

**FACILITIES LEASE AGREEMENT
FOR SUNRISE COVE MARINA**

**DATED AS OF
FEBRUARY 1, 2022**

**BETWEEN
SUNRISE COVE SMI WESTREC, LLC,
a Delaware limited liability company
AS LESSOR**

**AND
SUNRISE SMI OPCO, LLC,
a Delaware limited liability company
AS LESSEE**

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Appendix A - Definitions

FACILITIES LEASE AGREEMENT

This **FACILITIES LEASE AGREEMENT** (hereinafter called "**Lease**"), made as of the 1st day of February 2022 (the "**Effective Date**"), by and between SUNRISE COVE SMI WESTREC, LLC, a Delaware limited liability company (hereinafter called "**Lessor**"), and SUNRISE SMI OPCO, LLC, a Delaware limited liability company (hereinafter called "**Lessee**"), provides as follows.

W I T N E S S E T H :

Lessor has a leasehold interest under the Master Lease (as defined below) in the Leased Property (as defined below) and desires to lease to Lessee, and Lessee desires to lease from Lessor, the Leased Property on the terms set forth herein.

NOW, THEREFORE, Lessor and Lessee, intending to be legally bound, agree that Lessor, in consideration of the payment of rent by Lessee to Lessor, the covenants and agreements to be performed by Lessee, and upon the terms and conditions hereinafter stated, does hereby rent and lease unto Lessee, and Lessee does hereby rent and lease from Lessor, the Leased Property (as defined below).

Article I.

1.1 **Leased Property**. The Leased Property (herein so called) is comprised of Lessor's right, title and interest (whether fee or leasehold) in and to the following:

(a) a designated portion of the parcel or parcels of real property leased under the Master Lease with the applicable subleased portion thereof specifically depicted on the shaded area of the diagram attached hereto as Exhibit A (as specifically depicted the "**Land**");

(b) all buildings, structures, fixtures and other improvements of every kind including, but not limited to, alleyways, driveways, drive aisles, access areas, connecting tunnels, sidewalks, utility pipes, conduits and lines (on-site and offsite), parking areas, parking rights and roadways appurtenant to such buildings and structures presently situated upon the Land (collectively, the "**Leased Improvements**"); and

(c) all easements, rights and appurtenances relating to the Land and the Leased Improvements.

THE LEASED PROPERTY IS DEMISED IN ITS PRESENT CONDITION WITHOUT REPRESENTATION OR WARRANTY (EXPRESSED OR IMPLIED) BY LESSOR AND SUBJECT TO ALL THE RIGHTS OF PARTIES IN POSSESSION, AND TO THE EXISTING STATE OF TITLE INCLUDING ALL COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND OTHER MATTERS OF RECORD INCLUDING ALL APPLICABLE LEGAL REQUIREMENTS, THE LIEN OF FINANCING INSTRUMENTS, MORTGAGES, DEEDS OF TRUST AND SECURITY DEEDS, AND INCLUDING OTHER MATTERS WHICH WOULD BE DISCLOSED BY AN INSPECTION OF THE LEASED PROPERTY OR BY AN ACCURATE SURVEY THEREOF.

1.2 **Term.** The term of the Lease (the “**Term**”) is set forth on Exhibit B attached hereto.

Article II.

2.1 **Definitions.** For all purposes of this Lease, except as otherwise expressly provided or unless the context otherwise requires, the terms defined in this Article have the meanings assigned to them in Appendix A.

Article III.

3.1 **Rent.** Lessee will pay, without offset or deduction, to Lessor in lawful money of the United States of America which shall be legal tender for the payment of public and private debts, in immediately available funds, at Lessor’s address set forth in Article XXXII hereof or at such other place or to such other Person, as Lessor from time to time may designate in a Notice, all Base Rent, Percentage Rent and Additional Charges, during the Term, as follows:

(a) **Base Rent:** Lessee shall pay a monthly sum in the amounts set forth on Exhibit C-1 hereto as the “**Base Rent**” for the Leased Property, payable in advance in equal, consecutive monthly installments, on or before the first day of each calendar month during the Term; provided, however, that the first and last monthly payments of Base Rent shall be prorated daily as to any partial month;

(b) **Percentage Rent:** If applicable, Lessee shall pay percentage rent (“**Percentage Rent**”) in accordance with the terms and conditions of the Master Lease;

(c) **Master Lease Expenses.** If the Leased Property (or any portion thereof) is subject to a Master Lease, Lessee shall pay to Lessor any payments required to be made by Lessor under the Master Lease to the extent that such payments are attributable to the Leased Premises, including, without limitation, any percentage rent based on gross receipts from the Leased Premises (the “**Ground Lease Expenses**”);

(d) **Additional Charges.** In addition to the Base Rent, Percentage Rent, and Ground Lease Expenses (if applicable) (i) Lessee also will pay and discharge as and when due and payable all other amounts, liabilities, obligations and Impositions that Lessee assumes or agrees to pay under this Lease, including any and all common area and maintenance expenses associated with the Leased Property in accordance with Lessee’s Allocable Share (as applicable) and (ii) in the event of any failure on the part of Lessee to pay any of those items referred to in the preceding clause (i), Lessee also will promptly pay and discharge every fine, penalty, interest and cost that may be added for non-payment or late payment of such items (the items referred to in the foregoing clauses (i) and (ii) being additional rent hereunder and being referred to herein collectively as the “**Additional Charges**”). Lessor shall have all legal, equitable and contractual rights, powers and remedies provided either in this Lease or by statute or otherwise in the case of non-payment of the Additional Charges as in the case of non-payment of the Base Rent. If any installment of Base Rent, Percentage Rent or Additional Charges (but only as to those Additional Charges that are payable directly to Lessor) shall not be paid on its due date (with respect to regular payments of Base Rent and Percentage Rent) or within ten (10) days after receipt of written notice thereof (with respect to any Additional Charges), Lessee will pay Lessor

on demand, as Additional Charges, a late charge (to the extent permitted by law) computed at the Overdue Rate on the amount of such installment, from the due date of such installment to the date of payment thereof. To the extent that Lessee pays any Additional Charges to Lessor pursuant to any requirement of this Lease, Lessee shall be relieved of its obligation to pay such Additional Charges to the entity to which they would otherwise be due, and Lessor shall pay same from monies received from Lessee;

(e) Notwithstanding the foregoing, it is acknowledged by Lessor and Lessee that Lessor shall continue to be obligated to pay percentage rent to the Master Lessor on all adjusted gross sales and revenues earned by Lessee or Lessor on the Leased Property as required under the Master Lease irrespective of the amount of Rent collected by Lessor under this Lease; provided, however, that in order to avoid duplication, the Rent paid by Lessee to Lessor under this Lease shall not be included in gross receipts and thus will have no effect on the amount of rent payable to Master Lessor under the Master Lease. Lessee specifically agrees to comply with all obligations set forth in the Master Lease regarding keeping financial records and making its financial records available to representatives of the Master Lessor for inspection or audit.

3.2 **Rent Payable Without Deduction.** The Rent shall be paid so that this Lease shall yield to Lessor the full amount of the installments of Base Rent, Percentage Rent and Additional Charges throughout the Term, as applicable, and all as more fully set forth in Article V, but subject to any other provisions of this Lease that expressly provide for adjustment or abatement of Rent or other charges to be paid or performed by Lessor.

3.3 **Books and Records.** Lessee shall keep full and adequate books of account and other records reflecting the results of operation of the Leased Property on an accrual basis, all in accordance with generally accepted accounting principles to the extent applicable and the obligations of Lessee under this Lease. The books of account and all other records relating to or reflecting the operation of the Leased Property shall be kept either at Lessee's executive offices for at least four (4) years and shall be available to Lessor and its representatives and its auditors or accountants, at all reasonable times for copying, examination, audit, inspection, and transcription. In addition, Lessee shall comply with any requirements under the Master Lease relating to financial records and accounting to the full extent that such requirements apply to the Leased Property, or the business conducted by Lessee on the Leased Property.

3.4 **Confirmation of Percentage Rent.**

(a) **Officer's Certificate.** If this Lease requires that Percentage Rent be paid, Lessee shall submit to Lessor, concurrently with each payment of Percentage Rent, an Officer's Certificate (herein so called) setting forth the calculation of such payment of Percentage Rent.

(b) **Records Supporting Percentage Rent.** If this Lease requires the payment of Percentage Rent, Lessee shall utilize, or cause to be utilized, an accounting system for the Leased Property in accordance with generally accepted accounting principles, that will accurately record all data necessary to compute Percentage Rent, and Lessee shall retain, for at least four (4) years after the expiration of each Fiscal Year, reasonably adequate

records conforming to such accounting system showing all data necessary to compute Percentage Rent for the applicable Fiscal Years. Lessor, at its expense (except as provided herein below), shall have the right from time to time by its accountants or representatives to audit the information that formed the basis for the data set forth in any Officer's Certificate provided during the preceding four (4) Fiscal Years under Section 3.4(a) and, in connection with such audits, to examine all Lessee's records (including supporting data and sales and excise tax returns) reasonably required to verify Percentage Rent (and for no other purpose), subject to any prohibitions or limitations on disclosure of any such data under Legal Requirements. If any such audit discloses a deficiency in the payment of Percentage Rent, and either Lessee agrees with the result of such audit or the matter is otherwise determined or compromised, Lessee shall forthwith pay to Lessor the amount of the deficiency, as finally agreed or determined, together with interest at the Overdue Rate from the date when said payment should have been made to the date of payment thereof; provided, however, that as to any audit that is commenced more than one (1) year after the date Percentage Rent for any Fiscal Year is reported by Lessee to Lessor, the deficiency, if any, with respect to such Percentage Rent shall bear interest at the Overdue Rate only from the date such determination of deficiency is made unless such deficiency is the result of gross negligence or willful misconduct on the part of Lessee, in which case interest at the Overdue Rate will accrue from the date such payment should have been made to the date of payment thereof. If any such audit discloses that the Percentage Rent actually due from Lessee for any Fiscal Year exceeds that reported by Lessee by more than four percent (4%), Lessee shall pay the cost of such audit and examination. Any proprietary information obtained by Lessor pursuant to the provisions of this Section shall be treated as confidential, except that such information may be used, subject to appropriate confidentiality safeguards, in any litigation between the parties and except further that Lessor may disclose such information to prospective lenders. The obligations of Lessor and Lessee contained in this Section shall survive the expiration or earlier termination of this Lease.

3.5 **Capital Projects.** The selection of all design professionals and contractors for capital projects performed on the Leased Property shall be subject to the approval of Lessor.

Article IV.

4.1 **Payment of Impositions.** Subject to Article XII relating to permitted contests (a) Lessee will pay, or cause to be paid, either Lessee's Allocable Share of or all Impositions (including Capital Impositions), as applicable, before any fine, penalty, interest or cost may be added for non-payment, such payments to be made directly to the taxing or other authorities where feasible, and will promptly furnish to Lessor copies of official receipts or other satisfactory proof evidencing such payments and (b) Lessee's obligation to pay such Impositions shall be deemed absolutely fixed upon the date such Impositions become a lien upon the Leased Property or any part thereof. If any such Imposition may, at the option of the taxpayer, lawfully be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Lessee may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and in such event, shall pay such installments during the Term (subject to Lessee's right of contest pursuant to the provisions of Article XII) as the same respectively become due and before any fine, penalty, premium, further interest or cost may be added thereto.

Lessor, at its expense, shall, to the extent required or permitted by applicable law, prepare and file all tax returns in respect of Lessor's net income, gross receipts, sales and use, single business, transaction privilege, rent, ad valorem, and taxes on its capital stock, and Lessee, at its expense, shall, to the extent required or permitted by applicable laws and regulations, prepare and file all other tax returns and reports in respect of any Imposition as may be required by governmental authorities. If any refund shall be due from any taxing authority in respect of any Imposition paid by Lessee, the same shall be paid over to or retained by Lessee if no Event of Default shall have occurred hereunder and be continuing. If an Event of Default shall have occurred and be continuing, any such refund shall be paid over to or retained by Lessor. Any such funds retained by Lessor due to an Event of Default shall be applied as provided in Article XVI. Lessor and Lessee shall, upon request of the other, provide such data as is maintained by the party to whom the request is made with respect to the Leased Property as may be necessary to prepare any required returns and reports. Lessee shall file all personal property tax returns in such jurisdictions where it is legally required to so file. Lessor, to the extent it possesses the same, and Lessee, to the extent it possesses the same, will provide the other party, upon request, with cost and depreciation records necessary for filing returns for any property classified as personal property. Where Lessor is legally required to file personal property tax returns, Lessee shall provide Lessor with copies of assessment Notices in sufficient time for Lessor to file a protest. Notwithstanding anything to the contrary contained herein, if Lessor so elects in its sole discretion, it may directly pay either Lessee's Allocable Share of or all Impositions (including Capital Impositions), as applicable, before any fine, penalty, interest or cost may be added for non-payment and then seek reimbursement thereafter from Lessee.

4.2 **Notice of Impositions.** Lessor shall give prompt Notice to Lessee of all Impositions payable by Lessee hereunder of which Lessor at any time has knowledge, provided that Lessor's failure to give any such Notice shall in no way diminish Lessee's obligations hereunder to pay such Impositions, but such failure shall obviate any default hereunder for a reasonable time after Lessee receives Notice of any Imposition which it is obligated to pay during the first taxing period applicable thereto.

4.3 **Adjustment of Impositions.** Impositions payable by Lessee imposed in respect of the tax-fiscal period during which the Term terminates shall be adjusted and prorated between Lessor and Lessee, whether or not such Imposition is imposed before or after such termination, and Lessee's obligation to pay its prorated share thereof after termination shall survive such termination.

4.4 **Utility Charges.** Lessee will be solely responsible for obtaining and maintaining utility services to the Leased Property and will pay or cause to be paid all charges for electricity, gas, oil, water, sewer and other utilities used in the Leased Property during the Term and shall, as Additional Charges, pay to Lessor Lessee's Allocable Share of such costs to the extent such charges are billed to or paid by Lessor.

4.5 **Insurance Premiums.** To the extent provided in Section 13.1, Lessee will pay or cause to be paid in a timely manner all premiums for the insurance coverages required to be maintained by Lessee under Articles VIII and XIII and shall, as Additional Charges, pay to Lessor Lessee's Allocable Share of such costs to the extent such charges are billed to or paid by Lessor.

Article V.

5.1 **No Termination, Abatement, etc.** Except as otherwise specifically provided in this Lease, Lessee, to the extent permitted by law, shall remain bound by this Lease in accordance with its terms and shall neither take any action without the written consent of Lessor to modify, surrender or terminate the same, nor seek nor be entitled to any abatement, deduction, defendant or reduction of the Rent, or setoff against the Rent, nor shall the obligations of Lessee be otherwise affected by reason of (a) any damage to, or destruction of, the Leased Property or any portion thereof from whatever cause or any Taking of the Leased Property or any portion thereof, (b) any claim which Lessee has or might have against Lessor by reason of any default or breach of any warranty by Lessor under this Lease or any other agreement between Lessor and Lessee, or to which Lessor and Lessee are parties, (c) any bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding up or other proceedings affecting Lessor or any assignee or transferee of Lessor, or (d) for any other cause whether similar or dissimilar to any of the foregoing other than a discharge of Lessee from any such obligations as a matter of law. Except in the event of a constructive eviction of Lessee from the Leased Property for any reason other than an Event of Default, Lessee hereby specifically waives all rights, arising from any occurrence whatsoever, which may now or hereafter be conferred upon it by law to (1) modify, surrender or terminate this Lease or quit or surrender the Leased Property or any portion thereof, or (2) entitle Lessee to any abatement, reduction, suspension or defendant of the Rent or other sums payable by Lessee hereunder, except as otherwise specifically provided in this Lease. The obligations of Lessee hereunder shall be separate and independent covenants and agreements and the Rent and all other sums payable by Lessee hereunder shall continue to be payable in all events unless the obligations to pay the same shall be terminated pursuant to the express provisions of this Lease or by termination of this Lease other than by reason of an Event of Default.

5.2 **Abatement Procedures.** In the event of a partial Taking of the Leased Property as described in Section 15.4, the Lease shall not terminate with respect to the affected Leased Property, but the Base Rent shall be abated in the manner and to the extent that is fair, just and equitable to both Lessee and Lessor, taking into consideration, among other relevant factors, the number of usable units, the amount of square footage, or the revenues affected by such partial Taking.

Article VI.

6.1 **Ownership of the Leased Property.** Lessee acknowledges that the Leased Property (including improvements or alterations incorporated into the Leased Property after the Effective Date) is the property of Lessor either in fee or by leasehold interest and that Lessee has only the right to the possession and use of the Leased Property upon the terms and conditions of this Lease.

6.2 **Lessee's Personal Property.** Lessee will acquire, own, maintain and replace, at Lessee's cost and expense, throughout the Term such Inventory as is required to operate the Leased Property in the manner contemplated by this Lease. Lessee may (and shall as provided herein below), at its expense, install, affix or assemble or place on any parcels of the Land or in any of the Leased Improvements, any items of personal property (including Inventory) owned by Lessee. Lessee shall provide Lessor with an accurate list of all such items of Lessee's personal property

(collectively, including Inventory, the “**Lessee’s Personal Property**”) on an annual basis beginning with the first anniversary of the Effective Date (and on each anniversary thereafter) and upon expiration or termination of this Lease. Lessee may, subject to the first sentence of this Section 6.2 and the conditions set forth below, remove any of Lessee’s Personal Property set forth on such list at any time during the Term or upon the expiration or any prior termination of the Term. All of Lessee’s Personal Property, other than Inventory, not removed by Lessee within sixty (60) days following the expiration or earlier termination of the Term shall be considered abandoned by Lessee and may be appropriated, sold, destroyed or otherwise disposed of by Lessor without first giving Notice thereof to Lessee, without any payment to Lessee and without any obligation to account therefor. Lessee will, at its expense, restore the Leased Property to the condition required by Section 9.1 (d), including repair of all damage to the Leased Property caused by the removal of Lessee’s Personal Property, whether effected by Lessee or Lessor. Notwithstanding anything to the contrary contained herein, Inventory may be appropriated, sold, destroyed or otherwise disposed of by Lessor at any time by Lessor following the expiration or earlier termination of the Term but only after three (3) Business Days’ prior notice is delivered to Lessee.

Upon the expiration or earlier termination of the Term, Lessor shall have the option to purchase all (but not less than all) of Lessee’s Personal Property on hand at the Leased Property at the time of such expiration or termination for a sale price (payable in cash on the expiration date of this Lease) equal to the fair market value thereof (or cost, in the case of Inventory).

Except as hereinafter set forth, Lessee may make such financing arrangements, title retention agreements, leases or other agreements with respect to Lessee’s Personal Property as is customary and commercially reasonable provided that Lessee first advises Lessor of any such arrangement and such arrangement expressly provides that in the event of Lessee’s default thereunder, Lessor (or its designee) may assume Lessee’s obligations and rights under such arrangement.

6.3 **Lessor’s Lien.** To the fullest extent permitted by applicable law, Lessor is granted a lien and security interest on all Lessee’s Personal Property now or hereinafter placed in or upon the Leased Property, and such lien and security interest shall remain attached to such Lessee’s Personal Property until payment in full of all Rent and satisfaction of all of Lessee’s obligations hereunder that are outstanding on such date; provided, however, Lessor shall subordinate its lien and security interest to that of any non-Affiliate of Lessee which finances such Lessee’s Personal Property or any non-Affiliate conditional seller of such Lessee’s Personal Property, the terms and conditions of such subordination to be satisfactory to Lessor in the exercise of reasonable discretion. Lessee shall, upon the request of Lessor, execute such financing statements or other documents or instruments reasonably requested by Lessor to perfect the lien and security interests herein granted.

Article VII.

7.1 **Leased Property.** Lessee acknowledges receipt and delivery of possession of the Leased Property as of the Commencement Date and that Lessee has examined and otherwise has knowledge of the condition of the Leased Property and has found the same to be satisfactory for its purposes hereunder. Lessee is leasing the Leased Property “as is” in its present condition.

Lessee waives any claim or action against Lessor in respect of the condition of the Leased Property. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN TO THE CONTRARY, LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, IN RESPECT OF THE LEASED PROPERTY, OR ANY PART THEREOF, EITHER AS TO ITS FITNESS FOR USE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, LATENT OR PATENT, IT BEING AGREED THAT LESSEE TAKES THE LEASED PROPERTY SUBJECT TO ALL SUCH RISKS. LESSEE ACKNOWLEDGES THAT THE LEASED PROPERTY HAS BEEN INSPECTED BY LESSEE AND IS SATISFACTORY TO IT.

7.2 Use of the Leased Property.

(a) Lessee covenants that it will (with Lessor's commercially reasonable cooperation to the extent necessary and required) proceed with all due diligence and will exercise its commercially reasonable efforts to obtain and to maintain all approvals needed to use and operate the Leased Property under applicable local, state and federal law.

(b) Lessee shall use, or cause to be used, the Leased Property only for such uses outlined on Exhibit B, and for such other uses as may be necessary or incidental to such use or such other use as otherwise approved by Lessor (collectively, the "**Permitted Uses**"). Lessee shall not use the Leased Property or any portion thereof for any other use without the prior written consent of Lessor, which consent may be granted, denied or conditioned in Lessor's sole and absolute discretion. No use shall be made or permitted to be made of the Leased Property, and no acts shall be done, which will cause the cancellation or increase the premium of any insurance policy covering the Leased Property or any part thereof (unless another adequate policy satisfactory to Lessor is available and Lessee pays any premium increase), nor shall Lessee sell or permit to be kept, used or sold in or about the Leased Property any article which may be prohibited by law or fire underwriter's regulations. Lessee shall, at its sole cost, comply with all of the requirements pertaining to the Leased Property of any insurance board, association, organization or company necessary for the maintenance of insurance, as herein provided, and covering the Leased Property and Lessee's Personal Property.

(c) Lessee covenants and agrees that during the Term it will (1) operate continuously the Leased Property for the Permitted Uses subject to Unavoidable Occurrences, (2) maintain appropriate certifications and licenses for such use, subject to Unavoidable Occurrences and (3) seek to maximize the Gross Revenues generated therefrom consistent with sound business practices and Lessee's concurrent goal of maximizing its net operating income therefrom subject to Unavoidable Occurrences.

(d) Lessee shall neither suffer nor permit the Leased Property or any portion thereof to be used in such a manner as (1) materially impairs Lessor's title thereto or to any portion thereof, or (2) reasonably makes possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Leased Property or any portion thereof, except as necessary in the ordinary and prudent operation of the Leased Property.

Article VIII.

8.1 **Compliance with Legal and Insurance Requirements, etc.** Lessee, at its expense, will promptly (a) comply with all applicable Legal Requirements and Insurance Requirements in respect of the use, operation, maintenance, repair and restoration of the Leased Property, and (b) procure, maintain and comply with all appropriate licenses and other authorizations required for any use of the Leased Property and Lessee's Personal Property then being made, and for the proper operation and maintenance of the Leased Property or any part thereof.

8.2 **Legal Requirement Covenants.** Lessee covenants and agrees that Lessee shall not use the Leased Property and Lessee's Personal Property for any unlawful purpose, and that Lessee shall use commercially reasonable efforts to avoid any unlawful use of the Leased Property by others. Lessee shall acquire and maintain all appropriate licenses, certifications, permits and other authorizations and approvals needed to operate the Leased Property in its customary manner for the Permitted Uses, and any other lawful use conducted on the Leased Property as may be permitted from time to time hereunder, subject to unavoidable circumstances. Lessee further covenants and agrees that Lessee's use of the Leased Property and maintenance, alteration, and operation of the same, and all parts thereof, shall at all times conform to all Legal Requirements, unless the same are finally determined by a court of competent jurisdiction to be unlawful (and Lessee shall use reasonable efforts to cause all such sub-tenants, invitees or others to so comply with all Legal Requirements). Lessee may, however, upon prior Notice to Lessor, contest the legality or applicability of any such Legal Requirement or any licensure or certification decision if Lessee maintains such action in good faith, with due diligence, without prejudice to Lessor's rights hereunder, and at Lessee's sole expense. If by the terms of any such Legal Requirement compliance therewith pending the prosecution of any such proceeding may legally be delayed without the incurrence of any lien, charge or liability of any kind against the Leased Property or Lessee's leasehold interest therein and without subjecting Lessee or Lessor to any liability, civil or criminal, for failure so to comply therewith, Lessee may delay compliance therewith until the final determination of such proceeding.

8.3 **Environmental Covenants.** Lessor and Lessee (in addition to, and not in diminution of, Lessee's covenants and undertakings in Sections 8.1 and 8.2 hereof) covenant and agree as follows:

(a) Lessee agrees to give Lessor prompt written Notice of (1) all Environmental Liabilities when known; (2) all pending, threatened or anticipated Proceedings when known, and all Notices, demands, requests or investigations, relating to any Environmental Liability or relating to the issuance, revocation or change in any Environmental Authorization required for operation of the Leased Property; and (3) all Releases at, on, in, under or in any way affecting the Leased Property when known, or any Release known by Lessee at, on, in or under any property adjacent to the Leased Property.

(b) Lessee hereby agrees to defend, indemnify and save harmless any and all Lessor Indemnified Parties from and against any and all Environmental Liabilities except to the extent caused by the gross negligence or willful misconduct of Lessor.

(c) If any Proceeding is brought against any Indemnified Party in respect of an Environmental Liability with respect to which such Indemnified Party may claim indemnification under this Section, the Indemnifying Party, upon request, shall at its sole expense resist and defend such Proceeding, or cause the same to be resisted and defended by counsel designated by the Indemnified Party and approved by the Indemnifying Party, which approval shall not be unreasonably withheld; provided, however, that such approval shall not be required in the case of defense by counsel designated by any insurance company undertaking such defense pursuant to any applicable policy of insurance. Each Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel will be at the sole expense of such Indemnified Party unless such counsel has been approved by the Indemnifying Party, which approval shall not be unreasonably withheld. The Indemnifying Party shall not be liable for any settlement of any such Proceeding made without its consent, which shall not be unreasonably withheld, but if settled with the consent of the Indemnifying Party, or if settled without its consent (if its consent shall be unreasonably withheld), or if there be a final, non-appealable judgment for an adversary party in any such Proceeding, the Indemnifying Party shall indemnify and hold harmless the Indemnified Parties from and against any liabilities incurred by such Indemnified Parties by reason of such settlement or judgment.

(d) If at any time any Indemnified Party has reason to believe circumstances exist which could reasonably result in an Environmental Liability, upon reasonable prior written notice to Lessee stating such Indemnified Party's basis for such belief, an Indemnified Party shall be given immediate access to the Leased Property (including, but not limited to, the right to enter upon, investigate, drill wells, take soil borings, excavate, monitor, test, cap and use available land for the testing of remedial technologies), Lessee's employees, and to all relevant documents and records regarding the matter as to which a responsibility, liability or obligation is asserted or which is the subject of any Proceeding; provided that such access may be conditioned or restricted as may be reasonably necessary to ensure compliance with law and the safety of personnel and facilities. All Indemnified Parties requesting such immediate access and cooperation shall endeavor to coordinate such efforts to result in as minimal interruption of the operation of the Leased Property as practicable.

(e) The indemnification rights and obligations provided for in this Article VIII shall be in addition to any indemnification rights and obligations provided for elsewhere in this Lease.

(f) The indemnification rights and obligations provided for in this Article VIII shall survive the termination of this Lease.

Article IX.

9.1 **Absolute Net: Maintenance and Repair.**

(a) Lessor and Lessee acknowledge and agree that both parties intend that this Lease shall be and constitute what is generally referred to in the real estate industry as a

“absolute net” lease, such that, except as otherwise set forth herein, Lessee shall be obligated hereunder to pay all costs and expenses incurred with respect to, and associated with, the Leased Property and the business operated thereon and therein, including, without limitation, all taxes and assessments, utility charges, insurance costs, maintenance costs and repair, replacement and restoration expenses (all as more particularly herein provided) together with any and all other assessments, charges, costs and expenses of any kind or nature whatsoever related to, or associated with, the Leased Property and the business operated thereon and therein; provided, however, that Lessor shall nonetheless be obligated to pay any debt service on any mortgage encumbering Lessor’s interest in the Leased Property, audit expenses and Lessor’s personal income taxes with respect to the rents received by Lessor under this Lease. Except as expressly hereinabove provided, Lessor shall bear no cost or expense of any type or nature with respect to, or associated with, the Leased Property.

(b) Subject to Sections 3.5, 9.1(e), 14.2 and 15.4 below, Lessee shall, at Lessee’s sole cost and expense, keep and maintain the Leased Property, including, without limitation, the roof, foundation, all floors, floor coverings, windows, glass, plate glass, ceilings, skylights, walls, doors, electrical and lighting equipment, plumbing and fixtures, sprinkler systems, heating, ventilating, and air conditioning systems, parking areas, driveways, walkways, parking lots, loading dock areas and doors, rail spur areas, fences, signs, lawns and landscaping in all respects in good repair and in a clean and safe condition. Lessee’s maintenance and repair obligations include all necessary and appropriate repairs (including Capital Expenditures) thereto of every kind and nature, whether interior or exterior, ordinary or extraordinary, foreseen or unforeseen. Lessee shall obtain and maintain in effect maintenance contracts throughout the Term with reputable service firms on all serviceable systems and assets included with the fixtures which constitute a portion of the Leased Property, unless such services can be competently provided by Lessee’s employees, in which event such services may be provided by Lessee’s employees. All repairs shall, to the extent reasonably achievable, be at least equivalent in quality to the original work. Lessee will not take or omit to take any action, the taking or omission of which might materially impair the value or the usefulness of the Leased Property or any part thereof for the Permitted Uses. Except as expressly set forth elsewhere in this Lease, Lessee hereby waives, to the extent permitted by law, the right to make repairs at the expense of Lessor pursuant to any law in effect at the time of the execution of this Lease or hereafter enacted. Lessor shall have the right to give, record and post, as appropriate, Notices of non-responsibility under any mechanic’s lien laws now or hereafter existing. Notwithstanding anything to the contrary contained herein, Lessor shall be permitted upon thirty (30) days prior written notice to Lessee (except no notice shall be required in the event of Emergency Repairs) to assume the repair obligations of Lessee and invoice the Lessee for the costs incurred by Lessor or in the event the repairs cover more than the Leased Property then invoice the Lessee for the Allocable Share of the costs incurred by Lessor.

(c) Nothing contained in this Lease and no action or inaction by Lessor shall be construed, without Lessor’s prior written consent, as (1) constituting the request of Lessor, expressed or implied, to any contractor, subcontractor, laborer, materialman or vendor to or for the performance of any labor or services or the furnishing of any materials or other

property for the construction, alteration, addition, repair or demolition of or to the Leased Property or any part thereof, or (2) giving Lessee any right, power or permission to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Lessor in respect thereof or to make any agreement that may create, or in any way be the basis for any right, title, interest, lien, claim or other encumbrance upon the estate of Lessor in the Leased Property, or any portion thereof.

(d) Lessee will, upon the expiration or prior termination of the Term, vacate and surrender the Leased Property to Lessor in substantially the condition in which the Leased Property was originally received from Lessor, except as repaired, rebuilt, restored, altered or added to as permitted or required by the provisions of this Lease and except for ordinary wear and tear (subject to the obligation of Lessee to maintain the Leased Property in accordance with Section 9.1(b) above during the entire Term of the Lease), or damage by casualty or Condemnation (subject to the obligations of Lessee to restore or repair as set forth in the Lease).

(e) Lessee shall be responsible for all existing fuel storage tanks and lines located on the Leased Property, including any maintenance, labor, and costs to keep current with federal, state, local and other guidelines. Lessee shall provide annually to Lessor all documentation that the fuel storage tanks have been maintained and are in compliance with all laws and requirements of the underground storage tanks division of the applicable jurisdiction and any other regulatory authorities.

9.2 **Encroachments, Restrictions, etc.** If, as a result of any act or omission on the part of Lessee, any of the Leased Improvements, at any time, (i) materially encroach upon any property, street or right-of-way adjacent to the Leased Property, or (ii) violate the agreements or conditions contained in any lawful restrictive covenant or other agreement affecting the Leased Property, or any part thereof, or (iii) impair the rights of others under any easement or right-of-way to which the Leased Property is subject as a result of any act or omission on the part of Lessee, then promptly upon the request of Lessor or at the behest of any person affected by any such encroachment, violation or impairment, Lessee shall, at its expense, subject to its right to contest the existence of any encroachment, violation or impairment and in such case, in the event of an adverse final determination, either (a) obtain valid and effective waivers or settlements of all claims, liabilities and damages resulting from each such encroachment, violation or impairment, whether the same shall affect Lessor or Lessee or (b) make such changes in the Leased Improvements, and take such other actions, as Lessee in the good faith exercise of its judgment deems reasonably practicable to remove such encroachment, and to end such violation or impairment, including, if necessary, the alteration of any of the Leased Improvements, and in any event take all such actions as may be necessary in order to be able to continue the operation of the Leased Improvements for its intended use substantially in the manner and to the extent the Leased Improvements were operated prior to the assertion of such violation, impairment or encroachment. Any such alteration shall be made in conformity with the applicable requirements of Article X. Lessee's obligations under this Section 9.2 shall be in addition to and shall in no way discharge or diminish any obligation of any insurer under any policy of title or other insurance held by Lessor.

Article X.

10.1 **Alterations.** After receiving approval of Lessor (except no approvals are needed for Emergency Repairs that do not exceed ten thousand dollars (\$10,000)), which approval shall not be unreasonably withheld and which approval may be evidenced by Lessor's approval of the Capital Budget, Lessee shall have the right to make such material additions, modifications or improvements to the Leased Property from time to time as Lessee deems desirable for its permitted uses and purposes, provided that non-material additions, modifications and improvements will not require such consent if funds are available for such non-material items pursuant to the applicable Annual Budget and no such action significantly alters the character or purposes or significantly detracts from the value or operating efficiency thereof and will not significantly impair the revenue-producing capability of the Leased Property (other than during the period such work is being performed) or adversely affect the ability of Lessee to comply with the provisions of this Lease. The cost of such additions, modifications or improvements to the Leased Property shall be paid by Lessee, and all such additions, modifications and improvements shall, without payment by Lessor at any time, be included under the terms of this Lease and upon expiration or earlier termination of this Lease shall pass to and become the property of Lessor.

10.2 **Salvage.** All materials which are scrapped or removed in connection with the making of repairs required by Articles IX or X shall be or become the property of Lessor or Lessee depending on which party is paying for or providing the financing for such work.

Article XI.

11.1 **Liens.** Subject to the provision of Article XII relating to permitted contests, Lessee will not directly or indirectly create or allow to remain and will promptly discharge at its expense any lien, encumbrance, attachment, title retention agreement or claim upon the Leased Property or any attachment, levy, claim or encumbrance in respect of the Rent, not including, however, (a) this Lease, (b) the matters, if any, included as exceptions in the title policy insuring Lessor's interest in the Leased Property, (c) restrictions, liens and other encumbrances which are consented to in writing by Lessor or any easements granted pursuant to the provisions of Section 7.3 of this Lease, (d) liens for those taxes upon Lessor which Lessee is not required to pay hereunder, (e) liens for Impositions or for sums resulting from noncompliance with Legal Requirements so long as (1) the same are not yet payable or are payable without the addition of any fine or penalty or (2) such liens are in the process of being contested as permitted by Article XII, (f) liens of mechanics, laborers, materialmen, suppliers or vendors for sums either disputed or not yet due provided that (1) the payment of such sums shall not be postponed under any related contract for more than sixty (60) days after the completion of the action giving rise to such lien and such reserve or other appropriate provisions as shall be required by law or generally accepted accounting principles shall have been made therefor or (2) any such liens are in the process of being contested as permitted by Article XII hereof, and (g) liens resulting from the acts or omissions of Lessor, except to the extent that Lessor undertook work to cure a default or otherwise satisfy an obligation of Lessee hereunder.

Article XII.

12.1 **Permitted Contests.** Lessee shall have the right to contest the amount or validity of any Imposition to be paid by Lessee or any Legal Requirement or Insurance Requirement or

any lien, attachment, levy, encumbrance, charge or claim (“**Claims**”) not otherwise permitted by Article XI, by appropriate legal proceedings in good faith and with due diligence (but this shall not be deemed or construed in any way to relieve, modify or extend Lessee’s covenants to pay or its covenants to cause to be paid any such charges at the time and in the manner provided in this Article), on condition, however, that such legal proceedings shall not operate to relieve Lessee from its obligations hereunder and shall not cause the sale or risk the loss of any portion of the Leased Property, or any part thereof, or cause Lessor or Lessee to be in default under any mortgage, deed of trust, security deed or other agreement encumbering the Leased Property or any interest therein. Upon the request of Lessor, Lessee shall either (a) provide a bond or other assurance reasonably satisfactory to Lessor that all Claims which may be assessed against the Leased Property together with interest and penalties, if any, thereon will be paid, or (b) deposit within the time otherwise required for payment with a bank or trust company as trustee upon terms reasonably satisfactory to Lessor, as security for the payment of such Claims, money in an amount sufficient to pay the same, together with interest and penalties in connection therewith, as to all Claims which may be assessed against or become a Claim on the Leased Property, or any part thereof, in said legal proceedings. Lessee shall furnish Lessor and any lender of Lessor with reasonable evidence of such deposit within five days of the same. Lessor agrees to join in any such proceedings if the same be required to legally prosecute such contest of the validity of such Claims; provided, however, that Lessor shall not thereby be subjected to any liability for the payment of any costs or expenses in connection with any proceedings brought by Lessee; and Lessee covenants to indemnify and save harmless Lessor from any such costs or expenses. Lessee shall be entitled to any refund of any Claims and such charges and penalties or interest thereon which have been paid by Lessee or paid by Lessor and for which Lessor has been fully reimbursed. In the event that Lessee fails to pay any Claims when due or to provide the security therefor as provided in this paragraph and to diligently prosecute any contest of the same, Lessor may, upon ten days advance Notice to Lessee, pay such charges together with any interest and penalties and the same shall be repayable by Lessee to Lessor as Additional Charges at the next Payment Date provided for in this Lease; provided, however, that should Lessor reasonably determine that the giving of such Notice would risk loss to the Leased Property or cause damage to Lessor, then Lessor shall give such Notice as is practical under the circumstances. Lessor reserves the right to contest any of the Claims at its expense not pursued by Lessee. Lessor and Lessee agree to cooperate in coordinating the contest of any Claims.

Article XIII.

13.1 **Insurance Requirements.** During the Term, Lessee agrees at all times to keep the Leased Property, and all property located in or on the Leased Property, including Lessee’s Personal Property, insured with the following kinds and amounts of insurance (except to the extent that Lessor approves insurance coverage that deviates from the following or in the event Lessee is an Affiliate of Lessor and Lessor elects in writing to carry the coverage as the primary insured with the Lessee being only an insured or additional insured under the Lessor’s respective policy):

(a) Property including Flood, Named Storm and Earthquake: Insurance against loss or damage by fire, casualty and other hazards as now are or subsequently may be covered by an “all risk” policy or a policy covering “special” causes of loss, with such endorsements as Lessor or any holder of a mortgage or security deed encumbering the Leased Property (a “Mortgagee”) may from time to time reasonably require and which are

customarily required by institutional lenders of similar properties similarly situated, including, without limitation, building ordinance law, lightning, windstorm, civil commotion, hail, riot, strike, water damage, sprinkler leakage, collapse, malicious mischief, explosion, smoke, aircraft, vehicles, boats/watercraft, vandalism, falling objects and weight of snow, ice or sleet, builders risk/installation floater for ongoing projects or ground up construction and if applicable earthquake, earthquake sprinkler leakage, named storm, flood (for locations in a 100 year flood zone) and covering the Leased Property in an amount equal to 100% of the full insurable replacement value of the Leased Property (exclusive of footings and foundations below the lowest basement floor) without deduction for depreciation or co-insurance clause except as indicated below. The determination of the replacement cost amount shall be adjusted annually to comply with the requirements of the insurer issuing the coverage or, at Lessor's (or a Mortgagee's) election, by reference to such indexes, appraisals or information as Lessor (or a Mortgagee) determines in its reasonable discretion, and, unless the insurance required by this paragraph shall be effected by blanket policies in accordance with the requirements of this Lease. Each policy shall, subject to Lessor's (or a Mortgagee's) approval, contain replacement cost coverage, without deduction for depreciation with exception (with Lessor's written approval) of scheduled property (equipment), docks and piers, and shall provide for deductibles in such amounts as Lessor (or a Mortgagee) may permit in its sole discretion;

(b) Business Interruption Insurance: providing in the event of damage or destruction of the Leased Property an amount sufficient to sustain Lessee for a period of not less than one (1) year and not subject to coinsurance for: (i) the net profit that would have been realized had Lessee's business continued; and (ii) such fixed charges and expenses as must necessarily continue during a total or partial suspension of business to the extent to which they would have been incurred had no business interruption occurred, including, but not limited to, interest on indebtedness of Lessee, salaries of executives and other employees under contract, charges under non-cancelable contracts, charges for advertising, legal or other professional services, taxes and rents, insurance premiums, and depreciation; and

(c) Boiler and Machinery: If the Leased Property contains steam boilers, steam pipes, steam engines, steam turbines or other high pressure vessels, insurance covering the major components of the central heating, air conditioning and ventilating systems, boilers, other pressure vessels, high pressure piping and machinery, elevators and escalators, if any, and other similar equipment installed in the Leased Improvements, in an amount equal to one hundred percent (100%) of the full replacement cost and not subject to coinsurance, of the Leased Improvements, which policies shall insure against physical damage to and loss of occupancy and use of the Leased Improvements arising out of an accident or breakdown covered thereunder;

(d) Crime Coverage: Limit of at least \$1,000,000 per claim.

(e) Loss Payee: Lessor and any Mortgagee shall be included as loss payee for subsections (a), (b), (c), and (d).

(f) Commercial General liability Marine Operators Legal Liability and Protection and Indemnity insurance under a policy containing "Broad Form CGL" coverage (or a policy which otherwise incorporates the language of such endorsement), which policy shall name Lessor as an additional insured party and which shall include, without limitation, coverage against claims for personal injury, bodily injury, death and property damage liability with respect to the Leased Property and the operations related thereto, whether on or off the Leased Property, and the following coverages: Employee as Additional Insured, Completed Operations; Broad Form Contractual Liability, Personal Injury and Advertising Injury Protection, Medical Payment (with a minimum limit of \$5,000 per person), all of which shall be in such amounts as Lessor may from time to time reasonably require, but not less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence, One Million and No/100 Dollars (\$1,000,000.00) per Leased Property, and an annual aggregate limit of Two Million and No/100 Dollars (\$2,000,000.00). If such policy shall cover more than one Leased Property, such limits shall apply on a "per location" basis, subject to the annual aggregate limit of Two Million and No/100 Dollars (\$2,000,000.00). Such liability policy shall delete the contractual exclusion under the personal injury coverage, if possible.

(g) Liquor Liability: if any alcoholic beverages shall be sold, manufactured or distributed in the Leased Property, liquor liability coverage, all of which shall be in such amounts as Lessor may from time to time reasonably require, but not less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence, One Million and No/100 Dollars (\$1,000,000.00) per Leased Property, and a policy aggregate limit of Two Million and No/100 Dollars (\$2,000,000.00).

(h) Auto Liability: Owned, hired and non-owned automobile coverage (including rented and leased vehicles), with a \$1,000,000 bodily injury and property damage combined single limit.

(i) Pollution Liability: (if applicable) Coverage limits of at least \$1,000,000 each incident. Such coverage shall include premises legal liability and coverage for underground storage tanks and above ground storage tanks on the Leased Property.

(j) Sections (f), (g), (h), (i), and (o) shall include Lessor and Mortgagee as additional insureds, be primary and noncontributory and shall not contain cross liability exclusion. If available, shall include the following endorsements: Notice of Accident, Knowledge of Occurrence, and Unintentional Error and Omission.

(k) Hull and Machinery: Full replacement cost for Hull and Machinery.

(l) Workers' Compensation and Employers Liability: Workers' Compensation coverage with statutory limits and Employers Liability with limits of \$1,000,000.

(m) In addition to the insurance described above, Lessee shall maintain such additional insurance as may be reasonably required from time to time by Lessor or any Mortgagee and shall further at all times maintain.

(n) **Umbrella Liability:** Lessee will also maintain an “Umbrella” liability policy in addition to and sitting above and excess to the Commercial General Liability, Liquor Liability, Marine Operators Legal Liability, Auto Liability and Employers Liability with limits not less than Five Million and No/100 Dollars (\$5,000,000.00).

13.2 **Waiver of Subrogation.** All insurance policies carried by Lessee shall expressly waive any right of subrogation on the part of the insurer against Lessor. Lessee agrees that Lessee’s policies will include such waiver clause or endorsement.

13.3 **Form Satisfactory, etc.** All of the policies of insurance referred to in this Article XIII shall be written in a form, with deductibles reasonably satisfactory to Lessor. Lessee shall pay or cause to be paid all of the premiums and any deductibles relating to insurance coverage required per Section 13.1 and deliver certificates thereof to Lessor within thirty (30) days of their effective date and annually thereafter. In the event of the failure of Lessee either to effect such insurance as herein called for or to pay the premiums therefore, or to deliver such certificates thereof to Lessor at the times required, Lessor shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums therefore, and Lessee shall reimburse Lessor for any premium or premiums paid by Lessor for the coverage required under this Section upon written demand therefore, and Lessee’s failure to repay the same within 30 days after Notice of such failure from Lessor shall constitute an Event of Default within the meaning of Section 16.1. Each insurer mentioned in this Article XIII shall agree, by endorsement to the policy or policies issued by it, that it will give to Lessor at least 30 days written notice before the coverage under such policy or policies in question shall be materially reduced, allowed to expire or cancelled.

13.4 **Increase in Limits.** In the event that a Lessor or Mortgagee shall at any time reasonably determine the limits and/or retentions of the coverages outlined in Section 13.1 then carried to be insufficient, Lessee shall thereafter carry the insurance with increased limits and/or retentions until further change pursuant to the provisions of this Section.

13.5 **Blanket Policy.** Notwithstanding anything to the contrary contained in this Article XIII, Lessee may bring the insurance provided for herein within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Lessee; provided, however, that the coverage afforded to Lessor and Lessee will not be reduced or diminished or otherwise be different from that which would exist under a separate policy of insurance, and provided further that the requirements of this Article XIII are otherwise satisfied.

13.6 **Separate Insurance.** Lessee shall not on Lessee’s own initiative or pursuant to the request or requirement of any third party, take out separate insurance or increase the amount of any then-existing insurance by securing an additional policy or additional policies on the Leased Property, unless all parties having an insurable interest in the subject matter of the insurance, including in all cases Lessor, are included therein as additional insureds, and the loss is payable under separate additional insurance in the same manner as losses are payable under this Lease. Lessee shall immediately notify Lessor in writing that Lessee has obtained any such separate insurance or of the increasing of any of the amounts of the then existing insurance.

13.7 **Reports on Insurance Claims.** Lessee shall promptly investigate and make a complete and timely written report to the appropriate insurance company as to all accidents. Claims

for damage relating to the ownership, operation, and maintenance of the Leased Property, any damage or destruction to the Leased Property and the estimated cost of repair thereof shall be prepared by Lessee. Lessee shall prepare any and all reports required by any insurance company as required under the terms of the insurance policy involved, and a final copy of such report shall be furnished to Lessor. Lessee shall be authorized to execute proofs of such loss, in the aggregate amount of \$50,000 or less (subject however to restrictions or requirements set forth pursuant to the Mortgage Loan), with respect to any single casualty or other event.

Article XIV.

14.1 **Insurance Proceeds.** Except to the extent otherwise required in the policies of insurance required hereunder, all proceeds payable by reason of any loss or damage to the Leased Property, or any portion thereof, and insured under any policy of insurance required by Article XIII of this Lease shall be paid to Lessor and held in trust by Lessor or Mortgagee if so required in an interest-bearing account, shall be made available for reconstruction or repair, as the case may be, of any damage to or destruction of the Leased Property, or any portion thereof, and, shall be paid out by Lessor from time to time for the reasonable costs of such reconstruction or repair upon satisfaction of reasonable terms and conditions specified by Lessor. Any excess proceeds of insurance remaining after the completion of the restoration or reconstruction to the Leased Property shall be paid to Lessor. Determination of all salvage resulting from any property covered by insurance shall be made by Lessor. Notwithstanding anything herein to the contrary, in the event of any inconsistency between the provisions of this Lease and the provisions of any mortgage encumbering Lessor's interest in the Leased Property regarding the handling and use of proceeds payable by reason of any loss or damage to the Leased Property, the provisions of the mortgage shall control.

14.2 **Reconstruction in the Event of Damage or Destruction Covered by Insurance.** If the Leased Property is totally or partially destroyed, Lessee shall, with all reasonable diligence, to the extent that proceeds from the insurance required by this Lease are available (subject to the provisions of any Mortgage encumbering the Leased Property) for such purpose, repair or replace the damaged or destroyed portion of the Leased Property to substantially the same condition as existed previously.

14.3 **Lessee's Personal Property.** All insurance proceeds payable by reason of any loss of or damage to any of Lessee's Personal Property and any business interruption insurance shall be paid to Lessee; provided, however, no such payments shall diminish or reduce the insurance payments otherwise payable to or for the benefit of Lessor hereunder.

14.4 **No Abatement of Rent.** Any damage or destruction due to casualty notwithstanding, this Lease shall remain in full force and effect, and Lessee's obligation to make rental payments and to pay all other charges required by this Lease shall not be abated, fully or partially, as a result such damage or destruction.

14.5 **Waiver.** Lessee hereby waives any statutory rights of termination that may arise by reason of any damage or destruction of the Leased Property that Lessor is obligated to restore or may restore under any of the provisions of this Lease.

Article XV.

15.1 **Parties' Rights and Obligations.** If, during the Term, there is any Condemnation of all or any part of the Leased Property or any interest in this Lease, the rights and obligations of Lessor and Lessee shall be determined by this Article XV.

15.2 **Total Taking.** If title to the fee of the whole of the Leased Property or Lessor's leasehold interest in the Leased Property is condemned by any Condemnor, this Lease shall cease and terminate as of the Date of Taking by the Condemnor with respect to the Leased Property. If title to the fee of less than the whole of the Leased Property or Lessor's leasehold interest in a part of the Leased Property is so taken or condemned, which nevertheless renders the Leased Property Unsuitable for its Previous Use or Uneconomic for its Previous Use as reasonably determined by Lessor, Lessee and Lessor shall each have the option, by notice to the other, at any time prior to the Date of Taking, to terminate this Lease as of the Date of Taking. Upon such date, if such Notice has been given, this Lease shall thereupon cease and terminate with respect to the Leased Property. All Base Rent, Percentage Rent and Additional Charges paid or payable by Lessee hereunder with respect to the Leased Property shall be apportioned as of the Date of Taking, and Lessee shall promptly pay Lessor such amounts.

15.3 **Allocation of Award.** The total Award made in connection with a Total Taking, or a partial Taking that results in a termination of this Lease with respect to the Leased Property, or for loss of Rent, or for Lessor's loss of business beyond the Term, shall be solely the property of and payable to Lessor. Any Award made for loss of Lessee's business during the remaining Term, if any, or for the taking of Lessee's Personal Property or for removal and relocation expenses of Lessee in any such proceedings shall be the sole property of and payable to Lessee. Any other Award not separately allocated to Lessor or Lessee shall be equitably apportioned between Lessor and Lessee in proportion to the then fair market value of the leasehold estate of Lessee hereunder and the then fair market value of the Leased Property.

15.4 **Partial Taking.** If title to less than the whole of the Leased Property is condemned, and the Leased Property is still suitable for its previous use and not Uneconomic for its Previous Use as reasonably determined by Lessor, or if Lessee or Lessor is entitled but neither elects to terminate this Lease with respect to the Leased Property as provided in Section 15.2, Lessor at its cost shall with all reasonable dispatch restore the untaken portion of any Leased Improvements so that the Leased Improvements constitute a complete architectural unit of the same general character and condition (as nearly as may be possible under the circumstances) as the Leased Improvements existing immediately prior to the Condemnation.

15.5 **Temporary Taking.** If the whole or any part of the Leased Property or of Lessee's interest under this Lease is condemned by any Condemnor for its temporary use or occupancy, which for purposes hereof shall mean two (2) weeks or less, this Lease shall not terminate by reason thereof, and Lessee shall continue to pay, in the manner and at the terms herein specified, the full amounts of Base Rent and Additional Charges with respect to such Leased Property. In addition, Lessee shall pay, to the extent required by the Master Lease, Percentage Rent at a rate equal to the average Percentage Rent during the last three preceding Fiscal Years (or if three Fiscal Years shall not have elapsed, the average during the preceding Fiscal Years). Except only to the extent that Lessee may be prevented from so doing pursuant to the terms of the order of the

Condemnor, Lessee shall continue to perform and observe all of the other terms, covenants, conditions and obligations hereof on the part of Lessee to be performed and observed, as though such Condemnation had not occurred. In the event of any Condemnation as in this Section 15.5 described, the entire amount of any Award made for such Condemnation allocable to the Term of this Lease, whether paid by way of damages, rent or otherwise, shall be paid to Lessor. Lessor covenants that upon the termination of any such period of temporary use or occupancy it will, at its sole cost and expense, restore the Leased Property as nearly as may be reasonably possible to the condition in which the same was immediately prior to such Condemnation, unless such period of temporary use or occupancy extends beyond the expiration of the Term, in which case Lessor shall not be required to make such restoration.

Article XVI.

16.1 **Events of Default.** If any one or more of the following events (individually, an “Event of Default”) occurs:

(a) if Lessee fails to make payment of any portion of the Base Rent, Percentage Rent (as applicable) or Additional Charges (as applicable) within ten (10) days after receipt of written notice that the same is due and payable (provided, however, that Lessor shall not be required to provide such notice with respect to more than one (1) payment of Base Rent or Percentage Rent during any twelve (12) month period during the term hereof, and after such notice, it shall be an Event of Default if Lessee fails to make payment of such amounts within ten (10) days after the applicable due date); or

(b) if Lessee fails to observe or perform any other term, covenant or condition of this Lease and such failure is not cured by Lessee within a period of thirty (30) days after receipt by such party of Notice thereof from Lessor, unless such failure cannot with due diligence be cured within a period of thirty (30) days, in which case it shall not be deemed an Event of Default if Lessee proceeds promptly and with due diligence to cure the failure and diligently completes the curing thereof; provided, however, in no event shall such cure period extend beyond 90 days after such Notice (provided that no Event of Default shall be deemed to have occurred pursuant to this subsection (b) to the extent that Lessee’s failure to observe or perform any term, covenant or condition of this Lease is caused by Lessor’s failure to fulfill its obligations under this Lease or an Unavoidable Occurrence); or

(c) if Lessee shall file a petition in bankruptcy or reorganization for an arrangement pursuant to any federal or state bankruptcy law or any similar federal or state law, or shall be adjudicated a bankrupt or shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due, or if a petition or answer proposing the adjudication of Lessee as a bankrupt or its reorganization pursuant to any federal or state bankruptcy law or any similar federal or state law shall be filed in any court and Lessee shall be adjudicated a bankrupt and such adjudication shall not be vacated or set aside or stayed within sixty (60) days after the entry of an order in respect thereof, or if a receiver of Lessee of the whole or substantially all of the assets of Lessee shall be appointed in any proceedings brought by Lessee or if any such

receiver, trustee or liquidator shall be appointed in any proceeding brought against Lessee shall not be vacated or set aside or stayed within sixty (60) days after such appointment; or

(d) if Lessee is liquidated or dissolved, or begins proceedings toward such liquidation or dissolution, or, if Lessee or Lessor in any manner, permits the sale or divestiture of substantially all of its assets; or

(e) if the estate or interest of Lessee in the Leased Property or any part thereof is voluntarily or involuntarily transferred, assigned, conveyed, levied upon or attached in any proceeding (unless Lessee is contesting such lien or attachment in good faith in accordance with this Lease); or

(f) if, except as a result of damage, destruction, renovation or a partial or complete Condemnation or otherwise with Lessor's prior written approval, Lessee voluntarily ceases operations on the Leased Property for a period in excess of thirty (30) consecutive (and not in the aggregate) days; or

(g) if Lessee fails to satisfy the REIT Requirements set forth in Section 19.1, or breaches any representations, warranties, or covenants set forth in Section 19.2 or 19.3.

Then, and in any such event and provided such Event of Default by the defaulting party is continuing, the non-defaulting party may exercise one or more remedies available to it herein or at law or in equity, including but not limited to its right to terminate this Lease giving Lessee not less than ten (10) days' prior written notice of such termination (or, with respect to a default set forth in Section 16.1(g), immediately upon delivery of written notice of such termination), provided that such non-defaulting party is not itself in default under this Lease.

If litigation is commenced with respect to any alleged default under this Lease, the prevailing party in such litigation shall receive, in addition to its damages incurred, such sum as the court shall determine as its reasonable attorneys' fees, and all costs and expenses incurred in connection therewith.

16.2 Surrender. If an Event of Default occurs for other than by reason of an Unavoidable Occurrence (and the event giving rise to such Event of Default has not been cured within the curative period relating thereto as set forth in Section 16.1) and is continuing, whether or not this Lease has been terminated pursuant to Section 16.1, Lessee shall, if requested by Lessor so to do, immediately surrender and assign to Lessor or Lessor's designee the Leased Property including, without limitation, any and all books, records, files, licenses, perm its and keys relating thereto, and quit the same and Lessor may enter upon and repossess the Leased Property summary proceedings, ejectment or otherwise, and may remove Lessee and all other persons and any and all personal property from the Leased Property, subject to rights of any residents of the Leased Property and to any requirement of law. Lessee hereby waives any and all requirements of applicable laws for service of notice to re-enter the Leased Property. Lessor shall be under no obligation to, but may if it so chooses, relet the Leased Property or otherwise mitigate Lessor's damages.

16.3 **Damages.**

(a) Neither (i) the termination of this Lease, (ii) the repossession of the Leased Property, (iii) the failure of Lessor to relet the Leased Property, nor (iv) the reletting of all or any portion thereof, shall relieve Lessee of its liability and obligations hereunder, all of which shall survive any such termination, repossession or reletting. In the event of any such termination, Lessee shall forthwith pay to Lessor all Rent due and payable with respect to the Leased Property to and including the date of such termination.

(b) Lessee shall forthwith pay to Lessor, at Lessor's option, as and for liquidated and agreed current damages for Lessee's default, either:

(1) Without termination of Lessee's right to possession of the Leased Property, each installment of Rent (including Percentage Rent as determined below if applicable) and other sums payable by Lessee to Lessor under the Lease as the same becomes due and payable, which Rent and other sums shall bear interest at the Overdue Rate, and Lessor may enforce, by action or otherwise, any other term or covenant of this Lease; or

(2) The unpaid Rent which had accrued at the time of termination, repossession or reletting.

16.4 **Waiver.** If this Lease is terminated pursuant to Section 16.1, Lessee waives, to the extent permitted by applicable law, (a) any right to a trial by jury in the event of summary proceedings to enforce the remedies set forth in this Article XVI, and (b) the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt.

16.5 **Application of Funds.** Any payments received by Lessor under any of the provisions of this Lease during the existence or continuance of any Event of Default shall be applied to Lessee's obligations in the order that Lessor may determine or as may be prescribed by the laws of the State.

Article XVII.

17.1 **Lessor's Right to Cure Lessee's Default.** If Lessee fails to make any payment or to perform any act required to be made or performed under this Lease, and fails to cure the same within the relevant time periods provided in Section 16.1, Lessor, without waiving or releasing any obligation of Lessee, and without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Lessee, and may, to the extent permitted by law, enter upon the Leased Property for such purpose and take all such action thereon as, in Lessor's opinion, may be necessary or appropriate therefor. No such entry shall be deemed an eviction of Lessee. All sums so paid by Lessor and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses, in each case to the extent permitted by law) so incurred, together with a late charge thereon (to the extent permitted by law) at the Overdue Rate from the date on which such sums or expenses are paid or incurred by Lessors, shall be paid by Lessee to Lessor on demand. The obligations of Lessee and rights of Lessor contained in this Article shall survive the expiration or earlier termination of this Lease.

Article XVIII.

18.1 **Master Lease Provisions.** The provisions of this Section 18.1 shall be applicable if the Leased Property (or any portion thereof) is subject to a Master Lease. This Lease is subordinate to the terms, conditions and provisions of the Master Lease (a copy of which has been provided to Lessee). Lessee agrees to keep, observe, perform and be bound by all of Lessor's obligations under the Master Lease that are applicable to the Leased Property (unless otherwise expressly provided in this Lease), and Lessee shall take no action that would constitute a default under the Master Lease. Except as otherwise provided herein, all of the terms and provisions of the Master Lease which are applicable to or binding upon Lessor as tenant/lessee thereunder, shall also be applicable to or binding upon Lessee in the same manner as if such terms and provisions had been set forth in full herein. All provisions of the Master Lease which inure to the benefit of the ground lessor therein, shall inure to the benefit of and be enforceable by Lessor herein as against Lessee. Lessor shall not be required to perform any obligations of the ground lessor under the Master Lease. Lessor shall not be in default hereunder and shall have no liability to Lessee in connection with any default by ground lessor under the Master Lease. Lessee hereby acknowledges and agrees that the only services or other rights that Lessee is entitled to under this Lease are those to which Lessor is entitled under the Master Lease, and Lessee hereby agrees that Lessee will look solely to ground lessor under the Master Lease for all such services and other rights. If any conflict exists between this this Lease and the Master Lease, the Master Lease shall govern and control.

Article XIX.

19.1 **REIT Requirements.**

(a) Lessee understands that, in order for Suntex Marina Investors LLC ("SMI"), either itself or as the operating partnership in conjunction with a to be formed entity (individually or collectively the "SUNTEX REIT"), which holds a direct or indirect ownership interest in the Lessor to be eligible to be taxable as a "real estate investment trust" (a "REIT") pursuant to Code Section 856, the following requirements (the "**REIT Requirements**") must be satisfied:

(1) **Personal Property Limitation.** Anything contained in this Lease to the contrary notwithstanding, the average of the fair market values of the items of personal property that are leased to Lessee under this Lease at the beginning and at the end of any Fiscal Year shall not exceed fifteen percent (15%) of the average of the aggregate fair market values of the Leased Property at the beginning and at the end of such Fiscal Year (the "**Personal Property Limitation**"). If Lessor reasonably anticipates that the Personal Property Limitation will be exceeded with respect to the Leased Property for any Fiscal Year, Lessor shall notify Lessee, and Lessee shall either (i) purchase at fair market value any personal property anticipated to be in excess of the Personal Property Limitation ("**Excess Personal Property**") either from Lessor or a third party or (ii) lease the Excess Personal Property from a third party, all in the discretion of Lessee. In either case, Lessee's Rent obligation shall be equitably adjusted in a manner mutually acceptable to both Lessor and Lessee. Notwithstanding anything to the contrary set forth above, Lessee shall not be responsible in any way for determining whether Lessee has

exceeded or will exceed the Personal Property Limitation and shall not be liable to Lessor or any of its shareholders in the event that the Personal Property Limitation is exceeded, as long as Lessee meets its obligation to acquire or lease any Excess Personal Property as provided above. This Section 19.1 is intended to ensure that the Rent qualifies as "rents from real property," within the meaning of Section 856(d) of the Code, or any similar or successor provisions thereto, and shall be interpreted in a manner consistent with such intent.

(2) Sublease Rent Limitation. Anything contained in this Lease to the contrary notwithstanding, Lessee shall not sublet the Leased Property on any basis such that the rental or other amounts to be paid by the sublessee thereunder would be based, in whole or in part, on either (a) the net income or profits derived by the business activities of the sublessee, or (b) any other formula such that any portion of the Rent would fail to qualify as "rents from real property" within the meaning of Section 856(d) of the Code, or any similar or successor provision thereto.

(b) Lessee agrees, and agrees to use its best efforts to cause its Affiliates, to use its best efforts to permit the REIT Requirements to be satisfied and to cooperate in good faith with SUNTEX REIT and Lessor to ensure that the REIT Requirements are satisfied. Lessee agrees, and agrees to use reasonable efforts to cause its Affiliates, upon request by SUNTEX REIT, and, where appropriate, at SUNTEX REIT's expense, to take reasonable action necessary to ensure compliance with the REIT Requirements. Immediately after becoming aware that the REIT Requirements are not, or will not be, satisfied, Lessee shall notify, or use reasonable efforts to cause its Affiliates to notify, SUNTEX REIT of such non-compliance.

(c) If Lessee retains a manager to manage the Leased Property (a "**Property Manager**"), such Property Manager, as well as the property management agreement between Lessee and the Property Manager (the "**Property Management Agreement**") will be subject to the approval of Lessor, which approval may be given or withheld in Lessor's sole and absolute discretion. In such event, Lessee will, at all times during the Term, cause the Leased Property to be operated and managed in a manner that will comply with all REIT Requirements. Lessee may not amend, modify, or terminate the Property Management Agreement in any respect or change the Property Manager without the prior written consent of Lessor, which may be given or withheld in Lessor's sole and absolute discretion. Lessee shall also provide Lessor with copies of any amendments or modifications to the Property Management Agreement which are entered into from time to time or any other Property Management Agreement (which shall be subject to the approval of Lessor as stated above).

(d) Notwithstanding anything to the contrary in this Agreement, in the event that counsel or independent accountants for SUNTEX REIT, determine that there exists a material risk that the receipt of any Rent by Lessor during a taxable year hereunder would generate income not described in Sections 856(c)(2)(A)-(H) and 856(c)(3)(A)-(I) of the Code (such income, "Non-Qualifying Income") and thereby create a material risk that SUNTEX REIT would have Non-Qualifying Income for the applicable year in an amount in excess of 4.5% of gross income for such year (any amount so in excess, the "Excess

Non-Qualifying Income”), the amount of Rent paid to Lessor pursuant to Section 3.1 of this Agreement in such tax year shall not exceed the maximum amount that can be paid to Lessor in such year without causing SUNTEX REIT to have Excess Non-Qualifying Income for such year. If the amount of Rent paid for any tax year under the preceding sentence is less than the amount of Rent which would otherwise be paid to Lessor pursuant to Section 3.1 of this Agreement (the “Deferred Rent Amount”), then: Lessor shall not be entitled to any such amount, unless and until Lessor delivers to Lessee, at the sole option of Lessor, (i) an opinion of such Lessor’s tax counsel to the effect that such amount, if and to the extent paid, should not constitute Excess Non-Qualifying Income, (ii) a letter from the independent accountants of such Lessor indicating the maximum amount that should be payable at that time to Lessor without causing SUNTEX REIT to have Excess Non-Qualifying Income for any relevant taxable year, in which case Lessor shall be paid such maximum amount or (iii) a private letter ruling issued by the IRS to such SUNTEX REIT indicating that the receipt of any Deferred Rent Amount hereunder will not cause SUNTEX REIT to fail to meet the requirements imposed on REITs pursuant to Sections 856 through and including 860 of the Code. The obligations of Lessee to pay any Deferred Rent Amount which is not paid as a result of this provision shall terminate five years from the original date such amount would have been paid without regard to this provision and Lessor shall have no further right to receive any such amount.

Article XX.

20.1 **Holding Over.** If Lessee for any reason remains in possession of the Leased Property after the expiration or earlier termination of the Term, such possession shall be as a tenant at sufferance during which time Lessee shall pay as rental each month one hundred fifty percent (150%) of the aggregate of (a) one-twelfth (1/12th) of the aggregate Base Rent and Percentage Rent payable with respect to the last Fiscal Year of the Term with respect to such Leased Property, (b) all Additional Charges accruing during the applicable month and (c) all other sums, if any, payable by Lessee under this Lease with respect to the Leased Property. During such period, Lessee shall be obligated to perform and observe all of the terms, covenants and conditions of this Lease, but shall have no rights hereunder other than the right, to the extent given by law to tenancies at sufferance, to continue its occupancy and use of the Leased Property. Nothing contained herein shall constitute the consent, express or implied, of Lessor to the holding over of Lessee after the expiration or earlier termination of this Lease.

Article XXI.

21.1 **Abatement of Rent.** Except in the event of a constructive eviction of Lessee from the Leased Property for any reason other than an Event of Default or as expressly provided in this Lease, Lessee shall not be entitled to any abatement of Rent.

Article XXII.

22.1 **Indemnification.** Notwithstanding the existence of any insurance, and without regard to the policy limits of any such insurance or self-insurance, Lessee will protect, indemnify, hold harmless and defend Lessor from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys’

fees and expenses), to the extent permitted by law, imposed upon or incurred by or asserted against Lessor Indemnified Parties by reason of any failure of Lessee or any of its agents, employees or invitees to perform any obligations under this Lease or by reason of their respective gross negligence or willful misconduct. Any amounts that become payable under this Section shall be paid within ten (10) days after liability therefor on the part of the Indemnifying Party is determined by litigation or otherwise, and if not timely paid, shall bear a late charge (to the extent permitted by law) at the Overdue Rate from the date of such determination to the date of payment. An Indemnifying Party, at its expense, shall contest, resist and defend any such claim, action or proceeding asserted or instituted against the Indemnified Party. The Indemnified Party, at its expense, shall be entitled to participate in any such claim, action, or proceeding, and the Indemnifying Party may not compromise or otherwise dispose of the same without the consent of the Indemnified Party, which may not be unreasonably withheld. Nothing herein shall be construed as indemnifying a Lessor Indemnified Party against its own grossly negligent acts or omissions or willful misconduct.

Article XXIII.

23.1 **Subletting and Assignment.** Lessee may not assign or sublet all or any portion of this Lease or the Leased Property without the written consent of Lessor, which consent may be withheld in Lessor's sole discretion. In the case of a subletting, the sublessee shall comply with the provisions of Section 23.2, and in the case of an assignment, the assignee shall assume in writing and agree to keep and perform all of the terms of this Lease on the part of Lessee to be kept and performed and shall be, and become, jointly and severally liable with Lessee for the performance thereof. In case of either an assignment or subletting made during the Term, Lessee shall remain primarily liable, as principal rather than as surety, for the prompt payment of the Rent and for the performance and observance of all of the covenants and conditions to be performed by Lessee hereunder. An original counterpart of each such sublease and assignment and assumption, duly executed by Lessee and such sublessee or assignee, as the case may be, in form and substance satisfactory to Lessor, shall be delivered promptly to Lessor. In addition to the foregoing requirements, if the Leased Property (or any portion thereof) is subject to a Master Lease, any assignment or subletting by Lessee must be performed in strict compliance with the terms of such Master Lease.

23.2 **Subordination and Attornment.** Lessee shall insert in each sublease permitted under Section 23.1 that is entered into subsequent to the Effective Date provisions to the effect that (a) such sublease is subject and subordinate to all of the terms and provisions of this Lease and to the rights of Lessor hereunder (if Lessor executes a non-disturbance agreement with respect thereto), (b) if this Lease terminates before the expiration of such sublease, the sublessee thereunder will, at Lessor's option, attorn to Lessor (or to any subsequent lessee of all or any portion of the Leased Property) and waive any right the sublessee may have to terminate the sublease or to surrender possession thereunder as a result of the termination of this Lease, and (c) if the sublessee receives a written Notice from Lessor or Lessor's assignees, if any, stating that an uncured Event of Default exists under this Lease, the sublessee shall thereafter be obligated to pay all rentals accruing under said sublease directly to the party giving such Notice, or as such party may direct. All rentals received from the sublessee by Lessor or Lessor's assignees, if any, as the case may be, shall be credited against the amounts owing by Lessee under this Lease.

Article XXIV.

24.1 **Officer's Certificates; Financing Statements; Lessor's Estoppel Certificates and Covenants.**

(a) At any time and from time to time upon not less than ten (10) days' Notice by Lessor, Lessee will furnish to Lessor or to any person designated by Lessor an estoppel certificate certifying that this Lease is unmodified and in full force and effect (or that this Lease is in full force and effect as modified and setting forth the modifications), the date to which the Rent has been paid, whether to the knowledge of Lessee there is any existing default or Event of Default hereunder by Lessor or Lessee, and such other information as may be reasonably requested by Lessor. Any such certificate furnished pursuant to this Section may be relied upon by Lessor, any lender and any prospective purchaser of the Leased Property.

(b) Upon the request of Lessor, Lessee will furnish the following statements to Lessor:

(1) with reasonable promptness, such information respecting the financial condition and affairs of Lessee including financial statements, as Lessor may reasonably request from time to time; and

(2) the most recent Consolidated Financials of Lessee within forty-five (45) days after each quarter of any Fiscal Year (or, in the case of the final quarter in any Fiscal Year, the most recent Consolidated Financials of Lessee within ninety (90) days).

(c) At any time and from time to time upon not less than ten (10) days' Notice by Lessee, Lessor will furnish to Lessee or to any person designated by Lessee an estoppel certificate certifying that this Lease is unmodified and in full force and effect (or that this Lease is in full force and effect as modified and setting forth the modifications), the date to which Rent has been paid, whether to the knowledge of Lessor there is any existing default or Event of Default on Lessee's part hereunder, and such other information as may be reasonably requested by Lessee.

Article XXV.

25.1 **Lessor's Right to Inspect.** Lessee shall permit Lessor and its authorized representatives as frequently as reasonably requested by Lessor to inspect the Leased Property and Lessee's accounts and records pertaining thereto and make copies thereof, during usual business hours upon reasonable advance Notice. Lessor shall provide at least twenty-four (24) hours' Notice to Lessee prior to such inspection, except in the event of an emergency.

Article XXVI.

26.1 **No Waiver.** No failure by Lessor or Lessee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, and no acceptance of full or partial payment of Rent during the continuance of any such breach, shall

constitute a waiver of any such breach or of any such term. To the extent permitted by law, no waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

Article XXVII.

27.1 **Remedies Cumulative.** To the extent permitted by law, each legal, equitable or contractual right, power and remedy of Lessor or now or hereafter provided either in this Lease or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power and remedy, and the exercise or beginning of the exercise by Lessor of any one or more of such rights, powers and remedies shall not preclude the simultaneous or subsequent exercise by Lessor of any or all of such other rights, powers and remedies.

Article XXVIII.

28.1 **Acceptance of Surrender.** No surrender to Lessor of this Lease or of the Leased Property or any part thereof, or of any interest therein, shall be valid or effective unless agreed to and accepted in writing by Lessor, and no act by Lessor or any representative or agent of Lessor, other than such a written acceptance by Lessor, shall constitute an acceptance of any such surrender.

Article XXIX.

29.1 **No Merger of Title.** There shall be no merger of this Lease or of the leasehold estate created hereby by reason of the fact that the same person or entity may acquire, own or hold, directly or indirectly: (a) this Lease, or the leasehold estate created hereby or any interest in this Lease or such leasehold estate and (b) the fee estate in the Leased Property.

Article XXX.

30.1 **Conveyance by Lessor.** If Lessor or any successor owner of the Leased Property conveys the Leased Property in accordance with the terms hereof other than as security for a debt, and the grantee or transferee of the Leased Property expressly assumes all obligations of Lessor hereunder arising or accruing from and after the date of such conveyance or transfer, Lessor or such successor owner, as the case may be, shall thereupon be released from all future liabilities and obligations of Lessor under this Lease arising or accruing from and after the date of such conveyance or other transfer as to the Leased Property and all such future liabilities and obligations shall thereupon be binding upon the new owner.

30.2 **Mortgages and Subordination.** This Lease and Lessee's interest hereunder shall at all times be subject and subordinate to the lien and security title of any deeds to secure debt, deeds of trust, mortgages, or other interests heretofore or hereafter granted by Lessor or which otherwise encumber or affect the Leased Property and to any and all advances to be made thereunder and to all renewals, modifications, consolidations, replacements, substitutions, and extensions thereof (all of which are herein called the "**Mortgage**"); provided, however, that with respect to any Mortgage hereinafter granted, such subordination is conditioned upon delivery to Lessee of a non-disturbance agreement which provides that Lessee shall not be disturbed in its possession of the Leased Property hereunder following a foreclosure of such Mortgage and that

the holder of such Mortgage or the purchaser at a foreclosure sale shall perform all obligations of Lessor under this Lease. In confirmation of such subordination, however, Lessee shall, at Lessor's request, promptly execute, acknowledge and deliver any instrument which may be required to evidence subordination to any Mortgage and to the holder thereof. In the event of Lessee's failure to deliver such subordination and if the Mortgage does not change any term of the Lease, Lessor may, in addition to any other remedies for breach of covenant hereunder, execute, acknowledge, and deliver the instrument as the agent or attorney-in-fact of Lessee, and Lessee hereby irrevocably constitutes Lessor its attorney-in-fact for such purpose, Lessee acknowledging that the appointment is coupled with an interest and is irrevocable. Lessee hereby waives and releases any claim it might have against Lessor or any other party for any actions lawfully taken by the holder of any Mortgage.

Article XXXI.

31.1 **Quiet Enjoyment.** So long as Lessee pays all Rent as the same becomes due and complies with all of the terms of this Lease and performs its obligations hereunder, in each case within the applicable grace periods, if any, Lessee shall peaceably and quietly have, hold and enjoy the Leased Property for the Term hereof, free of any claim or other action by Lessor or anyone claiming by, through or under Lessor, but subject to all liens and encumbrances subject to which the Leased Property was conveyed to Lessor or hereafter consented to by Lessee or provided for herein.

Article XXXII.

32.1 **Notices.** All notices, demands, requests, consents, approvals and other communications ("Notice" or "Notices") hereunder shall be in writing and (i) personally served or, (ii) mailed by registered or certified mail, return receipt requested and postage prepaid or, (iii) sent by trackable overnight nationally recognized courier service, next Business Day delivery or, (iv) via facsimile (provided (i), (ii) or (iii) are also utilized), and addressed as follows:

If to Lessor:

SUNRISE COVE SMI WESTREC, LLC
17330 Preston Road, Suite 220A
Dallas, Texas 75252
Attn: Bryan Redmond

If to Lessee:

SUNRISE SMI OPCO, LLC,
17330 Preston Road, Suite 220A
Dallas, Texas 75252
Attn: Bryan Redmond

Personally delivered Notice shall be effective upon receipt, Notice given by mail shall be complete at the time of deposit in the U.S. Mail system, Notice given by trackable overnight nationally recognized courier service, next Business Day delivery shall be complete at the time of deposit

with such courier service, and Notice given by facsimile shall be complete at the time evidenced by the printed verification thereof, provided one of the other methods is also utilized, but any prescribed period of Notice and any right or duty to do any act or make any response within any prescribed period or on a date certain after the service of such Notice given by mail shall be extended five days.

Article XXXIII.

33.1 **Lessor May Grant Liens.** Without the consent of Lessee, Lessor may, from time to time, directly or indirectly, create or otherwise cause to exist any lien, encumbrance or title retention agreement (“**Encumbrance**”) upon the Leased Property, including specifically, without limitation, one or more Encumbrances that secure financing or refinancing.

Article XXXIV.

34.1 **Miscellaneous.** Anything contained in this Lease to the contrary notwithstanding, all claims against, and liabilities of, Lessee or Lessor arising prior to any date of termination of this Lease shall survive such termination for a period of one (1) year, and any claim or action in connection therewith shall be filed within said one (1) year period or be deemed finally and irrevocably waived, released and relinquished thenceforth. If any term or provision of this Lease or any application thereof is invalid or unenforceable, the remainder of this Lease and any other application of such term or provisions shall not be affected thereby. If any late charges or any interest rate provided for in any provision of this Lease are based upon a rate in excess of the maximum rate permitted by applicable law, the parties agree that such charges shall be fixed at the maximum permissible rate. Neither this Lease nor any provision hereof may be changed, waived, discharged or terminated except by a written instrument signed by Lessor and Lessee. All the terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The headings in this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. This Lease shall be governed by and construed in accordance with the laws of the State, but not including its conflicts of law rules.

34.2 **Transition Procedures.** Upon the expiration or termination of the Term, for whatever reason, Lessor and Lessee shall do the following (and the provisions of this Section 34.2 shall survive the expiration or termination of this Lease until they have been fully performed) and, in general, shall cooperate in good faith to effect an orderly transition of the management and/or lease of the Leased Property.

(a) **Transfer of Licenses.** Upon the expiration or earlier termination of the Term, Lessee shall use commercially reasonable efforts (i) to transfer to Lessor or Lessor’s nominee all licenses, operating permits and other governmental authorizations and all contracts, including contracts with governmental or quasi-governmental entities, that may be necessary for the operation of the Leased Property (collectively, “**Licenses**”), or (ii) if such transfer is prohibited by law or Lessor otherwise elects, to cooperate with Lessor or Lessor’s nominee in connection with the processing by Lessor or Lessor’s nominee of any applications for, all Licenses; provided, in either case, that the costs and expenses of any

such transfer or the processing of any such application shall be paid by Lessor or Lessor's nominee.

(b) Leases and Concessions. Lessee shall assign to Lessor or Lessor's nominee simultaneously with the termination of this Lease, and Lessee shall cooperate with the assignee in the assignment or termination of all leases and concession agreements in effect with respect to the Leased Property then in Lessee's name.

(c) Books and Records. All books and records for the Leased Property kept by Lessee shall be delivered promptly to Lessor or Lessor's nominee, simultaneously with the termination of this Lease, but such books and records shall thereafter be available to Lessee at all reasonable times for inspection, audit, examination, and transcription for a period of one (1) year and Lessee may retain (on a confidential basis) copies or computer records thereof.

(d) Final Financial Statements. Lessor and Lessee shall cooperate in the preparation of final financial statements and the final reconciliation with respect to management fees, Leased Property expenses, and any other costs related to the use and operation of the Leased Property, which shall be calculated by Lessee within three (3) months after termination of this Lease (such reconciliation to be completed at Lessee's expense).

(e) Interim Management Arrangement. So as to avoid any disruption or delay of any services at the Leased Property, Lessee shall, upon the request of the successor lessee or operator of the Leased Property, enter into an interim management arrangement with such successor in form and substance reasonably acceptable to Lessee, which shall lawfully permit the successor tenant or operator to continue to operate the Leased Property or activities of the Leased Property under Lessee's (or any Property Manager's) license or permit until the completion of the transfer and issuance of a replacement license or permit, not to exceed one hundred twenty (120) days.

(f) Subleases. Lessee shall assign its interest in any subleases to Lessor or a successor lessee, as directed by Lessor.

34.3 Waiver of Presentment, etc. Lessee waives all presentments, demands for payment and for performance, notices of non-performance, protests, notices of protest, notices of dishonor, and notices of acceptance and waives all notices of the existence, creation, or incurring of new or additional obligations, except as expressly granted herein.

34.4 Limitation of Liability. The obligations of Lessor and Lessee under this Lease do not constitute personal obligations of their respective individual partners, members, directors, officers, shareholders, trustees or beneficiaries, and neither party shall seek recourse against the other party's partners, members, directors, officers, shareholders, trustees or beneficiaries (whether directly or by virtue of pursuing a note receivable from (or other claim by Lessor or Lessee against) such partners, members, directors, officers, shareholders, trustees or beneficiaries), or any of their personal assets for satisfaction of any liability with respect to this Lease. The provisions of this Section are not designed to relieve either party from the performance of any of their obligations

hereunder, but rather to limit such party's liability in the case of the recovery of a judgment against it, as aforesaid; nor shall any of the provisions of this Section be deemed to limit or otherwise affect a party's right to obtain injunctive relief or specific performance or availability of any other right or remedy which may be accorded such party by law or the Lease. Notwithstanding the foregoing provisions of this Section 34.4 to the contrary, Lessor may pursue a claim against the partners, members, directors, officers, shareholders, trustees or beneficiaries of Lessee to the extent that Lessee distributes Gross Revenue to any or all of such parties at such time as Rent is due and owing to Lessor or Lessee otherwise misappropriates or misapplies Gross Revenues in a manner contrary to the terms and conditions of this Lease; provided, however, that any such claim shall be limited to the amount that is so distributed, misappropriated or misapplied.

Article XXXV.

35.1 **Memorandum of Lease.** Lessor and Lessee shall promptly upon the request of either enter into short form memoranda of both the existence and termination of this Lease, as and when applicable, in form suitable for recording under the laws of the State in which reference to this Lease, and all options contained herein, shall be made. The party requesting any such memorandum of this Lease shall pay all costs and expenses of recording such memorandum, including any real estate excise transfer or sales tax that may be due and payable in conjunction with recording any such memorandum. The provisions of this paragraph shall survive termination of the Lease.

Article XXXVI.

36.1 **Option to Renew.** Lessee shall have the right to extend the Term as set forth on Exhibit B.

36.2 **Fair Market Rent.** For the purposes of this Article, "Fair Market Rent" shall mean the Base Rent, on a so called "triple net" basis, that would be paid by a willing tenant, not compelled to lease, and accepted by a willing landlord, not compelled to lease, for the Leased Property as of the commencement date of the applicable Renewal Term. At the written request of Lessee made at any time within the last Lease Year of the Term or any Renewal Term, Lessor shall notify Lessee of its determination of Fair Market Rent. If Lessee disagrees with the Fair Market Rent as determined by Lessor, Lessee shall promptly notify Lessor of same and Lessee and Lessor shall negotiate in good faith the appropriate amount of Fair Market Rent for the applicable Renewal Term.

36.3 **Conditions.** At Lessor's option, which may be exercised in its sole discretion, Lessee may exercise its option to renew hereunder, and an exercise thereof shall be only effective, if at the time of Lessee's exercise of the option and on the commencement date of the applicable Renewal Term, this Lease is in full force and effect and there are no events or circumstances which, with the giving of notice or the passage of time, or both, could constitute a default by Lessee under this Lease, and inasmuch as this option is intended only for the benefit of the original Lessee named in this Lease, the entire Leased Property are occupied by the original Lessee named herein and the Lessee has neither assigned this Lease nor sublet any portion of the Leased Property.

[Signature Page Follows.]

IN WITNESS WHEREOF, the parties have executed this Lease by their duly authorized officers as of the date first above written.

LESSOR:

SUNRISE COVE SMI WESTREC, LLC,
a Delaware limited liability company

By:_____

Name:_____

Title:_____

LESSEE:

SUNRISE SMI OPCO, LLC,
a Delaware limited liability company

By:_____

Name:_____

Title:_____

EXHIBIT A

OUTLINE OF LEASED LAND

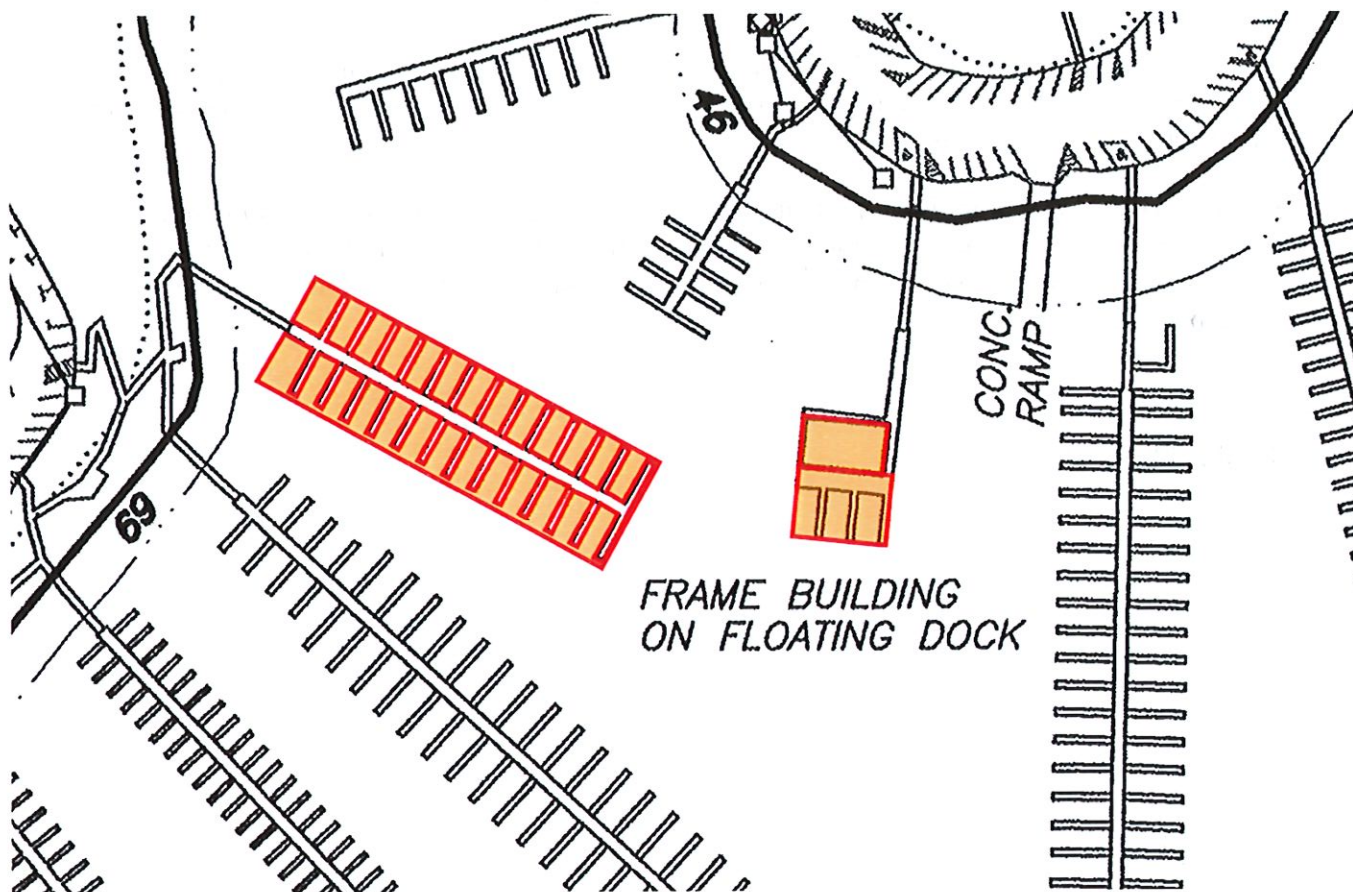


EXHIBIT B

CERTAIN KEY TERMS

Term. Term of the Lease shall expire on December 31, 2023. Lessee shall have the right to extend the Term for one (1) term of two (2) years (the “**Renewal Term**”) but only to the extent permitted under the Master Lease, if applicable.

Permitted Uses: Restaurant Facility; Clubhouse; Ship Store; Fuel Service Station/Fueling Docks; Cabin/Cottage Rentals; Service Center/Boat Repair Facility; Parts Warehouse; Boat Rental Facility; Office Space; Retail Space; Banquet/Event Space; Fitness Facility; Houseboats; Other (specify): None

Allocable Share: N/A

EXHIBIT C-1

BASE RENT

Base Rent – \$620.00/month

EXHIBIT C-2

PERCENTAGE RENT

IF APPLICABLE:

Lessee shall pay Lessor Percentage Rent as required under this Lease or as otherwise required in accordance with the terms and conditions of the Master Lease; provided, however, in order to avoid duplication, the Rent paid by Lessee to Lessor under this Lease shall not be included in gross receipts and thus will have no effect on the amount of percentage rent payable to Master Lessor under the Master Lease.

IF PERCENTAGE RENT IS NOT APPLICABLE, CHECK HERE: _____:

If checked, any references in the Lease to "Percentage Rent" (including payments of such amounts and delivery of materials evidencing calculation of such amount) are hereby deemed deleted.

APPENDIX A

DEFINITIONS

For all purposes of this Lease, except as otherwise expressly provided or unless the context otherwise requires, (a) the terms defined in this Appendix A have the meanings assigned to them in this Appendix A and include the plural as well as the singular, (b) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as are at the time applicable, (c) all references in this Lease to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this Lease and (d) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision.

Additional Charges. As defined in Section 3.3.

Affiliate. As used in this Lease, the term "**Affiliate**" of a person shall mean (a) any person that, directly or indirectly, controls or is controlled by or is under common control with such person, (b) any other person that owns, beneficially, directly or indirectly, ten percent (10%) or more of the outstanding capital stock, shares or equity interests of such person or (c) any officer, director, employee, partner or trustee of such person or any person controlling, controlled by or under common control with such person (excluding trustees and persons serving in similar capacities who are not otherwise an Affiliate of such person). The term "**person**" means and includes individuals, corporations, general and limited partnerships, stock companies or associations, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts, or other entities and governments and agencies and political subdivisions thereof. For the purposes of this definition, "**control**" (including the correlative meanings of the terms "**controlled by**" and "**under common control with**"), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, through the ownership of voting securities, partnership interests or other equity interests.

Annual Budget. As used in this Lease, the term "**Annual Budget**" shall mean an operating and capital budget prepared by or for Lessee and delivered to Lessor in accordance with Section 3.5.

Award. All compensation, sums or anything of value awarded, paid or received on a total or partial Condemnation.

Base Rate. The prime rate of interest announced publicly by Citibank, N.A., in New York, New York, from time to time. If no such rate is announced or becomes discontinued, then such rate as is published in The Wall Street Journal as the prime rate from time to time.

Base Rent. As defined in Section 3.1(a).

Business Day. Each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which the Federal Reserve Bank of Dallas is closed.

Capital Expenditures. As used in this Lease, the term “**Capital Expenditures**” shall mean expenditures for capital improvements to the Leased Property and replacement or refurbishing of the Improvements, Furniture, Fixtures and Equipment and of other equipment and systems that constitute portions of the Leased Property in connection with the Permitted Uses, and the cost of all approvals, licenses, permits and other authorizations necessary to complete such improvements, replacements and refurbishings, all as designated as capital improvements by and determined in accordance with generally accepted accounting principles.

Capital Impositions. Taxes, assessments or similar charges imposed upon or levied against the Leased Property for the costs of public improvements, including, without limitation, roads, sidewalks, public lighting fixtures, utility lines, storm sewers, drainage facilities and similar improvements.

CERCLA. The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

Claims. As defined in Section 12.1

Code. The Internal Revenue Code of 1986, as amended.

Commencement Date. The Effective Date.

Condemnation. A Taking resulting from (1) the exercise of any governmental power, whether by legal proceedings or otherwise, by a Condemnor, and (2) a voluntary sale or transfer by Lessor to any Condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

Condemnor. Any public or quasi-public authority, or private corporation or individual, having the power of Condemnation.

Consolidated Financials. For any Fiscal Year or other accounting period for Lessee and its consolidated subsidiaries, statements of earnings and retained earnings and cash flow and for the period from the beginning of the respective Fiscal Year to the end of such period and the related balance sheet as at the end of such period, all in reasonable detail and setting forth in comparative form the corresponding figures for the corresponding period in the preceding Fiscal Year, and prepared in accordance with generally accepted accounting principles as applied to Lessee and certified by Lessee’s Chief Financial Officer.

Date of Taking. The date the Condemnor has the right to possession of the property being condemned.

Encumbrance. As defined in Article XXXIII.

Environmental Authority. Any department, agency or other body or component of any Government that exercises any form of jurisdiction or authority over Lessor, Lessee or the Leased Property under any Environmental Law.

Environmental Authorization. Any license, permit, order, approval, consent, notice, registration, filing or other form of permission or authorization required under any Environmental Law.

Environmental Laws. All applicable federal, state, local and foreign laws and regulations relating to the environment (including without limitation, ambient air, surface water, ground water, land surface or subsurface strata), including without limitation laws and regulations relating to emissions, discharges, Releases or threatened Releases of Hazardous Materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials and laws relating to health or safety. Environmental Laws include but are not limited to CERCLA, FIFRA, RCRA, SARA, OSHA and TSCA.

Environmental Liabilities. Any and all obligations to pay the amount of any judgment or settlement, the cost of complying with any settlement, judgment or order for injunctive or other equitable relief, the cost of compliance or corrective action in response to any notice, demand or request from an Environmental Authority, the amount of any civil penalty or criminal fine, and any court costs and reasonable amounts for attorney's fees, fees for witnesses and experts, and costs of investigation and preparation for defense of any claim or any Proceeding, regardless of whether such Proceeding is threatened, pending or completed, that may be or have been asserted against or imposed upon Lessor, Lessee, any Predecessor, the Leased Property or any property used therein and arising out of:

- (a) Failure of Lessee to comply at any time with all Environmental Laws;
- (b) Presence of any Hazardous Materials in excess of allowable limits under any Environmental Laws on, in, under, at or in any way affecting the Leased Property;
- (c) A Release at any time of any Hazardous Materials on, in, at, under or in any way affecting the Leased Property;
- (d) Identification by an Environmental Authority of Lessee, Lessor or any Predecessor as a potentially responsible party under CERCLA or under any Environmental Law similar to CERCLA;
- (e) Presence at any time of any above-ground and/or underground storage tanks, as defined in RCRA or in any applicable Environmental Law on, in, at or under the Leased Property or any adjacent site or facility; or
- (f) Any and all claims for injury or damage to persons or property arising out of exposure to Hazardous Materials originating or located at the Leased Property, or resulting from operation thereof or any adjoining property.

Event of Default. As defined in Section 16.1.

FIFRA. The Federal Insecticide, Fungicide, and Rodenticide Act, as amended.

Fiscal Year. The 12-month period from January 1 to December 31.

Furniture, Fixtures and Equipment. For purposes of this Lease, the terms "Furniture, Fixtures and Equipment" shall mean collectively all furniture, wall coverings, fixtures and equipment and systems located at, or used in connection with, the Leased Property, together with all replacements therefor and additions thereto, including, without limitation, (i) all equipment and systems required for the operation of fuel docks, boat service centers and related repair facilities, kitchens and laundry facilities, (ii) office equipment, (iii) dining room wagons, materials handling equipment, cleaning and engineering equipment, (iv) telephone and computerized accounting systems, and (v) vehicles including boats and watercraft of any kind.

Government. The United States of America, any state, district or territory thereof, any foreign nation, any state, district, department, territory or other political division thereof, or any political subdivision of any of the foregoing.

Gross Revenues. means, in connection with any period, all operating revenue received or accrued for the benefit of Lessee and arising from the operation of the Leased Property (or any portion thereof) attributable to such period, calculated on an accrual basis and determined in accordance with GAAP or as defined whether named as "gross receipts" or "gross revenue" under the Master Lease, if applicable.

Hazardous Materials. Hazardous Materials shall mean and include:

(a) Solid, gaseous, or liquid wastes (including hazardous wastes), hazardous air pollutants, hazardous substances, hazardous materials, regulated substances, restricted hazardous wastes, hazardous chemical substances, mixtures, toxic substances, pollutants or contaminants or terms of similar import as such terms are defined in any Environmental Law as such definition may change from time to time;

(b) Any substance or material which now or in the future is known to constitute a threat to health, safety, property or the environment or which has been or in the future is determined by an Environmental Authority to pose a risk of injury to health, safety, property or the environment or exposure to which is prohibited, limited or regulated by any Environmental Law or any Environmental Authority, including all of those materials, wastes and substances designated now or in the future as hazardous or toxic by any Environmental Authority; and

(c) Any petroleum, or petroleum products or byproducts, radioactive materials, polychlorinated biphenols, asbestos, whether friable or non-friable, and urea formaldehyde foam insulation or radon gas.

Impositions. Collectively, all taxes (including, without limitation, all ad valorem, sales and use, single business, gross receipts, transaction privilege, rent or similar taxes as the same relate to or are imposed upon Lessee or its business conducted upon the Leased Property and all real estate or ad valorem property taxes and inventory and personal property taxes and similar charges on or relating to the Leased Property and the Facility), assessments (including, without

limitation, all assessments under private covenants and for public improvements or benefit, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term), water, sewer or other rents and charges, excises, tax inspection, authorization and similar fees and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Leased Property or the business conducted thereon by Lessee (including all interest and penalties thereon caused by any failure in payment by Lessee), which at any time prior to, during or with respect to the Term hereof may be assessed or imposed on or with respect to or be a lien upon (a) Lessor's interest in the Leased Property, (b) the Leased Property, or any part thereof or any rent therefrom or any estate, right, title or interest therein, or (c) any occupancy, operation, use or possession of, or sales from, or activity conducted on or in connection with the Leased Property, or the leasing or use of the Leased Property or any part thereof by Lessee. Nothing contained in this definition of Impositions shall be construed to require Lessee to pay (1) any tax based on net income (whether denominated as a franchise or capital stock or other tax) imposed on Lessor or any other person, or (2) any net revenue tax of Lessor or any other person, or (3) any tax imposed with respect to the sale, exchange or other disposition by Lessor of the Leased Property or the proceeds thereof, or (4) any single business, gross receipts (other than a tax on any rent received by Lessor from Lessee), transaction, privilege or similar taxes as the same relate to or are imposed upon Lessor.

Indemnified Party. Any Lessor Indemnified Party.

Indemnifying Party. Any party obligated to indemnify an Indemnified Party pursuant to Section 8.3 or Article XXII.

Insurance Requirements. All terms of any insurance policy required by this Lease and all requirements of the issuer of any such policy.

Inventory. All merchandise utilized by Lessee in connection with the operation of the Leased Improvement as a Facility, including, without limitation, food, beverage, fuel, linens and other non-depreciable personal property.

Land. As defined in Article I.

Lease. This Facilities Lease Agreement.

Leased Improvement, Leased Property. Each as defined in Article I.

Legal Requirements. All federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions affecting either the Leased Property or the maintenance, construction, use or alteration thereof (whether by Lessee or under Lessee's control), whether or not hereafter enacted and in force, including (a) all laws, rules or regulations pertaining to the environment, occupational health and safety and public health, safety or welfare, and (b) any laws, rules or regulations that may (1) require repairs, modifications or alterations in or to the Leased Property or (2) in any way adversely affect the use and enjoyment thereof; and all permits, licenses and authorizations and regulations relating thereto and all covenants, agreements, restrictions and encumbrances contained in any instruments, either

of record or known to Lessee (other than encumbrances created by Lessor without the consent of Lessee), at any time in force affecting the Leased Property.

Lender. The holder of any loan secured by Lessor's interest in the Leased Property.

Lessee. The Lessee designated on this Lease and its respective permitted successors and assigns.

Lessee's Personal Property. As defined in Section 6.2.

Lessor. The Lessor designated on this Lease and its respective successors and assigns.

Lessor Indemnified Party. Lessor, any Affiliate of Lessor, any other Person against whom any claim for indemnification may be asserted hereunder as a result of a direct or indirect ownership interest (including a stockholder's, partnership or membership interest) in Lessor, the officers, directors, partners, members, stockholders, employees, agents and representatives of Lessor, and the respective heirs, personal representatives, successors and assigns of any such officer, director, partner, member, stockholder, employee, agent or representative.

Master Lease. If applicable that certain ground lease, license or concession contract by and between Lessor as lessee and the applicable governmental agency as fee interest owner or land lessor ("**Master Lessor**") covering the Leased Land and, to the extent further applicable, any overlease between Master Lessor and the fee interest owner which covers the Leased Land.

Mortgage Loan. Any loan secured by Lessor's interest in the Leased Property.

Notice. A notice given pursuant to Article XXXII.

Officer's Certificate. A certificate of Lessee reasonably acceptable to Lessor, signed by an authorized signatory of Lessee, or any other person whose power and authority to act has been authorized by delegation in writing by such authorized signatory.

OSHA. The Occupational Health and Safety Act, as amended.

Overdue Rate. On any date, a rate equal to the Base Rate plus 5% per annum, but in no event greater than the maximum rate then permitted under applicable law.

Payment Date. Any due date for the payment of any installment of Base Rent.

Percentage Rent. As defined in Section 3.1(b).

Permitted Uses. As defined in Section 7.2(b).

Person. Any Government, natural person, corporation, general or limited partnership, limited liability company, stock company or association, joint venture, association, company, trust, bank, trust company, land trust, business trust, or other entity.

Predecessor. Any Person whose liabilities arising under any Environmental Law have or may have been retained or assumed by Lessee, either contractually or by operation of law, relating to the Leased Property.

Proceeding. Any judicial action, suit or proceeding (whether civil or criminal), any administrative proceeding (whether formal or informal), any investigation by a governmental authority or entity (including a grand jury), and any arbitration, mediation or other non-judicial process for dispute resolution.

RCRA. The Resource Conservation and Recovery Act, as amended.

Release or Releases. A “Release” as defined in CERCLA or in any Environmental Law unless such Release has been properly authorized and permitted in writing by all applicable Environmental Authorities or is allowed by such Environmental Law without authorizations or permits.

Rent. Collectively, the Base Rent, Percentage Rent and Additional Charges.

SARA. The Superfund Amendments and Reauthorization Act of 1986, as amended.

State. The State or Commonwealth of the United States in which the Leased Property is located.

Subsidiaries. Persons in which a party owns, directly or indirectly, more than 50% of the voting stock or control, as applicable (individually, a “Subsidiary”).

SUNTEX REIT as defined in Section 19.1(a).

Taking. A taking or voluntary conveyance during the Term of all or part of the Leased Property, or any interest therein or right accruing thereto or use thereof, as the result of, or in settlement of, any Condemnation or other eminent domain proceeding affecting the Leased Property whether or not the same shall have actually been commenced.

Term. As defined in Section 1.2.

TSCA. The Toxic Substances Control Act, as amended.

Unavoidable Occurrence. If Lessee is unable to timely fulfill its obligations under this lease due to: (i) strikes or lockouts affecting the general vicinity in which the Leased Property is located, (ii) delays in the delivery of materials or disruption of shipping, (iii) wars, riots, or civil insurrection, (iv) changes (occurring after the date hereof) in laws, codes and regulations (but not based on the failure, within the reasonable control of Lessee, to comply with laws, codes, or regulations and documents of record presently in effect), (v) fire or other casualty not caused by Lessee or any Affiliate of Lessee, (vi) lawsuits, injunctions and moratoriums beyond Lessee’s reasonable control (but not based on the failure, within the reasonable control of Lessee, to comply with laws, codes, or regulators and documents of record presently in effect), (vii) weather or (viii) drought.

Uneconomic for Previous Use. A state or condition of the Leased Property such that, in the good faith judgment of Lessee or Lessor, as applicable, reasonably exercised and evidenced by the resolution of the board of directors or other governing body of the respective entity, the Leased Property cannot be operated on a commercially practicable basis for its previous use, taking into account, among other relevant factors, the number of usable units and projected revenues, such that Lessee shall complete the cessation of operations from the Leased Property.

Unsuitable for Previous Use. A state or condition of the Leased Property such that, in the good faith judgment of Lessee or Lessor, as applicable, reasonably exercised and evidenced by the resolution of the board of directors or other governing body of the respective entity, due to casualty damage or loss through Condemnation, the Leased Property cannot function as a Leased Property consistent with standards applicable to a well maintained and operated marina facility.