

**South Portland City Council
Position Paper of the City Manager**

Subject:

ORDER #2-16/17 – Authorizing the City Manager to sign an Amended and Restated Lease Agreement between the City of South Portland and Port Harbor Marine, Inc., for property at 1 Spring Point Drive. Passage requires majority vote.

Position:

During the past two years the City of South Portland and Port Harbor Marine, Inc., which operates Spring Point Marina, a City owned property, have been negotiating an extension of the Spring Point Marina Lease. Roughly 40 years ago the property was a blighted former industrial shipbuilding site that was granted to the City of South Portland under a project agreement with the U.S. Department of the Interior and State of Maine Bureau of Parks and Recreation. On October 9, 1978, General Electric Company conveyed the property to the City “forever, so long as ... [it] is used in perpetuity for exclusively public purposes and never sold or exchanged (said reversion not intended to prevent leasing of the premises for ... a legally permissible public marina facility) ...”

On May 2, 1980 the City entered into a 40 year lease agreement with Port Harbor Marine, as operator, and since that time Port Harbor has built a world class marina, accessible to the public, and a landmark amenity in South Portland. The development of the marina required significant investment by the operator, and a longstanding partnership with the City, as landowner. Although Port Harbor Marine would prefer to purchase the property, that is not an option due to its unique history and certain deed restrictions. Several years ago the City Council took up the future of the marina, which would have required 10 year notice to the operator if its use as a marina was to be discontinued. During a workshop held on August 25, 2008 the City Council toured Spring Point Marina, and at a subsequent workshop held on April 26, 2010 the City Council indicated its preferred option was to continue the property’s use as a marina and negotiate an extension of the lease agreement with Port Harbor Marine.

Members of the City’s current negotiating team include Claude Morgan, Tom Coward, Joshua Reny, Greg L’Heureux, and Ron Epstein as legal counsel. Earlier in the process former Tax Assessor Elizabeth Sawyer, former Parks, Recreation, and Waterfront Director Rick Towle, and former Assistant City Manager Jon Jennings were also members of the

team. The extended lease agreement that has been negotiated substantially amends and restates the terms of the lease, with a couple of the more substantial changes being the structure of rent and City contributions to capital improvements, which are highlighted below.

The new lease agreement substantially modifies the structure of rent payments. The current rent is calculated as a percent of gross sales in addition to a base rent of \$20,000. In recent years the annual rent has been around \$65,000. Although this rent value was quite reasonable a few decades ago, the City's share of the revenue growth from annual sales has not kept up with inflation. Additionally, the property has been substantially improved during the past few decades and is now able to return a higher rent. The new rent structure would be a fixed rent that escalates with inflation. However, during the four years still remaining in the current lease, the rent will be set at an amount modestly higher than rent received in the most recent year. For the rent year beginning May 1, 2016, rent will be \$70,000, and will increase by \$5,000 each subsequent year through 2020. For the rent year beginning May 1, 2020, rent will be based on a fair market rent appraisal. That appraisal determined that fair market rent would have been approximately \$250,000 in 2014. The City and Port Harbor Marine have agreed to a base rent calculation of \$256,500 as of May 1, 2016. That figure will be subject to an annual inflation escalator, based on the Consumer Price Index (CPI), except the annual escalator will have a cap of 3% and a floor of 1%. Therefore, by May 1, 2020, the base rent will be in the range of approximately \$267,000 to \$289,000, depending on the rate of inflation during the next few years, and will continue to increase each year thereafter through the end of the lease, which will expire on May 1, 2050.

7-Year Rent Forecast Under New Lease

Rent Year	Min. Rent (1% escalator)	Max. Rent (3% escalator)	Notes
2016-17	\$ 70,000.00	same	Rent is fixed
2017-18	\$ 75,000.00	same	"
2018-19	\$ 80,000.00	same	"
2019-20	\$ 85,000.00	same	"
2020-21	\$ 166,914.93	\$ 188,693.01	\$100K credit (capital improv.)
2021-22	\$ 269,584.08	\$ 297,353.80	
2022-23	\$ 272,279.92	\$ 306,274.41	

Additionally, the City has agreed to contribute to some capital improvements to preserve and improve the long term value of the property. First, the City would rebuild the entrance road from Breakwater Drive to the main building, which Public Works Director Doug Howard has estimated will cost \$20,000 to \$25,000. Second, the City would contribute \$100,000, in the form of a credit to rent during the May 1, 2020 rent year, to offset the cost of certain capital improvements that will be performed by Port Harbor Marine. Examples of those repairs include dredging and replacement of fuel piping, in addition to several others. Except for these stated contributions to capital improvements, Port Harbor Marine will assume all responsibility to operate and maintain the facility, and shall incur any costs of

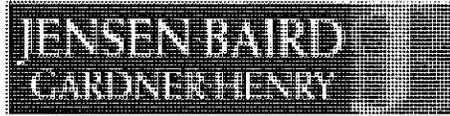
maintenance and capital improvements that may arise during the remainder of the lease. However, as is the case today, certain capital improvements that will increase the tenant's possessory interest (equity interest) must be first approved by the City.

Additionally, there are several other amendments, including language updates and modifications, in the new lease agreement. Ron Epstein of Jenson Baird Gardner & Henry has written a letter summarizing those changes, and that document is included as an addendum to this position paper. The negotiating team unanimously recommends approval of the lease agreement, and will be available at the City Council meeting to answer any questions you may have.

Requested Action:

Council passage of ORDER #2-16/17.


Assistant City Manager



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June 28, 2016

Joshua Reny
Assistant City Manager
Economic Development Director
City of South Portland
25 Cottage Road
South Portland, ME 04106

Dear Josh:

You have asked that we summarize for the City Council the terms of the proposed Lease amendment between the City and Port Harbor Marine, Inc. As you know, the term of the original Lease, dated May 2, 1980 between the City and Port Harbor Marine, ends on May 1, 2020. We understand that the rent (including base rent, percentage of sales and property taxes or payments in lieu thereof) paid by Port Harbor Marine to the City under the existing lease totals about \$65,000 per year.

The basic terms of the proposed Lease amendment are as follows:

Term: The amendment would extend the original 40 year lease currently scheduled to expire on May 1, 2020 by 30 years, to May 1, 2050.

Possessory Interest: The Lease amendment retains the Possessory Interest provisions of the existing Lease. If the Lease were not being extended, the City would have to pay Port Harbor Marine in May, 2020 for the Possessory Interest to the extent provided in the existing lease.

Base Rent: The amendment would increase the base rent from the current amount of approximately \$65,000 to \$256,500 as of May 1, 2016 and increase rent annually by the CPI of the preceding calendar year (January-December) on May 1 of each subsequent year of the lease thereafter, except that, in recognition of the fact that the existing term of

the lease runs to May 1, 2020, the annual rent will be capped as follows in the years prior to May 1, 2020 as follows:

May 1, 2016 through April 30, 2017 - \$70,000 per year
May 1, 2017 through April 30, 2018 - \$75,000 per year
May 1, 2018 through April 30, 2019 - \$80,000 per year
May 1, 2019 through April 30, 2020 - \$85,000 per year

The rent that takes effect on May 1, 2020 was based on the fair market rental value appraisal of James G. Bragg, Jr. (Certified General Appraiser, Maine No. CG 2913) of Resort Realty Advisors of Gloucester, Massachusetts. We understand that the City selected that appraiser based on his experience in appraisal of other marina properties. The methodology used by the appraiser to develop a market rent for the subject on a triple net basis involved applying a market derived capitalization rate to the value of the property (market rent = property value x overall capitalization rate). Because the Lease requires the City to buy out the tenant's Possessory Interest at termination of the lease, the appraiser first calculated the market value of the property less the tenant's Possessory Interest. He determined the market value of the property without the tenant's Possessory Interest to be \$2.87 million. The appraiser then applied a 6.75% capitalization rate, to arrive at an indicated annual rent of \$193,725. A few additions and deletions were then made (deducting the value of the City's one slip rental and winter storage and winterization right and adding an estimate of ad valorem real property taxes or payment in lieu thereof), to arrive at an indicated market rent of \$252,169 per year, which was rounded to \$250,000 per year.

The Lease amendment further provides that the annual CPI adjustments shall be not less than 1% and not more than 3% in a single year. The current rent amount of approximately \$65,000 per year includes 1% of Port Harbor Marine's gross sales (excluding sales of boats); the percentage rent of gross sales would be eliminated as of May 1, 2016 and thereafter. Rent shall be paid in equal monthly installments on the first business day of each month.

Other Lease Provisions: The Lease amendment would modify the lease covenants from the May 2, 1980 Lease to customary covenants for current commercial lease transactions, including insurance, hazardous materials, compliance with laws, default and late charge and maintenance obligations.

Capital Expenses: Under the Lease amendment, Port Harbor Marine will be responsible for all capital expenses during the term of the lease, except that during the first year of the lease extension (*i.e.*, May 1, 2020 – April 30, 2021) the City will make a one-time contribution to capital improvements and deferred maintenance in the amount

Jensen Baird
Gardner Henry

June 28, 2016
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of \$100,000, to be applied as a credit to the rent for that year in equal monthly installments (*i.e.*, gross rent less \$8,333.33 per month), and the City will re-construct the entrance road from the end of Broadway to the main building, including all paving and curbing, at its expense. Future maintenance of said roadway will be the responsibility of Port Harbor Marine for the duration of the lease.

If you have any questions, please call me. Thank you.

Sincerely,



Ronald A. Epstein



CITY OF SOUTH PORTLAND

THOMAS E. BLAKE
Mayor

JAMES H. GAILEY
City Manager

EMILY F. CARRINGTON
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

IN CITY COUNCIL

ORDER #2-16/17

District One
CLAUDE V. Z. MORGAN

District Two
PATRICIA A. SMITH

District Three
EBEN C. ROSE

District Four
LINDA C. COHEN

District Five
BRAD FOX

At Large
MAXINE R. BEECHER

At Large
THOMAS E. BLAKE

ORDERED, that the City Manager be and hereby is authorized to sign on behalf of the City an Amended and Restated Lease Agreement, in substantially the same form as shown on the attached, between the City of South Portland and Port Harbor Marine, Inc. for property located at 1 Spring Point Drive.

Fiscal Note: Rental income to City varies per year per lease

Dated: July 6, 2016

AMENDED AND RESTATED LEASE AGREEMENT

This Amended and Restated Lease Agreement made and entered into as of the 1st day of May, 2016 amends and restates in its entirety the Lease Agreement made and entered into the 2nd day of May, 1980, as amended by Lease Amendment No. 1 dated February 18, 1982, as amended by Lease Amendment No. 2, dated September 5, 2002, by and between **Port Harbor Marine, Inc.**, a Maine corporation with a place of business in South Portland, County of Cumberland and State of Maine, (hereinafter referred to as "Lessee"), and the **City of South Portland**, a municipal corporation existing under the laws of the State of Maine, located in the County of Cumberland and State of Maine, (hereinafter referred to as "Lessor").

WITNESSETH:

WHEREAS, Lessor has determined it to be in the public interest to contract with Lessee for the purpose of planning, constructing, operating and maintaining certain recreational and service facilities on city owned land and submerged land located adjacent to and under Portland Harbor, and

WHEREAS, Lessee has presented to Lessor a Proposal under the provisions of which it offers to plan, develop, operate, and maintain full service marina facilities including sales, service, berthing, other recreational services, and other amenities on the city owned land;

NOW THEREFORE, for the purposes aforesaid and in consideration of the mutual covenants and agreements contained herein, the parties agree as follows: Lessor does hereby let unto Lessee and Lessee does hereby lease and take the real estate described in Article One of this Lease, subject to the conditions and provisions of all articles of this Lease:

ARTICLE ONE
Legal Description

Two certain lots or parcels of land, with the buildings thereon, situated on the northeasterly side of Pickett Street in the City of South Portland, County of Cumberland and State of Maine, bounded and described as follows:

FIRST PARCEL: Beginning on the northeasterly side of said Pickett Street at the southwesterly corner of lot No. 36 in Block No. 21 as shown by a Plan entitled Days Map, South Portland, dated 1863 and recorded in Cumberland County Registry of Deeds in Plan Book 14, Page 4; thence by said Pickett Street and its prolongation on a course of North 56° 17' 15" West a distance of 334.00 feet to a right of way and land of Greater Portland Public Development Commission; thence by land of Greater Portland Public Development Commission on a course of North 30° 42' 45" East a distance of 299.90 feet to an iron distant 20.00 feet southwesterly and at right angles to the southwesterly side of the building known as No. 209; thence by land of Greater Portland Public Development Commission on the following courses: South 61° 35' 45" East a distance of 34.33 feet to an iron; thence North 36° 07' 15" East a distance of 55.31 feet to an iron; thence South 61° 14' 45" East a distance of 34.15 feet to an iron; thence North 28° 45' 15" East a distance of 6.35 feet to a point; thence South 61° 14' 45" East a distance of 4.28 feet to a point; thence North 28° 45' 15" East a distance of 43.08 feet to the

southwesterly side of Building No. 208; thence by said southwesterly side of Building No. 208 northwesterly a distance of 107.15 feet, more or less, to the southwesterly corner of Building No. 208; thence by the northwesterly side of said Building on the following courses: about North 28° 44' 15" East a distance of 26.80 feet to an angle; thence about North 22° 42' 45" West a distance of 15.10 feet to a corner; thence about North 68° 24' 15" East a distance of 18.50 feet to an angle; thence about North 28° 44' 15" East a distance of 95.50 feet to the northwesterly corner of said Building No. 208; thence continuing on the prolongation of the northwesterly side of said Building No. 208 a distance of 10.00 feet to the southwesterly side line of a right of way being northeasterly and parallel with the northeasterly side of said building on a course of south 61° 20' 45" East a distance of 239.38 feet to an iron; thence South 28° 39' 15" West a distance of 7.06 feet to the southwesterly side of said right of way which is a distant 47.00 feet northeasterly and parallel with the northeasterly side of said Building No. 208; thence by said line South 61° 20' 45" East a distance of 519.72 feet to an iron that is 2.00 feet southeasterly of the southeasterly rail of track "5A", so called; thence by other land now or formerly of Greater Portland Public Development Commission on the following courses: South 28° 45' 45" West a distance of 165.08 feet to a solid iron; thence South 61° 14' 15" East a distance of 12.24 feet to a spike; thence South 60° 45' 45" West a distance of 230.63 feet to an iron; thence by other land now or formerly of Greater Portland Public Development Commission and said terminus of Adams Street and northeasterly side of Lot No. 23 as shown on above mentioned Plan North 56° 17' 15" West a distance of 178.23 feet to an iron; thence by northwesterly side of Lots 23, 24, 25, 26, 27 and 28 on a course of South 33° 42' 45" West a distance of 150.00 feet to an iron; thence by northeasterly side of Lots 33, 34, 35 and 36 on a course of North 56° 17' 15" West a distance of 100.00 feet to an iron; thence by northwesterly side of Lot No. 36 South 33° 42' 45" West a distance of 100.00 feet to the point of beginning. Including a right of way extending from Adams Street over Parcel 2 as described in a deed from Greater Portland Public Development Commission to Ametek, Inc. dated March 29, 1974 and recorded in the Cumberland County Registry of Deeds in Book 3525, Page 65, as now travelled, to the Basin Area, said right of way to be used in common with others as a means of egress and ingress for the passage of vehicles and pedestrians from Adams Street to the Basin Area.

Excepting from the above described premises the parcel of land with the buildings thereon conveyed by the City of South Portland to the General Electric Company by deed dated October 31, 1978, and recorded in the Cumberland County Registry of Deeds in Book 4333, Page 77.

The above described premises are subjected to the restrictions and conditions contained in a deed from Ametek, Inc. to the City of South Portland dated January 5, 1976 and recorded in the Cumberland County Registry of Deeds in Book 3791, Page 243.

Being a portion of the premises conveyed to the City of South Portland by deed of Ametek, Inc. dated January 5, 1976 and recorded in said Registry of Deeds in Book 3791, Page 243.

SECOND PARCEL: The second parcel contained herein being bounded and described as follows:

Beginning at a point, said point being the northeasterly corner of the first parcel above described: thence North 61° 20' 45" West along a line which is distant 47.00 feet northeasterly from and parallel with the northeasterly side of Building No. 208, 460.49 feet to a point, said point being distant 13.64 feet on a bearing of North 61° 20' 45" West from the northeasterly corner of land conveyed to General

Electric Co. by said City of South Portland by deed dated October 31, 1978, recorded in said Registry of Deeds in Book 4333, Page 77;

Thence North 28° 42' 45" East along the southeasterly face of the concrete pier footing between Basins 3 and 4, 89.90 feet to the corner of said footing;

Thence North 61° 20' 45" West along said pier footing 4.25 feet to the southeasterly face of the pier between said Basins 3 and 4;

Thence North 28° 42' 45" East along the southeasterly face of said pier and the extension thereof 440 feet more or less to the approximate low water mark as it was located in 1917 prior to the construction of Basins;

Thence Easterly along said approximate low water mark 340 feet more or less to a point, said point being distant 140 feet more or less on a bearing of North 49° 01' 15" West from the northwesterly corner of land conveyed to the State of Maine by Ametek, Inc. by deed dated December 30, 1974 and recorded in said Registry of Deeds in Book 3637, Page 291;

Thence South 49° 01' 15" East along land now or formerly of the United States of America, assigned to the War Department for Fort Preble and now or formerly of the State of Maine, 140 feet more or less to said northwesterly corner of land conveyed to the State of Maine;

Thence South 28° 45' 45" West along land now or formerly of the State of Maine land 558.83 feet to the point of beginning, containing 6 acres more or less.

Bearings are based upon true North established by prior survey.

The above described premises are subject to restrictions and conditions contained in a deed from the General Electric Company to the City of South Portland dated October 9, 1978 and recorded in said Registry of Deeds in Book 4336, Page 186.

Being the same premises conveyed to the City of South Portland by deed of General Electric Company dated October 9, 1978 and recorded in said Registry of Deeds in Book 4336, Page 186.

Included any and all rights now owned or hereafter acquired in and to submerged lands seaward of the low water mark as established in 1917 and adjoining the above described premises, and including any and all riparian rights now owned or hereafter acquired relating to the above described premises.

ARTICLE TWO
Lease Administration

A. Term: The term of this Lease shall be seventy (70) years, for the period beginning May 2, 1980 and ending May 1, 2050.

B. Rental: Lessee agrees to pay to Lessor, during each Lease Year of the term of this Lease and any extension or renewal thereof, annual base rental, percentage rent, and additional rent at the

rates and times set forth in this Article. All such rental amounts shall be payable, without any offset, abatement, deductions or setoff whatsoever and without previous demand therefore, at the office of the Finance Director of the City of South Portland or at such other place as Lessor may direct by notice in writing to Lessee from time to time.

1. During the term, Lessee shall pay to Lessor an annual base rental and, during the period through May 1, 2016, a percentage of part of the gross income from the business for each year of the term of this Lease as follows:

a. A rental of Twenty Thousand Dollars (\$20,000) per year through the period ending May 1, 2016, prorated over Lease periods of less than a year, commencing June 1, 1981 and continuing through May 1, 2016, and due and payable without prior demand as follows:

1. During the first five (5) years of this Lease, ninety (90) days following the end of the calendar year.

2. During the next five (5) years of this Lease quarterly on April 1, July 1, October 1 and January 1.

3. For the remainder of the Lease, the annual base rental for each Lease Year shall be payable in advance in equal monthly installments on the first day of each and every month during each Lease Year.

4. The annual base rental shall be equal to the following amounts for the following lease years:

(a) except as otherwise provided in paragraph (c) below, the annual base rent shall be increased to \$256,500 for the year beginning May 1, 2016 and ending April 30, 2017;

(b) except as otherwise provided in paragraphs (c) and (d) below, on May 1, 2017 and on each May 1st thereafter (each such May 1st date being herewith called an "increase date"), the annual base rental shall be increased to an annual rate which bears the same proportion to the annual base rental rate for the immediately preceding Lease Year (determined without regard to the caps set forth in paragraph (c) below and without regard to the adjustment set forth in paragraph (e) below but taking into consideration the floor and ceiling set forth in paragraph (d) below) as the United States Bureau of Labor Statistics Consumer Price Index For All Urban Consumers, U.S. City Average, All Items (1982-1984=100) (the "Index"), in effect for the calendar month of the December immediately preceding such increase date, bears to such Index in effect for the December of the year immediately preceding the December that immediately precedes such increase date (in other words, the annual base rent shall be increased each lease year in accordance with the increase in the Index over the most recent year based on a December to the prior December comparison) (with such Index being appropriately adjusted, if necessary, to reflect all changes in the base year, using such conversion factors as shall be available from the United State Government). In the event the United States Bureau of Labor Statistics shall discontinue the issuance of its Consumer Price Index For All Urban Consumers, U.S. City Average, All Items, a substitute or successor index as selected by Lessor, which is then issued by the United States Government or other party as a

measure of inflation shall be used for the computation set forth herein. In no event shall the computation referred to in this paragraph serve to reduce the annual base rental below the annual base rental for the most recent Lease Year during the term of this Lease. The term "Lease Year" means each successive twelve month period during the term of this Lease beginning each May 1st, and except that in the event of the expiration or termination of this Lease on a day other than the last day of a Lease Year, the last Lease Year of the term shall be the period from the end of the preceding Lease Year to such date of expiration or termination;

(c) notwithstanding the provisions of paragraphs (a) and (b) above, the annual base rent shall be capped at the following amounts for the following years: (i) May 1, 2016 through April 30, 2017: \$70,000 per year; (ii) May 1, 2017 through April 30, 2018: \$75,000 per year; (iii) May 1, 2018 through April 30, 2019: \$80,000 per year; and (iv) May 1, 2019 through April 30, 2020: \$85,000 per year; however, such caps shall be disregarded and not treated as the rent for purposes of computing Consumer Price Index increases in annual base rent each year as illustrated by the examples set forth in paragraph (f) below;

(d) notwithstanding the provisions of paragraph (b) above (and except as otherwise provided in paragraph (c) above relating to the lease years beginning May 1, 2017, May 1, 2018, and May 1, 2019), for each Lease Year beginning on or after May 1, 2017, the annual base rent, notwithstanding the actual changes in the Index, (a) shall be increased to a maximum of 103% of the annual base rental for the prior Lease Year, and (b) shall be increased to a minimum of 101% of the annual base rental for the prior Lease Year; and

(e) notwithstanding the foregoing, provided that Lessee is not then in default hereunder, during the Lease Year beginning May 1, 2020 and ending April 30, 2021, Lessor shall make a one-time \$100,000 contribution to capital improvements to the premises, which shall be applied as an \$8,333.33 monthly offset to rent due during each month of that year. However, such contribution or credit shall be disregarded and not treated as a reduction in rent for purposes of computing Consumer Price Index increases in annual base rent each year;

(f) by way of examples of the foregoing provisions if the Index were to increase by 5% per year as applicable under paragraph (b) above to the lease years beginning May 1, 2017 and May 1, 2018 and by 0% for the lease years beginning May 1, 2019 and May 1, 2020 and by 3% per year for the lease years beginning May 1, 2021, the annual base rent would be determined as follows:

(i) for the lease year beginning May 1, 2017, the annual base rent would be determined under this example by multiplying 1.03 (the 5% index increase being capped at a 3% increase in accordance with paragraph (d) above) times \$256,500 for a result of \$264,195, but then reducing the annual base rent for such year to the \$75,000 cap amount for that lease year as set forth in paragraph (c) above;

(ii) for the lease year beginning May 1, 2018 the annual base rent would be determined in this example by multiplying 1.03 (the 5% index increase being capped at a 3% increase in accordance with paragraph (d) above) times \$264,195 (determined for this example in clause (i) of this paragraph without regard to the cap set forth in paragraph (c)) for a result of

\$272,120.90, but then capping the annual base rent for such lease year at the \$80,000 cap amount for that year set forth in paragraph (c) above;

(iii) for the lease year beginning May 1, 2019, the annual base rent would be determined in this example by multiplying 1.00 (the zero % Index increase in this example) times \$272,120.90 (determined under (ii) of this example without regard to the cap for that lease year set forth in paragraph (c)) for a result of \$272,120.90 but then applying a minimum increase of 1% as set forth in paragraph (d), resulting in a base annual rental for such lease year of \$274,842.06, but then capping the base rent for such lease year at \$85,000 in accordance with paragraph (c) above;

(iv) for the lease year beginning May 1, 2020, the annual base rent would be determined in this example by multiplying the annual base rent of \$274,842.06 for the prior year (such amount being determined in this example but without regard to the caps set forth in paragraph (c)) times the zero percent increase in the Index for a result of \$274,842.06 for that lease year, but then increasing the prior year's amount by the 1% minimum set forth in paragraph (d) above resulting in an annual base rent in this example for the lease year beginning May 1, 2020 of \$277,590.48, but then applying the \$100,000 credit set forth in paragraph (e) above, resulting in an effective base annual rent for that year of \$177,590.48;

(v) for the lease year beginning May 1, 2021, the annual base rent would be determined in this example by multiplying the annual base rent of \$277,590.48 for the prior lease year (determined without regard to the adjustments under paragraphs (c) and (e)) by 1.03 increase in the Index resulting in a base annual rent for the lease year beginning May 1, 2021 of \$285,918.19.

"Proposal" as used herein, and wherever appearing in the Lease Agreement, shall no longer include, as part of the facilities to be developed, the restaurant and other leasable space for support operations contained in the original Proposal, and Lessee shall not be obligated to construct and develop a restaurant and other leasable space; all references in the text or financial proposals related thereto shall be deleted. The Proposal shall also be modified to specify that the further amount which Lessee must invest through financing arrangements, as of the date of the February 18, 1982 lease amendment, is One Hundred Fifty Thousand Dollars (\$150,000.00) for construction and/or renovation of the sales and service building. The words "plans and specifications" as used herein, and wherever appearing in the Lease Agreement, shall now not include a restaurant and other lease space, but shall be supplemented by and include the additional plans attached hereto for the sales and service building and for landscaping. The landscaping improvements shall be completed by the dates shown on said plan.

The Lessee shall have permission to construct and operate up to 300 slips, provided that the slips must remain within the boundaries shown on the plan attached hereto as Exhibit A. As used herein, and wherever appearing in the Lease Agreement, the term "slip" shall be defined as a spot or location on a dock or float which accommodates one boat.

Lessee is permitted as its own expense to remove the tire breakwater currently existing at the site and replace it with a floating concrete breakwater as set forth on the plan attached hereto as

Exhibit A. Lessee agrees to defend, indemnify and hold Lessor harmless from and against all claims, suits, damages, costs, losses and expenses, including attorney's fees, in any manner directly or indirectly arising out of its removal of the tire breakwater and its construction of a floating concrete breakwater.

b. 1% of Lessee's gross sales excluding sales of boats through May 1, 2016 and 0% of Lessee's gross sales thereafter. Lessee's "gross sales" shall include gross income from the rental of restaurant and other facilities. This amount shall be payable ninety (90) days following the end of the calendar year.

c. Regardless of sales, Lessee shall pay a minimum total overall annual rent of Thirty Thousand Dollars (\$30,000.00) to Lessor through May 1, 2016, and the amounts set forth in Section (1)(a)(4) thereafter.

d. In addition, Lessee shall provide to Lessor, during the terms of this Lease, a suitable slip, at least twenty-four (24) feet in length. Lessor shall provide the boat, the crew for such boat and all costs of operation, maintenance and insurance. At the end of each season during the term of this Lease, Lessee, at its expense, shall haul, winterize, bottom wash, store and shrink wrap such boat and in the following spring shall prepare the boat for use that season and launch the boat. The crew of such boat shall not be considered employees of Lessee for any purpose.

e. In addition to the annual base rental and percentage rent specified above, Lessee shall pay to Lessor, as "additional rent", throughout the term of this Lease and any renewal or extension thereof at the times and in the manner set forth in this paragraph (e), without any offset, abatements, deduction or set off: (i) all Expenses, as hereinafter defined, and (ii) all other costs, charges, amounts and expenses that Lessee is obligated to pay to Lessor under this Lease. In the event of nonpayment of such additional rent, Lessor shall have all the rights and remedies with respect thereto as provided for in this Lease in case of nonpayment of annual base rental.

To the extent feasible, Lessee shall incur and pay all Expenses directly, and Lessor shall not perform any services or improvements to the premises. However, if Lessor incurs any Expenses, Lessee shall reimburse Lessor for such Expenses within 30 days from the date of billing of such Expenses to Lessee. Expenses shall mean the total costs and expenses incurred or paid by or on behalf of Lessor relating to the operation, repair, management, ownership and maintenance of and the provision of services to the premises, including all costs and expenses incurred in operating, maintaining, repairing and/or replacing all or any part of the premises (and any installations thereon, thereunder or thereover) which, in the judgment of Lessor, are consistent with principles of sound real estate management of similar buildings and properties, including but not limited to, all costs and expenses of: cleaning, mowing, trimming, replanting and maintaining the lawns and landscaping within the premises; all of Lessor's insurance relating to the premises, including, but not limited to, fire and casualty and extended coverage, bodily injury, public liability, property damage liability, automobile parking lot liability, workmen's compensation, and any other insurance carried by Lessor with respect to the premises or any part thereof; all costs for repairs, maintenance and replacement of the building, its equipment, facilities, systems (including HVAC, electrical and plumbing), roof, walls, signs, lighting, parking areas, roads and grounds; all costs of garbage disposal and sanitary control, removal of snow and ice, trash, rubbish, garbage and other refuse; repair, maintenance and/or

replacement of utility lines and facilities, water lines, pumps and facilities, electrical lines, gas lines, sanitary sewer lines, pumps and facilities and storm water lines; all electrical, water, sewer or other utility charges for serving the premises; all personnel to implement such services, including wages and salaries (including employee benefits) of any personnel; all personal property taxes and sales and use taxes on material, equipment, supplies and services; management fees; fees for required licenses and permits; costs of fire, security and police protection; and supplies, materials and labor in connection with the operation, repair, management, ownership and maintenance of and the provision of services to the premises. If any of such Expenses of the operations, repair, management, ownership and maintenance of and the provision of services to the premises are shared with other lots or buildings (including, without limitation, costs of the maintenance, repair and replacement of roadways, landscaping, signs, lighting, sanitary control, snow removal, utilities, and other common facilities or areas, sewer, water, drainage, electrical, gas lines and facilities, water, sewer or other utility charges for serving the premises and the common facilities and the cost of personnel to provide such services), Lessor may make a reasonable allocation of such shared expenses to the Lessee and the amount so allocated shall be deemed to be part of the Expenses for purposes of this Lease. Expenses shall also include any capital improvements to the premises.

2. With each payment of the percentage rent provided under paragraph 1(b) above, Lessee shall submit to Lessor, to the attention of the Lessor's Finance Director, a report of the gross income for the year covered by such payment, such report to be prepared in accordance with generally accepted accounting principles and certified by a Certified Public Accountant. All taxes, local state or federal, separately stated or invoiced to customers, received by Lessee shall not be considered to be gross income for this purpose.

3. In the event Lessor questions any such report of gross income certified by such Certified Public Accountant, and if the question cannot be resolved and settled by mutual agreement of the parties, Lessor may require a second audit and certification by such Certified Public Accountant or by any other Certified Public Accountant selected by Lessor, and if such audit confirms the report first made by Lessee's Certified Public Accountant, Lessor shall pay the cost of such additional audit. If such additional audit discloses a greater amount of gross income than the amount originally certified by Lessee's Certified Public Accountant, and if the discrepancy cannot be resolved and settled by mutual agreement of the parties, then Lessor's accountant and Lessee's accountant shall select a third independent Certified Public Accountant (not serving either Lessor or Lessee in any manner directly or indirectly), and such three (3) accountants shall by majority decision make a final certification of gross income. If such final certification discloses a greater gross income than was first certified by Lessee's accountant, Lessee shall promptly pay the additional percentage rent arising on such final report and all costs of the audits made. Otherwise, Lessor shall bear all the cost of the audits additional to the report first made, and Lessee may withhold from the rent thereafter payable the amount of such additional accounting expense and pay the same from the rent so withheld.

C. Scope of Lease: A basic marina facility will be constructed by Lessor with Land & Water Conservation Fund (L&WCF) funds in accordance with Heritage Conservation & Recreation Service (HCRS) regulations. Additional marina facilities will be constructed by Lessee. All construction by both Lessor and Lessee shall be in accordance with plans and specifications agreed upon between the parties and attached to this Lease. Any material deviations from the provisions of said plans and specifications will require the prior written approval of Lessor. Development will commence

according to Article Three B, Development Calendar, of this Lease. The terms of the Grant Agreement between Lessor and the State of Maine are hereby incorporated by reference and the terms of this Lease are made subject to the terms of such Grant Agreement.

E. Taxes: Any and all taxes which lawfully may be imposed by the federal government, by the state or by any political subdivision thereof, upon the property or business of Lessee on the leased premises shall be paid promptly as due by Lessee. The parties acknowledge that the Lessor may determine that the Lessee's leasehold interest in the leased premises is taxable by Lessor. Rental payable from Lessee to Lessor under Article Two-B of this Lease shall be reduced by the amount of any real estate taxes paid to Lessor on account of Lessee's leasehold interest. Lessee shall pay all personal property taxes on its personal property and shall file with the Assessor of the City of South Portland fully completed and executed Personal Property Declaration on such form specified by the City Assessor with a true and perfect inventory list of all personal property which was in the possession of the Lessee or any affiliated entity located on the premises as of April 1st of each year during the term of this Lease. The deadline to file a personal property declaration and list is April 26 of each year.

F. Liens: In the event Lessor or its Agents, without contributing cause or fault on their part, become involved, through or on account of the occupancy of the leased premises by Lessee or the conduct of Lessee's business upon said leased premises, in any controversy or litigation with third persons or parties, Lessee shall, upon notice from Lessor or its Agents, immediately do whatever is reasonable and feasible without prejudice to Lessee's rights and interests to remove Lessor's connection with, or liability under such controversy or litigation. If such controversy or litigation throws any cloud or encumbrance upon the leased real estate; and if Lessee reasonably believes it has a good and valid defense or claim in such controversy or litigation which Lessee desires to set up and maintain by and throughout court procedure and litigation, Lessee shall have the right to do so. In the event of such contest by Lessee, Lessee shall immediately pay and discharge any and all final judgments, liens, costs, damages, expenses and obligations of Lessor whatsoever, in, or arising out of the controversy or litigation involving Lessor or its agents, including all costs, expenses and attorney's fees incurred by Lessor or its agents in protecting their interest or defending themselves in such controversy or litigation. So long as Lessee is in good faith and by competent legal counsel actively defending the rights and interests of Lessor in any such controversy or litigation, Lessee shall not be liable for any expense of separate legal counsel representing Lessor.

Lessee shall pay promptly when due the entire cost of any work to the premises undertaken by Lessee so that the premises shall, at all times, be free of liens for labor and materials and upon request by Lessor to provide sufficient bonds or other sureties against such liens; and Lessee shall procure all necessary permits before undertaking such work; and do all of such work in a good and workmanlike manner, employing material of good quality and complying with all governmental requirements; and Lessee shall maintain such insurance as will protect it from claims under Workmen's Compensation Acts and other employee benefit acts and as will protect Lessor and Lessee from claims for damages because of bodily injury, including death, and from claims for damages to property, which may arise out of or in connection with such work whether performed by Lessee or by Lessee's contractors or subcontractors or anyone directly or indirectly employed by any of them; and Lessee shall defend

Lessor and save Lessor harmless and indemnified from all injury, loss, liability claims or damage to any person or property occasioned by or arising out of such work.

Lessee covenants and agrees that if any mechanics' lien or claim or other lien of any kind whatsoever shall be filed or maintained against the premises or other property of Lessor by any contractor, subcontractor, materialman or laborer of Lessee or Lessee's contractor or subcontractors for work done or materials furnished in connection with the Lessee's Work or any other work by Lessee or any contractor, subcontractor, materialman or laborer of Lessee or Lessee's contractor or subcontractors, Lessee shall, within thirty (30) days after the filing of such claim or lien, or sooner if required to prevent a default in any mortgage or other agreement affecting the premises, either (1) pursuant to any applicable statute, bond against the same and remove such claim or lien of record, or (2) furnish a waiver and release from the party originating such claim or lien as to Lessor's property and the premises. If Lessee fails to discharge any claim or lien, Lessor shall have the right to discharge any such claim or lien by payment or otherwise, and Lessee shall reimburse Lessor therefore and for all costs and expenses as additional rent. Lessee further agrees that all contractors, subcontractors, materialmen and laborers performing such work or providing such labor and materials furnished and work done for Lessee will be paid by Lessee so that there shall not be any legal or lawful claim of any kind whatsoever against Lessor for any work done or labor or materials furnished in connection with the Lessee's improvements or repairs to the premises.

G. Insurance: Lessee shall carry Workers' Compensation and such other insurance against losses by fire, public liability, employee liability and other hazards as is customary among prudent operators of similar businesses which insurance shall cover the entire marina.

All such policies shall be so issued that they will inure to the benefit of Lessee and Lessor, as their interests may appear, and shall be issued by a company or companies licensed to do business in the State of Maine, provided if Lessee is not then in default under this Lease (beyond any applicable cure period) that all insurance proceeds paid for damage to property of Lessee shall be made available to Lessee under customary construction loan procedures of commercial lenders in Cumberland County, Maine and applied, Lessor will agree to the use of insurance proceeds for reconstruction or repair of the premises, under customary construction loan procedures of commercial lenders in Cumberland County, Maine, by Lessee to the repair, replacement or restoration of the damaged property, except as otherwise provided in Paragraph O of this Article Two, or otherwise mutually agreed to by Lessor and Lessee.

Without limitation of the foregoing, Lessee, at its expense, shall procure and maintain for the benefit of Lessee and Lessor, insurance policies issued by such insurance companies, in such amounts, in such form and substance, and with such coverages, endorsements, deductibles, and expiration dates as are acceptable to Lessor, providing the following types of insurance covering the Property:

(i) "All Risks" property insurance (including broad form flood (for the restaurant only) and comprehensive boiler and machinery coverages) on the buildings and improvements located on the premises and the personal property located on or used in connection with the operation of the premises in an amount not less than ninety percent (90%) of the full replacement cost of the buildings and improvements and the personal property, with deductibles not to exceed ten thousand dollars (\$10,000) for any one occurrence, with a replacement cost coverage endorsement, and, if requested

by Lessor, a contingent liability from operation of building laws endorsement, a demolition cost endorsement and an increased cost of construction endorsement in such amounts as Lessor may require. Full replacement cost as used herein means the cost of replacing the buildings and improvements (exclusive of the cost of excavations, foundations, and footings below the lowest basement floor) and the personal property without deduction for physical depreciation thereof;

(ii) During the course of reconstruction or significant repair of any buildings or improvements on the premises, the insurance required by clause (i) above shall be written on a builders risk, completed value, non-reporting form, meeting all of the terms required by clause (i) above, covering the total value of work performed, materials, equipment, machinery, and supplies furnished, existing structures, and temporary structures being erected on or near the land, including coverage against collapse and damage during transit or while being stored off-site, and containing a soft costs (including loss of rents) coverage endorsement and a permission to occupy endorsement;

(iii) If any portion of the buildings or improvements is at any time located in any federally designated "special hazard area" (including any area having special flood, mudslide, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or a Flood Insurance Rate Map) and the broad form flood coverage required by clause (i) above is not available, in an amount equal to the full replacement cost or the maximum amount then available under the Maine Flood Insurance Program for such portion of the Improvements;

(iv) Business interruption insurance in an amount sufficient to recover at least the total estimated gross receipts from the rental of slips and the rental of the restaurant, if a tenant is in possession thereof, for a twelve (12) month period;

(v) Commercial general liability insurance against claims for personal injury (to include, without limitation, bodily injury and personal and advertising injury) and property damage liability, all on an occurrence basis, if available, with such coverages as Lessor may request (including, without limitation, contractual liability coverage, completed operations coverage for a period of two (2) years following completion of construction of any buildings or improvements on the premises, and coverages equivalent to an ISO broad form endorsement), with a general aggregate limit of not less than two million dollars (\$2,000,000), a completed operations aggregate limit of not less than two million dollars (\$2,000,000), and a combined single "per occurrence" limit of not less than one million dollars (\$1,000,000) for bodily injury, property damage, and medical payments;

(vi) During the course of construction or repair of any buildings or improvements on the premises, owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the insurance required by clause (v) above;

(vii) Employers liability insurance;

(viii) Umbrella liability insurance with limits of not less than Three Million Dollars (\$3,000,000) to be in excess of the limits of the insurance required by clauses (v), (vi) and (vii) above, with coverage at least as broad as the primary coverages of the insurance required by clauses (v), (vi) and (vii) above, with any excess liability insurance to be at least as broad as the coverages of the lead umbrella policy. All such policies shall be endorsed to provide defense coverage obligations;

(ix) Workmen's compensation insurance for all employees of Lessee engaged on or with respect to the premises; and

(x) Such other insurance in such form and in such amounts as may from time to time be required by Lessor against other insurable hazards and casualties which at the time are commonly insured against in the case of properties of similar character and location to the premises.

Lessee shall pay all premiums on insurance policies, and at Lessor's option upon a default hereunder not cured within any applicable grace period, shall pay in the manner provided in this Lease. The insurance policies provided for in clauses (v), (vi), (vii), (viii) and (ix) above shall name Lessor as an additional insured. The insurance policies provided for in clauses (i), (ii), (iii) and (iv) above shall name Lessor as additional insured and loss payee, shall be first payable in case of loss to Lessor, and shall contain loss payable endorsements in form and substance acceptable to Lessor, provided further however that the proceeds of any business interruption insurance shall be payable solely to Lessee and not to Lessor. Lessee shall deliver duplicate originals or certified copies of all such policies to Lessor, and Lessee shall promptly furnish to Lessor all renewal notices and all receipts of paid premiums. At least thirty (30) days prior to the expiration date of the policies, Lessee shall deliver to Lessor duplicate originals or certified copies of renewal policies in form satisfactory to Lessor.

All policies of insurance required by this Lease shall contain clauses or endorsements to the effect that (i) no act or omission of either Lessee or anyone acting for Lessee (including, without limitation, any representations made by Lessee in the procurement of such insurance), which might otherwise result in a forfeiture of such insurance or any part thereof, no occupancy or use of the premises for purposes more hazardous than permitted by the terms of the policy, and no change in title to the premises or any part thereof, shall affect the validity or enforceability of such insurance insofar as Lessor is concerned, (ii) the insurer waives any right of setoff, counterclaim, subrogation, or any deduction in respect of any liability of Lessee and Lessor, (iii) such insurance is primary and without right of contribution from any other insurance which may be available, (iv) such policies shall not be modified, canceled, or terminated without the insurer thereunder giving at least ten (10) days prior written notice to Lessor by certified or registered mail, and (v) that Lessor shall not be liable for any premiums thereon or subject to any assessments thereunder, and shall in all events be in amounts sufficient to avoid any coinsurance liability.

In no event shall the limits of said policies be considered as limiting the liability of Lessee under this Lease.

With the prior consent of Lessor not to be unreasonably withheld, the insurance required by this Lease may be effected through a blanket policy or policies covering additional locations and property of Lessee not included in the premises, provided that such blanket policy or policies comply with all of the terms and provisions of this Section and contain endorsements or clauses assuring that any claim recovery will not be less than that which a separate policy would provide, including, without limitation, a priority claim endorsement in the case of property insurance and an aggregate limits of insurance per location endorsement in the case of liability insurance.

All policies of insurance required by this Lease shall be issued by companies licensed to do business in the state where the policy is issued and also in the State of Maine and having a rating in Best's Key Rating Guide of at least "A" Excellent Class X.

Lessee shall not carry separate insurance, concurrent in kind or form or contributing in the event of loss, with any insurance required under this Lease unless such insurance complies with the terms and provisions of this Section.

In the event of any loss or damage to the premises, Lessee shall give immediate written notice to the insurance carrier and Lessor. Lessee hereby irrevocably authorizes and empowers Lessor, at Lessor's option and in Lessor's sole discretion upon a default hereunder not cured within any applicable grace period, as attorney in fact for Lessee, to make proof of such loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lessor's expenses incurred in the collection of such proceeds.

H. Indemnity: Lessee shall indemnify, defend and hold Lessor harmless from and against all injury (including death) to any person or loss of or damage to any property while on the premises or arising (directly or indirectly) out of or in connection with the possession, use, occupation or control of the premises, and from and against all injury (including death) to any person or loss of or damage to any property anywhere occasioned, or claimed to have been occasioned, by any act, neglect or default under this Lease of Lessee, its agents, employees, licensees or contractors. This hold harmless and indemnity agreement shall include indemnity against all costs, expenses and liabilities incurred in connection with any such injury, loss or damage or in defense of any claim or claims on account thereof.

I. Title to Property: Title to the real property constituting the leased premises, including any and all buildings, structures and improvements added by the Lessee which may be so permanently affixed to such real estate as to make removable by Lessee and repair of any damage caused by such removal unreasonable, is vested in Lessor, except to the extent title to such premises is in the State of Maine and leased by Lessor.

J. Lessee's Tangible Personal Property: All property placed on the Lease area by Lessee, including replacements, except replacements of property purchased or constructed with HCRS funds, shall for all purposes of this Lease be deemed to be tangible personal property belonging to the Lessee, except land structures or improvements so affixed to the real estate as to make removal by Lessee and repair of any damage caused by such removal unreasonable. Replacements by Lessee of property initially purchased or constructed with HCRS funds shall be considered as part of Lessee's "Possessory Interest", to the extent hereinafter provided, for all purposes of this Lease, and Lessee shall have no right to remove such property. Upon removal of any of Lessee's tangible property, Lessee shall be responsible for any damage to the leased premises caused by such removal.

K. Maintenance, Repair and Alterations; Compliance with Laws: During the term of this Lease it shall be the responsibility of Lessee to keep the properties in good condition at all times and to make, at Lessee's expense, repairs, replacements, and alterations as needed according to good business

practices, including a complete annual inspection of all the properties. Lessor shall have the right to inspect the property at all reasonable hours upon notice to Lessee.

If in the opinion of Lessor, Lessee fails to comply with the terms of this Agreement relating to the maintenance, repair, replacement, etc. of the properties, then Lessor shall so notify Lessee in writing setting forth the cause of Complaint, and Lessee shall thereupon take prompt action to correct such cause of complaint. If Lessee does not agree with Lessor as to the need for such requested repair, replacement or alteration, a meeting shall then be arranged by the authorized representative of the Lessee with the authorized representative of the Lessor within fifteen (15) days of the written notice from Lessor to discuss such complaint. If agreement is not reached at such meeting, the matter shall be submitted to arbitration as hereinafter provided.

Lessee, at its own cost and expense, shall keep and maintain the premises in as good order, repair, and condition, ordinary wear and tear excepted, as the premises existed at the commencement date of this Lease and as will exist upon completion of any improvements by Lessee, and will make any necessary repairs and replacements. Lessee shall make all repairs and replacements whether ordinary, extraordinary, foreseen or unforeseen, which may be required by any laws or ordinances.

Lessee shall not make any alterations, installations, repairs, improvements, replacements or additions in, to or about any part of the premises with a cost greater than \$50,000.00, without the prior written consent of Lessor and the prior written approval of the plans and specifications therefor, which consent will not be unreasonably withheld. Lessee may make such alterations and improvements to the premises only if it has first submitted plans of the said work to Lessor and obtained the consent thereto of Lessor in writing. Lessee agrees that all such alterations, and improvements shall be made in a good and workmanlike manner in accordance with the plans and specifications approved by Lessor and in accordance with all applicable building codes and land use and zoning ordinances, and that any such work undertaken by Lessee shall be diligently prosecuted to completion. Lessee shall promptly make all repairs to the premises, or the building, occasioned by any such alterations, or improvements.

Lessor shall have no obligation to make any improvements, repairs, maintenance or alterations to the premises, and all improvements and alterations which shall be necessary for use and occupancy by Lessee shall be performed by Lessee. Lessee shall install its trade fixtures, furniture, equipment and other personal property and shall construct its Leasehold improvements and any other changes and modifications in and on the premises, at Lessee's sole cost and expense, in accordance with plans and specifications approved in advance by Lessor. Notwithstanding any review or approval by Lessor of Lessee's working drawings and specifications, or any changes therein required by Lessor, Lessee shall have full responsibility for all defects in design, construction, workmanship and materials with respect to the such improvements. All of such improvements shall be diligently and promptly completed in a good and workmanlike manner and in full compliance with all applicable governmental laws, rules, regulations, ordinances, permits and approvals at Lessee's sole cost and expense and in accordance with the plans approved by Lessor.

Lessee shall promptly comply with all laws, ordinances, rules and regulations of governmental authorities (including but not limited to zoning ordinances and building codes) affecting the premises by reason of Lessee's business or for any other reason, including but not limited to, the making of

installments, repairs and alterations, whether structural or non-structural, foreseen or unforeseen, that are necessitated by any such laws, ordinances, rules and regulations.

Lessee further agrees, without limitation of its obligations under the foregoing provisions, to comply with all ordinances of the City of South Portland relating to stormwater management relating to the premises, including compliance with the provisions of Section 27-1536 of the City's Code of Ordinances, as may be amended from time to time. Lessee agrees to enter into and comply with a Stormwater Management System Maintenance Agreement with the City in the usual form as required by the City, and Lessee agrees that the City as Lessor shall have no obligations to maintain such stormwater management system relating to the premises.

L. Utilities: Lessor shall furnish adequate sewer and water service for the full utilization of the leased premises for restaurant, marina and related uses. Lessee shall pay for all utilities, including sewer user fees, water and electricity needed for the facility and customarily charged for City owned properties. Lessor is to bring such utilities up to the leased premises according to the plans and specifications attached.

M. Assignment or Sublease: Lessee may assign this Lease after obtaining the written approval of Lessor. Such written approval shall not be unreasonably withheld provided that the proposed lease assignee is of good reputation, and financially responsible and willing and able to comply in writing with all terms and conditions contained herein. Lessee may sublet the restaurant area after obtaining the written approval of Lessor which written approval shall not be unreasonably withheld, and providing the State of Maine, Department of Agriculture, Conservation and Forestry shall approve the design of the restaurant if required by the L&WCA and HCRS regulations. Lessee may sublet other areas without obtaining the written consent of Lessor. All assignments and subleases will incorporate and be subject to the terms of the Grant Agreement between the Lessor and the State of Maine.

In the event of any such assignment or subletting of the leased properties, Lessee shall remain entirely responsible for the fulfillment of all of the provisions of this Lease unless a transfer of such responsibility is specifically provided for in the assignment or subletting documents and is approved by Lessor in writing prior to said assignment or subletting. Such approval by the Lessor for the transfer of responsibility shall not be unreasonably withheld.

Lessee may mortgage, pledge or otherwise encumber the Lessee's leasehold interest under this Lease including Lessee's tangible personal property as defined in Paragraph J of this Article Two and Lessee's Possessory Interest as defined in Paragraph N of this Article Two, without consent of Lessor.

The parties acknowledge that Lessor is relying in part upon the personal qualifications of Robert C. Soucy, Jr., Michael J. Soucy and Marc Soucy, as the owner-operators of Lessee and of the marina facilities. Lessee agrees to obtain Lessor's prior written approval of any persons or entities who might replace Robert C. Soucy, Jr., Michael J. Soucy and Marc Soucy in the operation, management and control of Lessee, provided that any of such owners, upon written notice to Lessor but without the need to obtain the prior written consent of Lessor, may buy out the interest of any of the others as long as the remaining owners out of Robert C. Soucy, Jr., Michael J. Soucy and Marc

Soucy continue to own a majority of the shares in Lessee. Such approval shall not be unreasonably withheld provided such proposed persons or entities are of good reputation and financially responsible.

N. Possessory Interest: Lessee has an equity interest, (hereinafter referred to as a “Possessory Interest”), in this Lease to the extent of the current fair market value of all buildings, structures, and improvements added to the leased area by Lessee and so permanently affixed thereto as to make removal by Lessee and repair of any damage caused by such removal unreasonable. The current fair market value of Lessee’s Possessory Interest shall be deemed to be the current cost of reproduction less depreciation actually sustained, as determined for property loss settlement purposes under standard clauses of fire and extended coverage insurance policies approved by the Maine Department of Insurance, of the buildings, structures, and improvements to which such cost relates at the time of transfer of such Possessory Interest.

After completion of the initial construction as provided in paragraphs 2E and 3A hereof, improvements costing in excess of \$50,000 shall only be added to Lessee’s Possessory Interest if approved in writing by Lessor, which approval shall not be unreasonably withheld considering the value of such improvements to Lessor in the event Lessor were required to purchase Lessee’s Possessory Interest. Any improvements costing in excess of \$50,000 not approved in writing by Lessor within one year of the request for approval or construction of the improvements, whichever occurs first, shall be conclusively deemed not approved for purposes of this paragraph. Improvements at a cost of not in excess of \$100,000 may be approved in writing by the City Manager of Lessor; and any improvements at a cost in excess of \$100,000 may only be approved by the City Council of Lessor. Notwithstanding the foregoing, Lessor may withhold, in its sole discretion, its approval for purposes of this paragraph N if the improvements would create new buildings or expand the square footage of any existing building. Questions arising under this paragraph may be submitted to arbitration as hereinafter provided. Lessor agrees that all improvements through May 31, 2016 have been approved by Lessor.

O. Destruction By Fire or Other Hazard: In the event of the total destruction of the properties or damage to or destruction of a portion thereof so substantial that the remainder is not economically operable for the purposes herein contemplated, by fire, windstorm, or other hazard, operation of the properties shall be suspended until the portions thereof so destroyed or damaged are rebuilt, repaired, or replaced. Such rebuilding, repairing, or replacement hereafter collectively called “restoration”, shall be done by Lessee at its expense, provided that Lessee chooses to do such restoration in order to continue operations under the Lease. Lessee’s liability hereunder shall be limited to the amount of insurance proceeds payable to it. Lessor shall make the proceeds of any insurance payable to Lessor as a result of such casualty available for use by Lessee in such restoration. In the event Lessee should choose not to do such restoration, this Lease shall be terminated according to Paragraphs P, Q and R of this Article Two.

In the event such damage or destruction is less substantial so that the remainder of the properties are economically operable, operation shall continue to the extent practical while restoration is under way, and during the period between such destruction and completion of such restoration to the point where properties are fully available for operation, the amount of the Annual Rental shall be abated in such proportion as will be fair and equitable under the circumstances while restoration is being prosecuted diligently to completion. In the event of complete destruction of the property and

suspension of the operation thereof during the period of restoration, no payments shall be made by Lessee for the period of complete suspension of operations.

In the event that the premises shall be destroyed or damaged as aforesaid and such destruction or damage shall not be fully repaired and rebuilt within one year or such longer period as is reasonably practical with reasonable diligence in the circumstances, this Lease may be determined and ended at the election of Lessor or Lessee provided that notice in writing of such election shall be sent by the part so electing. Upon termination as aforesaid, this Lease and the term thereof shall cease and come to an end, and the parties shall have no further rights or obligations under this Lease except that (a) Lessee shall be obligated to clean up any debris resulting from such damage or destruction and to leave the leased premises in a clean and orderly condition, and (b) Lessor shall be obligated to pay Lessee the amount due for the Lessee's Possessory Interest as determined in accordance with paragraph N above, provided, however, that the payment from Lessor to Lessee for such Possessory Interest shall not exceed the amount of casualty insurance proceeds actually received by Lessor in connection with such damage and destruction, and provided, further that the amounts due under this clause (b) of the sentence shall not be due and payable until Lessee has complied with its obligations under clause (a) of this sentence.

P. Waiver of Breach: No assent, express or implied, and without regard to length of time, by Lessor to any breach in or default of any agreement or condition herein contained on the part of the Lessee to be observed, shall constitute a waiver of any of Lessor's right hereunder.

Q. Lessee's Default: If Lessee shall (a) fail to make any payment becoming due under this Lease to the Lessor and if such payment shall not be made within fifteen (15) days after written notice designating such failure from Lessor to Lessee, or (b) abandon or vacate the properties or discontinue the conduct of business thereon, or (c) if default shall be made by Lessee in the performance or compliance with any of the agreements, terms, covenants or conditions in this Lease provided, other than those referred to in the foregoing subparagraph (a), and such default shall continue for a period of thirty (30) days after written notice from Lessor to Lessee specifying the items in default, or in case of a default or contingency which cannot with due diligence be cured within said thirty (30) day period to commence to cure the same and thereafter to prosecute the curing of such default with due diligence and within a period of time which under all prevailing circumstances, shall be reasonable, but in any event within 120 days after the date of such notice of default, then Lessor may declare such default and proceed to terminate this Lease according to the Process for Advanced Termination as set forth in Paragraph R of this Article Two.

R. Advanced Termination Process: In any case of any substantial default by the Lessee in providing the facilities, services and rent required under this Lease or in the event of any default specified in Section Q above, the Lessor may terminate this Lease by the following procedure:

1. Lessor shall give to Lessee written notice specifying the particulars of the alleged default and of Lessor's compliance with the notification process set forth in the foregoing Paragraph Q of this Article Two.
2. Not less than ten (10) days nor more than thirty (30) days after receipt by Lessee of such notice, Lessor shall grant to Lessee an opportunity to be heard upon the charges.

3. Following such opportunity to be heard, Lessor shall have power to determine whether there has been such default.

4. If Lessor shall decide that there has been such a default, it shall give to Lessee written notice of such decision specifying the particulars thereof.

5. If Lessee fails or refuses to remedy such default within the periods set forth in Section Q hereof, and Lessee and Lessor cannot so agree that termination of this Lease is in order so far as the alleged default is concerned, then either or both parties may refer the question to arbitration as hereinafter provided.

Upon any such expiration or termination of this Lease, Lessee shall quit and peacefully surrender the premises to Lessor, and Lessor, upon or at any such expiration or termination, may without further notice, enter upon and reenter the premises and possess and repossess itself thereof, by force, summary proceedings or otherwise, and may dispossess Lessee and remove Lessee and all other persons and property from the premises without being liable to prosecution therefore, and may have, hold and enjoy the premises and the rights to receive all rental income of and from the same.

In the event of termination of this Lease as provided herein, Lessee shall not be released or discharged but shall remain and continue liable to Lessor in a sum equal to all annual base rental, percentage rent, additional rent and other charges then due and shall be liable for all damages provided for hereunder and all costs, and reasonable attorney's fees incurred by Lessor as a result of Lessee's default. In the event of termination of this Lease as a result of a default by Lessee, Lessor, in addition to all other rights and remedies hereunder, Lessor may repair or alter the premises as reasonably necessary to render them in tenantable condition; and may lease or release the premises or any portion thereof for the whole or the remainder of the term or for a longer period in Lessor's name or as agent for Lessee. In addition, if this Lease is terminated under the provisions hereof or in the event of the termination of this Lease, or of re-entry, by or under any summary dispossession or other proceeding or action or any provision of law by reasons of default hereunder on the part of Lessee, Lessee shall pay to Lessor as damages, at the election of Lessor, either

(i) a sum which at the time of such termination of this Lease or at the time of any such re-entry by Lessor, if any, of (1) the aggregate of the annual base rental, percentage rent and the additional rent payable hereunder which would have been payable by Lessee (conclusively presuming the percentage rent and additional rent to be the same as was payable either for the Lease Year preceding or the Lease Year immediately following such termination) for the period commencing with such earlier termination of this Lease or the date of any such re-entry, as the case may be, and ending with the expiration date, had this Lease not so terminated or had Lessor not so re-entered the premises, over (2) the aggregate rental value of the premises for the same period after considering reasonable projections of vacancy rates and costs of leasing and making the premises acceptable to new Lessees, or

(ii) sums equal to the annual base rental, and percentage rent and the additional rent (as above presumed) payable hereunder which would have been payable by Lessee had this Lease not so terminated, or had Lessor not so re-entered the premises payable upon the due

date therefor specified herein following such termination or such re-entry and until the expiration date; provided, however, that if Lessor shall re-let the premises during said period, Lessor shall credit Lessee with the net rents received by Lessor from such reletting, such net rents to be determined by first deducting from the gross rents as and when received by Lessor from such reletting, the expenses incurred or paid by Lessor in terminating this Lease or in re-entering the premises and in securing possession thereof, including reasonable attorneys' fees, as well as the expenses of re-letting.

Lessee also agrees to pay on demand in addition to all annual base rental, percentage rent and additional rent, hereunder (or in the event of termination of this Lease, then in addition to damages set forth above, all of Lessor expenses including reasonable attorney's fees incurred in enforcing any of the obligations of Lessee under this Lease, or in evicting Lessee or in collecting any amount due hereunder or in exercising any rights or remedy under this Lease or in Lessor consenting to any action or Lessee for which the Lease requires Lessor's consent; and (b) a late charge at the rate of one and one half percent (1-1/2%) per month on all amounts of annual base rental, percentage rent, additional rent and/or damages and other charges not paid when due hereunder, and (c) all expenses arising out of any termination of this Lease, and all expenses Lessor in attempting to release the premises or parts thereof including advertising, attorneys and brokerage fees, and cleaning and repair expenses.

(d) If Lessee shall default in the performance or observance of any agreement, condition or other provision in this Lease contained on its part to be performed or observed, and shall not cure such default within fifteen (15) days after notice in writing from Lessor specifying the default (or shall not within said period commence to cure such default and thereafter prosecute the curing of such default to completion with due diligence), Lessor may, at its option, without waiving any claims for default, at any time thereafter cure such default for the account of Lessee and Lessee shall reimburse Lessor for any amount paid and any expense or contractual liability so incurred, and any amounts due hereunder from Lessee shall be deemed additional rent due and payable with the next installments of annual base rental; provided, however, that Lessor may cure any such default as aforesaid prior to the expiration of said waiting period but after notice to Lessee, if it is necessary to protect the real estate or its interest therein, or to prevent injury or damage to persons or property.

(e) The rights and remedies given to Lessor in this Lease are distinct, separate, and cumulative remedies. The existence of these remedies shall not be deemed to be in exclusion of any other remedies provided at law or in equity. Exercise of any one such remedy shall not be deemed a waiver of such other remedies as may be available. The receipt of rent or other monies by Lessor from Lessee shall not be deemed a waiver of any default by Lessee. The receipt of annual base rental, additional rent or other monies by Lessor from Lessee after termination of this Lease shall not be deemed to reinstate, continue, or extend the terms of this Lease or to affect any notice previously provided Lessee or to operate as a waiver of Lessor's right to recover possession of the premises.

Lessor shall in no event be in default in the performance of any of its obligations hereunder unless and until Lessor shall have failed to perform such obligations within one hundred twenty (120) days or such additional time as is reasonably required to correct any such default after written notice

by Lessee to Lessor properly specifying wherein Lessor has failed to perform any such obligation. Lessee agrees that Lessor shall not be liable to Lessee or anyone claiming under Lessee for any damage to property or injury (including death) to any person on or near the premises that has been occasioned by or through (i) the acts or omissions of other Lessees (or those claiming under such Lessees) in the premises; (ii) failure of the water supply or of any other utility serving the premises; (iii) the action, whether direct or indirect, of the elements; or (iv) any other cause whatsoever unless the same shall be caused by or result from the affirmative acts of negligence of Lessor, and in any such cases, liable of Lessor shall be limited as set forth in applicable Maine law.

S. Termination or Expiration of Lease: If for any reason or reasons, this Lease shall be terminated or expire, and a successor to Lessee is designated by Lessor, Lessor shall require such successor, whether a private party or an agency of government, as a condition to the granting of a lease or any other agreement to operate, (a) to purchase Lessee's Possessory Interest by paying to Lessee the current fair market value of said Possessory Interest as set forth in Paragraph N of this Article Two, and (b) at Lessee's election, to purchase Lessee's tangible personal property, used or held and considered necessary for use in connection with the operation of the leased premises, by paying Lessee the current fair market value of said tangible personal property as defined in Paragraph J of this Article Two. Tangible personal property shall be valued at replacement costs, less depreciation. The parties recognize that upon the expiration of the Lease, Lessor may elect not to designate a successor to operate the leased premises as a marina, but may elect to use the facilities for some other purpose. The parties recognize that Lessee needs advance notice of such election of the Lessor in order to make investment decisions relative to the marina. Accordingly, Lessor will provide Lessee with notice ten (10) years in advance of the expiration of the term of the Lease and of its decision not to appoint a successor marina operator upon the expiration of the Lease. If Lessor fails to give such notice, upon expiration Lessor shall do one of three things: (1) appoint a successor marina operator subject to the conditions hereunder requiring payments to Lessee for its Possessory Interest and tangible personal property; (2) make the payments to Lessee required hereunder as if a successor had been selected; and 3) if both Lessor and Lessee so elect, negotiate an extended term with Lessee. Payment due to Lessee from such successor or Lessor shall be due within six (6) months of such expiration of the Lease. If this Lease is terminated other than by expiration of a term, such as by advanced termination for Lessee's default, then Lessor shall have six (6) months from such termination to appoint a successor marina operator subject to the conditions hereunder requiring payments to Lessee for its Possessory Interest and tangible personal property. If Lessor is unable to appoint a successor marina operator subject to such conditions, within such time, Lessee shall have an additional six (6) months to appoint a successor marina operator subject to such conditions. If neither Lessor nor Lessee are successful in appointing a successor marina operator within one year of such termination, then Lessor shall not be obligated to pay Lessee on account of Lessee's tangible personal property and Lessor's payment to Lessee on account of Lessee's Possessory Interest shall be limited to the fair market value to Lessor of the property comprising the Possessory Interest taking into consideration only actual potential uses of such property by Lessor, which uses may or may not include further uses as a marina, provided, however, that Lessor shall have no obligation to pay Lessee for its Possessory Interest if a termination occurs prior to Lessee having obtained permanent financing for carrying out its obligations for initial construction as provided in Paragraphs 2C and 3A hereof.

If Lessor and Lessee cannot agree upon payments to Lessee hereunder, such questions shall be submitted to arbitration as hereinafter provided.

T. Payment of Possessory Interest: Payment of the compensation provided for in the foregoing section for Lessee's Possessory Interest will terminate Lessee's Possessory Interest in the buildings, structures, and improvements added to the leased area by Lessee and will constitute just compensation for the termination or taking of such Possessory Interest. If Lessee and the proposed purchaser of Lessee's Possessory Interest cannot agree upon the current fair market value of any item or items, the fair market value thereof shall be submitted to arbitration as hereinafter provided.

U. Surrender at Termination or Expiration: Upon the termination or expiration of this Lease, Lessee agrees to return to Lessor all and singular the properties belonging to the Lessor, including Federally-funded facilities, (such as land structures or improvements thereon becoming part of the real estate constituting the Leased premises), including all replacements thereof and additions thereto made after commencement of this Lease, in good order of repair and condition, reasonable wear and tear excepted, and also except in the event of the total or substantial destruction of the properties and the election of Lessee not to restore.

Tangible personal property of Lessee shall be removed from the leased premises within ninety (90) days after the termination or expiration of this Lease provided that all payments due from Lessee to Lessor have been paid in full. Any tangible personal property of Lessee not removed within said period shall become and remain in the property of Lessor.

ARTICLE THREE **Facility Development**

A. Plans and Specifications: As hereinbefore set forth, a basic marina facility will be constructed by Lessor with HCRS funds in accordance with HCRS regulations. Additional marina facilities will be constructed by Lessee. Lessee shall submit the master plans and specifications for all structures and improvements proposed on the leased area to Lessor for review and must receive the written approval of Lessor of the plans and specifications prior to the letting of construction contracts or the beginning of any work, which will be consistent with the plans and specifications referred to in Article Two (C) and attached hereto. Simultaneously therewith the parties will review the Lessor's HCRS Budget which limits the Lessor's financial obligations; provided, however, the Lessor may seek additional funding for the marina. Such plans will include construction of specific items with HCRS funds consistent with their regulations. Such approval by Lessor shall not be unreasonably withheld or delayed, but Lessor shall not be responsible for delays over which it has no control occasioned by the review of other local, State or Federal agencies.

B. Development Calendar: Lessee and Lessor, as the case may be, shall commence actual construction of proposed facilities on the site within ninety (90) days following approval of all plans and specifications by Lessor and other governmental authorities whose approval thereof is needed and the procurement of all legally required permits, licenses and authorizations and shall thereafter prosecute such construction with due diligence.

C. Access Road: On or before May 1, 2020, at a time mutually agreed by the parties, Lessor shall reclaim and pave the entrance road to the property and install curbing along the right side entering the marina. Thereafter Lessee shall be responsible for all maintenance, reclaiming, pavings and sealing of the road.

ARTICLE FOUR
Facility Operation

A. Nondiscrimination: (1) Lessee will not discriminate against any employee or applicant for employment or against any person seeking to utilize the facilities or services provided under the provisions of this agreement on the basis of sex, race, creed, color, ancestry, national origin or political affiliation. Lessee will take affirmative action to ensure that applicants are employed and that employees and the public are treated without regard to their sex, race, color, ancestry, national origin or political affiliation. Such action shall include, but not be limited to, the following: employment, promotion, demotion, transfer, recruitment, training, termination, rate of pay, or other forms of compensation, and the services provided to the public.

(2) Lessee will include such provisions in every subcontract so that they will be binding upon each subcontractor, and upon each subletting operator.

The preceding provisions, subsections 1 and 2, shall govern performance of all construction work in pursuit of the construction of all buildings, structure, and the repair and maintenance thereof, and any other similar work done upon the leased premises, and for that purpose, the term "lease" shall be deemed to refer to this instrument and to contracts awarded by the Lessee and the term "Lessee" shall be deemed to refer to the Lessee and to contractors awarded contracts by the Lessee.

Lessee is in the use and occupancy of the leased premises shall not on the grounds of sex, race, color, creed or national origin or any other manner prohibited by law, discriminate or permit discrimination against any person or group of persons in any manner.

Lessee for itself, its personal representatives, successors in interest and assigns, as part of the considerations hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the grounds of sex, race, color or national original shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said demised premises; (2) in the construction of all improvements, buildings, structures on, over or under such land and the furnishing of services thereon, no person on the grounds of sex, race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to unlawful discrimination; and (3) Lessee shall use the premises in compliance with Title VI of the Civil Rights Act of 1964, as may be amended.

Lessee for itself, its personal representatives, successors in interest and assigns, as part of the considerations hereof, does hereby covenant and agree as a covenant running with the land that it shall not discriminate against handicapped individuals in violation of §504 of the Rehabilitation Act of 1973.

In the event of breach of any of the above non-discrimination covenants, the Lessor shall have the right, after failure of Lessee to rectify such breach within thirty (30) days after receipt of notice from Lessor, to institute termination of this agreement pursuant to Article 2 (T) hereof.

B. Rates and Prices: All rates and prices charged by Lessee for marina slips furnished or leased to the public shall be competitive with comparable businesses in the area, and shall not be discriminatory with respect to place of residence.

C. Disposal of Refuse; Hazardous Materials: Lessee shall not permit refuse, trash or garbage to accumulate or to gather in or about any of the buildings, structure or facilities on the leased area and shall provide and use suitably covered trash and garbage receptacles. Lessee shall at its sole costs and expense remove and dispose of all garbage, rubbish and trash in a manner satisfactory to Lessor.

Lessee represents, warrants and agrees that its use, maintenance and operation of the premises and the conduct of the business related thereto, shall at all times be in compliance with all applicable federal, state, county or local laws, regulations and ordinances of any governmental authorities relating to Hazardous Materials, as hereinafter defined, and that Lessee, its agents, employees, customers, suppliers and invitees will not cause any Hazardous Materials to be deposited, discharged, placed or disposed of at the premises and that the premises will remain free from Hazardous Materials other than the use of Hazardous Materials in the ordinary course of business and in compliance with all applicable laws.

Lessee shall, to the extent arising from breach of the foregoing Lessee's warranty, (a) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials from the premises, in accordance with all applicable federal, state and local laws, regulations, rules, ordinances and policies and in accordance with the orders and directives of all federal, state and local governmental authorities, and (b) defend, indemnify and hold harmless Lessor, its employees, agents, officers and directors, from and against any and all claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limit, attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to (i) the discovery, presence, disposal, release, or threatened release, of any Hazardous Materials hereafter placed within, under, upon, from, or into the premises, (ii) any personal injury (including wrongful death) or property damage (real or personal), any lawsuit brought or threatened, settlement reached, or government order and/or any violations of laws, orders, regulations, requirements, or demands of government authorities, now in effect or in effect at any time in the future, which are based upon or in any way related to any Hazardous Materials hereafter placed on the premises.

As used herein, "Hazardous Materials" shall mean any flammable explosives, radioactive materials, hazardous materials, hazardous waste, hazardous or toxic substances or matter, oil or other petroleum products, underground petroleum storage tanks, asbestos, chemical pollutants or related materials, including as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§6901, et seq.), applicable Maine Statutes (including 38 M.R.S.A. §§561, et seq.; 38 M.R.S.A. §§1361, et seq.; 38 M.R.S.A. §§1301, et seq.; and 38 M.R.S.A. §§1317, et seq.), or any similar federal, state or local law in effect from time to time, or in the regulations adopted and publications promulgated pursuant thereto or any other substances or materials promulgated pursuant thereto or any other substances or materials constituting a hazard, peril or threat to the health of persons, animals or plant life.

D. Manner of Use: Lessee shall not permit or suffer any objectionable use of the leased premises which might constitute a public nuisance or be in violation of any law, ordinance or regulation legally applicable to the use of the leased premises. Lessee and its employees will cooperate in efforts to control pollution of the water including assisting in proper operation of the sewerage system, reasonable control over petroleum pollutants, observation and education of patrons in their use of the leased area, and reporting of serious or repeated violations of pollution control regulations by patrons to the proper authorities.

E. Rental of Berths: If demand for berths within the entire marina facility becomes greater than the becomes greater than the number of berths available, then allocation of berths initially constructed with HCRS funds shall either be by annual or multi-year lottery or on a first-to-apply and waiting list basis following public notice, all in accordance with applicable HCRS regulations.

Lessee will keep berths available for transient boat use of a number equal to or greater than 10% of all berths initially constructed with HCRS funds.

F. Restrictions: Lessee agrees to conduct its business on the premises in full conformity with all applicable legal or equitable restrictions of any kind now existing on the premises. It is expressly understood that this obligation by Lessee does not, in any way, relieve Lessor from its obligations to ensure that all restrictions imposed on the premises are fully complied with. Lessor shall be responsible for compliance with the restrictions stated in paragraph number 3 on page 2 of deed from General Electric Company to Lessor dated October 9, 1978 and recorded in the Cumberland County Registry of Deeds in Book 4336, Page 186.

G. Public Purposes: The leased premises shall be operated by Lessee for public outdoor recreation purposes with unobstructed public access and in compliance with provisions of the Land & Water Conservation Fund Act and implementing guidelines and for other lawful purposes related thereto provided, however, that such other lawful purposes (a) shall be subject to the prior written approval of Lessor, which approval will not be unreasonably withheld, and (b) shall not violate the terms of this Lease or the Grant Agreement or the deed restrictions referenced herein. Lessor and Lessee shall identify the leased premises as being publicly owned and operated as a public outdoor recreation facility on a sign conspicuously located on the leased premises and in other advertising to the extent required by the State of Maine, Department of Agriculture, Conservation and Forestry. Lessor and Lessee shall cooperate in posting signs identifying the facility as being open to the public under the sponsorship of Lessor.

ARTICLE FIVE **Successors Bound**

This Lease shall be binding upon the respective grantees, successors and assigns of the parties hereto.

ARTICLE SIX **Interference with Marina Development And Operation**

If construction of an oil pipeline pier, is commenced, Lessee shall have the option to terminate this Lease up to six (6) months after the start of such construction. In the event of such termination, Lessee shall be paid for its Possessory Interest and may remove or sell its tangible personal property to Lessor at Lessee's option as provided in Paragraph Two (U) hereof. If Lessee does not elect to terminate the Lease, then Lessor shall pay to Lessee the cost of relocating facilities caused by such pier construction, and Lessor shall also pay to Lessee the profit lost to Lessee caused by interference with its business or an increase in costs of doing business caused by the construction and operation of such pier. Such profit will be substantiated by Lessee's Certified Public Accountant following the same procedure as set forth with respect to gross sales in Paragraph Two (B) (3) hereof and Lessor

shall have the same rights as set forth in that Paragraph in the event Lessor questions such Certified Public Accountant's figures.

In any event, Lessor agrees not to cause or permit any unreasonable interference with access from the leased premises to the channel in the Portland Harbor in connection with a pipeline pier or otherwise.

ARTICLE EIGHT **Arbitration**

Any controversy or claim arising out of or relating to this Lease may be submitted by either party to arbitration by selecting a disinterested person as an arbitrator and notifying the other party in writing of such selection. Within fifteen (15) days following the date of receipt of such notice, the other party shall select a disinterested person as an arbitrator and send written notice of such selection to the party first selecting an arbitrator. In the event either party shall select an arbitrator and notify the other party in writing of such selection as above provided, and the other party shall thereafter fail to select an arbitrator and give notice thereof in writing as above provided, the party first selecting an arbitrator may select a second arbitrator of like qualification.

The two persons chosen as arbitrators as above provided shall select a third arbitrator of like character and qualifications as above provided within fifteen (15) days after the selection of said second arbitrator, and if the two arbitrators first selected shall be unable to agree upon a third arbitrator within the time above specified, then either of the parties to this Lease upon giving fifteen (15) days' notice in writing to the other party and to the arbitrator selected by such other party may apply to any Justice of the Superior Court of the State of Maine for the appointment of a third arbitrator, and any arbitrator appointed by such Justice upon such application shall have the same powers and duties as if selected by the two arbitrators first selected as hereinabove provided. In case any person selected or appointed to act as arbitrator under this Lease shall neglect or refuse to serve or shall be unable to act, then the party or persons selecting or the Justice appointing him shall forthwith select or appoint another person as arbitrator in his place and the other person so selected or appointed shall have like qualifications, powers and duties as the person who shall neglect, refuse or be unable to act; and the parties aforesaid in case of the neglect, refusal or inability of any arbitrator to act shall continue to select or appoint arbitrators in the manner aforesaid until persons shall be selected or appointed as arbitrators hereunder who are willing and able to act.

In the disposition of arbitration hereunder, the arbitrators shall be guided by the law of the State of Maine Arbitration hereunder shall be governed by Maine's Uniform Arbitration Act, Title 14 M.R.S.A. §§5927-5949, as may be amended. The parties agree that errors of law of the arbitrators shall be reviewable by a court of competent jurisdiction. Except as otherwise provided herein and by law, the decision of a majority of the arbitrators shall be final and conclusive on the parties. The parties agree that the arbitration provisions hereof shall be complete defense to any suit, action or proceeding instituted in any court or before any administrative tribunal with respect to any controversy or dispute arising during the period of this Lease and which is arbitrable as herein set forth. The arbitration provisions hereof shall, with respect to any controversy or dispute hereunder, survive the termination of expiration of this Lease.

It is mutually agreed that all expenses of said arbitration including reasonable compensation to the arbitrators shall be paid and borne equally by the parties hereto unless otherwise provided in the award of the majority of arbitrators.

ARTICLE NINE
Memorandum of lease

The parties shall execute a short form or memorandum of this lease, for recording purposes, said short form or memorandum to contain only the provisions required by Maine statute for such form or memorandum.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

WITNESS:

CITY OF SOUTH PORTLAND

By: _____
Its City Manager

PORT HARBOR MARINE, INC.

By: _____
Its President