a risk or peril that would have been included in such insurance.

Section 7.09 Insurance Not a Limit.

The insurance requirements of this Article 7 are independent of, and do not limit or modify, TENANT'S indemnification, defense, hold harmless and other obligations pursuant to this Lease.

Article 8 TAXES AND FEES

Section 8.01 TENANT to Pay Taxes.

TENANT must pay, before delinquency, all taxes and assessments levied upon or assessed to TENANT on the Premises by reason of this Lease or of any equipment, appliances, improvement, or other development of any nature whatsoever, erected, installed, or maintained by TENANT or by reason of the business or other activity of TENANT upon or in connection with the Premises. TENANT must pay all possessory interest taxes applicable to the Premises.

Section 8.02 TENANT to Pay License and Permit Fees.

TENANT must pay any fees imposed by Legal Requirements for licenses or permits for any business or activities including construction by TENANT upon the Premises.

Section 8.03 Utilities.

TENANT must (i) pay, or cause to be paid and (ii) hold harmless CITY and the property of CITY, including the Premises, from all charges for the furnishing of gas, water, electricity, telecommunication service, and for other public utilities to the Premises during the term of this Lease and for the removal of garbage and rubbish from the Premises during the term of this Lease.

Article 9 CONDEMNATION

Section 9.01 Total Condemnation.

If title and possession to all of the Premises is permanently taken for any public or quasi-public use under any statute, or by the right of eminent domain, then this Lease will be considered terminated on the date that possession of the Premises is taken; and both CITY and TENANT will thereafter be released from all obligations, including Rent, all of which will be prorated to the date of termination, except those specified in Section 9.02 of this Lease.

Section 9.02 Condemnation Award.

Any compensation or damages awarded or payable because of the permanent taking of all or any portion of the Premises by eminent domain will be allocated between CITY and TENANT as follows:

(1) All compensation or damages awarded or payable for the taking by eminent domain of any land that is part of the Premises will be paid to and be the sole property of CITY free and clear of any claim of TENANT or any person claiming rights to the Premises through or under TENANT.

(2) All compensation or damages awarded or payable which is specifically attributed by the taking party to the "good will" of TENANT'S business will be paid to and be the sole property of TENANT.

(3) All compensation or damages awarded or payable because of any improvements constructed or located on the portion of the Premises taken by eminent domain where only a portion of the Premises is taken by eminent domain, and TENANT is not entitled to or does not

terminate this Lease, will be applied in the manner specified in Section 9.04 toward the replacement of such improvements with equivalent new improvements on the remaining portions of the Premises.

(4) All compensation or damages awarded or payable because of any improvements constructed or located on the portion of the Premises taken by eminent domain where this Lease is terminated because of the taking by eminent domain, whether all or only a portion of the Premises is taken by eminent domain, will be allocated between CITY and TENANT as follows:

(a) That percentage of the compensation or damages awarded or payable because of the improvements that equals the percentage of the full term of this Lease that has, at the time of the taking, not expired will belong to and be the sole property of TENANT.

(b) That percentage of the compensation or damages awarded or payable because of the improvements that equals the percentage of the full term of this Lease that has, at the time of the taking, expired will belong to and be the sole property of CITY.

(c) The term "time of taking," as used in this Section, means 12:01 a.m. of the date the agency or entity exercising the eminent domain power, takes title to or the date it takes physical possession of the portion of the Premises, whichever first occurs.

(5) Any severance damages awarded or payable because only a portion of the Premises is taken by eminent domain will be the sole and separate property of CITY.

Section 9.03 Termination for Partial Taking.

If, during the term of this Lease, title and possession of only a portion of the Premises is taken for any public or quasi-public use under any statute, or by right of eminent domain, then TENANT may, at TENANT'S option, terminate this Lease by serving written notice of termination on CITY within 90 days after TENANT has been deprived of actual physical possession of the portion of the Premises taken for such public use. This Lease will terminate on the first day of the calendar month following the calendar month in which the notice of termination described in this section is served on CITY. On termination of this Lease, pursuant to this Article, all subleases and subtenancies in or on the Premises or any portion of the Premises created by TENANT under this Lease will also terminate and the Premises must be delivered to CITY free and clear of all such subleases and subtenancies; provided, however, that CITY may, at CITY'S option, by mailing written notice to a subtenant allow any subtenant to attorn to CITY and continue such subtenant's occupancy on the Premises as a TENANT of CITY. On termination of this Lease pursuant to this section, however, both CITY and TENANT

will be released from all obligations under this Lease, except those specified in Section 9.02 of this Lease.

Section 9.04 Rent Abatement for Partial Taking.

If, during the term of this Lease, title and possession of only a portion of the Premises is taken under the power of eminent domain by any public or quasi-public agency or entity and TENANT does not terminate this Lease, then this Lease will terminate as to the portion of the Premises taken under eminent domain on the date actual physical possession of the portion taken by eminent domain is taken by the agency or entity exercising the eminent domain power. Furthermore, the Rent payable under this Lease will, as of that time be reduced in the same proportion of the Premises taken by eminent domain bears to the full value of the Premises at that time; provided however, that TENANT will make a good faith effort to replace any improvements or facilities with equivalent new facilities on the remaining portion of the Premises and do all other acts at TENANT'S own cost and expense required by the eminent domain taking to make the remaining portion of the Premises fit for the use specified in this Lease.

Section 9.05 Conveyance in Lieu of Eminent Domain.

A voluntary conveyance by CITY, with the consent of TENANT, of title to all or a portion of the Premises to a public or quasi-public agency or entity in lieu of and under threat by such agency or entity to take the same by eminent domain proceedings will be considered a taking of title to all or such portion of the Premises under the power of eminent domain subject to the provisions of this Article.

Section 9.06 Temporary Taking.

If the possession of the Premises or any portion thereof are taken under the power of eminent domain by any public or quasi-public agency or entity for a limited period not extending beyond the term of this Lease, then this Lease will not terminate (except as provided in this Section 9.06) and TENANT must continue to perform all its obligations hereunder, except only to the extent TENANT is prevented from performing such obligations by reason of such taking. TENANT will be entitled to receive the entire amount of compensation or damages awarded because of such temporary taking. If a temporary taking extends for more than 36 months, then TENANT will have the right to terminate this Lease, and TENANT will be entitled to receive, out of the compensation or damages awarded because of such temporary taking, the amount that

is attributable to the period of time up until the effective date of TENANT'S termination of this Lease.

Article 10 ASSIGNMENT AND SUBLEASING

Section 10.01 No Assignment Without CITY'S Consent.

Except as provided in this Article 10, TENANT must not assign or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Premises or any of the improvements that may now or hereafter be constructed or installed on the Premises without the express written consent of CITY first had and obtained. Any assignment or transfer by TENANT without the prior written consent of CITY, as evidenced by a resolution of the City Council, whether it be voluntary or involuntary, by operation of law or otherwise, is void and may, at the option of CITY, terminate this Lease. A consent by CITY to one assignment will not be deemed to be a consent to any subsequent assignment of this Lease by TENANT. CITY will not unreasonably nor arbitrarily withhold its approval to the assignment or transfer of this Lease to an assignee who is financially reliable and qualified to conduct the business for which this Lease was granted. It is mutually agreed TENANT'S qualifications are a part of the consideration for granting of this Lease and said party does hereby agree to maintain active control and supervision of the operation conducted on the Premises.

Section 10.02 Change of Ownership as Assignment.

For purposes of this Article 10, the following transactions will be deemed to be assignments or transfers:

(1) If TENANT is a partnership or limited liability company:

(a) A change in ownership effected voluntarily, involuntarily, or by operation of law, within a 12-month period, of 25 percent or more of the partners or members or 25 percent or more of the partnership or membership interests; or

(b) The dissolution of the partnership or limited liability company without its immediate reconstitution.

(2) If TENANT is a closely held corporation (i.e., one whose stock is not publicly held and not traded through an exchange or over the counter):

(a) The sale or other transfer, within a 12-month period, of more than an aggregate of 25 percent of the voting shares of TENANT (other than to immediate family members by reason of gift or death); or

(b) The dissolution, merger, consolidation, or other reorganization of TENANT.

Section 10.03 Application for Assignment.

A condition of an assignment is TENANT must file with CITY an application to assign its leasehold interest prepared by the prospective assignee. Concurrently with filing the application, TENANT must pay a reasonable fee associated with the cost of processing said application, in cash or certified or cashier's check to enable CITY adequately to investigate the proposed assignee's qualifications, financial reliability and suitability as a permitted assignee. CITY is not be required to account for the use of the sum paid. If the proposed assignee's net worth, financial reliability and qualifications on the date of assignment are not sufficient to reasonably guarantee successful operation of the Premises in compliance with all applicable CITY, County, State and federal requirements, then CITY may withhold approval of the assignment or condition it upon TENANT'S guarantee of such assignee's obligations hereunder for such period as CITY deems advisable. Net worth means the amount by which the total of all assets exceed the total of all liabilities as determined in accordance with general accepted accounting principles as approved by CITY'S auditor, or other authorized representative or agent.

Section 10.04 Probate Transfer of Assignment.

If TENANT is an individual, nothing herein contained will prevent the transfer of this Lease by trust, will, or by operation of law under the intestacy provisions of the California Probate Code as it may be amended from time to time. Probate sale of the leasehold interest will not be permitted without the consent of the CITY, evidenced by a City Council resolution, first had and obtained.

Section 10.05 No Sublease Without CITY'S Consent.

TENANT must not sublease the whole nor any part of the Premises, or license, permit, or otherwise allow any other person (the employees of TENANT excepted) to occupy or use the Premises, or any portion thereof, without the prior written consent of CITY's Harbor Director, or any future successor to the duties of the City's Harbor Director. The process for obtaining that consent will not begin until TENANT has filed an application to sublease and paid a reasonable fee, as determined by CITY, associated with the cost of processing the application. A consent to

one subletting, occupation, licensing or use will not be deemed to be a consent to any subsequent subletting, occupation, licensing or use by another person. Any sublease or license without CITY'S written consent is void, and may, at CITY'S option, terminate this Lease. CITY will not unreasonably nor arbitrarily withhold its consent to sublet to one who is qualified and financially reliable. CITY'S consent to any occupation, use, or licensing will be in CITY'S sole and absolute discretion. Notwithstanding any provisions herein to the contrary, the terms "assignment," "subletting," "occupation," or "use," are not to be construed or interpreted to mean or include the temporary, short-term renting or leasing of boat slips, motel, hotel, or apartment accommodations, if any, on the Premises.

Section 10.06 Subtenant Subject to Lease Terms.

Any and all subleases must be expressly made subject to all the terms, covenants, and conditions of this Lease. In no event will the term of any sublease extend beyond the term of this Lease. Subject to Section 10.09, termination of this Lease prior to the expiration of this Lease term also terminates any and all subleases. A breach of the terms of this Lease by a subtenant constitutes a breach on the part of TENANT and subjects both the subtenant and TENANT to all the remedies provided to CITY herein and by law. Failure by any subtenant to report Gross Sales or to pay Percentage Rent due from subtenant constitutes a breach of this Lease. TENANT hereby agrees to and does guarantee payment of such Percentage Rent due by a subtenant under the terms of this lease.

Section 10.07 Consent to Sublease Agreement.

Prior to any consent by CITY to any sublease hereof, TENANT, CITY and any subtenant must have executed the CITY'S Consent to Sublease Agreement making CITY a third party beneficiary, whereby the subtenant agrees to be bound by all of the terms, covenants and conditions of this Lease. Further, it is agreed by TENANT any default by the subtenant of any of the terms, covenants and conditions of this Lease will be a violations by TENANT of this Lease and all remedies of CITY for such violation, including termination of this Lease, may immediately be enforceable by CITY against TENANT. TENANT must apply any and all monies received from any subtenant first to the payment of obligations of the subtenant to CITY.

Section 10.08 TENANT and Guarantor Remain Liable.

Prior to approval by CITY to any sublease hereof, TENANT must agree to be primarily and jointly and severally liable to CITY for all obligations due CITY by any subtenant, including the payment of rents; and TENANT must agree CITY may proceed directly against TENANT

for any obligation owed to CITY by the subtenant. If this Lease is guaranteed, then neither the sublease nor CITY'S approval thereof will release the guarantor from its obligations pursuant to the guaranty.

Section 10.09 Nondisturbance.

On the terms set forth below, CITY may enter into agreements with subtenants establishing, in the event of any termination of this Lease prior to the expiration date, CITY will not terminate or otherwise disturb the rights of the subtenant under such sublease, but will instead honor such sublease as if that sublease had been entered into directly between CITY and such subtenant, conditioned upon such subtenant's agreement to attorn to CITY and full performance of all obligations under the sublease in question ("Non-Disturbance Agreement"). CITY agrees to execute a Non-Disturbance Agreement in connection with a particular sublease; provided, that Tenant provides CITY with a copy of the sublease, and the Non-Disturbance Agreement is customary in form and substance and otherwise reasonably acceptable to CITY.

Article 11 DEFAULT AND TERMINATION

Section 11.01 Abandonment by TENANT.

If TENANT breaches this Lease and abandon all or any part of the Premises prior to the scheduled expiration of the term of this Lease, then CITY may continue this Lease in effect by not terminating TENANT'S right to possession of the Premises, in which event CITY may, at its option, enforce all CITY'S rights and remedies under this Lease including the right to recover the Rent specified in this Lease as it becomes due under this Lease.

Section 11.02 Termination for Breach by TENANT.

All covenants and agreements contained in this Lease are declared to be conditions to this Lease and to the term hereby demised to TENANT. If TENANT fails to perform any covenant, condition, or agreement contained in this Lease, except for payment of any Rent or other monetary amount due, and such failure is not cured within 30 days after written notice thereof is served on TENANT, then CITY may terminate this Lease immediately, and in the event of such termination, TENANT will have no further rights hereunder and TENANT must thereupon forthwith remove from the Premises and will have no further right or claim thereto and CITY will immediately thereupon have the right to re-enter and take possession of the Premises, subject only to appropriate legal process.

Section 11.03 Termination for Failure to Pay Rent.

If any payment of Rent is not made as herein provided and such failure to pay is not cured within three days after written notice thereof is served on the TENANT, then CITY will have the option to immediately terminate this Lease; and in the event of such termination, TENANT will have no further right or claim thereto and CITY will immediately thereupon have the right to re-enter and take possession of the Premises, subject only to appropriate legal process.

Section 11.04 Lender May Cure Default.

CITY hereby affords the lender under any Leasehold Encumbrance of record with CITY the right to cure any default by TENANT of the covenants, conditions, or agreements hereof, as provided in Article 5 of this Lease.

Section 11.05 Damages for Breach.

If TENANT defaults in the performance of any covenant, condition or agreement contained in this Lease and the default be incurable or not be cured within the time period set forth hereinabove, then CITY may terminate this Lease and:

(1) Bring an action to recover from TENANT:

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

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

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss that TENANT proves could be reasonably avoided; and

(d) Any other amount necessary to compensate CITY for all detriment proximately caused by TENANT'S failure to perform its obligations under this Lease; and

(2) Bring an action, in addition to or in lieu of the action described in subparagraph (1) of this Section, to re-enter and regain possession of the Premises in the manner provided by the laws of unlawful detainer of the State of California then in effect.

Section 11.06 Cumulative Remedies.

The remedies available to CITY in this Article are not exclusive, but are cumulative with and in addition to all remedies now or hereafter allowed by law or elsewhere provided in this Lease.

Section 11.07 Waiver of Breach.

The waiver by CITY of any breach by TENANT of any of the provisions of this Lease does not constitute a continuing waiver or a waiver of any subsequent breach by TENANT either of the same or a different provision of this Lease.

Section 11.08 Surrender of Premises.

On expiration or sooner termination of this Lease, TENANT must surrender the Premises, and, subject to Section 4.04, all improvements in or on the Premises, and all facilities in any way appertaining to the Premises, to CITY in good, safe, and clean condition, reasonable wear and tear excepted.

Article 12 MISCELLANEOUS

Section 12.01 Notices.

Any and all notice or demands by or from CITY to TENANT, or TENANT to CITY, must be in writing. They must be served either personally, or by registered or certified mail. Any notice or demand to CITY must be given to:

Harbor Director
1275 Embarcadero
Morro Bay, CA 93442

with a copy to:

City Manager of the City of Morro Bay
City Hall
595 Harbor Street
Morro Bay, CA 93442

Any notice or demand to TENANT must be given at:

[insert tenant information here]

Such addresses may be changed by written notice by either Party to the other Party.

Section 12.02 Governing Law and Jurisdiction.

This Lease, and all matters relating to this Lease, are governed by the laws of the State of California in force at the time any need for interpretation of this Lease or any decision concerning this Lease arises. CITY and TENANT consent to exclusive personal and subject matter jurisdiction in the Superior Court of the State of California in and for the county where the Premises are located, and each Party waives any claim such court is not a convenient forum. Each Party hereby specifically waives the provisions of California Code of Civil Procedure Section 394, and any successor statute thereto.

Section 12.03 Binding on Successors.

Subject to the provisions herein relating to assignment and subletting, each and all of the terms, conditions, and agreements herein contained will be binding upon and inure to the benefit of the successors and assigns of any and all of the Parties; and all of the Parties hereto are jointly and severally liable hereunder.

Section 12.04 Partial Invalidity.

If any provision of this Lease is held by a court of competent jurisdiction to be either invalid, void, or unenforceable, then the remaining provisions of this Lease will remain in full force and effect unimpaired by the holding.

Section 12.05 Sole and Only Agreement.

Subject to the provisions of the second paragraph of Section 1.04 (*used only if second paragraph of that section is used*), (i) this Lease, including all exhibits incorporated by reference, constitutes the sole and only agreement between CITY and TENANT respecting the Premises and the leasing of the Premises to TENANT and (ii) any other agreements or representations respecting the Premises and their leasing to TENANT by CITY, which are not expressly set forth in this Lease, are null and void. The lease terms herein specified correctly set forth the obligations of CITY and TENANT as of the date of this Lease.[NOTE: See 12.07]

Section 12.06 Modification.

This Lease can only be modified, amended or altered pursuant to a written amendment executed by the Mayor and attested to by City Clerk, pursuant to prior City Council approval.

Notwithstanding City Council approval, no amendment will become effective until it is in fact executed by the Mayor and attested to by City Clerk and approved as to form by the City Attorney (or designee). TENANT understands this Lease cannot be modified, amended or altered by oral statements by any person representing CITY, including the Mayor and City Clerk. TENANT specifically agrees not to rely on oral statements, purported oral waivers, or purported oral modifications and agrees not to rely upon purported written modifications unless they meet the requirements of this Section. If the title of any person authorized to act for CITY under this Lease is changed during the term of this Lease, then the person who succeeds to substantially the same responsibilities with respect to CITY will have the authority to act for CITY under this Lease.

Section 12.07 Time of Essence.

Time is expressly declared to be the essence of this Lease.

Section 12.08 Memorandum of Lease for Recording.

CITY and TENANT agree, at the request of either at any time during the term of this Lease, to execute a Memorandum of Lease or "short form" of this Lease, which shall describe the Parties, set forth a description of the Premises, specify the term of this Lease, and incorporate this Lease by reference.

Section 12.09 Force Majeure.

If either Party hereto is delayed or hindered in or prevented from the performance of any act required hereunder by reason of a strike, lock-out, labor trouble, inability to procure materials, failure of power, governmental moratorium, riot, insurrection, war, pandemic or other reason of a like nature not the fault of the Party delaying in performing work or doing any act required under the terms of this Lease, then performance and doing of such act will be excused for the period of such delay. The Parties understand and agree, the foregoing will not extend any period of time for the payment of Rent or other sums payable by either Party or any period of time for the written exercise of an option or right by either Party.

Article 13 SPECIAL PROVISIONS PECULIAR TO THIS LEASE SITE

The following provisions apply to this Lease site only:

Section 13.01 [reserved]

EXECUTED on _____, 20____, at _____ County, California.

CITY OF MORRO BAY

TENANT

, MAYOR

By: _____

By: _____

ATTEST:

, CITY CLERK

APPROVED AS TO FORM:

, CITY ATTORNEY

EXHIBIT A
COPY OF PARCEL MAP