

# **LEASE AGREEMENT**

**BY AND BETWEEN**

**PORT SAN LUIS HARBOR DISTRICT  
A Special District**

**and**

**\_\_\_\_\_ BUSINESS NAME INC.**

**Month Day, Year**

## TABLE OF CONTENTS

<b>I.</b>	<b>BASIC LEASE TERMS .....</b>	<b>1</b>
<b>A.</b>	<b>PREMISES .....</b>	<b>1</b>
<b>B.</b>	<b>TERM .....</b>	<b>1</b>
<b>C.</b>	<b>TITLE AND CONDITION OF THE PREMISES .....</b>	<b>2</b>
<b>D.</b>	<b>RENT .....</b>	<b>3</b>
<b>E.</b>	<b>PUBLIC TRUST .....</b>	<b>10</b>
<b>II.</b>	<b>USE, OPERATION, DEVELOPMENT, AND MAINTENANCE OF THE PREMISES.....</b>	<b>10</b>
<b>A.</b>	<b>USE .....</b>	<b>10</b>
<b>B.</b>	<b>OPERATION .....</b>	<b>14</b>
<b>C.</b>	<b>DISTRICT'S OBLIGATIONS - REPAIRS .....</b>	<b>16</b>
<b>D.</b>	<b>RESERVATIONS.....</b>	<b>16</b>
<b>E.</b>	<b>LESSEE'S OBLIGATIONS .....</b>	<b>16</b>
<b>F.</b>	<b>DISTRICT'S RIGHT TO REPAIR PREMISES.....</b>	<b>18</b>
<b>III.</b>	<b>LAWS, TAXES AND UTILITIES .....</b>	<b>18</b>
<b>A.</b>	<b>COMPLIANCE WITH LAWS.....</b>	<b>18</b>
<b>B.</b>	<b>TAXES AND ASSESSMENTS.....</b>	<b>19</b>
<b>C.</b>	<b>SERVICES, ACCESS AND UTILITIES .....</b>	<b>20</b>
<b>IV.</b>	<b>CONSTRUCTION AND LIENS .....</b>	<b>21</b>
<b>A.</b>	<b>ADDITIONAL CONSTRUCTION, ALTERATIONS AND REPAIRS .....</b>	<b>21</b>
<b>B.</b>	<b>PLANS AND SPECIFICATIONS .....</b>	<b>21</b>
<b>C.</b>	<b>REPORTS, ANALYSIS, PLANS, SPECIFICATIONS .....</b>	<b>22</b>
<b>D.</b>	<b>QUALITY OF CONSTRUCTION.....</b>	<b>22</b>
<b>E.</b>	<b>BONDING .....</b>	<b>22</b>
<b>V.</b>	<b>OWNERSHIP OF IMPROVEMENTS AND ABANDONED PROPERTY .....</b>	<b>22</b>
<b>A.</b>	<b>OWNERSHIP DURING TERM .....</b>	<b>22</b>
<b>B.</b>	<b>OWNERSHIP AT TERMINATION .....</b>	<b>22</b>
<b>C.</b>	<b>ABANDONMENT.....</b>	<b>23</b>
<b>VI.</b>	<b>ASSIGNMENT/TRANSFER &amp; SUBLEASE.....</b>	<b>23</b>
<b>A.</b>	<b>TRANSFER OF LEASE OR PREMISES BY LESSEE; TRANSFER OF BENEFICIAL INTEREST OR OWNERSHIP OF LESSEE; SELECTION OF MANAGEMENT ENTITY AND ASSIGNMENT OF BENEFICIAL INTEREST IN OR OWNERSHIP OF ENTITY; SUBLEASES, LICENSES OR CONCESSION AGREEMENTS. ....</b>	<b>23</b>
<b>(1)</b>	<b><i>Transfer of the Lease, the Premises, or the Improvements to be Constructed Thereon.</i> .....</b>	<b>24</b>
<b>(2)</b>	<b><i>Prohibition of Sub-Letting</i> .....</b>	<b>24</b>
<b>B.</b>	<b>INVESTIGATION OF PROPOSED TRANSFEREE.....</b>	<b>24</b>
<b>D.</b>	<b>RELEASE OF DISTRICT .....</b>	<b>27</b>
<b>VII.</b>	<b>CORPORATE REPRESENTATIONS.....</b>	<b>27</b>
<b>VIII.</b>	<b>INSURANCE AND INDEMNIFICATION.....</b>	<b>28</b>
<b>A.</b>	<b>REQUIRED INSURANCE POLICIES.....</b>	<b>28</b>
<b>B.</b>	<b>HOLD HARMLESS AND INDEMNIFICATION .....</b>	<b>30</b>
<b>IX.</b>	<b>SURRENDER; HOLDING OVER .....</b>	<b>31</b>
<b>A.</b>	<b>SURRENDER OF PREMISES.....</b>	<b>31</b>
<b>X.</b>	<b>DESTRUCTION.....</b>	<b>31</b>

A.	DESTRUCTION, AND RISK IS COVERED BY INSURANCE .....	31
B.	DESTRUCTION, AND RISK NOT COVERED BY INSURANCE .....	32
C.	ADJUSTMENT OF MINOR LOSS -- NO INSURANCE TRUSTEE .....	32
D.	ADJUSTMENT OF MAJOR LOSS - INSURANCE TRUSTEE .....	32
E.	PROCEDURE FOR RESTORING PREMISES .....	33
F.	DISTRICT'S RIGHT TO TERMINATE ON PARTIAL DESTRUCTION.....	33
G.	ABATEMENT OR REDUCTION OF RENT .....	33
H.	LOSS DURING LAST PART OF TERM.....	33
I.	WAIVER OF CIVIL CODE SECTIONS .....	34
<b>XI.</b>	<b>EMINENT DOMAIN .....</b>	<b>34</b>
A.	DEFINITION OF TAKING .....	34
B.	TOTAL TAKING .....	34
C.	PARTIAL TAKING .....	34
D.	APPLICATION OF AWARDS .....	35
E.	NOTICE OF TAKING.....	35
F.	DISBURSEMENT OF AWARDS ON PARTIAL TAKING .....	36
<b>XII.</b>	<b>DEFAULT .....</b>	<b>36</b>
A.	DEFAULT BY LESSEE .....	36
B.	RIGHT OF DISTRICT TO PERFORM.....	40
C.	DEFAULT BY DISTRICT.....	41
D.	NO RECOURSE.....	41
<b>XIII.</b>	<b>SUSPENSION OF LEASE RIGHTS AND OBLIGATIONS .....</b>	<b>41</b>
A.	SUSPENSION OF LEASE RIGHTS AND OBLIGATIONS DURING THE EXTENSION TERM .....	41
<b>XIV.</b>	<b>UNAVOIDABLE DELAY; FORCE MAJEURE.....</b>	<b>42</b>
<b>XV.</b>	<b>ENTRY BY DISTRICT .....</b>	<b>42</b>
<b>XVI.</b>	<b>GENERAL.....</b>	<b>42</b>
A.	ESTOPPEL CERTIFICATES .....	42
B.	WAIVER.....	43
C.	NOTICES .....	43
D.	CORPORATE AUTHORITY.....	44
E.	NO LIGHT, AIR OR VIEW EASEMENT .....	44
F.	DISTRICT'S COVENANT OF QUIET ENJOYMENT.....	44
G.	NO JOINT VENTURE .....	44
H.	PROVISIONS SUBJECT TO APPLICABLE LAW .....	44
I.	ATTORNEYS' FEES. ....	45
J.	MISCELLANEOUS.....	45
<b>XVII.</b>	<b>EXHIBITS.....</b>	<b>47</b>
<b>XVIII.</b>	<b>LEASE EXECUTION.....</b>	<b>48</b>

## LEASE AGREEMENT

This Lease Agreement (“Lease”) is entered into on Month, Day, Year by and between PORT SAN LUIS HARBOR DISTRICT, a District formed pursuant to California Harbors and Navigation Code section 6000 *et seq.* (hereinafter called “District” or “District”) and name of company or individual (hereinafter called “ Lessee”). Together the District and Lessee are known as the Parties.

This Lease is entered into for the purpose of developing, leasing and operating certain real property of District, to Lessee so that Lessee may operate a                     . The District, the County of San Luis Obispo and the California Coastal Commission have determined that activities which allow for and create public access to ocean resources are a high priority. Lessee will conform with the “Port Master Plan (May 2004), Revised Per Local Coastal Plan Update 2007” and the Local Coastal Plan for the San Luis Bay Area Plan (“LCP”) and to maximize public access in a manner that protects and preserves public safety and considers the resources of the District.

In consideration of the development of the lease site and rents to be paid hereunder and of the agreements, covenants and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### **I. BASIC LEASE TERMS**

#### **A. Premises**

The District, for and in consideration of the agreement hereinafter stated, grants to Lessee for the purposes and uses as further described herein, the right, privilege, and duty to develop, equip, furnish, operate and maintain a                      on Harford Landing (the "Premises") as described in Exhibit -, according to the terms, conditions, covenants and restrictions as provided herein.

District must provide reasonable notice of its intent to enter the Premises as provided by Section XV, herein.

The Parties understand and agree that any Premises improvements are wholly owned by the District at the termination of the lease; and that during the lease term, including all lease term extensions, the Lessee is the sole party responsible for the operations, maintenance, repair and replacement of the Premises and all improvements thereon.

#### **B. Term**

##### **1. Construction Phase**

##### **2. Initial Lease Term-**

The Initial Term of this Lease shall be five years and shall commence on Month Day, Year, ("Commencement Date") and terminate on Month, Day, Year ("Termination Date") at 11:59 p.m.

##### **3. Lease Extension.**

Upon agreement of both Parties, the Lease may be extended for up to an additional XX according to the terms as provided herein. The first XX Extension Term, if initiated, shall begin on [Month, Day,] Year and automatically terminate without further notice to the parties on [Month, Day], Year.

Lessee shall be eligible to extend the Term if:

- a. Lessee gives written notice of its request to extend the Initial or Extended Term by providing notice to District at least ninety (90) days but not more than six (6) months before the expiration of the Initial or Extended Term (“Extension Notice”);
- b. Lessee is not in default under this Lease at the time the term begins;
- c. Lessee is not in default under this Lease at any time between the time the Extension Notice is given and the Termination Date for the Term; and
- d. Lessee is, and at all times during the Initial or Extended Term, has been, materially in compliance with the terms and conditions of the Lease.

Lessee expressly understands and recognizes that even if it has satisfied the above-listed conditions, the District may, in its sole and absolute discretion, refuse to grant the extension described herein. The Lessee will not have suffered any damages as a result. Any claim for damages against the District for its failure to extend the Agreement into the Extension Term shall be invalid and may be dismissed summarily by a trier of fact.

In the event the Lessee exercise the first Extension Term, then beginning on the first day of the Extension Term, references in this Lease to Termination Date shall be deemed to mean Month, Day, Year and Lease Term, as used in this Lease, shall include the Extension Term.

Lessee expressly recognizes and understands that District may begin a large-scale construction, reconstruction and/or maintenance project that may impact the Premises, access to the Premises and the operation of commercial businesses on Harford Pier. Lessee expressly recognizes that District has no obligation to pay any relocation expenses in the event of the disruption of Lessee’s business due to any such construction, reconstruction and/or maintenance project.

Lessee further recognizes that the District has an obligation to publicly advertise premises for long-term leases and that the District makes no guaranty to extend Lease, and may refuse further extension terms based on failure of Lessee to win Lease as part of a competitive proposal process.

**C. Title and Condition of the Premises**

1. Title

Title to the Premises(s) including all improvements, whether existing or constructed during the Lease Term is held in fee and/or controlled by District and that the Premises includes District-Owned Property.

2. Condition of Premises

The taking of possession of the Premises by the Lessee, in itself, shall constitute acknowledgement that the Premises are in good and sufficient condition for the purposes for which Lessee is entering into this Lease. Lessee acknowledges that it has had adequate opportunity to survey the Premises and has no outstanding questions or concerns regarding the current conditions or fitness for the stated use.

Lessee agrees to accept the Premises in their presently existing condition, "AS IS," and that the District shall not be obligated to make any alterations, additions, or betterments to the Premises except as otherwise provided in this Lease. Lessee hereby and forever waives any and all claims or causes of action against District arising from or in relation to the condition of the Premises or the Pier. Lessee understand and agrees that District makes no representations, warranties, or statements about the condition of the Premises or any buildings on or a part of the Premises.

**D. Rent**

Lessee shall pay rent to District, without abatement, deduction or offset whatsoever in lawful money of the United States of America, at Harbor Administrative Offices, 3950 Avila Beach Drive, Avila Beach, or mail to P.O. Box 249, Avila Beach, CA 93424, or to such other person or at such other place as District may from time to time designate by written notice to Lessee.

Base Rent and Percentage Rent and other payments payable hereunder shall be paid without notice or demand and without set-off, counter claim, abatement, suspension, deferment, deduction or defense.

1. Base Rent

Beginning Month Day, Year, and for each month during the Lease Term, Lessee shall pay to District a Base Rent of [proposed amount] hundred dollars (\$xxxx.xx) ("Base Rent") unless if Lessee's calculated Percentage Rent, as defined herein, exceeds the Base Rent amount, in which case, Lessee's monthly rental amount shall be the Percentage Rent.

2. Base Rent Adjustment. In addition to the Base Rent adjustment set forth in subsection D2 of this Lease, beginning with the Base Rent to be paid for the Rent Year beginning on Month, Day, Year and on and on Month Day of each Rent Year thereafter (each such date referenced herein as "Adjustment Date"), the amount of the Base Rent shall be adjusted in accordance with the Consumer Price Index. The Consumer Price Index to be used for purposes of this subparagraph shall be the Index of the Bureau of Labor Statistics of the U.S. Department of Labor for CPI U (All Urban Consumers), for L.A./Riverside/Orange County, All Items (1982-1984=100) ("Index"), published by the United States Department of Labor, Bureau of Labor Statistics, for the month immediately preceding the Adjustment Date; herein the "Index"). The base Index for purposes of computing the increase shall be the Index number existing on the date the Base Rent commences pursuant to this Lease ("Beginning Index").

The rental increase for each Adjustment Date for purposes of this subsection shall be determined by comparing the Beginning Index with the applicable Comparison Index

existing on the applicable Adjustment Date. The Base Rent for the immediately succeeding Rent Year shall be set by multiplying the Base Rent of this Lease by a fraction, the numerator of which is the Comparison Index and the denominator of which is the Beginning Index. The adjusted Base Rent shall be in effect for the Base Rent due on the Adjustment Date. If the applicable Comparison Index is not available until after the applicable Adjustment Date, then the rent shall continue at the then Base Rent amount until the applicable Comparison Index is available. As of the first day of the month following such rental adjustment determination, Lessee shall pay the new Base Rent plus any incremental increase for each prior month during such year of the term that the applicable Comparison Index was not available.

Notwithstanding anything to the contrary herein, the Base Rent for any Rent Year shall never be less than the Base Rent in effect for the immediately preceding Rent Year.

If District has not advised Lessee, in writing, of the increase Base Rent then, at any time during the Lease Term, District may deliver a written demand to Lessee for any or all of the increased Base Rent not previously paid. Lessee shall have fifteen (15) days from the receipt of said notice in which to pay the amount demanded. Failure to pay the amount demanded within the fifteen (15) day period shall be a material breach of this Lease and District may terminate this Lease without further notice.

3. Percentage Rent

a. Percentage Rent Defined

In the event that the Percentage Rent for any calendar month period exceeds the Base Rent, Lessee shall, for each such month of the Lease Term, pay, without abatement, deduction or offset, "Percentage Rent," which is calculated pursuant to the percentages of the Gross Receipts, set forth below.

The percentages on which Percentage Rent is calculated are as follows:

- i. [ percent proposed (X%)] of the Gross Receipts of sales including but not limited to the sale of [as proposed].
- ii. [ percent proposed (X%)] of the Gross Receipts of sales including but not limited to the sale of [as proposed, may differentiate different items such as alcohol sales].
- iii. Twenty percent (20%) of the Gross Receipts from any and all business activities not otherwise provided for in this section.

b. Gross Receipts Defined

"Gross Receipts" shall include:

- i. The entire amount of the price charged, whether wholly or partly for cash, on credit, or barter, or otherwise, for all items sold or delivered, and all charges for services sold or performed in, at, upon or from any part of or through the substantial use of the Premises by Lessee or any other person, firm or corporation or by means of any mechanical vending device, computerized system, internet, phone, or by any other means (except for those excluded below under paragraph c of this Section).

- ii. All gross income of Lessee or any other person, firm or corporation from any operations in, at, upon or from the Premises which are neither included in nor excluded from Gross Receipts by other provisions of this Lease, but without any duplication.
- iii. Without limitation, all deposits received and not refunded to the purchaser in connection with any transaction; and
- iv. All orders secured or received on the Premises by telephone, mail, house to house, mail order catalogue or other canvassing by personnel operating from, reporting to or under the supervision of any employee, agent or representative located at or operating out of the Premises or which Lessee, in the normal and customary course of its operations, would be credit or attribute to its business on the Premises, or by other means, whether or not filled elsewhere.
- v. The market value of any property or services received by Lessee in exchange for any of the items otherwise identified as "Gross Receipts" in this Lease.
- vi. Any proceeds from a settlement or litigation related to lost revenue from the Lease operation and/or recovered lost revenue from any activity that would have normally been subject to rent under this Lease.

c. Exclusions from Gross Receipts

"Gross Receipts" shall not include the following items; however, such items shall be reported separately to District each month during the term hereof as otherwise provided in this Lease.

- i. The net amount of cash or credit refunds or adjustments in fact made upon sales from the Premises, where the merchandise or tickets sold or fees collected or some part of them is returned by the purchaser to and accepted by Lessee (but not exceeding, in any instance, the selling price of the item in question).
- ii. Exchanges or transfers of merchandise between stores of Lessee, where such exchanges or transfers are made solely for the convenient operation of Lessee's business and do not have the effect of consummating a sale which has been made in, at, upon or from the Premises or of depriving District of the benefit of a sale which otherwise would have been made at, upon or from the Premises.
- iii. Returns to shippers or manufacturers.
- iv. Sales of fixtures, equipment, and other property used after their substantial use in the conduct of Lessee's business on the Premises.
- v. The amount of any local, county, state or federal sales, luxury excise or gross receipts taxes now or hereinafter imposed on sales from the Premises where such taxes are paid to the taxing authorities by Lessee (but not by any vendor of Lessee).
- vi. Interest on deferred payments for merchandise and carrying charges paid by customers were not included in the merchandise sale price.



- vii. If, after a credit has been included in Gross Receipts, it is written off as a bad debt, the unpaid amount of said credit sale may be deducted from the Gross Receipts made for any calendar year in which said unpaid amount is written off as a bad debt, but any payments thereafter made in connection therewith shall be included in the Gross Receipts for the calendar year in which such payments are made; however, the amount of credit so deducted in any one (1) calendar year may not exceed one percent (1%) of Gross Receipts.

Transaction costs such as credit card service charges shall not be excluded from Gross Revenue.

d. Sub-Lessee Gross Receipts

Lessee understands and hereby acknowledges that these provisions apply whether generated by Lessee, a sub-Lessee, an assignee, a lessee, or any other person or entity operating upon the Premises.

e. Monthly Statements

Lessee shall render to District on or before the fifth (5th) day of each calendar month following commencement of the percentage rental period, a statement of all gross receipts for the preceding calendar month.

The statement shall be signed by Lessee and shall be in the form reasonably prescribed by District.

Lessee acknowledges that, in signing the statement, it is certifying under penalty of perjury of the laws of the State of California that the statement is a complete and accurate representation of all matters set forth therein.

Each such monthly statement shall include:

- i. The total "Lessee's Gross Receipts" for the period broken down into the categories described in Section I.D.3(b);
- ii. The total exclusions from Gross Receipts permitted in Section I.D.3(c), itemized as to each exclusion, providing amount and type; and
- iii. The total Percentage Rent.

It is agreed that all computations shall be made on a monthly basis and shall be made separately for each month throughout the Term of this Lease without connection with any other month or accounting year.

There shall be no credit or refund of rent payments to Lessee unless an error has been made in the reporting of the monthly amount of gross receipts.

f. Annual Statement

Within ninety (90) days after the end of each accounting year, Lessee shall, at its

own expense, submit to District a balance sheet and income statement prepared or compiled by Lessee or by Lessee's bookkeeper or Certified Public Accountant, reflecting business transacted on or from the Premises during the preceding accounting year.

g. Lessee Financial Records

Lessee shall keep and maintain full, complete and appropriate books, records and accounts relating to the Premises, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Lessee's calculation of Percentage Rent. These records shall be kept on the Premises, or, if District is notified in writing, at Lessee's headquarters elsewhere in Central California, provided that District can compel the books and records be returned to Port San Luis, California, for purposes of review or auditing.

Complete and appropriate books, records and accounts shall include, but not be limited to: income statements, balance sheets, general ledger, sales journal, cash receipts journal, all guest receipts in numerical order, accounts of inventories, all receipts of merchandise, signed sales tax returns, signed income tax returns, cash disbursements journals, all cancelled checks, all bank statements showing business receipts, lists of non-revenue deposits, if any, and documentation supporting wholesale sales.

All books, records and accounts relating, in District's reasonable judgment, to Lessee's compliance with the terms, provisions, covenants and conditions of this Lease shall be kept and maintained in accordance with generally accepted accounting principles consistently applied and shall at all times during normal business hours be open to and available for inspection by District, its auditors or other authorized representatives.

All such business records must be supported by source documents, such as sales slips, unbilled accounting documents, ledgers, bank deposit receipts, sales tax returns, complete and continuous cash register, computer and other electronic files, sales books, bank books, purchase invoices, income tax returns and any other records and documents reasonably necessary to verify the gross receipts reported by Lessee.

Copies of all sales, income, other excise tax reports and Internal Revenue tax reports or any other reports that Lessee may be required to furnish any governmental agency, including personal tax records if Lessee is a sole proprietorship, shall at all reasonable times be open for inspection by District at the place that the books, records and accounts of Lessee are kept.

h. District's Right to Audit Current Records

If at any time during the term hereof said books, records and accounts are deemed inadequate or incomplete in the reasonable judgment of District, Lessee shall, upon the request of District, revise, adjust, complete, procure and maintain such books,

records and accounts so that they thereafter conform to said standards in District's reasonable judgment.

District shall have the right to audit and examine the books, records and accounts of Lessee necessary for a proper determination of the amount of Lessee's Gross Receipts, and all such books and records shall be held available for such purpose. Lessee shall preserve records on which any statement of Gross Receipts is based for a period of not less than five (5) years after such statement is rendered.

The receipt by District of any statement, record, or any payment by Lessee or acceptance by District of any Percentage Rent for any period shall not bind District as to the correctness of such statement or such payment.

Within five (5) years after the receipt of any such statement, District or any designated agent or employee of District at any time shall be entitled to audit the Gross Receipts and all books, records and accounts of Lessee pertaining thereto. Such audit shall be limited to the determination of the Gross Receipts and exclusions and shall be conducted during normal business hours at the principal place of business of Lessee.

If it is determined, as a result of such audit, that there has been a deficiency in the payment of Percentage Rent, then such deficiency shall become immediately due and payable as rent with interest at fifteen percent (15%) per annum or the maximum rate permitted by law, whichever is greater, from the date when said payment should have been made.

In addition, if Lessee's statement for any calendar year is found to have understated Gross Receipts by more than two percent (2%) and District is entitled to any additional Percentage Rent as a result of said understatement, then Lessee shall pay, in addition to the interest charges referenced hereinabove, all of District's reasonable costs and expenses connected with any audit or review of Lessee's accounts and records.

i. Operations

Lessee agrees to use the utmost skill and diligence in the conduct of Lessee's operations. Lessee agrees at all times during the term of this Lease to continue its operations on the Premises, subject only to closures resulting from natural catastrophes or total destruction of the premises or upon the request of District.

j. Point of Sale System

All sales and transactions made from the Premises shall be recorded by means of cash registers or other comparable devices to be approved by the Harbor Manager, which display to the customer the amount of the transaction and automatically issue a receipt for every transaction.

The registers shall be equipped with devices which lock in sales totals and other

transaction records, and with counters which are not re-settable and which record transaction numbers and sales details.

Totals registered shall be read and recorded at the beginning and end of each day.

k. Method of Payment.

If any two (2) payments of Base Rent or Percentage Rent made by check, draft or money order are returned to District due to insufficient funds, or otherwise, District shall have the right at any time thereafter, upon written notice to Lessee, to require Lessee to make all subsequent Base Rent or Percentage Rent payments by cashier's, certified check, or credit card.

4. Late Charges and Interest

If Lessee fails to make any Rent payment due under this Lease on or before the date it becomes due, then Lessee shall pay to District, as additional rent, an amount equal to ten percent (10%) of the amount which was due and unpaid, as liquidated damages for the untimely payment only. The parties agree that this amount represents a reasonable estimate of the losses, costs and expenses that District will suffer in such circumstances and that the actual amount of such losses, costs and expenses will be difficult or impossible to ascertain. These liquidated damages are in addition to any interest on the Rent due, as provided herein, which shall accrue from the date the payment is due until paid.

The payment by Lessee and acceptance by the District of late fees shall not be deemed an acceptance of Lessee's breach such that District could be considered to have relinquished any other remedies available to it under the terms of this Lease or at law on account of Lessee's breach. Failure to pay rent or other amounts owed to the District at the time due shall be considered a material breach of this Lease.

5. Security Deposit.

Lessee shall, at the time of execution of this Lease, deposit with District a security deposit (the "Security Deposit") in the sum of, receipt of which is acknowledged by District, to be held and applied by District in the following manner:

(a) If, at any time during the term of this Lease, any of the rent payable by Lessee to District under this Lease should be overdue and unpaid, or if any other sums payable by Lessee to District under the terms of this Lease apply any portion of the Security Deposit, up to the whole amount of that deposit, to the payment of the overdue rent or sums. In the event of any such appropriation and application by District, Lessee shall promptly, on receipt of written demand by District, restore the amount so appropriated or applied to the Security Deposit. Lessee's failure to do so within ten (10) days after receipt of the written demand by District, shall constitute a material breach of this Lease by Lessee.

(b) Should Lessee, at any time during the term of this Lease, be in default in the performance of any of the terms, covenants, and conditions of this Lease, District may, after terminating this Lease, appropriate and apply any portion of the

Security Deposit, up to the whole amount of the Security Deposit, that may be required to compensate District for damages caused by Lessee's breach to the payment of those damages to District.

(c) Should Lessee fully and faithfully perform all the terms, covenants, and conditions of this Lease, including the prompt payment of rent as required, District shall, on expiration or earlier termination of this Lease, return the full amount of the Security Deposit without interest to Lessee.

**E. Public Trust**

Lessee acknowledges that District holds all portions of the District property, both land and water, and including, but not limited to, the Premises, in trust for the people of the State of California. As trustee, District is obligated to exercise control over the Premises. The Lease is subject to District's obligation, as trustee. With respect to the Premises, as such obligation has been, or may in the future be, defined or described under California law.

**II. USE, OPERATION, DEVELOPMENT, AND MAINTENANCE OF THE PREMISES**

**A. Use**

1. Use of the Premises

a. Permitted Use

Lessee shall use the Premises for the purpose of **XX** in accordance with Federal, State and Local laws and regulations. Lessee may not change or expand upon the allowable uses as stated herein without the express written approval of the District.

Lessee may not make any improvement to the Premises without the express written approval of the District. District's approval of plans and specifications or any change to the allowable uses shall be within its sole and absolute discretion.

b. Consistency with Master Plan and LCP.

Notwithstanding anything to the contrary herein, any and all use of the Premises shall meet all requirements and guidelines set forth in the Master Plan and LCP. The responsibility for compliance with the Master Plan and LCP is Lessee's alone and Lessee represents and warrants that the construction and operation of the improvements and uses contemplated by this Lease are consistent with the Master Plan or LCP. Lessee further acknowledges that any modifications or amendments to the Master Plan or LCP, that Lessee might deem necessary or convenient, are within the sole and absolute discretion of District and subject to the approval of other governmental agencies including, without limitation, the County of San Luis Obispo or the California Coastal Commission.

c. Non-exclusive

This Lease shall not be construed as providing Lessee with any exclusivity to

operate its business free of competition from other business operated by public or private persons or entities on District property. Lessee acknowledges, understands, and agrees, that the Pier is a working pier and activities including but not limited to fishing, tourism, recreation, and the existence and activity of other vendors, will likely exist and occur on a consistent basis near and/or around Premises and the Pier in general.

2. Nondiscrimination

During the performance of this Lease, Lessee itself, or any person claiming under or through it, shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, sexual orientation, ancestry, religious creed, national origin, disability (mental and physical) including HIV and AIDS, medical condition (e.g., cancer/genetic characteristics), age (over 40), or marital status. Lessee shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

The Lessee shall include the nondiscrimination and compliance provisions of this clause in all Leases or subleases to perform work under this Concession Lease.

a. The use of the Premises which are the subject of this Lease or in the operations to be conducted pursuant to the provisions of this Lease, will not discriminate or permit discrimination against any person or class of persons by reason of sex, race, color, sexual orientation, ancestry, religious creed, national origin, disability (mental and physical) including HIV and AIDS, medical condition (e.g., cancer/genetic characteristics), age (over 40), or marital status in any manner prohibited by the laws of the United States, the State of California or any ordinance or policy of the Harbor District.

b. Lessee shall furnish its goods and services on a fair, equal and not discriminatory basis to all users thereof and Lessee shall only charge fair, reasonable and not discriminatory prices.

Lessee may make reasonable and nondiscriminatory rebates, discounts or other similar price reductions to volume purchasers to the extent permitted by law.

c. Lessee shall make its goods and services available to the public on fair and reasonable terms without discrimination on the basis of sex, race, color, sexual orientation, ancestry, religious creed, national origin, disability (mental and physical) including HIV and AIDS, medical condition (e.g., cancer/genetic characteristics), age (over 40), or marital status.

d. Lessee shall not discriminate nor allow discrimination either directly or indirectly, in hiring or employing persons to fulfill the terms and conditions of this Lease.

- e. Lessee agrees that it shall insert the above articles in any Lease by which said Lessee transfers any interest herein or grants a right or privilege to any person, firm or corporation to use the Premises or to render accommodations and services to the public on the Premises.
- f. Noncompliance with this provision shall constitute a material breach hereof and in addition to any other remedies provided by law or this Lease in the event of such noncompliance the District shall have the right to terminate this Lease and the interest hereby created without liability therefore, or at the election of the District the District shall have the right to judicially enforce these provisions.
- g. In the event the Lessee is found to have failed to comply with these provisions, and notwithstanding any other remedy pursued by the District, the Lessee shall pay to the District the sum of \$25.00 per day for each incident of a failure to comply.

3. Restrictions Upon Use

Lessee agrees that, in connection with the use and operation of the Premises, it will not:

- a. Use or permit the use of any objectionable advertising medium such as, without limitation, loudspeakers, phonographs, public address systems, sound amplifiers, radios or broadcasts within the Premises in such a manner that any sounds reproduced, transmitted or produced beyond the building interior of the Premises, and will keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the interior of the Premise.
- b. Cause or permit objectionable odors to emanate or be dispelled from the Premises; notwithstanding the above, the District recognizes that those odors normally associated with operation shall not constitute an objectionable odor.
- c. Permit any use of the Premises or any part thereof in a manner likely to injure the reputation of District, its officials or employees.
- d. Permit accumulations of garbage, trash, rubbish, oil or other hazardous or flammable products or any other refuse to occur on or off the Premises.
- e. Permit any materials provided to customers made from polystyrene foam. All containers must be biodegradable or recyclable. Modification to this stipulation is subject to the prior written consent of the Harbor Manager within his/her absolute discretion.
- f. Use the Premises or permit any use of the Premises to occur, which might cause a cancellation of any insurance policy covering the District's pier or mooring area, or any part thereof, or any building or improvements thereon.
- g. Use any water, electricity, gas or any other utility services in such a manner that is considered wasteful.
- h. Permit the use of any type of coin or token-operated entertainment or vending machine outside of the Premises.

- i. Store gasoline, fuel tanks, paint, thinners or any other flammable material on the Premises.
  - j. Permit employees or customers to smoke on the pier, except in locations designated by District as smoking areas. Lessee shall provide and maintain a “Butt Can” in an outdoor location within the Premises and require smokers to properly extinguish all smoking materials. In the event that Lessee has requested a customer to extinguish smoking materials and customer refuses, Lessee shall contact District Harbor Patrol Staff.
  - k. Permit the placement of any dispenser of publications (such as newspaper, magazines, brochures, racks etc.) within the Premises. When requested in writing and approved by the Harbor Manager, the Lessee may have a brochure box with a lid, so long as, brochures do not end up in the water or on the pier.
  - l. Permit the posting of any advertisement, handbill or notice on the exterior of the Premises, including but not limited to posts, handrails, other exterior fixtures, etc. Such advertising may be posted on the inside of the Premises building on windows or walls only.
  - m. Commit or allow any action or omission on or about the Premises or Water Area in a manner that might constitute a violation of any federal, state or local statute, law, rule, regulation, ordinance, directive order, permit, license or authorization. This includes, but is not limited to existing and future Port San Luis Harbor District Ordinances.
  - n. Allow any use or activity on or about the Premises or Water Area that interferes with the public’s use of the ocean waters.
  - o. Allow any use or activity on or about the Premises that might be construed as interfering with the quiet enjoyment of other District Lessees or permittees or that might cause District to be in breach of any obligation to other Lessees, permittees or third parties.
  - p. Sell or offer any tobacco products.
  - q. Conduct any business or operate outside of the Premises without express authorization of the District.
4. Compliance with Law.  
Lessee shall comply and ensure that its guests, invitees, employees, agents, comply with any and all governmental laws, rules, restrictions, ordinances, orders and directives, now or hereafter adopted or issued, in the construction of any improvements on the Premises, the repair of the Premises, the maintenance of the Premises or the use of the Premises. Lessee shall also obtain all necessary or required permits for any said construction, repairs, maintenance, or improvements on the Premises. Lessee expressly agrees to maintain the Premises at all times in a manner which does not violate any such governmental laws, rules, restrictions, ordinance, orders or directives. In the event the Premises is in such violation, Lessee shall immediately take all necessary steps to ensure that such violation is cured including, without limitation, seismic retrofit or removal of a hazardous material.



5. Other Use Obligations

a. Building Area

Lessee agrees that no improvement shall be erected, placed upon, operated or maintained within, on or near the Premises, nor any business conducted or carried on therein or therefrom, in violation of the terms of this Lease, or in violation of any regulation, order of law, statute, bylaw or ordinance of a governmental agency having jurisdiction over the Premises without first obtaining the written approval of the District.

b. Signs

Signs will be high quality, made by a professional sign-maker or graphics company. Vinyl banner, fin, or sail signs are not permitted. All signs shall be in accordance with the District's "Sign Ordinance" and must be consistent with the character of the Harford Landing. All sign materials, design and placement must be approved, in writing, by the Harbor Manager prior to installation.

c. Governmental Requirements

Lessee shall at all times comply with and shall pay all costs and expenses which may be incurred or required to be paid in order to comply with any and all Federal, State or local laws, statutes, regulations, permits, directives, orders or ordinances, which govern, apply to or are promulgated with respect to the operation and use of the Premises by Lessee.

Lessee shall be solely responsible to use, modify, repair or maintain the Premises in order to maintain complete compliance with any and all requirements of the Americans with Disabilities Act (ADA), the California Building Code and any and all other laws, regulations or ordinances relating to the accessibility of public and private improvements. Any proposed improvements to the premises shall first be reviewed and approved in writing by the District and any necessary or relevant public entity or regulator.

d. Lighting

The Premises shall be lighted for security purposes nightly during hours of darkness including dawn and dusk. Night lighting shall be the minimum necessary for convenience and security, and shall be shielded in order to minimize pollution of night skies and the ocean beyond the footprint of the premises. High intensity light beams are prohibited. Additional mounting of light fixtures on the outside of the premises must be approved by the Harbor Manager.

**B. Operation**

1. Generally

The Parties recognize and acknowledge that the manner in which the Premises is used and operated is of critical concern to District and the public because of the:

- a. Prominence of the location of the Premises,
- b. The impact which the Lessee's operation is expected to have upon surrounding properties and upon the operation of the Harbor District, and

- c. The necessity of creating and maintaining opportunities for safe and beneficial public access to marine resources.
- d. The importance of maximizing income for the District and the public.
- e. The importance of providing goods and services to the public.

Lessee agrees to operate the Premises fully and continuously during regular business hours so that the public may enjoy maximum benefits there from, and the District may obtain maximum revenue there from.

Lessee agrees that, at all times during the term of this Lease, Lessee shall maintain a business operation and maintain a level of quality of character and operation which is comparable to the level of quality of character and operation at the time of execution and delivery of this Lease and which is generally expected from successful **XX** operations.

Lessee shall be considered "Open" when the Premises is open to the public, staffed, gates are unlocked, phones are being answered by a live person, and generally when Lessee is conducting the regular business.

2. Personnel

Lessee shall, at all times, retain active, trained, qualified, competent and experienced personnel to supervise Lessee's operation and to represent and act for Lessee.

Lessee shall require its attendants and employees to be properly dressed, clean, courteous, efficient and neat in appearance at all times.

Lessee shall not employ any person(s) in or about the Premises who shall use offensive language or act in a loud, boisterous or otherwise improper manner.

Lessee shall maintain close supervision over attendants and employees to ensure maintenance of a high standard of service to the public. No employee shall be allowed to harass, intimidate, or interfere with the public or District's employees or treat the public or District's employees in any manner other than a respectful and friendly manner.

The Harford Landing is a public area that is used for recreational, entertainment, business and sightseeing activities by the public. All employees shall conduct themselves in a manner consistent with this public use. Any violation of this section shall empower the District to immediately cancel this Lease at its sole and complete discretion.

Lessee understands and agrees that the District has no obligation to provide parking of any kind in Harford Landing and Lessee shall have no designated parking spaces for personnel, invitees, licensees, or guests.

3. Hours

Lessee shall, at all times, maintain a written schedule delineating the operating hours and operating procedures for each business operation on the Premises, which schedule shall be

posted so that it is visible to the general public at all times and must be pre-approved by the Harbor Manager.

4. Prices

A schedule of prices charged for all goods and/or services supplied to the public from the Premises shall be maintained but said prices shall be subject to the review or the approval of the Harbor Manager. Nothing in the section shall require the District or the Harbor Manager to set prices for goods and service offered by Lessee.

Lessee shall, at all times, maintain on display, plainly visible to the public at all times, on the Premises, the rates and charges for all goods available for sale and services rendered to the public by Lessee or any of its agents or sub-Lessees or licensees.

Upon written request, Lessee shall furnish the Harbor Manager a copy of said rates and charges.

**C. District's Obligations - Repairs**

The Lessee understands and agrees that the District has no obligation to maintain, repair or replace any portion in, near or under the Premises or any Harbor District Public areas.

Lessee also recognizes that from time to time, District may close or restrict access to a portion of the Premises or to any area near the Premises such that access to the Premises may be impeded for the purpose of conducting repairs, rebuilding or replacement of structures or facilities, including, but not limited to, walkways, roads, landings, dolphins, camels, ladders, hoists, docks, fish cleaning facilities, utilities and other appurtenances necessary or convenient in connection therewith, in, over, upon, through, across and along any and all portions of the Premises or any Harbor facilities public areas. Except for emergencies or threats to public health, safety or welfare, District will provide reasonable advanced notice of any such planned repair work and will endeavor to reasonably accommodate Lessee and Lessee's patrons to the extent practicable.

**D. Reservations**

District reserves the right to install, lay, construct, maintain, repair, remove and operate such sanitary sewers, storm water drains, pipelines, manholes, and connections; water, oil and gas pipelines; telephones, fiber optic cables, communications lines, telegraph and electrical lines; and, the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across and along any and all portions of the Premises.

District agrees that rights granted to third parties by reason of this section shall contain provisions that the surface of the Premises shall be restored as nearly as practicable to its original condition upon the completion of any construction.

Lessee acknowledges that the District shall have unrestricted access to the Premises to perform all duties required of it by law or emergency situations.

**E. Lessee's Obligations**

1. Leased Area

Except as otherwise provided in this Lease, the Lessee, at its sole cost and expense, shall maintain the Premises and all Premises' improvements, in a condition acceptable to District in good condition and repair as may be worn by normal wear, tear and use, and District shall not have any responsibility therefore. For required maintenance and repairs conducted by District, Lessee shall reimburse the District for the labor, equipment, administration and materials expended to perform such work.

Lessee shall keep the Premises clean and sanitary at all times. Lessee shall regularly inspect the Premises as necessary to protect the public from safety hazards, including "trip and fall" or slippery obstacles or conditions, faulty electrical wiring or connections (including unlawful use of extension cords, bare or broken and exposed wires, etc.) and the like. Lessee shall keep the area up to ten (10') feet outside of the Premises' perimeter clean of rubbish and litter. No offensive materials, debris, bait, inventory, engines of any kind, support equipment or refuse matter nor any substance constituting any unnecessary, unreasonable or unlawful fire hazard or material detrimental to the public health shall be permitted on or within ten (10) feet of the Premises. The Lessee shall remove graffiti from the Premises within twenty four (24) hours of discovery by Lessee or District, at Lessee's sole expense.

Lessee shall Lease directly with the local utilities to provide metered electrical services to the Premises. Lessee shall be responsible for electrical conduits, conductors, grounding equipment, gas lines and all other associated devices downstream of the electric or gas meter serving the Premises.

Lessee shall be responsible for all mechanical equipment, as well as ancillary connections to the equipment, including, but not limited to, electrical, gas, water, waste water, other utility service, vents, drains, supporting structures and aesthetic architectural structures.

Lessee shall be responsible for all sewer plumbing upstream of the final connection to District lateral forced main sewer pipe near the Premises. Lessee is responsible for any required grease traps that are installed and which shall be maintained by the Lessee.

Any through pier drains shall be in compliance with Federal, State and local regulations with regards to discharge into the ocean. Through pier drains shall always meet or exceed the standard of the District, as may be amended from time to time, including but not limited to for clearances, attachments, materials, connections and lengths.

Lessee shall be responsible for all potable water plumbing downstream of the respective meter for each utility serving the Premises.

Lessee shall initiate repairs to all structures caused by utility malfunction for which Lessee is responsible within twenty four (24) hours of initial discovery and pursue the repairs diligently until completion, subject to the approval of the District.

Lessee shall provide a dumpster, of adequate size, to accommodate Lessee's solid waste generation. Dumpster shall be located near or within the Premises at a location designated at the sole and absolute direction of the District. Lessee shall provide and arrange for all garbage and/or refuse to be collected daily and transported to the dumpster and secured within.

In the event the dumpster is located out of the Premises additional fees shall be levied for that space. Lessee, at its sole expense, must remove solid waste from the dumpster no less than once per week in the winter season and twice a week in the summer season. In the event that Lessee incurs a cost of transporting the dumpster from the premises to the Harford Land Area for garbage collection, the additional cost must be paid by the Lessee.

In the event that electric, gas, water, waste water, other utility service, vents, drains, supporting structures, aesthetic architectural structures, sewer plumbing upstream, and/or removal of solid waste generation must be shared within the Premises, Lessee agrees to pay utilities on an allocation basis. The allocation basis shall be determined by the Harbor Manager and is subject to change at the Harbor Manager's sole discretion.

Lessee shall prevent vehicles from being parked on the Premises, except for active attended commercial loading and unloading within a designated parking or loading area. Lessee must communicate to its vendors, invitees and customers that parking in Harford Landing in any manner that obstructs the roadway, walkways or fire lane is prohibited. Lessee understands and agrees that its vehicles and those of its agents, employees and customers are subject to the same laws and ordinances as other public vehicles and are subject to citation for any and all violations.

**F. District's Right to Repair Premises.**

If Lessee fails to maintain or make repairs or replacements as required herein, District may notify Lessee in writing of said failure. Should Lessee fail to correct the situation within a reasonable time thereafter, as established by District, District may make the necessary correction and the cost thereof, including, but not limited to, the cost of labor, materials and equipment and administration, shall be paid by Lessee within ten (10) days of receipt of a statement of said cost from District. District's right to make repairs is not its only remedy in the event of Lessee's failure to maintain the Premises and District's election to make repairs shall not be deemed an election of District's remedies to the exclusion of others.

In the event of an emergency condition that threatens public or environmental health and safety or welfare, the Harbor District, in its sole discretion, may take immediate action to correct the condition or mitigate the danger and Lessee shall pay all associated costs, however, District shall make a reasonable effort to notify the Lessee of the condition prior to taking action if appropriate under the circumstances.

**III. LAWS, TAXES AND UTILITIES**

**A. Compliance with Laws**

Lessee shall, at its sole cost and expense, comply with and shall cause its contractors, subcontractors, agents, operators, licensees and customers to comply with all rules, orders, laws, ordinances and regulations of the State, County, federal government, Harbor District, Coastal Commission, Department of Boating and Waterways, Department of Fish and Game, San Luis Obispo County Fire and any and all public entities or regulatory agencies having authority or jurisdiction over the Lessee's business, the Premises or any activity taking place at the Premises or in the course of Lessee's business.

Lessee shall comply with each and every requirement of all policies of public liability, fire and other insurance, which at any time may be in force with respect to the Premises.

If the Lessee is deemed to have violated any such law, ordinance, order or regulations by the judgment of any court of competent jurisdiction or the admission of Lessee in any action or proceeding against it, whether District be a party thereto or not, that shall be conclusive of that fact as between District and Lessee.

**B. Taxes and Assessments**

**1. Generally**

**Lessee acknowledges and agrees that this Lease may create a possessory interest subject to property taxation and that Lessee will be solely liable for the payment of such tax.**

\_\_\_\_\_ **Lessee's Initials.**

Lessee agrees to pay and discharge, as additional rent for the Premises during the term of this Lease and before delinquency, all taxes (including, without limitation, possessory interest taxes associated with the Premises or the Lessee's business and the execution of this Lease), assessments, fees, levies, license and permit fees and other governmental charges of any kind or nature whatsoever, general and special, ordinary and extraordinary, foreseen, and unforeseen or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing (all of the foregoing collectively called "taxes" for all purposes under this Lease) which are or may be at any time or from time to time during the Lease Term levied, charged, assessed or imposed upon or against the Premises, against any of Lessee's personal property now or hereafter located thereon, against Lessee's business, or which may be levied, charged, assessed or imposed as a result of this Lease created hereby or which may be imposed upon any taxable interest of Lessee acquired pursuant to this Lease on account of any taxable possessory right which Lessee may have acquired pursuant to this Lease, or which may be levied upon or measured by the rent payable hereunder, including, without limitation, any gross receipts tax levied by the Port San Luis Harbor District, the State of California, the federal government or any other governmental body with respect to receipt of such rent by District whether or not the same shall have been in the express contemplation of District and Lessee.

**2. Additional Tax and Assessment**

In the event the Premises or any possessory interest therein, should at any time be subject to ad valorem taxes or privilege taxes levied, assessed or imposed on such property, Lessee shall pay taxes upon the assessed value of the entire Premises and not merely upon the assessed value of this Lease.

**3. Evidence of Non-payment**

The certificate, advice, receipt or bill of the appropriate official designated by law to make or issue the same or to receive payment of any such taxes, of nonpayment of such taxes shall be prima facie evidence that such taxes are due and unpaid or have not been paid at the time of the making or issuance of such certificate, advice, receipt or bill.

4. District's Right to Cure

If Lessee, in violation of the provisions of this Lease, shall fail to pay and to discharge any taxes, District may (but shall not be obligated to) pay or discharge such taxes, and the amount paid by District and the amount of all costs, expenses, interest and penalties connected therewith, including attorneys' fees, together with interest at the maximum rate permitted by law shall be deemed to be and shall be payable by Lessee as additional rent and shall be reimbursed to District by Lessee on demand.

5. Permitted Contests

Lessee shall not be required to pay, discharge or remove any taxes (including penalties and interest) upon or against the Premises or any part thereof, so long as Lessee shall in good faith contest the same or the validity thereof by appropriate legal proceedings and shall give to District prompt notice in writing of such contest at least ten (10) days before any delinquency occurs, provided that said legal proceedings shall operate to prevent the collection of the taxes so contested, or the sale of the Premises or any part thereof, to satisfy the same, and provided, further, that Lessee shall, prior to the date such taxes are due and payable, have given such reasonable security as may be required by District from time to time in order to ensure the payment of such taxes to prevent any sale, foreclosure or forfeiture of the Premises or any part thereof, by reason of such nonpayment.

Such security shall not be less than a sum equal to one and one quarter times the amount of such taxes and all penalties, fines and interest which can be assessed thereon and may be in the form of a bond issued by a surety acceptable to District. In the event of any such contest and the final determination thereof adversely to Lessee, Lessee shall, before any fine, interest, penalty or cost may be added thereto for nonpayment thereof, pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by Lessee, and after such payment and discharge by Lessee, District will promptly return to Lessee such security as District shall have received in connection with such contest.

Any such proceedings to contest the validity or amount of taxes or to recover back any taxes paid by Lessee shall be brought by Lessee, at Lessee's expense, in the name of Lessee; provided, however, that if any such proceeding shall be brought by Lessee, Lessee shall indemnify and save harmless District against any and all loss, cost or expense of any kind (including, but not limited to, reasonable attorneys' fees and expenses) which may be imposed upon or incurred by District in connection therewith.

C. Services, Access and Utilities

1. Lessee shall make all necessary arrangements and assume all costs to provide all required utilities on and to the Premises. Lessee shall promptly pay, as the same become due and payable, all charges, costs, bills and expenses of and for gas, electricity, sewer, telephone, water and all other services and utilities of whatever kind furnished or supplied to or used by Lessee or any other party in connection with the use, occupancy, maintenance or operation of the Premises or any part

thereof.

2. Lessee hereby expressly waives any and all claims against District for compensation, damages, payments or offset based upon or with respect to any and all loss or damage now or hereafter sustained by Lessee by reason of any defect, deficiency, failure or impairment of whatever kind or nature in any access, service or utility furnished or supplied to or used by Lessee or any other party in connection with the use, occupancy, maintenance or operation of the Premises or any part thereof. Such services and utilities shall include, without limitation, the walkways, pier, water supply system, drainage, wires leading to or inside the Premises, electric or telephone services. District shall have no responsibility to provide utilities to the Premises and shall not be liable if utilities are not available.

#### **IV. CONSTRUCTION AND LIENS**

##### **A. Additional Construction, Alterations and Repairs**

Prior to making any alterations to the Premises, Lessee shall comply with the Harbor Master Plan and obtain the written approval of the District, approval of which shall be in the District's sole and absolute discretion. Lessee must comply with all conditions of approval and mitigation measures required by the District when permitting the requested alteration or repair work. All work must be performed by duly licensed and appropriately experienced designers, consultants and contractors and must be completed in a first-class workmanlike fashion. Lessee shall pay for all costs and expenses associated therewith and shall indemnify, defend and hold District harmless from all damages, losses or claims attributable to the performance of such work. Any defects in construction shall be remedied immediately. All construction, alteration or repair work permitted herein shall be accomplished expeditiously and diligently. Lessee shall take all necessary measures to minimize any damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected thereby. Lessee shall repair, at its own cost and expense, any and all damage caused by such work and shall restore the area upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the beginning of such work. In addition, Lessee shall pay (or cause to be paid) all costs and expenses associated therewith and, shall indemnify and hold District harmless from all damages, losses or claims attributable to the performance of such work. Dust, noise and other effects of such work shall be controlled using the best accepted methods customarily utilized in order to control such deleterious effects associated with construction projects in a marine environment.

##### **B. Plans and Specifications**

Plans and specifications for all construction, alterations, or repairs shall be prepared and submitted to District prior to construction. District shall review and approve or disapprove all plans and specifications for construction and/or improvements within its reasonable discretion. There shall be no substantial change or modification in approved plans and specifications without District's prior written consent which consent shall not be unreasonably withheld. Once construction, remodeling, and/or improvements has commenced, Lessee shall proceed diligently to completion of all improvements without unnecessary delay.



**C. Reports, Analysis, Plans, Specifications**

Lessee shall provide to District copies of all reports, studies, plans, specifications, drawings, submittals or other documents reflecting or memorializing work performed or services provided with respect to the improvements on the Premises. The documents referenced in this section shall be provided to the District within fifteen (15) days after their receipt by Lessee. Upon expiration or earlier termination of this Lease, Lessee shall deliver to District all documents relating to the design or construction required by this Lease and such documents shall become the property of the District.

**D. Quality of Construction**

Construction of all improvements shall be in a first-class workmanlike manner, free from all defects. District, or its authorized agent shall have full and complete access to the Premises at all times during construction for the purpose of ensuring that all improvements meet the quality required by this Lease. Any defects in construction shall be remedied immediately. All work on the Premises shall be designed and performed by duly licensed and appropriately experienced designers, consultants and contractors.

**E. Bonding**

District has determined that under no circumstances does it want a partially completed project on the Premises. Prior to the commencement of any work on the Premises, Lessee, at its sole cost and expense, shall submit to District a surety performance and completion bond in an amount equal to one hundred and ten percent (110%) of the estimated cost of construction. Said bond shall unequivocally bind the surety for the full and complete performance of all construction to be performed by Lessee. Completion for purposes of this section shall mean completion of all improvements in the quality required by this Lease and the final approval of all governmental agencies necessary or the occupancy of all buildings. The bond shall be issued by an insurance company or other institutional surety with A.M Best Rating of A+7 or greater and shall be subject to approval of the District in its sole and absolute discretion. The bonding company and the form of the bond shall be approved by District within its reasonable discretion.

**V. OWNERSHIP OF IMPROVEMENTS AND ABANDONED PROPERTY**

**A. Ownership During Term**

The Parties agree that as of the commencement, through the duration and after the termination of this Lease, all facilities, whether in place at the commencement of the Lease or thereafter constructed or installed, shall be owned by the District.

**B. Ownership at Termination**

1. At the expiration or sooner termination of this Lease Term, District may, at District's election, demand the removal from the Premises, at Lessee's sole cost and expense, of all improvements, fixtures and/or furnishings, or of certain improvements, fixtures and/or furnishings. Any demand for Lessee to remove improvements from the Premises shall be made within sixty (60) days after the termination of this Lease. Lessee shall remove all such requested improvements within forty-five (45) days after notice is given by District. District has the right, but not the obligation, after

termination to store Lessee's property or fixtures off the Premises until the end of the forty-five (45) day period. Lessee shall be liable for any reasonable storage fees that may be incurred by District.

2. Any fixtures, improvements, furnishings or personal property not removed by Lessee within the forty-five (45) day period shall be deemed abandoned by Lessee and shall, without compensation to Lessee, become the District's property, free and clear of all claims to or against them by Lessee or any third party. In the event that Lessee abandons property, the removal of which shall incur an expense to the District, District shall have the right to seek reimbursement for such reasonable costs of removal from Lessee. In the event that Lessee abandons property on the Premises after the termination of the Lease, which is deemed hazardous waste under any County, State or Federal law, rule or regulation, District may seek reimbursement from Lessee for the cost of treating and/or removing such hazardous waste.
3. Upon termination of this Lease, whether by expiration of the Term or otherwise, all improvements not required to be removed by Lessee shall, without compensation to Lessee, then remain on District's property, free and clear of all claims to or against them by Lessee or any third party. Ownership of said improvements shall then become that of the District.
4. Lessee shall hold harmless, defend and indemnify District against all liability and loss arising from any such claims or from District's exercise of the rights conferred by this Section.
5. At District's request, Lessee agrees to execute any and all legal documents requested by the District to properly transfer ownership of such property to the District.

**C. Abandonment.**

If Lessee abandons, vacates or surrenders said Premises or is dispossessed of possession by process of law, or otherwise, any furniture, trade fixtures, business equipment or other personal property belonging to Lessee and left on the Premises shall, at the option of District, be deemed to be abandoned and title thereto shall thereupon pass to District without any payment or allowance whatever by District on account of such property.

In such event, the abandoned property may be retained by District as District's property or be disposed of, without accountability, in such manner as District elects, or if District shall give written notice to Lessee to remove such property, such property shall be removed by Lessee at Lessee's sole cost and expense.

**VI. ASSIGNMENT/TRANSFER & SUBLEASE**

- A. Transfer of Lease or Premises by Lessee; Transfer of Beneficial Interest or Ownership of Lessee; Selection of Management Entity and Assignment of Beneficial Interest In or Ownership of Entity; Subleases, Licenses or**

## **Concession Agreements.**

The restrictions contained in this section upon any transfer, sale, assignment, lease, sublease, license, franchise, gift, hypothecation, mortgage, pledge or encumbrance, or the like (“Transfer”) to any person or entity (“Transferee”) are imposed because Lessee’s qualifications are of particular concern to District, and District has entered into this Lease in reliance upon Lessee’s qualifications and financial strength. Any purported Transfer which is prohibited by this Section shall be null and void, and no voluntary or involuntary successor to any interest of Lessee under such a Transfer shall acquire any rights pursuant to this Lease. These restrictions on Transfer shall be binding on any successors, heirs or permitted Transferee of Lessee.

### **(1) Transfer of the Lease, the Premises, or the Improvements to be Constructed Thereon.**

- (a)** Except as otherwise provided in this Lease, Tenant shall not Transfer all or any portion of its rights under or interest in this Lease, the Premises, or the improvements constructed thereon, without District’s prior written consent, which consent may be granted or withheld in District’s reasonable discretion.
- (b)** The failure of District to consent to any proposed Transfer of Lessee’s rights under or interest in the Lease, the Premises or the Improvements constructed thereon pursuant to this Section, shall be deemed to be reasonable if the proposed Transferee is not superior or equal to Lessee in (1) financial responsibility and net worth as submitted by Lessee to District prior to the execution of this Lease; (2) experience, capability and intent to operate first class businesses on the Premises as required herein; (3) of good standing and repute; or (4) able to ensure continued management of the business on the Premises with the capability, experience and intent of operating those businesses in a first class manner.
- (c)** Upon any approved assignment of this Lease said assignee shall expressly assume liability with Lessee for the obligations of Lessee under this Lease to the extent of said assignee’s interest, and, notwithstanding any such assignment, Lessee shall remain fully responsible to District in accordance with the terms and provisions of this Lease.

### **(2) Prohibition of Sub-Letting**

- (a)** The Lessee is strictly prohibited from sub-letting.

## **B. Investigation of Proposed Transferee.**

In the event that Lessee requests District’s written consent to a proposed Transfer or Sublease, Lessee agrees to provide District with such information, including financial statements and tax returns, as District may reasonably require in order to evaluate the solvency, financial responsibility and relevant business acumen and experience of any proposed Transferee.

At the time of any request by Lessee for consent to a Transfer pursuant to Section VI, Lessee shall make such request in writing and shall submit to District (i) all binding agreements and documents evidencing and/or relating to the circumstances surrounding such Transfer, and (ii) a certificate setting forth representations and warranties by Lessee and the Transferee to District sufficient to establish and ensure that all requirements of this Lease have been and will be met.

The following shall apply to any request of the Lessee to assign or transfer this Agreement in any form or manner:

1. Proof of transferees financial strength and experience including (1) proof of financial responsibility shall mean proof of savings for at least six months of projected lease payments to the District in addition to six months of Lease purchase payments to the District in addition to six months Lease purchase payments to Lessee or lender; (2) summary of experience, capability and intent to operate first class businesses on the Premises as required herein; (3) at least three letters of recommendation.
2. A processing fee of \$250 shall be paid to District for review of each proposed assignment, sublease or license. In addition, the Lessee shall be responsible for all costs and out-of-pocket expenses incurred by the District associated with the processing of such an application.
3. The Lessee agrees to disclose to the District all terms of the assignment, or transfer or sub-lease, including, without limitation, the name of the escrow agent, the name of the selling agent, the terms of the transaction, and the total value of the transaction, including any consideration given outside of an escrow or this Agreement.

In addition, any application for, or documentation of, assignment, sub-lease or license agreements between Lessee and a sub-lessee shall be in form and substance satisfactory to District; provided, however, in the absence of a specific written agreement by District to the contrary, no such transfer or approval by District thereof shall be deemed to relieve Lessee or any other party bound in any way by this Agreement or otherwise with respect to any term, covenant and condition of this Agreement, including, but not limited to, the construction and reconstruction of the improvements, insurance and indemnification provisions.

4. In order to enable District to adequately investigate the proposed Transferee's qualifications, Lessee shall pay within five (5) days of District's written request therefore, a non-refundable transfer fee application of the greater of (i) Five Thousand Dollars (\$5,000.00) or reasonable and actual costs and attorney fees incurred by District in investigating and evaluating the proposed Transferee if such fees and costs exceed \$5,000.
5. Any proposed transferee, shall, in writing, for itself and its successors and

assignees, and expressly for the benefit of District, have expressly assumed all of the past, current and future obligations of Lessee under this Agreement and agreed to be subject to all of the conditions and restrictions to which Lessee is subject.

6. It is the intent of the Agreement, to the fullest extent permitted by law and equity, and excepting only in the manner and to the extent specifically provided otherwise in this Agreement, that no transfer of this Agreement, or any interest herein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit District of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Premises and the construction of improvements that District would have had, had there been no such transfer or change.

- a. Corporations

The transfer of more than forty percent (40%) of the voting stock in a corporation which is either itself the Lessee, or is a general partner in a partnership which is the Lessee, shall constitute an assignment under the terms of this Agreement

- b. Bankruptcy

If, notwithstanding the provisions of this Section, this Agreement is assigned by operation of law in connection with any proceedings under state or federal insolvency or bankruptcy law, or any comparable law, whether for liquidation or reorganization, District shall have a right of first refusal to purchase this Agreement. If any trustee or debtor in possession (collectively "trustee" receives an acceptable offer to purchase this Agreement, such trustee shall notify district in writing of terms of such offer. If District within thirty (30) days after receipt of such notice indicates in writing its agreement to purchase this Agreement on the terms stated, the trustee shall sell and convey this Agreement to District on the terms stated in the notice.

If the District does not indicate its agreement within thirty (30) days, the trustee shall thereafter have the right to assign this Agreement to the party making the offer on the terms of such offer. If such Offeror does not purchase this Agreement on such terms and conditions, District shall have a right of first refusal to purchase this Agreement in the event of any later offer for the purchase of this Agreement.

If an Offeror purchases this Agreement in connection with any proceedings under state or federal insolvency or bankruptcy law, or any comparable law, whether for liquidation or reorganization, District shall have the option to purchase this Agreement from such party for an amount equal to the amount such party paid for this Agreement, at any time within one (1) year from the date of such Offeror's purchase thereof.

- c. Effective Assignment

No assignment of any interest in this Agreement made with District's consent, or a herein otherwise permitted, shall be effective until there shall have been delivered to District an executed counterpart of such assignment containing an agreement, in recordable form, executed by the assignor and the proposed

assignee, wherein and whereby such assignee assumes due performance of the obligations on the assignor's part to be performed under this Agreement to the end of the term hereof.

The consent by District to an assignment hereunder shall not in any way be construed to relieve Lessee from obtaining the express consent in writing of District to any further assignment.

Notwithstanding an assignment by Lessee, Lessee shall remain fully responsible to the District in accordance with the terms and provisions of this Agreement.

**C. Effect of Agreement on Sub-Lease**

In the event of Agreement termination, any authorized sub-Lessee, at District's sole and absolute discretion, shall become directly obligated to District with respect to the provisions of the sub-lease or license, unless District shall elect to dispose such sub-lease.

Lessee covenants that any sub-lease agreement, sub-contract or license hereafter executed shall contain a clause expressly providing that the sub-Lessee shall assume such legal responsibilities to District in the event of a termination of this Agreement. However, the absence of such a clause from any sub-lease agreement, sub-contract or license shall not relive the sub-Lessee of this provision.

The District, in its sole discretion, reserves the right to dispose and eject any sub-Lessee remaining on the Premises after the Agreement is terminated with no other obligation except a fourteen (14) day notice to vacate.

**D. Release of District**

In the event of a sale, assignment, transfer or conveyance by District of the Premises, or its rights hereunder, the same shall operate to release District from any liability incurred following the effective date of such assignment upon any of the covenants or conditions, expressed or implied, herein contained in favor of Lessee, and in such event, Lessee agrees to look solely to the responsibility of the successor in interest of District in and to the Premises or this Lease. This Lease shall not be affected by any such sale, assignment, transfer or conveyance.

**VII. CORPORATE REPRESENTATIONS.**

Lessee represents and agrees for itself and any successor in interest of itself that without the prior written approval of District, there shall be no significant change (voluntary or involuntary) in the membership, management or control of Lessee which would prevent or impair the ability of Lessee to complete its obligations under this Lease.

Lessee shall promptly notify District of any and all significant changes in the membership, management or control of Lessee, whether legal or beneficial, or of any other act or transaction involving or resulting in any change in the ownership or identity of Lessee, or with respect to the identity of the Parties in control of Lessee or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information.

This Lease may be terminated by District hereof if there is any significant change in the membership, management or control of Lessee whether legal or beneficial, or of any other act or

transaction involving or resulting in any change in the ownership or identity of Lessee, or with respect to the identity of the Parties in control of Lessee or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information.

## **VIII. INSURANCE AND INDEMNIFICATION**

### **A. Required Insurance Policies**

Lessee shall maintain and keep in force during the term of this Lease, for the mutual benefit of District and Lessee, at Lessee's sole cost and expense, and naming the District as an additional insured, the following insurance applicable to the Premises:

**1. Certificate of Workers' Compensation Insurance** as required by the statutory laws of the State of California Labor Code.

**2. Certificate of General Liability Insurance and Auto Liability Insurance** with accompanying "Additional Insured" Endorsement documents. All endorsements shall clearly state policy number.

- Commercial General Liability and Auto Liability policies shall include endorsements naming Port San Luis Harbor District, Its Officers, Agents, Volunteers and Employees as additional insured.

- Endorsements for General Liability and Auto Liability shall state that the Lessee's insurance is "primary" and Port San Luis District is "non-contributory," or copies of the complete policy which state the equivalent may be submitted in their entirety.

**Minimum Insurance Requirements – General Liability Insurance:**

One million dollars (\$1,000,000) each occurrence (combined single limit)

One million dollars (\$1,000,000) for personal injury liability

Two million dollars (\$2,000,000) in the aggregate

One million dollars (\$1,000,000) for damage to rented premises including fire protection

**Minimum Insurance Requirements – Auto Liability Insurance:**

One million dollars (\$1,000,000) per occurrence for bodily injury and/or property damage

Policy shall cover any auto

**3. Business Interruption Insurance** which shall include minimum coverage for business income for a period of no less than twelve (12) months.

**4. Lessee's Property Insurance** to cover 100% of the full replacement cost of Lessee's improvements & betterments, equipment, signs, and personal property included in leased premises. Coverage shall insure against loss resulting from fire, lightning, vandalism, malicious mischief, those risks ordinarily defined as "all risk coverage".

**5. Builder's Risk Insurance** shall be added to property insurance prior to commencement of leasehold improvements or betterments. Before commencement of

any demolition or construction work on the Premises, Lessee shall procure, and shall maintain in force until completion and acceptance of the work (i) "all risks" builder's risk insurance, including coverage for vandalism and malicious mischief, with a combined single limit policy of Five Million Dollars \$\_\_\_\_\_ ) per occurrence and Ten Million Dollars (\$\_\_\_\_\_ ) in the aggregate and (ii) worker's compensation insurance in the statutory amounts covering all persons employed in connection with work on the Premises and with respect to whom death or bodily injury claims could be assessed against District or the Premises. Said Builder's risk insurance shall cover improvements in place and all material and equipment at the job site furnished under contract, but shall exclude contractor's, subcontractor's, and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees.

**6. Cancellation** - No cancellation or non-renewal of the insurance policy(ies), or reduction of coverage afforded under the policy(ies), shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such reduction or cancellation to the District.

**7. Deductible and Self-Insurance Retentions-** Any deductibles and/or self-insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by Lessee and approved by the District before execution of Concession Lease. At the option of the District, Lessee shall either reduce or eliminate such deductibles or self-insured retentions or shall provide a financial guarantee satisfactory to the District guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

**8. Absence of Insurance Coverage-**

District may direct Lessee to immediately cease all activities with respect to this Lease if it determines that Lessee fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this Lease. Any expense caused due to stopping of work and change of insurance shall be considered Lessee's expense.

**9. Lessee's Discretionary Insurance-**

The following insurance may be purchased at the Lessee's discretion unless required by law.

1. Employment Liability Insurance including Third Party discrimination and harassment.
2. Property Insurance for loss due to earthquakes or floods.

The District is not liable for claims against the Lessee for employment liability claims, Lessee property loss, or loss of business revenues due to interruptions unless caused by gross negligence or neglect of District.

**10. Policy Form, Content and Insurer.**

All insurance required by the provisions of this Lease shall be carried only with responsible insurance companies licensed to do business in this state having a



policyholder's rating from A. M. Best Company of at least A+7. If, during the term of this Lease, such rating service ends, then District shall select another comparable rating service which most closely approximates A.M. Best's Insurance Rating, with the view toward maintaining the same quality standard for determining a "secure and acceptable insurance company." If, during the term of this Lease, Lessee contends that the rating required above in order for an insurance company to be deemed a secure and acceptable insurance company is unnecessarily high and should be lower than the rating hereinabove set forth, District will reasonably consider such a request by Lessee to reduce the required rating used for determining a secure and acceptable insurance company.

All such policies required by the provisions of this Lease shall be non-assessable and shall contain language, to the extent obtainable, to the effect that (i) any loss shall be payable notwithstanding any act or negligence of District that might otherwise result in a forfeiture of the insurance, (ii) the insurer waives the right of subrogation against District and against District's Representatives, (iii) the policies are primary and noncontributing with any insurance that may be carried by District, (iv) the policies cannot be canceled or materially altered except after ninety (90) days' notice by the insurer to District, and (v) District shall not be liable for any premiums or assessments. All such insurance shall have deductibility limits reasonably satisfactory to District. Upon Lessee's execution and delivery hereof, Lessee shall deliver to District either certificates of insurance evidencing the insurance coverage specified in this Section or a binder for such insurance, in a form satisfactory to District, providing for the commencement of such insurance coverage as of the effective date of this Lease. Lessee shall thereafter deliver to District certificates of insurance evidencing the insurance coverage required by this Section upon renewal of any insurance policy. Lessee may provide any insurance required under this Lease by blanket insurance covering the Premises and any other location or locations, provided that the specific policy of blanket insurance proposed by Lessee is reasonably acceptable to District. District's review of such policy of blanket insurance shall be only for the purpose of determining if it provides the coverage required by this Lease and does not adversely affect District's interest in the Premises or its rights hereunder. All policies shall name District and its successors and assigns as additional insureds.

**B. Hold Harmless and Indemnification**

Lessee shall indemnify, defend and hold District and its Board members, employees, officers, agents, servants, consultants and all related parties and the property of District including the Premises and any improvements thereon, free and harmless from any and all loss or liability resulting from the use, occupancy or enjoyment of the Premises by Lessee or any person thereon or holding under Lessee arising from any cause provided, however, that Lessee shall be required to defend but not indemnify District and its board members, officers, agents, employees and representatives, from liabilities, determined by a final adjudication, to result solely and 100% from the intentional willful and wrongful acts of District, or liabilities, determined by a final adjudication, to result solely and 100% from the gross negligence of District. The above indemnification includes, without limitation, any liabilities arising by reason of:

- (a) The death or injury of any person, including Lessee or any person who is an employee or agent of Lessee, or damage to or destruction of any property, including property owned by Lessee or by any person who is an employee or agent of Lessee, from

any cause whatsoever 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 said premises;

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

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

(d) Lessee's failure to perform any provision of this Lease or to comply with any government statute, law, rule, regulation, order or directive.

## **IX. SURRENDER; HOLDING OVER**

### **A. Surrender of Premises**

1. The Lessee shall give to District, or the District shall give to Lessee a written notice at least ninety (90) days prior to intention to surrender the Premises.
2. At the end of the Term, or other sooner termination, of this Lease, Lessee will surrender and deliver to District the possession of the Premises, together with all improvements, in good order, condition and repair, free and clear of all occupancies other than subleases or licenses terminable at the option of the District or subLease or licenses to which District shall have expressly consented in writing, and free and clear of all liens and encumbrances other than those, if any, presently existing or created by District, without payment or allowance by District on account of any such improvements.
3. Lessee or any such sub-Lessee may, upon or prior to the termination of this Lease or such subLease or license, remove, at Lessee's or such sub-Lessee's sole cost and expense, all movable furniture, trade fixtures and equipment belonging to Lessee or such sub-Lessee, provided that upon any such removal, Lessee or such sub-Lessee, at Lessee's or such sub-Lessee's sole cost and expense, shall repair any damage, of whatever kind or nature, caused by such removal.

## **X. DESTRUCTION**

### **A. Destruction, and Risk is Covered by Insurance**

If, during the Term, the Premises are totally or partially destroyed from a risk covered by the insurance, rendering the Premises totally or partially inaccessible or unusable, Lessee shall restore the Premises to substantially the same condition as it was in immediately before destruction, whether or not the insurance proceeds are sufficient to cover the actual cost of restoration. Such destruction shall not terminate this Lease. If existing laws do not permit restoration then either the

Lessee or the District can terminate this Lease immediately by giving notice to the other party. District would be recipient of all insurance funds paid to either party without objection.

**B. Destruction, and Risk Not Covered by Insurance**

If, during the Term, the Premises are totally or partially destroyed from a risk not covered by Lessee's insurance, rendering the Premises totally or partially inaccessible or unusable, Lessee, at its option and its sole expense, may restore the Premises to substantially the same condition as it was in immediately before destruction. If Lessee does not so elect to restore the Premises, District may immediately terminate the Lease and Lessee shall not have any remedies or claim for damages for such termination. District's election to terminate the Lease under this provision shall not be its sole and exclusive remedy against Lessee. If the existing laws do not permit the restoration, either the Lessee or the District can terminate this Lease immediately by giving notice to the other party

**C. Adjustment of Minor Loss -- No Insurance Trustee**

If, during the Term, the Premises are destroyed from a risk covered by the insurance and the total amount of loss does not exceed Twenty Thousand Dollars (\$20,000), Lessee shall make the loss adjustment with the insurance company insuring the loss. The proceeds shall be paid directly to Lessee for the sole purpose of making the restoration of the Premises and not for any other reason.

**D. Adjustment of Major Loss - Insurance Trustee**

If the Premises is destroyed from a risk covered by the insurance and the total amount of loss exceeds Twenty Thousand Dollars (\$20,000), Lessee shall make the loss adjustment with the insurance company insuring the loss and on receipt of the proceeds shall immediately pay them to an institutional lender or title company approved by the District ("Insurance Trustee").

All sums deposited with the Insurance Trustee shall be held for the following purposes and the Insurance Trustee shall have the following powers and duties:

1. The sums shall be paid in installments by the Insurance Trustee to the Leaseor retained by Lessee as construction progresses, for payment of the cost of restoration. A ten percent (10%) retention fund shall be established that will be paid to the Leaseor on completion of restoration, payment of all costs, expiration of all applicable lien periods, and proof that the premises is free of all mechanic's liens and lienable claims.
2. Payments shall be made on presentation of certificates or vouchers from the architect or engineer retained by Lessee showing the amount due. If the Insurance Trustee, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Lessee, the Insurance Trustee shall have the right to appoint an architect or an engineer to supervise construction and to make payments on certificates or vouchers approved by the architect or engineer retained by the Insurance Trustee. The reasonable expenses and charges of the architect or engineer retained by the Insurance Trustee shall be paid by the Insurance Trustee out of the trust fund.
3. If the sums held by the Insurance Trustee are not sufficient to pay the actual cost of

restoration Lessee, or both the Lessee and District in the case of a restoration pursuant to the District's election, the parties shall deposit the amount of the deficiency with the Insurance Trustee within twenty (20) days after request by the Insurance Trustee indicating the amount of the deficiency.

4. Any sums not disbursed by the Insurance Trustee after restoration has been completed and final payment has been made to Lessee's Leaseor shall be delivered within fifteen (15) days (after demand made by either party on the Insurance Trustee).
5. Any un-disbursed funds after compliance with the provisions of this section shall be delivered to District to the extent of District contribution to the fund, and the balance, if any, shall be paid to Lessee.
6. All actual costs and charges of the Insurance Trustee shall be paid by Lessee.
7. If the Insurance Trustee resigns or for any reason is unwilling to act or continue to act, District shall substitute a new trustee in the place of the designated Insurance Trustee.

**E. Procedure for Restoring Premises**

As with the case of Lessee's repairs, maintenance or alterations to the Premises, Lessee shall secure all necessary permits from the District and any other relevant government agency and shall be bound by all conditional of approval or mitigation measures attached and made a part of such permits.

If Lessee fails to act diligently to initiate repairs to the Premises in a timely manner, District shall have the right to terminate the Lease with thirty (30) days' notice to Lessee.

**F. District's Right To Terminate on Partial Destruction**

If there is destruction to the building and other improvements in which the Premises are located that exceeds thirty three per cent (33)% of the then replacement value of the building and other improvements from a risk not covered by the insurance, District can elect to terminate this Lease whether or not the Premises is destroyed.

**G. Abatement or Reduction of Rent**

In case of destruction, there shall be no abatement or reduction of rent, however if the District cannot provide reasonable pedestrian access to the Premises for more than 30 consecutive days the Lessee shall have the right upon ninety days written notice to quit this Lease without penalty to either party. The District shall have the right, but not the obligation, to relocate the Lessee, at the Lessee's sole cost to another location suitable to the operation of a **XX** at such time the Lease shall remain intact.

**H. Loss During Last Part of Term**

If destruction to the Premises occurs during the extension period of the Term and such destruction is from a risk not covered by insurance, Lessee can terminate this Lease by giving notice to District

not more than fifteen (15) days after the destruction.

**I. Waiver of Civil Code Sections**

Lessee waives the provisions of Civil Code §1932(2) and Civil Code §1933(4) with respect to any destruction of the Premises.

**XI. EMINENT DOMAIN**

**A. Definition of Taking**

The term "taking" as used herein means the exercise by any governmental or other permitted authority of the power of eminent domain, including but not limited to the Port San Luis Harbor District, or the exercise of any similar governmental power and any purchase or other acquisition in lieu of condemnation, including, but not limited to, a voluntary sale or conveyance in lieu of condemnation.

**B. Total Taking**

In the case of a total and permanent taking of the fee of the entire Premises, this Lease shall terminate as of the date on which such taking shall be effective.

In case of a permanent taking of such substantial part of the Premises as shall result, in the good faith judgment of Lessee, in the Premises remaining after such taking (even if restoration were made) being economically unsuitable for the use being made of the Premises at the time of such taking, Lessee, at its option, may terminate this Lease by written notice given to District within thirty (30) days after the effective date of such taking.

Any taking of the Premises of the character referred to in this provision, which results in the termination of this Lease, is referred to as a "total taking."

**C. Partial Taking**

In the event of a taking of a portion of the Premises which is not a total taking (a "partial taking"), then and in that event:

1. Both District and Lessee waive the provisions of California Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court to terminate this Lease in the event of a partial taking of the Premises.
2. This Lease shall remain in full force and effect as to the portion of the Premises remaining immediately after such partial taking, without any abatement or reduction of Base Rent, Percentage Rent or any other payment payable hereunder; and
3. Lessee will promptly commence and complete (subject to delay, hindrance or prevention by reason of any of the causes mentioned herein) restoration of the Premises as nearly as possible to its condition and character immediately prior to such partial taking, except for any reduction in area caused thereby; provided that, in the case of a partial taking for temporary use, Lessee shall not be required to effect such restoration until such partial taking is terminated.

Such restoration shall be performed in a good and workmanlike manner and undertaken in accordance with plans and specifications submitted to and approved by District in accordance with the applicable provisions of this Lease.

**D. Application of Awards**

Awards and other payments on account of a taking (less costs, fees and expenses incurred by District, and Lessee in connection with the collection thereof) shall be applied as follows:

1. Net awards and payments received on account of taking, other than (a) a taking for temporary use, (b) a taking of only the leasehold estate hereunder, or (c) a total taking, shall be held and applied to pay the cost of restoration of the Premises. The balance, if any, remaining after restoration shall be divided between District and Lessee as they may agree and, in the absence of such Lease, such balance shall be paid to District and Lessee in the ratio, as nearly as practicable, which (a) the sum of (1) the then fair market value of District's reversionary interest in the improvements and (2) the fair market value of the land (Pier), valued as unencumbered by this Lease, unimproved and to be used for the uses specified in this Lease bears to (b) the then fair market value of Lessee's interest in the improvements for the remainder of the term of this Lease, provided, however, that Lessee's share of any such balance shall be applied first to any payment of any past due Base Rent, Percentage Rent or any other payment payable hereunder, including, without limitation, any past due tax payments.
2. Net awards and payment received on account of (a) a taking for temporary use or (b) a taking of only the leasehold estate created by this Lease shall be paid to Lessee, except that:
  - a. If any portion of any such award or payment is made by reason of any damage to or destruction of the Premises, and there exists in this agreement on obligations to restore said Premises, such portion shall be held and applied to pay the cost of restoration thereof; and
  - b. If any portion of any award or payment on account of a taking for temporary use relates to a period beyond the date of termination of this Lease term, such portion shall be paid to District; and
  - c. If, at any time such award becomes payable to Lessee, any Base Rent, Percentage Rent or other payments payable hereunder (including, without limitation, any tax payments) shall be due and unpaid, such award shall be first applied to the payment thereof.
3. With the exception of payments to Lessee for loss of business goodwill, any award and payment received on account of a total taking shall be paid to the District, including any and all payments for leasehold bonus value, fixtures and equipment (other than trade fixtures) and severance damages.

**E. Notice of Taking**

In case of a taking of all or any part of the Premises or the commencement of any proceeding or negotiations which might result in such taking, the party having notice of such taking or of the

commencement of any such proceeding or negotiations shall promptly give written notice thereof to the other party.

District and Lessee shall jointly prosecute their claims for an award in a single proceeding, in which any leasehold mortgagee may join.

District and Lessee shall not prosecute separate claims for an award, except that Lessee and any sub-Lessee may prosecute separate claims for awards for moving expenses or on account of the taking of any removable trade fixtures or for the unamortized portion of any leasehold improvements made by any sub-Lessee, but only to the extent that any such separate award shall not diminish the award made to District and Lessee in respect of their joint claim.

**F. Disbursement of Awards on Partial Taking**

All awards or other payments received on account of a partial taking shall be paid to the District, to be held and disbursed in the same manner as insurance proceeds, except that any portion of such award(s) remaining after completion of any restoration shall be disbursed by the District to the Parties pursuant to applicable provisions of this Lease.

**XII. DEFAULT**

**A. Default by Lessee**

1. Any of the following occurrences or acts shall constitute an "Event of Default" under this Lease:
  - a. If Lessee at any time during the Term (and regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity or before any administrative tribunal which have or might have the effect of preventing Lessee from complying with the terms of this Lease) shall fail (1) to make payment of any installment of Base Rent, Percentage Rent or of any other payment herein specified to be paid by Lessee, when due; or (2) to observe or perform any of Lessee's other covenants, agreements or obligations hereunder; and if any such default shall not be cured as to any default referred to in clause (1) within three (3) days after receipt of written or telegraphic notice thereof by Lessee or as to any default referred to in clause (2) with the exception of an abandonment which shall have no applicable cure period, within fifteen (15) days after District shall have given to Lessee written notice specifying such default (or, in the case of any default referred to in clause (2) which cannot with diligence be cured within such fifteen-day period, if Lessee shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with diligence, it being intended, in connection with a default not susceptible of being cured with diligence within such fifteen-day period, that the time within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with diligence); or,
  - b. If Lessee shall file a petition in bankruptcy or for reorganization or for any arrangement pursuant to any present or future federal bankruptcy act or under any similar federal or state law, or shall be adjudicated as bankrupt or insolvent or shall make an assignment for the benefit of its creditors or shall

- admit in writing its inability to pay its debts generally as they become due, or if a petitioner or answer proposing the adjudication of Lessee as a bankrupt or its re-organization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof; or
- c. If a receiver, trustee or liquidator of Lessee or of all or substantially all of the property of Lessee or of the Premises shall be appointed in any proceeding brought by Lessee, or if any such receiver, trustee or liquidator shall be appointed in any proceeding brought against Lessee and if such receiver, trustee or liquidator shall not be discharged within sixty (60) days after such appointment, or if Lessee shall acquiesce in or consent to such appointment; or
  - d. If Lessee shall be liquidated or dissolved or shall begin proceedings toward its liquidation or dissolution; or
  - e. If Lessee shall fail:
    - i. To timely pay any taxes when due; or
    - ii. To observe or perform any of Lessee's other covenants, Leases or obligations under any Lease with District relating to taxes; or
  - f. If Lessee shall commit or suffer to be committed any waste or impairment of the Premises or any part thereof; or
  - g. If Lessee shall alter the improvements in any manner, except as expressly permitted by this Lease; or
  - h. If Lessee shall fail to maintain insurance as required by this Lease; or
  - i. If Lessee shall engage in any financing except as permitted by the terms of this Lease, or any other transaction creating any mortgage on the Premises, or place or suffer to be placed thereon any lien or other encumbrance, or suffer any levy or attachment to be made thereon; or
  - j. If Lessee uses the Premises for purposes other than those provided for in this Lease without the prior written approval of District; or
  - k. If Lessee fails to be open for business on the Premises for more than seventy-two (72) consecutive hours, except in the case of such closures as may be allowed or provided for by this Lease, (hereafter "abandonment."). An abandonment shall constitute an automatic event of default and forfeiture of this Lease and entitle District to reenter and retake the premises without allowing Lessee a period to cure the event of default; or
  - l. If Lessee fails to comply with any applicable laws, including all state and local health laws applicable to Lessee's business; or
  - m. If Lessee fails to obtain permission of the District before construction, renovation or repair of any portion of the Premises and fails to conform to and abide by all rules and regulations relative to the Premises and uses herein authorized, which Premises and uses are subject at all times to applicable rules, regulations, resolutions, ordinances and statutes of the Harbor District, County of San Luis Obispo, State of California, the Federal Government and all other governmental agencies when applicable; or
  - n. If Lessee fails to obtain or violates any and all required permits or licenses



- for repair, construction or renovation of any portion of the Premises or use therein from the regulatory body having jurisdiction thereof before such repair or use is undertaken; or
- o. If Lessee breaches any other material term of this Lease.
  - p. Lessee and District further agree that Lessee's failure to pay Base Rent, Percentage Rent or any other payment specified to be paid by Lessee when due, for a third time during the course of this Lease or any extension thereof, shall be deemed an incurable breach of the Lease and District shall be able, but not required, to immediately pursue all rights and remedies available for an Event of Default as defined herein.
2. Upon the occurrence of any such Event of Default, in addition to any and all other rights or remedies of District hereunder or by law or in equity, it shall be, at the option of District, without further notice or demand of any kind to Lessee or any other person:
- a. The right of District to declare the Term hereof ended and to terminate this Lease, in which event Lessee shall promptly surrender possession of the Premises to District, and pay to District all Base Rent, Percentage Rent and all other payments due District hereunder to the date of such termination. If Lessee does not so promptly surrender the Premises, District shall have the immediate right to reenter the Premises and take possession thereof and remove all persons therefrom, and Lessee shall have no further claim thereon or thereunder;
  - b. The right of District, without terminating this Lease, to enter the Premises and occupy the whole or any part thereof for and on account of Lessee and to collect said rent and any other rent that may thereafter become payable to Lessee from any of its sub-lessees or sub-Lessees, to refuse, notwithstanding any other term or provision of this Lease, to permit and to deny the right of Lessee to remove any or all of Lessee's movable furniture, trade fixtures, equipment, improvements or personal property located in, on or upon the Premises, and to use and take exclusive possession of same without payment to Lessee or cost to District for so long as District so occupies the Premises or until this Lease is terminated pursuant to subsection c. below; and
  - c. The right of District, even though it may have reentered the Premises pursuant to subsection b. above, to thereafter elect to terminate this Lease.
3. In the event District reenters the Premises pursuant to the provisions of subsection 2.c. above, District shall not be deemed to have terminated this Lease and the liability of Lessee to pay Base Rent, Percentage Rent and sums payable hereunder thereafter shall continue unless District notifies Lessee in writing that District has so elected to terminate this Lease. Lessee further acknowledges and agrees that the service by District of any notice pursuant to the unlawful detainer or similar such statute of the State of California and the surrender of possession pursuant to such notice shall not be deemed to be a termination of this Lease.

Lessee hereby irrevocably appoints District as agent for the receipt of any rental

incoming ordinarily paid to Lessee from any sub-lessee, licensee, sub-Lessee or otherwise arising or relating from the use of the Premises or operation of the business and allowable uses of this Lease.

Lessee hereby irrevocably appoints District as agent and attorney in fact of and for Lessee to so enter upon the Premises in the Event of Default by Lessee hereunder, to remove any and all furniture and personal property whatsoever situated upon the Premises, and to place such furniture and personal property in storage for the account of and at the expense of Lessee. The storage, removal, disposal and transfer of title to any such furniture, fixtures or personal property shall be governed by the terms of Section V herein. In the event that after taking possession and title to such abandoned property, District so elects to sell such items, District shall apply the proceeds of such sale first, to the cost and expenses of such sale, including reasonable attorneys' fees actually incurred, second, to the payment of the costs of or charges for removing and storing any such furniture and personal property, third, to the payment of any other sums of money which may then or thereafter be due to District from Lessee under any of the terms of this Lease, and fourth, the balance, if any, to Lessee. Lessee hereby waives all claims for damages that may be caused by District's reentering and taking possession of the Premises or removing and storing furniture and personal property as herein provided, and will save District harmless from any losses, costs or damages occasioned thereby. No such reentry shall be considered or construed to be a forcible entry as the same is defined in the Code of Civil Procedure of the State of California.

4. Should District elect to terminate this Lease pursuant to the provisions of subsection 2.a. or 2.c. above, District may recover from Lessee as damages:
  - a. The worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus
  - b. The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Lessee proves could have been reasonably avoided; plus
  - 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 such rental loss that Lessee proves could be reasonably avoided; plus
  - d. Any other amount necessary to compensate District for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses incurred by District in maintaining or preserving the Premises after such default, preparing the Premises for re-letting to a new Lessee, any repairs or alterations to the Premises for such re-letting, leasing commissions or other costs necessary or proximate to re-letting the Premises; plus
  - e. At District's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of California.

As used hereinabove, the term "worth at the time of award" is computed by allowing interest at the rate of twelve percent (12%) per annum. For purposes of determining District's damages under this subsection 4, the annual rent payable hereunder shall be deemed to be equal to the average rent paid by Lessee for the calendar year immediately preceding the date of Lessee's default.

5. Trade Fixtures and Equipment

If there occurs an Event of Default, all of Lessee's fixtures, equipment, improvements, additions, alterations shall remain on the Premises and in that event, and continuing during the length of said default, District shall have the right to take the exclusive possession of same and to use same without payment to Lessee or any other party.

6. Remedies Not Exclusive

No right or remedy herein conferred upon or reserved to District or Lessee is intended to be exclusive of any other right or remedy, except as expressly stated herein, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing at law or in equity or by statute, except such rights or remedies as are expressly limited herein.

7. Waiver of Rights of Redemption

Lessee hereby waives for itself and all those claiming under it all rights which it may have under any present or future constitution, statute or rule of law (a) to redeem the Premises after termination of Lessee's right of occupancy by order or judgment of any court or by any legal process or writ or (b) which exempts property from liability for debt or for distress for rent.

**B. Right of District to Perform**

All covenants and Leases to be performed by Lessee under any of the terms of this Lease shall be performed by Lessee at Lessee's sole cost and expense and without any abatement of rent.

Subject to any rights of Lessee to contest, if Lessee shall fail to pay any sum of money, other than Base Rent and Percentage Rent, required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue for fifteen (15) days after notice thereof by District, District may, but shall not be obligated so to do, and without waiving or releasing Lessee from any obligations of Lessee, make any such payment or perform any such act on Lessee's part to be made or performed as in this Lease provided. All sums so paid by District and all necessary incidental costs and expenses, including, without limitation, reasonable attorneys' fees, together with interest thereon at the maximum rate permitted by law from the date of such payment by District shall be payable as additional rent to District on demand, and Lessee covenants to pay any such sums, and District shall have, in addition to any other right or remedy of District, the same rights and remedies in the event of the nonpayment thereof by Lessee as in the case of default by Lessee in the payment of the rent.

If Lessee fails to maintain quality of character and operation in the manner specified in this Lease, then:

1. District shall notify Lessee in writing, specifying the complaint and, if possible, requesting means of cure.
2. If Lessee has not cured the condition specified in the complaint within fifteen (15) days after receipt of notice, or if cure cannot be achieved within fifteen (15) days and Lessee has not commenced cure and is not proceeding diligently, then:
  - a. District may reenter the Premises without terminating this Lease and, as Lessee's attorney in fact, cure the default for the account of Lessee; or
  - b. If sums of money are expended by District, Lessee agrees to repay such sums immediately upon demand and, if not paid, said sums shall bear interest at eighteen percent (18%) or the maximum rate permitted by law, whichever is greater, until paid. All said sums shall constitute additional rent due hereunder.

**C. Default by District**

In the event District shall fail to perform or observe any of the covenants or provisions contained in this Lease on the part of District to be performed or observed within thirty (30) days after written notice from Lessee to District specifying the particulars of such default or breach of performance, or if more than thirty (30) days shall be reasonably required because of the nature of the default, if District shall fail to proceed diligently to cure such default after such notice, then in that event District shall be responsible to Lessee for any and all actual damages sustained by Lessee as a direct result of District's default; provided however, the Lessee as a duty to mitigate or reduce its damages to the fullest extent possible.

**D. No Recourse**

Lessee agrees that it shall have no recourse with respect to any obligation of District under this Lease, or for any claim based upon this Lease, or otherwise, against any employee, commissioner, Leaseor or attorney, past, present or future of District, or against any other person than District, and against District only to the extent of the unimproved lease-site, whether by virtue of any constitution, statute, rule of law, rule of equity, enforcement of any assessment as penalty, or by reason of any matter prior to the execution and delivery of this Lease, or otherwise, all such liability, by Lessee's execution and delivery hereof and as part of the consideration or District's obligations hereunder being expressly waived.

**XIII. SUSPENSION OF LEASE RIGHTS AND OBLIGATIONS**

**A. Suspension of Lease Rights and Obligations During the Extension Term**

If District and Lessee agree to extend the Lease Term into the Extension Term, as defined and described in Section I.B.2 herein, all terms and conditions of the Lease shall remain in full force and effect except that District shall have the right to suspend the Lease, in its sole and absolute discretion, upon three (3) months written notice to Lessee. This limited suspension right, may only be invoked for the purpose of allowing District to perform activities according to the Harbor District's Master Plan and future plans for the maintenance, repair, reconstruction and/or reconfiguration of Harford Pier, but does not impact any of the Harbor District's or Lessee's other rights to terminate this Lease as provided herein. Suspension of this Lease shall mean that the rights and obligations of the parties under this Lease, including but not limited to the Lessee's obligations to pay rent and provide insurance and the District's obligation to provide access to and possession of the Premises, are suspended until further notice from the District. Upon receipt of a

suspension notice from the District, Lessee may terminate this Lease without incurring any liability to the District. Suspension of the Lease pursuant to this Section shall not act in any way to extend the Lease Term or Extension term. Lessee understands and accepts this consequence as a part of the consideration for entering into this Lease. If the District's maintenance, repair, reconstruction and/or reconfiguration projects do not require uninhibited access to the Premises, the District shall not have the right to invoke the three (3) month suspension provision provided herein.

#### **XIV. UNAVOIDABLE DELAY; FORCE MAJEURE**

If either party shall be delayed or prevented from the performance of any act required by this Lease by reason of war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restriction or priority; unusually severe weather; inability to secure necessary labor, materials or tools; acts of the other party; acts or failures to act of the District or any other public or governmental agency or entity (other than those acts or failures to act of District shall not excuse performance by District); or any other similar causes, without fault and beyond the reasonable control of the party claiming an extension of time to perform, performance of such act shall be excused for the period of the delay, provided, however, that nothing in this provision shall excuse Lessee from the prompt payment of any Base Rent, Percentage Rent or other monetary charges required of Lessee, and provided, further, that the party delayed or prevented from the performance of any act as above described has notified the other of such delay or prevention within thirty (30) days of the inception thereof, and has thereafter kept said party regularly informed of the status of such delay or prevention.

#### **XV. ENTRY BY DISTRICT**

District and its agents may enter and examine the Premises at all reasonable times in order to determine whether Lessee is in compliance with the provisions hereof. District will exercise this right of inspection in a way that will cause as little interference, inconvenience, and disturbance to Lessee's operation as possible.

District and its authorized representatives reserve and shall have the right to enter upon the Premises at all reasonable times to inspect the same, to show said Premises to prospective purchasers, mortgagees or Lessees or to post notices, including, without limitation, notices of non-responsibility, all of the foregoing without abatement of rent.

Except in the event of an emergency, District shall use all reasonable efforts to limit such entry to regular business hours after giving reasonable notice to Lessee of the time and purpose of the entry. In the event of an emergency, District shall have the right to use any and all means which District may deem necessary or proper to open any gates in order to obtain entry to any portion of the Premises, and any entry to the Premises, or portions thereof obtained by District by any of said means or otherwise, shall not under any circumstances be construed or deemed to be forcible or unlawful entry into, or a detainer of, the Premises or an eviction, actual or constructive of Lessee from the Premises or any portions thereof.

#### **XVI. GENERAL**

##### **A. Estoppel Certificates**

District or Lessee, as the case may be, shall execute, acknowledge and deliver to or for the benefit

of the other or to or for the benefit of any Lender, at any time, from time to time, and the expense of the party requesting a certificate as herein below described, promptly upon request, its certificate certifying:

1. That this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications),
2. The dates, if any, to which all rents due hereunder have been paid,
3. Whether there are then existing any charges, offsets or defenses against the enforcement by District or Lessee of any Lease, covenant or condition hereof on the part of the other party to be performed or observed (and, if so, specifying the same), and
4. Whether there are then existing any defaults by Lessee and known by District in the performance or observance by Lessee of any Lease, covenant or condition hereof on the part of Lessee to be performed or observed and whether any notice has been given to Lessee of any default which has not been cured (and, if so, specifying the same).

Any such certificate may be relied upon by a prospective purchaser, mortgagee or trustee or beneficiary under a deed of trust of the Premises or the leasehold estate hereunder or any part thereof.

**B. Waiver**

No waiver of any default under this Lease shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege or option under this Lease shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege or option hereunder. No waiver of any provision hereof by District or Lessee shall be deemed to have been made unless and until such waiver shall have been reduced to writing and signed by District or Lessee, as the case may be. The receipt and acceptance by District of rent with knowledge of any default under this Lease shall not constitute or operate as a waiver of such default. Failure by District or Lessee, as the case may be, to enforce any of the terms, covenants or conditions of this Lease for any length of time or from time to time shall not be deemed to waive or decrease the right of District to insist thereafter upon strict performance by Lessee.

**C. Notices**

If at any time after the execution of this Lease, it shall become necessary or convenient for one of the Parties hereto to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing and shall be served personally or by depositing the same in the registered or certified United States mail, return receipt requested, postage prepaid and

1. if intended for District shall be addressed to:  
Harbor Manager  
Port San Luis Harbor District  
P.O. Box 249  
Avila Beach, CA 93424

with a copy to:

Adamski Moroski Madden & Green, LLP  
P.O. Box 3835  
San Luis Obispo, CA 93403-3835

2. if intended for Lessee shall be addressed to:  
[enter name, & address]

or to such other address as either party may have furnished to the other in writing as a place for the service of notice. Any notice so mailed shall be deemed to have been given as of the time the same is deposited in the United States mail.

**D. Corporate Authority**

If Lessee signs as a corporation, Lessee covenant that each of the persons executing this Lease on behalf of Lessee is a duly authorized and existing officer of the corporation, that Lessee has, is and shall remain during the term of this Lease qualified to do business in the State of California, that the corporation has full right and authority to enter into this Lease and that each, both or all of the persons signing on behalf of the corporation were authorized to do so. Upon District's request, Lessee shall provide District with evidence reasonably satisfactory to District confirming the foregoing covenants and warranties.

**E. No Light, Air or View Easement**

Lessee covenants and agrees that no diminution of light, air or view by any structure which may hereafter be erected (whether or not by District) shall entitle Lessee to any reduction or abatement of Base Rent, Percentage Rent or other amount payable under this Lease, result in any liability of District to Lessee or in any other way affect this Lease or Lessee's obligations hereunder.

**F. District's Covenant of Quiet Enjoyment**

District hereby covenants to Lessee that District has title, subject to the Tidelands Trust, to the Premises, free of all claims, liens and encumbrances. Upon Lessee paying the Base Rent, Percentage Rent and other amounts payable hereunder and observing and performing all of the covenants, conditions and provisions on Lessee's part to be observed and performed hereunder, Lessee shall peaceably hold and quietly enjoy the Premises for the entire term hereof without hindrance, molestation or interruption by District or any party claiming through or under District.

**G. No Joint Venture**

It is agreed that nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between District and Lessee or between District and any other party or cause District to be responsible in any way for the debts or obligations of Lessee or any other party.

**H. Provisions Subject to Applicable Law**

All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law and are intended to be limited to the extent necessary so that they will not render this Lease invalid, unenforceable or not entitled to be recorded under any applicable law. If any term of this Lease shall be held to be invalid, illegal or unenforceable, the validity of the other terms of this Lease shall in no way be affected thereby.

**I. Attorneys' Fees.**

In the event that either party hereto brings any action or files any proceeding in connection with the enforcement of its respective rights under this Lease or as a consequence of any breach by the other Party of its obligations under this Lease, the prevailing Party in such action or proceeding shall be entitled to have its reasonable attorneys' fees and out-of-pocket expenditures paid by the losing Party.

**J. Miscellaneous**

1. Each party hereby agrees to indemnify the other party from and against any real estate brokerage commissions or other such obligations incurred by the indemnifying party as the result of the negotiation or execution of this Lease.
2. Lessee shall not pay any money or provide any other consideration of any kind whatsoever or employ, Lease with or sub-Lease or license to or with any person or entity if such payment of money or provision of other consideration would violate or would have a reasonable likelihood of violating any law, statute, ordinance, directive, regulation, decision or opinion now or hereafter enacted or promulgated by the Harbor District, the State of California or any governmental public or judicial body, agency or department relating in any manner to conflicts of interest of if such payment or provision of consideration is to a person or entity which has discretionary authority or power of any kind over the development, use or occupancy of the Premises or any part thereof or with respect to the enforcement or interpretation of this Lease.
3. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, but this Lease shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.
4. District makes no representation or warranty of any kind regarding the continued availability of parking and Lessee hereby acknowledges that parking may be reduced, interrupted, modified, regulated and District shall have no liability therefore.
5. Nothing in this Lease shall be construed to create any duty to, any standard of care with reference to or any liability to anyone not a party except as otherwise expressly provided herein.
6. The words "District" and "Lessee" as used herein shall include a corporation and include the plural as well as the singular. Words used in the masculine gender include the feminine and neuter. If there be more than one District and Lessee, the obligations hereunder imposed upon District and Lessee shall be joint and several.
7. The captions used herein are for convenience of reference only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions hereof.



8. Time is of the essence of each and all of the Leases, covenants and conditions of this Lease.
9. This Lease shall be interpreted in accordance with and governed by the laws of the State of California. The language in all parts of this Lease shall be, in all cases, construed according to its fair meaning and not strictly for or against District or Lessee.
10. Lessee agrees to meet, cooperate and communicate with the Harbor District's Commission, committees and management in a reasonable manner.
11. Lessee agrees to comply with the following Water and Energy Conservation Guidelines applicable to Lessee's business on potable and non-potable water use at the Premises, as they may be modified from time to time:
  - a. Running water will not be used for the purpose of cleaning buildings, pier deck, stairs, landings, gangways, and hard surfaces, except as necessary for approved health and safety reasons or for the prevention of significant deterioration of property.
  - b. All hoses will be continuously equipped with an automatic shutoff nozzle.
  - c. Polluted or contaminated water run-off and overflows into the ocean shall be strictly prohibited.
  - d. Leaks will be reported as soon as discovered to the Harbor District's Facilities Staff at 595-5449 (Shop) and 595-5400 (Harbor Office).
  - e. Lessee shall replace existing electronic, refrigeration, mechanical equipment with energy-saving equipment as need arises for replacement of old, obsolete or worn-out equipment. Specifications for such energy-saving equipment shall include the latest recommended by the federal and state.
  - f. Lessee shall avail itself of other energy conservation programs, inspections and measures offered by utility companies free of charge and shall comply with reasonable energy saving recommendations of such programs.
  - g. Such other restrictions of a similar nature found by the Harbor Manager to be a reasonable means of temporarily reducing water use during drought conditions. Such restrictions shall be in addition to any requirements of law.
12. The area, if any, under pier decks, sidewalks, driveways or passageways adjoining the Premises or any part thereof is subject to all prior and existing rights of the Harbor District, and, furthermore, any tax, charge, assessment or rental of whatever form or nature and however denominated, which may hereafter be imposed, at any time or from time to time, by the District or by its authority or by any other public authority for the use or occupancy of such area shall be borne and paid by Lessee, except as otherwise herein expressly provided.
13. This Lease constitutes the entire Lease between District and Lessee with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral and

written. Evidence of prior negotiations is inadmissible for the purpose of providing meaning to any ambiguity to the terms provided herein.

This Lease may not be amended or modified in any respect whatsoever except by an instrument in writing signed by District and Lessee.

14. The Lessee's representative is required to personally guarantee performance of and compliance with all of the terms and conditions of this Lease, particularly, but not limited to, those relating to the prompt payment of rent, the keeping of Lessee business records, and the reporting of gross receipts to the District. A copy of the Personal Guarantee required to be executed is attached to this Lease as Exhibit B.

## **XVII. EXHIBITS**

The following exhibits are attached hereto as Exhibits and hereby made a part of this Concessions Lease as though fully set forth herein.

**EXHIBIT** - – Description of the Premises

**EXHIBIT** - – Personal Guarantee

**XVIII. LEASE EXECUTION**

**IN WITNESS WHEREOF**, District and Lessee have executed this Lease Agreement by proper persons thereunto duly authorized as of the date first hereinabove written.

**LESSEE:**

Date: \_\_\_\_\_

\_\_\_\_\_

**DISTRICT:**

Date: \_\_\_\_\_

\_\_\_\_\_  
Andrea K. Lueker, Harbor Manager  
Port San Luis Harbor District  
A California Special District

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Mr. Thomas D. Green, Esq.  
District Counsel

\_\_\_\_\_  
Attorney to Lessee