

C-88-83

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STOCKTON
STOCKTONNOT A PART OF THE
STOCKTONL E A S E

This lease is made on June 21, 1988, between the City of Stockton, a municipal corporation, hereafter called lessor, and STOCKTON SAILING CLUB, a California corporation, hereafter called lessee. Lessor leases to lessee and lessee hires from lessor the premises hereafter described.

ARTICLE I. PREMISES

1.1 Definition

Except as expressly provided to the contrary in this lease, reference to "premises" is to the described land, exclusive of any improvements now or hereafter located on the premises, notwithstanding that any such improvements may or shall be construed as affixed to and as constituting part of the real property, and without regard to whether ownership of the improvements is in the lessor or in the lessee.

1.2 General Description

The premises are shown on the map attached as Exhibit 1. The premises consist of approximately 13.96 acres of land situated in San Joaquin County, with access to Brookside Road on the north. A portion of the premises is underwater, under the "south cove" of Buckley Cove. The land is improved with existing improvements listed on Exhibit 2.

1.3 Legal Description

The legal description of the land comprising the premises is included in Exhibit 3.

1.4 Existing Improvements

- a. The premises were leased by the City of Stockton, as lessor, to Jack Benton, as lessee, on March 24, 1959. Said lease has subsequently been amended and extended. Said lease has also been assigned to Frank H. Hoffman, Jr. and Lucille Hoffman. Said lease is referred to hereinafter as the "Benton Lease." The Benton Lease has been surrendered to the City of Stockton.

Certain improvements have been constructed on the premises by Jack Benton, Frank H. Hoffman, Jr. and Lucille Hoffman. Said improvements are hereinafter referred to as the "Hoffman improvements." The Hoffman improvements are all improvements listed on Exhibit 2 "Existing Improvements Prior to 1974 Lease," except the sailing club building.

- b. A portion of the premises was subleased from Jack Benton to Stockton Sailing Club on April 30, 1966. Pursuant to the terms of said sublease, improvements made by Stockton Sailing Club became the property of the City of Stockton upon construction. Said improvements are hereinafter referred to as the "Sailing Club improvements." The Sailing Club improvements remain the property of the City of Stockton, subject to the terms and conditions of this lease. The Sailing Club improvements are the sailing club building.
- c. Pursuant to the 1974 lease between City (Lessor) and Sailing Club (Lessee), Lessee was required to make additional improvements to the property, which are listed on Exhibit 2 "Existing Improvements Subsequent to 1974 Lease." These improvements are the property of the City of Stockton.

ARTICLE II. TERM

2.1 Term

The term of this lease shall commence on July 1, 1988 and end at midnight, June 30, 2038, unless sooner terminated as provided in this lease.

2.2 Lessee's Duty to Surrender

At the expiration or earlier termination of the term, lessee shall surrender to lessor the possession of the premises. Surrender or removal of improvements, fixtures and trade fixtures shall be as directed in provisions of this lease on ownership of improvements at termination. Lessee shall leave the surrendered premises and any other property in good and broom-clean condition except as provided to the contrary in provisions of this lease on maintenance and repair of improvements. All property that lessee is required to surrender shall become lessor's property at termination

of the lease. All property that lessee is not required to surrender but that lessee does abandon shall, at lessor's election, become lessor's property at termination.

If lessee fails to surrender the premises at the expiration or sooner termination of this lease, lessee shall defend and indemnify lessor from all liability and expense resulting from the delay or failure to surrender, including, without limitation, claims made by any succeeding tenant founded on or resulting from lessee's failure to surrender.

2.3 Holding Over

This lease shall terminate without further notice at expiration of the term. Any holding over by lessee after expiration shall not constitute a renewal or extension or give lessee any rights in or to the premises except as otherwise expressly provided in this lease.

2.4 Right of First Refusal

If, within ninety (90) days prior to the expiration of the term of this lease, said property, or any portion thereof, is proposed to be leased for any of the uses or related uses set forth herein, lessee shall have a right of first refusal to negotiate a new lease for said property pursuant to terms and conditions then mutually agreeable. If lessor and lessee are unable, during said ninety (90) day period, to agree on said terms and conditions, lessor may negotiate with any third party for the lease of said property or portion thereof.

ARTICLE III. RENT; OTHER PAYMENTS

3.1 Rent

The 1974 City of Stockton to Stockton Sailing Club lease is being terminated and surrendered to the City of Stockton concurrently with the execution of this lease. The Hoffman improvements have been previously conveyed to lessee, with the consent of lessor. The erection of the Hoffman improvements and the Sailing Club improvements, and the construction of improvements as required by this lease, and the maintenance of said improvements throughout the term of this lease, and the relinquishment of said improvements to lessor upon termination of this lease, are hereby accepted by lessor. Rent shall be due on the last day of each month and shall be

paid on the first (1st) day of the month then due. During the first 12 months of the term, the rent shall be \$1,250.00 per month. During the next 12 months, and every 12 month period thereafter, the base rent shall be adjusted upward by three (3) percent annually, starting in July, 1989.

3.2 Taxes and Assessments

Lessee shall pay without abatement, deduction or offset all real and personal property taxes, general and special assessments, and other charges of every description levied on or assessed against the premises, improvements located on the premises, personal property located on or in the land or improvements, the leasehold estate, or any subleasehold estate, to the full extent of installments falling due during the term, whether belonging to or chargeable against lessor or lessee. Lessee shall make all such payments direct to the charging authority before delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for their non-payment. If, however, the law expressly permits the payment of any or all of the above items in the installments (whether or not interest accrues on the unpaid balance), lessee may, at lessee's election, utilize the permitted installment method, but shall pay each installment with any interest before delinquency.

3.3 Utility

Lessee shall provide for and pay for all utility services consumed on the premises. Lessee shall provide water for human consumption in a public park adjacent to the premises at no expense to lessor.

ARTICLE IV. USES; PURPOSES; FEES

4.1 Permitted Uses

Lessee shall use and permit the use of the premises for a public small boat harbor for boating, recreational purposes and related activities including but not limited to clubhouse, ship chandlery, boat and engine repair. The premises shall not be used primarily for ship or boat building. Lessee shall have exclusive possession of the sailing club building on the premises. Lessee's rights in the remainder of the premises are subject to the right of the general public to enter thereon for recreational fishing.

4.2 State Grant; Public Trust

A portion of the premises is held by lessor under a grant from the State of California, to lessor, and is subject to a public trust for navigation, commerce and fishing pursuant to Chapter 1700 of the Statutes of 1965 of the State of California. Nothing contained in this lease shall be construed to authorize any use by lessee which would be violative of the public trust under which lessor holds the premises.

4.3. Minor Repairs By Customer

Lessee shall permit persons who rent boat berthing spaces on the premises to use the premises for minor boat repair and engine repair.

4.4 Nondiscrimination in Boat Berthing

All boat berths on the premises shall be available for rental on a nondiscriminatory basis, without any preference for lessee's members, in availability of berths, or in amount of rental, or otherwise.

ARTICLE V. IMPROVEMENTS

5.1 Approval by Lessor

Lessee shall not, without lessor's prior written consent, enlarge, remove, demolish, replace or substantially alter any substantial improvement now or hereafter in place on the premises if the change would materially diminish its value or if the change would materially affect the appearance of the premises. Lessor's consent shall not be unreasonably withheld. Lessor's consent may be conditioned upon certain acts which may be required of lessee, including but not limited to the furnishing of a bond and the securing of adequate builder's risk and workmen's compensation insurance.

5.2 Soil Condition

Lessor makes no covenants or warranties concerning the condition of the soil or subsoil or any other condition of the premises.

5.3 Maintenance of Premises

Throughout the term, lessee shall, at lessee's sole cost and expense, maintain the premises and all improvements in good condition and repair, and in accordance with all applicable laws, rules, ordinances, orders and regulations of (1) federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials; (2) the insurance underwriting board or insurance inspection bureau having or claiming jurisdiction; and (3) all insurance companies insuring all or any part of the premises or improvements or both.

Lessee shall promptly and diligently repair, restore, and replace as required to maintain or comply as above, or to remedy all damage to or destruction of all or any part of the improvements, resulting wholly or in part from causes required by this lease to be covered by fire or extended coverage insurance. The completed work of maintenance, compliance, repair, restoration, or replacement shall be equal in value, quality, and use to the condition of the improvements before the event giving rise to the work. Lessor shall not be required to furnish any services or facilities or to make any repairs or alterations of any kind in or on the premises.

5.4 Ownership of Improvements During Term

The Sailing Club building and all improvements placed on the property or are to be constructed on the property as permitted by this lease are the property of lessor. All other existing improvements placed on the property prior to the 1974 lease between City and Stockton Sailing Club shall be owned by lessee until expiration of the term or sooner termination of this lease. Lessee shall not, however, remove any improvements from the premises nor waste, destroy, or modify any improvements on the premises, except as permitted by this lease. The parties covenant for themselves and all persons claiming under them that the improvements are real property.

5.5 Ownership of Improvements at Termination

All improvements on the premises at the expiration of the term or sooner termination of this lease shall, without compensation to lessee, then become lessor's property free and clear of all claims to or against them by lessee or any third person, and lessee shall defend and indemnify lessor against all liability and loss arising from such claims or from lessor's exercise of the rights conferred by this paragraph.

5.6 Lessee's Right to Remove Trade Fixtures

At the normal expiration of the term, provided lessee is not then in default, lessee shall have the right to remove any or all trade fixtures, provided all resultant injuries to the premises and improvements are completely remedied and lessee complies with lessor's reasonable requirements respecting the resultant appearance. Trade fixtures, for the purposes of this lease, shall include all furniture, furnishings, floor coverings, signs, and other equipment and personal property placed in or on the premises, but shall not include pumps, radiators, boilers, or air conditioning equipment, or any improvements.

5.7 Construction of Improvements

Lessee shall, subject to the issuance of all necessary licenses, permits and approval by affected federal, state and local agencies, construct and/or reconstruct or cause to be constructed the following improvements:

- (a) Dredge the Harbor,
- (b) Implement a small boat crane,
- (c) Modify the small boat yard to accommodate boats,
- (d) Expand the Club House deck,
- (e) Provide handicap restrooms in the Club House.

Lessee shall not, without prior written consent or, except as authorized by this lease, enlarge, remove, demolish, replace or substantially alter any improvement now or hereafter in place on the premises if the change would materially diminish the value of the leasehold or if the change would materially affect the appearance of the leasehold. Lessor's consent shall not be unreasonably withheld. Lessor's consent may be conditioned upon certain acts which may be required of lessee, including, but not limited to the

furnishing of a reasonable bond and the securing of adequate builder's risk and worker's compensation insurance.

ARTICLE VI. ENCUMBRANCE; SUBORDINATION;
ASSIGNMENT; SUBLETTING

6.1 Lessee's Right to Mortgage Leasehold

Lessee shall have the right at any time and from time to time to subject the leasehold estate and any or all improvements to one or more mortgages as security for a loan or loans or other obligation of lessee, provided that:

1. The mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions, and restrictions stated in this lease and to all rights and interests of lessor except as otherwise provided in this lease.
2. Lessee shall give lessor prior notice of any such mortgage, and shall accompany the notice with a true copy of the note and mortgage.

6.2 Assignment and Subletting

Lessee shall not sublease or rent all or part of the premises or improvements nor assign this lease to any other person or entity without lessor's written approval, except as provided in paragraph 6.1. Rental of individual boat berthing spaces shall not require approval of lessor.

ARTICLE VII. INSURANCE

7.1 Fire and Extended Coverage

Throughout the term, at lessee's sole cost and expense, lessee shall keep or cause to be kept insured all improvements located on or appurtenant to the premises against loss or damage by fire and such other risks as are now or hereafter included in an extended coverage endorsement in common use for commercial structures, including vandalism and malicious mischief. The amount of the insurance shall be sufficient to prevent either lessor or lessee from becoming a coinsurer under the provisions of the policies, but in no event shall the amount be less than 90 percent of the then actual replacement cost (herein called full insurable value). Lessor shall not carry any insurance the effect of

which would be to reduce the protection or payment to lessee under any insurance that this lease obligates lessee to carry. If any dispute whether the amount of insurance complies with the above cannot be resolved by agreement, lessor may, not more often than once every 12 months, 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. Lessee may include the holder of any mortgage on the leasehold as a loss payee to the extent of that mortgage interest.

7.2 Proceeds of Fire and Extended Coverage

Lessor shall, at lessee's cost and expense, cooperate fully with lessee to obtain the largest possible recovery, and all policies of fire and extended coverage insurance required by paragraph 7.1 shall provide that the proceeds shall be paid to lessee, except as provided in paragraph 7.1.

The proceeds shall be deemed to be held in trust by the recipient to the uses and purposes prescribed by this lease.

Any insurance proceeds remaining after complying with the provisions of this lease relating to maintenance, repair, and reconstruction of improvements shall be the lessee's sole property.

7.3 Builder's Risk Coverage

Builder's risk coverage may be required by lessor in accordance with paragraph 5.1 of this lease.

7.4 Public Liability Insurance

Throughout the term, at lessee's sole cost and expense, lessee shall keep or cause to be kept in force, for the mutual benefit of lessor and lessee, comprehensive broad form general public liability insurance against claims and liability for personal injury, death, or property damage arising from the use, occupancy, disuse, or condition of the premises, improvements, or adjoining areas or ways, providing protection of at least \$500,000 for bodily injury or death to any one person, at least \$1,000,000 for any one accident or occurrence, and at least \$100,000 for property damage. Principal amounts of required public liability insurance shall be subject to annual review for increases by

lessor, provided that increases may be required only to the extent that there is a corresponding general increase in public liability insurance coverage required by landowners in the area negotiating leases comparable to this lease.

7.5 Boiler, Unusual Hazards, Other Insurance

Lessee shall procure and keep in force in form and coverage reasonably satisfactory to lessor:

- a. Boiler and machinery insurance if at any time or from time to time such equipment is located on the premises.
- b. If lessee commits, permits, or causes the conduct of any activity or the bringing or operation of any equipment on or about the premises creating unusual hazards, lessee shall, promptly on notice of demand from lessor, procure and maintain in force, during such activity or operation, insurance sufficient to cover the risks represented thereby. Lessor's demand for unusual hazard insurance shall not constitute a waiver of lessor's right, if lessor would otherwise have that right, to demand the removal, cessation, or abatement of such activity or operation.
- c. Other insurance, in amounts from time to time reasonably required by lessor, against other insurable risks, if at the time they are commonly insured against for premises similarly situated and containing comparable improvements.

Lessee may procure and maintain any insurance not required by this lease, but all such insurance shall be subject to all other provisions of this lease pertaining to insurance.

7.6 Policy Form, Content, Insurer

All insurance required by express provisions of this lease shall be carried only in responsible insurance companies licensed to do business in the state in which the premises are located. All such policies shall be nonassessable and shall contain language, to the extent obtainable, to the effect that (1) any loss shall be payable notwithstanding any act or negligence of lessor that might otherwise result in a forfeiture of the insurance, (2) the insurer waives the

right of subrogation against lessor, and against lessor's agents and representatives, (3) the policies are primary and noncontributing with any insurance that may be carried by lessor, and (4) they cannot be cancelled or materially changed except after 30 days' notice by the insurer to lessor. Lessee shall furnish lessor with copies of all such policies promptly on receipt of them, or with certificates evidencing the insurance. Before commencement of the lease, lessee shall furnish lessor with binders representing all insurance required by this lease.

Lessee may effect for its own account any insurance not required under this lease. Lessee may provide by blanket insurance covering the premises and any other location or locations any insurance required or permitted under this lease provided it is acceptable to all mortgagees.

7.7 Failure to Maintain Insurance; Proof of Compliance

Lessee shall deliver to lessor, in the manner required for notices, copies or certificates of all insurance policies required by this lease, together with evidence satisfactory to lessor of payment required for procurement and maintenance of the policy, within the following time limits:

For insurance required at the commencement of this lease, on execution of this lease;

For insurance becoming required at a later date, at least 30 days before the requirement takes effect, or as soon thereafter as the requirement, if new, takes effect;

For any renewal or replacement of a policy already in existence, at least 30 days before expiration or other termination of the existing policy.

If lessee fails or refuses to procure or to maintain insurance as required by this lease or fails or refuses to furnish lessor with required proof that the insurance has been procured and is in force and paid for, lessor shall have the right, at lessor's election and on 10 days notice, to procure and maintain such insurance. The premiums paid by lessor shall be treated as added rent due from lessee with interest at the rate of 7 percent per year, to be paid

on the first day of the month following the date on which the premiums were paid. Lessor shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer or insurers, and interest shall run from the date of the notice.

7.8 Lessor's Nonliability

Lessor shall not be liable, and lessee shall defend and indemnify lessor against all liability and claims of liability, for damage or injury to person or property on or about the premises from any cause. Lessee waives all claims against lessor for damage or injury to person or property arising, or asserted to have arisen, from any cause whatsoever.

ARTICLE VIII. DEFAULT; REMEDIES

8.1 Lessee's Default

Each of the following events shall be a default by lessee and a breach of this lease:

- a. Abandonment or surrender of the premises or of the leasehold estate, or failure or refusal to pay when due any installment of rent or any other sum required by this lease to be paid by lessee, or to perform as required or conditioned by any other covenant or condition of this lease.
- b. The subjection of any right of interest of lessee to attachment, execution, or other levy, or to seizure under legal process, if not released within 30 days, provided that the foreclosure of any mortgage permitted by provisions of this lease relating to purchase or construction of improvements shall not be construed as a default within the meaning of this paragraph.
- c. The appointment of a receiver to take possession of the premises or improvements or of lessee's interest in the leasehold estate or of lessee's operations on the premises for any reason, including but not limited to, assignment for benefit of creditors or voluntary or involuntary bankruptcy proceedings, but not including receivership (i) pursuant to administration of the estate of any deceased or incompetent lessee or of any

deceased or incompetent individual member of any lessee, or (ii) pursuant to any mortgage permitted by provisions of this lease relating to purchase or construction of improvements, or (iii) instituted by lessor, the event of default being not the appointment of a receiver at lessor's instance but the event justifying the receivership, if any.

- d. An assignment by lessee for the benefit of creditors or the filing of a voluntary or involuntary petition by or against lessee under any law for the purpose of adjudicating lessee a bankrupt; or for extending time for payment, adjustment, or satisfaction of lessee's liabilities; or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all cosubsequent orders, adjudications, custodies, and supervisions are dismissed, vacated, or otherwise permanently stayed or terminated within 30 days after the assignment, filing, or other initial event.
- e. Default or delinquency in the payment of any loan secured by a mortgage permitted by this lease to be placed by lessee against lessor's title or the leasehold or both.

8.2 Notice of Default

As a precondition to pursuing any remedy for an alleged default by lessee, lessor shall, before pursuing any remedy, give notice of default to lessee and to all qualifying subtenants and mortgagees whose names and addresses were previously given to lessor in a notice or notices from lessee or any qualifying mortgagee stating that the notice was for the purpose of notice under this provision. A qualifying subtenant is a subtenant in possession under an existing sublease which is proper under this lease. A qualifying mortgagee is a mortgagee under a mortgage then existing under the provisions of this lease relating to purchase or construction of improvements. Each notice of default shall specify in detail the alleged event of default and the intended remedy.

8.3 Mortgagee's Right to Cure Defaults

Each mortgage under a mortgage then existing, under provisions of this lease permitting mortgages relating to purchase or construction of improvements, shall have 30 days after service of notice of default within which, at mortgagee's election, either:

- a. To cure the default if it can be cured by the payment or expenditure of money; or
- b. If mortgagee does not elect to cure by the payment or expenditure of money, or if the default cannot be so cured, to cause the prompt initiation of foreclosure, to prosecute it diligently to conclusion, and to perform and comply with all other covenants and conditions of this lease requiring the payment or expenditure of money by lessee until the leasehold estate shall be released or reconveyed from the effect of the mortgage or until it shall be transferred or assigned pursuant to or in lieu of foreclosure.

8.4 Lessee's Right to Cure Default

If the alleged default is nonpayment of rent, taxes, or other sums to be paid by lessee as provided in Article III, or elsewhere in this lease directed to be paid as rent, lessee shall have 10 days after notice is given to cure the default. For the cure of any other default, lessee shall promptly and diligently after notice commence curing the default and shall have 30 days after notice is given, to complete the cure plus any additional period that is reasonably required for the curing of the default.

8.5 Lessor's Remedies

If any default by lessee shall continue uncured, following notice of default as required by this lease, for the period applicable to the default under the applicable provision of this lease, lessor has the following remedies in addition to all other rights and remedies provided by law or equity, to which lessor may resort cumulatively or in the alternative:

- a. Lessor may at lessor's election terminate this lease by giving lessee notice of termination. On the giving of the notice, all lessee's rights in the premises and in all improvements shall terminate. Promptly after

notice of termination, lessee shall surrender and vacate the premises and all improvements in broom-clean condition, and lessor may reenter and take possession of the premises and all remaining improvements and eject all parties in possession or eject some and not others or eject none. Termination under this paragraph shall not relieve lessee from the payment of any sum then due to lessor or from any claim for damages previously accrued or then accruing against lessee.

- b. Lessor may at lessor's election reenter the premises, and, without terminating this lease, at any time from time to time relet the premises and improvements or any part or parts of them for the account and in the name of lessee or otherwise.
- c. Lessor may at lessor's election eject all persons or eject some and not other or eject none. Lessor shall apply all rents from reletting as in the provision on assignment of subrents. Any reletting may be for the remainder of the term or for a longer or shorter period. Lessor may execute any leases made under this provision either in lessor's name or in lessee's name and shall be entitled to all rents from the use, operation, or occupancy of the premises or improvements or both. Lessee shall nevertheless pay to lessor on the due dates specified in this lease the equivalent of all sums required of lessee under this lease, plus lessor's expenses, less the avails of any reletting or attornment. No act by or on behalf of lessor under this provision shall constitute a termination of this lease unless lessor gives lessee notice of termination.
- d. Lessor may at lessor's election use lessee's personal property and trade fixtures or any of such property and fixtures without compensation and without liability for use or damage, or store them for the account and at the cost of lessee. The election of one remedy for any one item shall not foreclose an election of any other remedy for another item or for the same item at a later time.

- e. Lessor shall be entitled at lessor's election to each installment of rent or to any combination of installments for any period before termination, plus interest at the rate of 7 percent per year from the due date of each installment. Avails of reletting or attorned subrents shall be applied, when received, as follows: (1) to lessor to the extent that the avails for the period covered do not exceed the amount due from and charged to lessee for the same period, and (2) the balance to lessee. Lessor shall make reasonable efforts to mitigate lessee's liability under this provision.

8.6 Notice of Lessor's Default; Lessee's Waiver

Lessor shall not be considered to be in default under this lease unless (1) lessee has given notice specifying the default and (2) lessor has failed for 30 days to cure the default, if it is curable, or to institute and diligently pursue reasonable corrective or ameliorative acts for noncurable defaults. Lessee shall have the right of termination for lessor's default only after notice to and consent by all mortgagees under mortgages then existing under provisions of this lease relating to purchase or construction of improvements. Lessee waives the protections of Civil Code Section 1932 and 1933.

8.7 Unavoidable Default or Delay

Any prevention, delay, nonperformance, or stoppage due to any of the following causes shall excuse nonperformance for a period equal to any such prevention, delay, nonperformance, or stoppage, except the obligations imposed by this lease for the payment of rent, taxes, insurance, or obligations to pay money that are treated as rent. The causes referred to above are: strikes, lockouts, labor disputes, failure of power, irresistible superhuman cause, acts of public enemies of this state or of the United States, riots, insurrections, civil commotion, inability to obtain labor or materials or reasonable substitutes for either, governmental restrictions or regulations or controls (except for reasonably foreseeable in connection with the uses contemplated by this lease), casualties not contemplated by insurance provisions of this lease, or other causes beyond the reasonable control of the party obligated to perform.

ARTICLE IX. GENERAL CONDITIONS
MISCELLANEOUS PROVISIONS

9.1 Notice

a. Definition of Notice; Application of Provision

As used in this lease, notice includes but is not limited to the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, and appointment. No notice of the exercise of any option or election is required unless the provision giving the election or option expressly requires notice. Unless the provisions of this lease on rent direct otherwise, rent shall be sent in the manner provided for giving notice.

b. Writing

All notices must be in writing; provided that no writing other than the check or other instrument representing the rent payment itself need accompany the payment of rent.

c. Delivery

Notice is considered given either (1) when delivered in person to the recipient named as below, or (2) on the date shown on the return receipt after deposit in the United States mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage and postal charges prepaid, addressed by name and address to the party or person intended as follows:

Notice to lessor: City Manager, City of Stockton
City Hall, Stockton, CA. 95202

Notice to lessee: Stockton Sailing Club
c/o Albert M. Ellis, Attorney At Law
RISHWAIN, HAKEEM & ELLIS
2800 W. March Lane, Suite 200
Stockton, CA. 95207

d. Change of Recipient or Address

Either party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

e. Recipient Named

Each recipient named must be an individual person. If more than one recipient is named, delivery of notice to any one such recipient is sufficient. If none of the recipients named in the latest designation of recipient is available for delivery in person, and if the notice addressed by mail to each recipient named in the latest designation of recipient is returned to the sender undelivered, notice shall be sufficient if sent by mail as above to the party as named in this lease, unless the name or identity of the party has changed as permitted in this lease and proper notice of the change has been given, in which event the notice shall be sufficient if sent by mail as above to the party named in the latest notice designating the party, and the notice is considered given when the first attempt to give notice was properly made.

9.2 Definitions

- a. Person means person or persons or other entity or entities or any combination of persons and entities.
- b. Individual person means a human being.
- c. Lessor means the person who is the owner at the time in question of the premises, whether singular or plural in number, and whether named in this lease as lessor or having become the successor in interest of the named lessor, or the successor of a successor, whether by assignment, foreclosure, or other transfer, and whether intentional or inadvertent or by operation of law.
- d. Lessee means that the person named as lessee in this lease, whether singular or plural in number, or the person who at the time in question is the successor in interest of lessee, or the successor of a successor, whether by assignment, foreclosure, or other transfer, and whether intentional or inadvertent or by operation of law. It does not, however, include any person claiming under any assignment or other transfer prohibited by this lease, and this definition does not alter the provisions of this lease relating to assignment or subletting.

- e. Mortgage means mortgage, deed of trust, or other encumbrance recognized in this state at the time it attaches as a contractual security interest in the real property.
- f. Mortgagee means mortgagee, beneficiary, or other obligee of an indebtedness secured by a mortgage. All mortgagees under this lease must be institutional lenders.
- g. Leasehold mortgagee means a mortgagee holding a mortgage, deed of trust or other encumbrance, encumbering lessee's leasehold estate as permitted by this lease.
- h. Premises are defined in the article on Premises.
- i. Foreclosure includes judicial foreclosure, sale under a power of sale given in the mortgage, and all other remedies provided by law or equity or set out in the mortgage and enforceable in this state at the time of the foreclosure for divesting the obligee of title in the event of the obligee's default.

9.3 Captions, Table of Contents

The table of contents of the lease and the captions of the various articles and paragraphs of this lease are for convenience and ease of reference only and do not define, limit, augment, or describe the scope, content, or intent of this lease or of any part of parts of this lease.

9.4 Gender

The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the neuter, and each includes corporation, partnership, or other legal entity when the context so requires.

9.5 Singular and Plural

The singular number includes the plural whenever the context so requires.

9.6 Exhibits, Addenda

All exhibits and addenda to which reference is made in this lease are incorporated in the lease by the respective references to them, whether or not they are actually

attached, provided they have been signed or initialed by the parties. Reference to "this lease" includes matters incorporated by reference.

9.7 Entire Agreement

This lease contains the entire agreement between the parties. No promise, representation, warranty, or covenant not included in this lease has been or is relied on by either party. Each party has relied on his own examination of this lease, the counsel of his own advisors, and the warranties, representations, and covenants in the lease itself. The failure or refusal of either party to inspect the premises or improvements, to read the lease or other documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection or advice.

9.8 Severability

The invalidity or illegality of any provision shall not affect the remainder of the lease.

9.9 Successors

Subject to the provisions of this lease on assignment and subletting, each and all of the covenants and conditions of this lease shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns, and personal representatives of the respective parties.

IN WITNESS WHEREOF, the parties have executed this lease on the date first above written.

CITY OF STOCKTON, A Municipal
Corporation

ATTEST:

By _____
"LESSOR"

City Clerk

STOCKTON SAILING CLUB, a
California Corporation

Approved as to form:

By _____

City Attorney

EXISTING IMPROVEMENTS

Prior to 1974 Lease:

1. Sailing club building
2. Bulkhead, with ladder
3. Crane
4. Hoist
5. Utility building with restrooms
6. 1200 gallon concrete septic tank
7. Water system with well and 5 HP submersible pump
8. Electrical system
9. Chain link fence with gates
10. Paved parking area - 85,600 sq. ft.
11. Curbs, sidewalks and ramp
12. Light at main gate
13. Sprinkler system
14. Boat storage, repair and sales building -
25,000 sq. ft., with butane tank
15. Seven Modesto Ash trees
16. Miscellaneous trees and shrubs
17. Open boat berths (including 31 dock boxes):
 - A Dock 18 - 24' berths
 - B Dock 27 - 28' berths; 5 - 36' berths
 - C Dock 16 - 32' berths; 19 - 28' berths
 - D Dock 27 - 28' berths; 5 - 32' berths

Subsequent to 1974 Lease:

1. Caretaker facilities
2. Public restrooms
3. Landscaping all unpaved areas
4. Six foot chain link perimeter fencing
5. Storage building
6. Underground all utility lines and equipment on site
7. Club house improvements
 - a. Including office, storage room, commodore's room and heating/air conditioning system
8. Open boat berths
 - a. E, F, G and H docks
9. Roadway and parking lot
10. Handicap elevator

LEASE: BUCKLEY COVE (SOUTH)

All that certain parcel of land being a portion of Section 36, R2N, TSE, MDB & M, City of Stockton, County of San Joaquin, State of California and more particularly described as follows:

Beginning at a point said point being designated as GB-15 on that map entitled Map of the Grant to the City of Stockton filed the 18th day of February 1972, in Book of Surveys at Page 59, San Joaquin County Records; thence on the following 8 courses:

- | | | |
|----|------------------------|---|
| 1. | North 36° 13' 24" West | 424.68 feet to point GB-16
of said map |
| 2. | North 36° 13' 24" West | 448.01 feet |
| 3. | North 01° 18' 27" East | 750.00 feet |
| 4. | North 46° 18' 27" East | 29.00 feet |
| 5. | South 88° 41' 33" East | 146.00 feet |
| 6. | North 01° 18' 27" East | 40.42 feet |
| 7. | South 88° 41' 33" East | 356.12 feet |
| 8. | South 01° 18' 27" West | 1,503.00 feet |
- to said POINT OF BEGINNING.

Containing 13.96 acres more or less.