

LEASE AGREEMENT
FOR 4911 BUCKLEY COVE WAY

This Lease ("Agreement") is made and entered into on 6/25/2021 by and between the City of Stockton ("Lessor"), a municipal corporation organized and existing under the laws of the State of California and Pacific Boat Detailing Inc. Dba Pacific Boat Services Inc. ("Lessee"), for the purpose and use of 4911 Buckley Cove Way, Stockton CA ("Marina"). 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 4911 Buckley Cove Way, a full description of which is included in Exhibit A, which is approximately 4.61 acres of land and is under the City's stewardship, granted by the State Lands Commission (Chapter 1700, Status of 1965). Lessee shall use the premises for the purpose of operating and managing a Marina and boat service facility.

ARTICLE 2: TERM, TERMINATION, AND DEFAULT

2.1 Initial Term. Parties agree the Lessor will lease the Marina to the Lessee for an Initial Term of twenty-five (25) years beginning on July 1, 2021 and ending on June 30, 2046, unless terminated in accordance with Section 2.4 or a mutual option is exercised in accordance with Section 2.2.

2.2 Mutual Option for Renewal Term. If the Parties mutually agree in writing before the conclusion of the Initial Term, this Lease will extend for a Renewal Term of twenty-five (25) years, not to exceed 50 cumulative years.

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

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 Mutual renewal is not executed. If a mutual option for renewal is not executed, the Lease shall terminate without further obligation by either

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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 agreement by the parties, and sixty (60) day written notice prior to termination;

2.4.4 Condemnation. If the Premises become unusable for the intended purpose because of condemnation, Lessee shall have the right to terminate the Lease as of the date of the taking; and

2.4.5 Surrender. Upon expiration or other termination of this Lease, Lessee shall surrender Marina in good clean condition except as provided to the contrary by provisions of this Lease. 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 Lease, 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 Initial Term Lease Payments. For the Initial Phase 1, Lessee will pay Lessor a monthly amount on the first day of each calendar month, and no later than the tenth 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 – 6	\$1,500.00 with annual five percent (5%) increase.	The Phase 1 amount shall be paid monthly beginning July 1, 2021, and on the first day of each calendar month thereafter through and including June 1, 2027, with an annual 5% recurring increase until the start of Phase 2.
Phase 2	Years 7 – 15	Either (a) 5% of All Monthly Marina Operation Gross Revenues (excluding boating parts or supplies ("Parts, defined at Section 3.5),	Beginning July 1, 2027, the Phase 2 amount shall be paid on the first day of each calendar month through the end of Phase 2.

		which will be paid at 4% of its gross revenue) or (b) \$3,000, whichever of the two is greater.	
Phase 3	Years 16 – 25	Either (a) 6% of All Monthly Marina Operation Gross Revenues (excluding boating parts or supplies ("Parts," defined at Section 3.5) which will be paid at 4% of its gross revenue) or (b) \$5,000, whichever of the two is greater.	Beginning July 1, 2036, the Phase 3 amount shall be paid on the first day of each calendar month through the end of Phase 3.

3.1.1 Minimum Monthly Rent. For the avoidance of doubt, during Phase 2, rent shall never be less than \$3,000 per calendar month. Beginning Phase 3, rent shall never be less than \$5,000 per calendar month.

3.2 Payment Verification. The Lessee will ensure proper accountability and internal control of all revenues collected and provide marina operation categorized 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.

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 Marina 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. Excluded from

Marina Operation Gross Revenues are "Parts" which refer to the parts or supplies used on or in the operation of a marine vessel such as, but not limited to propellers or engine oil, either with services provided by Lessee or sold by Lessee as a direct retail sale to public.

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 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 Lease.

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 Lease shall be treated as confidential except as required under the Public Records Request Act, 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 premises or of Lessor's interest in the Lease or to a governmental agency or employee demanding the information.

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 Lease 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 Lease 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 Lease, not less than eight (8) hours a day, nor less than five (5) days, per week, year-round. 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, as required by Marina operations.

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. All real and personal property taxes, general and special assessments, and other charges of every description levied on or assessed against the premises, possessory interest tax, 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 Lease 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 violation of any of the provisions of the Lease by the Lessee; and

4.1.2 Neither the Lease nor the leased premises may be assigned, transferred or sublet without the prior written consent of the City.

4.2 Permitted and Non-Permitted Uses. Lessee will use and permit the use of the premises for the construction, maintenance, and operation of a marina, including open

and covered boat berthing, boat and houseboat rentals, boat construction, marine repairs, boat sales, boat repair equipment, marine items, water recreation merchandise, fishing supplies, and other marina related services. 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, 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 Marina and at a minimum be responsible for the following:

- 4.3.1 Develop a comprehensive plan for managing, marketing, operating, and maintaining the Marina. The plan must also ensure a clean, safe and enjoyable recreational facility for boaters at a competitive price point;
- 4.3.2 Include regularly schedule hours of operation and determine how the marina will be accessible to the public/customers;
- 4.3.3 Provide and maintain necessary equipment to perform Marina operations including, but not limited to, transporting vessels service/repair and/or slip rentals, floating docks, and general 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 and associated parts of the dock system;
- 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 Marina 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, vehicles, and equipment berthed and/or stored within the Marina are always properly maintained and in a clean and safe condition. All vehicles, vessels, and equipment 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 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 contracts to be entered into by the Lessee with each Marina tenant;
- 4.3.11 Prepare a set of Marina rules and regulations and prepare a copy for the City subject to the City's review within thirty (30) days of execution of this Lease. Such rules and regulations shall be visibly displayed at the Marina's entrance and distributed to all Marina 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 of its 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 Marina operations. 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, operational supplies, materials, equipment, systems, and services utilized in the operation and management of the marina;

- 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 units presently on the premises, shall be permitted to remain in the Marina, except in connection with and incidental to the construction of permanent improvements.
- 4.4 Environmental Obligations. The Lessee will adhere to all applicable federal, state, local environmental and safety laws, rules, regulations, polices, requirements and;
- 4.4.1 Will establish and communicate an environmental policy for marina operations and boater activity, including allowable and prohibited boater maintenance, to all marina 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 Marina 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 explosives of any kind, 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 Vessel Monitoring/Inspection. Lessee will keep true and comprehensive records of all vessels berthed in the Marina that include tenant occupancy, slip assignment, and ensure that no 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 into the water. Any vessel that presents a safety or environmental hazard must be addressed immediately.

The Lessee will perform visual inspections of all vessels upon initial and all subsequent slip assignment, and at appropriate frequencies thereafter. Furthermore, the Lessee is also required to ensure the vessel are registered, documented, and insured, as well as in compliance with berthing requirements as set forth in the mooring contracts.

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

4.6 Security. Upon execution of this agreement, Lessee will provide all necessary security measures to protect patrons, guests, employees, and all other individuals from any disturbance or other occurrences that may be attributable to the Marina 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 exterior of the Marina as it deems necessary and desirable for the convenience of the public. No exterior signs shall be erected, removed, or changed by the Lessee without prior written approval of the Lessor. Lessee shall be permitted to erect business signage on the premises once approved in writing by the Lessor. Lessor may require drawings and/or specifications prior to granting written approval.

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

5.1 Repairs by Lessee. By taking possession of the Marina, Lessee will be deemed to have accepted the Marina 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 Marina facilities, 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 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 Marina in accordance with the terms of this agreement.

5.4 Improvements, New Construction, Demolition, and Alterations. Except as otherwise expressly provided in this Lease, 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.

The construction schedule (Exhibit B titled "Major Construction / Expansion / Upgrade Projects Summary"), depicts certain existing and planned improvements. Lessee will complete the projects at Exhibit B based on the completion times below, which time shall begin upon commencement of the Initial Term, and without regard to the accuracy of the "estimated costs" listed below or included in Exhibit B.

5.4.1 Lessee's Duty to Construct New Improvements.

- a. Clean Marina/Boat Yard Cleanup & Abandoned Boat Disposal.
 - i. Estimated Cost - \$45,000
 - ii. Completion by - 90 Days
- b. Equipment Certification/Renovation.
 - i. Estimated Cost - \$32,000
 - ii. Completion by - 90 Days
- c. Current Office Renovation.
 - i. Estimated Cost - \$65,000
 - ii. Completion by - 90 Days

- d. Wash Down Area.
 - i. Estimated Cost - \$65,550
 - ii. Completion by – 4 Months
- e. New/Updated Landscaping.
 - i. Estimated Cost - \$77,857
 - ii. Completion by – 10 Months
- f. Storm Water Filtration. (Bond Required, see section 5.5.2)
 - i. Estimated Cost - \$115,628
 - ii. Completion by – 18 Months
- g. Modification of Current Docks.
 - i. Estimated Cost - \$150,000
 - ii. Completion by – 18 Months
- h. Asphalt Concrete Restoration. (Bond Required, see section 5.5.2)
 - i. Estimated Cost - \$154,110
 - ii. Completion by – 3 Years
- i. Seawall (restoration). (Bond Required, see section 5.5.2)
 - i. Estimated Cost - \$950,000
 - ii. Completion by – 5 Years
- j. Metal Building – 25'x60'x25'. (Bond Required, see section 5.5.2)
 - i. Estimated Cost - \$95,000
 - ii. Completion by – Before end of Initial Term
- k. New Floating Docks. (Bond Required, see section 5.5.2)
 - i. Estimated Cost - \$358,200
 - ii. Completion by – Before end of Initial Term
- l. Dredging of the Water Inlet. (Bond Required, see section 5.5.2)
 - a. In addition to the above projects, dredging of the inlet that leads to this property will be necessary within the first five years of this Lease. Lessee will benefit greatly from such dredging as it will allow vessels with larger drafts and improved access to the property for service and/or mooring. The dredging of the inlet will also benefit the two marine properties to the west of 4911 Buckley Cove Way, specifically the City-operated Boat Launch and Riverpoint Landing. Therefore, the Lessee will be required to contribute a one-third share towards the full cost of dredging the inlet, but not to exceed five hundred thousand dollars (\$500,000).

The actual payment schedule will be determined at the time of project commencement using actual cost but must include full payment of Lessee's one-third portion or \$500,000, whichever is less, before the expiration of the initial term of this Lease.

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 all the following conditions 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;

5.5.2 Furnish Lessor a bond as described below. This Section 5.5.2 shall apply to those improvements marked as "Bond Required" in Section 5.4.1. The bond(s) will be that of a responsible surety company, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California. The performance or maintenance bond(s) shall be in an amount not less than the amount of the improvements as detailed above and will remain in effect during the construction of the Stormwater Filtration, Asphalt Concrete Restoration, Seawall (restoration,) Metal Building, New Floating Docks, and Dredging of the Water Inlet, until the entire cost of the work have been paid in full and the new improvements will have been insured or up to twelve months following the timing of when the improvement was to be made, whichever comes first. Written notice must be given to City 30 days in advance of bond termination for any reason. In the event the Lessee is not able to acquire a single bond to cover the entire cost of work, the Lessee will acquire multiple bonds that will equate to such time frame of twelve months beyond the scheduled completion or until entire cost of work is completed. Said bonds will be executed by the surety and Lessee 60 days prior to the beginning of each lease year starting in year two (July, 2022). The bond(s) shall state the following:

- a. That it is conditioned to secure the completion of the proposed construction, free from all liens and claims of contractors, subcontractors, mechanics, laborers, and materialmen for 12 months following commencement of construction;
- b. That the construction work shall be affected by the Lessee, the general contractor, or, on their default, the surety;

- c. That in default of such completion and payment, such part of the amount of the bond(s) shall be required to complete the work shall be paid to the Lessor as liquidated and agreed damages for the nonperformance of Lessee's agreements, it being agreed that the exact amount of Lessor's damages is difficult and impractical to ascertain; and
- d. That the surety will defend and indemnify Lessor against all loss, cost, damage, expense, and liability arising out of or connected with the work of improvement. Lessor may, but shall not unreasonably, disapprove the bond(s).

5.6 Completion of Construction. Construction required with the inception of this lease shall be completed and ready for use in accordance with the provisions of paragraph 5.4, provided that the time for completion shall be extended for as long as Lessee shall be prevented from completing the construction by delays beyond Lessee's control.

5.7 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.

5.8 Ownership of Improvements During Term. All existing improvements and all improvements constructed on the premises by Lessee as permitted by this Lease 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 Lessor. The parties covenant for themselves and all persons claiming under them that the improvements are real property.

5.9 Ownership of improvements at Termination. All improvements constructed 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.

5.10 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 Lease, shall include all machinery, partitions, furniture, furnishings, doors, bins, racks, floor coverings, special lighting fixtures, water pumps, 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 elevators, radiators, boilers, storm drain, water reclamation systems, or air conditioning equipment.

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 Marina or interest in this Lease, including any improvements, trade fixtures, or equipment on the premises, without Lessor's prior written approval. Rental of individual boat berthing spaces shall not require approval of Lessor.

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 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 Lease:

- 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 Lease to be paid by Lessee, or failure to perform as required or conditioned by any other covenant or condition of this Lease;
- 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 Lease 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 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;
- 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 Lease 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 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 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.

8.4 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:

8.4.1 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. 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 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 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 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 those 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.

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 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.

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.

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: Pacific Boat Services Inc.
Attn: Ramon Mata
4911 Buckley Cove Way
Stockton, CA 95219

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 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.
- 9.2.3 Lessee means 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.
- 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 obligor of title in the event of the obligor's default.
- 9.3 Caption. 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 this lease.
- 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 Lease 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 Lease" 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 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.
- 9.7 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 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.

ATTEST:



CITY OF STOCKTON, a Municipal Corporation,

for

Eliza R. Garza
ELIZA R. GARZA, CMC
CITY CLERK OF THE
CITY OF STOCKTON

BY: *H. Black*
HARRY BLACK
CITY MANAGER

APPROVED AS TO FORM
JOHN M. LUEBBERKE
CITY ATTORNEY

Pacific Boat Services Inc.,

BY: _____
RYAN MEYERHOFF
DEPUTY CITY ATTORNEY

BY: *Ramon Mata*
RAMON MATA
OWNER