

METROPOLITAN EXPOSITION-RECREATION COMMISSION

Resolution 97-21

Approval of Marina Lease between Metro/MERC and John and Nancy Murray of White Marine Services.

The Metropolitan Exposition-Recreation Commission finds:

1. A public Request for Proposals (RFP) was issued to promote marina, commercial or other uses that would support public access to the North Portland Harbor at the Portland Metropolitan Exposition Center.
2. John and Nancy Murray of White Marine Services, Inc. were selected through the RFP process to exclusively negotiate a lease in accordance with the RFP and their proposal.
3. Approval of the Marina Lease by the Commission is a Lease Contingency, is in the best interests of the Commission and enhances the environs of the Portland Metropolitan Exposition Center.

BE IT THEREFORE RESOLVED that the Metropolitan Exposition-Recreation Commission Chair and Secretary-Treasurer are authorized to execute the lease on behalf of the Commission.

BE IT FURTHER RESOLVED that this lease shall be subject to the approval of the Metro Council.

Passed by the Commission on May 14, 1997.



Chair



Secretary-Treasurer

APPROVED AS TO FORM:
Daniel B. Cooper, General Counsel

By: 
Kathleen Pool
Senior Assistant Counsel

MERC STAFF REPORT

Agenda Item/Issue: Approval of Marina Ground Lease between Metro/MERC and John and Nancy Murray of White Marine Services, Inc.

Resolution No.: 97-21

Date: May 14, 1997

Presented by: Chris Bailey

BACKGROUND:

In May 1996, the Commission was informed of staff's intent to issue a Request for Proposals (RFP) for the exclusive right to negotiate a lease for the development of approximately 4.07 acres of property on the North Portland Harbor; this area is the northern terminus of the Portland Metropolitan Exposition Center's property. MERC staff was interested in promoting marina, commercial and other uses that would support public access to the river through development of the site.

The RFP was sent to four (4) previously known and interested parties as well as an additional two (2) in response to newspaper ads announcing the RFP. A mandatory pre-proposal meeting was held and responses were due July 15, 1996.

One (1) proposal was submitted and following a review by MERC staff, John and Nancy Murray of White Marine Services, Inc. were notified of their selection in August 1996 for the exclusive right to negotiate a lease for development of the site.

The development envisions a first-class marina facility for not less than sixty (60) recreational vessels, long-term moorage facilities for the Willamette Yacht Club, marine-related commercial businesses and parking lot.

Negotiations have been underway since the Fall of 1996 with MERC staff and Metro's Office of General Counsel representing the interests of Metro/MERC toward conclusion of the subject lease.

Attached to this report you will find an "Overview Of Key Provisions In Marina Ground Lease" document.

FISCAL IMPACT:

Initial basic rent One Thousand Dollars (\$1000) per month at Effective Date, increasing to Two Thousand Dollars (\$2000) per month at time construction is complete.

- **Adjustments to basic rent for CPI** At five (5) years after the Effective Date and every fifth year thereafter, the basic rent shall be adjusted upward to reflect increases in the CPI.
- **Adjustments to basic rent to reflect new fair market value** At five (5) years after the date all permits and approvals are received for the project, and every fifth year thereafter, the basic rent shall be adjusted upward to reflect increases in the fair

market value and market-indicated rate of return for leases of similar nature, as conclusively determined by an MAI appraiser.

Initial term is thirty (30) years, expiring in year 2027. Lessee and Lessor may mutually agree to extend the Lease Term for two (2) successive extension terms of ten (10) years each.

RECOMMENDATION: Lease Contingencies provide that the Metropolitan Exposition-Recreation Commission and Metro Council approve the lease by formal action; staff recommends, therefore, that the Commission approve the lease.

Overview Of Key Provisions In Marina Ground Lease

1. **Lessor:** Metro, by and through Metropolitan Exposition-Recreation Commission.
Lessee: White Marine Services, Inc. and John and Nancy Murray.
2. **Property subject to Lease:** Approx. 4.07 acre site located north of the Expo Center, directly upstream of the Blue Heron Marina, directly downstream from the Ross Island Sand & Gravel batching plant. Includes developable uplands approximately 1.0 acres.
3. **Permitted Uses of the Property (§1.2.1).** Primary purpose is construction and development of marina, for not less than sixty (60) vessels. Lessee may also a construct parking lot, moorage facilities for Willamette Yacht Club, restaurant, and marine-related commercial businesses.
4. **Assignment of Riparian Rights (§1.1.1).** Lessor assigns to Lessee its riparian rights associated with the Property to the extent allowed by law. Such assignment shall terminate at lease termination. Lessee's sole responsibility to obtain at its cost all necessary State of Oregon Division of State Lands ("DSL") leases. Lessor may become the lessee on a DSL lease if DSL so requires, so long as Lessee makes all payments under the DSL lease and fulfills all other lease covenants.
5. **Lease Contingencies (§1.3).** Lease will be null and void if following contingencies are not met:
 - **Permits and Approvals:** Lessee must obtain all requisite permits, approvals, and riparian leases for the Project from the State of Oregon, Division of State Land ("DSL"), Army Corps of Engineers, and City of Portland, no later than **eighteen (18) months** after the Lease is approved and signed by Metro/MERC.
 - **Project Construction.** Construction must begin no later than **three (3) months** after all requisite approval criteria/permits have been obtained.

Construction Completed. Construction must be completed and Project open for business no later than **twenty four (24) months** after the Lease is approved and signed by Metro/MERC.
 - **Financing.** Lessee must obtain financing no later than **six (6) months** after Effective Date of Lease.
6. **Lease Term (§2).** Initial term is **thirty (30) years**, expiring in year 2027. Lessee and Lessor may mutually agree to extend the Lease Term for two (2) successive extension terms of **ten (10) years** each. (§2.2).
7. **Rent (§3.2).**
 - **Initial basic rent.** **One Thousand Dollars (\$1000) per month** at Effective Date, increasing to **Two Thousand Dollars (\$2000) per month** at time construction is complete (which shall be no later than 24 months after Effective Date).
 - **Adjustments to basic rent for CPI (§3.3.1).** At **five (5) years** after the Effective Date and **every fifth year thereafter** the basic rent shall be adjusted upward to reflect increases in the CPI.

- Adjustments to basic rent to reflect new fair market value (¶3.3.3). At five (5) years after the date all permits and approvals are received for the project, and every fifth year thereafter the basic rent shall be adjusted upward to reflect increases in the fair market value and market-indicated rate of return for leases of similar nature, as conclusively determined by an MAI appraiser.
8. **Security Deposit (¶3.5)**. Forty Five Thousand Dollars (\$45,000), half (\$22,500) posted on the date all permits and approvals obtained, remaining half (\$22,500) posted on date construction is complete. Non-refundable if Lease terminates for any reason after posting.
9. **Construction of Improvements (¶4.1.1)**. No construction may be undertaken by Lessee without prior written consent of Lessor, after Lessee's submission of contractor's name, final plans and specs, site-use plan, architectural/engineering renderings, and environmental controls.
10. **Lessee's Environmental Obligations (¶6)**.
- Initial Environmental Assessments and Periodic Audits (¶6.3). Within sixty (60) days after date all permits and approvals are obtained, Lessee shall conduct an environmental assessment at Lessee's expense, to serve as a "baseline" for future comparison. If a hazardous substance release is later found, a rebuttable presumption will exist that Lessee is responsible. Periodic audits shall also be conducted by Lessee at the expiration of the initial lease term (30 years), and at the expiration of each extension term.
 - Environmental Inspection at Lessor's request (¶6.4). In addition to the audits required to be performed by Lessee, lessor reserves the right to inspect for hazardous substances, and to require lessee to furnish an environmental audit regarding matters of concern to Lessor. If the results of such audit are "clean," then Lessor shall pay for the audit.
 - Hazardous Substance Release an Event of Default (¶6.3). Subject to a limited right to cure, a hazardous substance release or violation of environmental law shall be an event of default.
 - Exit Audit and Remediation (¶9.4). At least 2 months prior to lease expiration date, Lessee shall at its cost conduct an exit environmental audit, and shall promptly remedy any hazardous substance release revealed by the audit, prior to the expiration of the lease term.
 - Environmental Remediation in general (¶6.9). If a hazardous substance release or violation of environmental laws is found, Lessee must restore the property to its pre-release condition.
 - Environmental Indemnity (¶7.2). Lessee shall be solely responsible for and shall defend, indemnify and hold harmless Lessor from and against all environmental costs arising from acts or omissions of Lessee, or its partners, officers, directors, agents, employees, sublessees, contractors, subcontractors, customers, and/or invitees.
11. **Indemnity, Insurance (¶7)**.
- General Indemnity (¶7.1). In addition to the environmental indemnity, Lessee shall defend, indemnify and hold harmless Lessor from and against any and all actual or alleged claims, damages, expenses, costs, fees, fines, and/or penalties which are

imposed or claimed against Lessor and which arise from Lessee's (or all agents) act's or omissions, lessee's use of the property, any breach of the lease, or any damage caused by Lessee (or all agents).

- **Insurance (¶7.3).** Lessor shall be named as additional insureds on each policy. **Liability insurance** (each coverage in an amount not less than **One Million Dollars (\$1,000,000)**): occurrence form commercial general liability (including coverage for broad form contractual liability; sudden and accidental spill coverage on land and on water; wharfingers' liability); and automobile liability insurance; **Builder's Risk insurance; Property Insurance; Business Interruption Insurance; Worker's Comp. insurance.**

12. **First Right of Opportunity (¶11.4).** If Lessor decides to sell all or part of the leased Property, and if the sale does not involve the transfer or exchange of property or properties to another governmental entity or a non-profit agency, then Lessee shall be given a first right of opportunity to purchase the property for fair market value, or the opportunity to match any offer to purchase if another offer has been made.

13. **Leasehold Financing / Unsubordinated Ground Lease (¶12).** Lessee shall only have the right to mortgage or otherwise grant a security interest in Lessee's interest in this Lease and the Improvements. Lessor shall at no time be required to subordinate its fee simple interest in the Property to the lien of any leasehold mortgage, nor to mortgage its fee simple interest in the property as collateral or additional security. Lessor shall not be required to join in executing any lending documents of Lessee.

LEASE

METRO, By and Through Its

METROPOLITAN EXPOSITION-RECREATION COMMISSION

And

WHITE MARINE SERVICES, INC. AND JOHN AND NANCY MURRAY

Effective Date: _____

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LEASE

METRO, By and Through Its

METROPOLITAN EXPOSITION-RECREATION COMMISSION

And

WHITE MARINE SERVICES, INC. AND JOHN AND NANCY MURRAY

Effective Date:

7-9-97

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**LEASE FOR
BLUE HERON LANDING/MARINA EXPANSION**

METRO-MERC/WHITE MARINE SERVICES, INC. - MURRAY

THIS LEASE, effective the last date of signature set forth below, ("Effective Date") is between METRO, by and through its METROPOLITAN EXPOSITION-RECREATION COMMISSION, a public body of the State of Oregon ("Lessor"), and White Marine Services, Inc. and John and Nancy Murray (collectively "Lessee").

The parties, intending to be legally bound by the terms of this Lease, agree as follows:

1. AGREEMENT TO LEASE PROPERTY

1.1. Agreement to Lease and Description of Property. Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor the Property more particularly described and shown on Exhibit "A," attached hereto and by this reference incorporated herein (the "Property").

1.1.1. Assignment of Riparian Rights. To the maximum extent permitted by law, Lessor by and through this Lease, assigns to Lessee its riparian rights associated with the Property, for a period equal to the term of this Lease, and subject to all of the conditions and provisions herein. It is specifically agreed by the Parties that this assignment of riparian rights is

part and parcel of this Lease, does not exist independent of this Lease, and shall terminate upon termination of the Lease as provided for herein. It shall be the Lessee's sole responsibility to obtain any necessary leases with the State of Oregon, Division of State Lands ("DSL Leases"). Lessor shall cooperate with Lessee to the extent reasonably necessary to obtain such leases. Any such lease must contain a provision allowing Lessee to assign such rights and leases to Lessor. In the event of a default or termination of this Lease, Lessee shall assign any Division of State Lands rights or leases to Lessor. In the event that DSL requires Lessor, as property owner, to be the lessee on the DSL Lease, Lessor may agree to such requirement, so long as Lessee (White Marine Services) pays to DSL all rental and other payments and fulfills all other requirements associated with the DSL Lease and indemnifies and holds Metro/MERC harmless from any and all claims, demands, obligations, damages, or causes of action, of whatever kind or nature, relating to the DSL Leases.

1.1.2. Easements. Lessee shall not interfere with any public or private easements or rights of way existing as of the effective date of this Lease, or any other easements or encumbrances as may be agreed to in the future..

1.2. Use of Property.

1.2.1. Permitted Use. The primary purpose of Lessee's proposed project for the leased Property is the development of a first-class marina facility for not less than sixty (60) recreational vessels ("Project"), unless otherwise agreed to in writing by the Parties. The development of the marina facility Project, as set forth in the Request for Proposals issued by Lessor in May of 1996 ("RFP"), a copy of which is attached hereto as Exhibit B, and incorporated herein by reference, and the Lessee's Development Proposal dated 5/16/96, filed by Lessee in response to the RFP ("Proposal") a copy of which is attached hereto as Exhibit C and incorporated herein by reference, is a material inducement to Lessor's execution of this Lease. Lessee may use the Property to construct the parking lot, and construct and operate a marina, long term moorage facilities for the Willamette Yacht Club, and marine-related commercial businesses, subject to Lessor's right to approve such businesses, which shall not be unreasonably withheld in accordance with the terms and conditions set forth herein, and which may include a restaurant, as is described more specifically in the RFP and the Proposal. Lessee shall use and occupy the Property continuously during the Term for the operation of a first-class marina under the name of White Marine Services. The use shall be equivalent in style, service, and price range to the Riverplace marina business currently being operated at Portland, Oregon. The Property may not be used for any other purpose, operated under any other name, or be the subject of a change in concept without the written consent of Lessor, which consent shall be at Lessor's sole discretion. Lessee shall maintain and operate the business during the entire Term with due diligence and in a first-class manner. Any and all uses of the Property by Lessee shall be compatible with Lessor's use of its adjoining property. Any special activities conducted by Lessee on the Property other than the normal operations of a marina shall require the prior

written approval of Lessor, which shall not be unreasonably withheld in accordance with the terms and conditions set forth herein. "Special activities" shall include, but is not limited to, any shows or exhibits on the Property. Special activities shall compliment, enhance, and not compete with the other uses or activities at Expo. Neither Lessee nor the employees, agents, concessionaires, licensees, or sublessees of Lessee shall solicit business in the parking area or other common areas of the development, nor shall Lessee distribute any handbills or other advertising matter on automobiles parked in the parking area or in the other common areas. Lessor shall have the right to approve any signs or displays Lessee may desire to erect on or about the Property that are visible from the exterior of the Building, in order to ensure that Lessor may control the quality and character of the presentation displayed by Lessee. Such approval may be withheld or revoked if Lessor in good faith believes such display or plan is unsatisfactory or inappropriate for the development. Lessee acknowledges that any violation of the foregoing provisions of this section constitutes a material breach of this Lease. As long as Lessee is not in default, Lessor agrees not to lease any space in the Project property to a third party. Lessee expressly agrees that the sole remedy of Lessor in the event of a breach of this provision by Lessee shall be to terminate this Lease on the expiration of 60 days' notice to Lessee of Lessor's intent to terminate by reason of such breach, if Lessee has not cured the breach to Lessor's satisfaction within thirty (30) days of such notice.

1.3. Lease Contingencies. The following contingencies of this Lease must be satisfied by the dates specified below; or the Lease shall automatically terminate and Lessee's rights under the Lease and to the Property shall be null and void:

1.3.1. Metro Council / MERC Commission Approvals. This Lease must be specifically approved by formal action of the Metropolitan Exposition-Recreation Commission or successor and the Metro Council or successor prior to it having any binding effect whatsoever. ("Council and Commission Approval"). This condition may not be waived by either party. All parties acknowledge that no liability or obligations of any kind shall attach to any party until approval has been given pursuant to this subsection.

1.3.2. Contingencies Regarding Approval Criteria/Permits. In its Proposal and subsequently Lessee has advised Lessor that the following City of Portland, State of Oregon, and Army Corps of Engineers' approval criteria and/or permits, and no others, must be satisfied in order for the Project to go forward. If additional permits or approvals are required or necessary, Lessee shall notify Lessor of these additional requirements, but in all cases the time deadlines set forth herein must be satisfied unless an extension of time is mutually agreed to in writing by the Parties. Lessee shall use its best efforts to satisfy or obtain the following approval criteria/standards at Lessee's sole cost, effort and expense. Neither party shall have the right to waive any of the following City of Portland, State of Oregon, or Army Corps of Engineers approval criteria/standards, unless the party seeking to waive the criteria or standard presents

written notice from the appropriate governmental entity that the stated criteria is not necessary for the Project to go forward.

1.3.3. Deadlines for Completion. This Lease shall terminate and Lessee's rights under the Lease and to the Property shall be null and void and it shall be considered an Event of Default unless: (1) the City of Portland, State of Oregon, and Army Corps of Engineers' approval criteria/permits set forth below have been obtained no later than eighteen (18) months after the Effective Date of this Lease ("Approvals Obtained Date"); (2) Project construction has begun no later than three (3) months after all approval criteria/permits have been obtained ("Construction Start Date"); (3) Project construction must be completed and the Project must be ready to be open for business no later than twenty four (24) months after the Effective Date of this Lease ("Construction Complete Date"). This condition is for the benefit of Lessor and may only be waived by Lessor upon written notice to Lessee, and the dates herein may only be extended by mutual written agreement by the Parties. Lessee shall provide written notice to Lessor upon obtaining each approval criteria/permit set forth below, and upon the commencement of construction, and upon completion of construction. If, however, Lessee is pursuing completion of construction in a commercially reasonable manner and otherwise maintaining the Property in an orderly condition, Lessor will grant Lessee a reasonable extension of time to complete construction if Lessee requests such an extension in writing.

1.3.4. City of Portland Approval Criteria/Permits.

1.3.4.1. Comprehensive Plan-Industrial Sanctuary. As an allowed use in the Industrial Sanctuary, Lessee shall receive approval for expansion of its current limited facility to include additional moorage..

1.3.4.2. Zoning-IG2 cdh. Lessee shall receive approval as a conditional use, additional moorage for recreational boats as well as moorage for the club house and restaurant facility. Lessee shall obtain satisfactory design/environmental review for the Project, and shall receive building permits for the floating structures and upland improvements.

1.3.4.3. Public Safety and Protection of Public Property Basic services are already provided to the site. Lessee shall obtain approval for any additional required improvements for public safety and protection of public property, which Lessee shall obtain at its expense.

1.3.4.4. Environmental Considerations. Lessee shall obtain satisfactory environmental review as may be required.

1.3.4.5. Transportation. A transportation impact study may be required. Lessee shall notify Lessor in writing within 120 days after the Effective Date whether

the City of Portland or any other governmental body requires such impact study. Any such study required by any governmental body shall be completed by Lessee.

1.3.4.6. Landscaping. Lessee shall provide any landscaping pursuant to City Standards and/or any requirements imposed on Lessee or Lessor by City as a result of this or any other permit.

1.3.4.7. A design review will not be required, if Lessee can provide Lessor within 120 days after the Effective Date with written notice from the City of Portland that a design review is not necessary.

1.3.4.8. Building Permit. Lessee shall obtain all required building permits.

1.3.5. State of Oregon Approval Criteria/Permits.

1.3.5.1. DSL Dredge/Fill Permit. Dredging of the water area is not anticipated and shall not be conducted without prior written approval of Lessor. A permit may be required as a function of constructing the parking area and abutments for access ramps if more than 50 cubic yards of material is removed. Any such permit required shall be obtained by Lessee.

1.3.5.2. DSL Lease. Lessee shall obtain all DSL Leases required by DSL.

1.3.6. Army Corps of Engineers Approval Criteria/Permits. Through the joint application process with the DSL, Lessee shall obtain approval for the Project subject to standards of the Rivers and Harbors Act, and notification/review by other State and Federal agencies.

1.3.7. Financing. Lessee shall make all necessary financing arrangements no later than six (6) months after the Effective Date of this Lease. Lessor shall have the right to inspect and approve any financing arrangements made by Lessee in compliance with this condition.

1.3.8. Due Diligence. Lessee must complete all environmental assessments, surveys, other investigations or other due diligence related to the Property that Lessee may require, if any, no later than six (6) months after the Effective Date of this Lease.

1.4. Compliance with All Laws. Lessee's use of the Property must comply with all applicable laws, ordinances, rules, planning requirements, permit requirements, any applicable

comprehensive or master plans, and regulations of state, federal, city, county, regional or other public government authority, including, but not limited to, local fire codes and zoning codes, OSHA and DEQ (Department of Environmental Quality) regulations and Metro ordinances, as they may be amended from time to time. Lessee shall promptly provide Lessor with copies of all communications from any government entity which relates to Lessee's noncompliance or alleged noncompliance with any law, regulation or other governmental requirement relating to its operations on the Property. In the event that any government agency stops construction before the opening date of the marina, Lessee or Lessor shall have the option of terminating this lease.

2. TERM

2.1. Lease Term. The initial term of this Lease ("Lease Term") shall run from the Effective Date and continue through the anniversary of the Effective Date, 2027 ("Expiration Date"), unless sooner terminated pursuant to the terms of this Lease. Due to those certain contingencies listed in Section 1.3, however, this Lease may be terminated if all approval criteria and permits have not been obtained by Lessee by eighteen (18) months after the Effective Date and, therefore, no construction may begin before Lessee has obtained all approval criteria and permits set forth above and has provided Lessor with written notice of same, unless agreed to in writing by Lessor.

2.2. Extension Option. Lessee and Lessor may mutually agree to extend the Lease Term for two (2) successive extension terms ("Extension Options") of ten (10) years (each an "Extension Term"). Renewal procedures will begin at least 90 days prior to expiration of the previous term.

2.3. Quiet Enjoyment. Lessor covenants that during the Lease Term, so long as no Event of Default has occurred (as defined in Section 10), Lessee shall have quiet enjoyment of the Property, free from hindrance, eviction or disturbance by Lessor or by those lawfully claiming the same by, through or under Lessor. Notwithstanding the foregoing, nothing contained herein shall be deemed to limit any of the inspection rights, eminent domain rights or any other rights reserved by Lessor pursuant to the terms of this Lease or the law.

3. RENT

3.1. Rental Payments. Lessee shall pay to Lessor a monthly rent, payable in advance on the first of every month, referred to as the "Basic Rent." The "Lease Year" shall run from the Effective Date through the anniversary of the Effective Date the following year and on each year thereafter. Basic Rent shall be calculated in accordance with Sections 3.2 and 3.3 herein. All other sums which become payable by Lessee to Lessor under the terms of this Lease shall be considered "Additional Rent" due under this Lease. "Rent," as used herein, shall mean all such Additional Rent, together with Basic Rent. The first month's Basic Rent payment shall be due on

the Effective Date. One half of the Security Deposit, described in Section 3.6, shall be due and payable on the date all permits and approvals have been obtained, as set forth in section 1.3.3.

3.2. Basic Rent Amount. The initial amount of Basic Rent due hereunder shall be One Thousand Dollars (\$1000) per month at the Effective Date, increasing to Two Thousand Dollars (\$2000) per month at Construction Complete Date as described in section 1.3 above

3.3. Adjustment to the Basic Rent. The Basic Rent shall be adjusted at five years after the Effective Date and every fifth year thereafter of the Lease Term and any Extension Terms thereof (the "Adjustment Dates"), based on any increases in the Consumer Price Index - Seasonally Adjusted U.S. City Average for all Urban Consumers (1982-84=100) ("CPI-U"), as described in Section 3.3.2 or the Fair Market Value ("FMV"), in accordance with Section 3.3.3 and as defined in Section 3.3.4. Basic Rent shall not be adjusted downward. The "Adjusted Basic Rent" shall be effective as of the Adjustment Date. Lessee acknowledges that adjustments to Basic Rent, based on changes in the CPI-U and the FMV, although effective as of the Adjustment Date, may not be able to be calculated until some time after the Adjustment Date. Lessee agrees to continue paying Basic Rent at the Basic Rent rate in effect prior to the Adjustment Date until receipt of a billing from Lessor advising Lessee of the new Adjusted Basic Rent rates and the new Adjusted Basic Rent monthly payment amount. Lessee further agrees to pay to Lessor, within thirty (30) days after receipt of an invoice therefor, any difference between the amount of Basic Rent actually paid to Lessor after the Adjustment Date and the amount actually due for such period.

3.3.1. Annual Adjustment of Basic Rent Based on CPI-U. On each Adjustment Date, the Basic Rent shall be subject to an upward adjustment based on one hundred percent (100%) of the increase in the CPI-U as published in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor for the previous Lease Year. On the First Adjustment Date [five years after Effective Date](_____, 2002), the Basic Rent shall be adjusted by multiplying the then in place Basic Rent by a fraction, the denominator of which is the CPI-U figure published on or immediately prior to the Effective Date (_____, 1997) and the numerator of which is the CPI-U figure published on or immediately prior to the First Adjustment Date. Thereafter, the Adjustment shall be determined by multiplying the most recently Adjusted Basic Rent by a fraction, the denominator of which shall be the numerator from the previously Adjusted Basic Rent calculation (which is the CPI-U figure for the previously Adjusted Basic Rent) and the numerator of which shall be the CPI-U figure published on or immediately prior to the new Adjustment Date.

3.3.2. Change in Index. In the event the CPI-U is discontinued, the "Consumer Price Index - Seasonally Adjusted U.S. City Average for all Items for Urban Wage Earners and Clerical Workers (1982-84=100)" published by the Bureau of Labor Statistics or in the Monthly Labor Review of the United States Department of Labor shall be used for making the

computation. In the event the Bureau of Labor Statistics shall no longer maintain such statistics on the purchasing power of the U.S. consumer dollar, comparable statistics published by a responsible financial periodical or recognized authority selected by Lessor shall be used for making the computation.

3.3.3 Periodic Adjustment of Basic Rent Based on Fair Market Value. In addition to the adjustment to Basic Rent based on the CPI-U, yearly Basic Rent will be recalculated based on the fair market value and market-indicated rate of return for leases of similar nature, on the following dates: At five (5) years after all permits and approvals have been obtained, as set forth in section 1.3.3., and every five years thereafter of the Lease Term and any Extension Terms thereof ("Valuation Date"). The FMV will not be adjusted downward. Unless the parties can agree upon a new FMV of the Property without the assistance of an appraiser, 120 days prior to a Valuation Date, the parties will agree upon and retain an Oregon licensed MAI appraiser to determine the current FMV of the Property. Each party shall choose an MAI appraiser, and the two appraisers shall choose a third MAI appraiser based on appraisal expertise of the nature of this Property. The appraiser's finding of any increase in value shall be conclusively binding on the parties. The parties shall split the cost of said appraisal. Until the appraiser's decision is reached, Lessee shall pay Lessor the then current Adjusted Basic Rent. Within thirty (30) days after receipt of the appraiser's decision, Lessee shall pay the difference owed, if any. The amount of the Basic Rent recalculated on each Valuation Date shall become the new base for future Basic Rent adjustments.

3.3.4 Definition of Fair Market Value of Property. As used in this Lease, "Fair Market Value of the Property" ("FMV") shall mean the most probable cash sale price which the Property should bring in a competitive and open market under the conditions requisite to a fair sale, with both buyer and seller acting prudently, on a fully informed basis, and assuming the price is not affected by undue stimulus. Also implicit in this definition are the following: (i) Buyer and seller are typically motivated; (ii) both parties are well informed or well advised and each acting in what they consider their own best interests; (iii) a reasonable time is allowed for exposure in the open market; (iv) payment is made in cash, U.S. dollars, or other financial arrangements comparable thereto; (v) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale; and (vi) the Property is clean and uncontaminated; and (vii) the Property's value is based on the existing pattern of use or for a use permitted by law. For purposes of this Lease, FMV shall be determined exclusive of the value attributable to Improvements installed and paid for by Lessee ("Lessee's Improvements") but inclusive of the value attributable to all Improvements installed or paid for by Lessor ("Lessor's Improvements"). Furthermore, to the extent available, sale transactions used in the determination of FMV shall be of property with comparable infrastructure improvements, including, but not limited to, location, road access and utilities, common areas and other comparable site amenities.

3.4. Time and Place of Rent Payments. Basic Rent shall begin to accrue on the Effective Date of this Lease. Lessee shall make monthly payments of all Basic Rent, in advance, on or before the Effective Date and on or before the first of the month of each month thereafter ("Due Date") without offset, abatement or deduction. All payments shall be delivered to Lessor at the following address or such other place as Lessor may later designate:

Metropolitan Exposition-Recreation Commission
Attn: Christopher Bailey
P.O. Box 2746
Portland, Oregon 97208

It is intended that Basic Rent due under this Lease be absolute net to Lessor. Lessee shall pay all costs associated with the use, development and occupancy of the Property including, but not limited to, taxes, assessments, utilities, maintenance, and insurance.

3.5. Security Deposit. In addition to payments of Basic Rent and Additional Rent, Lessee shall post an irrevocable stand-by letter of credit, drawn on a bank acceptable to Lessor in a form acceptable to Lessor, in the amount of Forty Five Thousand Dollars (\$45,000) (the "Deposit"), to be posted as follows. Twenty Two Thousand Five Hundred Dollars (\$22,500) shall be posted on the date all permits and approvals have been obtained, as set forth in section 1.3.3, and the remaining Twenty Two Thousand Five Hundred Dollars (\$22,500) shall be posted on the Construction Complete Date. The Deposit shall be subject to adjustment for any increases in the CPI-U. The Deposit shall not be considered to be held in trust by Lessor for the benefit of Lessee and shall not be considered an advance payment of Rent or a measure of Lessor's damages in the event of a Default (defined in Section 10) by Lessee, except that the Deposit will be considered non-refundable if the Lease terminates for any reason, and shall be credited against the rental amount due for the last two years of the initial term, if Lessee re-deposits an amount equal to two years' rent upon commencement of an Extension Option. Lessor may, but shall not be obligated to, draw upon the Deposit to pay Rent or other sums owed by Lessee to Lessor or to reimburse Lessor for any other amounts which Lessor may expend or incur by reason of Lessee's failure to perform any of its obligations under this Lease, after Lessee has received notice to cure and the cure period has expired, as provided in Section 10. If Lessor does apply any of the Deposit to any of the above, Lessee shall, immediately upon demand, replenish the Deposit to its original full amount. If Lessee fully performs all of its obligations under this Lease, the letter of credit may be canceled. However, if any question exists concerning Lessee's full compliance with the Lease, Lessor shall be entitled to require that the letter of credit remain in place until Lessor is fully satisfied that there has been no breach of the Lease, even if it takes Lessor longer than thirty (30) days after expiration of the Lease and return of the Property to make such a determination to Lessor's satisfaction.

3.6. Taxes. Lessee shall pay all taxes (including, but not necessarily limited to, real property and personal property) and assessments of any public authority levied against the Property or upon any taxable interest of Lessee acquired pursuant to this Lease or any taxable possessory right Lessee may have in or to the Property or the Improvements located thereon, as well as all taxes on all taxable property, real or personal, owned or leased by Lessee in or about the Property, including any other tax or charge levied wholly or partly in lieu thereof. Lessee shall make all payments on or before the date payment is due ("Tax Due Date"). Lessee shall also be allowed to contest the validity of any assessment on the Property so long as monies sufficient to pay the taxes are paid to the taxing authority prior to the Tax Due Date. Lessee agrees that, to the extent allowed by law, Multnomah County, Oregon, is intended as a third party beneficiary of Lessee's obligation under this Lease to pay taxes owed by Lessee to Multnomah County, and that Multnomah County may enforce such obligation directly, by an action for a money judgment, without affecting any right or remedy available under this Lease or otherwise. Lessee understands that should this Lease expire prior to the end of any given tax year, Lessee will nonetheless be responsible to pay real property taxes assessed for the entire tax year (currently, July 1 through June 30). It shall be up to Lessee to determine whether Lessee is eligible for special In Lieu of Tax treatment and to take all steps necessary to apply for the In Lieu of Tax. Lessor shall have no responsibility to advise Lessee concerning In Lieu of Tax payments, due dates or the application process therefor. To the extent permitted by law, Lessee shall have the right to appeal the assessed value of the property for purposes of payment of property taxes.

3.6.1. In Lieu of Taxes. In Lieu of Taxes are currently governed by ORS 307.120. In order to qualify for In Lieu of Taxes, Lessee must follow procedures set forth in ORS 307.120 which now require that on or before June 30 preceding any year for which In Lieu of Taxes is requested, a request for approval and computation of the In Lieu of Taxes must be filed with the County Assessor in accordance with ORS 307.120. Lessor is required to notify any party-in-interest in property qualified for In Lieu of Taxes not later than fifteen (15) days prior to the date request is required to be made (now June 30) of the following: (i) the obligation to file a request for appraisal and computation of In Lieu of Taxes no later than June 30 or within thirty (30) days after the interest in the property is granted, whichever is later; (ii) the obligation to pay the In Lieu of Tax in the amount of one-quarter of one percent of real market value of the exempt property held to the County Treasurer on or before the September 1 following the date of request; and (iii) if the request is not made within the time prescribed, or if the taxes are not paid, then the property should be assessed and taxed in the same manner as non-exempt properties similarly situated. Except for this disclosure, Lessor shall have no responsibility to advise Lessee concerning In Lieu of Tax payments, due dates or the application process therefor. Lessor does agree that it will send Lessee, by fax or regular mail, notice of tax liability or In Lieu of Tax liability if it receives such notice from the County.

3.7. Delinquency and Administrative Charges. All Rent owed to Lessor not paid by Lessee within ten (10) days of the Due Date shall bear a delinquency charge of eighteen percent (18%) per annum or, if less, the maximum rate of interest allowed by law, from the date of delinquency until paid. Imposition of this charge shall not constitute a waiver of any other remedies available for failure to timely pay Rent. Lessor's failure to impose a delinquency charge shall not be a waiver of Lessor's other rights and remedies for such delinquent payment, nor of Lessor's right to later impose a delinquency charge. Acceptance of any delinquency charge by Lessor shall in no event constitute a waiver of Lessee's default with respect to the overdue amount in question, nor prevent Lessor from exercising any of the other rights and remedies granted under this Lease or by law.

3.8. Acceptance of Rent. Lessor's acceptance of a late or partial payment of Rent shall not constitute a waiver of any Event of Default (defined in Section 10). It is hereby agreed that any endorsements or statements appearing on checks of waiver, compromise, payment in full or another similar restrictive endorsement shall have no legal effect. Lessee shall remain in default and obligated to pay all Rent due, even if Lessor has accepted a partial or late payment of Rent. Notwithstanding the foregoing, if no other Event of Default exists and Lessee pays all Rent owed in full, plus all delinquency charges, and Lessee has not been late more than twice in its monthly payments during that same Lease Year, then acceptance of such payment in full by Lessor shall be deemed to have cured that Default.

4. LESSEE'S OTHER OBLIGATIONS

4.1. Construction of Improvements.

4.1.1. Lessor's Approval. Lessee shall undertake no construction, alteration, or changes ("Work") on or to the Property without the prior written consent of Lessor.

The granting of or the denial of consent will be based on whether or not the Work complies with all laws, building codes and planning requirements. Prior to the commencement of any construction on the Property, Lessee must first submit the following to Lessor for approval at least sixty (60) days in advance of any scheduled construction: (i) The name of the proposed contractor; (ii) final plans and specifications; (iii) a site-use plan; and (iv) architectural and/or engineering renderings. Lessee must also submit, for Lessor's approval, its environmental controls for any planned Work aimed at preventing accidental spills of Hazardous Substances Release (defined in Section 6.2.3) or contamination of the Property or surrounding waterways. Approval of all of the above must be obtained prior to application for any building or similar permits. Lessor shall have fifteen (15) business days to review all such submissions. If Lessee does not receive any written comments from Lessor within this time period, Lessor shall be deemed to have approved the submissions. If Lessor does notify Lessee that the submissions are not approved, Lessee shall use its best efforts to meet Lessor's requirements and

shall resubmit to Lessor for reconsideration as soon as Lessee believes the problems with the submission have been solved. Lessor shall then have ten (10) business days to approve or reject the resubmission. Failure to respond within this (10) day time period shall be deemed an approval by Lessor. Lessor will condition its approval on Lessee's obtaining and delivering to Lessor, subject to industry standards, a performance bond, a labor and materials payment bond and a completion bond issued by a corporate surety, reasonably acceptable to Lessor, and licensed to do business in Oregon, each in an amount equal to the estimated cost of the construction and each in a form satisfactory to Lessor. Lessee must comply with all City of Portland and Multnomah County building codes and requirements.

4.1.2. Environmental Exit Audit. An environmental exit audit shall be performed by Lessee at termination at Lessee's expense to determine the presence of hazardous substances. If any hazardous substances are detected, Lessee shall, at its sole expense, remedy the problem, unless Lessee can show that such hazardous substances existed prior to the Lease, were a result of actions of Lessor, or were a result of actions of third parties completely unrelated to Lessee.

4.1.3. Permits. Lessee shall not apply for any permits until Lessor has given its final approval as provided above. Once approval has been given by Lessor, no Work may commence until Lessee obtains and delivers to Lessor copies of all necessary governmental permits. Lessee must also supply Lessor with a copy of Lessee's occupancy permit.

4.1.4. Construction Schedule. A completion schedule shall be agreed upon for any Work project prior to the commencement of such Work. Failure to start or complete construction in accordance with that schedule shall constitute an Event of Default, provided, however, that if Lessee is pursuing completion of construction in a commercially reasonable manner and otherwise maintaining the Property in an orderly condition, Lessor will grant Lessee a reasonable extension of time to complete construction if Lessee requests such an extension. All Work done on the Property at any time during this Lease must be done in a good workmanlike manner and in accordance with all building permit requirements. If requested by Lessor, within thirty (30) days after the completion of any Work, Lessee shall deliver to Lessor complete and fully detailed as-built drawings of the completed Work, prepared by an architect or engineer pre-approved by Lessor and duly licensed by the State of Oregon.

4.2. Maintenance.

4.2.1. General. Lessee shall keep and maintain the Property and all Improvements, systems, and equipment located thereon, in good repair and operating condition and shall perform all necessary and appropriate preventive maintenance and repairs. On the third anniversary of the Effective Date of this Lease, and every third anniversary thereafter, Lessor and Lessee shall conduct a thorough inspection of the Property, including the environmental inspections outlined in Section 6.5. Lessor shall inform Lessee of any needed repairs or

maintenance to be done in order to maintain the quality of any Improvements and the Property. Such repairs and maintenance shall be done with reasonable dispatch. Notwithstanding the foregoing, Lessor reserves its right to inspect the Property more frequently, as set forth in Section 4.8. Lessee shall develop and adhere to a maintenance plan and maintenance schedule for all machinery.

4.2.2. Maintenance and Landscaping Standards. Lessee shall regularly and consistently maintain the Property in a clean, orderly and safe condition. Lessee shall also comply with any specific published or posted Lessor maintenance standards for the Property, all planning requirements, and shall meet or exceed all applicable City of Portland and/or Multnomah County landscaping/Greenspace requirements, including but not limited to any requirements imposed as a result of any building permits issued by any governmental bodies at any time. All refuse shall be kept in covered containers and regularly removed by a refuse company to a legal garbage disposal site. Construction debris shall be regularly removed and properly recycled or disposed of during all construction work.

4.2.3. Conduct of Business. Lessee intends to continuously carry on Lessee's business, without interruption, at all times after the completion of construction of the Project. Lessee agrees to notify Lessor of any shut down or closure which is expected to last more than four (4) weeks and shall in no event cease operations for any period longer than sixty (60) days without first notifying Lessor of the closure and keeping the Property reasonably secured.

4.3. No Liens. Lessee agrees to pay, when due, all sums for labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been provided or ordered with Lessee's consent for the Property. If any lien is filed against the Property which Lessee wishes to protest, then Lessee shall immediately deposit cash with Lessor, or procure a bond reasonably acceptable to Lessor, in an amount sufficient to cover the cost of removing the lien from the Property. If Lessee fails to remove the lien or furnish the cash or a bond acceptable to Lessor within ten (10) business days of notice thereof, Lessor shall automatically have the right, but not the obligation, to pay the lien off with no notice to Lessee and Lessee shall immediately reimburse Lessor for any sums so paid to remove any such lien. Except as permitted under Section 12, Lessee shall not encumber the Property or any Improvements thereon without prior written approval of Lessor.

4.4. Utilities and Services. Lessee is responsible for obtaining and paying for all utility services necessary for the operation of the Project on the Property. Lessee shall be responsible for paying all fees imposed by the various utilities furnishing those services. Fees shall include, but are not limited to, all connection fees and impervious surface fees charged by the utilities and by the various governmental agencies having jurisdiction over the Property. If Lessee desires to install utility lines on, under or above the Property, Lessee must first obtain Lessor's written approval to do so and must provide Lessor with a detailed survey showing the

exact location of such lines, along with a precise metes and bounds description of the same. Lessor agrees to inform Lessee of whether it approves the installation of such lines within ten (10) business days of its receipt of written request from Lessee, along with all necessary plans and drawings. Failure to respond to Lessee's request within this time period shall be deemed an approval by Lessor but Lessee must still obtain all other required government approvals.

4.5. Storm Water and Waste Water Disposal. Lessee will either connect to the City of Portland's storm water system or may request permission from the City of Portland to construct its own storm water system in accordance with all laws and regulations. Lessee will also be required to construct a waste water treatment system which must be permitted and approved by the City of Portland and any other applicable regulatory authorities. Such system shall also be constructed with all required permits in place and in accordance with all laws and regulations. Lessee shall provide Lessor with detailed drawings of any such system it constructs and also with copies of all permits needed for such construction, in accordance with the provisions of this Section 4.

4.6. Surcharge Materials. If Lessee's construction on the Property will result in the removal of excess sand from the Property, then, at Lessor's sole option, such sand shall remain the property of Lessor and Lessor shall direct Lessee to temporarily stock pile the sand material on the Property or on an area immediately adjacent to the Property, if an adjacent area is available. Lessor shall then have the right to come onto the Property to remove the material without further authorization from Lessee. Lessor agrees to coordinate the time for removal with Lessee so that the presence of the material and the removal process do not unreasonably interfere with Lessee's use of the Property. Lessee shall bring no soil, rock, or other organic materials onto the Property without the written consent of Lessor and before such approval will be given, the soil will need to be tested to ensure that it contains no Hazardous Substances. No treated soils will be allowed on the Property.

4.7. Signs. All signs installed on the Property must meet any applicable signage criteria contained in any applicable local sign ordinances, zoning requirements, or other legal standards. Lessee shall remove all signs and sign hardware upon termination of this Lease and restore the sign location to its former state, unless Lessor elects to retain all or any portion of the signage.

4.8. Lessor's Access to Property. Lessor shall have the right to enter upon the Property for the purposes of: (i) confirming the performance by Lessee of all obligations under this Lease; (ii) doing any other act which Lessor may be obligated or have the right to perform under this Lease; and (iii) for any other lawful purpose. Such entry shall be made with reasonable advance notice (twenty-four (24) hours or more, except in the case of an emergency or reported violation of law) and during normal business hours, where practical. If Lessor does enter onto the Property for any of the above described reasons, it agrees to use good faith efforts

not to interfere with Lessee's operations any more than necessary to accomplish its inspection purposes. Lessee waives any claim against Lessor for damages for any injury or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Property or any other loss occasioned by such entry, except to the extent caused by the negligence or willful misconduct of Lessor.

4.9. Authority to Do Business. At all times during this Lease, Lessee shall be registered, and in good standing, to do business in Oregon.

4.10. Cooperation for Permits and Licenses. In the event that it is necessary for the proper performance of this Lease, particularly the construction contemplated in this Section 4, on the part of either Lessor or Lessee, each agrees to cooperate with the other to facilitate the obtaining of any needed permits or licenses. Provided, however, unless Lessor has specifically otherwise agreed elsewhere in this Lease, Lessee shall be responsible for obtaining, and for the cost of obtaining, all such permits and licenses and shall reimburse Lessor its reasonable costs expended in assisting Lessee in obtaining any such permits and licenses, if Lessee requests Lessor's assistance.

5. LESSOR'S RIGHTS, REPRESENTATIONS & OBLIGATIONS

5.1. Delivery of Property. Lessee shall have the right to possession of the Property as of the Effective Date subject to the limitations of Section 4. In the event Lessor shall permit Lessee to occupy the Property prior to the Effective Date, such occupancy shall be subject to all provisions of this Lease. Unless otherwise stated herein, early or delayed possession shall not advance or defer the Expiration Date of this Lease.

5.2. Condition of Property. Lessor, without limitation, makes no warranties or representations regarding the condition or suitability of the Property for Lessee's intended use. Lessee has inspected and accepts the Property in "AS IS" condition upon taking possession. Unless caused by Lessor or its agents or employees after the Effective Date hereof, Lessor shall have no liability to Lessee, and Lessee shall have no claim against Lessor, for any damage or injury caused by any condition of the Property. Lessee is responsible for doing its own initial environmental assessment (as described in Section 6.3 as "Initial Assessment") of the site before taking possession and Lessor shall have no liability to Lessee for environmental problems that are not shown by such Initial Assessment. Unless otherwise agreed to in writing by Lessor, Lessor shall have no responsibility to bring the Property into compliance with any laws, including, without limitation, any building or occupancy codes. Lessee shall be solely responsible for inspecting the Property and determining whether the Property is in compliance with all laws before entering into this Lease. Lessor will, however, cooperate in any environmental audit Lessee wishes to conduct and will make staff requested available to the

environmental auditors for interview concerning the condition of the Property. Lessor cannot warrant the accuracy or completeness of any information obtained from Metro or Metro ERC employees. It is expressly acknowledged that Lessee shall have no rights express or implied in or to any parking for Lessee or its invitees in any nearby lots owned or retained by Lessor.

6. ENVIRONMENTAL OBLIGATIONS OF LESSEE

6.1. General. The following provisions apply to Lessee's construction and operations on the Property, and shall be incorporated into any subleases entered into by Lessee. Lessee shall be responsible for conducting all of its activities on the Property in accordance with all "Environmental Laws" and in a manner that does not result in any "Hazardous Substance Release" (as those terms are defined and utilized below) to the Property or to any other properties or bodies of water.

6.2. Definitions. As used in this Lease, the following terms shall be defined as follows:

6.2.1. "Environmental Laws" shall be interpreted in the broadest sense to include any and all federal, state and local statutes, regulations, rules and ordinances now or hereafter in effect, as the same may be amended from time to time, which in any way govern materials or substances or relate to the protection of health, safety, natural resources, or the environment.

6.2.2. "Hazardous Substances" shall be interpreted in the broadest sense to include any substance, material, waste, or product defined, regulated, or designated as hazardous, toxic, radioactive, or otherwise dangerous under any Environmental Laws.

6.2.3. "Hazardous Substance Release" shall be interpreted to include any releasing, spilling, leaking, migrating, pumping, pouring, emitting, discharging, injecting, escaping, leaching, disposing or dumping, whether intentionally or unintentionally, of any Hazardous Substance on the Property or on any other property as a result of Lessee's operations and shall also include any spill, release or deposit of Hazardous Substances on the Property by any third party during the term of this Lease, except Lessor or a third party completely unrelated to Lessee or to Lessee's operations or business and/or completely unrelated to Lessee's sublessees, contractors, subcontractors, invitees, customers, agents, employees, or their operations or businesses.

6.2.4. "Environmental Costs" shall be interpreted in the broadest sense to include, but shall not necessarily be limited to: (i) costs or expenses relating to any actual or claimed violation of or noncompliance with any Environmental Law; (ii) damages, response costs or other relief; (iii) the cost, expense or loss to Lessor as a result of any injunctive relief, including

preliminary or temporary injunctive relief, applicable to Lessor or the Property; (iv) all reasonable expenses of evaluation, testing, analysis, clean-up, remediation, removal and disposal relating to Hazardous Substances, including reasonable fees of attorneys, engineers, consultants, paralegals and experts; (v) all reasonable expenses of reporting the existence of Hazardous Substances or the violation of Environmental Laws to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (vi) all reasonable expenses or obligations, including attorneys' and paralegal fees, incurred at, before and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom whether or not taxable as costs, including, reasonable, attorneys' and paralegal fees, witness fees (expert and otherwise), deposition costs, copying, telephone and telefax charges and other expenses; and (vii) any damages, costs, fines, liabilities and expenses incurred by Lessor as a result of Lessee's activities on the Property.

6.3. Initial Environmental Assessment and Periodic Scheduled Audits. Within sixty (60) days after the date all permits and approvals are obtained pursuant to section 1.3.3, Lessee shall conduct an environmental assessment ("Initial Assessment") on the Property, at Lessee's expense. This Initial Assessment will be conducted by an environmental assessment firm selected by Lessee and acceptable to Lessor. The scope of the audit will be agreed upon by the parties and shall include borings and water samplings. Lessor and Lessee shall both receive signed and certified duplicate copies of the Initial Assessment report which will be used as a baseline for determination of potential future environmental liability. If a Hazardous Substance Release(s) later is found, including at the time of the Exit Audit described in Section 9 below, that did not appear in this Initial Assessment, a rebuttable presumption will exist that Lessee is responsible for the Hazardous Substance Release. At the expiration of the initial Lease Term, and at the expiration of each Extension Term thereafter, Lessee shall be required to perform, at Lessee's sole expense, thorough environmental audits ("Periodic Audits"). These Periodic Audits shall be of similar scope to the Initial Assessment, but will also include an audit of Lessee's environmental practices and procedures at the time, unless both parties agree to a different approach. Additionally, the scope of the Periodic Audit shall be expanded, to the extent Lessor deems necessary, if evidence of a Hazardous Substance Release or a violation of Environmental Laws is discovered. In the event a Hazardous Substance Release or a violation of any Environmental Law is discovered during any Periodic Audit, or at any other time during this Lease, Lessee shall take steps required by law and under this Lease to clean up the Property and to pay all costs, including fines associated with the Hazardous Substance Release or violation. Any discovered Hazardous Substance Release or violation of Environmental Laws or the environmental provisions of this Lease may be declared an Event of Default by Lessor, unless Lessee shows that such Hazardous Substance Release or violation of Environmental Law was caused by Lessor or that the Hazardous Substance Release pre-existed the Effective Date of this Lease, or that the Hazardous Substance Release was completely unrelated to the operation or business of Lessee, Lessee's sublessees, contractors, subcontractors, invitees, customers, agents, and employees or their operations or businesses. Prior to declaring the problem an Event of

Default, Lessor shall allow Lessee to cure the problem upon written notice to Lessee, if Lessor determines that the problem does not indicate continuing improper environmental practices and if such problem can be remedied within thirty (30) days or such other additional period of time that the Lessor in its discretion determines to be warranted under the circumstances, provided that Lessor's discretion shall not be exercised unreasonably; however, once such notice has been given once in any given Lease Year, no further notice or cure period by Lessor for substantial environmental problems shall be required prior to declaring an Event of Default.

6.4. Limited Business Use of Hazardous Substances. Lessee may, in the normal course of Lessee's business as a marina, and to the extent necessary for Lessee's permitted use of the Property, use certain Hazardous Substances described in this paragraph on the Property in compliance with the following two conditions: (i) use of such Hazardous Substances shall be in compliance with all Environmental Laws; (ii) use of such Hazardous Substances shall not expose the Property or neighboring properties to any meaningful risk of Hazardous Substance Release or damage from the release or use of Hazardous Substances. Ordinary cleaning supplies and equipment maintenance cleaners and lubricants are permitted on the Property in small quantities. Fuels and lubricants completely contained within vehicles are also permitted. Chemicals and substances customarily used in conjunction with the operation of a marina and restaurant, are also permitted on the Property. Except as provided herein, no other Hazardous Substances may be used or stored on the Property without Lessor's prior written consent. Lessor may condition its consent to the use or presence of any Hazardous Substance on the Property upon Lessee's giving Lessor such additional assurances as Lessor, in its discretion, deems necessary to protect itself, the public, the Property and the environment against damage, Hazardous Substance Release, injury or liability therefrom, including, but not limited to, the installation (and removal on or before termination of the Lease) of reasonable protective modifications to the Property or an increase in the security deposit and insurance coverage. Lessor agrees to respond to any request for approval to use any Hazardous Substance within ten (10) business days of the date the request is received by Lessor. No underground or above ground tanks containing Hazardous Substances, including those storing fuel, shall be allowed on the Property without the prior written consent of Lessor. Whether to grant or deny such consent shall be within the sole discretion of Lessor. Notwithstanding the foregoing, tanks needed for Lessee's waste water treatment system shall be allowed but Lessor shall have the right to review and approve the plans for such tanks and any emergency environmental spill procedures prior to installation of the system.

6.5. Environmental Inspection. Lessor reserves the right to inspect for Hazardous Substances and/or Lessee's management of Hazardous Substances on the Property at any time, and from time to time, with notice to Lessee and, when possible, during normal operating hours. If Lessor, at any time during the term of this Lease or any extension thereof, has reason to believe that Lessee is handling Hazardous Substances contrary to the requirements of this Lease, in violation of this Lease or in any manner that may allow a Hazardous Substance Release on the

Property, Lessor may, without limiting its other rights and remedies, inspect without advance notice to Lessee and may also require Lessee to furnish to Lessor, at Lessee's sole expense, an environmental audit or environmental assessment with respect to the matters of concern to Lessor. Lessor shall have the right to approve the company or individual conducting such audit and the audit procedures. Lessor shall be given an original copy of the audit results. Lessee shall cooperate with all such requests. If the results of such audit show no evidence of a Hazardous Substance Release or a violation of Environmental Laws, then Lessor shall reimburse Lessee for its out-of-pocket costs of conducting such audit.

6.6. Safety. Lessee shall maintain, and shall require its sublessees to maintain, Material Safety Data Sheets for each and every Hazardous Substance used by Lessee, Lessee's agents, sublessees, employees, contractors, licensees or invitees on the Property, as required under the Hazard Communication Standard in 29 CFR §1910.1200, as it may be amended or redesignated from time to time, and comparable state and local statutes and regulations. In order to ensure that such information is available to Lessor in the event of a spill or other emergency, all such information shall be kept current at all times and a copy of all such materials shall be kept in a place known to and accessible to Lessor.

6.7. Disposal of Hazardous Substances. Except as allowed by state and/or federal discharge permit approved by Lessor, Lessee shall not dispose of any Hazardous Substance, regardless of the quantity or concentration, within the storm and/or sanitary sewer drains and plumbing facilities within the Property, within or on the Property, or within or on other property of Lessor or into the river. All Hazardous Substances shall be removed from the Property and disposed of only in accordance with the law. If Lessee knows, or has reasonable cause to believe, that Hazardous Substance Release has come to be located on or beneath the Property or adjacent property or the river, Lessee must immediately give written notice of that condition to Lessor.

6.8. Notice to Lessor. Lessee shall immediately notify Lessor upon becoming aware of a violation or alleged violation of any Environmental Law and/or: (1) any Hazardous Substance Release on, under or adjacent to the Property or the river or threat of or reasonable suspicion of any of the same; and/or (2) any notice or communication from a governmental agency or any other person directed to Lessee or any other person relating to such Hazardous Substances on, under or adjacent to the Property or the river or any violation or alleged violation of any Environmental Laws with respect to the Property.

6.9. Environmental Remediation. In the event of a Hazardous Substance Release, or any violation of Environmental Laws, or the threat of or reasonable suspicion of the same, then if such is the responsibility of Lessee under this Lease, Lessee shall immediately undertake all acts necessary or appropriate to contain, clean up and remove the Hazardous Substance Release and cure any violation of any Environmental Law. Lessee shall also undertake, within a reasonable

time, all investigatory, remedial and/or removal actions necessary or appropriate to ensure that any contamination caused by the Hazardous Substance Release is eliminated. Lessor shall have the right to approve all investigatory, remedial and removal procedures and the company(ies) and/or individuals conducting such procedures, and Lessor agrees that it shall act promptly when requested to give such approval. Promptly upon written notice from Lessor or from any governmental entity, Lessee shall remove from the Property or from the water or any other properties (including, without limitation, the soil or water table thereof), at Lessee's own cost and expense, all Hazardous Substances Releases which are Lessee's responsibility under this Lease during the term of this Lease and shall restore the Property, water or other properties to their pre-Hazardous Substance Release condition, in conformance with all applicable governmental rules and regulations. Any Environmental Costs incurred by or assessed against Lessor as a result of the actions of Lessee or any other party which are the responsibility of Lessee under this Lease shall be promptly paid by Lessee after Lessor incurs the obligation to pay such Costs or determines that an Environmental Cost is owing and Lessor so notifies Lessee. If Lessee discovers a Hazardous Substance Release or other problem that is not Lessee's responsibility under this Lease, Lessee agrees to promptly notify Lessor concerning such discovery.

6.10. Annual Certification. Not later than thirty (30) days after the end of each Lease Year, Lessee shall provide a written certification to Lessor which certifies that Lessee has not received any notice from any governmental agency regarding a violation of any Environmental Law relating to its operation on the Property; or, if such notice was received, Lessee shall explain the reason for the notice, what has been done to remedy the problem and shall attach a copy of the notice. Lessee shall also certify that Lessee has obtained and has in force all permits required under all Environmental Laws for Lessee's operations on the Property. Copies of all such permits shall be made available to Lessor upon request.

6.11. Documentation of Hazardous Substances. Lessee shall maintain for periodic inspection by Lessor and deliver to Lessor, at Lessor's request, true and correct copies of the following documents (hereinafter referred to as the "Documents") related to Lessee's operations on the Property and its handling, storage, disposal, discharge and emission of Hazardous Substances, concurrently with the receipt from or submission to a governmental agency: Permits; approvals; reports and correspondence; storage and management plans; spill prevention control and countermeasure plans; other spill contingency and emergency response plans; documents relating to taxes for Hazardous Substances; notice of violations of any Environmental Laws; plans relating to the installation of any storage tanks to be installed in, under or around the Property (provided said installation of tanks shall only be permitted after Lessor has given Lessee its written consent to do so); and all closure plans or any other documents required by any and all federal, state and local governmental agencies and authorities for any storage tanks or other facilities installed in, on or under the Property.

7. INDEMNITY, INSURANCE

7.1. General Indemnity. Upon the Effective Date of this Lease, Lessee agrees to defend (using legal counsel reasonably acceptable to Lessor), indemnify, and hold harmless Lessor from and against any and all actual or alleged claims, damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties (collectively "Costs") which may be imposed upon or claimed against Lessor and which, in whole or in part, directly or indirectly, arise from or are in any way connected with: (i) the act, omission or negligence of Lessee or Lessee's partners, officers, directors, agents, employees, invitees, contractors or subcontractors; (ii) the use, occupation, management or control of the Property by Lessee, whether or not due to Lessee's own act or omission and whether or not occurring on the Property; (iii) any breach, violation or nonperformance of any of Lessee's obligations under this Lease; and/or (iv) any damage caused by any of Lessee's partners, officers, directors, contractors, subcontractors, employees, agents, sublessees, customers, or invitees on or to the Property.

7.2. Environmental Indemnity. In addition to all other indemnities provided for by this Lease or by law, Lessee shall be solely responsible for and agrees to defend (using legal counsel reasonably acceptable to Lessor), indemnify and hold harmless Lessor from and against all Environmental Costs claimed against or assessed against Lessor arising, in whole or in part, directly or indirectly, from acts or omissions of the Lessee, Lessee's partners, officers, directors, sublessees, contractors, subcontractors, employees, agents, customers, and/or invitees, at or about the Property after the Effective Date of this Lease (or earlier if caused by Lessee or any of Lessee's partners, officers, directors, agents, employees, contractors, subcontractors, sublessees or invitees). This indemnification shall require Lessee to reimburse Lessor for any diminution in value of the Property or other adjacent or nearby property of Lessor, caused by Hazardous Substances, including damages for the loss or restriction on use of rentable or usable space or of any amenity of the Property, or any other property of Lessor. For purposes of determining diminution in value, it shall be Lessor's burden to show that the value of the Property or other property of Lessor has been diminished or a loss in use has resulted due to Hazardous Substance Release or violation of Environmental Law that is the responsibility of Lessee under this Lease; and it is further agreed that if all Hazardous Substance Release has been removed by Lessee, then no diminution in value or loss of use shall be deemed to have occurred after all such clean-up has been completed in accordance with the requirements of this Lease. It is also agreed that if the Hazardous Substance Release was caused by a third party who had absolutely no connection to Lessee or Lessee's operations, and no connection to Lessee's sublessees, contractors, subcontractors, employees, agents, or invitees, or their operations, then Lessee shall not be responsible for the diminution in value or loss of use of the Property or other damaged property resulting from that Hazardous Substance Release. Notwithstanding the foregoing, however, if such Hazardous Substance Release was caused by vandalism and Lessee was not, at the time of such vandalism, in compliance with the security provisions of this Lease, then Lessee shall also

be liable for the diminution in value, as described above. Lessee's obligations shall not apply at all if the Hazardous Substances were deposited on the Property by Lessor or Lessor's officers, directors, agents, employees or contractors acting on behalf of Lessor. Lessee shall be solely responsible to assure that no person brings Hazardous Substances onto the Property in violation of this Lease, unless caused by Lessor or its officers, directors, agents, employees, contractors or subcontractors. This Environmental Indemnity is in addition to, and not in lieu of, the general indemnity provision set forth in Section 7.1. This Environmental Indemnity does not apply to any claim or damages which are the direct result of the actions of Lessor or Lessor's officers, directors, contractors, subcontractors, employees or agents while acting on behalf of Lessor.

7.3. Insurance Requirements. Insurance requirements set forth below do not in any way limit the amount or scope of liability of Lessee under this Lease. The amounts listed indicate only the minimum amounts of insurance coverage Lessor is willing to accept to help insure full performance of all terms and conditions of this Lease. All insurance required by Lessee under this Lease shall meet the following minimum requirements:

7.3.1. On or before the Effective Date, Lessee shall provide Lessor with certificates of insurance establishing the existence of all insurance policies required under this Section 7. Thereafter, Lessor must receive notice of the expiration or renewal of any policy at least thirty (30) days prior to the expiration date or cancellation of any insurance policy. No insurance policy may be canceled without at least thirty (30) days prior written notice being given to Lessor. Insurance must be maintained without any lapse or modification in coverage during the entire Lease Term and any exercised Extension Options thereof. Insurance canceled without Lessor's consent shall be deemed an immediate Event of Default under this Lease. Lessor shall also be given certified copies of Lessee's policies of insurance, upon request.

7.3.2. Lessor, its officers, employees, and agents shall be named as additional insureds in each required policy and, for purposes of damage to the Property, as a loss payee, to the extent of Lessor's ownership interest therein. Such insurance shall not be invalidated by any act, neglect or breach of contract by Lessee.

7.3.3. The required policies shall provide that the coverage is primary, and will not require any contribution from any insurance or self-insurance carried by Lessor.

7.3.4. All policies of insurance must be written by companies having an A.M. Best rating of "A" or better or equivalent.

7.3.5. Lessor shall have the right to periodically review the types and limits of insurance coverage required and in the event Lessor determines, using standards generally employed in the insurance industry for assessment of businesses engaged in activities akin to those of Lessee, that such limits should be increased, lowered or modified, or such types added

or eliminated, Lessor shall provide notice to Lessee of such determination and Lessee shall, if limits are increased, provide Lessor with an updated certificate of insurance. Lessor also reserves the right to require a change of insurance carrier if the Lessee's carrier's rating drops below an A rating. Lessee shall be given at least thirty (30) days notice of any such required changes. Any such changes mandated by Lessor must be in accordance with market conditions and industry standard. Lessee shall be entitled to request that Lessor review the insurance requirements of this Lease if Lessee reasonably believes that any aspect of coverage should be reexamined. If Lessee disagrees with Lessor's requirement for a change in the types or amount of coverage, the parties agree to submit such dispute to binding arbitration, with the arbitrator being selected in accordance with the provisions of Section (except the selected arbitrator shall have a background in commercial and industrial insurance rather than being an MAI appraiser) and with it being agreed that such arbitration will be conducted on an expedited schedule, taking no longer than sixty (60) days from the date the arbitrator is selected to the time that a decision must be rendered.

7.4. Required Insurance. At all times during this Lease, Lessee shall provide and maintain the following types of coverage:

7.4.1. Liability Insurance. Lessee shall maintain an occurrence form commercial general liability policy (including coverage for broad form contractual liability; sudden and accidental spill coverage on land and on water; wharfingers' liability [if applicable to Lessee's operations]; personal injury liability); and automobile liability insurance policy or policies for the protection of Lessee and Lessor, insuring Lessee and Lessor against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the Property or occasioned by reason of the operations of Lessee. Each coverage specified herein shall be in an amount of not less than *ONE MILLION DOLLARS (\$1,000,000)* combined single limit for bodily injury and property damage for Premises liability and for Products/Completed Operations liability.

7.4.2. Builders' Risk. During any construction, as described in Section 4, Lessee shall maintain a Builders' Risk policy of insurance, which coverage shall include fire and extended property insurance coverage, for One Hundred Percent (100%) of the value of any construction work done on the Property by Lessee. Coverage shall include: (1) form work in place; (2) all materials and equipment on site; (3) all structures, including temporary structures; and (4) all supplies related to the construction work being performed.

7.4.3. Property Insurance. Lessee shall maintain, in full force and effect during the Lease Term, "All Risk" property insurance, covering all buildings, fixtures, equipment, and all other Improvements located on the Property. Coverage shall be in an amount equal to ONE HUNDRED PERCENT (100%) of the new replacement value thereof. Such insurance shall

name Lessor as an additional insured and as a loss payee as to its full interest in any Lessor Improvements covered by Lessee's insurance:

7.4.4. Business Interruption Insurance. To ensure timely payment of Rent, and any other losses that might otherwise occur to Lessee, Lessee shall carry a business interruption insurance policy which shall include coverage for payment of all Rent due hereunder for a minimum of a twelve (12) month period. The proceeds of any Business Interruption Insurance shall be used first to continue Rent payments due to Lessor.

7.4.5. Workers' Compensation Insurance. Lessee shall maintain in force Workers' Compensation insurance or self-insurance for all of Lessee's employees, including coverage for Employer's Liability, and, if applicable, Longshore and Harbor Workers' Compensation Act.

7.5. Waiver of Subrogation. Except as limited by this Section, the parties hereto waive any right of action that they and/or their insurance carriers might have against the other for loss or damage, to the extent that such loss or damage is covered by any property insurance policy or policies and to the extent that proceeds (which proceeds are free and clear of any interest of third parties) are received by Lessee. This waiver of subrogation does not apply to deductible amounts of any policies.

8. DAMAGE OR DESTRUCTION

8.1. General. Lessee shall immediately notify Lessor of damage or destruction to any Improvements located on the Property in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000) (herein "Casualty").

8.2. Reconstruction. Lessee shall be fully responsible to restore the Property and to repair and/or replace any Improvements within a reasonable amount of time following damage or destruction. The repaired or replaced Improvements must be at least equal in value to the Improvements that were damaged or destroyed. In the event of a Casualty, Lessee must diligently work to restore or replace the damaged Improvements as quickly as is reasonably possible but in no event shall such reconstruction time exceed Two Hundred Ten (210) days without the prior written permission of Lessor, which will not be unreasonably withheld. During restoration, Rent shall continue to be due and paid in full and on time. In the event that it is determined that more than fifty percent (50%) of the total value of all Improvements have been destroyed AND more than twenty (20) years of this Lease Term have expired, Lessee may opt to terminate this Lease so long as Lessee has sufficient insurance proceeds or other funds to pay the following: clean-up of all damage and restoration of the Property (Lessee's Improvements do not need to be replaced, but if not replaced must be completely removed) to its original pre-Lease

condition. Lessee shall only be entitled to terminate this Lease as described herein after all clean-up has been completed, all liens or other obligations of Lessee relating to the Property and this Lease have been paid, there is no outstanding Event of Default under this Lease and the insurance proceeds have been allocated and used to pay all of the above. Lessor shall not be required to reimburse Lessee any prepaid Rent. Restoration of the Property and the Improvements must comply with all terms of this Lease and any then-applicable planning requirements.

9. TERMINATION

9.1. Duties on Termination. Upon expiration or earlier termination of the Lease for any reason, Lessee shall deliver all keys to Lessor and surrender the Property in good clean condition. All Lessee Improvements shall become the property of Lessor at termination of this Lease, provided, however, that Lessor may, at its sole option and discretion, require Lessee to remove any Lessee Improvements at Lessee's sole expense. Whether or not to allow some or all of Lessee's Improvements to be left on the Property shall be in Lessor's sole discretion. All repair and removal for which Lessee is responsible shall be completed prior to termination and surrender of the Property.

9.2. Lessee's Improvements and Personal Property.

9.2.1. Removal Requirement. At or before the termination of this Lease, Lessee, at Lessee's expense, shall remove from the Property any and all of Lessee's Improvements, and personal property, and shall repair any damage to the Property resulting from the installation or removal of the same. Title to any items of Lessee's personal property or Lessee's Improvements which remain on the Property after the termination date of this Lease may, at the option of Lessor, be automatically taken by Lessor, and Lessor shall have the option, in its sole discretion, of: (a) retaining any or all of such personal property or Lessee Improvements without any requirement to account to Lessee therefor, or (b) removing and disposing of any or all of such personal property or Lessee Improvements and recovering the cost thereof, plus interest from the date of expenditure at Lessor's then current interest rate, from Lessee upon demand.

9.2.2. Time for Removal. The time for removal of any Improvements or personal property by Lessee upon termination shall be as follows: (1) on or before the Expiration Date; or (2) if this Lease is terminated unexpectedly due to a casualty loss, condemnation, an uncured Event of Default or for any other reason prior to the Expiration Date, then all removal required by Lessor must occur within six (6) months of the actual termination date. Lessee must continue to pay all Rent until all removal and clean-up is completed. At any time during the last six (6) months of this Lease or any Extension Term thereof, Lessee may notify Lessor, in writing, of those Lessee's Improvements it wishes to leave on the Property. Lessor agrees to

inform Lessee within thirty (30) days of its receipt of such notification from Lessee whether or not any or all of those Lessee's Improvements may be left on the Property. Lessor reserves the right, however, to later require removal of Lessee's Improvements from the Property if the condition of the Lessee's Improvements it would have otherwise allowed to remain changes significantly prior to the termination of this Lease. During this six (6) month removal period, Lessor will have full occupancy and control of the Property. Lessee's only use of the Property shall be for removal and clean-up. Rent after termination shall be at the hold-over rate described in Section 9.3.

9.3. Holding Over. If Lessee holds over after this Lease terminates, Lessee shall be deemed a month-to-month holdover tenant or a tenant at sufferance, at Lessor's sole discretion. In the event Lessor deems Lessee as a month-to-month holdover tenant, Lessee shall remain bound by this Lease, except that the tenancy shall be from month-to-month, subject to the payment of all Basic Rent in advance, with the monthly Basic Rent being one hundred fifty percent (150%) of the Basic Rent in effect immediately prior to the holding over. Such a tenancy may be terminated at any time by written notice from Lessor to Lessee. In the event Lessor deems Lessee as a tenant at sufferance, Lessor shall be entitled to evict Lessee but Lessor may still collect a charge for use of the Property at a rate equal to the escalated Basic Rent stated in this paragraph.

9.4. Exit Audit and Remediation. Lessee shall, at Lessee's sole cost and expense, not sooner than six (6) months prior to the Expiration Date or otherwise scheduled termination date of this Lease, and not later than two (2) months prior to the Expiration Date or otherwise scheduled termination date of this Lease, conduct an exit environmental audit (the "Exit Audit") of the Property to determine whether there are any Hazardous Substances on or about the Property. Lessor shall have the right to approve the Exit Audit procedures and the company or individual conducting the audit. Lessor shall be given a certified copy of the Exit Audit results. Lessee shall provide to Lessor a supplemental update report for the Exit Audit as of the last day of the Lease Term or any Extension Term. Lessee shall promptly remedy any Hazardous Substance Release or violation of Environmental Laws revealed by the Exit Audit and its updates for which Lessee is responsible under the terms of this Lease. Such remediation shall be performed in accordance with all applicable Environmental Laws, prior to the expiration of the Lease Term. In the event Lessee fails to promptly remedy the Hazardous Substance Release or violation of Environmental Laws, Lessor shall have the right to do so and to charge Lessee all resulting Environmental Costs. Lessor shall give Lessee at least seven (7) days prior written notice of its intention to remedy the Hazardous Substance Release or violation of Environmental Laws. Lessee agrees to pay to Lessor all Environmental Costs incurred by Lessor within thirty (30) days after receipt of invoice from Lessor. Such right shall be in addition to any other remedies available to Lessor under this Lease, at law, or in equity. In the event this Lease terminates unexpectedly for any reason, Lessee shall cause the Exit Audit to be conducted, in a manner acceptable to Lessor as described above, within thirty (30) days of the actual termination

of this Lease. Until such time as Lessee has fulfilled all the requirements of this Exit Audit, Lessor may, at Lessor's option, treat Lessee as a holdover tenant and all provisions of this Section 9 concerning holdover tenancy shall apply. If Lessee does not conduct or complete the Exit Audit as required, Lessor may, at its sole option, and without further notice to Lessee, conduct or complete such audit and bill Lessee for all costs of conducting the Exit Audit.

10. DEFAULT

10.1. Event of Default. The occurrence of any of the following violations of this Lease shall constitute an Event of Default (also referred to as a "Default") after the expiration of the cure periods set forth in Sections 10.1 and 10.2. Some violations have no cure periods and, therefore, become immediate Events of Default as described in this Section.

10.1.1. Default in Rent. Failure of Lessee to pay any Rent or other amount payable to Lessor or to others as provided in this Lease within ten (10) days of the payment Due Date. Lessor shall give Lessee ten (10) days written notice of any violation in a Rent payment twice during any given Lease Year and Lessee shall have ten (10) days after the date of such notice to cure the violation by paying the past-due Rent, plus all interest due thereon, in full. Once notice has been given twice in any given Lease Year, no further notice and cure period by Lessor for past-due Rent shall be required.

10.1.2. Failure to Obtain Required Permits/Approvals and Failure to Meet Deadlines for Completion. Failure of Lessee to obtain the permits and approval criteria set forth in Section 1.3.4 and/or failure to meet the deadlines set forth in Section 1.3.3. If, however, Lessee is pursuing completion of construction in a commercially reasonable manner and otherwise maintaining the Property in an orderly condition, Lessor will grant Lessee a reasonable extension of time to complete construction after Lessee requests such an extension in writing.

10.1.3. Violation of Other Covenants. Unless otherwise provided in this Section 10 or elsewhere in this Lease, failure of Lessee to comply with any term, covenant or condition of this Lease (other than the payment of Rent or other amounts covered under Section 10.1.1 and the deadlines for completion covered under Section 10.1.2) within thirty (30) days after written notice by Lessor describing the nature of the violation shall constitute an Event of Default. If the violation is of such a nature that it cannot be completely remedied within the thirty (30) day period, this provision shall be complied with if Lessee begins correction of the violation within the thirty (30) day period and thereafter proceeds in good faith and with diligence to effect the cure as soon as possible and to the satisfaction of Lessor.

10.1.4. No Notice Required. Notwithstanding the foregoing Section 10.1.2, and unless otherwise provided in this Lease, Lessor need not give notice for a violation of

the same subsection of this Lease more than five (5) times during the Lease Term, and a failure to perform such type of obligation after the fifth notice shall constitute an immediate Event of Default for which no further notice or opportunity to cure need be given. Furthermore, if any violation threatens to cause serious harm to Lessor or other tenants of Lessor or persons, then Lessor shall not be required to give any notice or opportunity to cure before seeking immediate injunctive relief and/or specific performance.

10.1.5. Insolvency. To the extent permitted by the United States Bankruptcy Code, each of the following shall be considered an Event of Default: Insolvency of Lessee; an assignment by Lessee for the benefit of creditors; the filing by Lessee of a voluntary petition in bankruptcy; an adjudication that Lessee is bankrupt or the appointment of a receiver for the properties of Lessee and the receiver is not discharged within sixty (60) days; the filing of an involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within sixty (60) days after filing; or the attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within sixty (60) days. In all of these instances, no notice that an Event of Default has occurred shall be required from Lessor and no cure period, except the time period specifically stated in this section 10.1.5, shall apply.

10.1.6. Abandonment. Failure of Lessee for thirty (30) days or more to use and occupy the Property for one or more of the purposes permitted under this Lease, unless such failure is excused under other provisions of this Lease. In the case of Abandonment, no notice that an Event of Default has occurred shall be required from Lessor. Lessee's failure to operate shall not constitute abandonment as long as Lessee maintains security personnel on site and complies with all other terms of this Lease.

10.2. Remedies on Default. Immediately following an uncured Event of Default or an Event of Default for which there is no cure period, Lessor may exercise any or all of the following remedies, in addition to any other remedies provided in this Lease or at law or equity:

10.2.1. Re-entry. Lessor may re-enter the Property, or any part thereof, by suitable action or proceeding at law, or by force or otherwise, without being liable for indictment, prosecution or damages therefor, and may repossess the Property and remove any person or property therefrom, to the end that Lessor may have, hold and enjoy the Property.

10.2.2. Reletting. Lessor, at its option, may relet the whole or any part of the Property from time to time, either in the name of Lessor or otherwise, to such tenants, for such terms ending before, on or after the Expiration Date of this Lease, at such rentals and upon such conditions (including concessions and free rent periods) as Lessor, in its sole discretion, may determine to be appropriate. To the extent allowed under Oregon law, Lessor shall not be liable for refusal to relet the Property, or, in the event of any such reletting, for failure to collect

any rent due upon such reletting; and no such failure shall operate to relieve Lessee of any liability under this Lease or otherwise affect any such liability. Lessor may make such physical changes to the Property as Lessor, in its sole discretion, considers advisable or necessary in connection with any such reletting or proposed reletting, without relieving Lessee of any liability under this Lease or otherwise affecting Lessee's liability. Lessor shall have no obligation to attempt to relet the Property prior to leasing such other property Lessor may have available for lease. Lessor shall not be required to attempt to relet the Property to a potential lessee with whom Lessor has been negotiating a lease for other property owned by Lessor or to whom Lessor has shown other property owned by Lessor. Lessor shall be entitled to use its best efforts to lease such other property of Lessor's to such prospective tenant.

10.2.3. Rent Recovery. Whether or not Lessor retakes possession or relets the Property, Lessor shall have the right to recover unpaid Rents and all damages caused by the Event of Default. Damages shall include, without limitation: The net present value of all Rents otherwise owed under this Lease discounted at a rate of Eight and One-half percent (8 1/2%) and based on the assumption that, for the purposes of calculating future rents, the CPI-U will be deemed to increase annually by a percentage equal to the average percentage increase in the CPI-U during the last five (5) years of the Lease immediately prior to the Default (for example if the average CPI-U increase during that five year period averaged 4%, then the CPI-U will increase by 4% per year for the remaining number of years that would have otherwise been left on the Lease Term) and that the FMV will increase 7 percent over the previously Adjusted Basic Rent every ten years (subject only to Oregon laws concerning mitigation of damages); all reasonable legal expenses and other related costs incurred by Lessor as a result of Lessee's Default; that portion of any leasing commission paid by Lessor as a result of this Lease which can be attributed to the unexpired portion of this Lease; all costs incurred by Lessor in restoring the Property to good order and condition, or in remodeling, renovating or otherwise preparing the Property for reletting; and all costs incurred by Lessor in reletting the Property, including, without limitation, any brokerage commissions and the reasonable value of Lessor's staff time expended as a result of the Default. If Lessor is successful in re-letting the Property, Lessor will credit Lessee for rent it receives for the Property, as such rent is received, but only after first deducting all of Lessor's costs and expenses incurred in re-letting and after all damages due to Lessor as a result of the Default have been fully repaid.

10.2.4. Recovery of Damages. Lessor may sue periodically for damages as they accrue without barring a later action for further damages. Nothing in this Lease will be deemed to require Lessor to await the date on which the Lease Term expires to bring or maintain any suit or action respecting this Lease. Lessor may, in one action, recover accrued damages plus damages attributable to the remaining Lease Term, including all Rent due. Escalations in Rent shall continue to be calculated as set forth in Section 3 just as if the Lease were to remain in effect. If Lessor has relet all or any part of the Property for all or any part of the period

remaining on the Lease Term, this amount will be credited to Lessee as it is paid, less all expenses incurred in reletting.

10.2.5. Termination of Lease. After the expiration of any of the cure periods described in Sections 10.1.1 and 10.1.2, Lessor may terminate this Lease by delivering to Lessee a notice of termination in accordance with the notice provisions found in Section 15.6, which notice shall give Lessee one final opportunity to fully cure the Event of Default within ten (10) days and thereby reinstate this Lease. If Lessee fails to fully cure the Event of Default within that ten (10) day period, this Lease will automatically terminate. Notwithstanding the foregoing, if Lessee is not entitled to any cure period as provided in this Section 10 or elsewhere in the Lease, or if all rights to a cure period have been used up, as provided under Section 10.1.3, then the notice of termination will be effective immediately upon receipt. Even if Lessee breaches this Lease, this Lease shall continue for so long as Lessor does not terminate Lessee's right to possession by giving the above described notice to Lessee, and Lessor may enforce all of its rights and remedies under this Lease, including the right to recover Rents as they become due under this Lease. Acts of maintenance or preservation or efforts to relet the Property or the appointment of a receiver upon initiative of Lessor in order to protect Lessor's interest under this Lease shall not constitute a termination of Lessee's rights to possession unless written notice of termination is given by Lessor to Lessee. Any notice to terminate may be given before or within the cure period for an Event of Default and may be included in a notice of failure of compliance. No such termination shall prejudice Lessor's right to claims for damages for such breach or any other rights and remedies of Lessor.

10.3. Remedies Cumulative and Nonexclusive. Each right and remedy in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease or existing at law or in equity, including, without limitation, suits for injunctive relief and specific performance. The exercise by Lessor of any such rights or remedies will not preclude the simultaneous or later exercise by Lessor of any other rights or remedies. All rights and remedies are nonexclusive.

10.4. Curing Lessee's Defaults. If Lessee shall Default in the performance of any of Lessee's obligations under this Lease, Lessor, without waiving such Default, may (but shall not be obligated to) perform the same for the account of and at the expense of Lessee, without notice in a case of emergency, and in any other cases, only if such Default continues after the expiration of thirty (30) days from the date Lessor gives Lessee notice of the Default. If an emergency situation exists which threatens to cause serious harm to Lessor, the Property or other properties or parties, Lessor may take immediate action to cure Lessee's Default if Lessee fails to take immediate and appropriate action. Lessor shall not be liable to Lessee for any claim for damages resulting from such action by Lessor. Lessee agrees to reimburse Lessor upon ten (10) business days notice, as Additional Rent, any amounts Lessor may spend in complying with the terms of this Lease on behalf of Lessee.

10.5. Violation of Lease by Lessor. In the event of any violation of this Lease by Lessor, Lessee shall have available to it all remedies at law and in equity, including specific performance and injunctive relief. Prior to being entitled to any such remedies, however, Lessee shall give Lessor written notice specifying such default with particularity, and Lessor shall have thirty (30) days within which to cure, or if such violation cannot reasonably be cured within thirty (30) days, Lessor shall then have thirty (30) days to commence cure and shall diligently prosecute cure to completion. Unless and until Lessor fails to so cure after such notice, Lessee shall not have any remedy or cause of action by reason thereof.

11. ASSIGNMENT, SUBLEASE, MORTGAGE AND TRANSFER

11.1. General Prohibition. This Lease is personal to Lessee. Therefore, except in accordance with the express terms of this Lease, specifically Sections 11 and 12, no part of the Property, nor any interest in this Lease, may be assigned, pledged, transferred, mortgaged, or subleased other than subleasing to customers in the ordinary course of business which includes renting any and all marina slips, and yacht club moorage facilities by Lessee, nor may a right of use of any portion of the Property be conveyed or conferred on any third party by Lessee by any other means, nor may any controlling interest in Lessee be conveyed, without the prior written consent of Lessor. Whether to deny or grant any such request shall be in Lessor's sole discretion except as set forth below. Any assignment or attempted assignment, transfer, or conveyance without Lessor's prior written consent shall be void. This provision shall apply to all transfers, including any that may occur by operation of law. If Lessee is a corporation or other entity, any change in ownership of the "Controlling Interest" in the stock of the corporation ("Controlling Interest" shall mean 51% or more of the voting shares) or ownership interest in such other entity, through sale, exchange, merger, consolidation or other transfer, except if such transfer is to an immediate family member of John Murray, shall be deemed an assignment of this Lease requiring Lessor's consent, which consent in this case shall not be unreasonably withheld..

11.2. Effect of Consent. If consent to assign or sublease is given by Lessor, no assignment or subletting by Lessee shall relieve Lessee of any obligation under this Lease and Lessee shall remain fully liable hereunder unless a specific written release is given to Lessee by Lessor. Any attempted assignment or sublease by Lessee in violation of the terms and covenants of this Lease shall be void. Any consent by Lessor to a particular assignment or sublease shall not constitute Lessor's consent to any other or subsequent assignment or sublease. If consent is granted, Lessee shall provide a copy of the signed assignment or sublease document to Lessor promptly after execution. The sublease or assignment instrument shall contain a provision requiring that the subtenant or assignee perform and observe all terms and conditions of this Lease and shall provide that Lessor have the right to enforce such terms and conditions directly against the assignee or subtenant.

11.3. Transfer by Lessor. At any time after the Effective Date of this Lease, Lessor shall have the right to transfer its interest in the Property or in this Lease. In the event of such a transfer, the Lessee shall attorn to Lessor's transferee and recognize the transferee as the new Lessor under the Lease. Thereafter, upon notification to Lessee of the name and address of Lessor's successor, Lessee shall look to Lessor's successor for satisfaction of any obligations accruing from and after the date of the transfer. Any such transfer shall be subject to this Lease, including Lessee's rights of quiet enjoyment granted hereunder.

11.4. First Right of Opportunity. In the event Lessor decides to sell all or part of this Property, and such sale does not involve the transfer or exchange of property or properties to another governmental entity or a non-profit agency, then Lessee shall be given a first right of opportunity to purchase any of the above or the opportunity to match any offer to purchase (a "First Opportunity to Purchase"). After being notified by Lessor that Lessor decides to sell all or part of this Property, or after being notified by Lessor that a third party has offered to purchase all or part of the Property, Lessee shall be entitled to purchase as follows: (1) In the event that Lessor notifies Lessee that it has decided to sell all or part of the Property, and Lessor has not received a third party offer to purchase all or part of the Property, Lessee will have sixty (60) days to elect to purchase, in which event, Lessee shall be entitled to make the purchase at a price determined as follows: The fair market value of the property on the effective date of this lease, exclusive of Lessee's improvements, as determined by an independent MAI appraiser in accordance with Section 3.3.3 and as defined in Section 3.3.4 above. If Lessor gives Lessee the opportunity to purchase and Lessee declines to do so, then this right of First Opportunity to Purchase shall be extinguished for that sale. If that sale does not close, Lessee shall again have the opportunity to purchase according to the procedures set forth in this Section 11.4; or (2) In the event that Lessor notifies Lessee that a third party has offered to purchase all or part of the Property, and if the offer is otherwise acceptable to Lessor, Lessor will notify the Lessee of the terms of the offer and the property covered by the offer. Lessee will then have thirty (30) days to match the offer and to make the purchase. The date for the closing of the sale shall be the same as that of the matched offer, unless otherwise agreed to by Lessor. If Lessor gives Lessee the opportunity to match an offer and Lessee declines to do so, then this right of First Opportunity to Purchase shall be extinguished for that sale. If that sale does not close and Lessor receives a new offer, Lessee shall have the opportunity to match that new offer according to the procedures set forth in this Section 11.4..

11.5. Estoppel Certificates. Lessee agrees to execute and deliver to Lessor, at any time and within ten (10) days after written request, a statement certifying, among other things: (i) That this Lease is unmodified and is in full force and effect (or, if there have been modifications, stating the modifications); (ii) the dates to which Rent has been paid; (iii) whether or not Lessor is in default in performance of any of its obligations under this Lease and, if so, specifying the nature of each such default; and (iv) whether or not any event has occurred which,

with the giving of notice, the passage of time, or both, would constitute such a default by Lessor and, if so, specifying the nature of each such event. Lessee shall also include in any such statement such other information concerning this Lease as Lessor reasonably requests. The parties agree that any statement delivered pursuant to this Section shall be deemed a representation and warranty by Lessee which may be relied upon by Lessor and by potential or actual purchasers and/or lenders with whom Lessor may be dealing, regardless of independent investigation. If Lessee fails to provide such statement within ten (10) days after Lessor's written request therefor, Lessee shall be deemed to have given such statement, shall be deemed to have admitted the accuracy of any information contained in the request for such statement and Lessor shall be deemed appointed Lessee's attorney in fact, with full authority to make such an estoppel certificate on Lessee's behalf.

12. LEASEHOLD FINANCING /UNSUBORDINATED GROUND LEASE

12.1. Lessee shall only have the right to mortgage or otherwise grant a security interest in Lessee's interest in this Lease and the Improvements. Lessor shall at no time be required to subordinate its fee simple interest in the Property to the lien of any leasehold mortgage, nor to mortgage its fee simple interest in the property as collateral or additional security. Lessor shall not be required to join in executing any documents by which any lender's line is created.

12.2. Subject to the foregoing, Lessee shall have the right, in addition to any other rights granted and without any requirement to obtain Lessor's consent, to mortgage or grant a security interest in Lessee's interest in this Lease and the Lessee Improvements and any subleases, under one or more leasehold mortgages or pursuant to a sale-leaseback financing arrangement to one or more Lending Institutions, as defined, and/or under one or more purchase money lease hold mortgages, and to assign this Lease and any subleases as collateral security for such leasehold mortgages or pursuant to the sale-leaseback financing arrangement, on the condition that all rights acquired under such leasehold mortgages or pursuant to the sale-leaseback financing arrangement shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease and to all rights and interests of Lessor, none of which covenants, conditions, restrictions, rights, or interests is or shall be waived by Lessor by reason of the right given to mortgage or grant a security interest in Lessee's interest in this Lease and the Property and any improvements, except as expressly provided otherwise.

12.3. Any mortgage or sale-leaseback financing arrangement made pursuant to this section is referred to as a "Permitted Leasehold Mortgage," and the holder of or secured party under a Permitted Leasehold Mortgage is referred to as a "Permitted Leasehold Mortgagee." The Permitted Leasehold Mortgage that is prior in lien or interest among those in effect is referred to as the "First Leasehold Mortgage," and the holder of or secured party under the First Leasehold Mortgage is referred to as the "First Leasehold Mortgagee." For the purposes of any rights

created under this section, any so-called wraparound lender shall be considered a First Leasehold Mortgage. If a First Leasehold Mortgage and a Permitted Leasehold Mortgage that is second in priority in lien or interest among those in effect are both held by the same Permitted Leasehold Mortgagee, the two Permitted Leasehold Mortgages are collectively referred to as the "First Leasehold Mortgage." A "Permitted Leasehold Mortgage" includes, without limitation, mortgages and trust deeds as well as financing statements, security agreements, sale-leaseback instrumentation, and other documentation that the lender may require. The words "Lending Institution," as used in this Lease, mean any commercial, national, or savings bank, savings and loan association, trust company, pension trust, foundation, or insurance company, and any other entity, person, corporation, partnership, or otherwise making a loan on the security of Lessee's interest in this Lease or all or any part of the Lessee Improvements.

13. EMINENT DOMAIN

13.1. General. In the event any public or private entity, having the power of eminent domain exercises its right or power of eminent domain (hereinafter "Taking Entity"), the parties' rights and obligations shall be governed by the common law of the State of Oregon, the applicable Oregon statutes, and this Lease. In the event of conflict between the statute, common law, and this Lease as to distribution of proceeds, this Lease shall prevail, to the extent permitted by law.

13.2. Definitions. As used in this Section 13, the following terms shall have the following meanings:

13.2.1. "Date of Taking" means the date on which the condemning authority takes actual physical possession or such earlier date as the condemning authority gives notice that it is deemed to have taken possession or is granted possession by a court.

13.2.2. "Partial Taking" means the taking of only a portion of the Property which does not constitute a Total Taking.

13.2.3. "Total Taking" means the taking of the fee title by right of eminent domain or other authority of law, or a voluntary transfer under the threat of the exercise of the right of eminent domain or other authority, of so much of the Property as is necessary for Lessee's occupancy, that the Property, after the taking, is no longer suitable for Lessee's intended use. Any taking of fifty percent (50%) or more of the area of the Property shall be conclusively deemed a Total Taking.

13.3. Total Taking. If a Total Taking occurs during the Lease Term, this Lease will terminate as of the Date of Taking.

13.4. Partial Taking. If a Partial Taking occurs during the Lease Term, this Lease will continue in full force and effect as to the remainder of the Property if Lessee can reasonably continue its operation within the remaining area so long as Lessee can reasonably operate its Project within such remaining area. The Basic Rent payable by Lessee for the balance of the Lease Term will be reduced in the same proportion that the square footage area of the Property taken bears to the square footage area of the Property immediately prior to the Date of Taking. In the event of such continuation, Lessee shall make all necessary repairs or alterations to make the remaining Property a complete architectural unit.

13.5. Award. All compensation and damages awarded for the taking of the Property, or any portion thereof, excluding the value of Lessee's Improvements, will belong exclusively to Lessor. Lessee will not have any claim or be entitled to any award for the value of any unexpired term of this Lease; however, Lessee may make Lessee's own claim for any separate award that may be made by the condemning authority for Lessee's loss of business, or on account of any cost or loss Lessee may sustain in moving or in the removal or loss of Lessee's Improvements, equipment, furnishings, and other personal property which Lessee is authorized to remove under this Lease, or as a result of any alterations, modifications, or repairs which may be reasonably required by Lessee in order to place the remaining portion of the Property not so condemned in a suitable condition for the continuance of Lessee's occupancy. Compensation for Lessee's Improvements taken shall be paid to Lessee and compensation for Lessor's interests or improvements shall be paid to Lessor.

13.6. Effect of Termination. If this Lease is terminated due to a Taking pursuant to this Section 13, then all Rent and other amounts payable by Lessee under this Lease will be paid by Lessee up to the Date of Taking, and any Rent and other amounts paid in advance and allocable to the period after the Date of Taking will be repaid to Lessee by Lessor so long as Lessee has not been reimbursed for any such amount by the Taking Entity. In the event of such termination, Lessor and Lessee will then be released from all further liability under this Lease, except such liability which expressly, or by its nature, survives termination and for any obligations either party failed to perform when due prior to termination.

14. LESSOR'S REPRESENTATIONS AND WARRANTIES

Lessor represents and warrants as follows:

1. Lessor is a public body of the State of Oregon duly created and existing under and pursuant to the laws of the State of Oregon;
2. Lessor has good and valid fee interest in and to the Property;

3. Lessor has full power and authority to enter into this Lease and to carry out its obligations hereunder.

15. GENERAL PROVISIONS

15.1. Covenants, Conditions, and Restrictions. This Lease is subject and subordinate to the effect of any covenants, conditions, restrictions, easements, mortgages, deeds of trust, ground leases, rights of way, and any other matters of record currently in existence imposed upon the Property and to any applicable land use or zoning laws or regulations. Lessee shall, upon request of Lessor, execute and deliver agreements of subordination in the form requested by Lessor.

15.2. Governing Law. This Lease shall be governed and construed according to the laws of the State of Oregon. Venue shall be in Multnomah County, Oregon.

15.3. No Benefit to Third Parties. Lessor and Lessee are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Unless specifically provided otherwise in this Lease, nothing in this Lease gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

15.4. Lessor's Consent. If Lessee requests Lessor's consent or approval pursuant to any provision of the Lease and Lessor fails or refuses to give such consent, Lessee shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable. Lessee's sole remedy shall be an action for specific performance or injunction, and such remedy shall be available only if Lessor has expressly agreed, in writing, not to act unreasonably in withholding its consent and Lessor has, in fact, acted unreasonably.

15.5. No Implied Warranty. In no event shall any consent, approval, acquiescence, or authorization by Lessor be deemed a warranty, representation, or covenant by Lessor that the matter approved, consented to, acquiesced in or authorized is appropriate, suitable, practical, safe or in compliance with any applicable law or this Lease. In no event shall Lessor be deemed liable therefor. Lessee shall be solely responsible for such matters.

15.6. Notices. All notices required or desired to be given under this Lease shall be given in writing and may be delivered by personal delivery or by placement in the United States mail, postage prepaid, as certified mail, return receipt requested, and addressed as follows:

To Lessor:

Metro Exposition-Recreation Commission
Box 2746
Portland, Oregon 97208
Attn: Christopher Bailey
Fax: (503) 731-7870

with a copy to:

Metro
600 NE Grand Avenue
Portland, Oregon 97232
Attn: Executive Officer
Fax: (503) 797-1799

and a copy to:

Metro
600 NE Grand Avenue
Portland, Oregon 97232
Attn: Office of General Counsel
Fax: (503) 797-1792

To Lessee:

to the Property address or to:

John and Nancy Murray

with a copy to:

White Marine Services, Incorporated
2335 N. Marine Dr.
Portland, OR 97217
Attn: Nancy
Fax: 285-3710

Any notice delivered by personal delivery shall be conclusively deemed received by the addressee upon actual delivery or deposit in the United States mail. The addresses to which notices are to be delivered may be changed by giving notice of such change in accordance with this notice provision. In order for notice to be deemed effectively given by mail, notice must be

sent to all Lessor addresses listed above. In order for notice to be deemed effectively given by mail to Lessee, notice must be sent to one of the two addresses of Lessee shown above. Notice may also be sent by fax transmission and shall be effective upon transmission. The burden of proving receipt by fax shall be on the sender but may be satisfied by showing a transmission receipt evidencing the name of the document sent, the date and time of sending and the number of pages transmitted.

15.7. Time of the Essence. Time is of the essence in the performance of and adherence to each and every covenant and condition of this Lease.

15.8. Nonwaiver. Waiver by Lessor of strict performance of any provision of this Lease shall not be deemed a waiver of or prejudice Lessor's right to require strict performance of the same provision in the future or of any other provision of this Lease.

15.9. Survival. Any covenant or condition (including, but not limited to, indemnification agreements), set forth in this Lease, the full performance of which is not specifically required prior to the expiration or earlier termination of this Lease, and any covenant or condition which by its terms is to survive the termination of this Lease, shall survive the expiration or earlier termination of this Lease and shall remain fully enforceable thereafter.

15.10. Partial Invalidity. If any provision of this Lease is held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

15.11. No Light, View or Air Easement. The reduction or elimination of Lessee's light, air, or view will not affect Lessee's obligations under this Lease, nor will it create any liability of Lessor to Lessee.

15.12. Lease and Public Contract Laws. To the extent required by law, the contract provisions required by ORS Chapter 279 [and the Metro Code?] to be included in public contracts are hereby incorporated by reference and shall become a part of this Lease as if fully set forth herein and, if applicable, shall control in the event of conflict with any provision of this Lease.

15.13. Limitation on Lessor's Liability. Lessor shall have no liability to Lessee for loss or damage suffered by Lessee on account of theft or any act of a third party including other tenants.

15.14. Calculation of Time. All periods of time referred to in this Lease shall include Saturdays, Sundays, and legal holidays. However, if the last day of any period falls on a Saturday, Sunday, or legal holiday, then the period shall be extended to include the next day which is not a Saturday, Sunday or legal holiday. "Legal Holiday" shall mean any holiday observed by the federal government. If the period of time referred to herein is designated as "business days", then weekends and legal holidays shall not be counted in calculating the "business days" time period.

15.15. Headings. The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

15.16. Exhibits Incorporated by Reference. All Exhibits attached to this Lease are incorporated by reference herein for all purposes.

15.17. Modification. This Lease may not be modified except by a writing signed by the parties hereto.

15.18. Absence of Brokers. Lessee and Lessor each represent to the other that they have not dealt with any leasing agent or broker in connection with this Lease.

15.19. Entire Agreement. This Lease and the access rights and easements described herein represent the entire agreement between Lessor and Lessee relating to Lessee's leasing of the Property. It is understood and agreed by Lessee that neither Lessor nor Lessor's agents or employees have made any representations or promises with respect to this Lease or the making or entry into this Lease, except as expressly set forth in this Lease. No claim for liability or cause for termination shall be asserted by Lessee against Lessor for, and Lessor shall not be liable by reason of, any claimed breach of any representations or promises not expressly set forth in this Lease; all oral agreements with Lessor are void and are expressly waived by Lessee.

15.20. Successors. The rights, liabilities and remedies provided for herein shall extend to the successors and assigns of the parties hereto. The words "Lessor" and "Lessee" and their accompanying verbs or pronouns, wherever used in this Lease, shall apply equally to all persons, firms, or corporations which may be or become such parties hereto.

15.21. Execution of Multiple Counterparts. This Lease may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one instrument.

15.22. Defined Terms. Capitalized terms shall have the meanings given them in the text of this Lease.

15.23. Interpretation. In this Lease, unless otherwise specified, the singular includes the plural and the plural the singular; words imputing any gender include the other gender; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to articles, sections or exhibits are to those of this Lease unless otherwise indicated; references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Lease; the phrase "and/or" shall be deemed to mean the words both preceding and following such phrase, or either of them; and references to the parties include their respective permitted successors and assigns. Terms of this Lease have been negotiated between Lessor and Lessee. Therefore, there shall be no presumption that any ambiguity should be construed against the drafter.

15.24. No Limit on Lessor's Powers. Nothing in this Lease shall limit, in any way, the power and right of Lessor to exercise its governmental rights and powers, including its powers of eminent domain.

15.25. Warranty of Authority. The individuals executing this Lease warrant that they have full authority to enter into this Lease on behalf of the entity they represent.

15.26. Contract Documents/Precedence. The Contract Documents shall mean this Lease, the Request for Proposals issued by Lessor in May 1996, including any attachments thereto; and the Proposal submitted by Lessee dated 5/16/96, including any attachments thereto. The Contract Documents together form the agreement between Lessor and Lessee. All determination of the precedence of, discrepancy in, or conflicts regarding the Contract Documents shall be made by Lessor at Lessor's sole discretion, but, in general, precedence will be in accordance with the following list with the highest precedence item at the top:

1. This Lease.
2. The RFP, including any attachments thereto.
3. The Proposal submitted by Lessee.

IN WITNESS WHEREOF, the parties have subscribed their names hereto, effective as of the last date of signature below.

LESSEE:
WHITE MARINE SERVICES, INC.

LESSOR:
METRO EXPOSITION-RECREATION CMSN.

By Nancy Murray
Title Director
Date: 5/6/97

By _____
Commission Chair
Date:

METRO EXPOSITION-RECREATION CMSN.

By _____
Commission Secretary/Treasurer
Date:

JOHN AND NANCY MURRAY

By Nancy Murray
Nancy Murray
Date: 5/6/97

By John Murray
John Murray
Date: 05/06/97

METRO

By _____
Executive Officer
Date:

APPROVED BY METRO COUNSEL ON:
