

**LEASE AGREEMENT
FOR 4950 BUCKLEY COVE WAY**

This Lease ("Agreement") is made and entered into on 10/20/22 ("Effective Date") by and between the City of Stockton ("Lessor"), a municipal corporation organized and existing under the laws of the State of California and STEPHENS MARINE, INC, DBA RiverPoint Landing Marina & Resort, A California Corporation ("Lessee"), for the purpose and use of 4950 Buckley Cove Way, Stockton CA. The Lessor and Lessee may be referred to collectively as "Parties" or in the singular as "Party" as the context requires.

ARTICLE 1: PREMISES

"Premises" refer to the property at 4950 Buckley Cove Way, a full description is included in Exhibit A, which is approximately 13.35 acres of land and is under the City's stewardship, granted by the State Lands Commission (Chapter 1700, Statutes of 1965). Lessee shall use the Premises for the purpose of operating and managing docks (and ancillary improvements) used to provide secure moorings and other services for boats (collectively, the "Marina"), as well as a dry-dock storage and RV camping facility. The Premises are within an area commonly known as "Buckley Cove".

ARTICLE 2: TERM, TERMINATION, AND DEFAULT

2.1 Initial Term. Parties agree the Lessor will lease the Premises to the Lessee for a Term of twenty-five (25) years beginning on the date stated above ("Initial Term"), unless terminated in accordance with Section 2.4 or the Lessee exercises its option in accordance with Section 2.2.

2.2 Option for Renewal Term.

2.2.1 Lessee shall have the option but not the obligation to extend the Initial Term for an additional twenty-five (25) years. Lessee may exercise this option anytime beginning on or after the sixteenth (16th) year of the Initial Term, but in no event less than 180 days prior, to the last day of the Initial Term. Lessee may not exercise this option if at the time of exercise there exists an uncured Lessee default under the terms of this Agreement. Lessee may exercise its right to extend the Initial Term by providing notice to Lessor pursuant to the provisions of this Agreement.

2.3 Holdover. This Lease shall terminate without further notice at expiration of the term. Any holding over by the Lessee after expiration shall not constitute a renewal or

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extension or give Lessee any rights in or to the Premises except as otherwise expressly provided in this Agreement.

2.4 Termination of Lease. This Lease can be terminated in accordance with the following provisions:

2.4.1 Breach. This Agreement may be terminated for breach according to Article 8;

2.4.2 Option renewal is not executed. If Lessee does not exercise its option to renew the Lease (as provided in Section 2.2 above), the Lease shall terminate without further obligation by either Party on the last day of the initial term or another date as mutually agreed upon in writing;

2.4.3 Mutual Agreement. Upon mutual written agreement by the parties;

2.4.4 Damage and Destruction. If the Premises become unusable for the intended purpose because of condemnation, Lessee shall have the right to terminate the Lease thirty (30) days from the date of damage; and

2.4.5 Surrender. Upon expiration or other termination of this Lease, Lessee shall surrender the Premises in good clean condition except as provided to the contrary by provisions of this Agreement. 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. Upon surrender Lessor may cause the removal of abandoned property, at Lessee's expense, that Lessor does not elect to possess. If Lessee fails to surrender the premise at the natural expiration or sooner termination of this Agreement, Lessee shall defend and indemnify Lessor from all liability and expenses 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.

ARTICLE 3: LEASE AND OTHER PAYMENTS

3.1 Lease Payments. Lessee will pay Lessor a monthly amount, in arrears, on the twentieth (20th) day of each calendar month, and no later than the last day of each month according to the following payment schedule and in accordance with Section 3.1.1, Section 3.2, Section 3.3, Section 3.4, and Section 3.5. Lessee shall pay to Lessor without abatement, deduction or offset the following sums:

Phase 1	Years 1 – 15	Either (a) 5% of Monthly Gross Income, excluding fuel or (b) \$5,000, whichever of the two is greater, plus \$.015 per gallon of fuel.	The Phase 1 amount shall be paid, in arrears on the 20 th day of each calendar month for the prior month's rent through the end of Phase 1.
Phase 2	Years 16 – 25	Either (a) 6% of Monthly Gross Income, excluding fuel or (b) \$7,000, whichever of the two is greater, plus \$.015 per gallon of fuel.	Beginning Phase 2, the amount shall be paid, in arrears on the 20 th day of each calendar month for the prior month's rent through the end of Phase 2.

3.1.1 Minimum Monthly Rent. For the avoidance of doubt, during Phase 1, rent shall never be less than \$5,000 per calendar month. Beginning Phase 2, rent shall never be less than \$7,000 per calendar month.

3.2 Payment Verification. The Lessee will ensure proper accountability and internal control of all revenues collected and provide marina gross revenue reports on a monthly basis, without notice or demand from Lessor. The Lessee will simultaneously pay the rent specified above.

3.3 Delivery of Lease Payment. Each monthly payment will be delivered to the City of Stockton, located at 400 E Main Street, 4th Floor, Attention: Parking & Venues Division, Stockton, CA 95202, or delivered to other such places designated via written notice by Lessor, or paid to Lessor via electronic funds transfer.

3.4 Delayed Lease Payment. Any payment received after the tenth of any month will be considered late and subject to a late payment penalty of \$100.00 for each calendar month until cured.

3.5 Premises Operation Gross Revenues. Gross income consists of the total, as determined under the accrual method of accounting, of all actual prices and rents charged for merchandise, services, rentals or subleases or any combination thereof, whether wholly or partly for cash or on credit, and all other receipts from all business conducted on or from the Premises, including but not limited to all (a) deposits not refunded; (b) orders taken on or from the Premises to be filled or paid for elsewhere; (c) rents or other considerations passing to Lessee from subtenants, concessionaires and licensees; (d) considerations to Lessee for the placing of coin-operated or other vending, weighing, and other devices on the Premises; and (e) considerations received by the Lessee from the operation of communication services (e.g. WiFi) on the Premises. Each transaction on

credit or installation shall be treated as a transaction for the full price in the lease year in which the sale is made, irrespective of whether paid for within that year.

3.5.1 Exclusions From Gross Income Excluded from gross income, or subtracted if previously included, shall be:

- a. All uncollected credit installment balances determined and shown on the Lessee's books to be uncollectable;
- b. All sums collected and paid out of sales taxes, luxury taxes, excise taxes, and similar taxes required by law to be added to the total purchase price, whether now or hereafter enforced, to be collected from customers and paid by Lessee;
- c. Merchandise transferred or exchange between other stores or warehouse owned by or affiliated with Lessee if those transfers or exchanges are made solely for convenience operation of Lessee's business and not for the purpose of consummating a sale previously made on or from the Premises or for the purpose of depriving Lessor of the benefit of a sale that otherwise would be made on or from the Premises;
- d. Merchandise returned to shippers and manufacturers;
- e. All credits and cash refunds made on any sale that took place on or from the Premises;
- f. All cash or credit received in settlement of any claims for loss of or damage to merchandise;
- g. Gift certificates or like vouchers, if not issued for value, until the time they have been converted into a sale by redemption;
- h. The portion of the purchase price by which the price is actually reduced for merchandise traded in for credit;
- i. Bulk sales made by the Lessee not in the ordinary course of business, except sales of merchandise traded in for credit; and
- j. Any income or receipts that, under generally accepted accounting principles are derived from the sale or disposal of any capital assets, or from the retirement of any indebtedness, or from the Lessee's

investment or any funds not invested in the Premises or the operation of Lessee's business within the premise.

3.6 Records – Audit. Lessee shall keep true and correct records of all gross income. The records to be kept includes sales slips, unbilled accounting documents, ledgers, cash register tapes, bank deposit receipts, sales tax returns, sales books, bank books, and other records reasonably necessary to verify the gross income stated in Lessee's statements to Lessor. All records shall be kept at the Premises (or stored electronically) for not less than five (5) years after delivery of the required monthly report; provided that each party may at reasonable times remove any or all records or permit or cause them to be removed for legal or accounting purposes or for other purposes consistent with these provisions and this Agreement.

Lessor will have the right, at any reasonable time and from time to time after giving reasonable notice, to do any or all of the following to audit the records; to cause an audit of the records to be made; to make abstracts from the records; to make copies of any or all of the records; to examine any or all wharfage agreements, subleases, licenses, and concession agreements; and to make copies of any or all said documents. Lessee shall make all records specified in the notice available at the time specified in the notice, if reasonable, and at the place where the records are to be kept, or Lessor may remove any or all records to a place or places reasonable and agreeable for the purpose. All information so obtained by Lessor or otherwise obtained under the percentage rent provisions of this Agreement shall be treated as confidential except as required under the California Public Records Act ("PRA"), in any litigation or arbitration proceedings between the parties and except, further, that Lessor may divulge the information to a prospective buyer or encumbrancer of the promises or of Lessor's interest in the lease or to a governmental agency or employee demanding the information. Upon receiving a PRA request from a third party for disclosure of information obtained by Lessor pursuant to this Agreement, Lessor shall provide notice to Lessee of the request prior to any requested disclosure so as to provide Lessee a meaningful opportunity to seek a court order or other remedy to preclude disclosure, and Lessor shall reasonably cooperate with Lessee in those efforts.

If the audit discloses that the gross income was understated by more than five percent (5%), Lessee shall immediately pay the additional percentage rent to Lessor plus the reasonable cost of the audit, or the then late payment penalty as described in section 3.4; whichever is greater.

3.7 Negation of Partnership. Nothing in this Agreement shall be construed to render the Lessor in any way or for any purpose a partner, joint venture, or associate in any relationship with Lessee other than that of landlord and tenant, nor shall this Agreement be construed to authorize to act as agent for the other.

3.8 Lessee's Covenant of Best Efforts. Lessee will use its best efforts to maximize Lessee's gross revenue, and to that end, Lessee shall continuously during the entire term conduct and carry on its business on the Premises and shall keep said Premises open for business and cause said business to be conducted therein during each and every business day of the term of this Agreement, not less than eight (8) hours a day, nor less than three hundred (350) days a year. Lessee agrees to operate said business on the Premises with due diligence and efficiency in a like manner as comparable businesses.

3.9 Utilities, Trash and Debris. Lessee will be responsible for all utility costs including, but not limited to, electricity, sewer and water, in connection with the operation of the Premises .

3.9.1 Lessee will be responsible for the cost of storage, removal and disposal of all refuse and garbage generated from marina operations. Disposal of all refuse left by patrons on the Premises is the sole responsibility of the Lessee.

3.10 Taxes and Assessments. Regarding all real and personal property taxes; general and special assessments; possessory interest tax; 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 sublease hold estate, to 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 nonpayment. If, however, the law expressly permits the payment of any or all of the above items in 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.

ARTICLE 4: USES AND LESSEE DUTIES

4.1 State Grant – Public Trust. The property is held by the Lessor under a grant from the State of California to Lessor, and are 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 Agreement shall be construed to authorize any use by Lessee which would be violative of the public trust under which Lessor holds the Premises. Any such lease made by the City, will contain, in addition to terms and conditions deemed necessary by the City, the following provisions:

4.1.1 The lease may be terminated by the City upon material violation of any of the provisions of this Agreement by Lessee, subject to any cure provisions provided herein; and

4.1.2 Neither this Agreement nor the Premises may be assigned, transferred or sublet without the prior written consent of the City, excluding use agreements for RV parking, Dry-dock storage, and boat berthing.

4.2 Permitted and Non-Permitted Uses. Lessee shall use and permit the use of the Premises for a public small boat harbor for recreational boating, facilities for recreational vehicle camping, dry dock storage space, other recreational purposes, and related activities including but not limited to restaurant, ship chandlery, boating, and engine repair. The Premises shall not be used primarily for ship or boat building.

All the permitted uses are subject to obtaining any necessary permits or licenses.

Lessee shall not knowingly permit the use of the property for any illegal or otherwise prohibited purpose or for any purpose that:

- 4.2.1 Could void or render voidable any policy of insurance held by both parties;
- 4.2.2 Could render uncollectible any loss insured under any insurance policy held by both parties;
- 4.2.3 Would materially reduce the value of the property; and
- 4.2.4 Would otherwise be in violation of any governmental restriction such as CA Division of Boating and Waterways, State Lands Commission (Chapter 1700, Statutes of 1965), Boating Clean and Green and Hazardous Waste, California Coastal Commission, CA Department of Parks, Cal OSHA, and all federal, state, and count marine-related regulations.

4.3 Duties and Obligations of Lessee. Without limiting duties or obligations of the Lessee described in more general terms elsewhere in this agreement, Lessee will assume sole responsibility for the daily operation of the Premises and at a minimum be responsible for the following:

- 4.3.1 Develop a comprehensive plan for managing, marketing, operating, and maintaining the Premises and the additional permitted use as described in Section 4.2.;
- 4.3.2 Include regularly schedule hours of operation and determine how the Premises will be accessible to the public/customers;
- 4.3.3 Provide and maintain necessary equipment to perform operations including, but not limited to, transporting vessels, slip rentals, floating docks, and general recreational and Marina maintenance as outlined herein;

- 4.3.4 Maintenance and repair according to Article 5;
- 4.3.5 Provide all staff, equipment, vehicles and materials for the use and maintenance of all docks, gangways, fuel lines and dock, landscaping, hardscape, RV sites, electrical, pump-out facilities, and associated parts of the dock system and surrounding property;
- 4.3.6 Maintain current licenses and registrations for all equipment and ensuring all personnel who operate such equipment possess current licensure/certification, qualification, or competency as required by federal, state, and local laws;
- 4.3.7 Submit verification and copies of all up-to-date licenses and certifications as requested by the City/County/State and other regulatory agencies, as required;
- 4.3.8 Maintain all records and reports that pertain to the management and operation of the Premises including, but not limited to wet slip tenants, vessel storage tenants, launch/retrieval operations, security activities, financial and management/operational issues, maintenance records, transient slips and interim rentals, and environmental and regulatory fees and permits;
- 4.3.9 Ensure all vessels berthed and/or stored within the Premises are always properly maintained and in a clean and safe condition. All vehicles that do not meet the above criteria, will be promptly removed from the Premises Lessee will request copies of each vessel's current registration and proof of insurance when preparing new and/or renewed moorage and/or storage contracts. Such records will be maintained by the Lessee and available for review by the Lessor, annually or upon request;
- 4.3.10 Develop, establish, administer, and ensure compliance with mooring and storage contracts to be entered into by the Lessee with each tenant on the premise;
- 4.3.11 Prepare a set of rules and regulations and prepare a copy for the City subject to the City's review within thirty (30) days of execution of this Agreement. Such rules and regulations shall be provided to all tenants. These rules will be modified or amended to remain in compliance with state and local laws and regulations;

- 4.3.12 Lessee will be responsible for all employees' and agents' wages, benefits, insurance, and taxes in accordance with state policies and procedures;
- 4.3.13 Lessee will be responsible for the cost of training and licensing staff, required to conduct operations on the premise. Under no circumstance will the Lessee's employees, implied or otherwise, become employees of the City;
- 4.3.14 Lessee will be responsible for all office furniture, landscaping equipment, operational supplies, materials, equipment, systems, and services utilized in the operation and management of the Premises;
- 4.3.15 Lessee will allow the Lessor and its agents to enter the property in case of emergency and to examine the leased Premises at reasonable times and further provide necessary keys or required access as may be required; and;
- 4.3.16 No temporary structures or mobile units, except those recreational vehicles which are parked in designated locations, shall be permitted to remain on the Premises, except: (i) in connection with and incidental to the construction of permanent improvements, or (ii) in connection with the provision of security services to the Premises (provided, however, no such temporary structure or mobile unit may be used for residential housing, and instead must be used only for business purposes by employees or independent contractors of Lessee in the course of performing security services on or about the Premises).

4.4 Environmental Obligations. The Lessee will adhere to all applicable federal, state, local environmental and safety laws, rules, regulations, policies, requirements and;

- 4.4.1 Will establish and communicate an environmental policy for operations and boater activity, including allowable and prohibited boater maintenance, to all Marina and/or recreational customers;
- 4.4.2 Ensure that an area is designated for used oil, used oil filters, and used bilge pad. The Lessee will maintain on the Premises enough absorbent materials for use in case of chemical or oil spills. In the event of any actual or suspected spill of any chemical, petroleum product, or wastewater, the Lessee must immediately notify regions' designated protocol, as well as the City, and immediately take all measures necessary to control the spread of the spilled material, and to clean it up;
- 4.4.3 All waste materials must be disposed of properly and in accordance with City, State and Federal requirements;

- 4.4.4 Lessee will have environmental services on-call in the event that there is an environmental hazard greater than what the Lessee is prepared for;
- 4.4.5 Provide the City with the record of any and all environmental hazards within a 24-hour period and by the following business day after weekends and/or holidays;
- 4.4.6 Will establish a recycling program for paper, plastics, glass, zinc and other metal anodes, used oil, and any other recycling materials, per state and county regulations;
- 4.4.7 The Lessee will not permit the storage of any hazardous substances or materials, including, but not limited to illuminating oils, oil lamps, turpentine, benzene, or other similar substances, or any substance or material prohibited by the standard policies of fire insurance companies in California; and
- 4.4.8 Lessee will prohibit the use of fireworks, firework displays, or any pyrotechnics, on the Premises.

4.5 Vehicle and Vessel Monitoring/Inspection. Lessee will keep true and comprehensive records of all vehicles and vessels stored/berthed within the Premises that reflect tenant occupancy and slip assignment, and ensure that no vehicle or vessel is in such condition that it may list, capsize, sink, or release electric current, fuel, motor oil, human waste, or any other hazardous material or pollutant on the Premises and/or water. Any vehicle or vessel that presents a safety or environmental hazard must be addressed immediately.

The Lessee will perform visual inspections of all vehicles and vessels upon initial and all subsequent slip assignment, and at appropriate frequencies thereafter. Furthermore, the Lessee is also required to ensure the vehicles and/or vessels are registered, documented, and insured, as well as in compliance with berthing or other relevant requirements applicable by the permitted use, referenced in section 4.2, as set forth in the Lessee's mooring, storage or reservation agreements.

In such case it is needed, the Lessee will terminate agreements as necessary and ensure vehicle and vessels leave the Premises, with the use of lien-sale remedies if/when necessary.

4.6 Security. Upon execution of this agreement, Lessee will provide commercially reasonable security measures to protect the Premise's patrons, guests, and employees from disturbances or other occurrences that may be attributable to the Premise's

operations. When property is secured, copies of all pass codes and keys will be supplied to the City.

4.7 Signage. The Lessor reserves the right to erect, remove, or change signs at the Premises as it deems necessary and desirable for the convenience of the public and in accordance with federal, state, and local regulations. No exterior signs shall be erected, removed, or changed by the Lessee without prior written approval of the Lessor.

ARTICLE 5: REPAIRS AND MAINTENANCE OF FACILITIES, EQUIPMENT, AND IMPROVEMENTS

5.1 Repairs by Lessee. By taking possession of the Premises, Lessee will be deemed to have accepted the Premises in "as is" condition. Throughout the term of the contract and at the sole cost and expense of the Lessee, Lessee will maintain the Premises and all improvements in good condition and repair in accordance with all applicable laws, rules, ordinances, orders, and regulations of federal, state, county, and municipal agencies.

5.2 Maintenance. Throughout the term hereof and at Lessee's sole cost and expense, provide custodial/janitorial services to all facilities on the Premises, including temporary bathroom facilities; remove and dispose of all abandoned or derelict vessels; provide an annual inspection and maintenance schedule to prevent deterioration of facilities; maintain the Premises and all improvements in good condition and repair in accordance with all applicable laws, ordinance, and regulations; 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 agreement to be covered by or extended insurance coverage.

The completed work of maintenance, compliance, repair, restoration, or replacement will be equal or greater in value, quality, and use to the condition of the improvements before the event giving rise to the work. Lessor will not be required to furnish any services of facilities or to make any repairs or alterations of any kind in or on the Premises.

5.3 Equipment. The Lessee will be responsible to provide any and all tools, fixtures, furnishing, equipment and other appurtenances necessary to successfully operate the Premises in accordance with the terms of this agreement.

5.4 Improvements, New Construction, Demolition, and Alterations. Except as otherwise expressly provided in this Agreement, Lessee will not, without Lessor's prior written consent, enlarge, remove, demolish, replace, or substantially alter any substantial improvement now or hereinafter 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.

5.4.1 Lessee's Duty to Complete Capital Improvements. Lessee agrees to complete, at its sole cost and expense, and in compliance with all applicable laws and building codes, the following capital improvements to the Premises:

- a. On or before the end of 2Q 2024, provide new electrical service to the RV campground, sites 12-30 (inclusive): 50A/30A electrical hookup for each site (estimated cost to complete this improvement is \$220,000).
- b. On or before the end of 2Q 2025, modify and improve existing electrical service to the RV campground, sites 1-11 (inclusive), 31, and 32: 50A/30A electrical hookup for each site (estimated cost to complete this improvement is \$75,000).
- c. On or before the end of 3Q 2023, replace asphalt and curbs, east side of Premises (estimated cost to complete this improvement is \$125,000).
- d. On or before the end of 3Q 2024, replace asphalt and curbs, west side of Premises (estimated cost to complete this improvement is \$125,000).
- e. On or before the end of 3Q 2026, improve access to fuel dock by adding a +/-65' linear guest dock anchored to the northwest portion of the Premises, adjacent to the existing fuel dock (estimated cost to complete this improvement is \$135,000); to the extent Lessee is unable to obtain all permits necessary to complete this improvement, Lessee will provide written notice to Lessor describing one or more alternative improvements to the Premises of equal or greater cost, which Lessee will complete by 3Q 2026.

5.4.2 Dredging. Lessor and Lessee agree that dredging of (i) the shared channel to the north and leading to the Marina, and (ii) the waters in and around the Marina and those waters serving improvements east of the Marina not belonging to or operated by Lessee (i.e., Lessor's boat launches, and docks operated by Pacific Boat Services, Inc.) will be necessary within the first five (5) years of this Lease (the "Dredging Project"). Lessor and Lessee agree that the Dredging Project will benefit Lessor, Lessee, and others within Buckley Cove, as, among other things, it will allow vessels, including those with larger drafts, better access to the Marina, Lessor's boat launches, and Pacific Boat Services, Inc.'s improvements. Accordingly, Lessor and Lessee further agree as follows:

- a. Lessor will lead the Dredging Project, and will be the party contracting all work related thereto. Lessor will process all funding and financial segments of the Dredging Project, including disbursement of payments

to contractors performing work related to the Dredging Project. Within sixty (60) days of signing this Lease, Lessor will commence development of a plan for the Dredging Project, which plan will include a list of major pre-work milestones (e.g., scoping, funding allocation, identification of potential contractors, deadline for submission of Requests for Proposals, etc.) and an estimated timeline for completion (collectively, the "Plan"). Lessee will provide assistance in developing the Plan, and Lessor will provide to Lessee a status report on the Plan and the Dredging Project on or before the date that is sixty (60) days after the Effective Date and continuing every sixty (60) days thereafter until the Dredging Project is completed. Lessee will pay to Lessor up to \$75,000 to complete the Plan, in five (5) increments of \$15,000 each, the first beginning on the date that is sixty (60) days after the Effective Date, and continuing every 60 days thereafter provided Lessor makes diligent and meaningful progress towards finalizing the Plan (collectively, "Plan Funding"). The Plan Funding will be credited dollar-for-dollar to Lessee's contribution obligation set forth in Section 5.4.2.d, below.

- b. Prior to entering into any contract with a third party for work relating to the Dredging Project, Lessor will consult with Lessee as to the selection of the contractor to perform such work, the timing and scope of such work, and other terms and conditions of a contract.
- c. Lessor will use its best efforts to initiate and complete the Dredging Project within five (5) years of the date of this Agreement.
- d. Lessee will reimburse Lessor up to one-third (1/3), not to exceed five hundred thousand dollars (\$500,000), of the full cost of the Dredging Project; provided, however, if the full cost of the Dredging Project exceeds \$2,500,000, Lessee's not to exceed contribution amount shall instead be one million dollars (\$1,000,000).
- e. The actual payment schedule for Lessee's contribution detailed in Section 5.4.2.d. above will be determined at or before the commencement of the Dredging Project by and between Lessor and Lessee, and will generally follow a progress payment schedule that reflects the amount of work then completed. Lessee will deposit two hundred fifty thousand dollars (\$250,000) with Lessor prior to commencement of the Dredging Project upon ninety (90) days' written notice from Lessor, which deposit will be credited to Lessee's contribution. Full payment of the balance of Lessee's contribution must occur no later than ninety (90) days after Dredging Project completion.

5.5 Conditions of Construction. Before any substantial work of construction, alteration, demolition, or repair is commenced on the Premises, and before any building materials have been delivered to the Premises by Lessee or under Lessee's authority, Lessee will comply with the following condition or procure Lessor's written waiver of the condition or conditions specified in the waiver:

5.5.1 Obtain Lessor's written approval of preliminary plans and specifications and obtain all necessary permits for construction.

5.6 INTENTIONALLY OMITTED.

5.7 Soil Conditions. Lessor makes no covenants or warranties respecting the condition of the soil or subsoil or any other condition of the Premises.

5.8 Right to Contest Governmental Order. Lessee has the right to contest by appropriate judicial or administrative proceedings, without cost or expense to Lessor, the validity or application of any law, ordinance, order, rule, regulation, or requirement (hereinafter called law) that Lessee repair, maintain, alter, or replace the improvements in whole or in part, and Lessee shall not be in default for failing to do such work until a reasonable time following final determination of Lessee's contest. Lessor may, upon notice, require Lessee to first furnish Lessor a bond, satisfactory to Lessor in form amount, and insurer, guaranteeing compliance by Lessee with the contested law and indemnifying Lessor against all liability that Lessor may sustain by reason of Lessee's failure or delay in complying with the law. Lessor may, but is not required to, contest any such law independently of Lessee. Lessor may, on Lessee's notice of request, join in Lessee's contest.

5.9 Ownership of Improvements During Term. All existing improvements and all improvements constructed on the Premises by Lessee as permitted by this Agreement shall be owned by Lessee until expiration of the term or sooner termination of this Agreement. Lessee shall not, however, remove any improvements from the Premises nor waste, destroy, or modify any improvements on the Premises, to deface or devalue the Premises, except as permitted by Lessor. The parties covenant for themselves and all persons claiming under them that the improvements are real property.

5.10 Ownership of improvements at Termination. All improvements constructed on the Premises at the expiration of the term or sooner termination of this Agreement 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.

5.11 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 remaining improvements

are completely remedied and Lessee complies with Lessor's reasonable requirements respecting the resultant appearance.

Trade fixtures, for purposes of this Agreement, shall include all machinery, partitions, furniture, furnishings, bins, racks, floor coverings, special lighting fixtures, water pumps (mobile only), exterior and interior signs, boat lifts, and other equipment and personal property installed or placed in or on the Premises whether or not permanently attached to the real property, but shall not include utility fixtures, elevators, radiators, boilers, storm drain, water reclamation systems, air conditioning equipment, RV power boxes, and fuel equipment, as to deface or devalue the Premises.

ARTICLE 6: ASSIGNMENT, MORTGAGE, AND SUBLETTING

6.1 Assignment, Mortgage, and Subletting. Lessee shall not sublease, assign, mortgage, encumber, hypothecate, create a security interest for the benefit of creditors, or rent out any portion of the Premises or interest in this Agreement, including any improvements, trade fixtures, or equipment on the Premises, without Lessor's prior written approval. Rental of individual boat berthing spaces, RV parking spaces, and dry dock storage spaces shall not require approval of Lessor nor rental or subleasing of the premises comprising the "Riverpoint Landing".

ARTICLE 7: INSURANCE REQUIREMENTS

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

7.2 Minimum Scope and Limit of Insurance. Coverage shall be at least as broad as:

7.2.1 **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 or its equivalent covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

7.2.2 **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease. (for Lessees with employees).

7.2.3 Property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named insured; whichever is greater. No representation is made that the minimum insurance requirements of this agreement are sufficient to cover the obligations of the Lessee under this agreement.

7.3 Limits of Insurance. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

7.4 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

7.4.1 Additional Insured Status. The City of Stockton, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Lessee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Lessee's insurance (at least as broad as ISO Form CG 20 10.) **Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.**

7.4.2 Primary Coverage. The Additional Insured coverage under the Lessee's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13. The City of Stockton does not accept endorsements limiting the Lessee's insurance coverage to the sole negligence of the Named Insured.

7.4.3 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City of Stockton.

7.4.4 Waiver of Subrogation. Lessee hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Lessee may acquire

against the City of Stockton by virtue of the payment of any loss under such insurance. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the City of Stockton for all work performed by the Lessee, its employees, agents and subcontractors.

- 7.4.5 Self-Insured Retentions. All Self-insured retentions must be disclosed to Risk Management for approval and shall not reduce the limits of liability. The City of Stockton may require the Lessee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton.
- 7.4.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City of Stockton.
- 7.4.7 Verification of Coverage. Lessee shall furnish the City of Stockton with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Lessee's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- 7.4.8 Special Risks or Circumstances. City of Stockton reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- 7.4.9 Certificate Holder Address. Proper address for mailing certificates, endorsements and notices, unless notified of a new address by Lessor, shall be:

City of Stockton
400 E Main Street, 3rd Floor – HR
Attn: City Risk Services
Stockton, CA 95202

ARTICLE 8: DEFAULT REMEDIES

8.1 Lessee's Default. Each of the following events shall be a default by Lessee and a breach of this Agreement:

- 8.1.1 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 Agreement to be paid by Lessee, or failure to perform as required or conditioned by any other covenant or condition of this Agreement;
- 8.1.2 The subjection of any right or 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 Agreement relating to purchase or construction of improvements shall not be construed as a default within the meaning of this paragraph;
- 8.1.3 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 Agreement 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;
- 8.1.4 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 consequent 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;

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 sublessees or assignees whose names and addresses were previously given to Lessor in a notice or notices from Lessee or any sublessee or assignee stating that the notice was for the purpose of notice under this provision. A qualifying sublessee or assignee is a sublessee or assignee in possession under an existing sublease or assignment which is proper under this Agreement and approved in

advance and in writing by Lessor. Each notice of default shall specify in detail the alleged event of default and the intended remedy.

8.3 Lessee's Right to Cure Defaults. If the alleged default is nonpayment of rent, taxes, or other sums to be paid by Lessee as provided in Article 3, or elsewhere in this Agreement 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 the notice commence curing the default and shall have 30 days after notice is given to complete the cure, plus an additional period that is reasonably required for the curing of the default but never more than an additional 180 days. To the extent a department, division, employee, or agent of Lessor provides Lessee notice of default as provided in Section 8.2 above, Lessee may appeal that notice by seeking review and a determination by the City Manager or designee.

8.4 Lessor's Remedies. If any default by Lessee shall continue uncured, following notice of default as required by this Agreement, for the period applicable to the default under the applicable provision of this Agreement, 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:

8.4.1 Lessor may at Lessor's election terminate this Agreement 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. Within thirty (30) days 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 equipment and trade fixtures 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.

8.5 Notice of Lessor's Default – Lessee's Waiver. Lessor will not be in default under this Agreement 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 non-curable defaults. Lessee shall have the right of termination for Lessor's default only after notice and Lessor's failure to cure the default, or implement reasonable corrective or ameliorative acts for non-curable defaults, within 30 days of the notice.

8.6 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 Agreement 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 those reasonably foreseeable in connection with the uses contemplated by this Agreement), casualties not contemplated by insurance provisions of this Agreement, or other causes beyond the reasonable control of the party obligated to perform.

8.7 Attorney's Fees. If either party brings any action or proceeding to enforce, protect, or establish any right or remedy, the prevailing party shall be entitled to recover reasonable attorneys' fees. Arbitration is not an action or proceeding for the purpose of this provision.

ARTICLE 9: GENERAL AND SPECIAL TERMS AND CONDITIONS

9.1 Notice – Definition of Notice. As used in this Agreement, 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 Agreement on rent direct otherwise, rent shall be sent in the manner provided for giving notice.

9.1.1 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. All consents and approvals required by this Agreement are to be in writing, and cannot be unreasonably withheld, conditioned, or delayed.

9.1.2 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 of Stockton
425 N. El Dorado Street
Stockton, CA 95202

Notice to Lessee: River Point Landing
Attn: Richard B. Dunn
4950 Buckley Cove Way
Stockton, CA 95219

With a copy to: Eric Nims

Neumiller & Beardslee
PO Box 20
Stockton, CA 95201

9.1.3 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.

9.2 Definitions.

9.2.1 Person Means person or persons or other entity or entities or any combination of persons and entities.

9.2.2 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 Agreement 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.

9.2.3 Lessee means the person named as Lessee in this Agreement, 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 Agreement, and this definition does not alter the provisions of this Agreement relating to assignment or subletting.

9.2.4 Foreclosure includes judicial foreclosures, 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 oblige of title in the event of the obliger's default.

9.3 Caption. The captions of the various articles and paragraphs of this Agreement are for convenience and case of reference only and do not define, limit, augment, or describe the scope, content, or intent of this Agreement or of any part of this ease.

9.4 Singular and Plural. The singular number includes the plural whenever the context so requires.

9.5 Exhibits – Addenda. All Exhibits and addenda to which reference is made in this Agreement are incorporated in the lease by the respective references to them, whether

they are actually attached, provided they have been signed or initiated by the parties. Reference to "this Agreement" includes matters incorporated by reference.

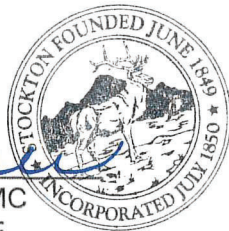
9.6 Entire Agreement. This lease contains the entire agreement between the parties. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied on by either party. Each party has relied on his own examination of this Agreement, the counsel of his own advisors, 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.

9.7 Severability. If any portion of this Lease thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state, or city statute, ordinance, or regulation, the remaining provisions of the Lease shall remain in full force and effect to the extent that the provisions of the Lease are severable.

9.8 Successors. Subject to the provisions of this Agreement on assignment and subletting, each and all the covenants and conditions of this Agreement 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 Agreement on the date first above-written.

ATTEST:



for ELIZA R. GARZA, CMC
CITY CLERK OF THE
CITY OF STOCKTON

CITY OF STOCKTON, a Municipal Corporation,

BY: HARRY BLACK
HARRY BLACK
CITY MANAGER

APPROVED AS TO FORM
LORI ASUNCION
INTERIM CITY ATTORNEY

Stephens Marine Inc.,

BY: _____

BY: RB Dun

RYAN MEYERHOFF
DEPUTY CITY ATTORNEY

NAME: RICHARD B.
DUNN TITLE: PRESIDENT