



**CITY OF MORRO BAY
HARBOR DEPARTMENT LEASE MANAGEMENT POLICY**

**Adopted by the City Council
July 14, 2020**

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Morro Bay City Council

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I. VISION STATEMENT

The long-term vision of the City of Morro Bay is to manage and maintain the City's Tidelands Trust Land (TTL) lease sites along the western side of Embarcadero Road as a vibrant working waterfront, incorporating tourism and various commercial and recreational uses. Positive cash flow to the Harbor Fund is crucial to maintain the integrity of the waterfront and environmental health of the bay and its resources. In order to provide a quality experience for the public, tourism and other recreational uses of the Embarcadero are encouraged and considered in lease management decisions. The waterfront will be pedestrian-friendly with ample access and view corridors to coastal resources.

The principal tenets in the State Tidelands Grant will be followed and future development or redevelopment of the TTL will conform with the City's General Plan, Downtown and Waterfront Master Plan, Local Coastal Program and the voter-approved initiative known as Measure D that protects commercial and recreational fishing uses, while remaining true to the historic fishing heritage of the harbor and community.

This Policy is intended as an advisory tool to provide guidance for current and future lease site management, development, and redevelopment decisions considered by the City, with the ultimate dual goals of maintaining the vitality of the City's waterfront, as well as the fiscal health of the department charged with managing it.

This Policy will follow guiding principles that are designed to serve as a bridge between the Harbor's goals, purpose, and regulatory environment, and management and leasing needs. These guiding principles are:

- A. The City shall foster a spirit of partnership with its tenants in the application of this Policy, while fulfilling its duties as a steward of vital public enterprise, assets and resources.
- B. The City will make TTL lease sites available on fair and reasonable terms without discrimination.
- C. The City, in its role as a TTL trustee, may consider more than just the maximum revenue that can be generated by a new lease. The City will also consider what is in the best interests to ensure the public's enjoyment of the TTL, as well as to serve the City of Morro Bay, including the essential role all parties and businesses play in maintaining growth and job creation, as well as the need to maintain a diversified mix of water dependent uses.
- D. The City shall retain effective management controls over the use of TTL assets and will structure management controls in all leases and rental agreements in order to:
 - E. Achieve highest and best use of TTL assets;
 - F. Ensure timely development as-needed; and
 - G. Foster open and competitive access for new entrant and incumbent TTL tenants.
- H. The City will establish and maintain a level and structure of rents, fees, and charges that are fair and equitable for all tenants, and which are based on current appraised lease site values.
- I. The City will establish minimum operational maintenance standards for users of TTL lease sites in order to promote safety and maintain appropriate levels and quality of service.
- J. The City and its leaseholders will at a minimum follow good environmental practices, including but not limited to all applicable environmental laws, regulations, established guidelines and best management practices.

- K. The City will actively monitor compliance with provisions of lease agreements, file timely notice of non-compliance and employ available remedies to enforce compliance when appropriate.
- L. The City shall be open and transparent in its selection of new tenants and in lease negotiations per State law, including exercising the City's right to negotiate confidentially under Government Code Section 54956.8.

II. HISTORY

Tracing back to English Common Law, the Public Trust Doctrine establishes navigable water or lands subject to tidal influence are "sovereign," held open to the public for commerce, fisheries or navigation. As cited in the Doctrine, "by the law of nature these things are common to mankind, the air, running water, the sea, and consequently the shores of the sea."

In order to establish a Navy amphibious training base to aid the war effort, in 1942-44 the federal government constructed a revetment along the Morro Bay waterfront and filled most of the area now known as the commercial strip along the Embarcadero. After the war, the State of California claimed ownership of the newly created land as at least a portion of it had previously been below the high tide line. In 1947, the State of California granted those public trust lands in Morro Bay to the County of San Luis Obispo (Chapter 1076 of the California Statutes of 1947, and amended by Chapter 1874 of the California Statutes of 1957). After many years of dispute with private property owners, who also claimed an interest in the land, most title issues were settled in the 1950s-1960s by designating those lands west of Embarcadero Road as public trust lands owned by the State, and those lands east of Embarcadero Road as privately owned. The City of Morro Bay assumed trusteeship of the granted lands upon incorporation in 1964-1965. The Tidelands Grant in Morro Bay is in perpetuity; provided, that the City conforms to the terms of the legislative grant.

The granted lands must be used for commerce, fisheries, navigation, recreational purposes, parklands, public access, public parking and environmental protection or enhancement. Residential use of these public lands is specifically prohibited. The City will lease out these lands to private businesses, government entities or non-profit organizations for a period up to 50 years and all revenues from such leases must be expended within the area of the granted lands for the purposes of the public trust.

Over the years, the City has changed its leasing practices and policies to better protect the public interest by adopting modern lease formats and standards for fair market rent and periodic rental adjustments. Prior to the mid 1980's, the City's leasing process included the active participation of a ten-member Harbor Commission. In addition to leasing activity, the Commission set policies and had an active role in managing the business of the harbor. In 1985, the City created the Harbor Department to focus property management efforts in the TTL and to assure the State TTL revenues were properly accounted for; and, in 1987, the City Council reorganized the Harbor Commission into a seven-member Harbor Advisory Board whose role became advisory-only in nature. The result of those changes was a streamlined process, more responsive to the business environment and improved lease management because Harbor Department familiarity on each lease site's history, operator and lease terms allows for smoother lease negotiations and hastened resolution on contract interpretation and other issues. The Harbor Department has multiple, and often competing, roles in both aiding in the success of its leaseholders, while at the same time carrying out the policies,

planning, zoning, land use, legal and insurance issues of the City. As the most informed entity, the Harbor Department will take all those factors into account when managing and administering the City's waterfront leases.

The Harbor Department is operated through a City enterprise fund known as the Harbor Fund. Similar to the Water and Wastewater enterprise funds, all Harbor services are funded with either user fees or property management income (no sale, property or transient occupancy tax revenues). The Harbor Fund is the sole-source for management of the TTL leases, Harbor Patrol and various public and other facility management including maintenance, repair and capital improvements.

III. GENERAL POLICY, PURPOSE AND BENEFITS

The City of Morro Bay shall manage the TTL to provide, support and enhance harbor facilities, and must act in accordance with the stipulations of the Tidelands Grant and granting statutes as interpreted and managed by the State Lands Commission. With those obligations fully in mind, the primary goal of this Policy will be to maximize the City's financial return from valuable public real estate assets in a manner, which:

- A. Is consistent with the City's General Plan, Local Coastal Program, Downtown and Waterfront Strategic Plan, zoning ordinances and all other adopted plans and policies, consistent with the City's goals of maintaining a small commercial and recreational fishing harbor, a working waterfront and visitor-serving environment,
- B. Provides for, supports and enhances harbor facilities and services in a manner which its residents can be proud of,
- C. Protects and enhances the environment, while serving the broader economic and recreational needs of the community,
- D. Allows tenants to earn a fair return on their investments in a predictable business climate,
- E. Appropriately accounts for TTL revenues and expenses in compliance with State law and the Tidelands Grant, and
- F. Promotes and enhances economic development to serve the Morro Bay community's present and future generations.

IV. BACKGROUND

A. General Lease Management

Under the supervision of the Harbor Director, the Harbor Department is responsible for the negotiation of leases, the Request for Proposals (RFP) process for lease site development and redevelopment and for the day-to-day administration of the leases under this Policy. The Harbor Director has the authority to interpret the provisions of the Leases and Subleases and where appropriate, in the Harbor Director's discretion, to seek counsel from the City Attorney, City Manager or the City Council.

The Harbor Department is also tasked with the collection of rents and fees, property inspections, financial audits communications with Master Tenant and subtenants and coordinating lease activity with the administrative, community development, legal and governance (City Council) functions of the City.

The Harbor Director, with oversight by the City Manager and guidance/direction from the City Council, will conduct negotiations with Master Tenants for new and existing leases, and manage the process for marketing vacant lease sites and sites subject to redevelopment. The terms and conditions of the leases and/or the processes for negotiation, as adopted in this Policy, shall be observed and applied consistently throughout the TTL area. All leases, and unless otherwise provided in a lease, all amendments to leases, all license agreements and requests for proposals to develop/redevelop lease sites must be approved by a majority vote of the City Council, and the Harbor Director shall keep the City Manager and/or the City Council informed of progress, as well as to seek direction from them on specific lease issues. In the event of a dispute between the leaseholder and the Harbor Director as to the application of policies and procedures, the parties may submit the dispute to the City Manager and/or City Council for resolution.

The Harbor Director will confer and coordinate with the Community Development Department on specific development, permitting, land use and zoning issues concerning the development, redevelopment or management of lease sites subject to this Policy. Master Tenants must work directly with the Community Development Department for use permit applications for development or redevelopment. The Harbor Director will coordinate insurance issues with the City's Risk Manager, and legal issues with the City Attorney.

The Harbor Director approves subleases under the Consent to Sublease process providing subleases conform to the terms and conditions of the Master Lease under which they are being approved, including compliance with the uses allowed in the site's Conditional Use and other permits, as-applicable.

B. Leasing Areas

The City recognizes there are three distinct zoning areas on the waterfront that require different considerations in leasing and lease issues; in managing waterfront development and redevelopment, the City's leasing practices shall recognize and implement the City's vision for the leased properties as reflected in the City's General Plan, Local Coastal Program, Zoning Code and applicable Master Plans. The three areas from north to south are as follows:

1. Embarcadero Road from Beach Street North. This area is designated with specific voter-approved zoning known as "Measure D" to preserve commercial and non-commercial recreational fishing-dependent uses. Measure D stipulates all TTL subject to City lease between Beach Street and Target Rock be primarily for the purposes of serving or facilitating licensed commercial fishing activities, or non-commercial recreational fishing activities, or is clearly incidental thereto. Measure D further stipulates existing non-conforming restaurants or retail uses are allowed but cannot be expanded or enlarged. The City will strongly encourage Master Tenants who propose enhancements of commercial fishing uses or marine dependent uses by considering new long-term leases that facilitate those types of projects. Leases for existing restaurant/retail sites may be amended to provide a longer term, or a new lease executed, if the Master Tenant can develop plans to maintain the lease site and improve public benefits and access, enhancing the general business environment and marine-related uses in the TTL. Within the general outlines of this Policy the City Council will provide specific direction to the City's designated negotiator on the Morro Bay Power Plant outfall lease.

2. Embarcadero Road from Beach Street to Tidelands Park/Public Boat Launch. In this core commercial area of the waterfront, the City controls and manages the public property on the west side of Embarcadero Road, where land and water area leases exist for commercial development. In this area, Master Tenants are encouraged to propose redevelopment of lease sites to improve public benefits, enhance the business and working waterfront environment in the TTL and renegotiate leases to modern terms.
3. Tidelands Park South Water Area Only Leases. In this area the City leases only the water areas, as the upland property and access to the water is owned and controlled by private parties. The City will encourage continuation/enhancement of marine dependent uses such as boat slips and boat repair facilities where feasible; however, this area is not suitable for large redevelopment projects.

V. LEASE ADMINISTRATION

A. Master Lease Format

The City has developed a master lease format based on modern leasing practices and similar formats used by other public agencies. The Master Lease Template attached to this Policy in Exhibit F, will be the template for all future master leases, until such time as modified by the City Council. Terms such as rental amount, term of the lease and other data or circumstances particular to an individual lease or lease site may be altered within the text of the Master Lease Template to suit a particular leasing situation. Section 13 of the Master Lease Template is for special provisions peculiar to a particular lease such as redevelopment or improvement provisions, special circumstances or other provisions not common to all Master Leases.

B. License Agreements

A License Agreement format will be used for temporary, interim or non-exclusive use of TTL property, or for regulating non lease site-based businesses operating in the TTL areas when appropriate. A separate License Agreement Policy will be used to manage License Agreements.

C. Building Leases

If a City lease site reverts to City ownership for any reason and recognizing there is a potential conflict of interest if the City is both landlord to Master Tenants and a building lease landlord competing with Master Lessees to fill vacancies on the waterfront, then the City will only enter into building leases for those sites under one or more of the following circumstances:

1. When it becomes absolutely necessary,
2. To maintain the improvements,
3. For business continuity or
4. To take advantage of an unusual opportunity.

Such building leases will be only on a short-term basis (generally three years or less), provide for fair market value terms and conditions and be in compliance with the Tidelands Trust Act.

D. Approved Uses

Only those uses as-described in Article 3 Use of Premises section of the master lease and as-provided in a City-approved applicable Conditional Use Permit or other entitlement for the lease site, all in conformance with the Tidelands Trust, will be allowed. Those uses must

conform with the applicable City land use entitlement regulations and policies. Master Tenants proposing new uses for a lease site shall be referred to the Community Development Department of the City for review and approval through the applicable land use entitlement process; and, upon such approval, the new permitted uses of the subject lease will be incorporated into the lease by amendment.

E. Fair Market Rent

State Law requires fair market rent be charged for use of the TTL and City leases and licenses thereon. Fair market rent will be determined by the City through the use of an independent appraiser to appraise the fair market value of the leased property, and the City will set an annual rent minimum of 8% of the appraised value of the land and/or improvements if the improvements have reverted to the City. The lease will be structured to provide for a minimum annual fair market rent or a percentage of gross sales rent, whichever is greater, per the City's adopted percent gross rent schedules included in Exhibit E.

In order maintain fair market percent rent rates, the City will periodically conduct or have conducted a percent rent rate study of then-current percent rents of other similar coast-wide public agencies on an as-needed basis, and all new leases and/or applicable lease amendments will incorporate the most current percent rent rates, unless the City Council determines the public interest can be better served by a different rate.

In cases where the Master Tenant is proposing complete site redevelopment or an improvement project involving remodeling or replacement of 50% or more of the existing improvements, or of a lease site requiring significant private investment costing 50% or more of the appraised value of the property, the City may allow both temporary reductions in the outlined minimum rent to offset the Master Tenant's period of reduced revenues during construction, as well as a reduction in the standard percentage of gross sales requirements as negotiated with the Master Tenant, on a case-by-case basis.

1. Non-Profits/Public Benefit

It is recognized both community-based non-profit organizations and public benefit entities, because of their purpose and function, provide intrinsic benefits to the City at large. Those organizations, however, must pay market lease rates on all operations/uses to provide needed revenue for the Harbor Fund, unless they provide direct or indirect benefits to the TTL areas, waterfront, or harbor community, which are sufficient to justify a reduction in rent based on the following criteria;

- a) An independent fiscal and/or cost-benefit analysis is conducted, at the cost of the non-profit or public benefit organization, to quantify the direct or indirect economic or other impacts (positive and/or negative) to other businesses in the TTL, and determine if there are other (positive and/or negative) fiscal or other impacts associated with the use, including those of potential unfair competitive advantages over the private sector. Lease rates can be negotiated at less than market rate if it is determined other quantifiable direct or indirect financial, public or other benefits, as determined by the City Council.

- b) Other revenue options may be considered in establishing leases with revenue-generating non-profit entities, such as an admission tax or fee, a lease payment based on a percentage of membership fees or dues, an in-lieu sales tax fee, or any other alternative measures developed through negotiation with the City, as approved by the City Council.

2. Government

Government Master Lessees that provide coastal or marine-dependent services to the City, the bay or boating community, and enhance the quality of life of in the City should be allowed to lease space on the Embarcadero. Governmental uses may pay reduced rent based upon the limitations and restrictions of the agency and the value of the services provided by it to the City.

- F. Lease Term (duration)

The appropriate term for a new lease will be determined by the City Council based generally on the size of lease site and the level of private investment proposed for the site and TTL public property. The term of a lease is primarily related to the dollar amount of the investment in improvements made on the site and TTL, and relative to the size of the lease site in relation to its revenue-generating capacity. Because of the differing values and revenue-generating potentials of the different leaseholds, the relationship of the investment to the term of the lease needs to be assessed on a case-by-case basis, and can be difficult to define in a centralized numerical formula.

Because lease and property negotiations are a fluid and dynamic environment, in negotiating the lease term the City Council may take into consideration recent past negotiations as examples of appropriate term-to-investment ratios. In addition, the City Council may also consider other relevant information in determining if a longer lease term is warranted in approving a lease, such as but not limited to, and with differing degrees of weighting the importance of each as the City Council may deem appropriate:

1. The desirability or marketability of the leasehold in question,
2. Business or revenue-generating potential of the site and improvements,
3. Useful life of the improvements,
4. Jobs potentially created by the business mix of the facility,
5. Challenges or other limitations inherent in a particular leasehold (such as land use entitlement limitations or physical conditions or obstacles to development),
6. The extent of the capital investment being expended by the potential Master Tenant,
7. If the capital investment is expected to generate above average returns to the City, and
8. The investment/redevelopment will reposition the lease site to a higher aesthetic, increase the site's property value or inherent revenue-generating potential or increase/improve public benefits.

Capital investment can take the form of: purchase of leasehold interest and improvements; cost of remodeling and refurbishing existing improvements; the cost of new improvements/site redevelopment; the cost of public benefits; or other public improvements, provided that personal property and Tenant Improvements (or "TI's") will not qualify as capital investment toward measuring lease term.

G. Lease Negotiation

Negotiations relative to leasing public tidelands shall commence and remain at the appropriate staff levels and follow appropriate chains of command, with the Harbor Director serving as the main point of contact with the prospective Master Tenant. Participation from the Administration, Community Development, Legal or Public Works departments may be necessary when issues relative to their respective departments arise.

The City Council may exercise its authority under California Government Code Section 54956.8 to meet in Closed Session to give instructions to the City's negotiator(s) regarding negotiations for lease of real property. During the Closed Session, the City's negotiators will be properly instructed and authorized to finalize negotiations and the lease with the prospective Master Tenant/Subtenant. Negotiations are to be conducted to the maximum extent possible in private at the staff level, prior to City Council consideration of the lease in regular open session, to avoid the City Council negotiating a lease in public.

In some cases, parties who are considering buying a Tidelands Master leasehold interest may desire to renegotiate portions of the existing lease prior to completing the sale/assignment of the lease. Normally, City staff will not negotiate with prospective Master Tenants due to the fact the City does not have a leasehold relationship with a prospective Master Tenant, and the potential impact on the "sale" price of a lease. Prospective buyers of leasehold interest are buying the existing lease agreement only.

All lease sites eventually need to be reconstructed or significantly remodeled. In general, the City desires such reconstruction to bring improvements up to then current modern building codes, design criteria, and market conditions. The City acknowledges Leaseholders will need to renegotiate leases in those instances. The normal stage for lease negotiation to commence in a reconstruction redevelopment situation is when the Master Lessee has received City Council approval of a Concept Plan for a land use entitlement (many times a Conditional Use Permit (CUP)) for the site. The project will then be at a stage when the land use entitlement approval can be attached to a lease, and the Master Tenant can be required to construct the improvements in compliance with the land use entitlement in a given period of time.

Upon execution of any new Master Lease, as a matter of course a Memorandum of Lease will be recorded with the County Clerk-Recorder for the leased property to ensure the public and any interested parties can be made aware of the existence of the lease.

H. Lease Amendment, Renewal and Extension

1. Amendment

Lease amendments may be used for various functions where the existing lease agreement is retained, including, but not limited to, the addition of time to the lease term. Master Tenant-desired amendments may be contingent on updating other sections of the lease, or a rent adjustment desired by the City, depending on the nature of the Master Tenant amendment.

Lease amendments must be consistent with the City's then applicable land use entitlement regulations and vision for the lease site, and conform to then-current standard lease language in effect at the time, and will only be made with Master Lessees in Good Standing, as-defined herein.

A lease amendment process flow chart is included in Exhibit B.

2. Renewal

Leases will not be renewed, as-defined herein, because automatically renewing a lease with an existing Master Lessee can lead to a false sense of private ownership of the lease site, with the consequence some Master Lessees may not maintain or reconstruct the improvements prior to the expiration of a given lease term.

3. Extension

Leases will not be extended, as-defined herein. Any additional lease term (duration) to a lease must be by lease amendment, and generally only in exchange for additional consideration from the Master Tenant. Lease “extension” is not to be confused with lease “holdover,” as defined in the individual lease agreements.

I. Lease Expiration and Termination

In general, there are three options for leases that are nearing their expiration or are terminated:

1. Advertise the lease site is available through a Request for Proposals (RFP) process. The RFP process is addressed in Section K.
2. Keep the site in a short-term interim lease arrangement until the City Council determines its intent for lease site’s future, including but not limited to consolidation with another lease site or site redevelopment.
3. Work with the existing Master Tenant on a new, replacement lease.

In the case of an expiring lease when an existing Master Tenant proposes to continue occupancy and they desire to make additional or new capital improvements, or when the Master Tenant proposes to completely redevelop the site, they must make their intentions known to the City no less than five years prior to the expiration of their existing lease. Such a proposal must be consistent with the City’s vision for the lease site in terms of business mix, amenities and public benefits and improvements, as such vision is previously determined by the City Council. In the absence of such a proposal from the existing Master Tenant, or if such a proposal is rejected by the City Council, the City may utilize an RFP process to solicit the lease site opportunity, with the intent that such solicitation will be initiated not less than four years prior to the expiration of the existing lease, at the City’s discretion.

For a new lease request not involving significant new capital investment, other consideration, such as higher rents to the City or additional public benefits, may be employed. Additionally, the City may, with the assistance of professional property inspectors and/or the City’s Building Inspector, Fire Marshall and Code Enforcement Officer, evaluate existing facility conditions, and propose additional site capital investments that would justify a new lease with an existing Master Tenant.

Proposals for a new lease will be evaluated on a case-by-case basis upon, but not necessarily limited to, the following:

- a. Master Tenant is in Good Standing, as-defined herein.
- b. The City desires to continue a proven, mutually beneficial leasing relationship.
- c. Master Tenant’s proposal is desirable, their plan is acceptable, it matches the City’s vision and plan for the site, and is in compliance with the City’s land use entitlement regulations.

- d. Proposed capital or other improvements (including public benefits) justify amortizing the Master Tenant's investment over a longer period of time than is available in the existing lease.
- e. An older lease is to be replaced with a new lease incorporating then current modern leasing terms and fair market rates, and be consistent with the City's vision.
- f. Competitiveness or desirability of proposed lease terms.

A new lease establishment process (with an existing Master Tenant) flow chart is included in Exhibit B.

J. Rent Collection

Master Tenants must pay to the City minimum guaranteed annual rent as-stipulated in their individual lease agreements.

Additional percentage rents for the twelve-month periods ending June 30 are due by July 31 for that prior fiscal year. In order to calculate percent gross rents due, Master Tenants are required to provide records of their gross sales and/or the gross sales from their subtenants and slip tenants, with percent rents calculated per the requirements in their individual lease agreements. The calculated total dollar value of all percentage rents, minus the minimum guaranteed annual rent (but no refund if less than zero) is the amount of the percentage rent due to the City.

Acceptable payment methods are to be made by check, money order, cashier's check, credit card or cash, received by mail or hand delivered to the Harbor Department.

Receipts will be available if payment is hand delivered to the Harbor Department.

If rent is not received within ten days following the date on which the rent first become due, then the Master Tenant must pay a late fee of ten percent of the amount of the rent, or as stipulated in the lease agreement, as well as the full rental amount due. In addition to the late fee, the Master Tenant must pay interest at the rate of one percent per month or fraction thereof, the amount stipulated in the lease agreement or the maximum amount permitted by law as of the date the lease is signed, whichever is greater, on the amount of the rent, exclusive of the late fee, from the date on which rent first became delinquent until paid.

Returned checks shall be handled by the terms of the City's current Return Check Policy.

K. Putting Lease Sites up for a Competitive RFP Process

Where it is desired to solicit competitive proposals from the public for a given lease site, a RFP process will be employed. That process can be done "in-house" with City staff or be done in conjunction with or by a real estate development broker or other qualified private party, as determined by the City Council. In general, putting a site out for public proposals shall have the following top four priorities:

1. Ensuring lease sites match the City's plans and vision for the sites in terms of business mix, amenities and public benefits.
2. Redeveloping or upgrading lease site improvements to then current modern designs, codes and market conditions,
3. Enhance and/or maximize revenues to the City, and
4. Improved public benefits.

A lease site RFP process flow chart is included in Exhibit B.

L. Lease Site Redevelopment and Coordination with Community Development Department

When lease site remodels or redevelopments are being considered, close coordination with the Community Development Department is necessary to ensure consistency with the City's policies, plans, zoning and economic development goals and objectives, especially where multiple site consolidation is under consideration.

In addition, past land use entitlements and history on a given site will be consistently interpreted and applied to future development and use, which can only be established with close inter-departmental coordination.

M. Lease Site Consolidation

Lease expiration dates may be established to coincide where adjoining sites might have mutual planning benefits. In some cases, the City may not add time to the term of an existing lease, either for the purpose of consolidating sites or to pursue other extenuating public benefit.

Lease site consolidation may be considered in instances where:

1. Opportunities exist for financial economies of scale not otherwise achievable with smaller sites,
2. Achieving long-term planning goals as identified in the City's General Plan, Local Coastal Program and various master plans,
3. Policy implementation, or
4. Realizing desired public amenities or benefits.

N. Lease Site Monitoring, Inspection and Maintenance

1. Lease Site Monitoring and Inspection

The City has a paramount interest in ensuring the improvements on the City's lease sites are being properly maintained and are in a safe and secure condition. The City shall have the lease sites inspected and a report made on such inspections at least every five years, or as often as the Harbor Director or City Manager deems necessary, with approximately one-fifth of the lease sites inspected every year on a rotating basis. A checklist for lease site criteria is included in this Policy under Exhibit G. In conducting lease site inspections, the City may utilize any or all of the following:

- a. Harbor Department staff,
- b. Fire Marshall,
- c. Building Inspectors,
- d. Code Enforcement Officers, including reports from agencies such as County Health and others,
- e. Private Contractors, and
- f. Other resources as-identified

City staff will require deficiencies noted in the lease site inspection reports to be repaired or cured by Master Tenants in a timely manner, depending on the nature and urgency of the deficiencies identified. Any deficiencies that pose, in the sole determination of the Harbor Director, in consultation with the Building Official and/or Fire Marshall, a public or life-safety issue must be cured immediately.

Ultimate disposition of any uncured deficiency will be handled according to the provisions in the individual lease agreements.

As long-term leases draw close to expiration, there can be a tendency for maintenance deferment. The City must carefully monitor and strictly enforce lease maintenance provisions to protect the reversionary interest in the lease site improvements. Site inspections shall be conducted with appropriate and reasonable advanced notification.

2. Maintenance of Improvements and Leased Premises

Unless otherwise provided in individual lease agreements, Master Tenants are solely responsible for the upkeep and maintenance of the leased premises and improvements, including any seawalls and/or revetments, and must, at the Master Tenant's sole cost and expense, repair, replace, restore and otherwise maintain the leased premises and all improvements thereon in a fully functional, safe and secure condition per the terms of their leases.

In addition, Master Tenants must, at all times during the term of their leases, repair, keep and maintain the interior and exterior appearance of their premises and improvements in good, clean, vermin-free and sanitary order. Such repair and maintenance will include, but not necessarily be limited to, removing all obstructions, trash, debris, vermin and refuse, and maintaining improvement appearance and landscaping in an attractive manner.

For all maintenance and repair performed under the provisions of a lease agreement, Master Tenants must comply with all applicable laws, codes, ordinances, regulations and requirements of any governmental agency having jurisdiction over the leased premises. Ultimate disposition of uncured deficiencies will be handled according to the provisions in the individual lease agreements.

3. Maintenance of Public Spaces, Common Areas, Rights-of-Way and Sidewalks

Public spaces, common areas, rights-of-way, sidewalks and other areas or spaces not necessarily on a given lease site's premises, but utilized as part of a lease site's business operations (the path of travel for a site's dumpsters to the roadway for collection, for example) will be cleaned and kept free of litter, debris and contamination, and maintained without surface contamination in a "broom clean" condition at all times by the Master Tenants utilizing those areas.

O. Environmental Considerations

Lease negotiations shall be consistent with the City of Morro Bay's intent to be protective of natural and human resources in and around Morro Bay Harbor. Leases should specifically include or incorporate by reference applicable environmental regulations that may include, but not be limited to, boater and/or marina Best Management Practices, the Clean Marina Program, or similar programs and initiatives of the Morro Bay National Estuary Program.

P. Lease Terms and Site Entitlement Compliance

The City will monitor compliance with, inspect for and ensure compliance with all lease terms, conditions and provisions on an ongoing basis. In addition, as part of the five-year site inspections, the City will inspect for and ensure compliance with Master Lessee adherence to all entitlements (permits and permit conditions, including sign permits) associated with the premises and improvements.

Deficiencies noted in the lease terms or entitlements must be repaired or cured by Master Tenants in a timely manner, depending on the nature and urgency of the deficiencies identified. Ultimate disposition of uncured deficiencies will be handled according to the provisions in the individual lease agreements.

Q. Percentage of Gross Sales Audits

Without limiting the City's right of audit and oversight contained in its individual lease agreements, it will be the City's policy to require the annual submission to the City of all applicable business sales tax records as-submitted to the State of California, in addition to the hotel room night sales and transient occupancy tax ("TOT") payments as-submitted to the City, with the Master Tenant's annual percent gross sales reports each year. Harbor Department staff, with the assistance from the Finance Department and/or other resources, will annually audit the submitted documents for accuracy against each other, and with the sales tax records received by the City from the State and the City's sales tax reporting service. The disposition of any amounts owed or owing will be handled in accordance with the terms in the individual leases themselves.

While sales tax reporting, TOT reporting and percent gross reporting should match in terms of sales numbers reported, discrepancies between the reporting will be handled as follows:

1. Any discrepancy that constitutes a difference in gross receipt reporting versus sales tax and/or TOT reporting of less than 5% will result in no further auditing action.
2. Any discrepancy that constitutes a difference in gross receipt reporting versus sales tax and/or TOT reporting of 5% or more will result in City taking whatever further auditing action is necessary to satisfy City the amounts reported are correct, including but not limited to conducting a full traditional financial audit.

For lease sites that have sales or revenues that are not subject to sales tax or TOT, those sales will be subject to traditional financial auditing every three years as-follows:

1. The non-taxable sales of one-third of the sites with such sales will be audited each year on a rotating basis, with sites chosen to reflect approximately one-third of the total non-taxable sales in the TTL, and
2. Each audit will select any one or more of the immediate past three years to review.

In any event, the City reserves the right to conduct a full traditional financial audit of any lease site, within the limits of any lease agreement's terms, should, in the City's sole determination, such an audit be justified.

R. Lease Sale, Assignment and Assumption

All City leases require City Council approval for the sale or assignment and assumption of a lease agreement. Any Master Lessee requesting such approval will be required to:

1. Pay the appropriate fees noted in the City's Master Fee Schedule,
2. Complete the appropriate forms,
3. Submit financial and other documentation to indicate the qualifications and experience of the proposed Leaseholder to the satisfaction of the Finance Director, Harbor Director and City Attorney,
4. Be a Master Lessee in Good Standing, as defined herein, in full compliance with the terms and conditions of their lease agreement, and

5. Provide proof of proposed Master Tenant's City of Morro Bay current valid business license/tax certificate, general liability insurance and all applicable governmental licenses.

If the proposed assignment or sale includes a change in use of the site, then the change in use shall be reviewed by the Community Development Department for conformance with planning and zoning regulations. Proposed changes in uses for lease sites must comply with the City's land use entitlement regulations, including, but not limited to, the adopted General Plan, Local Coastal Program, and Measure D's limitations for properties north of Beach Street. Where zoning allows a variety of uses, whenever possible preference will be given to coastal-related uses.

S. Sublease Approval

All leases require City approval of subtenant/sublease agreements. Any Master Lessee requesting subtenant approval will be required to:

1. Pay the appropriate fees noted in the City's Master Fee Schedule,
2. Complete the appropriate forms,
3. Submit documentation to indicate the qualifications and experience of the proposed subtenant to the satisfaction of the Harbor Director,
4. Submit a properly executed copy of the City's standard Consent to Sublease/Subtenant Agreement,
5. Submit a copy of the proposed subtenant/sublease agreement between the Master Lessee and subtenant, and
6. Obtain proposed subtenant's City of Morro Bay current valid business license/tax certificate, general liability insurance and all applicable governmental licenses.

T. Financial Criteria and Financing Considerations

In making a determination of whether or not a Master Tenant, proposed Master Tenant or Subtenant is a financially acceptable partner the City wishes to do business with, the City will use any or all of the following criteria:

1. Experience and history in commercial leasing situations, property management and development/redevelopment,
2. Demonstrated financial capacity and capitalization,
3. Financial strength and current relationships with financing sources, including credit scores,
4. History, if any, of defaults, bankruptcies or litigation that indicates a bad partnership risk, and
5. Properly and professionally-prepared business plans and/or financial proformas with industry-standard elements expected of such documents.

While there is the need to foster financing, refinancing and investment on the waterfront, while protecting the City's interests and fiduciary responsibility, the City will not approve financing related to or using the lease site, or leasehold interest as collateral, unless such financing is for sole investment upon the TTL, for City-requested public improvements or benefits in the TTL or to reduce the interest rate of existing debt secured by the lease.

VI. Exhibits to Policy (Exhibits B, C, D and G subject to administrative change without notice)

A. Definitions and Acronyms

1. **Allowed Use:** a use that is *allowed* on a lease site per that site's Master Lease, but that must also be an *approved* use per that site's various land entitlement use permits.
2. **Annual Minimum Rent:** also known as "Minimum Rent" or "Base Rent." The minimum rent charged a Master Tenant on an annual basis for use of the premises. The Annual Minimum Rent is established as a percentage of the Appraised Value of the property, as-defined, and established in individual lease agreements.
3. **Appraised Value:** the estimated fair market value of a subject property as-determined by a qualified commercial property appraiser. Assumptions made for appraising a leasehold property are:
 - a. "Fair market value" is the most probable price in terms of money which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus.
 - b. The property rights appraised are those of the fee simple interest in the subject property as if free of all liens, leases and encumbrances.
 - c. The subject property is vacant and available for development to its highest and best use.
4. **Approved Use:** a use that is approved on a lease site per that site's various land entitlement use permits, including but not limited to Conditional Use Permits, Temporary Use Permits or Minor Use Permits.
5. **Base Rent:** also known as "Annual Minimum Rent" or "Base Rent." See "Annual Minimum Rent."
6. **Building Lease:** a lease in which the City owns and maintains the building and improvements, and tenants lease space on a monthly or annual basis and perform their own Tenant Improvements.
7. **City Council, Departments and Staff:** all references in this document to City Council, Departments or Staff refer to the Council, Departments and Staff of the City of Morro Bay, California.
8. **Closed Session:** A meeting of the City Council to discuss confidential matters, as-allowed by law, such as litigation, employee relations or property/lease negotiations, conducted in private without the attendance of the public to avoid revealing information that could jeopardize the public interest and City's position on those matters.
9. **Coastal Development Permit:** a permit for any development within the Coastal Zone that is required pursuant to subdivision (a) of Section 30600 of the California Public Resources Code.
10. **Concept Plan:** a basic conceptual development plan for a property requiring approval from the Planning Commission and City Council to move forward to full permitting approval and construction.
11. **Conditional Use Permit or "CUP":** a use that is generally compatible with other uses permitted in a zoning district, but that requires individual review of its location, design, configuration, and intensity and density of use and structures, and may require the imposition of conditions pertinent thereto to ensure the appropriateness of the use at that particular location.
12. **Downtown Waterfront Strategic Plan:** the purpose of this Strategic Plan is to connect and enhance Morro Bay's downtown and waterfront areas and provide a

more uniform feel to each district. The Strategic Plan summarizes the outcomes of a community-based visioning process and will serve as a guide for private development and public investment and decision-making over the downtown and waterfront areas.

13. **Fair Market Rent:** the rent charged a tenant (through negotiation) based on the Appraised Value of the leased property and including Percent Gross Sales Rent in the case of a Ground Lease. Ground Lease Annual Minimum Rent is typically set at 8% of the Appraised Value of the leased premises. In the case of a Building Lease, the rent charged a tenant will be based on current average waterfront per-square-foot space rent rates.
14. **Fair Market Value:** see "Appraised Value."
15. **General Plan or "GP":** the City's comprehensive, long-term plan for the physical development of the City.
16. **Ground Lease:** a long-term lease of land only, with improvements that are built by the lessee that usually revert to the City at the termination of the lease.
17. **Harbor Fund:** a fund of the City of Morro Bay with revenues and expenditures separate from the City's General Fund, managed by the Harbor Department as an enterprise fund to account for all revenues and expenses connected with the operation of the harbor in accordance with the Tidelands Trust Land granting statutes. The sole sources for all Harbor Fund revenues are lease site minimum and percent gross of sales rents and boating and boating facility-related fees.
18. **Holdover:** occupancy of the leased premises after the lease term has expired, in accordance with the terms of the individual lease agreements.
19. **Interim Lease:** a short-term lease, typically five years or less, executed for an intervening period of time while a lease site's future is being contemplated or developed.
20. **Internet Sales:** sales physically conducted on the internet, although conducted as part of a business entity on a lease site.
21. **Lease Amendment:** any formal revision or change to an existing lease by adding, deleting or changing a provision, or by modifying the wording.
22. **Lease Assignment:** transfer by sale or other arrangement of a leasehold interest from a Master Lessee to a new owner. All such assignments must be approved by the City Council. Also referred to as "Assignment and Assumption."
23. **Leases Assumption:** see "Lease Assignment."
24. **Lease Extension:** the continuation of an existing lease with no changes in its terms and conditions other than providing a longer period of time (term) for which the lease is valid. "Extension" is not to be confused with nor affect lease "holdover," as defined in individual leases.
25. **Lease Renewal:** the exact re-creation of an existing lease that is expiring with no changes to that lease, including duplication of the original term.
26. **Lease Term:** the period of time in which a lease agreement is valid.
27. **License Agreement:** an agreement for use of public property that does not convey the typical exclusive use or rights as in a lease agreement.
28. **Local Coastal Program or "LCP":** the documents included in the LCP implement the California Coastal Act at the local level in Morro Bay. This includes addressing all major policy topics of the Coastal Act, incorporating analysis needed to support coastal policies and incorporating local context in conjunction with the legal requirements of the Coastal Act.
29. **Master Lease:** the ground lease agreement or contract held by a Master Tenant for rightful possession of the City's Tidelands Trust Land lease sites along the Embarcadero.

30. **Master Lease Template:** the City Council-approved “standard” lease agreement from which all lease negotiations for new leases are to be initially based.
31. **Master Tenant:** the tenant or lessee named in a lease agreement who holds or possesses a given leasehold.
32. **Master Tenant in Good Standing:** the Master Tenant has a good history of performance and lease compliance and the improvements on the site are well maintained. Example standards for determining “good history” of Master Tenant performance are:
 - a. The Master Tenant’s record with respect to the prompt and accurate payment of rent and related fees due the City, and cures any audit discrepancies in a timely and appropriate manner;
 - b. Master Tenant maintains accurate and complete financial records in accordance with the lease agreement that are made accessible to the City and/or City’s auditors when requested;
 - c. The Master Tenant’s record of compliance with existing lease conditions, and corrective measures for any non-compliance issues taken in a timely manner;
 - d. The appropriateness of the proposed Master Tenant business and/or subtenants with respect to the long-term planning and vision goals of the City;
 - e. The Master Tenant’s financial and personal investment in the leasehold improvements, Master Tenant business and overall management of the site;
 - f. Master Tenant has proven investment and maintained accurate financial records for the amounts committed in the lease for redevelopment, remodeling and/or improvements;
 - g. The contribution to the surrounding business community made by the Master Tenant’s business;
 - h. The quality and value of goods and services provided to the public by the Master Tenant, their tenant and/or its subtenant(s);
 - i. The Master Tenant has obtained, maintained and remained in compliance with all required permits and entitlements;
 - j. The total financial return (revenue) to City from the leasehold is maximized and within industry norms;
 - k. Other pertinent considerations as may be appropriate as determined by the City Council.
33. **Measure D:** a 1981 land use ordinance of the City of Morro Bay restricting lease site development and use between Beach Street and Target Rock to those uses “primarily for the purpose of serving or facilitating licensed commercial fishing activities or noncommercial recreational activities.”
34. **Minimum Rent:** also known as “Annual Minimum Rent” or “Base Rent.” See “Annual Minimum Rent.”
35. **Minor Use Permit or “MUP”:** a discretionary permit which may be granted by the appropriate City of Morro Bay authority to provide for the accommodation of land uses with special site or design requirements, operating characteristics, or potential adverse effects on surroundings, which are not permitted by right, but which may be approved upon completion of a review process and, where necessary, the imposition of special conditions of approval.
36. **Percent Gross Sales Rent:** rent based on a percentage of a tenant’s gross sales according to Exhibit E. Percent gross rent is typically only owed in the amount the percent gross rent exceeds the annual minimum rent.
37. **Sublease:** a lease to a third party, commonly known as a subtenant, by a Master Tenant, conveying some or all of the Master Tenant’s leased property.

38. **Subtenant**: a third-party tenant or lessor that enjoys a sublease.
39. **Temporary Use Permit of "TUP"**: a discretionary permit which may be granted by the appropriate City of Morro Bay authority to provide for the accommodation of land uses with special site or design requirements, operating characteristics, or potential adverse effects on surroundings, which are not permitted by right, but which may be approved upon completion of a review process and, where necessary, the imposition of special conditions of approval.
40. **Tenant Improvements or "TI's"**: removeable personal or business property or trade fixtures affixed to leased premises for business purposes that the tenant can detach and take away.
41. **Tidelands Trust Land or "TTL"**: those properties on Morro Bay's waterfront and surrounding areas, in some cases formerly underwater and filled, owned by the public and held in trust by the City for the people of the State of California. Per the California Constitution and State Law, those properties are to be used in furtherance of navigation, commerce, fisheries, environmental protection, recreation and open space.

B. Flow Charts

- I. New Master Lease
- II. Sublease Approval
- III. Lease Amendment
- IV. Assignment and Assumption (lease sale)
- V. Expiring Lease/Lease Site Redevelopment
- VI. Consent to Encumber (loan) Approval

(immediately following this page)

Exhibit B

NEW MASTER LEASE - Flow Chart

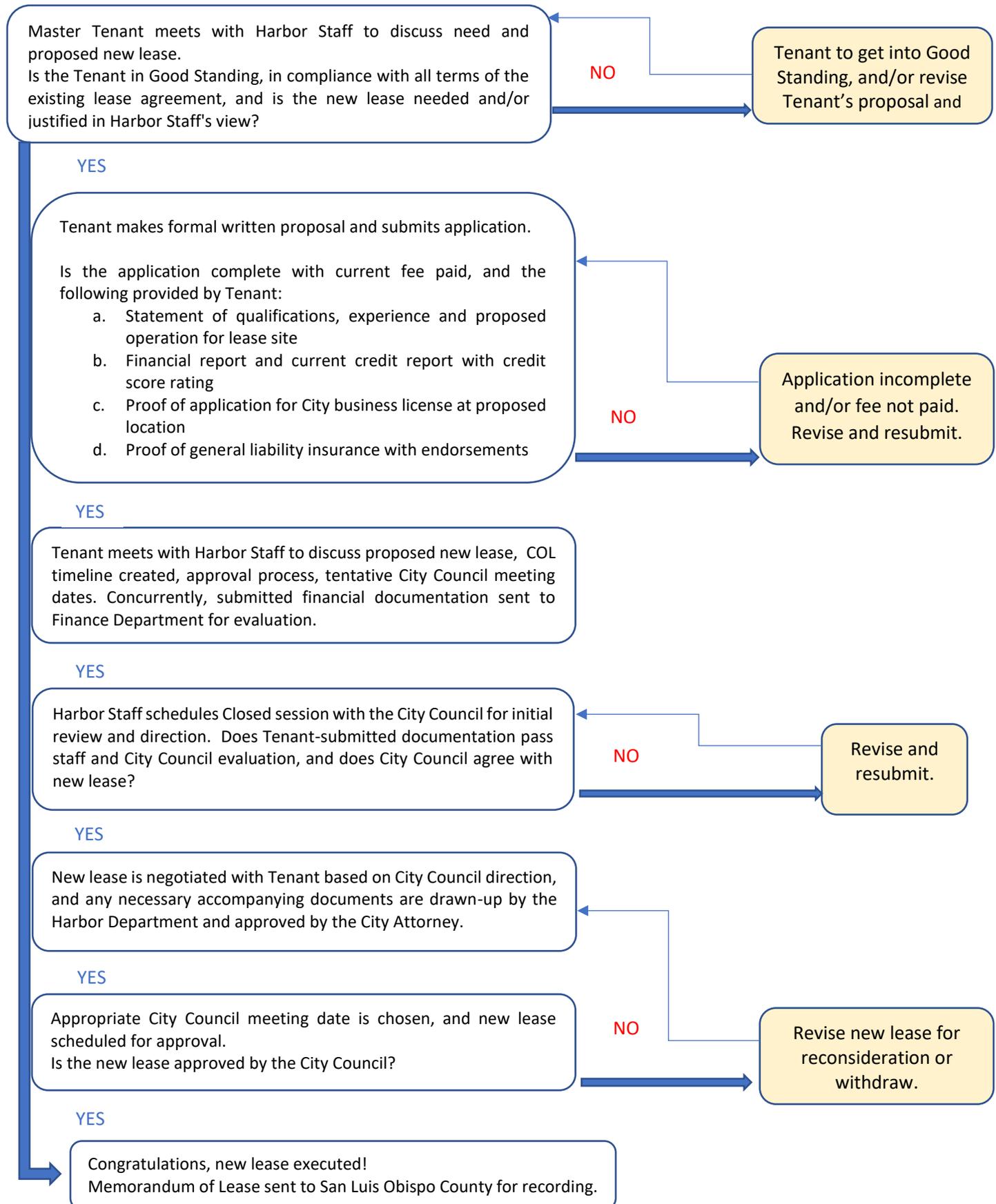


Exhibit B

SUBLEASE APPROVAL - Flow Chart

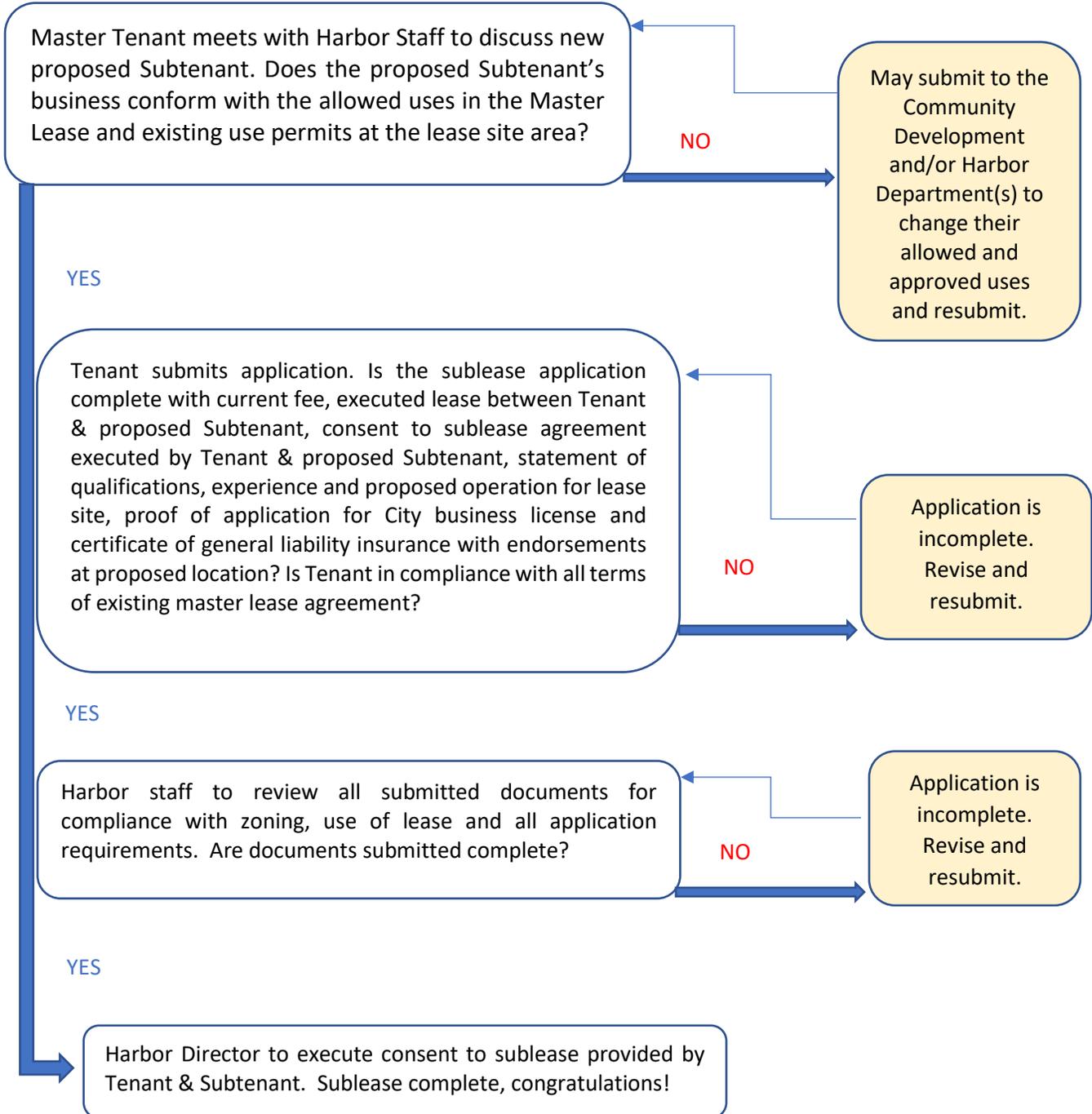


Exhibit B

LEASE AMENDMENT - Flow Chart

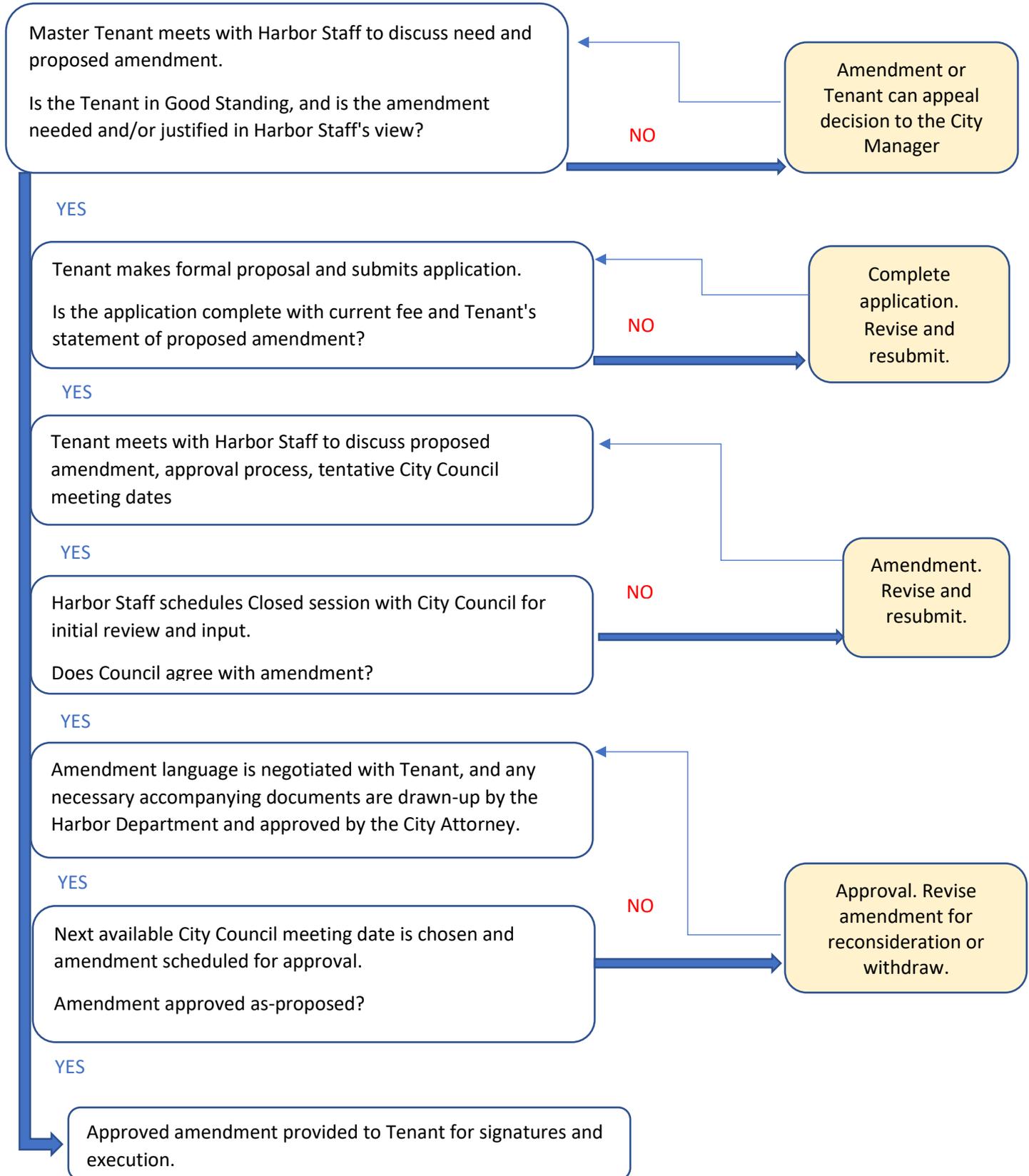


Exhibit B

ASSIGNMENT & ASSUMPTION - Flow Chart

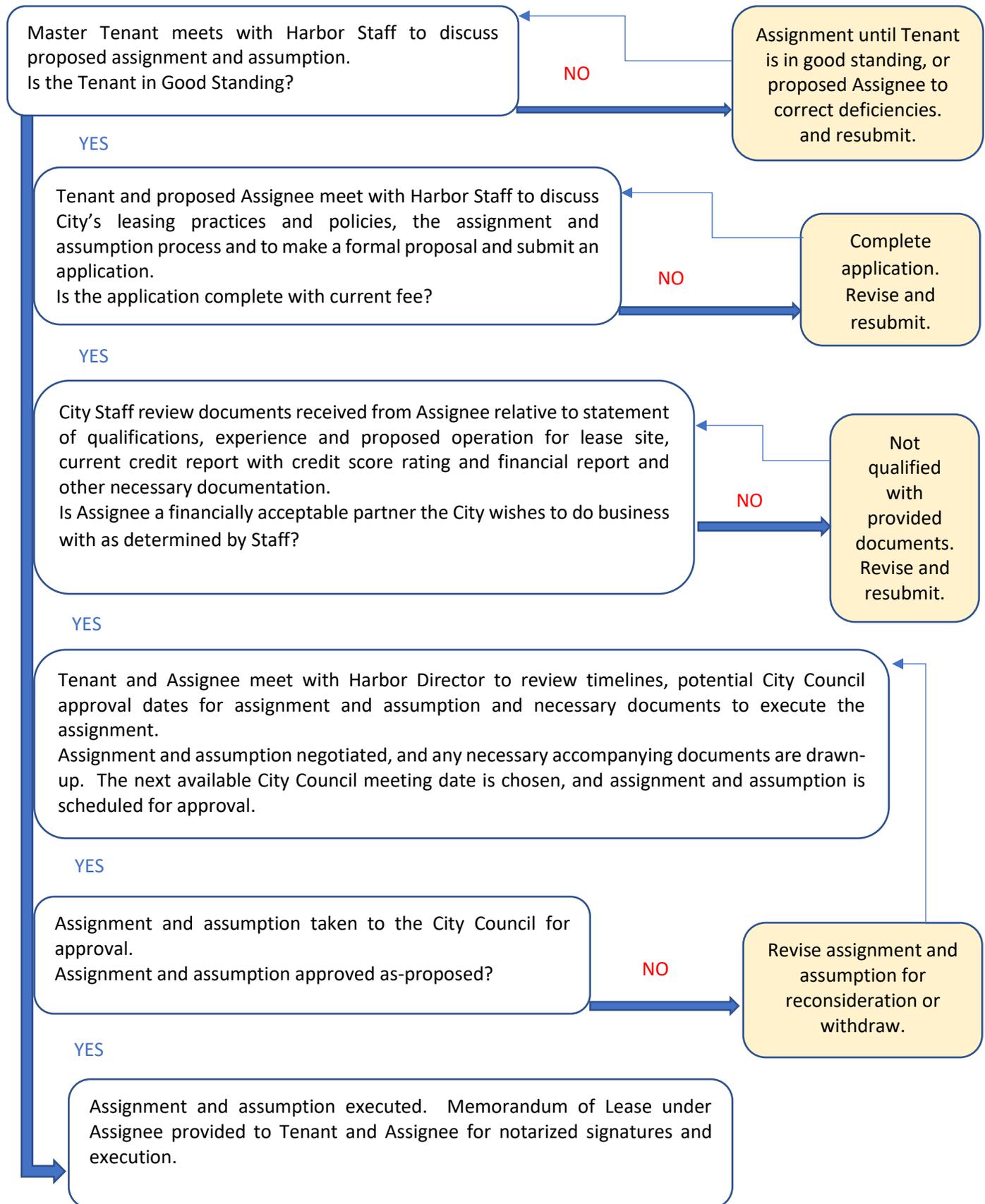


Exhibit B

Expiring Lease/Lease Site Redevelopment – Flow Chart

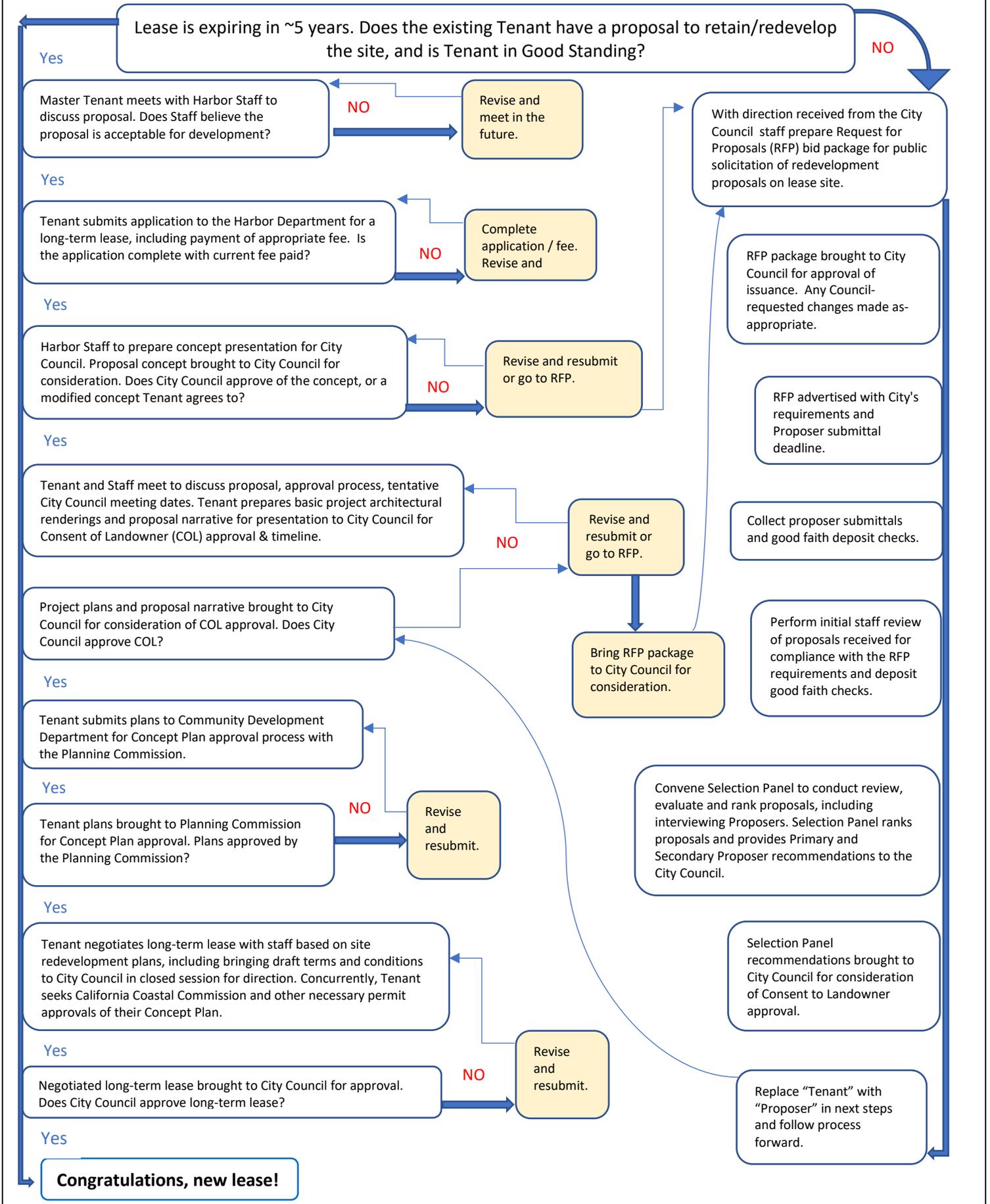
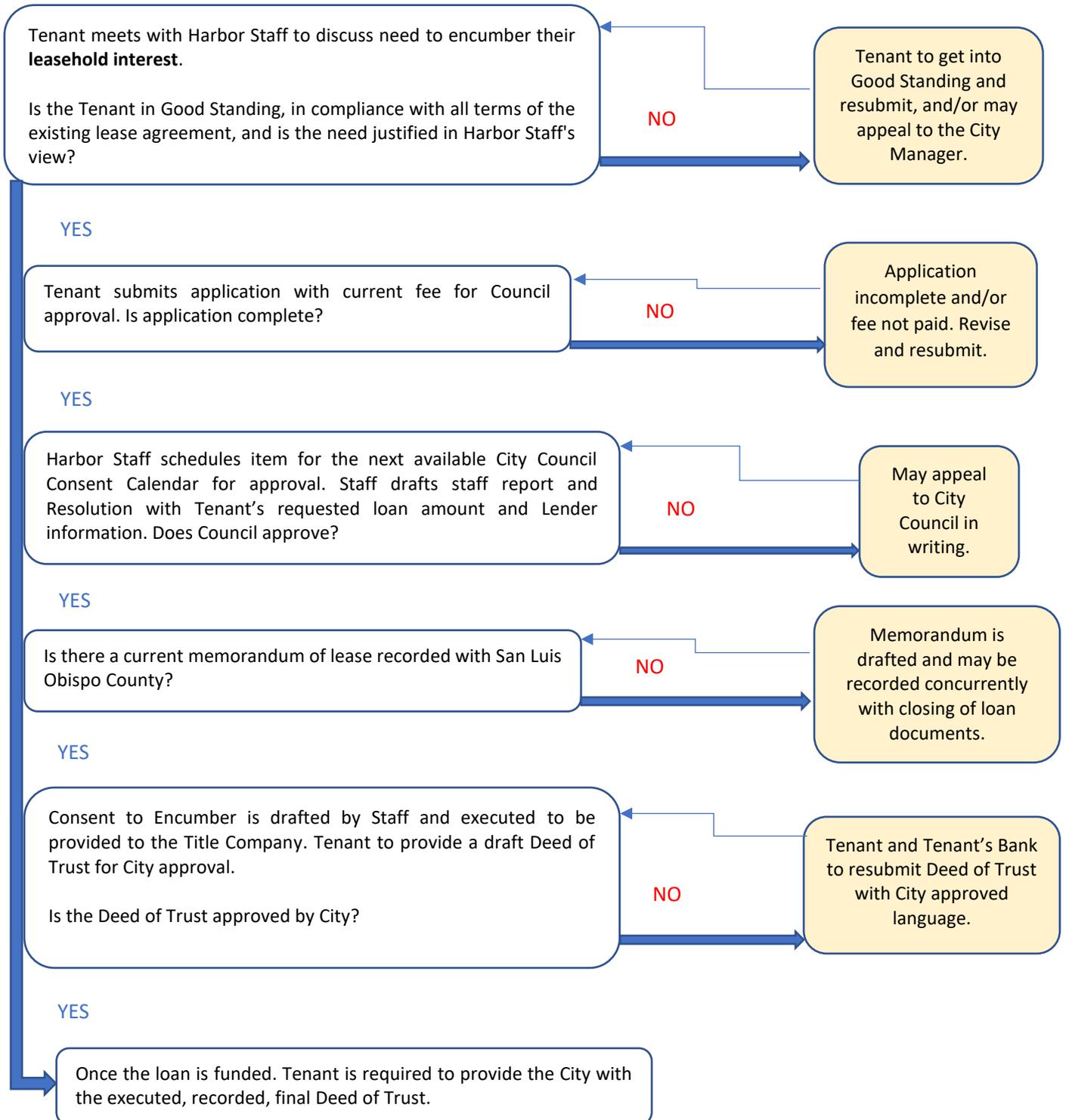


Exhibit B

CONSENT TO ENCUMBER APPROVAL - Flow Chart (Loan)

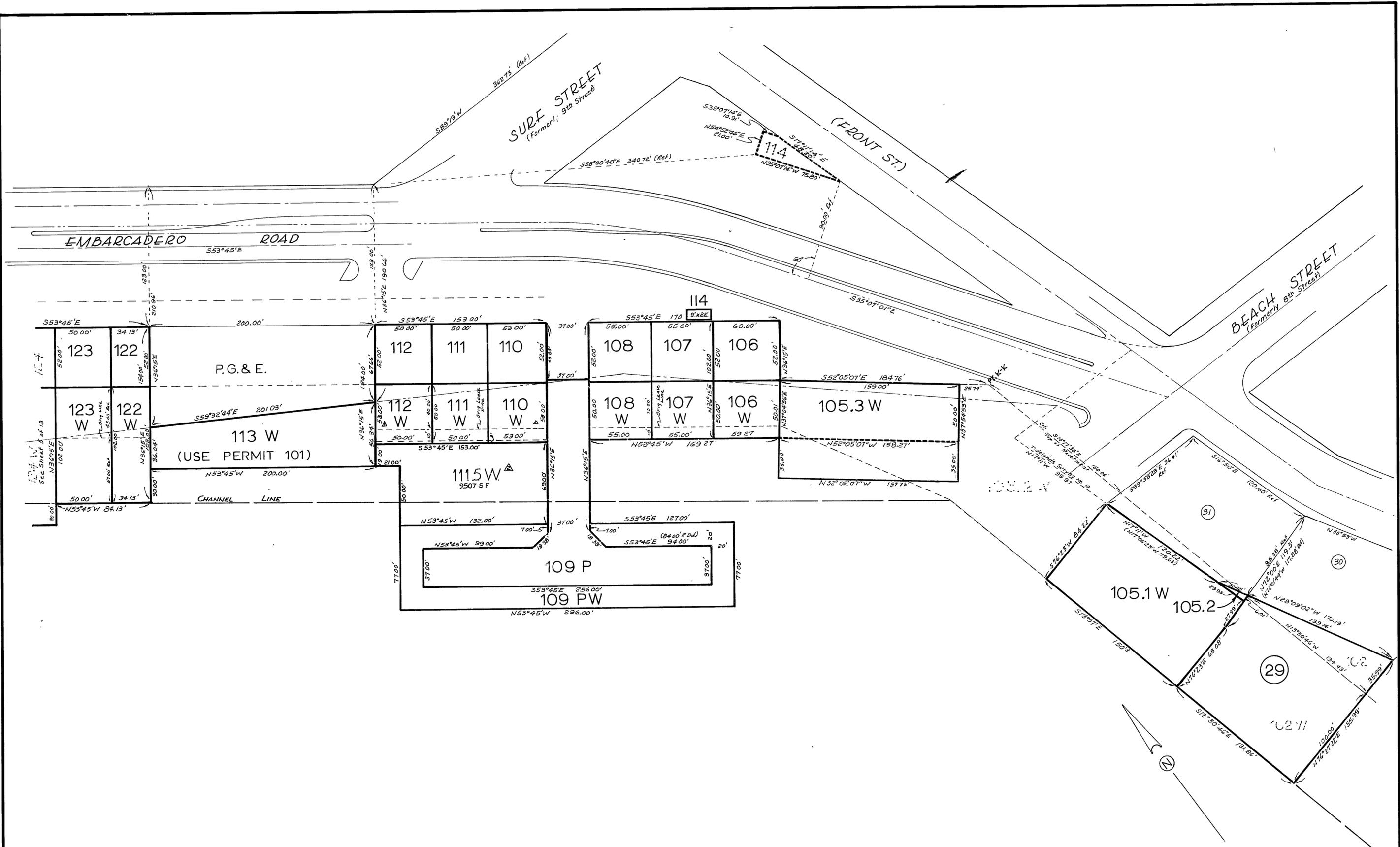


C. Maps/Surveys

(immediately following this page)

See Sheet 5 of 13

See Sheet 7 of 13



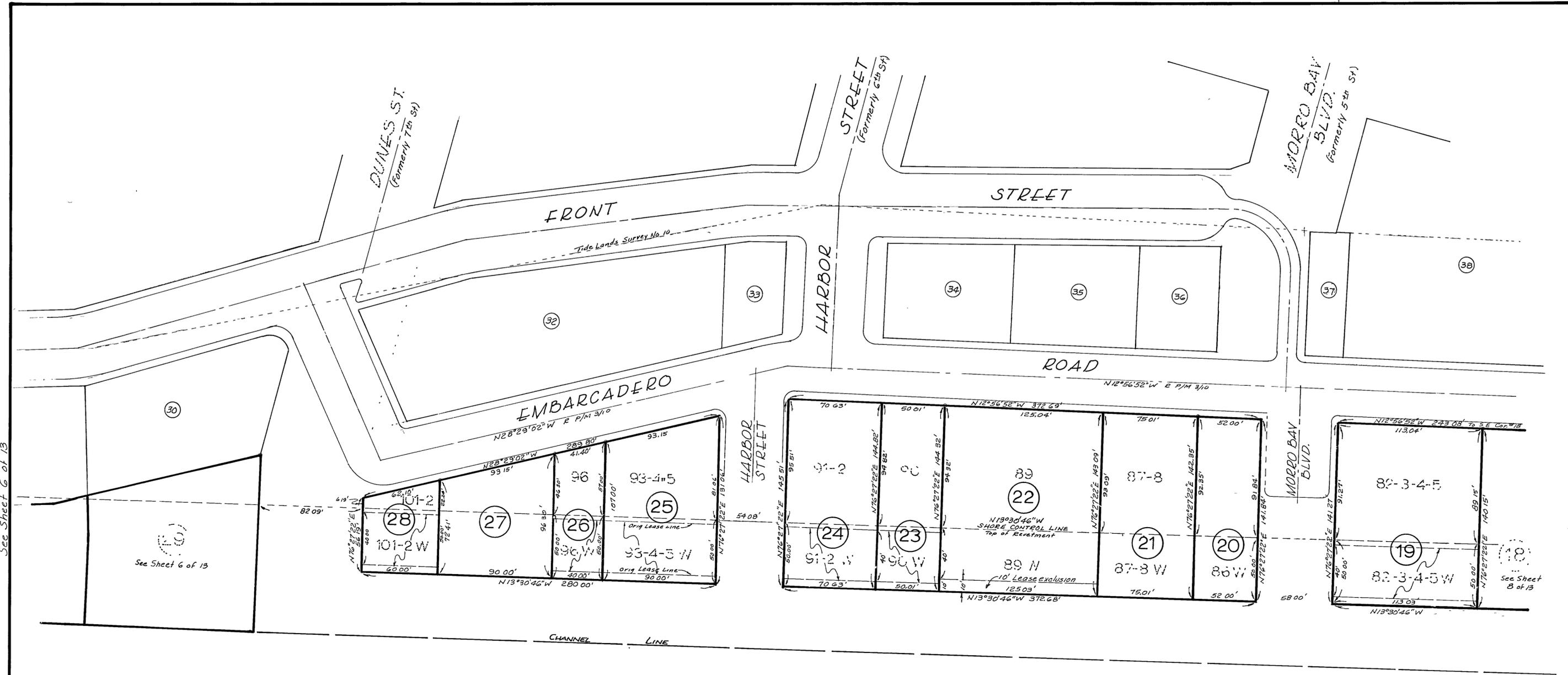
LEASE SITES MAP
 CITY OF MORRO BAY, SAN LUIS OBISPO CO., CALIF.
 Scale: 1" = 50'

GARING, TAYLOR, & ASSOC., INC.
 Arroyo Grande, California
 Nov. '74
 File '73

Revisions			
No	Date	Description	Authority
9-19-77		Add Lease Site 1115W	City Council
129-75		Extend Lane line 3' from shore line	City Council

See Sheet 6 of 13

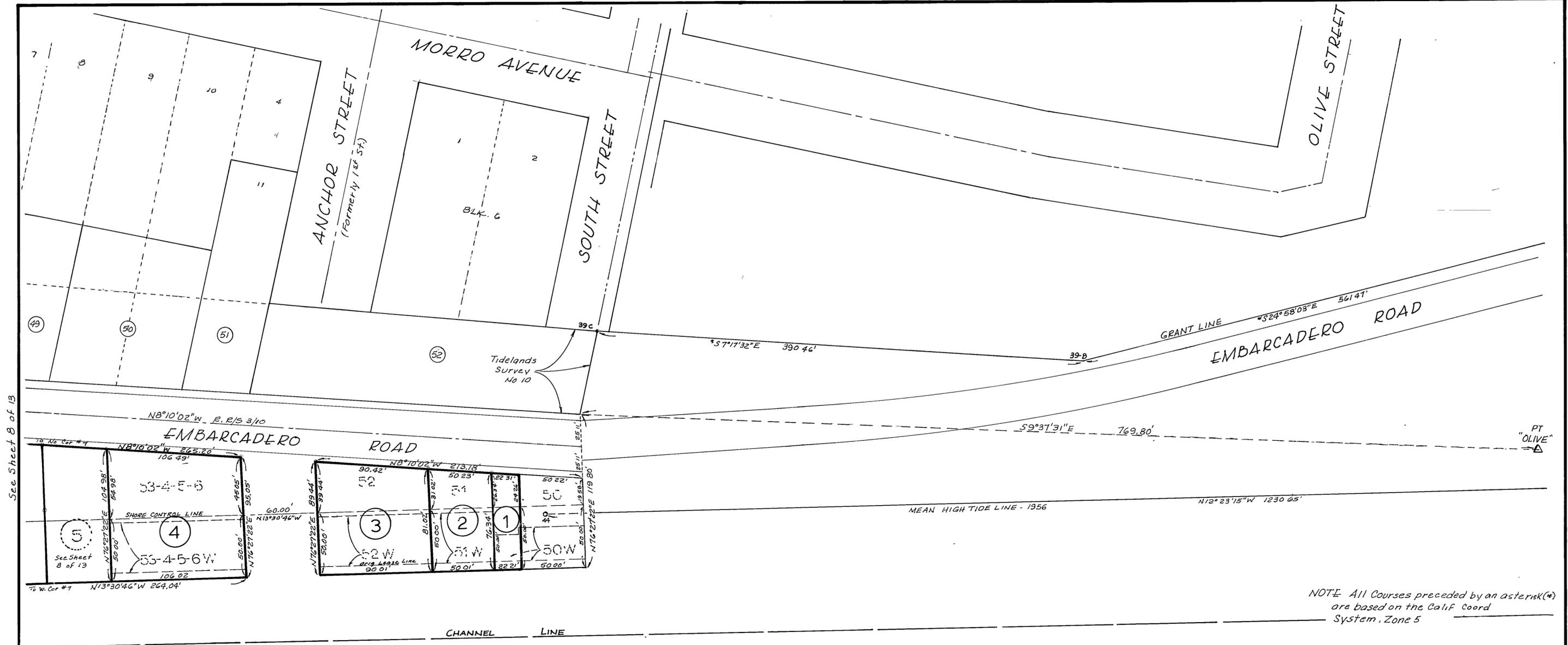
See Sheet 8 of 13



See Sheet 6 of 13

See Sheet 8 of 13

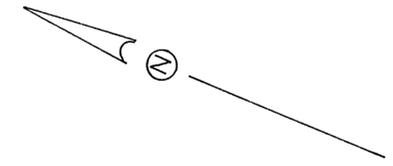
LEASE SITES MAP
 CITY OF MORRO BAY, SAN LUIS OBISPO CO., CALIF.
 Scale 1" = 50'
GARING, TAYLOR, & ASSOC., INC.
 Arroyo Grande, California
 Nov. 74
 Feb. 75



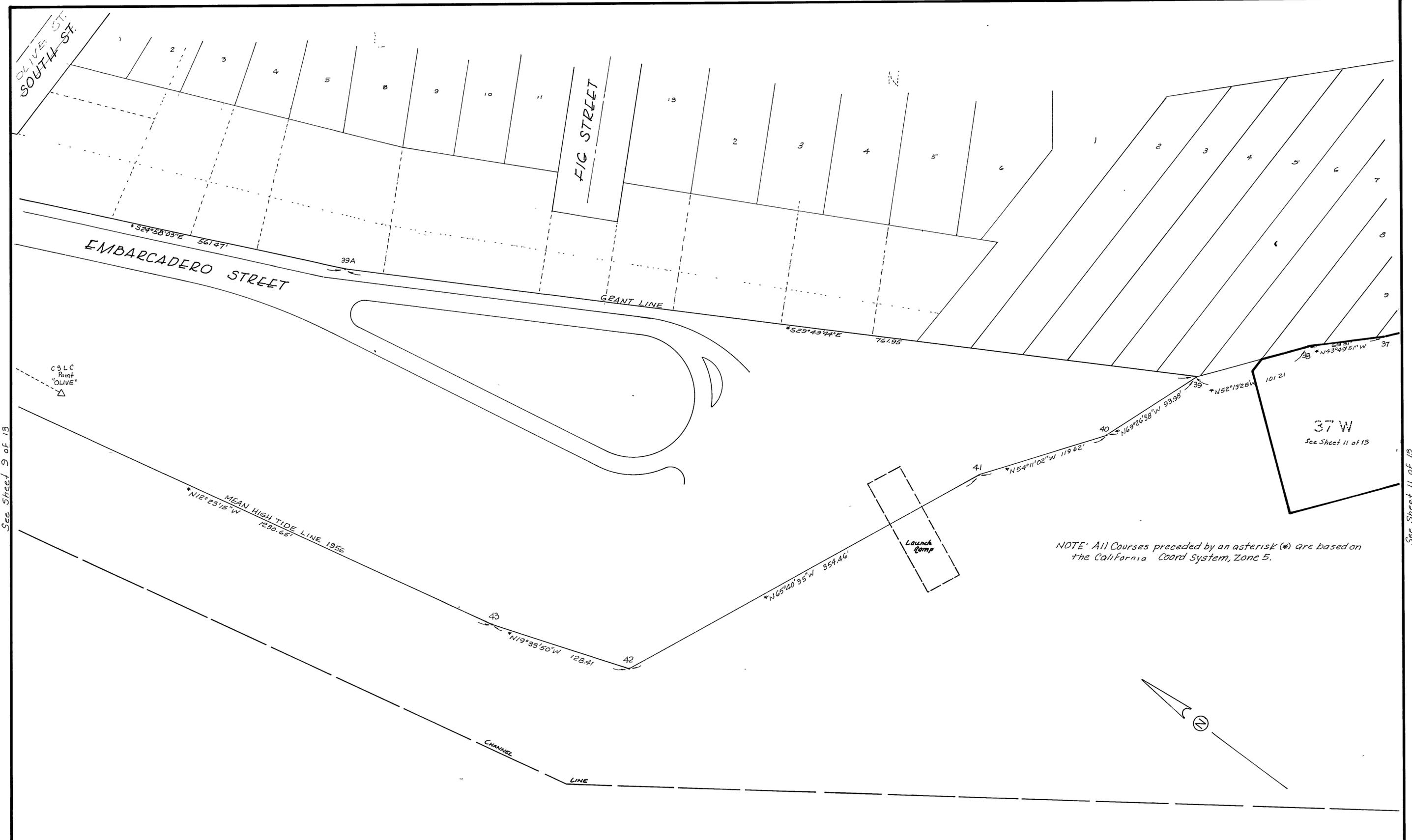
See Sheet 8 of 13

See Sheet 10 of 13

NOTE: All Courses preceded by an asterisk(*) are based on the Calif. Coord System, Zone 5



LEASE SITES MAP
 CITY OF MORRO BAY, SAN LUIS OBISPO CO., CALIF.
 Scale 1" = 50'
GARING, TAYLOR, & ASSOC., INC.
 Arroyo Grande, California
 Nov. '76
 Feb. '78



See Sheet 9 of 13

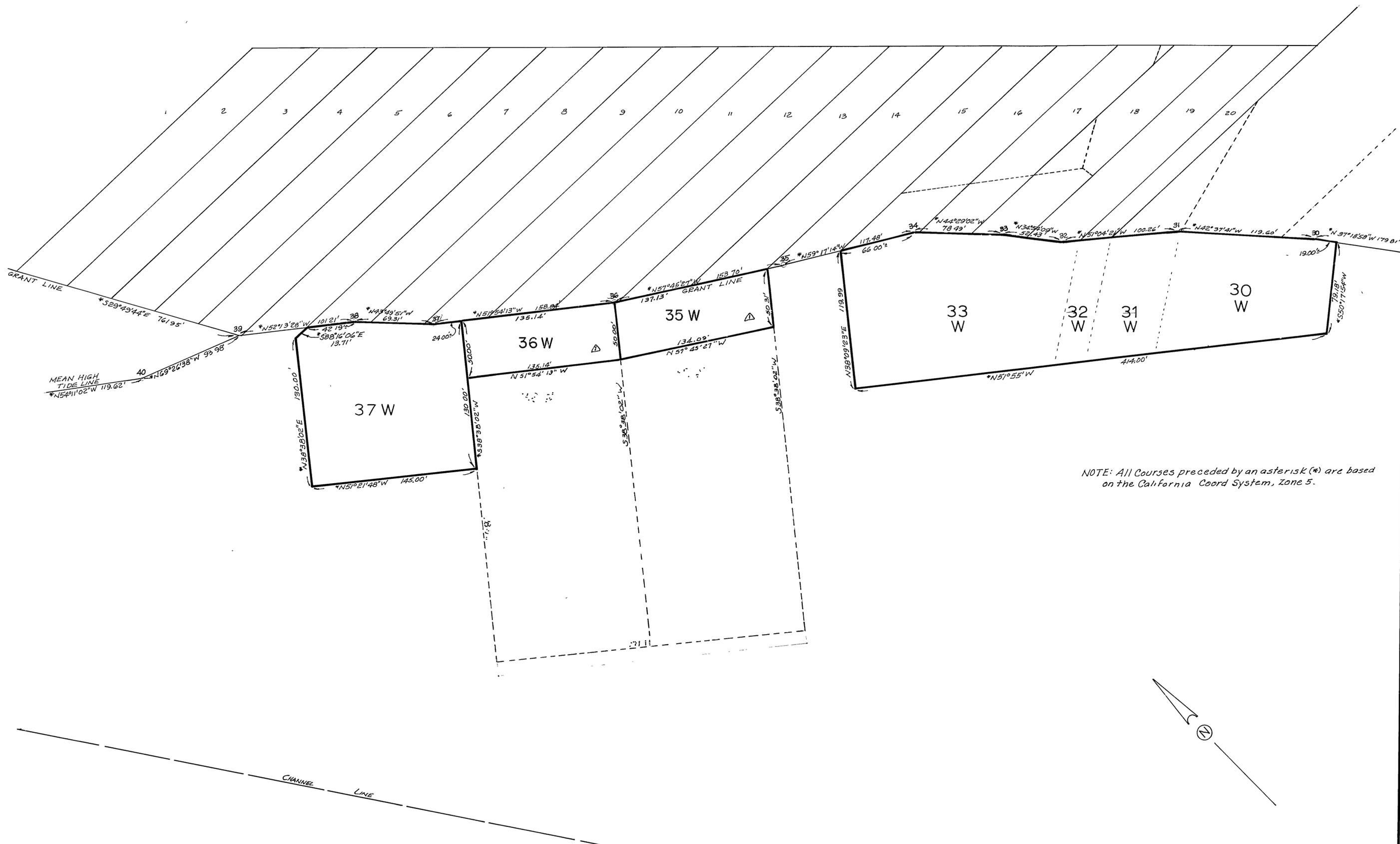
See Sheet 11 of 13

NOTE: All Courses preceded by an asterisk (*) are based on the California Coord System, Zone 5.

LEASE SITES MAP
 CITY OF MORRO BAY, SAN LUIS OBISPO CO., CALIF.
 Scale 1" = 50'
GARING, TAYLOR, & ASSOC., INC.
 Arroyo Grande, California
 Nov '74
 FEB '78

See Sheet 10 of 13

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NOTE: All Courses preceded by an asterisk (*) are based on the California Coord System, Zone 5.

LEASE SITES MAP

CITY OF MORRO BAY, SAN LUIS OBISPO CO., CALIF.

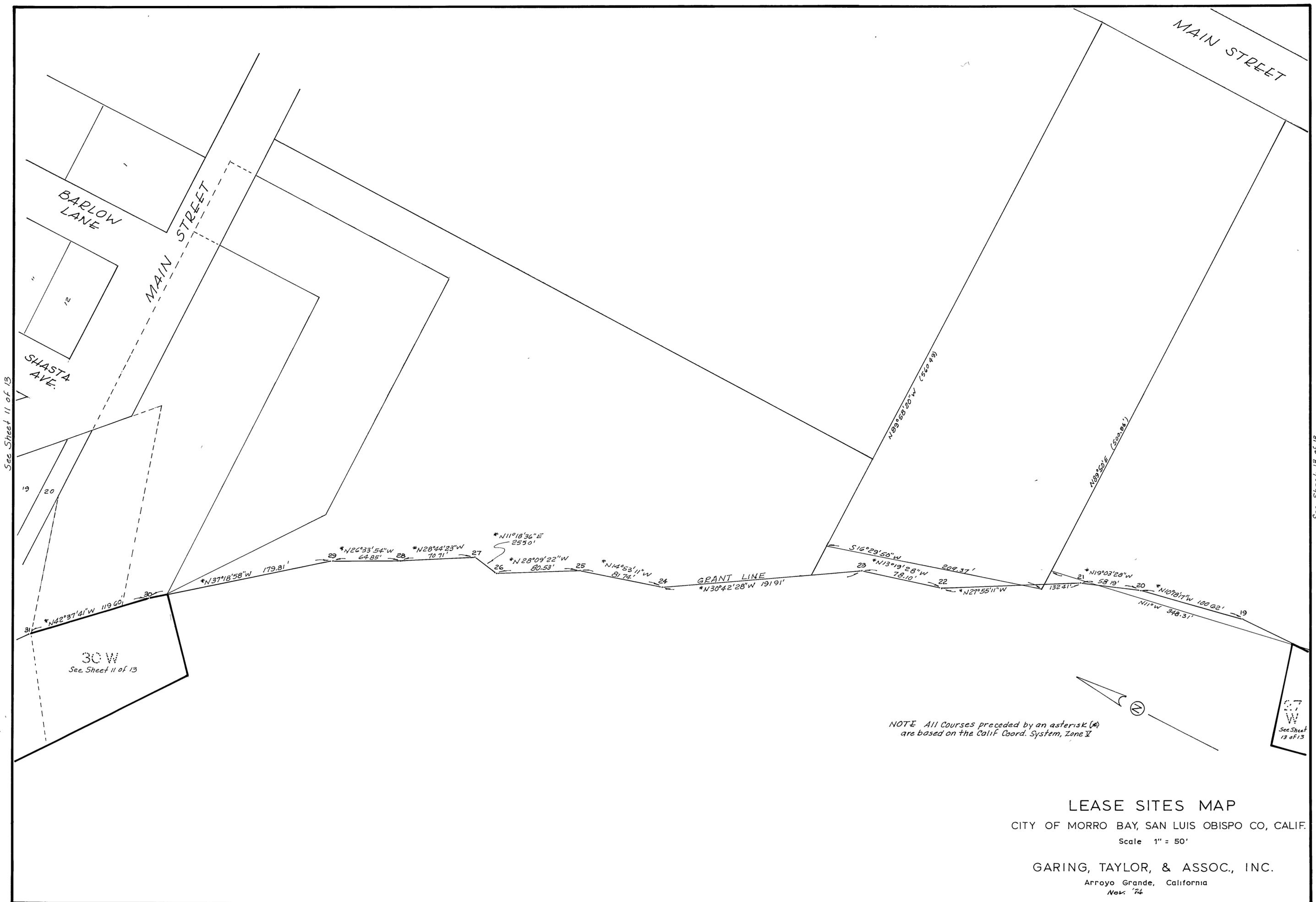
Scale 1" = 50'

GARING, TAYLOR, & ASSOC, INC.

Arroyo Grande, California
Nov. '72

Revisions

No	Date	Description	Authority
2	2-7-79	ADD CHANNEL LINE	CITY ENGINEER
1	2-6-75	Delinate L.S. 36W & 35W	City Council



See Sheet 11 of 13

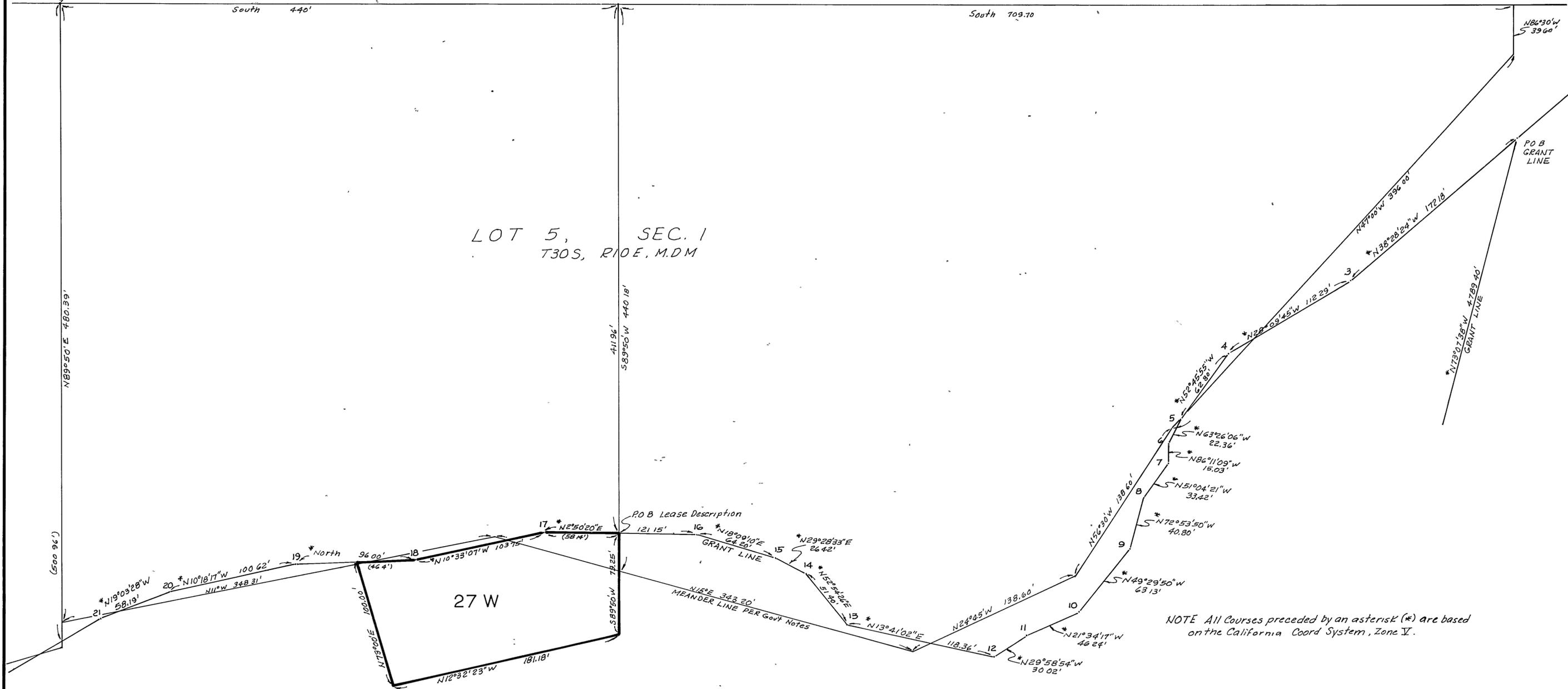
See Sheet 13 of 13

NOTE: All Courses preceded by an asterisk (*) are based on the Calif. Coord. System, Zone V

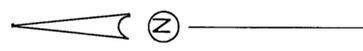
LEASE SITES MAP
 CITY OF MORRO BAY, SAN LUIS OBISPO CO, CALIF.
 Scale 1" = 50'
 GARING, TAYLOR, & ASSOC., INC.
 Arroyo Grande, California
 Nov. '74

SEC 6, T30S, R11E, M.D.M

NW Cor Sec 6, T30S, R11E MDM
NE Cor Lot 5, Sec 1, T30S, R10E MDM



NOTE All Courses preceded by an asterisk (*) are based on the California Coord System, Zone I.



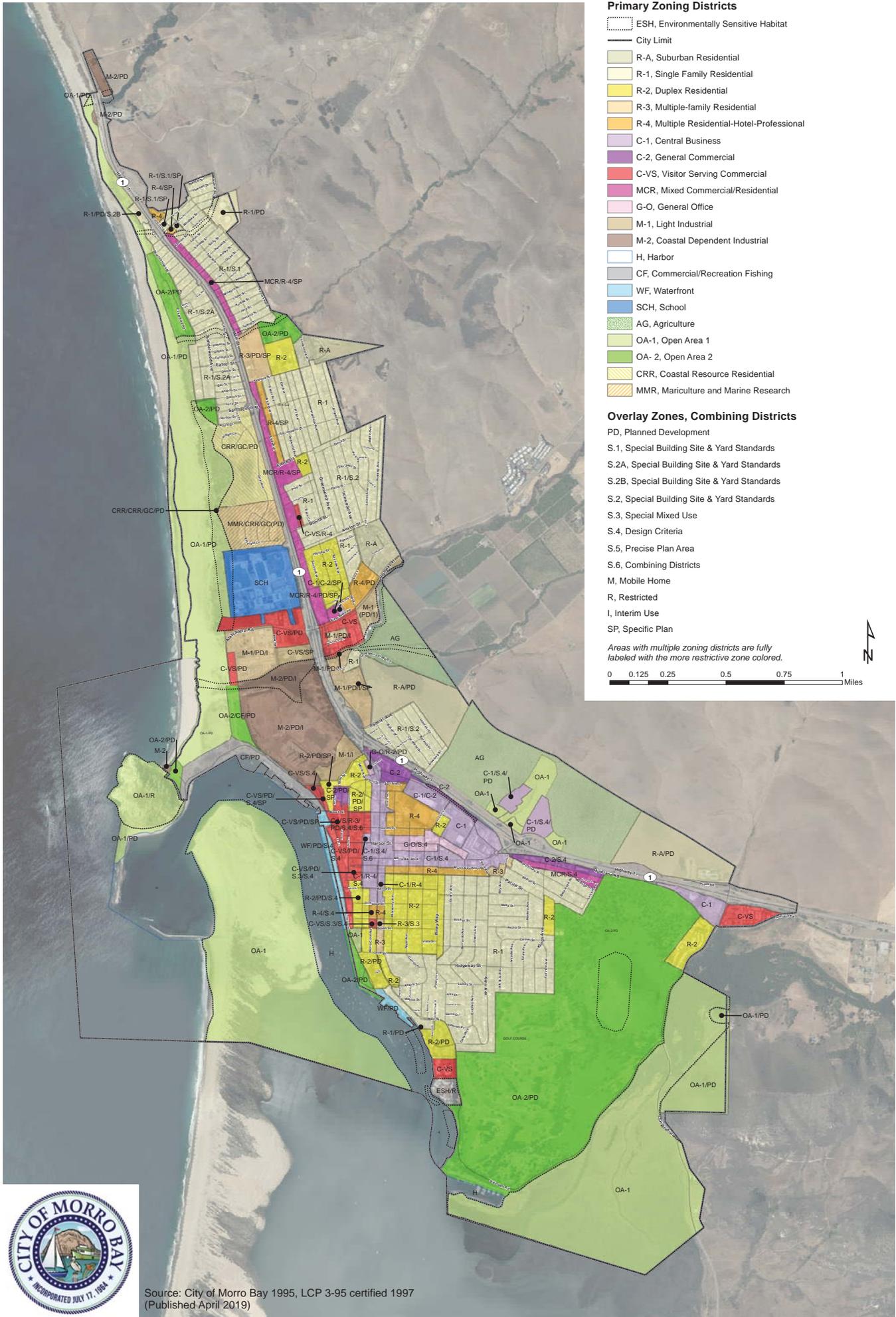
LEASE SITES MAP
CITY OF MORRO BAY, SAN LUIS OBISPO CO, CALIF
Scale 1" = 50'

GARING, TAYLOR, & ASSOC, INC.
Arroyo Grande, California
Nov '74

D. City of Morro Bay Zoning Map

(immediately following this page)

CITY OF MORRO BAY ZONING



Primary Zoning Districts

- ESH, Environmentally Sensitive Habitat
- City Limit
- R-A, Suburban Residential
- R-1, Single Family Residential
- R-2, Duplex Residential
- R-3, Multiple-family Residential
- R-4, Multiple Residential-Hotel-Professional
- C-1, Central Business
- C-2, General Commercial
- C-VS, Visitor Serving Commercial
- MCR, Mixed Commercial/Residential
- G-O, General Office
- M-1, Light Industrial
- M-2, Coastal Dependent Industrial
- H, Harbor
- CF, Commercial/Recreation Fishing
- WF, Waterfront
- SCH, School
- AG, Agriculture
- OA-1, Open Area 1
- OA-2, Open Area 2
- CRR, Coastal Resource Residential
- MMR, Mariculture and Marine Research

Overlay Zones, Combining Districts

- PD, Planned Development
- S.1, Special Building Site & Yard Standards
- S.2A, Special Building Site & Yard Standards
- S.2B, Special Building Site & Yard Standards
- S.2, Special Building Site & Yard Standards
- S.3, Special Mixed Use
- S.4, Design Criteria
- S.5, Precise Plan Area
- S.6, Combining Districts
- M, Mobile Home
- R, Restricted
- I, Interim Use
- SP, Specific Plan

Areas with multiple zoning districts are fully labeled with the more restrictive zone colored.



Source: City of Morro Bay 1995, LCP 3-95 certified 1997 (Published April 2019)

E. Percent of Gross Sales Rent Schedules A & B

SCHEDULE A

PERCENTAGE RENT FOR GROUND LEASES

SALES		% GROSS
FOOD SERVICE:	Restaurant, Dining Room	3-5
	Snack Bar, Delicatessen,	5
	Fast Food, Convenience Food	5
	Bar/Lounge, Beer & Wine Sales	10
RETAIL SALES & SERVICE:	Tenant	3-5
FISH & SEAFOOD:	Retail Sales	3-5
	Wholesale Sales	0
MOORINGS, TIES & SLIPS:	Pier/Fixed Piles	10
	Pier/Floating	10
BOAT REPAIR & SALES:	Boat & Marine Repair	3
	New Boat Sales	1
	Used Boat Sales	2
FUEL:	Gasoline	\$0.02/gal.
	Diesel	\$0.015/gal.
HOTEL/MOTEL:		5-9
ALL OTHER USES:		5

Percentage Rental is to be based on the gross amount received from any and all sources of income derived from the lease site.

SCHEDULE B

PERCENTAGE RENT FOR BUILDING LEASES

SALES		% GROSS
FOOD SERVICE:	Restaurant, Dining Room	5
	Snack Bar, Delicatessen,	7
	Fast Food, Convenience Food	7
	Bar/Lounge, Beer & Wine Sales	10
RETAIL SALES & SERVICE:	Tenant	7
	Sublease	7
FISH & SEAFOOD:	Retail Sales	5
	Wholesale Sales	0.5
MOORINGS, TIES & SLIPS:	Pier/Fixed Piles	20
	Pier/Floating	20
BOAT REPAIR & SALES:	Boat & Marine Repair	5
	New & Used Boat Sales	2
FUEL:	Gasoline	.02/gal.
	Diesel	\$0.015/gal.
HOTEL/MOTEL:		10
RV PARK:		25
ALL OTHER USES:		10

Percentage Rental is to be based on the gross amount received from any and all sources of income derived from the lease site.

F. Master Lease Template

(immediately following this page)

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

G. Forms

- I. Sublease Approval Application
- II. Consent to Sublease Agreement
- III. Assignment and Assumption Approval Application
- IV. Consent to Encumber Application
- V. Lease Amendment Application
- VI. Master Lease Agreement Application
- VII. Insurance Requirements

(immediately following this page)

Exhibit G



City of Morro Bay

Harbor Department
1275 Embarcadero
Morro Bay, CA 93442
Phone: 805-772-6254
Fax: 805-772-6258

Fee: Check #: Date:

APPLICATION

FOR **SUBLEASE** APPROVAL TO A LEASE SITE.

To be completed and returned to the Harbor Office for processing. Please print or type.

Lease Site Number

Physical Address with Sublease Suite #

Proposed Sublease Date

Current Master Tenant Name

Subtenant Name

Business/Corporation Name

Business/Corporation Name

Mailing Address

Mailing Address

City, State Zip

City, State Zip

Telephone / Email Address

Telephone / Email Address

Current Master Tenant Name

Subtenant Name

Business/Corporation Name

Business/Corporation Name

Mailing Address

Mailing Address

City, State Zip

City, State Zip

Telephone / Email Address

Telephone / Email Address

Master Tenant/Representative Signature

Date

Master Tenant/Representative Signature

Date

Subtenant's Signature

Date

Subtenant's Signature

Date

SEE REVERSE

CONSENT TO SUBLEASE AGREEMENT

THIS CONSENT TO SUBLEASE AGREEMENT is entered into this _____ day of _____, by and between _____, hereinafter referred to as TENANT, and _____, dba, _____ hereinafter referred to as SUBTENANT and approved by the City of Morro Bay, California, hereinafter referred to as CITY.

RECITALS

WHEREAS, a Master Lease was executed on _____ for the premises known as Lease Site _____ and;

WHEREAS, TENANT desires to sublease a portion of the premises to SUBTENANT, and:

WHEREAS, the Master Lease requires CITY consent of any sublease in the following form of agreement.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. TENANT and SUBTENANT jointly and severally guaranty TENANT will pay to City all of the sums required of TENANT and any sums due by reason of SUBTENANT's activities under the terms of the Master Lease dated _____ hereinafter known as "Master Lease". In the event TENANT fails to make such payment, SUBTENANT agrees to promptly make such payment to CITY for TENANT. Failure to pay the rent shall constitute a violation of the Master Lease and CITY shall, after three (3) days written notice to TENANT, have the following options:

(a) CITY may elect to pursue all legal remedies against TENANT alone or against both TENANT and SUBTENANT or against SUBTENANT alone. CITY'S election to pursue one instead of both of the parties shall not preclude a later action against the other party to recover any amounts not paid and both TENANT and SUBTENANT agree that they are to be jointly and severally liable for any breach by the SUBTENANT.

(b) CITY shall have all other legal remedies provided for in the lease and allowed by law, including the right to bring an action for unlawful detainer against SUBTENANT, TENANT or both for non-payment of rent by TENANT of SUBTENANT'S portion of rent due to CITY.

2. SUBTENANT acknowledges receipt of a complete copy of the Master Lease and all amendments thereto and specifically agrees to comply with each and all of the terms and conditions of the Master Lease. TENANT guarantees SUBTENANT's compliance with each and all of the terms and conditions of the Master Lease, as each pertains to the portion of the Lease Site subject to the subject sublease (attached as Exhibit A hereto) (the "Sublease"), and all of the parties agree a violation by SUBTENANT of the terms of the Master Lease, as each pertains to the portion of the Lease Site subject to the sublease, shall constitute a violation of the Master Lease by TENANT. TENANT agrees to take whatever action is required to secure SUBTENANT's compliance with each and all of the terms of the Master Lease, and agrees to indemnify CITY, as Landlord, from any and all claims, loss, cost or expense resulting from SUBTENANT's failure to comply with the terms of the Master Lease.

3. The initial term of the Sublease shall be _____ years, commencing upon execution of the Sublease; provided, that TENANT may extend the term of the Sublease with the SUBTENANT without obtaining a new Consent to Sublease Agreement from CITY's City Council under the following conditions: (1) Tenant receives prior written authorization from the Harbor Director to extend the term of the Sublease, (2) the extended term of the Sublease does not exceed the term of the Master Lease, (3) the extended Sublease shall not modify any other terms of the Master lease or the Sublease, except its term, (4) TENANT provides CITY with a fully executed copy of the extended Sublease within five business days after the extended Sublease has been fully executed. The extended Sublease shall be added to Exhibit "A" of this Consent to Sublease Agreement. The Harbor Director's authorization of any extension in the term of the Sublease does not serve to waive any rights of CITY set forth in the Master Lease or in this Consent to Sublease Agreement, including any claims for breach of the Master Lease or of this Consent to Sublease Agreement. The Sublease shall, in all events, terminate upon termination of the Master Lease for any reason, including, but not limited to, a termination which occurs as a result of court judgment.

4. Pursuant to the provision in the Master Lease requiring TENANT to pay rental based on percentage of gross sales, SUBTENANT agrees to and shall keep full, complete, and accurate records, and books of account in accordance with accepted accounting practices as showing the total amount of gross sales, as defined in the Master Lease, made each calendar month in, on or from the subleased premises. SUBTENANT shall keep said records and books of account within San Luis Obispo County and shall notify CITY in advance of their location at all times. Said records, books of account and all cash register tapes, including any sales tax reports that SUBTENANT may be required to furnish any government or governmental agency, including but not limited to those items listed in Exhibit B attached hereto and incorporated herein, shall at all reasonable times be open to the inspection of TENANT, CITY, CITY'S auditor, or other authorized representative or agent of TENANT or CITY.

5. The proposed use by SUBTENANT is as follows:

Percentage of Gross Rental Applicable to Permitted Use: _____

Said designated use shall not be changed without the prior written consent of CITY. SUBTENANT acknowledges that the percentage of gross payment required for the proposed use under the terms of the Master Lease is as set forth hereinabove. SUBTENANT agrees that any use by SUBTENANT of the subleased premises for a purpose other than that specified in this paragraph, whether or not permitted under the terms of the Master Lease, shall constitute an unauthorized use subject to those penalties set forth in the Master Lease. The location and size of the proposed use shall not be altered without the prior written consent of the CITY. Specifically, and in addition to any other terms and provisions of the lease, all parties agree that if SUBTENANT makes a use of the subleased premises which is not included within or permitted under the terms of the Master Lease, TENANT shall be liable for and shall pay to CITY, 10% of the gross revenue from such unpermitted use.

6. SUBTENANT shall not alter or improve the premises or any part thereof without first obtaining the prior written consent of CITY.

7. SUBTENANT agrees to submit a statement of previous business experience and agrees to submit current personal and business financial statements upon request and further agrees to submit such documents as part of the CITY's consideration of the consent to Sublease Agreement. SUBTENANT shall not assign, mortgage, or encumber the subleased premises in whole or in part without the prior written consent of CITY.

8. Unless SUBTENANT is included as an additional insured under the terms of TENANT's liability insurance, SUBTENANT agrees to maintain adequate liability insurance in the manner and form required under the Master Lease in an amount of not less than \$1,000,000 per occurrence and agrees to name the CITY OF MORRO BAY as an additional primary insured without offset against the CITY's insurance. SUBTENANT agrees to provide the certificates of insurance and copies of the actual insurance policies to the CITY as required under the Master Lease and otherwise comply with the insurance requirements set forth in the Master Lease. CITY reserves the right to require reasonable increases in the liability insurance coverage from time to time.

9. SUBTENANT and TENANT agree to indemnify and save CITY free and harmless from and against any and all claims, including reasonable attorney's fees and court costs arising from SUBTENANT's failure to comply with any of the terms of this Consent and Sublease Agreement.

10. This Agreement cannot be modified except by a written document mutually approved by the parties hereto. A waiver of any of the conditions or terms of this Consent or of the Master Lease shall not constitute a waiver of any future breach of any terms or conditions of this Consent or the Master Lease.

11. To the extent that the terms of the proposed Sublease are inconsistent with the terms of this Agreement or Master Lease with the CITY OF MORRO BAY, this Agreement or Master Lease shall supersede and be the controlling document. To the extent that this Consent to Sublease Agreement is inconsistent with the terms of the Master Lease, the Master Lease shall supersede and be the controlling document.

IN WITNESS WHEREOF, the parties hereto have executed this Consent to Sublease Agreement as of the day and year first above written at Morro Bay, California.

TENANT:

SUBTENANT:

CITY OF MORRO BAY:

Eric Endersby, Harbor Director

EXHIBIT "B"

CONSENT TO SUBLEASE AGREEMENT

At a minimum, certain books and records shall be kept by TENANT and SUBTENANT such as:

1. Pre-numbered and dated guest checks;
2. Pre-numbered sales invoices or daily cash register tapes;
3. Bank Statements;
4. Sales Tax Returns;
5. Sales Journals;
6. Cash Disbursement Journals; and
7. General Ledger

Exhibit G

City of Morro Bay

Harbor Department
1275 Embarcadero
Morro Bay, CA 93442
Phone: 805-772-6254
Fax: 805-772-6258



Fee:
Check #:
Date:

APPLICATION

FOR ASSIGNMENT OF A CITY MASTER LEASE AGREEMENT

To be completed and returned to the Harbor Office for processing. Please print or type.

Lease Site Number

Physical Address

Proposed Assignment Date

Current Master Tenant Name

Assignee Name

Business/Corporation Name

Business/Corporation Name

Mailing Address

Mailing Address

City, State Zip

City, State Zip

Telephone / Email Address

Telephone / Email Address

Current Master Tenant Name

Assignee Name

Business/Corporation Name

Business/Corporation Name

Mailing Address

Mailing Address

City, State Zip

City, State Zip

Telephone / Email Address

Telephone / Email Address

Master Tenant/Representative Signature

Date

Master Tenant/Representative Signature

Date

Assignee's Signature

Date

Assignee's Signature

Date

SEE REVERSE

Exhibit G



City of Morro Bay

Harbor Department
1275 Embarcadero
Morro Bay, CA 93442
Phone: 805-772-6254
Fax: 805-772-6258

Fee:
Check #:
Date:

APPLICATION

FOR CONSENT TO ENCUMBER OF A CITY MASTER LEASE AGREEMENT

To be completed and returned to the Harbor Office for processing. Please print or type.

Lease Site Number

Physical Address

Proposed Amendment Date

Current Master Tenant Name

Business/Corporation Name

Mailing Address

City, State Zip

Telephone / Email Address

Lender

Business/Corporation Name

Mailing Address

City, State Zip

Telephone / Email Address

Loan Amount

Master Tenant/Representative Signature

Date

SEE REVERSE

Exhibit G



City of Morro Bay

Harbor Department
1275 Embarcadero
Morro Bay, CA 93442
Phone: 805-772-6254
Fax: 805-772-6258

Fee:
Check #:
Date:

APPLICATION

FOR ADMENDMENT OF A CITY MASTER LEASE AGREEMENT

To be completed and returned to the Harbor Office for processing. Please print or type.

Lease Site Number

Physical Address

Proposed Amendment Date

Current Master Tenant Name

Business/Corporation Name

Mailing Address

City, State Zip

Telephone / Email Address

Current Master Tenant Name

Business/Corporation Name

Mailing Address

City, State Zip

Telephone / Email Address

Master Tenant/Representative Signature

Date

Master Tenant/Representative Signature

Date

SEE REVERSE

Exhibit G



City of Morro Bay

Harbor Department
1275 Embarcadero
Morro Bay, CA 93442
Phone: 805-772-6254
Fax: 805-772-6258

Fee:
Check #:
Date:

APPLICATION

FOR A CITY MASTER LEASE AGREEMENT

To be completed and returned to the Harbor Office for processing. Please print or type.

Lease Site Number

Physical Address

Proposed Lease Date

Master Tenant Name

Business/Corporation Name

Mailing Address

City, State Zip

Telephone / Email Address

Master Tenant Name

Business/Corporation Name

Mailing Address

City, State Zip

Telephone / Email Address

Master Tenant/Representative Signature

Date

Master Tenant/Representative Signature

Date

SEE REVERSE

CITY OF MORRO BAY

595 Harbor St.
Morro Bay, CA 93442
(805) 772-6200
FAX (805) 772-7329

INSURANCE REQUIREMENTS FOR LESSEES

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

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance (for lessees with employees).
3. Property insurance against all risks of loss to any tenant improvements or betterments.
4. Insurance Services Office Form Number C A 0001 covering Automobile Liability, code 1 (any auto).

Minimum Limits of Insurance

Lessee shall maintain limits no less than:

1. General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be **twice** the required occurrence limit.
2. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.
3. Property Insurance: Full replacement cost with no coinsurance penalty provision.

Deductibles and Self-Insured Retentions

City of Morro Bay
Insurance Requirements for Lessees

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

Other Insurance Provisions

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of ownership, maintenance or use of that part of the premises leased to the Lessee.
2. The Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of section 2782 of the Civil Code.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

Verification of Coverage

Lessee shall furnish the City with original certificates and amendatory **endorsements** effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the City **before** use of City premises. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

Sub-lessee

Lessee shall include all sub-lessees as insureds under its policies or shall furnish separate certificates and endorsements for each sub-lessee. All coverages for sub-lessees shall be subject to all the requirements stated herein.

H. Lease Site Inspection Checklists

(immediately following this page and end of document)



Exhibit H

LEASE SITE INSPECTION CHECKLISTS

Annual

Building and Site Exteriors

General building condition, cleanliness.
Condition and cleanliness of walkways, curbs, hardscaping, features.
Landscaping trimmed, cleaned and weeded.
Walkways clear with no obstructions, including trip, slip and fall hazards.
Trash, storage areas neat, clean and secured.
Informational and warning signage in-place, current and legible.
Address and building identification clear.
Lighting operation.
Condition and presence of cover plates, grates, mechanical protection.
Condition of stairs, railings and handrails.
Proper implementation of needed pest control measures.
Access to electrical panels, service centers.
Condition of under-wharf/pier plumbing and electrical.

Building Interiors

Suites/Units clearly identified.
Condition of tenant finish items, walls, floors, ceilings.
Pathways clear with no obstructions, including trip, slip and fall hazards.
Restrooms clean and stocked.
Lighting operation.
Adequate housekeeping and trash removal.
Presence of fire extinguishers, current inspection tags.
Exit signs in place.
Access to circuit breaker and electrical panels.
Elevators and lifts serviceable, currently inspected.

Slips/Docks/Piers/Wharves

General condition of gangways, head floats, fenders, decking.
Docks clear with no obstructions and minimally-stored items.
No hazardous materials present.
No open flame devices allowed on slips, docks, piers or wharves at any time.
Power pedestals and shore power cords adequate and legal.
Cleats, pile rings, dock hardware adequate and serviceable.
Vessel tie-up lines adequate and serviceable.
Lighting operation.

Administrative

Site/Operation in compliance with applicable Conditional Use, Minor Use, Temporary Use and Coastal Development permits.
Site in compliance with applicable sign permit.

Exhibit H

Every Five Years

Building and Site Exteriors

Annual inspection items, in addition to:

Evidence of termites, rain leakage.

Check roof and rain gutters.

Operation and integrity of irrigation systems.

Condition, integrity of roof vents, appurtenances.

Building Interiors

Annual inspection items, in addition to:

Check attic, basement areas.

Inspect circuit breaker and electrical panels for condition, issues.

Condition, operation of HVAC systems, filter replacement.

Water heater and exposed plumbing for condition, leakage.

Janitor, electrical and service closets clean and free of clutter.

Operation of exit/emergency signs and lighting.

Slips/Docks/Piers/Wharves

Annual inspection items, in addition to:

Operation, integrity and code-compliance of electrical systems

Administrative

Annual inspection items, in addition to:

Current Health Department certificate for food service establishments.

Current ABC licenses for alcohol-serving establishments.

Evidence of periodic grease trap servicing.

Evidence of structural inspection, evaluation or survey of seawalls, revetments, piers, pilings, slips, docks, wharves, structures and other water lease improvements