

Lease  
between  
Pillar Point Seafood  
and  
San Mateo County Harbor District





## **SAN MATEO COUNTY HARBOR DISTRICT**

### **LEASE**

This Lease (hereinafter called "Lease") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, by and between the San Mateo County Harbor District, a political subdivision of the State of California (hereinafter called "Landlord"), having its principal place of business at 400 Oyster Point Blvd., Suite 300, South San Francisco, CA 94080 and Pillar Point Seafood, (hereinafter called "Tenant"), having its principal place of business at Area 3, Johnson Pier, Pillar Point Harbor, mailing address: PO Box 193, Maxwell, CA 95955, with references to the following facts and objectives:

### **RECITALS**

A.Landlord is the operator of that certain parcel of real property situated in the County of San Mateo, State of California known as Pillar Point Harbor, APN 047-083-060 (hereinafter called "Harbor").

B.Tenant desires to lease from Landlord and Landlord desires to lease to Tenant a portion of the aforementioned real property known as Area 3 at Johnson Pier, consisting of approximately thirty three (33) feet by nineteen (19) feet, including upper and lower levels of the building located at the westerly extension of the Johnson Pier and more particularly described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter called "Premises").

C.Tenant wishes to lease the Premises for its commercial fish-buying business, and in accordance with the terms and conditions below.

NOW, THEREFORE, for and in consideration of the Premises and of the mutual obligations, agreements, and representations and warranties herein contained, the parties do hereby agree as follows:

### **AGREEMENT**

#### **1.0TERMS AND DEFINITIONS**

As used in this Lease, the following words and phrases have the following meanings:

Alteration: any addition or change to, or modification of, the Premises or demolition and construction of new Improvements made by Tenant, whether as part of the Initial Tenant Improvements or otherwise.

Approvals: those permissions required by law or regulation prior to, or during, the use and operation of the Premises.

Commencement Date: the date on which Tenant opens the Premises for business, but no later than six (6) months after the Effective Date of this Lease.

County: San Mateo County.

Department: is the Department of Boating and Waterways in the State of California Natural Resources Agency.

Effective Date: the most recent date of signatures by the parties to this Lease.

Event of Default: is defined in Section 21.1.

Expiration: the coming to an end of the time specified in the Lease as its duration, including any Extension Term.

Finfish: Finned vertebrate fish other than wetfish (see definition on page 3 below) including e.g. salmon, halibut, rockfish.

Fish: shall mean any type of fish, crustacean, or other seafood harvested from the sea by any method.

Fixture: personal property that is attached to the Premises such that it becomes an irremovable part of the real property; Tenant's objects of trade ("trade fixtures") that can be removed without damage to the Premises are not Fixtures under this Lease.

Good Condition: the good physical condition of the Premises and each portion thereof. "In Good Condition" means in good order and repair, clean, broom clean, free of graffiti and accumulated trash, and fully operative.

Gross Receipts: is defined in Section 6.1(d).

Harbor Commission: shall mean the governing board of Landlord.

Hazardous Material: any hazardous or toxic substance, material or waste that is or becomes regulated by any local government authority, the State of California or the United States Government.

Impositions: all taxes and assessments due during the Lease Term.

Improvements: all buildings, other structures, fixtures, sidewalks, curbs, gutters, paved areas, structures, signs, water wells, water supply systems, sewage systems, waste water systems, fencing, utility systems, parking area improvements, service and trash area improvements, landscaping, lighting, exterior fountains, sculptures, flags, banners or historic artifacts, or any other improvements now or hereafter constructed or maintained on the Premises or any alteration or additions thereto, except for Tenant's Personal Property.

Inflation Factor: is defined in Section 5.2.

Insurance Requirements: all terms of any insurance policy covering or applicable to the Premises or any part thereof, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Premises or any alteration or part thereof or any use or condition of the Premises or any part thereof.

Landlord: San Mateo County Harbor District, a political subdivision of the State of California.

Law: any judicial decision, statute, constitution, ordinance, resolution, regulation, rule, administrative order, or other requirement of any municipal, county, state, federal or other government agency or authority having jurisdiction over the parties or the Premises, in effect either at the time of execution of the Lease or at any time during the Lease Term, including without limitation, any regulation or order of a quasi-official entity or body.

Lease: this Lease.

Leasehold Mortgage: a mortgage secured by the leasehold estate created by this Lease.

Legal Requirements: all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or any or at any time hereafter may be applicable to the Premises or any part thereof or any of the adjoining sidewalks, curbs, streets or ways, or any use or condition of the Premises or any part thereon.

Maintenance: replacement, repainting, and cleaning, and such labor and materials as required to keep the Premises clean, and any associated landscaping healthy and aesthetically pleasing, and all requirements imposed by Landlord.

Minimum Base Rent: the base rent to be paid by Tenant to Landlord on a monthly basis throughout the Lease Term, and which shall be two thousand five hundred dollars (\$2,500.00) per month adjusted annually by the Inflation Factor.

Mortgage: a mortgage or deed of trust.

Mortgagee: the holder of a mortgage or deed of trust.

Non-Family Member: any Person other than Lease signatory's spouse, children, or siblings.

Person: any individual, corporation, association, partnership, joint venture, organization, or any other business entity, or a governmental or political unit or agency.

Premises: is as defined in the Recitals, herein, and including all improvements constructed by the Tenant thereon during the Lease Term.

Tenant's Personal Property: the equipment, signs, furniture, furnishings, merchandise, and moveable property placed in the Premises by the Tenant which have not become Fixtures.

Termination: the ending of the Lease Term for any reason before Expiration.

Wetfish: E.g., Sardines, mackerels, anchovies, market squid, coastal tunas.

Unavoidable Delays: delays due to strikes, acts of God, governmental restrictions, enemy action, riot, civil commotion, fire, unavoidable casualty or any other causes beyond the control of Landlord or Tenant, as the case may be; provided, however, that no delay may be deemed unavoidable if Landlord would be in danger of incurring any civil or criminal liability for Tenant's failure to perform the required act. In the event of a delay which would qualify as an Unavoidable Delay as defined herein but for the danger of the Landlord incurring civil liability, such delay shall be deemed to be an unavoidable delay if Tenant agrees in writing to indemnify

Landlord and hold it harmless from and against any liability, damages, cost, expense, claim or cause of action, including without limitation, reasonable attorney's fees incurred by Landlord as a result of such delay. Unavoidable delays shall not include delays resulting from either (a) Tenant's inability to obtain sufficient funds or firm financing commitments to complete construction or (b) inability of Tenant to obtain a building permit issued by the County of San Mateo for the Initial Tenant Improvements.

## 2.0 AGREEMENT TO LEASE

2.01 Premises Leased. Upon and subject to the conditions and limitations set forth below, Landlord leases to Tenant, and Tenant leases from Landlord, the Premises for the term and at the rental provided in this Lease, together with all rights-of-way or rights of use servitudes, licenses, tenements, hereditaments, appurtenances and easements now or hereafter belonging or pertaining to any of the Premises. However, this Lease confers no rights with regard to the subsurface of the Premises more than fifteen (15) feet below ground level, except to the extent necessary to install pilings or other support for the Improvements, nor does it confer rights to airspace above the roof of the Premises other than air space rights for signs which may be placed upon the roof of the Premises but which shall comply with all Legal Requirements, as well as policies and guidelines for signage of Landlord, the County, and other regulatory agencies, provided that the total height of the Premises including the signs, shall not exceed twenty-eight (28) feet. The parties hereto agree that said letting and hiring is upon and subject to the terms, covenants and conditions herein set forth and Tenant covenants as a material part of the consideration for this Lease to keep and perform each and all its terms, covenants and conditions. Landlord shall take no action with respect to its reserved subsurface rights that would endanger or impair the Improvements or interfere with the activities taking place on the Premises.

2.01.1 Rents and Services. The ultimate purpose of the Lease for the benefit of the public is the complete and continuous use of the Premises. All facilities and services shall be made available to the public without any illegal discrimination as defined by California and Federal law.

The immediate purpose of this Lease is the use of the Premises for operation and maintenance of a fish-buying business.

It is agreed that the ultimate and immediate purposes are consistent and compatible. Accordingly, Tenant covenants and agrees to operate the Premises fully and continuously to accomplish said purpose consistent with sound business practice and subject to the terms of this Lease.

2.01.2 Cooperation Among Tenants. Tenant shall cooperate with all other tenants of Landlord who will be operating enterprises in the vicinity of the Premises, and shall conduct its operations so as to avoid interference with the operations of other tenants. Landlord may, but is not required to, resolve any difference or conflict that may arise between Tenant and other tenants operating enterprises in the vicinity of the Premises. If the operations of Tenant are

impaired because of any acts or omissions of such other tenants, Tenant shall have no claim against Landlord on that account.

2.02 Lease Term. The term of the Lease (hereinafter called the "Lease Term") shall commence on the date on which Tenant opens the Premises for business but no later than six (6) months from the Effective Date of this Lease ("Commencement Date"), and expire at midnight on the same day five (5) years subsequent, unless Tenant exercises the option pursuant to Section 3.0 of this Lease, or unless sooner terminated pursuant to any provision hereof. Notwithstanding any of the provisions of this paragraph, Tenant shall submit to the County of San Mateo all necessary application materials, plans, drawings, and specifications for discretionary land use approvals permitting construction no later than ninety (90) days following the Effective Date. Failure to submit said application materials, plans, drawings, and specifications within this time period shall cause the immediate Termination of this Lease unless waived in writing by Landlord by delivery of written notice to Tenant, whereupon each party shall be released from its obligations under this Lease effective upon the date of such notice.

2.02.1 Delay in Possession. If for any reason, Landlord fails to deliver possession of the Premises to Tenant by the Commencement Date, Landlord shall not be liable for any Damages resulting from that failure, nor shall that failure affect the validity of this Lease or the obligations of Tenant hereunder or extend the Lease Term, but in such case, Tenant shall not be obligated to pay rent or perform any other obligation under the terms of this Lease, except as may be otherwise provided in this Lease, until possession of the Premises is tendered to Tenant. If Landlord has not delivered possession to Tenant within thirty (30) days after the Commencement Date, Tenant may, however, cancel this Lease, by providing written notice to Landlord within ten (10) days after the end of the thirty(30)-day period; in that case, the parties shall be discharged from all obligations under this Lease, provided, however, that if the written notice of Tenant is not received by Landlord within that ten (10) day period, Tenant shall have no further right to terminate the Lease under this provision.

2.02.2 Right of Entry. During the period commencing upon the Effective Date and continuing through the Commencement Date, Tenant shall have a revocable license to enter the Premises for the purpose of conducting such studies, surveys, tests and investigations as are necessary for the planning and design of the Initial Tenant Improvements to be constructed. Such license shall be revocable only in the Event of a Default by Tenant, after notice provided by Landlord to Tenant regarding Tenant's default and the expiration of any applicable grace period.

During the period between the Effective Date and the Commencement Date, Landlord shall not use the Premises in a manner which results in an increase in Tenant's construction costs or interferes with the progress of Tenant's construction of the facilities. Tenant shall have no vested or possessory interest in the Premises during this period except for its right and title to the Initial Tenant Improvements it constructs thereon.

During this period, Tenant shall maintain insurance coverage as provided elsewhere in Section 16 below.

2.03Preparation of Premises by Landlord. Landlord shall have no obligation to prepare the Premises for Tenant's occupancy. Furthermore, Landlord makes no warranties or representations as to the condition of the Premises or their suitability for Tenant's operation except as explicitly set forth in Section 10 below.

2.04Early Termination. If, after exercising due diligence, but in no event later than one hundred twenty (120) days after the Commencement Date, Tenant has not obtained a building permit issued by the County of San Mateo permitting Tenant to construct the Initial Tenant Improvements or has not furnished to Landlord evidence of sufficient funds or firm financial commitments to complete the construction in the form of a letter of commitment from Tenant or Tenant's lending institution setting forth the amount of the loan and the terms and conditions of the financing, this Lease shall terminate immediately unless such Termination has been waived in writing by Landlord by delivery of written notice to Tenant. Upon such notice of waiver, each party shall be released from its obligations under this Lease effective upon the date of such notice, except that Tenant, at Tenant's expense, shall restore the Premises to the condition in which they were made available to Tenant if Tenant has made any modifications to them, unless Landlord waives the right to such restoration in writing.

2.05End of Lease Term.

2.05.1Surrender. Upon the Expiration or other Termination of the Lease Term, Tenant shall quit and surrender to Landlord, or Landlord's successor in interest, the Premises including all Improvements in good condition, except for (a) ordinary wear and tear occurring after the last necessary Maintenance made by Tenant and (b) destruction to the Premises covered by Paragraphs 17.1 and 17.2. Any damage or deterioration of the Premises shall not be deemed ordinary wear and tear if the same could have been prevented by good Maintenance practices. Tenant shall repair any damage to the Premises occasioned by the installation or removal of Tenant's Personal Property, alterations, furnishings, and equipment. Tenant hereby agrees to execute all documents as Landlord may reasonably deem necessary to evidence any Termination of the Lease Term.

If Tenant fails to surrender the Premises to Landlord on Expiration or Termination of the Lease Term as required by this Paragraph, Tenant shall indemnify, defend and hold Landlord harmless from all Damages resulting from Tenant's failure to surrender the Premises, included but not limited to and without limitation, claims made by a succeeding tenant resulting from Tenant's failure to surrender the Premises, and Tenant waives all claims against Landlord for any Damages to Tenant resulting from Landlord's retention or disposition of any Improvements, Alterations, or Tenant's Personal Property. Tenant shall be liable to Landlord for all costs incurred by Landlord for storing, removing, or disposing of any Improvements, Alterations, or Tenant's Personal Property. In addition, Tenant shall be liable to Landlord for any Damages Landlord may sustain as a result of such failure to surrender and shall pay all costs and attorney's fees as may be necessary to evict Tenant.



The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereon, shall not work a merger, and shall, at the option of Landlord, operate as an assignment to it of any or all subleases or subtenancies.

2.05.2 Tenant's Personal Property. Tenant shall within thirty (30) days, at its own expense, remove all of Tenant's Personal Property which, at Landlord's option, may include all removable Fixtures and installations of any kind or placed on the Premises by Tenant, and shall leave the leased Premises in clean condition, and shall perform all restoration made necessary by the removal of such Personal Property at or prior to the Expiration or Termination of the Lease Term. Landlord may remove any of the Tenant's Personal Property or Fixtures that Tenant has not removed from the Premises on Expiration or Termination of the Lease Term and store Tenant's Personal Property in a public warehouse or elsewhere for such a period of time as may be required by applicable Law, after which time Landlord may retain or dispose of all such property in accordance with applicable Law. Tenant waives all claims against Landlord for any Damage to Tenant resulting from Landlord's retention or disposition of any Tenant's Personal Property as provided herein. Tenant shall be liable to Landlord for Landlord's costs for storing, removing and disposing of any Tenant's Personal Property.

2.05.3 Ownership of Improvements. Upon Expiration or Termination of this Lease, title to such immovable Improvements, including all buildings, structures, Fixtures and facilities constructed or placed within the Premises by Tenant, which are or have been within the Lease Term attached or fastened to the ground, deck, floor or walls of a structure, such that they cannot be removed without damage to the Premises, shall become the property of Landlord or Landlord's successor in interest at the Expiration of the Lease or upon earlier Termination thereof, and Tenant shall execute such instruments as may be reasonably required by Landlord confirming Landlord's title to such Improvements or Fixtures located on the Premises.

2.05.4 No Relocation. Tenant acknowledges, agrees and expressly waives any and all rights to relocation benefits under federal or state law upon the Termination or Expiration of this Lease.

2.06 Holding Over. Any holding over by Tenant after the Expiration or Termination of this Lease, and any acceptance of Rent by Landlord thereafter, shall not constitute a renewal or give Tenant any rights hereunder in the Premises, except with the prior written consent of Landlord, which consent may be withheld for any reason whatsoever. Any holding over by Tenant after the Expiration or Termination of this Lease, with the written consent of Landlord, shall be construed to be a tenancy from month to month, and shall be terminable upon thirty (30) days written notice given by either Landlord or Tenant. All the terms, covenants, conditions, and provisions of this Lease shall apply to any such month-to-month tenancy. Landlord shall respond to a request to holdover within a reasonable time.

If Tenant holds over after the Expiration or Termination of this Lease without the express written consent of Landlord, upon the date of such Expiration or Termination Tenant shall become a tenant at sufferance only at a rental rate equal to one hundred fifty percent (150%) of the rent that would be applicable to the Premises pursuant to Sections 5 and 6 below, for a

month-to-month tenancy, terminable upon thirty (30) days' written notice by either party to the other, and otherwise subject to the terms, covenants, conditions, and provisions herein specified, so far as applicable. Nothing in this Paragraph 2.6 shall be construed as consent by Landlord to any holding over by Tenant.

### 3.0OPTION TO RENEW

Subject to the Provisions hereinafter set forth, Landlord grants to Tenant two (2) options to renew this Lease for an additional five (5) years each on the same terms, conditions, and provisions as contained in this Lease, except that the Minimum Base Rent shall be adjusted as provided in Section 5.0.

The first option to renew may be exercised by Tenant, provided no Event of Default by Tenant is then occurring, by issuing a notice in writing, received by Landlord no earlier than four (4) years after the Commencement Date but not less than one hundred eighty (180) days prior to the date of Expiration of the Lease Term. The second option to renew may be exercised by Tenant under the same terms and conditions, but not less than one hundred eighty (180) days prior to the date of Expiration of the first option to renew. Failure to give such notice will render Tenant's option to renew null and void.

### 4.0SECURITY DEPOSIT

On or before the Rent Commencement Date, Tenant shall deposit with Landlord the sum of seven thousand five hundred and no/100<sup>ths</sup> Dollars (\$7,500.00) which shall be equal to three (3) months Minimum Base Rent as a Security Deposit for Tenant's performance under this Lease (the "Security Deposit"). The Security Deposit shall be adjusted annually and concurrently with the adjustment of Minimum Base Rent as set forth in Paragraph 5.2 of this Lease, however at all times the Security Deposit shall always be equal to three (3) months Minimum Base Rent as adjusted by the Inflation Factor, and Tenant shall annually pay Landlord an amount to adjust the Security Deposit accordingly. The Security Deposit and Security Deposit adjustment payments shall be in the form of cash deposited with Landlord.

The Security Deposit shall guarantee Tenant's full and faithful performance of all the terms, covenants, and conditions of this Lease, and shall take the form of an initial single cash payment to Landlord with annual adjustments as described above.

If Tenant is in default hereunder, Landlord may use the Security Deposit, or any portion of it, to cure the Event of Default or to compensate Landlord for any Damages sustained by Landlord resulting from Tenant's Default. Tenant shall immediately on demand pay to the Landlord a sum equal to the portion of the Security Deposit extended or applied by Landlord as provided in Paragraph 4 so as to maintain the Security Deposit in the sum then required of Tenant. If Tenant performs all of Tenant's obligations under this Lease, the Security Deposit, or so much thereof as has not been applied by Landlord, shall be returned, without payment of interest or other increment for its use, to Tenant or, at Landlord's option, to the last assignee, if any, of Tenant's interest hereunder, at the Expiration or Termination of this Lease and after Tenant has vacated the Premises. No trust or fiduciary relationship is created herein between Landlord and Tenant with respect to the Security Deposit.

Landlord may maintain the Security Deposit separate and apart from Landlord's general funds or may commingle the Security Deposit with Landlord's general or other funds. Tenant shall not be entitled to, and Tenant hereby specifically waives any requirement that Landlord pay, interest on the Security Deposit.

## 5.0 MINIMUM BASE RENT

5.01 Minimum Base Rent. Tenant agrees to pay to Landlord as base rent, without notice or demand, Two Thousand Five Hundred and no/100<sup>ths</sup> Dollars (\$2,500.00) ("Minimum Base Rent"), on or before the first day of each and every successive calendar month during the Term of this Lease. Tenant's obligation to pay rent shall commence on the Commencement Date. Minimum Base Rent shall be paid to Landlord without deduction or offset, in lawful money of the United States of America and at such place as Landlord may from time to time designate in writing. Minimum Base Rent for any period that is less than one (1) month shall be a prorated portion of the monthly installment herein based on a thirty (30) day month.

5.02 Adjustment to Minimum Base Rent. The Minimum Base Rent established in Paragraph 5.1 of this Lease shall be adjusted annually on each anniversary of the Commencement Date for the term of this Lease by the greater of three percent (3%) or the increase since the prior year in the San Francisco-Oakland-San Jose Cost of Living Indexes: All Item Index (All Urban Consumers Index).

5.03 Minimum Base Rent Adjustment at End of Lease Term, upon Exercise of Option, or Upon Assignment of Lease or Sale of Business to Any Non-Family Member at Any Time. At each and any of these times, Minimum Base Rent may, at Landlord's sole discretion, be adjusted to reflect two percent (2%) of the adjusted Minimum Base Rent.

## 6.0 FEES FOR FISH PURCHASE AND OFF-LOADING

6.01 Fees for fish purchase and off-loading. In addition to Minimum Base Rent, Tenant agrees to pay to Landlord all of the following amounts:

- (a) Wholesale Fish Purchase = \$10.00 per ton actual scale gross weight for wetfish and \$.01 per pound gross weight for finfish and shellfish purchased by Tenant for fish at the Premises on or before the first day of each and every successive calendar month during the Term of this Lease on or before the first day of each and every successive calendar month during the Term of this Lease.
- (b) Fish Off-Loading: \$10.00 per ton actual scale gross weight for wetfish and \$.01 per pound gross weight for finfish and shellfish off-loaded by Tenant at Premises on or before the first day of each and every successive calendar month during the Term of this Lease on or before the first day of each and every successive calendar month during the Term of this Lease.
- (c) Retail Fish Sales: Tenant will pay Landlord five percent (5%) of its gross receipts for all fish sold to the general public on or before the first day of each and every successive calendar month during the Term of this Lease on or before the first day of each and every successive calendar month during the Term of this Lease.

- (d) Gross Receipts Defined: For the purposes of subsections 6.1(a), (b) and above, “gross receipts” means all amounts derived, received, or charged by any sublessee, subtenant, concessionaire, licensee, or any other person, firm or corporation (herein called “subtenant”) or by Tenant, for fish purchased, or for sales, charges for service, for the use of space made in or on the Premises, or from any and all sources of income derived in whole or in part from any business transacted in, at or from the Premises, whether from subtenants, customers, or otherwise, both for cash and on credit, and in cases of sales or charges on credit, whether or not payment is actually made.

Gross Receipts shall include, without limitation, all:

- (i) Deposits not refunded;
- (ii) Orders taken on or from the Premises to be filled or paid for elsewhere;
- (iii) Sales or charges for all services performed, whether such sales are made or such services are rendered at or arranged through the occupied space at the Premises by long distance communication and whether initiated, performed, or completed at another location;
- (iv) Consideration received by Tenant for value directly from customers, and from subtenants, including subrents;
- (v) Income from off-site processing of fish unloaded at the Premises.

Each sale or charge for service or use of space on credit or in installments shall be treated as a sale or charge for the total price in the calendar year for which the sale or charge is made whether or not any payments are made within that year.

- (e) Only the following amounts may be excluded or deducted from Gross Receipts at the time they are ascertained, and where not ascertainable during the period covered by a statement of Gross Receipts, then from the time of a subsequent statement when they are known:
- (vi) All sums collected and paid out for sales taxes, luxury taxes, excise taxes, and similar taxes required by law to be added to the total purchase price, whether now or hereinafter in force, to be collected from customers and paid by Tenant or a subtenant;
  - (vii) All refunds made on any sale or charge for service or use of space previously included as Gross Receipts;
  - (viii) Any income or receipts, under generally accepted accounting principles, which are derived from the sale or disposal of any capital assets (excluding any assets normally sold in the course of business conducted on the Premises) or from the retirement of any indebtedness, or from Tenant’s or subtenant’s investments of any funds not invested in the

Premises or the operation of the Tenant's or subtenant's business on the Premises.

None of the above exclusions or deductions from Gross Receipts shall be excluded or deducted if in substance it is a typical sale, charge for service, or other source of Gross Receipts which is ordinarily the subject of Purchase and Off-Loading Fees, but arranged only to avoid such rent, or if actually contracted for elsewhere on other premises such as typical sale, charge for service, or other source of Gross Receipts which is ordinarily the subject of Purchase and Off-Loading Fees, but such sale, charge or service, or other Gross Receipts, is for the Lessee's or a subtenant's business benefit.

**6.02**Payment of Purchase and Off-Loading Fees. Purchase and Off-Loading Fees at the rates set forth in Section 6.1 shall be paid monthly and shall be due and payable on the 15<sup>th</sup> day following the end of each month.

**6.03**Documentation/Audit.

- (a) Tenant shall monthly provide the Landlord with a copy of its Department of Fish and Game transportation receipts, landing receipts, and unloading receipts or other documentation of receipts satisfactory to the General Manager. Such documentation shall include but not be limited to the name of the vessel making delivery for off-loading, name of vessel operating, Tenant name, actual scale weight of species loaded, and signature of vessel operator, tenant, and buyer if other than Tenant, and number of Commercial Activity Permit of buyer if other than Tenant.
- (b) Tenant shall keep records related to its business operations, including but not limited to its calculations of its Gross Receipts in a commercially reasonable form and detail, and in accordance with generally accepted accounting principles.
- (c) All documents, books and accounting records kept by Tenant relating to this Lease shall be open to inspection by Landlord or its authorized representative at any reasonable time during the Lease Term and for three (3) years thereafter.

**7.0**IMPOSITIONS

**7.01**Possessory Interest. Pursuant to California Revenue and Taxation Code Section 107.6 Tenant is hereby advised that this Lease creates a possessory interest subject to property taxation and, as the party in whom the possessory interest is vested, Tenant will be subject to payment of the taxes levied on said interest. Beginning the Effective Date of the Lease, Tenant shall pay all Impositions before any interest, penalty, fine or cost may be added for non-payment, and will furnish Landlord for inspection within thirty (30) days after Landlord's written request, official receipts of the appropriate taxing authority or other proof satisfactory to the Landlord evidencing such payment. Tenant shall pay all real property taxes attributable to the Premises. In addition to paying real property taxes on the Premises, Tenant shall also pay for any assessments which may be levied upon the Premises as a result of any Improvements made by Tenant. Tenant shall at all times keep current said real property taxes and assessments and shall

hold Landlord harmless therefrom. Any Impositions relating to the fiscal period of any taxing authority, part of which includes any period prior to the commencement of the Lease Term or after Expiration or Termination of the Lease Term shall be apportioned between Landlord and Tenant on a pro rata basis. With regard to assessments payable in installments, Tenant shall only be required to pay those installments falling due during the Lease Term. Tenant may contest any Impositions or seek a reduction thereof provided that Tenant shall furnish to Landlord a surety bond indemnifying Landlord from any Damages arising from any such proceedings.

7.02 Taxes and Assessments. Tenant agrees to pay to the proper authority any and all taxes, assessments and similar charges on the Premises in effect at the time this Lease is entered into, or which become effective thereafter, including all taxes levied or assessed upon the possession, use, or occupancy, as distinguished from the ownership to the Premises. Tenant, on behalf of itself and any permitted successors and assigns, recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant and any permitted successor or assign may be subject to the payment of such taxes. Tenant, on behalf of itself and any permitted successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or extend this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Tenant shall report any assignment or other transfer of any interest in this Lease or any renewal or extension hereof to the County Assessor within sixty (60) days after such assignment transaction or renewal or extension. Tenant further agrees to provide such other information as may be requested by Landlord to enable Landlord to comply with any reporting requirements under applicable Law with respect to possessory interest.

## 8. UTILITIES, SERVICES AND ASSESSMENTS

Tenant shall make all arrangements for and pay the appropriate supplier for all utilities and services directly furnished to or used by it including, without limitation, gas, water, electricity, sewer, and telephone services and for all connection charges for such utilities and services. Tenant has its own water, electric, and gas meters. If any such charges for utilities and services are not paid when due, Landlord may pay the same, but shall not be required to pay the same. Tenant shall immediately pay any amount so paid, together with any other costs incurred by Landlord in connection with the handling of such payment, to Landlord as additional rent. Tenant shall also pay for taxes and assessments levied upon machines, appliances or property owned or used by Tenant.

Landlord shall not be liable for any failure or interruption of (i) any utility service furnished to the Premises, or (ii) the heating, ventilating, and air conditioning systems. No such failure or interruption shall entitle Tenant to terminate this Lease or abate rent or to stop making any other payments due hereunder.

## 9. USE; LIMITATIONS ON USE

### 9.01 Use.

- (a) Tenant shall use the Premises for its commercial fish-buying and/or fish-unloading business and additional ancillary and compatible uses and services pursuant to paragraph 9.1 (b)(vii) of this lease. Tenant shall not use the Premises for any other purposes without Landlord's prior written consent.
- (b) Tenant shall develop, operate and maintain a first-rate and complete facility for the purpose of wholesale buying, unloading, storing, and shipment of fish and fish-related products and/or the non-exclusive right to sell fish on a retail basis as stipulated in subsection (ii) below. Tenant shall have all necessary permits for fish processing on display in order to engage in this activity.
  - (ix) Tenant shall provide on the Premises all equipment required for the operation of said wholesale fish dealership, including winch and hoist for the purpose of loading or unloading of fish or other merchandise to and from vessels, and scales, skiff or equipment storage. Tenant may provide a second winch and hoist at a location approved in advance by the Harbor Master.
  - (x) Tenant shall have the non-exclusive right to sell fish in the same condition as purchased directly from fishing boats at Pillar Point Harbor, on a retail basis, on a month-to-month basis, subject to written approval of Landlord of any plans, specifications and engineering and compliance with San Mateo County Local Coastal Plan and zoning/land use regulations. Landlord shall retain the right to delete this right if storage, traffic, pedestrian or space problems occur. Tenant shall not be allowed to do any advertising for the retail fish operation on or off-site at any time except as may be permitted by Landlord at Landlord's sole discretion. Violation of this provision will automatically rescind the right by Tenant to sell fish on a retail basis.
  - (xi) Tenant shall not buy fish or other seafood products from any vessel that exceeds eighty (80) feet in length, without permission of Landlord's Harbor Master or General Manager. Permission shall not be arbitrarily withheld and shall be subject to appeal to the Harbor Commission.
  - (xii) Tenant shall unload at the Premises only fish that it has either purchased or has caught in vessels owned or leased by Tenant, or has been purchased by a registered holder of a valid Commercial Activity Permit issued by Landlord. There will be no fish processing on the second floor of the Premises.
  - (xiii) Tenant shall provide documentation to the District for all fish unloaded that has been purchased by a registered holder of a valid Commercial Activity Permit issued by Landlord, which documentation shall include date of landing/unloading, name of vessel and vessel operator from whom the fish were unloaded, and name of Permit holder receiving the fish.

- (xiv) Tenant agrees to keep free and clear a fifteen (15) foot wide area on Johnson Pier for common area access by all fish buyer tenants at all times, unless mutually agreed by all parties.
- (xv) Tenant shall have sole use of a seventeen feet by twenty-eight feet (17' x 28') area totaling four hundred seventy-six square feet (476 sq. ft.) in Parking Lot "A" as designated by the Landlord at Landlord's sole discretion, to be used for storage of any gear, boxes or other items that are considered essential to the fish-buying operation. Tenant shall be solely responsible, at its expense, for fencing in said area and securing the fenced-in area with a locked, secure gate. If the area so designated is not enclosed by Tenant on or before \_\_\_\_\_, 20\_\_, Tenant shall forfeit said space to the Landlord for the remainder of the Lease Term. Landlord shall not be responsible for the security of equipment or material stored. Tenant shall not store hazardous material on the Premises. If and when Landlord has other storage available, the fish buyers will move their storage to the new facility at Landlord's request. Any expenses incurred will be at the sole expense of Tenant. Subject to the prior written approval of Landlord, Tenant may provide additional uses and services which are ancillary to, and compatible with, the required uses and services hereunder, provided that they are not incompatible with other uses and services allowed or required for other tenants at Pillar Point Marina.
- (xvi) Tenant may place a sign or signs stating the name of Tenant's business on the front and landward side of the pier building housing Tenant's Premises with prior written approval of Landlord, and which comply with Landlord's Design Guidelines as amended.
- (c) Tenant's operating schedule and prices shall comply with the following:
  - (xvii) Beginning on the Commencement Date, all of the uses and services specified in Subsection 9.1(b) above shall be provided with full services on the Premises during the active fishing seasons, weather permitting, on call of Landlord personnel or as needed.
  - (xviii) Tenant shall, at all times, maintain a schedule of the prices charged for fish and fish products or charged for all goods or services or combinations thereof supplied to patrons on or from the Premises, whether the same are supplied by Tenant or by its sublessees, assignees, concessionaires, permittees, or licensees, and shall make said schedule available to Landlord.
  - (xix) All rates and charges to customers purchasing on or from the Premises shall be reasonable and consistent with the quality of services and facilities offered and shall be no more than rates and charges for comparable services and facilities in Northern California.



- (d) Tenant's rights to buy fish shall be non-exclusive, and Landlord retains the right to permit the purchase of fish from vessels at Pillar Point Harbor. Tenant shall annually negotiate in good faith with other tenants at Pillar Point and local fisherman to establish a commercially reasonable pricing schedule for fish purchases. To the extent such agreement on pricing is reached and implemented each year, Landlord shall include in any permits that it issues for fish purchases from vessels a Fee equal to that required in subsection 6.1(a) of this Lease.

9.02Limitations on Use. Tenant's activities on the Premises shall be in accordance with this Paragraph 9.2.

9.02.1Prohibited Uses. The parties hereto agree that the following acts, occurrences or conduct by Tenant on or from the Premises are strictly prohibited:

- (a) Engaging in, assisting, aiding or abetting in any act that constitutes a violation of any Law.
- (b) Obstructing vessel or vehicle traffic on Harbor waters or land area.

9.02.2Compliance with Laws and Legal Requirements. Tenant, at Tenant's sole cost and expense, promptly shall comply with all Laws, statutes, ordinances, resolutions, regulations, judicial decisions, proclamations, orders, decrees or policies of any municipal, county, state or federal government, or the departments, courts, commissions, boards and officers thereof, or other governmental or regulatory authority with jurisdiction over the Tenant and the Premises or any portion thereof, including without limitation, the Landlord, relating to or affecting the condition, use or occupancy of the Premises in effect either at the time of execution of this Lease or which may hereafter be in effect at any time during the term hereof, whether or not the same are now contemplated by the parties. Tenant's compliance shall include compliance with all provisions and conditions of the Federal Americans with Disabilities Act and California Harbors and Navigation Section 40. Tenant shall obtain and pay for all licenses and permits required for Tenant's construction and occupancy and use of the Premises. Compliance with Laws and Legal Requirements shall include compliance with all requirements of each regulatory agency that has jurisdiction over the Premises including but not limited to the Department of Boating and Waterways and the County of San Mateo.

9.02.3Other Permits and Approvals

Should other permits, licenses, and/or Approvals, other than set forth in this Lease, be required to make Alterations or Improvements or to operate the Premises as a fish-buying operation or other use explicitly permitted hereunder, or if a failure to procure such a license or permit might or would, in any way, affect Landlord or the ability of Tenant to operate its businesses, it shall be the sole responsibility of Tenant to obtain and comply with the requirements of said permits, licenses, and/or Approvals.

9.02.4Waste; Nuisance. Tenant shall not cause, maintain or permit any unreasonable annoyance or nuisance in, on, or about the Premises or on any Landlord property or Harbor waters. Tenant shall not commit or suffer to be committed any waste in or about the

Premises and shall keep the Premises in first class repair and maintain the same in Good Condition during the Lease Term.

9.02.5Hazardous Material. Tenant shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Premises except to the extent that such Hazardous Material is necessary to Tenant's business and will be used, kept and stored in a manner that complies with all Laws, including environmental regulations, relating to such Hazardous Material. Tenant agrees to indemnify, defend and hold Landlord harmless from any liabilities, losses, claims, damages, penalties, or other expenses resulting from or arising out of the use, storage, transportation, release, or disposal of Hazardous Material on or about the Premises by Tenant. Tenant shall not have any responsibility with respect to Hazardous Material existing in, on or under the Premises as of the Effective Date.

9.02.6Cancellation of Insurance. Tenant shall strictly observe all Insurance Requirements as set forth in Section 16 of this Lease and shall not do or permit to be done anything that will cause a cancellation of any insurance coverage of the Premises.

9.02.7Continuous Operation. Subject to the terms of this Lease, and following completion of the Initial Tenant Improvements, Tenant shall continuously and diligently operate the Premises throughout the Lease Term and shall keep or cause the Premises to be kept open for business three hundred sixty-five days (365) per calendar year consistent with sound business practice and weather and safety conditions. Reasonable interruptions in the operation will be permitted for periodic cleaning of the Premises, for taking inventory, if it becomes necessary to change the management of the Premises, or if the Premises should be closed and the business of Tenant temporarily discontinued therein on account of strikes, lockouts, or similar causes beyond the reasonable control of Tenant. Without limiting the generality of the foregoing, in the event of a foreclosure against the leasehold by a leasehold Mortgagee, the leasehold Mortgagee shall be entitled to cease operating the Premises for a period of up to one hundred eighty (180) days; provided, however, that payment of the Minimum Base Rent and Percentage Rent shall continue.

9.02.8Environmental Protection. Tenant shall comply with all applicable environmental Laws and regulations and take all reasonable measures available to:

- (a) Avoid any pollution of the atmosphere or littering of land or water caused by or originating in, on, or about Tenant's facilities.
- (b) Keep the noise level on the Premises to a minimum so that Persons in the general neighborhood will be able to comfortably enjoy other facilities leased by Landlord in the vicinity of the leased Premises.
- (c) Keep the lights on the Premises from adversely affecting the operation or other use of boats in the Harbor.
- (d) Prevent all waste and pollutants, including petroleum products of any nature, from being discharged from the Premises into the Harbor waters.

9.02.9Supervision by Tenant. Tenant shall employ its own personnel or a management company or entity experienced and skilled in the management of operations as they

are contemplated under this Lease. This management company or Tenant's own personnel shall give attention to efficient supervision of Lease operations, using its best skill, and shall keep employed, at all times, a competent supervisor and any necessary assistants. The management company's supervisor or assistant shall be present at all times and all directions given to the management company's supervisors shall be as binding as if given by Tenant.

9.02.10Protection of Leased Premises. Tenant shall maintain the Premises in such a manner as to protect Landlord's property from damage, injury, loss, or liability arising from rainfall, and other action of the elements, excepting such as may be caused by fault or negligence of officers, agents, employees or contractors of Landlord.

9.02.11Hold Harmless. Tenant shall defend, upon demand, all suits brought against Landlord or Department, their officers, agents, or employees, or naming Landlord or Department, their officers, agents, or employees as a defendant wherein it is alleged that operations by Tenant or conditions of the Premises or the Improvements on the Premises create a liability of Landlord or Department, their officers, agents, or employees, and Tenant shall pay any and all judgments against and save and hold Landlord or Department, their officers, agents, and employees harmless from any liability, cost, expense, or loss on account thereof, except to the extent liability is based on (i) acts or omissions of Landlord or Department, their officers, agents, contractors or employees or (ii) the condition of the Premises prior to the Effective Date.

9.02.12Landlord's Right to Fix and Determine Rates. Landlord has the power and reserves the right to fix and determine the rates and prices to be charged by Tenant for the use by the public of the Premises improved, developed and leased by Tenant. Notwithstanding the foregoing, Tenant may, without the prior written consent of Landlord, make such rate or price adjustments as are deemed necessary or appropriate by Tenant in light of changing costs or other operating expenses, and such adjustments shall not be considered a violation of applicable law. Tenant agrees to provide Landlord with a copy of the most current rates and prices and will continue to do so upon request of Landlord. Landlord, however, will not unreasonably withhold its approval of said rates and prices.

## 10.0 WARRANTIES OF LANDLORD

10.01Taxes and Encumbrances. Landlord represents and warrants to Tenant that as of the Effective Date, the Premises are free and clear of all tenancies or other rights of third parties, whether oral or written, and that Landlord is able to and will place Tenant in the peaceful and undisturbed possession of the Premises on said Effective Date.

10.02Legal Proceedings to Ownership. Landlord represents, to the best of Landlord's knowledge and belief, that no lawsuits or legal proceedings are pending or threatened regarding the ownership, use, or possession of the Premises, or any part thereof, except as stated in this Lease. Landlord agrees to indemnify and hold Tenant harmless from any and all claims, Damages, judgments, liens, costs or expenses arising from any such lawsuits or legal proceedings which are currently known to exist.

10.03Condemnation. No condemnation proceedings are pending with respect to the real property to be leased or any part thereof, or interest therein, and, to the best of Landlord's knowledge and belief, none are contemplated.

10.04Violations. There is not located on, in, about, or under the Premises to be leased any Hazardous Material of which Landlord is aware and there are no past or present investigations, administrative proceedings, threatened or pending, alleging non-compliance with or violation of any Laws or Legal Requirements relating to the Premises or to any required environmental permits by Landlord nor any third party. As used herein, "Laws or Legal Requirements" means and includes the Comprehensive Environmental Response and Liability Act ("CERCLA" or the Federal Super Fund Act) as amended by the Super Fund Amendments and Reauthorization Act of 1986 ("SARA") and any other Law, ordinance or regulation relating to Hazardous Materials. To the best of Landlord's knowledge, there are no new, nor have there ever been, any above-ground or underground storage tanks in or under the Premises.

## 11.0HAZARDOUS MATERIALS

11.01Hazardous Material or Contamination. Any Hazardous Material or contamination, as defined by any governmental agency having jurisdiction over the Premises, which is not a result of any act of Tenant or caused by Tenant or any agent, employee, contractor, subtenant, licensee or contractor of Tenant shall be the responsibility of the Landlord to mitigate to the extent required by a governmental agency with regulatory jurisdiction over the Premises. Without limiting the generality of the foregoing, Landlord, as owner of the property, agrees to indemnify, hold harmless and defend Tenant from any and all claims, losses, liabilities, demands, costs and fees (including attorney's fees) which may relate to or arise out of said Hazardous Material or contamination which is not a result of any act, omission or negligence of Tenant or caused by Tenant, or any agent, employee, contractor, subtenant, licensee or contractor of Tenant, and shall include the duty to remediate and mitigate (including, but not limited to, satisfying any other governmental agencies or administrative proceedings) so long as Tenant is not negligent and does not introduce any Hazardous Materials or contamination to the Premises.

11.01.1Requirements for Handling. Neither Tenant nor its agents or invitees, shall use, generate, process, produce, package, treat, store, emit, discharge or dispose (collectively, "Handle") in, on or about the Premises any Hazardous Materials without the prior written consent of Landlord, which consent shall not be unreasonably withheld so long as Tenant demonstrates to Landlord's reasonable satisfaction that such Hazardous Material is necessary to Tenant's business, will be Handled in a manner which strictly complies with all Laws and will not materially increase the risk of fire or other casualty to the Premises. Notwithstanding the foregoing, Tenant may Handle on the Premises janitorial or office supplies or materials in such limited amounts as are customarily used for general office and janitorial purposes so long as such Handling is at all times in full compliance with all Laws.

11.01.2Tenant Responsibility. Subject to the restrictions set forth in Paragraphs 9.2.5, 9.2.8 and 11.1.1, Tenant shall handle all Hazardous Materials discovered on the Premises during the Term of this Lease or introduced on the Premises by Tenant, its agents or invitees, in compliance with all Laws. Tenant shall not be responsible for the safe Handling of Hazardous

Materials introduced on the Premises during or before the Effective Date of this Lease by Landlord or its agents. Tenant shall protect its employees and the general public in accordance with all Laws. Landlord may from time to time request, and Tenant shall be obligated to provide, information reasonably adequate for Landlord to determine that any and all Hazardous Materials are being handled in a manner which complies with all Laws. Landlord shall have the right to inspect the Premises for Hazardous Materials at reasonable times, pursuant to its rights of entry provided for hereunder.

11.01.3Requirement to Remove. Prior to Expiration or Termination of this Lease, Tenant, at its sole cost and expense, shall remove any and all Hazardous Materials introduced in, on, under or about the Premises by Tenant, its agents or invitees. Further, Tenant, at its sole cost and expense, shall remove any Hazardous Material discovered on the Premises during the Lease Term which is required to be removed by any governmental agency, including Landlord; provided however, that Tenant shall not be obligated to remove any Hazardous material introduced onto the Premises during the term of this Lease by the Landlord or its agents.

## 12.0 INITIAL TENANT IMPROVEMENTS

12.01Tenant Obligations. Tenant shall be responsible, at its sole cost and expense, for the construction of the Initial Tenant Improvements described more particularly in Exhibit B. Construction of the Initial Tenant Improvements shall comply with this Section 12, as well as with the general requirements applicable to all Alterations in Section 13 below.

12.02Tenant's obligation to Provide Schematic Drawings. Within thirty (30) days from the Effective Date of this Lease, Tenant agrees to prepare and deliver to Landlord, for review, schematic drawings of the Initial Tenant Improvements to be constructed or improved on the Premises. Landlord shall reasonably approve or disapprove said drawings within thirty (30) days after its receipt. Disapproval shall be accompanied by specification or the grounds for disapproval. Thereafter, if Landlord and Tenant cannot agree on said drawings, then this Lease shall terminate and each party shall be released from its obligations (except those obligations incurred prior to such Termination) under this Lease. There shall be no change in the approved schematic drawings without the prior written approval of Landlord for each change. Tenant hereby agrees to construct or make the Initial Tenant Improvements to the Premises at its own cost, in substantial accordance with the schematic drawings.

12.02.1Building Permit Application Filing. Tenant shall file a complete application for a building permit within sixty (60) days of the approval of the schematic drawings.

12.03Construction Schedule. Tenant shall commence construction of the Initial Tenant Improvements within sixty (60) days of obtaining a building permit from the County of San Mateo, and shall complete construction within sixty (60) days after commencing construction.

## 13.0 ALTERATIONS

13.01General. If not in default under this Lease, Tenant, at its sole cost and expense, may make reasonable Alterations to the interior of any improvement on the Premises without the prior written consent of the Landlord; provided, however, that any such Alteration (a) shall not change

the exterior character of the Improvements or reduce the gross area of the Improvements, (b) shall not effect any change in the use of the Premises, (c) is effected with due diligence, in a good and workmanlike manner and in compliance with all Legal Requirements and Insurance Requirements, and (d) is promptly and fully paid for by Tenant. Within thirty (30) days after completion of any such Alterations, Tenant shall furnish Landlord with as-built drawings showing such Alterations. Notice shall be given to Landlord prior to the commencement of any alterations to afford Landlord the opportunity to post a notice of non-responsibility.

13.02Improvement Plans. All Alterations constructed by Tenant shall meet all requirements of all government bodies or agencies having jurisdiction over such Alterations, and Tenant shall not make, or cause or suffer to be made, any Alterations to the Premises until Tenant has procured and paid for all regulatory Approvals required to be obtained. When approval of the building plans for the Premises has been obtained from the County of San Mateo, Tenant shall deliver two (2) sets of said plans to Landlord.

13.03Agreements with Government Entities. Tenant shall not enter into any contract, easement or agreement with San Mateo County, the State of California or any other governmental agency or body or public utility with reference to utility connections, street Improvements, easements or drainage facilities without prior written consent of Landlord, which consent shall not be unreasonably withheld.

13.04Prior Notice. Tenant shall provide ten (10) days written notice to Landlord prior to the first entry on the Premises by the Tenant, its agents, employees, contractors or subcontractors for the purpose of commencing construction; said notice shall specify the nature of the work to be performed.

13.05Landlord's Non-Responsibility. Landlord assumes no liability or responsibility for any defect in any structure by its approval of plans and specifications. Landlord may post upon the Premises a notice of non-responsibility.

13.06Notice of Completion. Upon completion of construction of any Alterations, Tenant shall timely file or cause to be filed a notice of completion.

13.07Construction. Tenant shall be responsible for the construction of Alterations at Tenant's sole cost and expense.

13.08Approval of Contractor. Tenant shall provide to Landlord, on or before the commencement of construction, a copy of the construction contract that has been executed by a licensed California Contractor as well as a copy of the commitment contract between the Tenant and the lending institution. The contractor shall be in good standing. Tenant shall also furnish Landlord with a true copy of Tenant's contract with the general contractor after the same has been approved by the lending institution. If Tenant elects to act as a general contractor, reference above to contract and evidence shall be considered to apply to the contract with each subcontractor in excess of one hundred thousand dollars (\$100,000). The contract shall give Landlord the right but not the obligation to assume Tenant's obligation and rights under that contract if Tenant should Default.

13.09Evidence of Financing and Construction Security. Thirty (30) days or more prior to commencement of construction or improvement of the Premises, or any phase thereof, Tenant shall furnish to Landlord evidence of sufficient funds or firm commitments to complete the construction in the form of a letter of commitment from Tenant and other evidence that shall be reasonably satisfactory to Landlord. If said evidence of sufficient funds or firm commitments to complete the construction is not provided to Landlord by Tenant, this Lease shall immediately terminate.

13.010Underground Conditions and Grading. Landlord makes no covenants or warranties regarding the condition of the soil or subsoil or any other condition of the Premises.

13.011Tenant's Duty to Obtain Building Permits. Tenant shall obtain, at its sole cost and expense, all permits, Approvals, certificates and licenses under applicable zoning, building and safety and land use Laws and regulations as may be required by any and all agencies having jurisdiction over the Premises for the Alterations to the Premises as contemplated herein.

13.012Ownership of Improvements During the Lease Term. Other than upon Expiration or Termination of this Lease in accordance with the terms herein, Landlord shall have no right, title, or interest during the Lease Term in any Alteration hereafter constructed by Tenant on the Premises, except as agreed upon by Landlord and Tenant in writing prior to commencement of construction by Tenant of said Alterations.

13.013Final Approved As Built Plans. Tenant shall provide Landlord two (2) complete sets of final approved "as built plans" within ninety (90) days after completion of the Improvements to which they relate.

13.014Performance Bond. Upon Landlord's written request, Tenant shall procure a performance bond in an amount recommended by a licensed civil engineer that will be sufficient to demolish the Improvements and return the Premises to the condition they were in on the Effective Date. Tenant covenants that it will return the Premises to the condition they were in on the Effective Date in the event it fails to complete construction of the Improvements.

13.015Mechanic's Liens and Other Liabilities. Tenant shall maintain the Premises free from and clear of any claims, obligations, liabilities, liens, encumbrances and charges, including but not limited to any claims, liens or charges arising out of or in connection with the furnishing of materials or the performance of labor on the Premises. Tenant shall further protect and indemnify Landlord and the Premises from and hold them, and each of them, harmless against any and all claims, obligations, liabilities, liens, encumbrances and charges.

13.016Imposition of Lien. In the event a lien is imposed upon the Premises as result of such construction, repair, alteration, or installation, Tenant shall either:

- (i) Record a valid release of lien, or
- (ii) Procure or cause to be procured and record or cause to be recorded a bond in accordance with Section 3143 of the Civil Code, which frees the Premises from the claim of the lien or stop-notice and from any action brought to foreclose the lien.

13.017Compliance with Laws. Tenant shall make any and all alterations or repairs on the Premises that may be required by all Laws from time to time applicable thereto, including, but not limited to, the San Mateo County Local Coastal Program and zoning and land use regulations. All Alterations and Improvements permitted under this Paragraph 13.17 shall be accomplished in a good and workmanlike manner, in conformity with all Laws, Legal Requirements, Insurance Requirements, and any design criteria adopted by the Harbor Commission. Upon completion of any such work, Tenant shall supply Landlord “as built plans.” Tenant shall indemnify and hold Landlord harmless from and against all actions, claims and Damages arising by reason of Tenant’s failure to comply with the foregoing Provisions.

13.018Surrender. Upon Expiration or Termination of this Lease as provided herein, any Alteration made by Tenant under provisions of this Paragraph 13 shall be deemed Improvements and the provisions of Paragraph 2.5.3 shall govern the right of the parties with respect thereto.

13.019Landlord’s Obligations. Landlord shall have no obligation to alter, remodel, improve, decorate or paint the inside of the Premises or any part thereof during the Lease Term.

13.020Improvements Part of Realty. Subject to the Provisions of Paragraphs 2.5.3 and 13.18 of this Lease, all Alterations to the Premises made by or on behalf of the Tenant which may not be removed without substantial injury to the Premises shall become part of the realty immediately upon completion, shall be owned by Landlord and shall, at the end of the term hereof, remain in the Premises without compensation to Tenant, unless Landlord first waives its right to the Alterations in writing. Notwithstanding the foregoing, Landlord at its option may require Tenant to remove any Alterations at Tenant’s sole expense regardless of whether title has or has not vested in Landlord, and regardless of whether consent was, or was not given. Tenant shall repair any Damages occasioned by such removal at Tenant’s sole cost and expense.

#### 14.0 CONDITION OF PREMISES, MAINTENANCE

##### 14.01Condition of Premises.

- (a) Landlord shall deliver the Premises to Tenant clean and free of debris on the Effective Date.
- (b) Except as otherwise provided in this Lease, Tenant hereby accepts the Premises in their condition existing as of the Effective Date or the date that Tenant takes possession of the Premises, whichever is earlier, including but not limited to the requirements of the State of California Regional Water Quality Board and subject to all applicable zoning, municipal, county, and state Laws, ordinances, and regulations governing and regulating the use of the Premises, and any covenants or restrictions of record, and accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that neither Landlord nor Landlord’s agent has made any representation or warranty as to the present or future suitability of the Premises for the conduct of Tenant’s business.

14.02Existing Conditions. Tenant has made a thorough inspection of the real property and is familiar therewith, and has accepted the Premises in an “as is” physical condition.



Landlord makes no representation or warranty with respect to the condition of the Premises, including without limitation, the seismological condition thereof, or their fitness or availability for any particular use, and Landlord shall not be liable for any latent or patent defect therein.

14.03 Tenant's Maintenance Obligations.

- (a) Tenant shall, at all times during the Term of this Lease, at its sole cost and expense, keep the Premises in Good Condition and maintained in good working order and condition, and repair the Premises and all Improvements and Alterations thereon, including water, electric, and gas lines located inside the Premises. Tenant shall provide routine custodial Maintenance of the Premises, which includes all ordinary housekeeping and maintenance of equipment and replacement of supplies that are normally performed on a day-to-day basis in order to keep the Premises operating in an efficient, clean, safe, and Good Condition. Routine maintenance includes, but is not limited to:
  - (i) Replacing light bulbs as needed where no specialized equipment is required to do so.
  - (ii) Regular cleaning of the area, storage spaces, and regular washing of windows to be done not less than weekly; daily removal of interior and exterior graffiti, and daily emptying of trash receptacles and ash trays.
- (b) At least once each quarter, representative(s) of Tenant responsible for supporting and overseeing operations of the Premises shall meet with representative(s) of Landlord and inspect the Premises and confer on status of operations and possible improvements.
- (c) Tenant shall be responsible, at its sole expense, for all interior building repairs, including repairs to exterior doors. Tenant shall also be responsible for repairing, at its sole expense, all damage to ladders, piers and fender pilings caused by any vessel using Harbor facilities to access the Premises in connection with Tenant's operations. A video will be given to Tenant prior to the Commencement Date to establish the baseline state of conditions.
- (d) Landlord shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the Premises nor to any Improvements or alterations now or hereafter located thereon, except that Landlord shall maintain the outside and roof of the structure containing the Leased Premises, including painting the outside of the structure.
- (e) In the event that the Tenant, its agent or invitees cause any Damages (excepting ordinary wear and tear) to the Premises, Landlord may repair the same at Tenant's expense and Licensee shall immediately reimburse Landlord therefor. Tenant shall make or cause others to make all repairs, replacements or renewals, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen, necessary or appropriate to maintain the Premises in Good

Condition. Tenant shall provide and maintain established standards of public health and cleanliness established by Landlord.

- (f) In the event Tenant fails to maintain the Premises in Good Condition as required by this Paragraph 14, Landlord may give Tenant written notice specifying what actions are required to correct the conditions of the Premises. In the event Tenant fails to initiate such actions as are indicated by Landlord in its notice within thirty (30) days after Tenant's receipt of such notice, or thereafter fails to diligently proceed to complete such actions, such failure shall be deemed an Event of Default within the meaning of Paragraph 21 and Landlord shall have all the rights, powers and remedies provided for in this Lease or at Law including the right to enter on the Premises and maintain or cause the Maintenance of the Premises as required by this Paragraph 14. In such event Landlord shall be entitled to reimbursement for any amounts spent plus a fee of ten percent (10%) of the cost of the work performed which shall be due and payable five (5) days after Tenant receives Landlord's statement therefore. In the event Tenant fails to pay such amounts within such five (5) day period, Landlord shall be entitled to interest thereon at the Default Rate established in Section 21.4 from the end of such five (5) days until paid.

14.04 Common Maintenance and Landscaping Program. If Landlord shall, after the Effective Date, implement a program for the common Maintenance and landscaping of common areas situated near the Premises, Tenant agrees to enter into an agreement with Landlord and Landlord's other tenants, as appropriate, implementing such a program and to pay its proportionate share of expenses.

14.05 Signage Program. Tenant agrees to comply with Landlord's regulations, policies and guidelines governing signage, and to pay costs and operational expense of installing and maintaining signage for the Premises on Harbor property. No signs, directional, guiding, or other stripes, lines, directions or markings shall be installed or painted in or upon the Premises or removed by Tenant without prior written consent of Landlord.

14.06 Emergency Plan.

- (a) Tenant shall work with Landlord to complete a detailed emergency plan. Tenant shall instruct all Persons employed by Tenant in the plan and the employee's responsibilities relating to the plan. Copies of the plan shall be posted in a prominent location on the Premises.
- (b) In the event of any major emergency or condition (i.e., power outage, flooding, fire, natural catastrophe or any other unanticipated condition) that may reasonably result in a threat to Persons or property, Tenant shall immediately contact Landlord by telephone and Tenant's Manager or Assistant Manager shall report to the Premises and remain until the emergency has been resolved. If Landlord cannot be reached, Tenant shall make continued efforts to reach other staff persons as designated by Landlord until a Landlord representative has been

notified. Landlord's facility operator is available 24 hours a day and can be reached by calling the Pillar Point Harbor Master, (650) 726-4382 extension 4 or contact 911.

- (c) Tenant shall immediately erect and maintain such temporary signs, barricades, lights and other devices as may be necessary to warn people of any dangerous or defective conditions and shall take such actions as may be necessary to reasonably protect people from injury, loss or damage which might result because of any such condition.
- (d) Any time a dangerous or defective condition may reasonably be known by Tenant to exist in the Premises or their environs, Tenant shall immediately take reasonably necessary protective action by calling the Pillar Point Harbor Master and shall immediately notify Landlord by telephone and in writing of such condition and protective action.

14.07Security of Facilities. The security of the Premises shall be the responsibility of the Tenant.

## 15.0 INDEMNIFICATION AND EXCULPATION

15.01Liability of Landlord. Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income there from or for damage to the goods, wares, merchandise, or other property of Tenant, Tenant's employees, invitees, customers, or any other Person in or about the Premises, nor shall Landlord be liable for bodily injury to the person of Tenant, Tenant's employees, agents, or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Premises or upon other portions of Landlord's property or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant. Landlord shall not be liable for any damage arising from any act or neglect of any other tenant, occupant, or user of the Landlord's property nor from the failure of Landlord to enforce the provisions of any other lease.

15.02Waiver of Claims by Tenant. Tenant, as a material part of the consideration to be rendered to Landlord, hereby waives any and all claims against Landlord and its agents, and agrees to hold Landlord and its agents harmless from any claims for damages to goods, wares, goodwill, merchandise, equipment, business opportunities and Persons in, upon or about the Premises for any cause arising at any time, including without limitation all claims arising from the joint or concurrent negligence of Landlord or its agents, but excluding any intentionally harmful acts committed solely by Landlord.

15.03Indemnification of Landlord. Tenant shall indemnify and hold Landlord and its elected officials, agents, officers, directors, contractors and employees (collectively, "Agents") harmless from, and shall defend them against any and all claims, demands, direct or vicarious liability, attorney fees, causes of action or judgments, damage, injury or loss arising directly or

indirectly out of: (a) any injury to or death of any Person, including employees of Tenant, or damage to or destruction of any property occurring in, on or about the Premises, or any part thereof, from any cause whatsoever, (b) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease, (c) the use, occupancy or condition of the Premises or the activities therein by Tenant, its agents, or clients, customers, invitees, guests, members, licensees, and assignees (collectively, "Invitees") or (d) any release or discharge, or threatened release or discharge, of any substance, waste or material which now or in the future is determined by any state, federal, or local governmental authority to be capable of posing a present or potential risk of injury to health, safety, the environment or property (collectively, "Hazardous Material") caused or allowed by Tenant in, under, on or about the Premises, or into the environment. This indemnity shall be enforceable regardless of the negligence of Landlord, and regardless of whether liability without fault is imposed or sought to be imposed on Tenant. This indemnity shall be enforceable except to the extent that such indemnity is void or otherwise unenforceable under applicable Law in effect on, or validly retroactive to, the date of this Lease. This indemnity includes all such loss, damage, injury, liability or claims as described above, loss predicated in whole or in part, upon active or passive negligence of Landlord or its Agents. This indemnity shall exclude claims, liability, damage or loss resulting solely and exclusively from the willful misconduct of Landlord which is not contributed to by any act of, or by any omission to perform some duty imposed by Law or agreement on, Tenant, its agents or invitees.

In addition to Tenant's obligation to indemnify Landlord, Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Landlord from any claim that actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent. Tenant's obligation to defend shall arise at the time such claim is tendered to Tenant by Landlord and shall continue at all times thereafter.

The foregoing indemnity obligation of Tenant shall include without limitation, indemnification from all loss and liability, including attorney's fees, court costs and all other litigation expenses. This indemnification by Tenant shall begin from the first notice that any claim or demand is or may be made. The provisions of this section shall survive the Termination of this Lease with respect to any Damage, destruction, injury or death occurring prior to such Termination.

15.04 Indemnification of Tenant. Landlord agrees to indemnify Tenant against and save harmless from and defend Tenant against, all demands, claims, attorneys' fees, causes of action or judgment for injury to persons, loss of life, or damage to property occurring on said Premises arising from Landlord's gross negligence or willful misconduct.

15.5 Indemnification and Waiver Regarding Department. The liability waivers by Tenant applicable to the Landlord and its agents under Paragraph 15 and the indemnity obligations of Tenant to Landlord and its agents under this Paragraph 15 also apply to the benefit of the Department, its employees, and officers.

## 16.0INSURANCE

16.01Comprehensive General Liability Insurance. Prior to Tenant's entry upon the Premises and in any event throughout the term of this Lease, at Tenant's sole cost and expense, Tenant shall procure and keep in force or cause to be kept in force, at all times, for the protection of Landlord and Tenant, and naming Landlord, its agents and assignees as Additional Insured, Comprehensive General Liability Insurance including Products and Completed Operations coverage, and including coverage for bodily injury, personal injury and property damage liability arising from the use, occupancy, maintenance, disuse, or condition of the Premises and Improvements. The limits of liability should be usual and customary to the Tenant's industry, but not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) aggregate, bodily injury and property Damage including products and completed operations. In addition, excess liability in an amount not less than two million dollars (\$2,000,000) will also be kept in full force and effect. Such policy shall include a Waiver of Subrogation rights, and shall not contain any intra-insured exclusions (Cross Liability) as between insured Persons or organizations. The limits of said insurance shall not, however, limit the liability of Tenant.

16.02Tenant's Property Insurance. Throughout the Lease Term, at Tenant's sole cost and expense, Tenant shall procure and keep or cause to be kept in force, at all times, property insurance for the protection of Tenant, Lender and Landlord and naming Landlord, its agents and assignees as Additional Insured, all Improvements, all of Tenant's trade fixtures, Tenant-owned alterations, utility installations and personal property located on or appurtenant to the Premises, against loss or damage by fire and such other risks as are now or hereafter included in the Special Form, vandalism and malicious mischief. The amount of the insurance shall be sufficient to prevent either Landlord or Tenant from becoming a coinsurer under the Provisions of the policies, but in no event shall the amount be less than one hundred percent (100%) of the then actual replacement cost (herein called Full Insurable Value). Landlord shall not carry any insurance the effect of which would be to reduce the protection or payment to Tenant under any insurance that this Lease obligates Tenant to carry. If any dispute arises as to whether the amount of insurance complies with the above and said dispute cannot be resolved by agreement, Landlord may, not more often than every two (2) years, request the carrier of the insurance then in force to determine the Full Insurable Value as defined in this provision, and the resulting determination shall be conclusive between the parties for the purpose of this paragraph. Tenant may include the holder of any mortgage on the leasehold or on the fee, or both, as a loss payee.

16.03Builder's Risk and Other Insurance. Tenant shall provide to Landlord: (i) certificates of insurance evidencing Special Form coverage for "builder's risk", (ii) evidence of workers' compensation insurance covering all Persons employed in connection with the construction of the Improvements and Alterations and with respect to whom death or bodily injury claims could be asserted against Landlord or the Premises, and (iii) evidence that Tenant has paid or caused to be paid all premiums for coverage described in this Paragraph 16.3 sufficient to assure maintenance of all insurance required herein during the anticipated course or the construction. Tenant shall maintain, keep in force, and pay all premiums required for all insurance mentioned herein at all times during which construction work is in progress.

16.04Loss of Income and Extra Expense Insurance. Tenant shall procure and maintain loss of income and extra expense insurance in amounts as will reimburse Tenant for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent tenants in the business of Tenant or attributable to prevention of access to the Premises as a result of such perils. Loss of income and extra expense insurance covering loss of income to the extent of net income for a six-month (6-month) period shall be procured and maintained by Tenant.

16.05Employer's Liability and Workers' Compensation Insurance. Tenant, at its sole cost and expense shall, during the Lease Term, obtain, maintain and keep in full force and effect, Workers' Compensation Insurance as required by Law and Employer's Liability Insurance with limits or liability as required by Law, but in no event less than \$1,000,000 per each accident.

16.06Additional Insurance. Tenant at its sole cost and expense shall, during the Lease Term, obtain, maintain and keep in full force and effect such other insurance with respect to the Premises in such amounts and against such insurable hazards as Landlord, construction or permanent lenders from time to time may reasonably require.

16.07Waiver of Subrogation Rights. The parties release each other, and their respective authorized representatives, from any claims for damage to the Premises or to the fixtures, personal property, Improvements or Alterations of either Landlord or Tenant in or on the Premises which are caused by or result from risks insured against under any property insurance policies carried by the parties and in force at the time of any such damage, to the extent such claims for damage are paid by such policies. Each party shall cause each property insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against the other party in connection with any damage covered by any policy.

16.08Other Insurance Matters. All the insurance required under this Lease shall: (i) be issued by insurance companies authorized to do business in the State of California with a current financial rating of at least an A+ Class XV or better as rated in the most recent edition of Best's Key Rating Guide; (ii) be issued as a primary policy; (iii) contain an endorsement requiring thirty (30) days written notice from the insurance company to Landlord before cancellation or material change. Tenant shall name Landlord as an additional insured on any and all liability insurance policies.

Each insurance policy required hereunder, or a certificate of the policy, shall be deposited with Landlord prior to the Commencement Date and not less than thirty (30) days before Expiration of the term of any policy then in force, except that the policy described in Paragraph 16.1 or a certificate thereof shall be delivered to Landlord prior to Landlord's entry upon the Premises.

16.09Failure to Procure Insurance. If Tenant fails or refuses to procure or to maintain insurance required by this Lease or fails or refuses to furnish Landlord with required proof that the insurance has been procured and is in full force and effect and paid for, Landlord shall have the right, but not the obligation, upon five (5) days written notice to Tenant, to procure and maintain such insurance. The premiums paid by Landlord shall be chargeable to Tenant and

shall bear interest at the legal rate then in effect in the State of California from the date when the premium is paid by Landlord.

16.010Increase in Amount. Landlord may, at any time, require Tenant to increase the minimum dollar amounts for insurance required by this Lease, but every such increase shall be reasonable under the circumstances and in no event shall such increases more than double in any ten (10) year period.

16.011Insurance during Construction. Before Tenant commences making the Initial Tenant Improvements or other Alterations to the Premises and before construction begins, Tenant shall obtain appropriate Certificates of Insurance naming Landlord as Additional Insured from any contractor employed by Tenant to make the Alterations, and shall provide Landlord with copies of said Insurance Certificates.

## 17.0 DAMAGE OR DESTRUCTION

17.01Destruction Due to Risk Covered by Insurance. If a total destruction (the rendering totally unusable of fifty percent (50%) or more of Tenant's Improvements on the leased Premises), or a partial destruction (less than fifty per cent (50%)) occurs to Tenant-owned Improvements, and the loss is covered by the insurance described in Paragraph 16.2, Tenant shall within ninety (90) days thereafter commence and diligently prosecute the repair, restoration, or replacement such that the completed work, which may be different in design, shall be equal in value, quality and use to the condition of the Improvements before the event giving rise to the work.

17.02Destruction Due to Risk Not Covered by Insurance. If any of the Tenant-owned Improvements are damaged or destroyed by any casualty not covered by the insurance Provisions of this Lease and if the leased Premises are thereby rendered unfit for the uses prescribed herein, Tenant shall have the option of removing any Improvements and alterations and returning the Premises as it was at the time of the inception of this Lease, in which event, Tenant may terminate this Lease, or rebuild the Improvements in such a way that it would be comparable in use and value (but not necessarily design) to the Improvements which had existed prior to the casualty.

## 18.0 NO CLAIMS AGAINST LANDLORD; NO PARTNERSHIP

Nothing contained in this Lease gives the Tenant any right, power, or authority to contract for or permit the performance of any labor or services or the furnishing of any material or other property in such a fashion as would permit the making of any claim against Landlord or its interest in the Premises. Neither the provisions set forth herein for the computation of Percentage Rent, nor any one or more agreements herein contained is intended, nor shall the same be deemed or construed, to create a partnership between Landlord and Tenant, to make them joint venturers, or to make Landlord in any way responsible for the debts or losses of Tenant.

## 19.0 INTEGRATED AGREEMENT; MODIFICATION

This Lease contains all of the agreements of the parties hereto with respect to any matter for which provision is made in this Lease, and no prior agreement or understanding, oral or written, express or implied, pertaining to any such matter shall be effective for any purpose. No provisions of this Lease may be amended or added to and no consent or waiver shall be effective except by an instrument in writing signed by the party to be bound by such instrument. The parties acknowledge that all prior agreements, representations and negotiations are deemed superseded by the execution of this Lease to the extent they are not incorporated herein.

## 20.0 ASSIGNMENT, SUBLETTING, AND HYPOTHECATION

20.01 Transfer of Tenant's Interest. Tenant shall not, voluntarily or by operation of law, assign or otherwise transfer this Lease or encumber any right or interest hereunder, or in or to any of the Improvements, or sublet or license the use of the Premises without the prior written approval of Landlord and Department. No such assignment or other transfer, whether voluntary or involuntary, by merger or operation of Law under legal process, through receivership or bankruptcy, or otherwise, and no such subletting or licensing shall be valid or effective. Any attempted assignment, transfer, mortgage, encumbrance, or subletting without Landlord's and Department's consent shall be void, and shall constitute a breach of this Lease without the need for notice to Tenant. Any sale or other transfer, including by consolidation, merger, or reorganization, of a majority of the voting stock of Tenant, if Tenant is a corporation, or any sale or other transfer of a majority of the partnership interest in Tenant if Tenant is a partnership, shall be an assignment for purposes of this section.

20.02 Conditions for Subleasing. Each sublease shall provide that, if Tenant defaults or breaches this Lease and if the Subtenant is notified of Tenant's Default or breach and, if so instructed by Landlord, Subtenant shall make rental payments to Landlord or Encumbrance Holder (as defined in Section 20.4 below). Tenant shall not accept, directly or indirectly, more than twelve (12) months prepaid rent from any Subtenant. Subrents shall be fixed at the fair rental value for the Premises. Subleases shall be made expressly subject to this Lease and shall permit the Subtenant to perform any act required of Tenant under this Lease. Subleases shall expressly require the Subtenant to comply with the terms, covenants, and conditions of this Lease on the subleased Premises, and each sublease shall also include such other terms, covenants and conditions consistent with provisions of other leases of Landlord for similar uses, as may be required by Landlord. Tenant shall, promptly after execution of each Sublease, notify Landlord of the name and mailing address of the Subtenant and shall, promptly after demand, at Landlord's election, either provide Landlord with a copy of the Sublease or permit Landlord to examine and copy the Sublease.

The voluntary or other surrender of this Lease by Tenant, or mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subleases or may, at the option of Landlord, operate as an assignment to Landlord of any or all such subleases.

## 20.03 Conditions for Assignment of Leasehold



20.03.1 Payment to Landlord for Return on General Maintenance.

- (a) Notwithstanding any other Provision of this Lease to the contrary, should Tenant be allowed to assign or sell any portion or all of said Tenant's interest in this leasehold to any other Person, entity or group, said Tenant shall pay Landlord ten percent (10%) of the gross sales price (including the value of any traded property, leasehold, equipment or services involved in the "purchase"), whichever is greater, as a return to Landlord for the general maintenance, construction, improvement, advertising, and expansion of the Pillar Point Harbor area.
- (b) The "gross sales price" in the sale of any above described interest in this leasehold shall not include the sale of any standard and removable stock on hand or other personal property which may normally be removed by a tenant at the end of a leasehold, not having attained the status of Fixtures. The "gross sales price" shall include the value of leasehold, any generalized goodwill associated with the leasehold on the Premises, the right to complete the term of the Lease and utilize the structure involved, and the berthing provided, and any and all fixtures in place on site which are not excluded above. Notwithstanding anything to the contrary in this Lease, without Landlord's prior written consent and without any payment being made to Landlord, the following transfer of interests in the Lease may be made: (i) any transfer resulting from the death of an individual holding an interest in the Lease; (ii) any transfer of an interest to or from a revocable trust; (iii) any transfer to a family member, defined as the Lease signator's spouse, child or sibling, or a trust for the benefit of such a family member, or to a partnership or other entity which is owned by a Person or Persons holding an interest in the Lease.

20.03.2 Additional Conditions for Assignment of Leasehold. Any assignment or sublease of all or substantially all of the leased Premises shall be deemed an assignment of the leasehold. Tenant shall file a Request to Assign Leasehold with Landlord to which shall be attached a completed proposer's questionnaire prepared by the prospective assignee. Concurrently with filing the Request to Assign Leasehold, Tenant shall pay in cash or certified or cashier's check the sum of Five Hundred Dollars (\$500.00) to Landlord to enable Landlord to adequately investigate the proposed assignee's qualifications as a permitted assignee. If the proposed assignee's net worth on the date of assignment is not equal to or greater than Tenant's net worth at the commencement of this Lease, Landlord may require Tenant to guarantee such assignee's obligations hereunder for such period as Landlord deems advisable. Net worth shall mean the amount by which the total of all assets shall exceed the total of all liabilities as determined in accordance with generally accepted accounting principles as approved by the Landlord's Auditor. Tenant shall have no current lease violations or breaches of lease and shall have had no lease violations or breaches of lease including no minimum or percentage rent payment arrears within one (1) year of filing the Request to Assign Leasehold and throughout the lease assignment process. Landlord shall approve or disapprove any Request to Assign Leasehold within ninety (90) days of receipt of such request, but Landlord reserves the right to seek prospective assignees after receipt of Tenant's Request to Assign Leasehold within the

ninety (90) day period. Landlord shall refer any prospective assignees to Tenant for consideration, but Landlord's action shall not limit Tenant's ability to seek an assignee directly. If Landlord does not approve or disapprove Tenant's Request to Assign Leasehold within said ninety (90) days, and Tenant has notified Landlord by registered mail that the Request to Assign Leasehold has been duly made and the sum for investigation of the prospective assignee has been duly paid, and that ninety (90) days have elapsed without approval or disapproval by Landlord, then the time period for Landlord approval or disapproval may be extended by mutual written agreement of the parties.

The consideration passing to Tenant from such assignee upon transfer of Lessee's interest in this Lease to a Landlord-approved Person or entity shall not be included as Gross Receipts for the determination of rent.

Upon assignment of Tenant's interest in this Lease to a Landlord-approved assignee who has unconditionally assumed the obligations imposed by this Lease, Tenant and its predecessors in interest shall be relieved of all obligations hereunder arising after the date of such transfer.

20.04Hypothecation. Tenant may, with the prior written approval of Landlord, grant a security interest to this Lease for the purpose of financing construction, including "major repairs" and "minor repairs" subject to compliance with each and every condition that follows. Financing includes both the construction (or interim loan) and the take-out (or permanent or long-term) loan. Landlord shall not unreasonably withhold approval.

1. No security interest in this Lease (which term shall be deemed to include the Leasehold Mortgage or deed of trust, the note evidencing any indebtedness secured by such Leasehold Mortgage or deed of trust and all documents evidencing the commitment of financing) shall extend to or affect the fee, the reversionary interest, or the estate of Landlord in and to any land or Landlord-owned Improvements now or hereafter erected on the Leased Premises.
2. No security interest in this Lease shall cover more than one indebtedness except upon consolidation of the construction and takeout loans, and then only to the extent of such consolidation. There shall be no more than one security interest outstanding at any time during the term of this Lease. No security interest in this Lease or assignment thereof shall be binding upon Landlord in the enforcement of its rights under this Lease, nor shall Landlord be deemed to have any notice thereof, unless such security interest complies with each and every provision of this Lease pertaining to such security interest.
3. No security interest in this Lease shall be created with nor assigned to any Person or entity, natural or artificial, except an institutional lender (herein called "Encumbrance Holder") which shall mean any bona fide institution authorized under the Laws of the State of California to lend money on the security of an interest or interests in real property, including but not limited to an insurance company or trust company or real estate investment trust or Mortgage trust or

mutual fund or pension and welfare profit sharing fund or endowment fund with an investment portfolio of not less than Ten Million Dollars (\$10,000,000), a charitable or non-profit corporation or association with an investment portfolio of not less than Five Million Dollars (\$5,000,000), any California or federally chartered savings and loan association or bank, or F.N.M.A. or similar federally chartered corporations (if legally empowered to make loans contemplated by this Lease).

4. No security interest in this Lease or assignment thereof shall be valid unless all of the following conditions are met:
  - a. At the time of making such security interest this Lease is in full force and effect; and
  - b. Such security interest shall have been expressly made subject to the terms, covenants, and conditions of this Lease; and
  - c. Such security interest shall expressly provide that Encumbrance Holder shall provide evidence to Landlord that Encumbrance Holder has accepted or approved the completed Improvements and that the funds have been properly disbursed; and
  - d. Such security interest shall expressly provide that any proceeds from insurance, including fire or extended coverage, shall be used for repair or rebuilding of the leasehold Improvements and such other expenses as are expressly required to be paid from such proceeds by this Lease. Such security interest may provide that after such proceeds have been so applied, any remaining balance which would then be payable to Lessee could be used to repay all or part of the outstanding loan secured by such security interest.
  - e. Such security interest shall expressly provide that all notices of default under the note and deed of trust or Leasehold Mortgage must be sent to Landlord and Tenant, and that Landlord shall have the right, but not the obligation, to cure the default or cause the default to be cured if Tenant fails to do so. Landlord shall have twenty (20) days in which to cure any default or to cause any default to be cured after the time for Tenant to cure it has expired. Any sub-subtenant of such Subtenant of the Leased Premises shall have the right, but not the obligation, to cure any default within the period permitted for Landlord to cure such default. If any such sub-subtenant of a Subtenant cures all Tenant's defaults then existing, such sub-subtenant's or Subtenant's possession and use shall not be disturbed by Encumbrance Holder as long as the Subtenant performs its sublease provisions and continues to perform the obligations of the Tenant, including payment of rent to the Landlord and sums due the Encumbrance Holder according to their respective interests.

- f. Landlord shall have received written notice of the making of such security interest within five (5) days after the execution and delivery of such security interest and such security interest or abstract thereof shall have been recorded within ten (10) days after the execution and delivery thereof.
- 5. If Encumbrance Holder acquired Tenant's interest in the Lease as a result of a sale under the security interest pursuant to a Judgment of foreclosure or through any transfer in lieu of foreclosure, including, without limitation, purchase at trust deed sale, such Encumbrance Holder shall have the privilege of transferring its interest in such Lease to a wholly owned subsidiary corporation without the prior consent of Landlord and, in such event, such Encumbrance Holder shall be relieved of any further liability under this Lease arising from and after such transfer.
- 6. Encumbrance Holder shall have the right at any time during the term of the outstanding security interest and while this Lease is in full force and effect, to do any act or thing required by this Lease to be performed by Tenant in order to prevent a forfeiture of Tenant's rights hereunder, and all such acts or things so done shall prevent a forfeiture of Tenant's rights hereunder as if done by Tenant.
- 7. Written consent of Encumbrance Holder shall be obtained prior to any amendment to this Lease.
- 8. Each and all of the provisions, agreements, terms, covenants, and conditions of this Lease to be performed, kept and observed by Landlord and Tenant shall be binding upon the heirs, executors, administrators, successors, and assigns of Landlord and Tenant, and all rights, privileges and benefits arising under this Lease in favor of Landlord, Tenant and Encumbrance Holder shall be available in favor of the heirs, executors, administrators, successors, and assigns thereof respectively; provided, however, that any assignment, hypothecation, or subletting by or through Tenant or Encumbrance Holder in violation of the provisions of this Lease shall be void, and no rights whatsoever shall be conferred thereby.

20.05Hypothecation or Assignment for Benefit of Creditors. A general assignment by Tenant for the benefit of creditors, or any action taken by Tenant under any insolvency or bankruptcy act, shall constitute a breach of this Lease by Tenant and be cause for immediate Termination of this Lease by Landlord, anything in this Lease to the contrary notwithstanding.

## 21.0DEFAULT AND REMEDIES

21.01Events of Default. If one or more of the following events ("Events of Default") shall occur, Landlord may exercise any of the rights and remedies specified in Paragraph 21.2:

- (a) Tenant fails to pay any rent when and as the same becomes due and payable and such failure continues for a period of ten (10) days after written notice thereof is delivered to Tenant;

- (b) Tenant fails to comply with any Insurance Requirement, if such failure continues for twenty (20) days after written notice thereof from Landlord to Tenant.
- (c) Tenant fails to perform or comply with any other term or condition of this Lease and such failure shall continue for thirty (30) days after written notice thereof from Landlord, and Tenant does not, subject to Unavoidable Delays within such period, commence with due diligence and dispatch the curing of such Default.
- (d) Tenant makes a general assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due, or files a petition in bankruptcy, or is adjudged bankrupt or insolvent, or accepts or files a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, Law or regulation.
- (e) Within ninety (90) days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, Law or regulation, such proceeding is not dismissed, or Tenant fails to timely commence or continue defense of such action, or if, within ninety (90) days after the appointment without the consent or acquiescence of Tenant of any Trustee or receiver, or attempt to liquidate any material part of its assets, such appointment or attempt to liquidate is not vacated, or Tenant fails to timely commence or continue defense of such action.
- (f) Tenant vacates or abandons the Premises for five (5) business days in any thirty-day period.
- (g) Landlord discovers that any financial statement given to Landlord by Tenant, any assignee of Tenant, any subtenant of Tenant, any successor in interest of Tenant or any guarantor of Tenant's obligation hereunder, was materially false at the time given.

21.02 Landlord's Remedies. Upon any Event of Default Landlord shall have the following remedies:

21.02.1 Tenant's Right to Possession Not Terminated. Should Tenant breach this Lease beyond notice and the expiration of any applicable grace period, Landlord may, in addition to any other remedy given Tenant by law or in equity:

- (a) Continue this Lease in effect by not terminating Tenant's right to possession of the Premises, in which event Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent specified within this Lease, as such rent becomes due.

21.02.2 Termination of Tenant's Right to Possession. Landlord may terminate Tenant's right to possession of the Premises if any Event of Default as specified in Paragraph 21.1 continues for thirty (30) days after receipt of written notice by Tenant from Landlord, The

Landlord may then retain or dispose of the Premises in accordance with applicable Law and recover from Tenant:

- (a) The worth at the time of award of the unpaid rent which had been earned at the time of termination of the Lease; and
- (b) The worth at the time of award of the amount by which the unpaid rent would have been earned after termination of the lease for the balance of the term until the time of award exceeds the amount of rental loss that Tenant proves could have been reasonably avoided for the same term; and
- (c) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss that Tenant proves could be reasonably avoided;
- (d) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under the Lease; or
- (e) Terminate this lease and Tenant's right to possession of the Premises, and in addition to any recoveries that Tenant may seek hereinabove, bring an action to reenter and regain possession of the Premises in the manner provided by the laws or unlawful detainer of the State of California then in effect.

21.02.3 Landlord's Right to Cure Tenant's Default. Landlord may, in the Event of Default, cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord.

21.03 Interest on Unpaid Sums. Sums not paid when due pursuant to Paragraphs 5.1, 5.2 and 5.3 of this Agreement shall bear interest at the rate equal to five percent (5%) per annum plus the prevailing rate on the 25<sup>th</sup> day of the month preceding the event which caused such interest to be payable as established by the Federal Reserve Bank of San Francisco on advances to member banks under Sections 13 and 13.a of the Federal Reserve Act as now in effect or hereafter amended (the "Default Rate") from the date due until paid. No interest shall accrue or be paid for payments made no later than seven (7) business days after the due date.

21.04 Late Charge. Late payment by Tenant to Landlord of any sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount being impractical to fix. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of Minimum Base Rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) days after such amount shall be due, then without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to five percent (5%) of such overdue amount. The parties hereby agree that such late charges represent a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute

a waiver of Tenant's Default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of any of the aforesaid monetary obligations of Tenant, then Minimum Base Rent shall automatically become due and payable quarterly in advance, rather than monthly, notwithstanding any other provision of this Lease to the contrary.

## 22.0 SURVIVAL OF TENANT'S OBLIGATIONS; LANDLORD'S EQUITABLE RELIEF

No Expiration or Termination of this Lease pursuant to Paragraph 21.2.2 or by operation of Law or otherwise, shall relieve Tenant of its liabilities and obligations hereunder which have then accrued, which shall survive such Expiration or Termination, including without limitation the right of Landlord for indemnification against liability for personal injuries or for property damage occurring prior to the later of (i) Termination of this Lease or (ii) Tenant's vacation of the Premises, nor shall anything in this Lease be deemed to affect the right of Landlord to equitable relief where such relief is appropriate.

## 23.0 NO WAIVER BY LANDLORD

The failure of the Landlord to seek redress for violation of, or to insist on strict performance of, any term, covenant or condition of this Lease shall not be deemed a waiver of such violation or subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. No delay or omission in the exercise or any right or remedy of Landlord upon any Event of Default by Tenant shall impair such a right or remedy or be construed as a waiver. No act or conduct of Landlord, including, without limitation, the acceptance of keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the Expiration or Termination of this Lease. Only a written notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a Termination of this Lease. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant. Any waiver by Landlord of any Event of Default must be in writing and shall not be a waiver of any other Event of Default concerning the same or any other provision of the Lease.

## 24.0 REMEDIES CUMULATIVE

Each right, power and remedy of Landlord provided for in this Lease is now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease.

## 25.0 ENTRY BY LANDLORD

25.01 Entry for Inspection. Landlord and its respective authorized representatives shall have the right to enter the Premises, without notice, at any times during normal business hours and subject to Tenant's normal security requirements and, if required, accompanied at all times by a representative of Tenant for the purpose of inspecting the same or for the purpose of doing any work hereunder necessitated by an Event of Default, and to take all such action thereon as may be necessary or appropriate for any such purpose (but nothing herein contained in this Lease

shall create or imply any duty on the part of Landlord to make any such inspection or do any such work).

25.02Emergency Entry. Landlord may enter the Premises at any time, without notice, in the event of an emergency. Landlord shall have the right to use any and all means that Landlord may deem proper in such an emergency in order to obtain entry to the Premises. Entry to the Premises by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of the Premises, or an eviction of Lease from the Premises or any Portion of them.

25.03No Liability. Landlord shall not be liable in any manner, and Tenant hereby waives any claim for Damages, for any inconvenience, disturbance, loss of business, nuisance, or other Damage, including without limitation any abatement or reduction in Lease fees due hereunder, arising out of Landlord's entry onto the Premises as provided in this Lease, except damage resulting solely from the gross negligence or willful misconduct of Landlord or its authorized representatives

25.04Non-Disturbance. Landlord shall use its best efforts to conduct its activities on the Premises as allowed in this section in a manner which, to the extent reasonably practicable, will cause the least possible inconvenience, annoyance or disturbance to Tenant.

## 26.0 PERFORMANCE ON BEHALF OF TENANT

In the event that Tenant shall fail to make any payment or perform any act required hereunder to be made or performed by Tenant, then Landlord may, but shall be under no obligation to, provide Tenant with written notice and an opportunity to cure as specifically set forth herein, if any, following which Landlord may make such payment or perform such act with the same effect as if made or performed by Tenant; provided however, that nothing contained in this Paragraph 26 shall limit Landlord's obligation to provide written notice to Tenant under Paragraph 21 of this Lease. Entry by Landlord upon the Premises for such purpose shall not waive or release Tenant from any obligation or Event of Default hereunder. Tenant shall reimburse Landlord (with interest at the Default Rate) for all sums so paid by Landlord in connection with the performance of such act.

## 27.0 ACCEPTANCE OF SURRENDER

No modification, Termination or surrender of this Lease or surrender of the Premises or any part thereof or any interest therein by Tenant (except surrender upon Expiration or Termination of this Lease) shall be valid or effective unless agreed to and accepted in writing by Landlord and no act by any representative or agent of Landlord, other than such a written agreement and acceptance by Landlord shall constitute an acceptance thereof.

## 28.0 ESTOPPEL CERTIFICATE BY TENANT

Tenant will execute, acknowledge and deliver to Landlord within ten (10) days after receipt of Landlord's written request therefore, a certificate certifying: (a) 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 modification); (b) the dates, if any, to which Minimum Base



Rent, Percentage Rent and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any Default which has not been cured except as to Defaults specified in said certificate; (d) that Landlord is not in default hereunder except as specified in the certificate; and (e) any other matters reasonably requested and related to this Lease. In the event Tenant fails to execute and return such certificate to Landlord within said ten (10) day period, Landlord may, at its option, treat failure to deliver such statement as a material default of the lease, or Landlord may execute such certificate on Tenant's behalf and agrees to provide Tenant with a copy of said certificate. Any such certificate, whether executed by Tenant or Landlord on Tenant's behalf, shall be binding upon Tenant and may be relied upon by any prospective purchaser or Mortgagee of the Premises or any part thereof.

#### 29.0ESTOPPEL CERTIFICATE BY LANDLORD

Landlord will execute, acknowledge and deliver to Tenant within thirty (30) days of Tenant's written request, a Certificate certifying: (a) 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 modification); (b) the dates, if any, to which Minimum Base Rent, Percentage Rent and other sums payable hereunder have been paid; (c) whether or not to the knowledge of Landlord there are then existing any defaults under this Lease (and to specify the same); and (d) such other matters related to this Lease as are reasonably requested by the requesting party. Any such certificate shall be binding on Landlord and may be relied upon by any prospective transferee of Tenant's interest under this Lease. In the event Landlord fails to execute and return such certificate to Tenant within said thirty (30) day period, Tenant may execute such certificate on Landlord's behalf and agrees to provide Landlord with a copy of said Certificate.

#### 30.0CONVEYANCE BY LANDLORD

In case the original or any successor Landlord shall convey or otherwise dispose of Premises or its interest therein, it shall thereupon be released from all liabilities and obligations of Landlord under this Lease (except those accruing prior to such conveyance or other disposition) and such liabilities and obligations shall be binding solely on the then owner of the Premises. Tenant waives the protection of any statute or rule of law that gives or purports to give Tenant any right to terminate this Lease or surrender possession upon the transfer of Landlord's interest.

#### 31.0PROVISIONS SUBJECT TO APPLICABLE LAW

Rights, powers and remedies provided herein may be exercised only to the extent that 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 or unenforceable.

#### 32.0APPRAISAL

When the value of the Premises, or any part thereof is to be determined pursuant to any provision of this Lease, such value shall be determined by agreement of Landlord and Tenant within thirty (30) days from the date negotiations commence or, in the absence of such agreement, by one independent appraiser selected by Landlord and Tenant. If the two parties cannot agree on such value or on a single appraiser, then at the written request of either party, Landlord and Tenant within fifteen (15) days after such notice shall each appoint an appraiser to make such

determination, and notice of such appointment shall be given to the other party. If either party shall fail or refuse so to appoint an appraiser and give notice thereof within such period, the appraiser appointed by the other party shall within thirty (30) days thereafter individually make such determination. If the parties have each so appointed an appraiser within such thirty (30) day period, the appraisers thus appointed shall proceed to determine such value within thirty (30) days after notice of their appointment. If such two appraisers shall be unable to agree on such value within such thirty (30) days, they shall immediately calculate the arithmetic average of their values which shall become the value. All reasonable costs, fees and expenses of the appraisers shall be borne equally by Tenant and Landlord.

### 33.0NOTICES

Whenever any notice is required or permitted hereunder, such notice shall be in writing and shall be personally delivered, sent by U.S. Registered or Certified Mail, return receipt requested, postage prepaid, or sent by a nationally recognized overnight carrier service to the address set forth below or at such other addresses as are specified by written notice delivered in accordance herewith:

Landlord:                      SAN MATEO COUNTY HARBOR DISTRICT  
   400 Oyster Point Blvd. Suite 300  
   South San Francisco, CA 94080

Tenant:                        \_\_\_\_\_  
   \_\_\_\_\_  
   \_\_\_\_\_

Any notice personally delivered as hereinabove provided shall be deemed effectively given on the date of receipt of such notice. Any notice sent by U.S. Registered or Certified Mail or by a nationally recognized overnight courier service shall be deemed effectively given on the date of delivery or attempted delivery thereon, whichever is sooner.

### 34.0MEDIATION AND ARBITRATION

34.01Service of process. Concurrently with the execution of this Lease, a form for the irrevocable appointment of an agent to receive service of process on behalf of the other party shall be executed by each party.

34.02Disputes Subject to Mediation and Arbitration. Disputes between the parties relating to the interpretation and enforcement of their rights and obligations under this Lease shall be resolved by mediation and arbitration in accordance with the Provisions of Paragraphs 34.3, *et seq.*, of this Lease, with the exception that Landlord, at its sole discretion, may elect to proceed instead with an unlawful detainer action in Superior Court for San Mateo County in the event that Tenant defaults through failure to pay minimum or percentage rents when due under the terms of this Lease or any action to obtain a temporary restraining order or equivalent temporary relief to maintain the status quo and preserve either parties' ability to enforce the provisions of the Lease.

34.03Initial Mediation. With respect to any dispute between the parties that is to be resolved by arbitration, the parties shall attempt in good faith for thirty (30) days, to mediate such dispute and use their best efforts to reach agreement on the matters in dispute.

34.04Arbitration. Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph 34.2 shall be settled and decided by arbitration. Any such arbitration shall be held and conducted in the County of San Mateo by an arbitrator, who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of an arbitrator within fifteen (15) days, then Landlord and Tenant shall each choose an arbitrator, each of whom shall agree to select a third arbitrator who would actually arbitrate the dispute between the parties.

The following shall apply and govern such arbitration:

- (a) Any demand for arbitration shall be in writing and must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute, or other matter would be barred by the applicable statute of limitations.
- (b) The arbitrator or arbitrators appointed must be former or retired judges or “attorneys” with at least ten (10) years experience in real property and commercial matters.
- (c) All proceedings involving the parties shall be reported by a Certified Shorthand court reporter and written transcripts of the proceedings shall be prepared and made available to the parties.
- (d) The arbitrator or arbitrators shall prepare in writing and provide to the parties factual findings and the reasons on which the decision of the arbitrator or arbitrators is based.
- (e) Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date the arbitration proceedings are initiated.
- (f) The prevailing party shall be awarded reasonable attorney’s fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.
- (g) Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.
- (h) The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final and judgment made shall be entered on it in accordance with applicable law in any court having jurisdiction over the matter.

**NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE CERTAIN DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE**

**“ARBITRATION OF DISPUTES” PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE “ARBITRATION OF DISPUTES” PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION, AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.**

**WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE “ARBITRATION OF DISPUTES PROVISION TO NEUTRAL ARBITRATION.**

\_\_\_\_\_  
Initials

\_\_\_\_\_  
Initials

\_\_\_\_\_  
Initials

### 35.0 ATTORNEY’S FEES

Tenant shall reimburse Landlord, upon demand, for any reasonable costs or expenses incurred by Landlord in connection with an Event of Default under this Lease, whether or not suit is commenced or judgment entered. Such costs shall include legal fees, costs for experts or other professional services, and costs incurred for the negotiation of a settlement, any enforcement of rights, or otherwise. If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney’s fees and costs of suit.

35.01 Litigation Expenses. If either party hereto brings an action or proceeding (including any cross-complaint or counterclaim) against the other party by reason of a Default, or otherwise arising out of this Lease, the prevailing party in such action or proceeding shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to, reasonable attorney’s fees, which fees shall be payable whether or not such action is prosecuted to judgment. “Prevailing party” within the meaning of this section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense.

35.02 Appeals. Attorney’s fees under this section shall include attorney’s fees and all other reasonable costs and expenses incurred in connection with any appeal.

### 36.0 QUIET ENJOYMENT

Upon Tenant’s payment of Rent due hereunder, Tenant shall have quiet possession of the Premises for the Lease Term. If, at any time, Landlord’s title or right to receive rent hereunder is disputed, or there is a change of ownership of Landlord’s estate by any act of the parties or

operation of law, Tenant may deposit in escrow Rent thereafter accruing until Tenant is furnished proof satisfactory to it as to the party entitled thereto.

### 37.0 MISCELLANEOUS PROVISIONS

37.01 Time is of the Essence. Time is of the essence with respect to the performance of each Provision of this Lease.

37.02 Successors and Assigns. Except as otherwise provided in this Lease, all of the covenants, conditions and provisions to this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

37.03 Payments by Tenant. Except as otherwise expressly provided herein, Rent and all other sums payable by Tenant to Landlord under this Lease shall be paid without notice. All sums payable by Tenant shall be paid by good check in the currency of the United States at the Pillar Point Harbor office of Landlord as set forth below:

Office of the Harbor Master  
Pillar Point Harbor  
San Mateo County Harbor District  
1 Johnson Pier  
Half Moon Bay, CA 94019

or at such place and to such Person as Landlord may from time to time designate by written notice to Tenant.

37.04 Status of Parties on Termination of Lease. Except as provided in Paragraph 22, if either party elects to terminate this Lease as provided herein, on the date the Lease terminates the parties shall be released from further liabilities and obligations and the Landlord shall return to Tenant any unearned rent, so long as Tenant is not in default on the date the Lease terminates. Any Percentage Rent which has accrued but has not yet become due will be payable by Tenant to Landlord or credited in whole or in part to Tenant in the event that Landlord holds any unearned rent.

37.05 Exhibits Incorporation into Lease. All exhibits referred to in this Lease are attached to this Lease and are incorporated herein by this reference.

37.06 Governing Law. This Lease shall be construed and interpreted in accordance with the Laws of the State of California, and venue for any action relating thereto shall be in San Mateo County.

37.07 Singular and Plural and Gender. When required by the context of this Lease, the singular shall include the plural, the male the female, and vice versa.

37.08 Joint and Several Obligations. "Party" shall mean Landlord or Tenant; and if more than one Person or entity is Landlord or Tenant, the obligations imposed on that Party shall be joint and several.

37.09 Severability. The unenforceability, invalidity, or illegality of any provision of this Lease shall not render the other provisions of this Lease unenforceable, invalid or illegal, and

this Lease shall remain in force and effect as if such unenforceable, invalid or illegal provision had never been a part of this Lease.

37.010Binding Effect. Each and all provisions, agreements, terms, covenants and conditions of this Lease to be performed, kept and observed by Landlord and Tenant, shall be binding on any party who legally acquires any rights or interest in this Lease from Landlord or Tenant. However, Landlord shall have no obligation to Tenant's successor unless the rights or interests of Tenant's successor are acquired in accordance with the terms of this Lease.

37.011Third Party Beneficiaries. Except as to the Department as set forth in this Lease, there are no third party beneficiaries of this Lease.

37.012Interpretation. This Lease shall conclusively be presumed to have been drafted jointly by both parties hereto.

37.013Authority. If either Party has a governing board, that party shall deliver to the other Party upon the execution at this Lease a certified copy of a resolution of its board authorizing the execution of this Lease and naming the officers that are authorized to execute this Lease on behalf of the corporation.

37.014Captions. Captions are included in this Lease for convenience only and do not constitute a part of this Lease.

37.015Section Headings. The section headings contained herein are for convenience in reference and are not to be used to construe the intent of this Lease or any part thereof, nor to modify, amplify, or aid in the interpretation or construction of any of the Provisions thereof.

37.016Force Majeure. If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, or other cause without fault and beyond the control of the party obligated to perform (financial inability and any closure of access roads that does not effect a total blockage of all access to the Premises excepted), performance of such act shall be excused and extended for a period equivalent to the period of such delay; provided, however, that nothing in this section contained shall excuse Tenant from the prompt payment of any rent or other charge required of Tenant hereunder except as may be expressly provided elsewhere in this Lease.

37.017Nondiscrimination Covenant. Tenant covenants not to discriminate against or segregate any Person or group of Persons, on account of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability.

37.18 Loan Agreement. The terms and conditions of this Lease are subordinate to, and subject to, the Loan Agreement between Landlord and the Department (Department Contract NO. 84-21-34, dated August 23, 1984, as modified).

### 38.0 MEMORANDUM OF LEASE

Concurrently with execution of this Lease, the parties shall execute and acknowledge a Memorandum of Lease identifying the Lease in substantially the form of Exhibit C to be recorded in the official records of San Mateo County. Upon the request of either party, the

parties shall execute and acknowledge further Memoranda of any future amendments of this Lease. The parties hereto ratify, confirm and adopt all of the terms and conditions of the Lease.

### 39.0 APPROVAL BY CALIFORNIA DEPARTMENT OF BOATING AND WATERWAYS

This Lease requires the written approval of the Department and shall not take effect until such approval is obtained.

IN WITNESS WHEREOF, the Parties have executed this Lease on the day and year first above written.

#### **LANDLORD:**

SAN MATEO COUNTY HARBOR DISTRICT

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: Harbor District Board President

#### **TENANT:**

PILLAR POINT SEAFOOD

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**EXHIBIT A**

**DEPICTION OF THE PREMISES**



**EXHIBIT B**

**INITIAL TENANT IMPROVEMENTS**

**EXHIBIT C**  
**FORM OF LEASE MEMORANDUM**

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

San Mateo County Harbor District  
400 Oyster Point Boulevard, Suite 300  
South San Francisco, CA 94080

APN:

[Space Above For Recorder's Use Only]

*The undersigned declare that this Memorandum of Lease is exempt from Recording Fees pursuant to California Government Code Section 27383 and exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922.*

**MEMORANDUM OF LEASE**

This Memorandum of Lease is entered into as of \_\_\_\_\_, 2012, by and between the SAN MATEO COUNTY HARBOR DISTRICT, a political subdivision of the State of California, having a mailing address of 400 Oyster Point Boulevard, Suite 300, South San Francisco, CA 94080 (hereinafter referred to as "Landlord") and Pillar Point Seafood, having a mailing address of PO Box 193, Maxwell, CA 95955 (hereinafter referred to as "Tenant").

- 1.Landlord and Tenant entered into that certain Lease dated as of \_\_\_\_\_, 20\_\_ (the "Lease"), for the purpose of operating a commercial fish-buying business pursuant to further terms and conditions set forth in the Lease.
- 2.The initial lease term will be five (5) years ("Initial Term") commencing on \_\_\_\_\_, 20\_\_, with two (2) options to renew for five (5) years each.
- 3.The portion of the land being leased to Tenant (the "Premises") is described in Exhibit A annexed hereto.
- 4.This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Lease, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Lease, the provisions of the Lease shall control. The Lease shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Lease.

*[SIGNATURES APPEAR ON NEXT PAGE]*

**IN WITNESS WHEREOF**, the parties have executed this Memorandum of Lease as of the day and year first above written.

TENANT:

PILLAR POINT SEAFOOD

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LANDLORD:

SAN MATEO COUNTY HARBOR DISTRICT, a  
political subdivision of the State of California

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN MATEO )

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

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

**DESCRIPTION OF ATTACHED DOCUMENT**

Corporate Officer

Title or Type of Document

Number Of Pages

Other:

Date Of Document

Signer(s) Other Than Named Above

**EXHIBIT A**  
**to Memorandum of Lease**

**LEGAL DESCRIPTION OF PREMISES**



## **TABLE OF CONTENTS**

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### **LIST OF EXHIBITS:**

EXHIBIT A – DEPICTION OF THE PREMISES

EXHIBIT B – INITIAL TENANT IMPROVEMENTS

EXHIBIT C – FORM OF LEASE MEMORANDUM