

## GROUND LEASE

THIS GROUND LEASE (“**Lease**”) is dated for reference purposes as of this \_\_\_\_\_ day of \_\_\_\_\_, 2022 (the “**Effective Date**”), by and between CRESCENT CITY HARBOR DISTRICT (“**Landlord**”) and RENEWABLE ENERGY CAPITAL, LLC, a California limited liability company (“**Tenant**”), who, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, agree as follows:

**1. Background.** Landlord is the owner of record of that certain real property (“**Property**”) located in the City of Crescent City, Del Norte County California, commonly known as the Redwood Harbor Village RV Park located at 159 Starfish Way, Crescent City, Assessor Parcel No. \_\_\_\_\_, consisting of approximately \_\_\_\_\_ square feet and more particularly described in Exhibit “A” attached hereto. Tenant wishes to lease the Property from Landlord, together with all rights, privileges and easements appurtenant thereto. Landlord is willing to lease the Property to Tenant. The Property and such appurtenant rights, privileges and easements are collectively referred to as the “**Premises.**”

**2. Lease of Premises.** Landlord hereby leases to Tenant, and Tenant hereby leases and takes from Landlord, the Premises for the purpose of the Approved Use, on the terms and conditions set forth herein.

**3. Term; Options to Extend.**

(a). Initial Term. The initial term (“**Initial Term**”) of this Lease shall commence at the end of the Due Diligence Period, unless Tenant terminates the Lease during such period in accordance with Section 5 below (“**Commencement Date**”), and shall continue for a period of twenty-five (25) Lease Years. Each period of twelve (12) consecutive calendar months during the term (following any adjustment for a fractional month as described in the preceding sentence) is referred to hereafter as a “**Lease Year.**” Tenant shall record the Memorandum of Lease described in Section 38 below, in the form attached hereto as Exhibit “B” (“**Memorandum**”).

(b). Options to Extend. Upon the terms and conditions described in the Addendum attached hereto, Tenant will have the right to extend the term of this Lease for up to three (3) periods of five (5) Lease Years each (each an “**Extension Period**”). Unless otherwise specifically stated herein, all provisions of this Lease will be applicable during the Initial Term and any Extension Periods. The date upon which the Initial Term or an Extension Period expires is referred to hereafter as the “**Termination Date.**”

**4. Monthly Rent and Rent Adjustments.** Tenant shall pay to Landlord as rent for the use and occupancy of the Premises, at the times and in the manner described herein, the following sums of money:

(a) Monthly Rent. Beginning on the Commencement Date (also referred to as the “**Rent Commencement Date**”), on the first day of each calendar month, Tenant shall pay to Landlord a monthly rent payment (“**Rent**”) in the amount of \$35,000.00 (“**Monthly Rent**”).

(\$420,000.00 annually). The Monthly Rent will be prorated with respect to any partial month at the commencement of the Initial Term.

(b) Adjustments to Monthly Rent During the Lease. At each anniversary from the Rent Commencement Date (each an “**Adjustment Date**”), Monthly Rent will be increased by the greater of, two percent (2%) or the seven (7)-year rolling average increase in the Consumer Price Index as determined by the U.S. Bureau of Labor Statistics for all Urban Consumers for the West Region over the previous year (“**Index**”) (eg.  $(3\%+4\%+5\%+3\%+2\%+1\%+2\%)/7=2.86\%$ ), provided, however, in no event will the increase be less than two percent (2%). Should the Index be discontinued, the index used for comparison shall be a comparable index designated by the Bureau. It is recognized by both parties that the Index for any month is not published for approximately two months. Tenant shall, therefore, continue to pay the current rental paid by Tenant until such time as the new Index is available and, at that time, Tenant shall pay within ten (10) days of notice of the new Monthly Rent the new amount plus arrearages. In no event will Monthly Rent ever decrease below the prior year’s Monthly Rent even if the Index is negative. In such event, the Monthly Rent shall increase at the minimum rate specified in this Section 4(b). Subject to the determination of fair market value during the first year of any Extension Period set forth in Section 45 hereof, the annual adjustments to Monthly Rent shall continue through any Extension Period exercised by Tenant.

(c) Percentage Rent.

(1) During the Term, Tenant will pay to Landlord, as provided below, the dollar amount by which six percent (6%) of Tenant’s “Gross Sales” (as hereinafter defined) exceeds the Monthly Rent paid by Tenant to Landlord during each month of the Term (“**Percentage Rent**”). Calculations of Monthly Rent and Percentage Rent shall not include any consideration for operating expense contributions. Percentage Rent will be calculated and reported on a monthly basis, and shall be paid in accordance with this Section 4(c). Tenant shall furnish or cause to be furnished to Landlord a statement of the monthly Gross Sales of Tenant within ten (10) days after the close of each month and a statement of the annual Gross Sales of Tenant within thirty (30) days after the close of each fiscal year. Such statements will be certified as an accurate accounting of Tenant's Gross Sales by an authorized representative of Tenant. Within ten (10) calendar days after the end of each month, Tenant shall pay to Landlord the amount, if any, by which the product of six percent (6%) multiplied by the Gross Sales for such month exceeds the Monthly Rent paid by Tenant for such month. Annual reconciliation shall verify or correct the original reported Gross Sales but shall not recalculate the Percentage Rent on an annual basis. Within ninety (90) days after the close of each fiscal year, an accounting of Tenant's Gross Sales during said fiscal year and the amounts paid to Landlord as Monthly Rent and as Percentage Rent during each month of such fiscal year will be made by Landlord and, on such accounting, an adjustment will be made with respect to Percentage Rent as follows: if Tenant has paid to Landlord an amount greater than Tenant is required to pay under the terms of this Section 4(c), Landlord shall issue a check in the amount of such excess Percentage Rent within thirty (30) days of such determination; or if Tenant has paid an amount less than the Percentage Rent required to be paid under this Section 4(c), Tenant will pay to Landlord such difference within thirty (30) days of such determination. On termination of this Lease, if Tenant is not in default under this Lease, Landlord will refund to Tenant the amount of any excess, promptly on Landlord's receipt of Tenant's request therefore.

(2) “**Gross Sales**” as used in this lease means the gross selling price of all merchandise or services sold or rented on a monthly basis or from the Premises by Tenant, its subtenants, licensees, and concessionaires (including food and beverages; provided that this reference to food and beverages does not permit the sale of food or beverages from the Premises if not otherwise expressly permitted by this Lease), whether for cash or on credit, whether made by store personnel or by machines, or whether made by catalogue or Internet sale (from on or off the Premises), excluding therefrom the following: (i) sales taxes, excise taxes, or gross receipts taxes imposed by governmental entities on the sale of merchandise or services, but only if collected from customers separately from the selling price and paid directly to the respective governmental entities; and (ii) proceeds from the sale of fixtures, equipment, or property that are not stock in trade (“**Exclusions from Gross Sales**”). Tenant will use its reasonable good faith efforts to maximize Gross Sales from the Premises.

(3) At the time of a sale or other transaction, Tenant must record the sale or other transaction in a cash register with sealed continuous tape, or on a computer, or by using any other method of recording sequentially numbered purchases and keeping a cumulative total.

(4) For a period of three (3) years following the submittal of its certified annual statement for each calendar or fiscal year, Tenant must keep and maintain full and accurate accounting books and records relative to transactions from the Premises in accordance with generally accepted accounting principles consistently applied. The accounting books and records kept and maintained by Tenant for audit purposes must include all records, receipts, journals, ledgers, and documents reasonably necessary to enable Landlord or its auditors to perform a complete and accurate audit of Gross Sales and Exclusions from Gross Sales in accordance with generally accepted accounting principles.

(5) Landlord, at any time within three (3) years after receipt of any certified annual statement and on not less than ten (10) days' prior written notice to Tenant, may cause an audit to be made of Gross Sales and Exclusions from Gross Sales and all of Tenant's records and accounting books necessary (in Landlord's judgment) to audit such items. Tenant will make all such books and records available for the audit at the Premises or at Tenant's offices in the state in which the Premises is situated. If the audit discloses an underpayment of Percentage Rent, Tenant will immediately pay to Landlord the amount of the underpayment with interest, which will accrue from the date the payment should have been made through and including the date of payment. If the audit discloses an underreporting of Gross Sales in excess of two percent (2%) of the reported Gross Sales, whether or not additional Percentage Rent is due, then Tenant will also immediately pay to Landlord all reasonable costs and expenses incurred in the audit and in collecting the underpayment, including auditing costs and attorney fees. If the audit discloses an overpayment of Percentage Rent, Tenant will be entitled to a credit in the amount of the overpayment against the next payment(s) of Percentage Rent due, unless the audit was for the last year of the Term, in which event Landlord will refund to Tenant the overpayment within sixty (60) days following the date of the finalization of the audit.

(6) For the purpose of computing Percentage Rent, Tenant's Gross Sales for any period during which Tenant does not continuously and uninterruptedly conduct its business, as required by Section 40, will be deemed to be Tenant's Gross Sales for the

corresponding period during the last calendar year in which Tenant operated continuously and uninterruptedly.

(7) Landlord is a public entity subject to the Public Records Act. Information provided to Landlord pursuant to this Section III may be disclosed publicly as required by law. If Landlord receives a request for records related to information obtained from Tenant pursuant to this section, Landlord agrees to promptly provide Tenant with written notice of the request. Tenant will then have the time specified in the Landlord's notice to determine whether it considers any of the information confidential proprietary information and whether it will take legal action to preclude disclosure of the requested information. Tenant understands that the Landlord's notice of a request for records under the California Public Records Act (Gov. Code, section 6250, et seq.) will require a prompt response from Tenant given the Landlord's obligation to respond to such a request within 10 days of its receipt. Absent a timely response, Landlord may release the requested records. Landlord shall have no monetary liability to Tenant for release of information pursuant to a request under the California Public Records Act or any subpoena; nor shall Landlord be obligated to defend against any challenge related to a California Public Records Act request or a subpoena for records that Tenant asserts are confidential. Tenant further agrees to be liable for and pay all judgments against the Landlord, as well as attorney fees and costs, resulting from a challenge related to a records request or subpoena for records that Tenant asserts are confidential.

(d) Location for Payment. All Monthly Rent and all other moneys and charges payable by Tenant to Landlord hereunder shall be paid by Tenant to Landlord in lawful money of the United States of America at Landlord's address for notices hereunder, or to such other person or at such other place as Landlord may from time to time designate by notice in writing to Tenant.

## **5. Conditions To Commencement.**

(a) No Representations or Warranties. It is expressly understood by the parties hereto that the physical condition of the Premises as of the Effective Date is such that it is leased to Tenant as-is without any representation or warranty. Landlord makes no express or implied representations or warranties concerning the Premises or its fitness for any particular purpose. Tenant shall bear the costs of any action necessary to place the Premises in a condition that meets the requirements of law or that is otherwise suitable for any of its contemplated uses. Landlord shall not be held liable to Tenant for any losses incurred or damages sustained as a direct or indirect result of the condition of the Premises or any use or failure thereof.

(b) Tenant's Feasibility and Due Diligence. Tenant shall have a period of two hundred seventy (270) days from the Effective Date ("**Due Diligence Period**") to conduct due diligence activities, to examine the physical condition of the Premises and to perform other non-invasive investigations, including, without limitation review of title, obtaining a survey, and a Phase I environmental assessment. Landlord shall provide Tenant with copies of any existing leases, as well as any surveys, environmental studies, and notifications relating to environmental conditions, and other documents requested by Tenant that are in Landlord's possession and that relate to the Premises, in their full, unedited form ("**Landlord Deliveries**"). Landlord makes no representation whatsoever about the content, accuracy, or value of any of Landlord's Deliveries.

All Landlord's Deliveries will be provided to Tenant without warranty from Landlord regarding the accuracy of the information contained therein, and such documents may or may not be assignable to Tenant. The delivery of such reports and studies shall be subject to the proprietary rights of any engineer or other consultant preparing the same and any limitations on use imposed by them. Tenant assumes all risk of reviewing and understanding any and all information contained in Landlord's Deliveries. Tenant may terminate this Lease for any reason at any time during the Due Diligence Period, at which point Landlord's obligations under this Lease shall terminate with no liability to Tenant whatsoever. Tenant will give notice to Landlord of its approval of the physical condition of the Premises by 5:00 pm PST on the expiration of Due Diligence Period.

(c) Tenant's Due Diligence Extension. Tenant shall have the unilateral right, no later than fifteen (15) days prior to the expiration of the Due Diligence Period, to extend the Due Diligence Period by an additional ninety (90) days ("**Due Diligence Extension**").

(d) Landlord's Approval of Tenant's Finances. Landlord shall have one hundred eighty (180) days from the Effective Date to review and approve Tenant's financials and credit enhancements. The Lease is contingent upon Landlord's approval and determination, in its reasonable discretion, that Tenant's financial condition is sufficient to meet its obligations under this Lease. If Landlord determines that Tenant's financial condition is not sufficient to meet its obligations under this Lease, Landlord shall have the right to terminate this Lease, and the parties shall have no obligations or responsibilities pursuant to this lease, except for those obligations which expressly survive.

(e) CEQA. The Lease is contingent upon all of the procedures of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) and the State CEQA Guidelines (Title 14, California Code of Regulations section 1500 et seq.) (collectively "**CEQA**") being met with respect to this Lease. Landlord and Tenant will make good faith efforts to complete the environmental analysis or otherwise comply with CEQA requirements as required with respect to Tenant's proposed use, which must be evidenced by a document that is certified, or adopted, or if applicable, a notice of exemption that is filed, in accordance with CEQA and the District's CEQA procedures. The environmental review shall be deemed completed for purposes of this Lease once the notice of determination or notice of exemption, as applicable, has been posted and filed and the appeal period has run without a legal challenge or appeal being brought against said notice, or if a challenge appeal is timely filed, the resolution of any such challenge or appeal in a manner that results in the environmental review no longer being subject to challenge or appeal and in the granting or issuance, without modification, of the environmental review. The parties' sole obligations shall be to use good faith efforts and the failure to complete the environmental review shall not create liability under this Lease.

If the conditions in this Section 5 are not satisfied, all obligations and responsibilities of and between the Parties pursuant to this Lease shall be terminated except for those obligations which expressly survive.

## **6. Taxes and Assessments.**

(a) Tenant Responsibility. Tenant covenants and agrees to pay and discharge, during the entire Term, before delinquency, all taxes, assessments, water charges, sewer charges, utility rates and fees, levies or other charges, general, special, ordinary, extraordinary and otherwise, of every kind and character which are or may during the Term be levied, charged, assessed or imposed upon or against the Premises or any buildings or improvements located thereon, or against any of Tenant's personal property located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby. In addition, Tenant shall pay any tax assessed exclusively on rental income of Landlord to the extent such income is allocable to this Lease, if and only if such tax is assessed by State or local authorities upon the elimination of and in lieu of taxation based on the ownership of real property. At the commencement and at the end of the Term, such taxes, assessments and other charges to be paid by Tenant shall be prorated on the basis of the fiscal year of the taxing authority in question so that, at the commencement and at the end of the Term, as to any such taxes, assessments and other charges levied or assessed for a fiscal year preceding the commencement or extending beyond the end of the Term, Tenant will pay only such proportion of such taxes, assessments and other charges as the portion of such fiscal year following the commencement and preceding the end of the Term bears to the entire fiscal year.

(b) Revenue & Taxation Code Section 107.6. Possessory Interest Tax. Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxes and that, if a possessory interest is created, Tenant shall, in accordance with this Paragraph 6 hereof, be responsible for payment of property taxes levied against such possessory interest

(c) Improvement or Special Assessment District. If at any time during the Term of this Lease any governmental subdivision shall undertake to create a new improvement or special assessment district (including lighting and landscape districts and community facilities districts) the proposed boundaries of which shall include any portion of the Land, Tenant shall be entitled to appear in any proceeding relating thereto and to present its position as to whether the Property should be included or excluded from the proposed improvement or assessment district and as to the degree of benefit to the Property resulting therefrom. Landlord shall promptly advise Tenant in writing of the receipt of any notice or other information relating to the proposed creation of any such improvement or special assessment district, the boundaries of which include any portion of the Land.

(d) Personal Property. Tenant covenants and agrees to pay (or to cause other responsible parties to pay) before delinquency all personal property taxes, assessments and liens upon all personalty situated within the Premises.

(e) Payment by Landlord. In the event Tenant fails to pay any real estate taxes or taxes or assessments on personal property, Landlord may, at its option, after giving ten (10) days' notice to Tenant, pay any such taxes or assessments together with all penalties and interest which may have been added thereto by reason of any such delinquency or failure to pay, and may likewise redeem the Premises or any part thereof, or the buildings or improvements located thereon, from any tax sale or sales. Any such amounts so paid by Landlord shall become immediately due and payable as additional rent by Tenant to Landlord, together with interest thereon at the maximum lawful rate from the date of payment by Landlord until paid by Tenant. Any such payment shall not be deemed to be a waiver of any other rights of Landlord hereunder.

7. **Utilities/Expenses.** Landlord represents and warrants to Tenant that water, sewage, gas, electricity, and telephone service are either on the Premises or that they are located within five (5) feet of the boundary of the Premises. Tenant shall pay for any Tenant Improvements, alterations, or other costs to occupy the land in any way, at its sole cost and expense. Tenant shall determine the availability of and shall cause to be installed in, on, and about the Premises all additional facilities necessary to supply thereto all water, sewage, gas, electricity, telephone and other services required in connection with the construction and operation of the Premises, and, during the Term hereof, Tenant shall pay all charges and expenses associated with the use of said facilities and shall protect and hold harmless Landlord and the Premises therefrom. Tenant shall pay all connection, service and other charges pertaining to the Premises levied by public utilities or municipalities with respect to utilities during the Term. Tenant shall pay all expenses associated with operating and occupying the Premises. This is a triple net lease and Tenant is responsible for the operation and expenses of its occupancy in every way, and Landlord shall have no expense.

8. **Quiet Enjoyment.** Landlord covenants that upon payment by Tenant of the rent herein reserved and upon performance and observance by Tenant of all of the agreements, covenants and conditions herein contained on the part of Tenant to be performed and observed, and subject to all covenants, conditions, restrictions and encumbrances of record, Tenant shall peaceably hold and quietly enjoy the Premises during the entire Term without hindrance, molestation or interruption by Landlord or by anyone lawfully or equitably claiming by, through or under Landlord.

9. **Use.**

(a) Tenant shall have the right to use the Premises as an operating recreational vehicle park and for no other purpose ("**Permitted Use**"). Subject to Tenant's compliance with all then applicable codes, ordinances, regulations, requirements for permits and approvals, and Landlord's written approval, which shall not be unreasonably withheld, Tenant may, at Tenant's sole cost and expense, install temporary and/or permanent structures, including, without limitation, paving and improvements necessary for the Permitted Use. Without limiting the foregoing, Tenant acknowledges and agrees the Permitted Use shall not be changed without written approval from the Commissioners of the Crescent City Harbor District, in such Commissioner's sole and absolute discretion. In no event shall the Premises be used for long-term rental purposes.

(b) Without limiting the foregoing, Tenant agrees that in connection with the use and operation of the Premises it will not: (i) cause or permit substantial and obnoxious odors to emanate or be dispelled from the improvements; (ii) permit undue accumulations of garbage, trash, rubbish or any other refuse; (iii) create, cause, maintain or permit any nuisance (as defined under applicable law) in, on or about the Premises; (iv) commit or suffer to be committed any waste (as defined under applicable law) in, on or about the Premises; (v) knowingly use or allow the Premises to be used for any unlawful purpose, or for any purpose which violates the terms of any recorded instrument which affects the Premises and which is senior in priority to this Lease; (vi) Cause or permit any insurance coverage on the Premises or the improvements thereon to become void or voidable (unless Tenant has previously obtained replacement coverage in the same amounts) or make it impossible to obtain any required insurance at commercially feasible

rates; or violate any law, ordinance or regulation applicable to the Premises and the improvements thereon.

(c) Tenant shall at all times comply with, and shall pay all costs and expenses which may be incurred or required to be paid in order to comply with, any and all laws, statutes, ordinances, rules and regulations (“**Laws**”) which apply to the operation and use of the Premises on a nondiscriminatory basis, including those requiring alterations or additions to be made to, or safety appliances and devices to be maintained or installed in, on or about the Premises on a nondiscriminatory basis under any Laws now or hereafter adopted, enacted or made and applicable to the Premises, and payment of any fees, charges or assessments arising out of or in any way related to the Premises on a nondiscriminatory basis as a source of adverse environmental impacts or effects.

(d) There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, age, handicaps, sex, marital status, sexual orientation, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Premises or the improvements thereon, or any part thereof, and Tenant itself, or any person claiming under or through it, shall not establish or permit any such practice of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, subtenants or vendees of the Premises or the improvements thereon, or any part thereof.

## **10. Construction and Covenant to Open and Operate**

(a) Construction Period. Tenant shall pay the first installment of Monthly Rent on the Commencement Date, and shall have ninety (90) days (“**Construction Period**”) to obtain all necessary permits and approvals, and, once permits have been received, begin construction. For avoidance of doubt, Monthly Rent shall be due during the Construction Period.

(b) Covenant to Open and Operate. Tenant covenants to open for business to the public within ten (10) business days of the expiration of the Construction period, as such period may be extended, and thereafter, subject to temporary closures for casualty, condemnation, remodel (to the extent approved by Landlord), or Force Majeure (as defined below), which prevent Tenant from conducting its normal business operations in the Premises, to operate continuously and uninterruptedly in the entirety of the Premises throughout the Term the business described in Section 3.

(c) Construction Surety. A payment and performance bond guaranteeing the lien free performance and construction of any and all Tenant Improvements (defined below) and that such construction shall be effected in accordance with the plans and specifications for such Tenant Improvements (“**Construction Contract**”) by Tenant or Tenant’s contractor on Tenant’s default or the failure of Tenant’s contractor to complete the Tenant Improvements in accordance with the terms of the applicable Construction Contract. Such bond shall be in a form and substance reasonably acceptable to Landlord, for an amount not less than one hundred percent (100%) of the Construction Contract, for the benefit of Tenant, with Landlord named as a dual obligee (as its interest may appear) under a dual obligee rider or its equivalent, and issued by an admitted surety insurer, as defined in Code of Civil Procedure 995.120, with an underwriting

limitation, pursuant to Insurance Code Section 12090, greater than the contract amount of the bond. Such bond shall remain in full force and effect, until the completion of the Tenant Improvements being constructed. If the provider of any bond or guaranty regarding any construction becomes the subject of any Bankruptcy Proceeding, Tenant shall within a reasonable period of time provide a substitute bond or guaranty to Landlord regarding such construction.

#### **11. Title to Buildings and Improvements.**

(a) Title to all buildings, structures and improvements that now, or may from time to time constitute a part of the Premises shall be and remain in Tenant until the termination of this Lease. Upon termination of this Lease, Tenant may remove from the Premises all machinery, equipment and fixtures. Landlord may, by written notice to Tenant given not less than one (1) year prior to the expiration of the Term of this Lease, elect (i) to require that Tenant remove all improvements from the Premises; or (ii) leave building improvements (but not machinery, equipment and fixtures) in place, in which case title will pass to and vest in Landlord without cost or charge to it.

(b) Tenant, on termination of this Lease, shall execute and deliver any and all deeds, bills of sale, assignments, and other documents which in Landlord's reasonable judgment may be necessary or appropriate to transfer, to evidence or to vest in Landlord clear title to any of the property described in the foregoing subsection (a) located on the Premises at the time of such termination.

**12. Permits, Licenses, Etc.** Landlord will from time to time during the Term execute, acknowledge and deliver any and all instruments required to grant rights-of-way and easements in favor of municipal and other governmental authorities or public utility companies incident to the installation of water lines, fire hydrants, sewers, electricity, telephone, gas, steam, and other facilities and utilities reasonably required for the use and occupancy of the Premises. Tenant shall reimburse Landlord for any sum paid by Landlord in respect of the matters specified in this Section 12, including reasonable attorney fees.

#### **13. Maintenance, Repair and Condition of Premises.**

(a) Tenant acknowledges that prior to the Commencement Date, Tenant shall have completed its due diligence investigation and otherwise satisfied itself regarding the physical condition of the Property and its suitability for Tenant's intended use and construction of improvements thereon. Tenant's acceptance of the Premises following the Due Diligence Period constitutes Tenant's acceptance of the Property in its "AS-IS" condition, with all faults. Tenant releases Landlord and any of its subsidiaries and affiliates and their respective officers, directors, shareholders, employees and attorneys from any and all liabilities and claims of any type concerning the condition of the Property. Tenant further agrees that, if Tenant wishes to construct any improvement in the Premises, Tenant shall comply with all requirements in Section 14 (Improvements) of this Lease. Landlord makes no representations regarding the condition, status, compliance with laws or suitability for a particular purpose for Tenant's use. Tenant agrees to comply with all laws in demolition and destruction of the building with regard to any Hazardous Materials and the possible presence of same on the Premises.

(b) Tenant shall, during the Term, at its own cost and expense and without any cost or expense to Landlord:

(1) Keep and maintain all buildings and improvements (including, but not limited to, all landscaping located on the Property and all appurtenances thereto) in good and neat order and repair and shall allow no nuisances to exist or be maintained therein. Landlord shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Premises or any buildings or improvements located thereon, and Tenant hereby expressly waives all right to make repairs at Landlord's expense under sections 1941 and 1942 of the California Civil Code, or any amendments thereof; and

(2) Comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations affecting the Premises, all buildings and improvements located thereon, or any activity or condition on or in the Premises.

(c) Tenant agrees that it will not commit or permit waste upon the Premises.

(d) Tenant will not cause or permit any Hazardous Materials to be released in, on, under or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Tenant's expense, comply with all statutory requirements with respect to any contamination of the Premises that was caused or materially contributed to by Tenant or pertaining to or involving any Hazardous Materials brought onto the Premises during the term of this Lease by or for Tenant or any third party who enters on the Premises at Tenant's request or direction. Tenant will defend, indemnify and hold Landlord free and harmless from and against any and all claims, damages and liabilities with respect to any such contamination of the Premises occurring following the Commencement Date and before the Termination Date or such earlier or later date on which Tenant actually surrenders possession of the Premises to Landlord. Tenant will immediately notify Landlord if Tenant becomes aware that any release of Hazardous Materials has come to be located in, on, under or about the Premises at any time during the Term. "**Hazardous Materials**" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to those substances, materials or wastes regulated now or in the future under any of the following statutes or regulations promulgated thereto: (1) any "hazardous substance" within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") 42 U.S.C. § 9601, et seq. or the California Hazardous Substance Account Act, Cal. Health and Safety Code § 25300 et seq. or the Porter-Cologne Water Quality Act, Cal. Water Code § 13000 et seq. or the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; (2) any "hazardous waste" within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; or (3) any other substance, chemical, waste, toxicant, pollutant or contaminate regulated by any federal, state or local law, statute, rule, regulation or ordinance for the protection of health or the environment, including, without limitation, any petroleum products or fractions thereof.

#### **14. Improvements, Changes, Alterations, Demolition and Replacement.**

(a) Tenant shall have the right at any time and from time to time during the Term to make such improvements to the Premises and such changes and alterations, structural or

otherwise, to any buildings, improvements, fixtures and equipment located on the Property, as Tenant shall deem necessary or desirable.

(b) Following the Effective Date, if Tenant so elects, Tenant shall proceed with due diligence and dispatch to complete the construction on the Premises of the Tenant Improvements.

(c) All improvements, changes and alterations (other than changes or alterations of moveable trade fixtures and equipment) shall be undertaken in all cases subject to the following conditions which Tenant covenants to observe and perform:

(1) No improvement, change or alteration (“**Tenant Improvements**”), shall be undertaken until:

(i) Landlord shall have approved the site plan and plans and specifications for such Tenant Improvements (other than Tenant Improvements with a cost of Ten Thousand Dollars (\$10,000) or less).

(ii) Tenant shall have procured and paid for, so far as the same may be required from time to time, all municipal and other governmental permits and authorizations of the various municipal departments and governmental subdivisions having jurisdiction, and Landlord agrees to join in the application for such permits or authorizations whenever such action is necessary.

(iii) Tenant shall have prepared and presented a Long-Term Resident Relocation Plan to the Landlord, and Landlord has approved the Long-Term Resident Relocation Plan. In connection with the Long-Term Resident Relocation Plan, Tenant shall indemnify, defend, and hold the Landlord, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of or relating to any claims for relocation assistance which any user of the Premises prior to the Commencement Date may be entitled, including, without limitation any claims pursuant to Gov. Code §§ 7260-7277 or any other similar provision. Nothing in this lease shall be construed as an admission by Landlord as to its liability for relocation assistance pursuant to Gov. Code §§ 7260-7277 or any other similar provision. Landlord may, in Landlord’s sole and absolute discretion, require Tenant to deliver to Landlord a payment bond or a letter of credit issued, which bond or letter of credit shall be in a form and substance reasonably acceptable to Landlord and issued by a credit worth bonding company or financial institution, as applicable, reasonably acceptable to Landlord, for one hundred percent (100%) of the estimated cost of implementing the Long-Term Resident Relocation Plan, including, without limitation the cost of any claims for relocation assistance. Any such payment bond or letter of credit required to be issued to Landlord shall be in the name of Landlord and shall secure Tenant’s obligations under this Section and under the Long-Term Resident Relocation Plan. The payment bond or letter of credit shall remain in place until the expiration of the statute of limitations for any claims for relocation assistance pursuant to Gov. Code §§ 7260-7277 or any other similar provision.

(d) In the event that any future Tenant Improvement qualifies as a “project” under CEQA requiring discretionary approval from Landlord, any such project shall be subject to

CEQA, and Landlord shall make a determination of whether such project is exempt from CEQA or whether additional environmental review is necessary.

(e) All work done in connection with any Tenant Improvement, change or alteration shall be done promptly and in a good and workmanlike manner and in compliance with all laws, ordinances, orders, rules, regulations and requirements of all Federal, state and municipal governments and the appropriate departments, commissions, boards and officers thereof. All such work shall be at the sole cost and expense of Tenant.

(f) Tenant has been alerted to the requirements of Labor Code Sections 1720 et seq. and 1770 et seq. ("**Prevailing Wage Laws**"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If any of the work to be performed under this Lease by Tenant is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, Tenant agrees to fully comply with such Prevailing Wage Laws. Tenant shall defend, indemnify and hold the Landlord, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. If any of the work to be performed under this Lease by Tenant is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, it shall be mandatory upon the Tenant and its contractors to comply with all applicable California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815), public works contractor registration (Labor Code Sections 1725.5 and 1771.1) and debarment of contractors and subcontractors (Labor Code Sections 1777.1). It shall be the sole responsibility of Tenant to determine whether to comply with Prevailing Wage Laws for any or all work required by this Lease. As a material part of this Lease, Tenant agrees to assume all risk of liability arising from any decision not to comply with Prevailing Wage Laws.

(g) In addition to the insurance coverage referred to in Section 19 below, Workers' Compensation Insurance covering all persons employed in connection with the work and with respect to whom death or injury claims could be asserted against Landlord, Tenant or the Premises, and a general liability policy coverage, naming Landlord with limits of not less than One Million Dollars (\$1,000,000), shall be maintained by Tenant, at Tenant's sole cost and expense, at all times when any work is in process in connection with any improvement, change or alteration. Tenant may provide such coverage by means of a blanket policy, covering other locations in addition to the Premises, provided that such blanket policy provides aggregate coverage of not less than Three Million Dollars (\$3,000,000). All such insurance shall be obtained and kept in force as otherwise provided in Section 19 below.

**15. Damage or Destruction.** No loss or damage by fire or other cause required to be insured against hereunder resulting in either partial or total destruction of any building, structure, or other improvement on the Property, shall operate to terminate this Lease, or to relieve or discharge Tenant from the payment of rents or amounts payable as rent as they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained on the part of Tenant to be performed and observed. Tenant hereby

waives the provisions of subsection 2 of section 1932 and subsection 4 of section 1933 of the California Civil Code, as amended from time to time.

**16. Assignment and Subletting.** Tenant shall have no right to assign all or any part of its interest in this Lease without Landlord's prior consent, not to be unreasonably withheld. Without limiting the foregoing, Tenant shall not have the right or power to request or effect a Transfer at any time an Event of Default shall exist, and no right to Transfer prior to the Commencement Date or the first forty-eight (48) months after the Commencement Date without Landlord's prior consent. By way of example and without limitation, the parties agree that it shall be reasonable for Landlord to withhold its consent to a Transfer if any of the following situations exist or may exist: (a) in Landlord's reasonable business judgment, the transferee lacks sufficient experience to manage a successful development and project of the type and quality being conducted at the Premises; or (b) in Landlord's reasonable business judgment, the then net worth of the transferee is inadequate (after taking into account the net worth of the guarantor of Tenant's obligations under this Lease, if any) to manage a successful development and project of the type and quality being conducted at the Premises.

(a) Procedures. Should Tenant desire to assign, transfer, sublet, mortgage, pledge, hypothecate or encumber this Lease or any interest therein (a "**Transfer**"), Tenant shall give notice thereof to Landlord by requesting in writing Landlord's consent to such Transfer at least thirty (30) days before the effective date of the Transfer and shall provide Landlord with the following: (a) The full particulars of the proposed transaction, including its nature, effective date, and material terms and conditions, including the purchase price and payment terms of the purchase price. Such documentation shall include, without limitation, an executed copy of the agreement(s) effecting the Transfer. (b) A description of the identity, net worth, and previous business experience of the transferee, including, without limitation, copies of such transferee's latest income statement, balance sheet, and statement of cash flows (with accompanying notes and disclosures of all material changes thereto) in audited form only if available at the time, and certified as accurate by the transferee along with a written statement authorizing Landlord or its designated representative(s) to investigate such transferee's business experience, credit, and financial responsibility; (c) A statement that Tenant intends to consummate the transaction if Landlord consents to the Transfer; and (d) Any further information relevant to the transaction that Landlord reasonably requests within ten (10) days after receipt of Tenant's written request for consent.

(b) Void Without Consent. A proposed Transfer without such consent shall be void, and shall, at the option of the Landlord, constitute a default under the terms of this Lease. No sublease or assignment shall release Tenant from continuing liability hereunder. Within forty-five (45) days after receipt of Tenant's written request for consent in accordance with this section, Landlord shall respond in writing to the proposed Transfer. If Landlord refuses to consent to a proposed Transfer, it shall state in writing the specific reason(s) for its refusal to consent. If Landlord fails to respond in writing to a request for consent within the forty-five (45)-day period, or if Landlord refuses to consent in writing within the forty-five (45)-day period but does not state in writing the specific reason(s) for its refusal, Landlord shall conclusively be deemed to have consented to the proposed Transfer.

(c) Documentation and Expenses. Each Transfer that requires Landlord's consent that Tenant effects shall be evidenced by an instrument reasonably acceptable to Landlord, which shall be executed by Landlord, Tenant, and the transferee. By such instrument, the transferee shall assume and promise to perform the terms, covenants, and conditions of this Lease, which are obligations of Tenant. Tenant shall, on demand of Landlord, reimburse Landlord for Landlord's reasonable costs, including legal fees, incurred in obtaining advice and reviewing or preparing documentation for each Transfer that requires Landlord's consent, not to exceed \$2,500; however, this fee may be reasonably adjusted by Landlord from time to time based on increases in costs.

**17. Mortgage of Leasehold.** Tenant shall have the right to encumber the leasehold estate created by this Lease by a mortgage, deed of trust or other security instrument, including, without limitation, an assignment of the rents, issues and profits from the Premises, (the "**Leasehold Mortgage**") to secure repayment of any loan to Tenant, and associated obligations, from any lender (a "**Lender**"). Notwithstanding the foregoing, Tenant shall not, and shall have no right to, encumber Landlord's fee or reversionary interest in the Premises. Tenant covenants to keep Landlord's fee and reversionary interest in the Premises and every part thereof at all times free and clear of any and all liens and encumbrances of any kind whatsoever arising out of the acts or omissions of Tenant, including those liens and encumbrances created by the performance of Tenant of any construction, labor, or furnishing of any material, supplies or equipment to Tenant.

**18. Protection of Lender.** During the continuance of any Leasehold Mortgage and until such time as the lien of any Leasehold Mortgage has been extinguished:

(a) Landlord shall not accept any surrender of this Lease, nor shall Landlord consent to any amendment or modification of this Lease, without the prior written consent of any Lender.

(b) Notwithstanding any default by Tenant in the performance or observance of any agreement, covenant or condition of this Lease on the part of Tenant to be performed or observed, Landlord shall have no right to terminate this Lease or interfere with the occupancy, use, and enjoyment of the Premises unless (i) an event of default shall have occurred and is continuing, (ii) Landlord shall have given any Lender written notice of such event of default, and (iii) the Lender(s) shall have failed to remedy such default, acquire Tenant's leasehold estate created hereby, or commence foreclosure or other appropriate proceedings, all as set forth in, and within the time specified by, this Section 18.

(c) Any Lender shall have the right, but not the obligation, at any time prior to termination of this Lease and without payment of any penalty, to pay all of the rents due hereunder, to effect any insurance, to pay any taxes and assessments, to make any repairs and improvements, to do any other act or thing required of Tenant hereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease. All payments so made and all things so done and performed by a Lender shall be as effective to prevent a termination of this Lease as the same would have been if made, done and performed by Tenant instead of by a Lender.

(d) Should any event of default under this Lease occur, any Lender shall have thirty (30) days after receipt of written notice from Landlord setting forth the nature of such event of default, or ten (10) in the event of non-payment of rent, within which to remedy the default; provided that in the case of a default which cannot with due diligence be cured within such thirty (30) day period, the Lender(s) shall have the additional time reasonably necessary to accomplish the cure, provided that (i) such Lender has commenced the curing within such thirty (30) days and (ii) thereafter diligently prosecutes the cure to completion. If the default is such that possession of the Premises may be reasonably necessary to remedy the default, the Lender(s) shall have a reasonable additional time after the expiration of such thirty-day period, within which to remedy such default, provided that (i) the Lender(s) shall have fully cured any default in the payment of any monetary obligations of Tenant under this Lease within such thirty day period and shall continue to pay currently such monetary obligations as and when the same are due and (ii) the Lender(s) shall have acquired Tenant's leasehold estate or commenced foreclosure or other appropriate proceedings seeking such acquisition within such period, or prior thereto, and is diligently prosecuting any such proceedings.

(e) Any event of default under this Lease which is not susceptible to remedy by a Lender shall be deemed to be remedied if (i) within thirty (30) days after receiving written notice from Landlord setting forth the nature of such event of default, or prior thereto, a Lender shall have acquired Tenant's leasehold estate created hereby or shall have commenced foreclosure or other appropriate proceedings seeking such acquisition, (ii) a Lender shall diligently prosecute any such proceedings to completion, and (iii) a Lender shall have fully cured any default in the payment and performance of any monetary or other obligations of Tenant hereunder which do not require possession of the Premises within such sixty day period and shall thereafter continue faithfully to perform all such monetary obligations which do not require possession of the Premises, and (iv) after gaining possession of the Premises, a Lender shall perform all other obligations of Tenant hereunder as and when the same are due.

(f) If a Lender is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings the times specified in subsections (d) and (e) above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition; provided that Lender shall have fully cured any default in the payment of any monetary obligations of Tenant under this Lease and shall continue to pay currently such monetary obligations as and when the same fall due.

(g) Landlord shall mail by certified or registered post, return receipt requested, or personally deliver to any Lender a duplicate copy of any and all notices in writing which Landlord may from time to time give to or serve upon Tenant pursuant to the provisions of this Lease, and such copy shall be mailed or delivered to any Lender at, or as near as possible to, the same time such notices are given or served by Landlord. No notice by Landlord to Tenant hereunder shall be deemed to have been given unless and until a copy thereof shall have been so mailed or delivered to any Lender. Upon the execution of any Leasehold Mortgage, Landlord shall be informed in writing of the vesting of the security interest evidenced by the Leasehold Mortgage and of the address to which all notices to the Lender are to be sent. Notwithstanding

any other provision of this Section 18, any Lender shall be deemed to have waived any right to receive notice pursuant to this Section unless and until Landlord has received such information.

(h) Foreclosure of the Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the leasehold mortgage, or any assignment or conveyance of the leasehold estate created by this Lease from Tenant to a Lender or other purchaser through, or in lieu of, foreclosure or other appropriate proceedings of a similar nature shall not constitute a breach of any provision of or a default under this Lease. Upon such foreclosure, sale or conveyance Landlord shall recognize the Lender, or any other foreclosure sale purchaser, as Tenant hereunder. In the event a Lender becomes Tenant under this Lease, such Lender shall be liable for the obligations of Tenant under this Lease only for the period of time that such Lender remains Tenant. Such Lender shall have the right to assign this Lease at any time after becoming Tenant without any restriction otherwise imposed on Tenant hereunder and shall be fully released from liability under the Lease from and after the date of such assignment.

(i) Should Landlord terminate this Lease by reason of any default by Tenant hereunder, Landlord shall, upon written request by a Lender given within thirty (30) days after such termination, immediately execute and deliver a new lease of the Premises to such Lender, or its nominee, purchaser, assignee or transferee, for the remainder of the Term with the same agreements, covenants and conditions (except for any requirements which have been fulfilled by Tenant prior to termination) as are contained herein and with priority equal to that hereof; provided, however, that such Lender shall promptly cure any defaults of Tenant susceptible to cure by such Lender and that such Lender's right to possession of the Premises under the new lease shall commence only upon Tenant's vacating of the Premises. Upon execution and delivery of such new lease Landlord, at the expense of the new lessee, which expenses shall be paid by the new Tenant as they are incurred, shall take such action as shall be necessary to cancel and discharge this Lease and to remove Tenant named herein from the Premises.

## **19. Fire and Extended Coverage and Liability Insurance**

(a) During the period of the construction of any improvements upon the Property, Tenant shall at its sole expense obtain and keep in force builder's risk insurance, insuring Tenant, Landlord, Lender, and such other parties as Tenant may designate as an additional insured hereunder, against all risks of physical loss and/or damage from any cause (exclusive of earthquake and subject to usual policy exclusions) to all buildings, structures, materials and real property to be improved located on or forming a part of the Premises under improvement.

(b) Tenant shall, at its sole expense, obtain and keep in force during the Term, after substantial completion of any improvements upon the Premises fire and extended coverage insurance (excluding earthquake insurance) naming Landlord, Lender, and such other parties as Tenant may designate, as additional insureds thereunder.

(c) Tenant shall, at its sole expense, obtain and keep in force during the Term general liability insurance with limits of not less than Two Million Dollars (\$2,000,000) for injury to or death of any number of persons in one occurrence, and not less than One Million

Dollars (\$1,000,000) for damage to property, insuring against any and all liability of Landlord and Tenant including, without limitation, coverage for contractual liability, broad form property damage, personal injury, and non-owned automobile liability, with respect to the Premises or arising out of the maintenance, use or occupancy thereof, and insurance on all boilers and other pressure vessels, whether fired or unfired, located in, on, or about the Premises, without exclusion for explosion, collapse and underground damage, in an amount not less than One Million Dollars (\$1,000,000). Tenant may provide coverage for general liability insurance under a blanket policy, provided that such blanket policy provides aggregate coverage of not less than Four Million Dollars (\$4,000,000) as specified in Section 14(c)(3). All of such insurance shall insure the performance by Tenant of the indemnity agreement as to liability for injury to or death of persons and damage to property set forth in Section 21(b) hereof. All of such insurance shall be noncontributing with any insurance which may be carried by Landlord and shall contain a provision that Landlord, although named as an insured, shall nevertheless be entitled to recover under the policy for any loss, injury or damage to Landlord, its agents and employees, or the property of such persons.

(d) The limits and coverage of all such insurance shall be adjusted by agreement of Landlord and Tenant on every fifth anniversary of the Commencement Date during the Term in conformity with the then prevailing custom of insuring property similar to the Premises and any disagreement regarding such adjustment shall be settled by arbitration in the manner provided in Section 32 hereof. Upon the issuance thereof, each insurance policy or a duplicate or certificate thereof shall be delivered to Landlord and Lender. Nothing herein shall be construed to limit the right of Lender to cause Tenant to carry or procure other insurance covering the same or other risks in addition to the insurance specified in this Lease.

(e) All amounts that shall be received under any insurance policy specified in subsections (a) and (b) above shall be first applied to the payment of the cost of repair, reconstruction or replacement of any buildings or improvements, or furniture, fixtures, equipment and machinery, that is damaged or destroyed.

**20. Mechanics' and Other Liens.** Tenant shall promptly discharge or remove by bond or otherwise prior to foreclosure thereof any and all mechanics', materialmen's and other liens for work or labor done, services performed, materials, appliances, teams or power contributed, used or furnished to be used in or about the Premises for or in connection with any operations of Tenant, any construction of Tenant Improvements, alterations, improvements, repairs or additions which Tenant may make or permit or cause to be made, or any work or construction by, for or permitted by Tenant on or about the Premises, and to indemnify, save and hold Landlord and all of the Premises and all buildings and improvements thereon free and harmless of and from any and all such liens and claims of liens and suits or other proceedings pertaining thereto. Tenant covenants and agrees to give Landlord written notice not less than twenty (20) days in advance of the commencement of any construction, alteration, addition, improvement or repair costing in excess of Twenty-Five Thousand Dollars (\$25,000) in order that Landlord may post appropriate notices of Landlord's non-responsibility.

**21. Indemnity.**

(a) Tenant shall have the right to contest the amount or validity of any lien of the nature set forth in Section 20 hereof or the amount or validity of any tax, assessment, charge, or other item to be paid by Tenant under Section 6 hereof by giving Landlord written notice of Tenant's intention to do so within twenty (20) days after the recording of such lien or at least ten days prior to the delinquency of such tax, assessment, charge, or other item, as the case may be. In any such case, Tenant shall not be in default hereunder, and Landlord shall not satisfy and discharge such lien nor pay such tax, assessment, charge or other item, as the case may be, until ten (10) days after the final determination of the amount or validity thereof, within which time Tenant shall satisfy and discharge such lien or pay such tax, assessment, charge or other item to the extent held valid and all penalties, interest, and costs in connection therewith; provided, however, that the satisfaction and discharge of any such lien shall not, in any case, be delayed until execution is had upon any judgment rendered thereon, nor shall the payment of any such tax, assessment, charge or other item, together with penalties interest, and costs, in any case be delayed until sale is made or threatened to be made of the whole or any part of the Premises on account thereof, and any such delay shall be a default of Tenant hereunder. In the event of any such contest, Tenant shall protect and indemnify Landlord against all loss, cost, expense, and damage resulting therefrom, and upon notice from Landlord so to do, shall furnish Landlord a corporate surety bond payable to Landlord, in one hundred and twenty percent (120%) of the amount of the lien, tax, assessment, charge, or item contested, as the case may be, conditioned upon the satisfaction and discharge of such lien or the payment of such tax, assessment, charge, or other item, and all penalties, interest, and costs in connection therewith.

(b) To the fullest extent allowed by law, Tenant covenants and agrees that Landlord shall not at any time or to any extent whatsoever be liable, responsible or in anywise accountable for any loss, injury, death, or damage to persons or property which, at any time may be suffered or sustained by Tenant or by any person who may at any time be using, occupying, or visiting the Premises or be in, on or about the Premises, from any cause whatsoever, except when whether such loss, injury, death, or damage shall be caused by or in anywise result from or arise out of the negligent or intentional acts or omissions of Landlord. Furthermore, Tenant shall forever indemnify, defend, hold, and save Landlord free and harmless of, from and against any and all claims, liability, loss, or damage whatsoever, including, without limitation, attorneys' fees, on account of any such loss, injury, death or damage occasioned by any cause other than Landlord's intentional or grossly negligent acts or omissions. Tenant hereby waives all claims against Landlord for damages to the buildings and improvements now or hereafter located on the Property and to the property of Tenant in, upon or about the Premises, and for injuries to persons or property in, on or about the Premises, from any cause arising at any time, except for any such claims arising from negligent or intentional acts or omissions committed by Landlord. Tenant's indemnity obligation set forth in this Section shall survive the termination or expiration of this Lease with respect to any claims or liabilities arising out of injury or damage to person or property which occurs during the Term.

(c) Tenant shall indemnify, protect, defend, and hold Landlord, and/or any of Landlord's officials, officers, employees, agents, departments, and instrumentalities (collectively, the "Indemnified Parties") harmless from any and all claims, demands, lawsuits, petitions for writ of mandamus, alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and other such procedures), judgments, orders, decisions, and other actions and proceedings (whether legal, equitable, declaratory, administrative or

adjudicatory in nature) (collectively “Actions”) brought against the Indemnified Parties that challenge, attack, or seek to modify, set aside, void, or annul any action of, or any permit or approval issued by, Landlord and/or any of its officials, officers, employees, agents, departments, and instrumentalities, for or concerning this Lease, the operation of a recreational vehicle park on the Premises (collectively, the “Project”), or any other permits, entitlements, or approvals related to the Project; Tenant’s obligation to indemnify against the Actions shall apply whether such Actions are brought under the Ralph M. Brown Act, California Environmental Quality Act, the California Coastal Act, the Planning and Zoning Law, the Subdivision Map Act, Community Redevelopment Law, Code of Civil Procedure Sections 1085 or 1094.5, or any other federal, state, or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. Applicant’s obligation under this condition of approval shall extend to indemnifying and holding harmless the Indemnified Parties against any damages, fees, or costs awarded in connection with any Action challenging the Project. Landlord and Tenant expressly agree that Landlord shall have the right to choose the legal counsel providing Landlord’s defense, and that Tenant shall reimburse, on a monthly basis, Landlord for any costs, fees, and expenses incurred by Landlord in the course of the defense. Landlord shall promptly notify Tenant of any Action brought, and Tenant shall cooperate with Landlord in the defense of the Action. Tenant’s obligation to fully indemnify Landlord shall survive the suspension, revocation, expiration or termination of any permit, entitlement, or approval issued by Landlord for or relating to the Project.

## **22. Eminent Domain.**

(a) If the whole of the Premises should be taken by any public or quasi- public authority under the power or threat of eminent domain during the Term, or if a substantial portion of the Premises should be taken so as to materially impair the use of the Premises contemplated by Tenant, and thereby frustrate Tenant’s purpose in entering into this Lease, then, in either of such events, this Lease shall terminate at the time of such taking. In such event, of the compensation and damages payable for or on account of the Property, exclusive of the buildings and improvements thereon, Tenant and Lender, as their interests may appear, shall receive a sum equal to the worth at the time of the compensation award of the amount by which: the fair rental value of the Premises for the balance of the Term (including unexercised Extension Periods) *exceeds* the rental payable pursuant to the terms of this Lease for the balance of the Term (including unexercised Extension Periods); the balance of such compensation and damages shall be payable to and be the sole property of Landlord. All compensation and damages payable for or on account of the buildings and improvements located on the Property and constituting a part of the Premises shall be divided among Landlord, Tenant, and Lender as follows:

(1) All compensation and damages payable for or on account of buildings and improvements having a remaining useful life less than the remaining Term as of the date of such taking shall be payable to and be the sole property of Tenant and Lender, as their interests may appear; and

(2) A proportionate share of all compensation and damages payable for or on account of buildings and improvements having a remaining useful life greater than the remaining Term as of the date of such taking, determined by the ratio that the then remaining

Term bears to the then remaining useful life of such buildings and improvements, shall be payable to and be the sole property of Tenant and Lender, as their interests may appear, and the remaining share thereof shall be payable to and be the sole property of Landlord.

(b) If less than the whole of the Premises should be taken by any public or quasi-public authority under the power or threat of eminent domain during the Term and this Lease is not terminated as provided in subsection (a) above, Tenant shall promptly reconstruct and restore the Premises, with respect to the portion of the Premises not so taken, as an integral unit of the same quality and character as existed prior to such taking. The Monthly Rent payable by Tenant following such taking shall be equitably reduced by agreement of Landlord and Tenant in accordance with the reduced economic return to Tenant, if any, which will occur by reason of such taking. The compensation and damages payable for, or on account of, such taking shall be applied to the reconstruction and restoration of the Premises by Tenant pursuant to this subsection (b) by application, first, of any sums payable for or on account of the buildings and improvements situated on the Property, and second, of any sums payable for or on account of the Property exclusive of such buildings and improvements. The remainder, if any, after reconstruction and restoration shall be divided among Landlord, Tenant and Lender in the manner provided in subsection (a) above.

(c) No taking of any portion (but not all) of the remaining Term (including unexercised Extension Periods) of the leasehold interest in the Premises shall terminate this Lease or give Tenant the right to surrender this Lease, nor excuse Tenant from full performance of its covenants for the payment of rent and other charges or any other obligations hereunder capable of performance by Tenant after any such taking, but in such case all compensation and damages payable for or on account of such taking shall be payable to and be the sole property of Tenant and Lender.

(d) Should Landlord and Tenant for any reason disagree (i) as to whether any portion of the Premises taken is so substantial as materially to impair the use of the Premises contemplated by Tenant, (ii) on the division of any compensation or damages paid for or on account of any taking of all or any portion of the Premises, or (iii) on the amount by which the rent payable by Tenant hereunder is to be equitably reduced in the event of a partial taking, then, and in any of such events, the matter shall be determined by arbitration in the manner provided in Section 33 hereof.

(e) The foregoing provisions shall apply to the Premises and the improvements located thereon; notwithstanding the foregoing, as between Landlord and Tenant, Tenant shall be solely entitled to all compensation for the relocation of businesses conducted from the Premises.

**23. Landlord's Right of Inspection.** Landlord shall have the right to inspect the Property upon not less than two (2) days prior written notice to Tenant.

**24. Tenant's Defaults and Landlord's Remedies.** It shall be an event of default hereunder (each an "Event of Default") if (i) default shall be made by Tenant in the punctual payment of any rent or other moneys due hereunder and shall continue for a period of five (5) business days after written notice thereof to Tenant; (ii) default shall be made by Tenant in the

performance or observance of any of the other agreements, covenants or conditions of this Lease on the part of Tenant to be performed and observed and such default shall continue for a period of thirty (30) days after written notice thereof to Tenant, or, in the case of a default which cannot be cured by the payment of money and cannot be cured within thirty (30) days, shall continue for an unreasonable period after such written notice; (iii) Tenant shall abandon the Premises; (iv) Tenant shall admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation under any law or statute of the federal government or any state government or any subdivision of either now or hereafter in effect, make an assignment for the benefit of its creditors, consent to, or acquiesce in the appointment of a receiver of itself or of the whole or any substantial part of the Premises; (v) a court of competent jurisdiction shall enter an order, judgment or decree appointing a receiver of Tenant or of the whole or any substantial part of the Premises, and such order, judgment or decree shall not be vacated, set aside or stayed within sixty (60) days from the date of entry of such order, judgment or decree, or a stay thereof be thereafter set aside; (vi) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Tenant under any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation law or statute of the Federal government or any state government or any subdivision of either now or hereafter in effect, and such order judgment or decree shall not be vacated, set aside or stayed within sixty (60) days from the date of entry of such order, judgment or decree, or a stay thereof be thereafter set aside; or (vii) under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction shall assume custody or control of Tenant or of the whole or any substantial part of the Premises, and such custody or control shall not be terminated within sixty (60) days from the date of assumption of such custody or control. Upon the occurrence of any Event of Default by Tenant hereunder, Landlord shall have the following rights and remedies, in addition to all other rights and remedies of Landlord provided hereunder or by law:

(1) The right to terminate this Lease, in which event Tenant shall immediately surrender possession of the Premises, and pay to Landlord all rent and all other amounts payable by Tenant hereunder to the date of such termination;

(2) The remedies described in California Civil Code Section 1951.2, including, without limitation, the right to recover the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subdivision (b) of section 1951.2 of the California Civil Code;

(3) The remedies described in California Civil Code section 1951.4, including, without limitation, the right to collect, by suit or otherwise, each installment of rent or other sums that become due hereunder, or to enforce, by suit or otherwise, performance or observance of any agreement, covenant or condition hereof on the part of Tenant to be performed or observed; or

(4) The right to cause a receiver to be appointed in any action against Tenant to take possession of the Premises or to collect the rents or profits therefrom. Neither appointment of such receiver nor any other action taken by Landlord shall constitute an election

on the part of Landlord to terminate this Lease unless written notice of termination is given to Tenant.

**25. Nonwaiver.** If any action or proceeding is instituted or if any other steps are taken by Landlord or Tenant, and a compromise part payment or settlement thereof shall be made, either before or after judgment, the same shall not constitute or operate as a waiver by Landlord or Tenant of any agreement, covenant or condition of this Lease or of any subsequent breach thereof. No waiver of any default under this Lease shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege, or option under this Lease shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege, or option hereunder. No waiver of any provision hereof by Landlord or Tenant shall be deemed to have been made unless and until such waiver shall have been reduced to writing and signed by Landlord or Tenant, as the case may be. The receipt by Landlord of rent with knowledge of any default under this Lease shall not constitute or operate as a waiver of such default. Payment by Tenant or receipt by Landlord of a lesser amount than the stipulated rent or other sums due Landlord shall operate only as a payment on account of such rent or other sums. No endorsement or statement on any check or other remittance or in any communication accompanying or relating to such payment shall operate as a compromise or accord and satisfaction unless the same is approved in writing by Landlord, and Landlord may accept such check, remittance or payment without prejudice to its right to recover the balance of any rent or other sums due by Tenant and pursue any remedy provided under this Lease or by law.

**26. No Merger.**

(a) There shall be no merger of the leasehold estate created by this Lease with any other estate in the Premises, including the fee estate, by reason of the fact that the same person may own or hold the leasehold estate created by this Lease, or an interest in such leasehold estate, and such other estate in the Premises, including the fee estate, or any interest in such other estate; and no merger shall occur unless and until Landlord, Tenant and any Lender shall join in a written instrument effecting such merger and shall duly record the same.

(b) No termination of this Lease shall cause a merger of the estates of Landlord and Tenant, unless Landlord so elects and any such termination shall, at the option of Landlord, either work a termination of any sublease in effect or act as an assignment to Landlord of Tenant's interest in any such sublease. Notwithstanding the foregoing, in the event of the termination of this Lease and the execution of a new lease with Lender or its nominee pursuant to Section 18(i) above, the termination of this Lease shall neither work a merger of estates nor a termination of any subleases in effect unless Lender so elects.

**27. No Partnership.** It is expressly understood and agreed that Landlord does not, in any way or for any purpose by executing this Lease, become a partner of Tenant in the conduct of Tenant's business, or otherwise, or a joint venturer or a member of a joint enterprise with Tenant.

**28. Covenants Run With Land.**

(a) The agreements, covenants and conditions in this Lease contained are and shall be deemed to be covenants running with the land and the reversion and shall be binding upon and shall inure to the benefit of Landlord and Tenant and their respective successors and assigns and all subsequent Landlords and Tenants respectively hereunder.

(b) All references in this Lease to “**Tenant**” or “**Landlord**” shall be deemed to refer to and include successors and assigns of Tenant or Landlord, respectively, without specific mention of such successors or assigns.

**29. Notices.** Except as otherwise provided hereunder; any notice or communication to Landlord, Tenant or Lender shall be in writing and be mailed by certified mail, postage prepaid. Notices or communications shall be addressed to Landlord at:

Crescent City Harbor District  
Attn: Harbormaster  
101 Citizens Dock Road  
Crescent City, California 95531  
Phone: \_\_\_\_\_

or such other address or addresses as Landlord shall from time to time designate, or to such agent of Landlord as it may from time to time designate, by notice in writing to Tenant. Notices or communications shall be addressed to Tenant at:

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

or such other address or addresses as Tenant shall from time to time designate, or to such agent of Tenant as it may from time to time designate, by notice in writing to Landlord. Notices or communications to Lender shall be addressed to Lender at such address as Lender shall from time to time designate by notice in writing to Landlord. Any notice mailed in the manner above set forth shall be deemed to have been received unless returned to the sender by the post office.

**30. Limitation of Landlord’s Liability.** In the event of any transfer of Landlord’s interest in this Lease, the Landlord herein named (and in case of any subsequent transfer, the then transferor) shall be automatically freed and relieved from and after the date of such transfer of all personal liability for the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed; provided, however, that any funds in the hands of Landlord or the then transferor at the time of such transfer, in which Tenant has an interest shall be turned over to the transferee and any amount then due and payable to Tenant by Landlord or the then transferor under any provision of this Lease shall be paid to Tenant; and provided, further, that upon any such transfer, the transferee shall expressly assume, subject to the limitations of this Section 30, all of the agreements, covenants and conditions in this Lease to

be performed on the part of Landlord, it being intended hereby that the covenants and obligations contained in this Lease on the part of Landlord shall, subject as aforesaid, be binding on each Landlord, its successors and assigns, only during its period of ownership.

**31. Estoppel Certificates.** Tenant or Landlord, as the case may be, will execute, acknowledge and deliver to the other and/or to Lender, promptly upon request, its certificate certifying (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications), (b) the dates, if any, to which the Monthly Rent, and other monetary obligations have been paid, (c) whether there are then existing any charges, offsets or defenses against the enforcement by Landlord of any agreement, covenant or condition hereof on the part of Tenant to be performed or observed (and, if so, specifying the same), and (d) whether there are then existing any defaults by Tenant in the performance or observance by Tenant of any agreement, covenant or condition hereof on the part of Tenant to be performed or observed and whether any notice has been given to Tenant of any default which has not been cured (and, if so, specifying the same). Any such certificate may be relied upon by a prospective purchaser, mortgagee or trustee under a deed of trust of the Premises or any part thereof.

**32. Holding Over.** This Lease shall terminate without further notice upon the expiration of the Term, and any holding over by Tenant after the expiration of the Term shall not constitute a renewal hereof or give Tenant any rights hereunder or in or to the Premises, except as otherwise herein provided, it being understood and agreed that this Lease cannot be renewed, extended or in any manner modified except in writing signed by Landlord and Tenant.

**33. Late Charge.** Tenant acknowledges that Tenant's failure to pay any installment of Monthly Rent or any other amounts due under this Lease as and when due may cause Landlord to incur costs not contemplated by Landlord when entering into this Lease, the exact nature and amount of which would be extremely difficult and impracticable to ascertain. Accordingly, if any installment of Monthly Rent or any other amount due under the Lease is not received by Landlord within ten (10) days after it is due, then, without any notice to Tenant, Tenant shall pay to Landlord an amount equal to five percent (5%) of the past due amount, which the parties agree represents a fair and reasonable estimate of the costs incurred by Landlord as a result of the late payment by Tenant.

**34. Default Interest.** In the event that Tenant shall fail to pay any amount of Monthly Rent, or any other monetary obligations owed to Landlord hereunder within thirty (30) days of the date that such amounts are due and payable, Tenant shall pay to Landlord, in addition to such amounts, interest thereon at the maximum interest rate permitted by law from the first day of the month in which such monetary obligation was payable to the date of actual payment thereof by Tenant to Landlord.

**35. Severability.** In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Lease, but this Lease shall be construed as if such invalid, illegal, or unenforceable provisions had not been contained herein.

**36. Time of the Essence.** Time is of the essence of each and all of the agreements, covenants, and conditions of this Lease.

**37. Consents.** Whenever in this Lease the consent or approval of either Landlord or Tenant is required or permitted, the party requested to give such consent or approval will act promptly and will not unreasonably withhold its consent or approval.

**38. Memorandum of Lease.** Contemporaneously with the execution of this Lease, Landlord and Tenant will execute and acknowledge for recordation in the Official Records of the County of Del Norte a Memorandum of Lease in the form of Exhibit "B" hereto.

**39. Attorney Fees.** In the event of any action or proceeding at law or in equity between Landlord and Tenant to enforce any provision of this Lease or to protect or establish any right or remedy of either party hereunder, the unsuccessful party to such litigation shall pay to the prevailing party all costs and expenses, including reasonable attorney fees, incurred therein by such prevailing party, and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorney fees shall be included in and as a part of such judgment.

**40. Integration.** This instrument constitutes the entire agreement between Landlord and Tenant with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral or written. This Lease may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Landlord, Tenant and, if required by any Lender, by Lender.

**41. Amendments.** This Lease may be modified only in writing and only if signed by the parties at the time of the modification.

**42. Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of California.

**43. Commissions, Indemnity, Disclosure.** Each party represents to the other party that there is no broker representing such party in the current transaction, and that the representing party has incurred no liability for any brokerage commission or finder's fee arising from or relating to the transactions contemplated by this Lease. Each party hereby indemnifies and agrees to protect, defend and hold harmless the other party from and against all liability, cost, damage or expense (including without limitation attorneys' fees and costs incurred in connection therewith) on account of any brokerage commission or finder's fee which the indemnifying party has agreed to pay or which is claimed to be due as a result of the actions of the indemnifying party. This Section 44 is intended to be solely for the benefit of the parties hereto and is not intended to benefit, nor may it be relied upon by, any person or entity not a party to this Agreement.

**44. General Provisions Regarding Option to Extend.** The following provisions will apply to any option to extend the Term (the "**Option(s)**").

(a) Tenant shall have no right to exercise an Option (i) during the period commencing with the giving of any notice of default and continuing until such default is cured;

(ii) during any period during which rent is unpaid (without regard to whether notice thereof has been given to Tenant); (iii) during any time Tenant is materially in default under this Lease; (iv) in the event that Tenant has been given two (2) or more notices of separate defaults, whether or not such defaults have been cured, during the twelve (12) month period immediately preceding the attempt to extend the Term.

(b) An Option shall terminate and be of no further force or effect (notwithstanding Tenant's due and timely exercise of such Option) if, after such exercise and prior to the commencement of an extended term or completion of the purchase, (i) Tenant fails to pay rent for a period of thirty (30) days after such rent becomes due; or (ii) if Tenant commits a material breach of this Lease.

**45. Options to Extend Termination Date.** Tenant will have the option to extend the Termination Date for up to three (3) periods of five (5) years each (each an "**Extension Period**"), upon the following terms and conditions:

(a) The Termination Date may not be extended for a later period unless the prior extension option has been validly exercised.

(b) Tenant shall give written notice to Landlord of its election to extend the Termination Date of this Lease not later than one hundred eighty (180) days prior to the Termination Date or the most recent Extension Period.

(c) Rent during the first year of any Extension Period will be fair market value as determined by Landlord and Tenant within thirty (30) days after Landlord received Tenant's exercise notice, provided, however, in no event shall Annual Rent be less than one hundred two percent (102%) of the Annual Rent then in effect prior to the applicable Extension Period.

(d) If the parties are unable to agree upon the fair market value for the Annual Rent, they shall select an appraiser within ten (10) days after the expiration of such thirty (30) days following Landlord's receipt of Tenant's exercise notice. If Landlord and Tenant are unable to select a single appraiser, each party shall select its own appraiser within ten (10) days thereafter and the two (2) appraisers shall meet promptly and attempt to determine the Annual Rent, based on the prevailing lease rate and/or property value of comparable recreational vehicle parks in Northern California, and Oregon. If the two (2) appraisers are unable to agree within thirty (30) days after their selection on Annual Rent that varies less than five percent (5%) (as among the two (2) appraisers), the two (2) appraisers shall select a third (3<sup>rd</sup>) appraiser within ten (10) days following such thirty (30) day period. The third (3<sup>rd</sup>) appraiser shall in all events be a person who has not previously acted in any capacity for either Landlord or Tenant. If the two appraisers are unable to agree on a third (3<sup>rd</sup>) appraiser (or if either party should within the time specified fail to appoint its appraiser), then either party, upon written application with ten (10) days' prior written notice to the other, may request such appointment be made by the then presiding judge of the Superior Court of Del Norte County acting pursuant to Code of Civil Procedure Section 1281.6.

(e) The determination of a majority of the appraisers shall be binding upon the parties and shall be made no later than thirty (30) days following the selection of the third (3<sup>rd</sup>) appraiser. If a majority of the appraisers are unable to set the Annual Rent within the stipulated period of time, the three (3) appraisals shall be added together and their totals divided by three (3); the resulting quotient shall be such Annual Rent. If, however, the low appraisal and/or the high appraisal are/is more than five percent (5%) lower and/or higher than the middle appraisal, the low and/or high appraisal shall be disregarded. If only one (1) appraisal is disregarded, the remaining two (2) appraisals shall be added together and their total divided by two (2); the resulting quotient shall be the Annual Rent. If both the low appraisal and the high appraisal are disregarded, the middle appraisal shall be the Annual Rent. Each party shall bear the cost of the appraisers selected by it; the expenses of the third (3<sup>rd</sup>) appraiser shall be borne one-half (1/2) by Landlord and one-half (1/2) by Tenant.

**46. Landlord's Buyout Right.** At any time during any Extension Period, Landlord shall have the continuing right to purchase Tenant's leasehold interest and terminate this Lease upon no less than six (6) months' notice. As consideration for Landlord's buyout right set forth in this Section 46, Tenant shall receive a Buyout Fee (the "**Buyout Fee**") equal the depreciated value of the Improvements paid for by Tenant plus the fair market value of the RV Park business based on the Industry Multiple (defined below) of Net Operating Income. For purposes of this Section 46, "Net Operating Income" shall mean Tenant's Gross Sales, less operating expenses, including, without limitation, real estate taxes, utilities, property and liability insurance and maintenance. The "Industry Multiple" shall mean the quotient of Net Operating Income divided by the Fair Market Value of the Premises.

**47. Quitclaim Deed Upon Termination.** Upon expiration or any early termination of the Lease Tenant shall deliver a duly executed and notarized quitclaim deed, disclaiming any and all interest in and to the Premises along with a bill of sale for purposes of transferring any furniture, fixtures and equipment used in operating the Premises for the Permitted Use.

**48. Leasehold Policy of Title Insurance.** Upon the recording of the Memorandum of Lease, Tenant may elect to obtain a leasehold policy of title insurance, insuring Tenant's leasehold interest in the Property. Tenant will pay the premium for any such title policy.

**49. Force Majeure.** In the event that either party hereto shall be delayed or prevented from the performance of any of its obligations required hereunder due to circumstances beyond the reasonable control of the non-performing party, including but not limited to, strikes, lockouts or other differences with workers or unions, pandemic or epidemic, fire, flood, acts of God, hostilities, civil commotion, governmental acts, orders or regulations, failure of power, or other reason of a like or similar nature, not the fault of the party delayed in performing its services or doing acts required under the terms of this Lease, then performance of such acts shall be excused for the period of the delay. Notwithstanding the foregoing, this provision shall not apply to Tenant's obligation to pay rent or other sums due hereunder, and Tenant shall continue to timely perform its payment obligations hereunder as and when due.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

LANDLORD:

CRESCENT CITY HARBOR DISTRICT

By: \_\_\_\_\_

Its: \_\_\_\_\_

TENANT:

RENEWABLE ENERGY CAPITAL, LLC, a  
California limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

## **EXHIBIT “A”**

### **DESCRIPTION OF PROPERTY**

That certain real property located in the County of Del Norte, State of California, described as follows:

Beginning at the most westerly corner of Lot 13 of Block 3 of Walton Docks Subdivision according to the map thereof filed July 13, 1915 in Book 2 of Maps, page 35, Del Norte County records; and running:

- (1) Thence south 44 degrees west along the southwesterly prolongation of the northwesterly line of said Lot 13 to a point on the Ordinary High Water Line of the Pacific Ocean;
- (2) Thence southeasterly along said Ordinary High Water Line to its point of intersection with the southwesterly prolongation of the southeasterly line of Josephine Street;
- (3) Thence north 44 degrees east along said southeasterly line to the northeasterly line of that certain strip of land shown as 'Reserved for Dock Causeway' on said map of Walton Dock Subdivision;
- (4) Thence northwesterly along said northeasterly line to the point of beginning.

**EXHIBIT "B"**

**MEMORANDUM OF LEASE**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MEMORANDUM OF LEASE

This memorandum of lease ("**Memorandum of Lease**") is made as of \_\_\_\_\_, 2022 between \_\_\_\_\_ ("**Landlord**") and \_\_\_\_\_ ("**Tenant**"), who agree as follows:

1. The Lease. Landlord leases to Tenant, and Tenant leases from Landlord, the Premises (described below) on the terms and conditions of that certain unrecorded Ground Lease ("Lease") dated as of \_\_\_\_\_, 2022, between the parties. (Unless expressly provided otherwise, all capitalized terms and phrases used in this Memorandum shall have the same meanings as set forth in the Lease.)

2. The Premises. The Premises which are the subject of the Lease are that certain real property situated in the City of Crescent City, Del Norte County, California, commonly known as Assessor Parcel No. \_\_\_\_\_ and more particularly described in Exhibit "1" attached hereto and made a part hereof by this reference.

3. Term. The initial term ("**Initial Term**") of the Lease shall commence on \_\_\_\_\_, and expire twenty-five (25) years thereafter; provided, however, if the Term commence on a date other than the first day of a calendar month, the Term shall be extended by this fractional month.

4. Option to Extend Termination Date. Tenant has three (3) consecutive options to extend the Termination Date of the Lease of five (5) years each on all the terms and conditions of the Lease.

5. Purpose of Memorandum. This Memorandum of Lease is prepared for the purpose of notice and recordation. This Memorandum of Lease does not and is not intended to modify the provisions of the Lease.

LANDLORD:

CRESCENT CITY HARBOR DISTRICT

By: \_\_\_\_\_  
Its: \_\_\_\_\_

TENANT:

RENEWABLE ENERGY CAPITAL, LLC, a  
California limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA  
COUNTY OF DEL NORTE

On \_\_\_\_\_ before me, (here insert name and title of the officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA  
COUNTY OF DEL NORTE

On \_\_\_\_\_ before me, (here insert name and title of the officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

EXHIBIT "1" TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION OF PREMISES

That certain real property located in the City of Crescent City, Del Norte County, California, described as follows:

BEGINNING at the most westerly corner of Lot 13 of Block 3 of Walton Dock Subdivision according to the map thereof filed July 13, 1915 in Book 2 of Maps, page 35, Del Norte County records; and running:

(1) Thence south 44 degrees west along the southwesterly prolongation of the northwesterly line of said Lot 13 to a point on the Ordinary High Water Line of the Pacific Ocean;

(2) Thence southeasterly along said Ordinary High Water Line to its point of intersection with the southwesterly prolongation of the southeasterly line of Josephine Street;

(3) Thence north 44 degrees east along said southeasterly line to the northeasterly line of that certain strip of land shown as "Reserved for Dock Causeway" on said map of Walton Dock Subdivision;

(4) Thence northwesterly along said northeasterly line to the point of beginning.