

# Hoist Space Lease



This Lease is entered into the last day shown below between the Crescent City Harbor District, a public agency, "Landlord", and **Pacific Choice Seafood Company, an Oregon corporation whose number is C1586978**, "Tenant". Tenant's present statistics are as follows:

Tenant's Full Name: **Pacific Choice Seafood Company, an Oregon corporation whose number is C1586978**

**Office Address: #1 Commercial Street, Eureka, CA 95501;**

**Corporate Office: 16797 SE 130<sup>th</sup> Avenue, Clackamas, OR 9701**

**All Business Telephone Numbers: 707-442-2981, 503-905-0500**

**E-Mail Address: rharris@pacseafood.com**

## **LANDLORD AND TENANT AGREE:**

### **1. Premises**

(a) For and in consideration of the rent to be paid and the covenants to be performed by Tenant under this lease, Landlord agrees to lease the Premises to the Tenant, and the Tenant agrees to lease the Premises from Landlord, on the terms and conditions set forth in this lease. Except as expressly set forth in this Lease, "the Premises" is described as Space Number **Seven (7)** on Citizens Dock ("the Dock") in the County of Del Norte, State of California, more particularly illustrated in Exhibit "A", attached hereto and incorporated by this reference **and two (2) freezer spaces**. Tenant shall have the right to place **two hoists** within each space of the Premises. Tenant shall have the exclusive right to possession of the space taken up on the Dock by the base of Tenant's hoist, any office space located within the Premises, freezer space as allocated by this Lease, and for temporary storage containers so long as they do not unreasonably impede access through the Premises by vehicles and pedestrians for other harbor related activities. Placement of storage containers outside the boundary shown on Exhibit A is prohibited.

As to the remainder of the Premises, for the term of this Lease, Landlord grants Tenant and its employees, agents, customers and invitees, the nonexclusive right, in common with Landlord and all others to whom Landlord has or may grant the right, to use the Common Areas, subject to Tenant's compliance with any rules and regulations enacted or modified by Landlord that govern the use of the Common Areas. "Common Areas" means the space within the Premises excepting those areas to which Tenant is granted the exclusive right of possession, above. "Common Areas" is more fully defined in Article 9, herein. Tenant shall also have the nonexclusive right to use in common with Landlord, other tenants in the harbor and their employees and invitees, Landlord's common entrances, restrooms, parking lot and similar areas and facilities in the vicinity of the Premises that are not leased to other tenants, subject to Landlord's regulation of those facilities. Tenant shall not store anything off the Premises on Landlord's property.

(b) All vehicles using the parking lots shall be operable and removed from the harbor's parking lots and other areas on a daily basis. Vehicles longer than twenty-three feet shall not be allowed in the harbor unless they are conducting transient loading and unloading. For such transient loading and unloading vehicles, any vehicle that exceeds thirty feet in length, including its semi-trailer, is hereafter referred to as a "Truck." All Trucks that are doing any business with Tenant shall be on the Dock only when they are actively loading or unloading. If the Truck is waiting, it shall be parked in the boat basin parking lot. Trailers shall never be disconnected from the motor truck or truck tractor. Trucks shall back out on Citizen's Dock. Trucks are prohibited from attempting to U-turn on the Dock. Trucks are prohibited from being left unattended. Additionally, Trucks doing business with the Tenant are prohibited from parking between the "Y" intersection of the Dock and the entrance of the Dock excepting the unloading area below the fuel dock.

(c) The rights of Tenant under this Lease are subject to and subordinate to any general obligation, bond, Certificate of Participation, loan or other indebtedness of the Landlord now in existence or hereafter created.

## **2. Term**

The term of this Lease shall be for a period of twenty-four (24) months, commencing on the **1<sup>st</sup> day of November, 2022, and expiring at midnight on the 31<sup>st</sup> day of October, 2022**, unless terminated earlier as provided in this lease. Any holding over by Tenant after the expiration of said term shall not constitute a renewal hereof but the terms hereof shall continue in force and effect on a month-to-month basis, except that the agreed upon base rent shall increase to 150% of the stated amount

## **3. Rent**

(a) Tenant shall pay Landlord a basic minimum net rent in the sum of **\$1,250**, effective on November 1, 2022, increasing to **\$1,500** commencing on November 1, 2023, in lawful money of the United States of America ("Minimum Rent"). Each monthly installment of Minimum Rent shall be paid in advance, without prior demand by Landlord, and without

any deduction, abatement, diminution, offset, or reduction or setoff. If the Minimum Rent payable under this lease is abated for any portion of any month pursuant to the terms of this Lease, the amount of the monthly installment of Minimum Rent for that month shall also be adjusted on a per diem basis calculated on a 30-day month. All rent payable under this Lease shall be paid (1) to Landlord at the address set forth in this Lease for giving notices to Landlord as may be changed by written notice from time to time, or (2) to Landlord's agent at the address designated in writing by Landlord.

(b) As additional rent Tenant shall pay to Landlord the following amount, per pound, for all seafood products unloaded or moved on or over the areas leased by Tenant, which areas include the Premises as well as the Fish Processing Plant:

Species Unloaded or Moved in Cents per Pound

All species of Tuna.....	0.5
All species of Crab .....	1.0
All species of Salmon.....	2.0
<u>Pink Shrimp</u> (Pandalus jordani).....	0.25
<u>Coonstripe Shrimp</u> (Pandalus danae).....	2.5
All trawl caught groundfish. ....	0.4
<u>Pacific Whiting/Hake</u> (Merluccius productus) .....	0.025
Nearshore groundfish caught by hook & line (Cabezon & Kelp Greenling, Rockfish: Black, Blue, Brown, China, Copper, Quillback, Gopher, Yelloweye, Black & Yellow, Grass) .....	1.25
Sablefish caught with fixed gear (Anoplopoma fimbria) .....	1.0
All other species.....	0.5

By the due date for payment of the poundage-based additional rent, Tenant shall prepare and provide to Landlord a summary of the previous month's landing receipts showing the cumulative total of the following information compiled from the landing receipts detailing all of the following: (1) The accurate weight of the species of fish received, as designated pursuant to California Fish and Game Code § 8045. Sablefish may be reported in dressed weight, and if so reported, shall have the round weights computed, for purposes of management quotas, by multiplying 1.6 times the reported dressed weight; (2) The price paid. When requested by Landlord, Tenant shall provide Landlord with a photocopy of each landing receipt completed by Tenant pursuant to California Fish and Game Code §8043. If Tenant generates an automated report that complies with this paragraph, a copy of the automated report provided to Landlord shall suffice rather than a separate report by Tenant. Notwithstanding the foregoing duty to disclose landing receipt information, Tenant hereby specifically waives any privilege or confidentiality that it may have with the California Department of Fish and Game, National Marine Fisheries Service and Pacific States Marine Fisheries Commission as Tenant's landing receipts submitted to such agency to assist Landlord in auditing Tenant's submissions to further assure the accuracy of the information received. Tenant agrees to execute any further documents necessary for the Department of Fish and Game, National Marine Fisheries Service and Pacific States Marine Fisheries Commission to release information relating to Tenant's landings. This additional rent shall be due for all landings that occurred. The poundage- based additional rent that accrues in any month is not payable to Landlord on the date the next minimum rent is payable, but shall instead, be paid at the following minimum rent due date. For instance, when tenant pays rent due on September 1<sup>st</sup> it shall also pay the additional rent due for landings that occurred during the month of July.

(c) Any rent due under this Lease not paid to Landlord on the date due hereunder, shall bear interest at the rate shown on Landlord's annual schedule of fees, or the highest lawful rate, whichever is greater, from the due date and payable until the same shall have been fully paid, but the payment of such interest shall not excuse or cure any default by Tenant under this Lease. Tenant hereby acknowledges that the late payment by Tenant to Landlord will cause Landlord to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs may include, but are not limited to, administrative processing, accounting charges, late charges that may be imposed on Landlord. Accordingly, if any installment of rent, or any other sum due from Tenant, shall not be received by the tenth day of the month Tenant shall pay to Landlord, in addition to interest provided above, a late charge of five percent (5%) of the amount unpaid.

The parties agree that such late charge represents a fair and reasonable estimate of the cost Landlord will incur due to late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of its other rights or remedies hereunder. Any payment, of any kind, returned for insufficient funds will be subject to an additional handling charge in the sum shown on Landlord's annual schedule of fees, from time to time amended.

Landlord shall have the right to accept all rent and other payments, whether full or partial, and to negotiate checks and payments thereof without any waiver of rights, irrespective of any conditions to the contrary sought to be imposed by Tenant.

#### **4. Use**

(a) The Premises shall be utilized for the purpose of receiving and unloading seafood products and indicated uses, and use of any building on the premises for office space connected with such activities, and use of a designated freezer space. Tenant may not use the Premises or permit the Premises to be used for any other purpose.

(b) Tenant shall ensure that all activities being engaged in by Tenant and/or Tenant's employees, licensees, subtenants, visitors, patrons, guests or invitees shall be conducted free from negligence in a reasonably careful manner to prevent harm to oneself or to others.

(c) Tenant shall at all times keep the Premises (including the interior and exterior business front surfaces) and walking surfaces on the Dock in a clean, safe, sanitary, and orderly condition. Tenant shall have the duty to repair any defective or dangerous walking surfaces fronting on the Premises. At its sole expense, Tenant shall replace any cracked or broken glass on the Premises with glass equal in quality and similar in kind to that originally installed on the Premises. When ever a Tenant is actively loading and/or unloading vessels Tenant shall have a two cubic yard dumpster to receive its waste. The dumpster shall be emptied at least once per week.

(d) Tenant shall comply with all statutes, ordinances, resolutions, policies, directives of the Harbor Commissioners, laws, regulations and general plans now in effect and hereafter promulgated by any agency having jurisdiction over the harbor district and/or the Premises and the activities thereon. If any license (including, but not limited to, Commercial Fish Business License, Fish Receiving License, Fisherman's Retail License, Fish Processor's License, Fish Wholesaler's License or Fish Importer's License, Coast Guard Certificate of Adequacy for Reception Facilities), permit, or other governmental authorization is required for the lawful use or occupancy of the Premises or any portion of the Premises, Tenant shall procure and maintain it throughout the term of this lease. The judgment of any court of competent jurisdiction, or the admission by Tenant in a proceeding brought against Tenant by any government entity, that Tenant has violated any such statute, ordinance, regulation, or requirement shall be conclusive as between Landlord and Tenant and shall constitute grounds for termination of this lease by Landlord.

(e) Tenant and Tenant's guests and invitees shall use the premises and common areas of Citizens Dock so as not to block or interfere with access or use by the public and other tenants of the Dock. Tenant shall comply with the reasonable directives of Landlord regarding use of the common areas of Citizens Dock.

(f) Tenant and its employees shall park only in those areas that are designated by Landlord as parking areas.

(g) Notwithstanding the foregoing, Tenant shall not use and shall not permit or suffer the Premises or any portion of the Premises or the hoist to be used, improved, developed, used, or occupied in any manner or for any purpose that which will in any way conflict with any law, statute, ordinance, resolution, policy or governmental rule or regulation (including but not limited to the Crescent City Harbor District and Coastal Commission regulations), now in force or which may hereafter be enacted or promulgated. Tenant agrees not to allow any fuel, toxic materials, or any fumes, waste, or matters that could damage Landlord's property, public waters or the environment to be released or spilled into the environment. Tenant shall not commit, or allow to be committed any waste upon the premises or any nuisance thereon.

(h) Landlord shall have the right from time to time to adopt, amend, or supplement rules and regulations relating to the Premises and the Common Areas. Landlord shall notify Tenant in writing of the adoption of, and any amendment or modification made to the rules and regulations. Rules and regulations shall apply uniformly to all tenants. Tenant agrees to comply with all such rules and regulations; a failure by Tenant to so comply shall constitute a breach under this Lease.

(i) Tenant shall not do or permit anything to be done in or about the Premises that will in any way obstruct or interfere with the rights of Landlord's other tenants or injure or annoy them or use or allow the Premises to be used for any improper, unlawful, or objectionable purpose.

(j) Tenant shall surrender the Premises in good order and condition (reasonable wear and tear excepted).

(k) In the event that Tenant's actions trigger the need for structural changes based upon the applicability or enforcement of governmental regulations (e.g. the Americans with Disabilities Act) Tenant shall either vacate the premises prior to the need for the structural changes or be solely responsible for the payment of all expenses related to the structural improvement.

(l) Tenant shall not do or permit anything to be done in or about the Premises or bring or keep anything in the Premises that will in any way increase the existing rate of or affect any fire or other insurance on the Premises, any of its contents, or other harbor businesses or cause a cancellation of any insurance policy. Tenant shall promptly, upon demand, reimburse Landlord for any additional premium charged for any such policy due to Tenant's failure to comply with the provisions of this section.

(m) Sleeping and all other residential type of use is prohibited upon the Premises or the common areas.

(n) Tenant may not use the Premises or permit the Premises to be used for any other purpose.

## 5. Utilities

(a) Tenant shall pay for all utility services supplied to the Premises or used by Tenant, including but not limited to water, propane, electricity, waste disposal, telephone service, electrical power lines, cable lines, fuel, and any other sustenance, energy and communication utility services that may hereafter come into use.

(b) Landlord reserves the right from time to time to provide any or all utilities to the Premises. In such case, Tenant shall pay such charges as Landlord may establish from time to time, which Landlord may determine based on the quantity of utilities used or consumed at the Premises on a monthly or other regular basis. At the time of executing this Lease, the initial monthly charge for utilities each month is: (1) Twenty-Two Dollars (\$22) for water per hoist; and (2) the Cost for Electricity plus an administrative charge of Ten Dollars (\$10) for each electric meter assigned to Tenant at any time during the billing period; and (3) One Hundred Eleven Dollars (\$111.00) for each freezer space reserved for Tenant's use, which amounts shall be due at the same time as the Minimum Rent monthly payments. On at least ten days' prior written notice to Tenant, Landlord may discontinue furnishing any utility service previously provided to Tenant. Whenever a utility service is not supplied by Landlord, Tenant shall apply to the appropriate local utility companies to begin service on the Premises and shall pay the cost of any required deposit, hook-up fee, metering charge, or other charge by the utility provider.

(c) The "Cost for Electricity" shall be determined as follows: The total kilowatts shown on the meter to have been used by Tenant, between each meter reading by Landlord on an approximately monthly basis, shall be multiplied by Landlord's cost per kilowatt hour. Landlord's cost per kilowatt-hour shall be determined by dividing the number of kilowatt-hours shown to be used by the meter, as specified in the Landlord's most recent invoice from its public utility supplier, into the total charges (including taxes) on said invoice. There shall be added an administrative fee for Landlord cost of computing Tenant's electricity in the sum of ten dollars per month. Throughout the term of this Lease, Tenant shall pay, prior to delinquency, the cost of all utilities used on the Premises, whether supplied by a local utility company or by Landlord. When any service is separately metered and supplied by a local utility company, Tenant shall arrange for the utility company to bill Tenant directly.

(d) Under no circumstances shall Landlord be liable for any damages or liability for the lack of or inability to provide utility service to Tenant. Landlord shall have no responsibility for the curtailment or suspension of any utility services to the Premises or the freezer facilities provided by a local utility company or by Landlord or a default by Tenant under this Lease. Curtailment or suspension of utility services does not constitute a constructive eviction under this Lease. **THERE SHALL BE NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND SIMILAR WARRANTIES.** Landlord does not warrant that any utilities provided by Landlord will be free from shortages, failures, variations, or interruptions caused by repairs, maintenance, replacements, improvements, alterations, changes of service, strikes,

lockouts, labor controversies, accidents, inability to obtain services, fuel, steam, water or supplies, weather, tsunami, acts of god, war, riot, terrorist act, earthquake, governmental requirements or requests, or other causes beyond Landlord's reasonable control. None of the same shall be deemed an eviction or disturbance of Tenant's use and possession of the Premises or any part thereof, or render Landlord liable to Tenant for abatement of Rent, or relieve Tenant from performance of Tenant's obligations under this Lease. Landlord in no event shall be liable for damages by reason of such shortage, failure, variation, or interruption, including without limitation, loss of profits, spoilage of previously frozen items, business interruption or other incidental or consequential damages.

(e) In the event that Landlord directs tenant to obtain any service from an entity other than Landlord, Tenant shall: (i) make application in Tenant's own name for all utilities not provided by Landlord, (ii) comply with all utility company regulations for such utilities, including requirements for the installation of meters, and (iii) obtain such utilities directly from, and pay for the same when due directly to, the applicable utility company. The term "utilities" for purposes hereof shall include but not be limited to electricity, cold storage, gas, water, sewer, steam, fire protection, telephone and other communication and alarm services, heating air conditioning, and all taxes or other charges thereon. Tenant shall install and connect all equipment and lines required to supply such utilities to the extent not already available at or serving the Premises, or at Landlord's option shall repair, alter or replace any such existing items. Tenant shall maintain, repair and replace all such items located on the Premises, operate the same, and keep the same in good working order and condition. Tenant shall not install any equipment or fixtures, or use the same, so as to exceed the safe and lawful capacity of any utility equipment or lines serving the same. The installation, alteration, replacement or connection of any utility equipment and lines shall be subject to the requirements for alterations of the Premises set forth herein. Tenant shall ensure that all HVAC equipment is installed and operated at all times in a manner to prevent roof leaks, damage, or noise due to vibrations or improper installation, maintenance or operation.

## **6. Taxes**

(a) Tenant shall be liable to pay on or before their due dates, all Taxes that may be levied or assessed against the land, personal property, buildings, or other improvements in the Premises and against Tenant's business and leasehold interest. "Taxes" means any sales taxes, use taxes, business property taxes, Landing Tax, personal property taxes, real property taxes and assessments, or other direct taxes or other levies or charges imposed by a governmental entity that are or may be levied, assessed, imposed, become a lien on, or arise in connection with this Lease or the use, occupancy, or possession of all or any portion of the Premises or the land, buildings, or other improvements in the Premises. Tenant shall send Landlord copies of any notices, reports, or inquires received by Tenant from taxing authorities concerning delinquent taxes or other assessments.

(b) Tenant shall be liable for any fees for licenses, registrations, permits and other certificates that may be required for the lawful operation of Tenant's business and the hoist.



(c) If any taxing authority requires that Landlord pay a Tax directly to the taxing authority, Tenant shall upon notice by Landlord, pay to Landlord the amount of the Tax, at the time the next rent installment is due.

## **7. Additional Rent and Miscellaneous Duties**

(a) Tenant shall conduct its business in a businesslike and efficient manner. Further, because the adequacy of the rent payable by Tenant under this Lease is dependent on the amount of seafood product handled by Tenant on the Premises, Tenant shall, except as otherwise provided in this Lease, continuously, actively, and diligently operate its business on the Premises in a manner intended to maximize Tenant's Additional Rent generated by the Premises.

Landlord and Tenant acknowledge that (1) Landlord does not consider the Minimum Rent provided for under this Lease in itself to be fair and adequate compensation for the leasing of the Premises to Tenant, and (2) Landlord's consideration for entering into this Lease is based on the expectation that the Additional Rent to be paid by Tenant will supplement the Minimum Rent so as to provide Landlord with a fair and adequate rental return on the Premises. Therefore, if Tenant either fails to open for business on the date required under this Lease or, after opening, fails to continuously operate its business on the Premises as required under this Lease, then, at Landlord's option, (1) Tenant shall be in default under this Lease, and (2) Landlord shall have the right to collect, in addition to all other sums due from Tenant under this Lease, liquidated damages from Tenant equal to one-thirtieth of the monthly amount of Minimum Rent payable by Tenant under this Lease for each day Tenant fails to open after the required opening date or for each day Tenant fails to operate its business after it has opened.

(b) Tenant shall maintain full and accurate books of account, records, Fish and Game records and other pertinent data showing poundage of all seafood unloaded or moved over the premises, including such information that will show the poundage of each species by date. The records shall be available for inspection by Landlord or its representatives at a place to be designated by Landlord upon twenty-four (24) hours written notice. Tenant shall also keep all supporting documentation for Additional Rent and exclusions or deductions, including daily receipts, sealed cash register rolls, and serialized sales slips. Tenant shall keep and maintain the foregoing books, records, and supporting documentation pertaining to each lease year for at least three years after expiration of that lease year.

Notwithstanding the foregoing, if any books, records, or supporting documentation kept and maintained by Tenant are the subject of an audit requested by Landlord or an unresolved controversy involving Landlord, Tenant shall keep and maintain them until the audit or controversy is terminated.

Landlord's and/or its accountants or representatives may examine the books and records of Tenant for the purpose of conducting an audit of Additional Rent, provided that (1) at least three days' advance written notice is given to Tenant, and (2) an audit is not performed more frequently than once each year. If an audit discloses that the actual poundage of seafood products for the period in question is greater than previously reported by Tenant to Landlord, Tenant shall pay the excess amount to Landlord. If the

excess amount is greater than five percent, Tenant shall pay the full cost of the audit; otherwise, Landlord shall pay the full cost of the audit. If the excess amount is greater than ten percent, then Landlord shall have the right to terminate this Lease. Any information obtained by Landlord in conducting an audit of Tenant's books and records shall be treated as confidential except in any litigation or proceeding between Landlord and Tenant. Landlord may also disclose information from an audit performed by it pursuant to any judicial proceeding or subpoena or if within the spirit of the California Public Records Act.

Landlord may examine under oath the Chief Financial Officer, the accountant and/or the bookkeeper who was involved in the particular record keeping, and any other persons who may have been involved in the preparation of the Additional Rent reports and calculations related thereto under the Lease.

(c) Subject to the limits of liabilities and release provisions in this Agreement, and further subject to Tenant's duties under this Lease, Landlord shall, at Landlord's own cost and expense, keep the Common Areas and structural supports of the Dock in good repair; provided, however, Landlord shall not:

(i) Be required to make any repairs to the exterior roof, sidewalls, structural supports, and foundations of the building on the Premises that are rendered necessary by the negligence of or abuse of that property by Tenant or any employees, agents, subtenants, or permittees of Tenant; or

(ii) Be liable for any damages resulting from Landlord's failure to make any repairs required by this section to be made by Landlord, for any claims made that are not covered by Landlord's insurance as provided in Paragraph 10 hereof.

## **8. Maintenance and Alterations**

(a) Landlord shall not be required or obligated to make any changes, alterations, dredging, additions, improvements, or repairs in, on, or about the Premises, nor to the depth between the surface and the floor of the ocean nor to the floor of the harbor, or any part thereof, during the term of this lease.

(b) Tenant has inspected the Premises and accepts them in "as is" condition. Landlord makes no representations or warranties regarding the condition of the Premises, and Tenant acknowledges that neither Landlord nor Landlord's officers, elected official, employees or agents have made any representations to Tenant regarding the present or future condition of the Premises.

(c) Tenant at its own expense, shall keep and maintain in safe order, condition, and repair as reasonably determined by Landlord, the Premises and every part thereof and any and all appurtenances thereto wherever located, any pilings damaged by boats being unloaded at the hoist, all hoists, cables, machinery, equipment, and other property situated in or

upon the Premises, and further including all plumbing, water, gas and electric fixtures, pipes, wires and conduits, and every part thereof and any and all appurtenances thereto wherever located,

and all improvements and installations made by or on behalf of Tenant whether such work, repair, replacement or restoration is foreseen or unforeseen, or is ordinary or extraordinary. Tenant, at its own expense, shall make all repairs to the Premises which are made necessary by any breach of this Lease of any misuse or neglect by: (1) Tenant or any of his partners, associates, employees or licensees; (2) Any visitors, patrons, guests or invitees of Tenant; (3) Any persons committing a crime to the Premises. If Tenant fails to make any necessary repairs within 10 days after written notice from Landlord, or after reasonable notice to Tenant in the event of an emergency, Landlord may make the repairs and Tenant shall pay the cost of the repair to Landlord as Additional Rent. This payment shall accompany the next due monthly payment of Minimum Rent and shall include interest at the then-maximum legal rate.

(d) Tenant may not make any alterations or improvements to the Premises during the term of this Lease without first obtaining the written consent of Landlord. Landlord's consent to any such alterations or improvements shall be made in the sole, legislative determination of Landlord.

(e) Tenant shall not attach any fixtures, equipment or other items to the Premises or make any additions, changes, alterations or improvements to the Premises or the systems and equipment serving the Premises (all such work referred to collectively herein as the "Work"), without the prior written consent of Landlord. Landlord reserves the right to impose requirements as a condition of such consent or otherwise in connection with the Work, including without limitation, requirements that Tenant: (1) submit for Landlord's prior written approval detailed plans and specifications prepared by licensed and competent architects and engineers, (2) submit for Landlord's prior written approval the names, addresses and background information concerning all contractors, subcontractors and suppliers, (3) obtain and post permits, and additional insurance.

(f) All Work shall be performed: (1) in a thoroughly first class, professional and workmanlike manner, (2) only with materials that are new, high quality, and free of material defects, (3) in accordance with plans and specifications approved by Landlord in advance in writing, (4) not to adversely affect the systems and equipment or the structure of the building, (5) diligently to completion and so as to cause the least possible interference with other harbor tenants, and (6) in compliance with all laws and other provisions of this Lease. If Tenant fails to perform the Work as required herein or the materials supplied fail to comply herewith or with the specifications approved by Landlord, and Tenant fails to cure such failure within 48 hours after notice by Landlord (except that notice shall not be required in emergencies), Landlord shall have the right to stop the Work until such failure is cured which shall not be in limitation of Landlord's other remedies and shall not serve to abate the Rent or Tenant's other obligations under this Lease.

(g) All alterations, additions, fixtures and improvements, except for Tenant's stock in

trade, trade fixtures, furniture, and furnishings, made or placed in or on the Premises by Tenant or any other person shall on expiration or earlier termination of this Lease, become the property of Landlord and remain on the Premises. Landlord shall have the option, however, on expiration or termination of this Lease, of requiring Tenant, at Tenant's sole cost and expense, to remove any or all such alterations, additions, and improvements from the Premises. Should the items be required to be removed by Landlord, Tenant shall repair any damage caused by such removal.

(h) Tenant shall keep the Premises and this Lease free from any mechanic's, materialman's or similar liens or encumbrances, and any claims therefore, in connection with any Work. Tenant shall post such performance and payment bonds as may be required by Landlord. Tenant shall give Landlord notice at least ten (10) days prior to the commencement of any Work or such additional time as may be necessary under applicable laws, to afford Landlord the opportunity of posting and recording appropriate notices of non-responsibility. Tenant shall not commence Work until any payment and performance bonds required by Landlord have been obtained by tenant and approved and filed by Landlord. Tenant shall remove any such claim, lien or encumbrance by bond or otherwise within twenty

(20) days after notice by Landlord. If Tenant fails to do so, Landlord may pay the amount or take such other action as Landlord deems necessary to remove such claim, lien or encumbrance, without being responsible for investigating the validity thereof. The amount so paid and costs incurred by Landlord shall be deemed additional Rent under this Lease payable upon demand, without limitation as to other remedies available to Landlord. Nothing contained in this Lease shall authorize Tenant to do any act which shall subject Landlord's title to Premises to any such notices, liens or encumbrances whether claimed by operation of statute or other Law or express or implied contract. Any claim to a lien or encumbrance upon the Premises arising in connection with any Work shall be null and void, or at Landlord's option shall attach only against Tenant's interest in the Premises and shall in all respects be subordinate to Landlord's title to the Premises.

## **9. Common Areas.**

(a) The term "Common Areas" herein means all areas of the Crescent City Harbor District's property or the property under its control which are now or hereafter made available by Landlord from time to time for the general use or benefit of Landlord, other tenants at the harbor, other parties to whom the right to use the Common Areas has been or is hereafter granted, and their employees and invitees, as such areas currently exist and as they may be changed from time to time. The Common Areas may, at Landlord's election, include areas in adjoining properties which are or become available to Landlord, tenants, employees and invitees of the harbor and Citizen's Dock and which are maintained with the Common Areas, operating agreement or other such agreement now or hereafter in effect. Without limiting the generality of the foregoing, the Common Areas may include, as designated by Landlord from time to time, any parking areas, roofs covering buildings, entrances, sidewalks, streets or roadways, passageways, loading platforms, wharves, docks, delivery areas, ramps, stairs, landscaped and vacant areas, public bathrooms, information and telephone booths, directory signs and equipment,

common lighting facilities, drainage areas, decorations, fixtures, improvements, systems and equipment, and other facilities, located in or serving any of the foregoing, except to the extent reserved for use by one or more designated tenants.

(b) Landlord shall administer and operate the Common Areas. Landlord reserves the right at all times to determine the nature and extent of all Common Areas, and shall have exclusive control and management thereof. Landlord shall have the right to close all or a portion of the Common Areas to discourage non-customer parking or prevent a dedication thereof to public use or otherwise prevent the acquisition of public rights in such areas, and shall have the right to take such other actions as are further described in this Lease. Landlord reserves the right to use, permit or deny the use of the Common Areas for any purpose which in Landlord's sole opinion may be in the best interests of the harbor, including without limitation promotions, events, exhibits, displays, shows and other activities.

(c) Tenant may use the Common Areas to which, and for the purposes for which, other tenants are given access during the Term, subject to the following conditions:

(i) The Common Areas shall be used by Tenant and Tenant's employees and invitees on a non-exclusive basis in common with employees and invitees of Landlord and other tenants and parties to whom the right to use the Common Areas has been or is hereafter granted.

(ii) Tenant shall not directly or indirectly conduct business in the Common Areas or make any use of the Common Areas that interferes in any way with the use of the Common Areas by other parties.

(iii) Tenant's use of the Common Areas shall be subject to the other provisions of this Lease, including without limitation, all rules, resolution and ordinances adopted by Landlord's governing board or its designee.

(iv) Tenant's right to use the Common Areas shall terminate upon the expiration or earlier termination of this Lease or Tenant's right to possession of the Premises.

## **10. Nonliability of Landlord**

(a) Notwithstanding anything herein to the contrary, to the extent allowed by law and to the extent the Landlord is uninsured, Landlord or his agents shall not be liable for, and Tenant specifically releases and discharges Landlord from any and all rights, claims, actions, liabilities, damages, or causes of action, of whatsoever kind or nature, whether known or unknown, presently in existence or occurring in the future, arising from, or in connection with, any injury or damage to persons or property resulting from Tsunami, tidal action, weather, deterioration from biological action, fire, explosion, electricity, or any cause whatsoever, except to the extent caused by Landlord's

negligence or willful misconduct. Landlord or his agents shall not be liable for any defect in the Premises, Citizen's Dock or the Common Areas whether such defect could have been observable through a reasonably diligent inspection or is latent. To the extent that Landlord is uninsured (including, without limitation, noncovered damages and/or occurrences and damages in excess of Landlord's insurer's policy limits) Tenant, on Tenant's behalf and on behalf of its insurers, expressly releases and holds Landlord harmless from all risks from any cause whatsoever that may accrue to Tenant. Tenant shall either obtain a waiver of subrogation from its insurer or name Landlord as an additional insured on its policies of insurance to effect the parties intent to hold Landlord harmless from noninsured liability. Tenant shall ensure that the equipment that it permits, invites or places upon Citizen's Dock shall not overload the ability of Citizen's Dock to bear in combination with all structures and other vehicles, equipment and other personalty that from time to time may be extant upon it.

Tenant expressly waives all rights under section 1542 of the California Civil Code, which section has been fully explained to Tenant by its legal counsel, and which Tenant fully understands. Section 1542 provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

## **11. Insurance and Indemnification**

(a) Tenant shall, at its own cost and expense, procure and maintain during the entire term of this Lease the following insurance coverage:

(i) Workers' Compensation & Employer's Liability Insurance. The Workers' Compensation Insurance shall be in the form and amount required by State statute. If Tenant is required by law to maintain Workers' Compensation Insurance, the Employer's Liability minimum limits required are: (a) \$1,000,000 Each Accident; (b) \$1,000,000 Disease -Policy Limit; and (c) \$1,000,000 Disease -Each Employee. The Workers' Compensation policy shall contain endorsements providing (I) a waiver of subrogation in favor of Landlord; and (II) thirty (30) days' written notice to Contractor in the event of cancellation or material reduction in coverage.

(ii) General Liability Insurance. Occurrence basis with minimum limits of (a) \$1,000,000 Each Occurrence; (b) \$2,000,000 General Aggregate; and (c) \$1,000,000 Products/ Completed Operations Aggregate. General Liability Insurance shall be at least as broad as ISO "Occurrence" Form CG 0001 and shall include coverages as follows: (I) Premises, operations and mobile equipment liability coverage for explosion, collapse and hoist operations; (II) independent contractor's coverage (liability a

subcontractor may incur as a result of the operations, acts or omissions of subcontractors, suppliers and their agents or employees); (III) personal injury coverage; (IV) broad form property damage coverage; (V) Fire and extended coverage insurance, and vandalism and malicious mischief insurance, insuring Tenant's fixtures, goods, wares, and merchandise in or on the Premises for 100 percent of their full insurable and replacement cost, without deduction for depreciation. (VI) Business interruption insurance, payable in the event of a loss covered by the fire and extended coverage or vandalism and malicious mischief insurance Tenant is required to maintain, in an amount not less than the amount of Tenant's Minimum Rent and Additional Rent for a six month period following any damage or destruction. (VII) An endorsement naming Landlord and such additional parties as Landlord designates as additional insureds (the endorsement must be ISO Form CG2010 11/85 edition or its equivalent and must cover joint negligence, completed operations and the acts of subcontractors and suppliers); (VIII) an endorsement providing the insurance is primary as respects Landlord and that any insurance maintained by Landlord is excess and non-contributing; and (IX) an endorsement providing thirty (30) days' written notice to Landlord in the event of cancellation or material reduction in coverage.

No endorsement limiting or excluding a standard coverage is permitted and claims-made coverage.

(iii) Business Auto Liability Insurance. \$1,000,000 each occurrence combined single limit for bodily injury and/or property damage liability, including coverage for (1) owned automobiles; (II) hired or borrowed automobiles; and (III) non-owned automobiles. Tenant shall provide an endorsement naming Landlord and such additional parties as Landlord reasonably designates as additional insureds. Said endorsement shall provide thirty (30) days' written notice to Landlord in the event of cancellation or material reduction in coverage.

(b) General requirements. A certificate and endorsement in a form acceptable to Landlord demonstrating compliance with the above insurance requirements (or, at Landlord request, certified copies of Tenant's actual policies) shall be delivered to Landlord before Tenant occupies the Premises or performs any work at Premises. Tenant shall maintain all of the above insurance coverage in force until the expiration or earlier termination of the Lease.

If Tenant fails to purchase or maintain the insurance specified in this Section, Landlord shall have the right, but not the obligation, to purchase such insurance on Tenant's behalf and at Tenant's cost. Tenant shall deliver all information required in connection with such purchase. If Tenant insurance is considered inadequate by Landlord, Landlord shall have the right to charge Tenant any additional premium charged by Landlord's insurer.

The use of self-insured retention or deductibles in excess of \$10,000 shall not be allowed unless specifically approved by Landlord in advance and in writing. Tenant is fully responsible for payment of any self-insured retentions or deductibles, regardless of their amount.

(c) Any insurance policy Tenant is required to procure and maintain under this Lease shall be issued by a responsible insurance company or companies licensed to do business in the State of California.

(d) Tenant may not do, omit to do, permit to be done, or keep anything in or on the Premises that will violate the provisions of Landlord's fire and extended coverage insurance policy or otherwise adversely affect the premiums paid by Landlord or Landlord's ability to maintain the insurance in effect. If any such act or omission by Tenant results in an increase in Landlord's premiums for any policies on the Premises, Tenant shall pay the amount of the increase. Landlord may also, at Landlord's option, rectify the condition causing the increase if Tenant fails to do so. In that case, on demand of Landlord, the amount expended by Landlord shall be immediately due and payable by Tenant as Additional Rent.

(e) If during the term of this Lease Tenant fails to secure or maintain the insurance required under this Lease, Landlord may obtain the insurance for the Premises in Tenant's name or as the agent of Tenant, and Tenant shall compensate Landlord for the cost of the insurance premiums. Tenant shall reimburse Landlord the full amount paid no later than the date the next installment of rent is due. A failure by Tenant to make reimbursement within the time required shall be considered a default under this Lease.

(f) Tenant agrees that in the event of loss due to any of the perils for which Tenant has agreed in this lease to provide insurance, Tenant shall look solely to its insurance for recovery. Tenant hereby grants to Landlord, on behalf of any insurer providing insurance to Tenant with respect to the Premises, a waiver of any right of subrogation that any such insurer of one party may acquire against the other by virtue of payment of any loss under that insurance.

(g) Except as otherwise provided in this Lease, proceeds from any policy or policies shall be payable to both either or Landlord and Tenant as their respective interests may appear.

(h) To the fullest extent permitted by law, Tenant shall indemnify, defend (at Tenant's sole cost and expense and with legal counsel approved by Landlord, which approval shall not be unreasonably withheld), protect and hold harmless Landlord and Landlord's Related Parties (collectively, the "Indemnified Parties"), from and against any and all Liabilities which may arise from or in any manner relate to (directly or indirectly), arise out of, or in connection with, as the result of entering into this Lease and/or the construction, business operation, use, condition, occupation or possession of the Premises and any portion thereof, and the hoist including: 1) any accident in connection with the operation, use, condition or possession of the Premises, Dock and/or Common Areas resulting in damage to property or injury to or death to any person; 2) strict liability in



tort as a consequence of the operation of the Premises and/or the seafood products processed; 3) any claim based upon environmental law or regulation relating to the Premises or the waters surrounding the Premises; 4) any claim of any nature directly arising from or related to the Tenant's business operation including that of the hoist, which claim is based upon the operation of the Premises from and after the commencement date of this Lease; 6) the existence, placement, delivery, storage or release of hazardous materials on the Premises or contamination of property, arising therefrom; 7) claims relating to the dangerous condition of the Premises; 8) access to Citizen's Dock; 9) Tenant's Activities or Tenant's presence or activities conducted on the Premises (including, without limitation, the negligent and/or willful acts, errors and/or omissions of Tenant, its principals, officers, agents, employees, vendors, suppliers, consultants, invitees, licensees, subtenants, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them) regardless of any passive negligence or strict liability of an Indemnified Party. Tenant understands and acknowledges that the indemnification obligation hereunder is intended to constitute a "Type II" indemnity under California law and extends to and includes Claims arising from the passive negligence of Indemnified Parties. Notwithstanding the foregoing, nothing herein shall be construed to require Tenant to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties.

Without limiting Tenant's obligation to indemnify Landlord upon Landlord's request, Tenant shall indemnify, hold harmless, protect and defend with legal counsel acceptable to the Landlord at Tenant's sole cost, Landlord from and against all Liabilities, paid, incurred or suffered by, or asserted against Landlord in a judicial, administrative or regulatory forum or otherwise, whether well founded or not, arising or resulting in whole or in part, directly or indirectly, from actions or inactions of Tenant or Tenant's Related Parties, for any of Tenant's Activities, including, without limitation, any condition of the Premises relating to hazardous or toxic substances, including any one or more release or threatened release of any materials (including hazardous waste) and relating to closure/post closure costs of the Tenant ("Hazardous Materials Conditions"). This indemnity of Landlord by Tenant is intended to operate as an agreement pursuant to 42 U.S.C. §9607(e) and California Health and Safety Code §25364, to insure, protect, hold harmless and indemnify Landlord from liabilities in accordance with this paragraph. Landlord does not hereby waive or surrender any other indemnity or remedy available to it under applicable law, and Tenant shall be strictly liable to Landlord for Hazardous Materials Conditions arising out of, related to or resulting from Tenant's or Tenant's Related Parties, agents, invitees or Activities, including any repair, cleanup or detoxification thereof or preparation and implementation of any removal, remedial, response, closure or other plan with respect thereto as required by law.

For purposes of defense and indemnification relating to this Lease:

- (i) "Liabilities" means liabilities, lawsuits, claims, judgments, demands, cleanup orders, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and expenses, (including, without limitation, attorneys' fees, disbursements and court

costs, and all other professional, expert or consultants' fees and costs and Landlord's general and administrative expenses) obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties and other detriments of every nature and description whatsoever, including all costs and expenses of litigation or arbitration, attorneys fees (whether Landlord's or Tenant's staff attorneys or outside attorneys) and court costs, whether under state or federal law except for liabilities caused by the sole negligence or willful misconduct of the indemnified party.

(ii) "Landlord's Activities" means: Any supervision by Landlord of activities emanating outside the Premises.

(iii) "Landlord and Landlord's Related Parties" means Landlord and its elected officials, officers, volunteers, representatives, partners, designees, commissioners, employees, consultants, agents, successors and assigns, and any lender of Landlord with an interest in the Premises.

(iv) "Tenant Activities" means any actions or omissions of Tenant or Tenant's Related Parties in the performance of this Lease including, but not limited to, receiving, loading, unloading, storage and/or transportation of seafood products in accordance with the use of the Premises under this Lease, operation and supervision of Tenant's equipment activities, operation and supervision of transportation activities on site, operation and supervision of container storage and movement on site, environmental impacts of business operation and transportation and, all other activities of Tenant or Tenant's related parties in connection with this Lease, except those listed in this section as Landlord's Activities as well as any breach of any representation or warranty of Tenant set forth in this Lease.

(v) "Tenant and Tenant's Related Parties" includes Tenant and its respective officers, directors, shareholders, members, partners, agents, employees, subcontractors, consultants, licensees, invitees, guarantors or affiliates. "Affiliates" means a person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Tenant, where construction or interpretation of "control" shall be governed by Rule 144 of the Securities Act of 1993. Tenant shall use best efforts, or cause such persons to use best efforts, to provide Landlord's legal counsel all reasonably necessary information relevant to such persons, including proper and legal corporate names and relationship (or lack thereof) to Tenant's articles of incorporation, certificates of good standing, and other documentation related directly or indirectly to alleged liabilities.

(i) The provisions of this section shall survive termination of this Lease.

## **12. Destruction of Premises**

(a) Notice of Damage. Within 24 hours of its occurrence, Tenant shall notify Landlord of any damage or accident occurring on the Premises.

(b) Damage or destruction from insured casualty. Subject to the limitations set forth in this Paragraph, if at any time during the term of this Lease, the Premises are damaged or destroyed by fire or any other casualty Landlord shall have the right to terminate this Lease and shall have no obligation to repair, restore, or rebuild the Premises.

If Landlord elects to terminate this Lease under any of the above circumstances, Landlord shall give written notice to Tenant not later than 30 days after occurrence of the casualty. This notice shall set forth the date on which the termination is to be effective. That date shall be not less than 10 days nor more than 60 days after the date of the termination notice. If the type of partial or total destruction described in this Paragraph occurs, Tenant shall have the same right as Landlord to terminate this Lease, subject to the same notice requirements, provided that Tenant gives its notice of termination prior to the time Landlord commences repairs to or restoration of the Premises.

(c) Abatement of Rent. If damage or destruction to the Premises renders the operation of Tenant's business wholly impossible and Tenant in fact ceases to operate its business, the Minimum Rent payable under this Lease shall abate either during the period beginning on the date of the casualty and ending on the date the repairs, restoration, or rebuilding is complete; or, if the damage or destruction results in the termination of this Lease, on the date of termination. If Tenant is able to continue partial operation of its business, the Minimum Rent shall be abated proportionately based on the percentage of area of the Premises Tenant is able to occupy. Notwithstanding any abatement or partial abatement of Minimum Rent provided for under this Paragraph, Tenant shall not be excused from continuing to pay Additional Rent required under this Lease.

(d) All insurance proceeds payable with respect to the Premises shall belong to and be payable to Landlord. If Landlord does not elect to terminate this Lease, the portion of the insurance proceeds that are attributable to the Premises, subject to any prior rights of Landlord's lender, shall be disbursed in the following order: first, to Landlord's cost of rebuilding or restoration; second, to Tenant's cost of rebuilding or restoration, excluding costs covered by Tenant's insurance and also excluding the cost of any Tenant trade fixtures or stock in trade; and third, to Landlord, as Landlord's sole property. No amount shall be paid to Tenant until after the completion of Tenant's work and the expiration of the period during which a mechanic's lien arising from Tenant's Work could be filed.

## **13. Assignment and Sublease**

(a) Tenant shall not do any of the following without first obtaining the written consent of Landlord: assign, sell, mortgage, or in any other manner transfer this Lease or any interest of Tenant in the lease; sublet the whole or any part of the Premises; or permit all

or any part of the Premises to be used or occupied by others (whether through the grant of a concession, license, or otherwise). Any consent requested from Landlord may be withheld by Landlord as Landlord in its sole discretion determines. The prohibitions against transfer described in this Paragraph include any transfer transaction described above that occurs by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

(b) Without in any way waiving its right to approve or disapprove any transfer transaction described in this Paragraph, Landlord may (1) collect rent from an assignee, subtenant, user, or occupant of the Premises following any transfer described in this Paragraph, whether or not Landlord gave its prior written consent for the transfer, and (2) apply the collected amount to the rent due from Tenant under this Lease.

(c) Any sublease, assignment, or other transfer agreement described in this Paragraph must recite the following: that it is subject and subordinate to this Lease; and that the termination by Landlord of this Lease will, at Landlord's sole option, terminate the sublease, assignment, or other transfer agreement.

(d) The transfer of corporate shares of Tenant by assignment, sale, bequest, inheritance, operation of law, or other disposition shall not be considered a prohibited transfer transaction under this Lease if it results in Tenant holding at least 51 percent of the voting power of the corporation.

(e) Whether or not Landlord grants consent, Tenant shall pay \$ 750.00 towards Landlord's review and processing expenses, plus any legal fees incurred by Landlord in connection therewith. Tenant shall pay the \$750.00 before Landlord begins to process any request for assignment, sublease, or other transfer transaction. Any balance remaining shall be paid to Landlord within ten days of written demand therefore.

(f) If Tenant shall desire Landlord's consent to any Transfer, Tenant shall notify Landlord, which notice shall include: (1) a reference to the Premises and this Lease, (2) the name and address of the proposed Transferee and a detailed description of the business operation proposed to be conducted in the Premises, (3) the proposed effective date which shall not be less than 45 nor more than 180 days after Tenant's notice, (4) the terms of the proposed Transfer, a copy of all documentation pertaining thereto, and a detailed description of any alterations to the Premises required in connection with the Transfer, and (5) such other information as Landlord may reasonably require.

#### **14. Default and Termination**

(a) "Default" Defined. The occurrence of any of the following constitutes a default and breach of this Lease by Tenant:

(i) Any failure by Tenant to pay the rent or to make any other payment

required to be made by Tenant under this Lease, when the failure continues after the statutory period following service of a Notice to Pay Rent or Quit has expired.

(ii) The abandonment of the Premises by Tenant. For these purposes, the absence of Tenant from or the failure by Tenant to conduct business on the Premises for a period in excess of 14 consecutive days may constitute abandonment, at Landlord's sole discretion.

(iii) A failure by Tenant to observe or perform any other provision of this Lease to be observed or performed by Tenant, when the failure continues for 30 days or more after written notice of Tenant's failure is given by Landlord to Tenant; provided, however, that if the default cannot reasonably be cured within the 30-day cure period, Tenant shall not be deemed to be in default if Tenant commences the cure within the 30-day cure period and thereafter completes the curative action within a reasonable time.

(iv) The making by Tenant of any general assignment for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, it is dismissed within 60 days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, when possession is not restored to Tenant within 30 days; or the attachment, execution, or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, when that seizure is not discharged within 30 days.

(b) Termination of Lease and Recovery of Damages. In the event of any default by Tenant under this Lease, in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the right to terminate this Lease and all rights of Tenant under this Lease by giving written notice of the termination. No act of Landlord shall be construed as terminating this Lease except written notice given by Landlord to Tenant advising Tenant that Landlord elects to terminate the lease. In the event of such termination, the Tenant agrees to surrender immediately possession of the Premises, without let or hindrance, and to pay the Landlord or its assignee all damages recoverable at law that the Landlord or its assignee may incur by reason of default by the Tenant, including, without limitation, any costs, loss or damage whatsoever arising out of, in connection with, or incident to any such retaking possession of the Premises.. In the event Landlord elects to terminate this Lease, Landlord may recover the following from Tenant:

(i) The worth at the time of award of any unpaid rent that had been earned at the time of termination of the lease;

(ii) The worth at the time of award of the amount by which the unpaid rent that would have been earned after termination of the lease until the time of award exceeds the amount of rental loss that Tenant proves could have been reasonably avoided;

(iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the term of this Lease after the time of award exceeds the amount of rental loss that Tenant proves could be reasonably avoided; and

(iv) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease.

The term "rent" as used in this Paragraph shall mean the Minimum Rent, the Additional Rent, and all other sums required to be paid by Tenant pursuant to the terms of this Lease.

(d) Landlord's Right to Relet. In the event Tenant breaches this Lease, Landlord may enter on and relet the Premises or any part of the Premises to a third party for any term, at any rental, and on any other terms and conditions that Landlord in its sole discretion may deem advisable, and shall have the right to make alterations and repairs to the Premises. Tenant shall be liable for all of Landlord's costs in reletting.

(e) Cumulative Remedies. The remedies granted to Landlord in this Article shall not be exclusive but shall be cumulative and in addition to all remedies now or hereafter allowed by law or provided in this Lease.

(f) Waiver of Breach and Estoppel. No waiver of any provision of this Lease shall be implied by any failure of Landlord to enforce any remedy for the violation of that provision, even if that violation continues or is repeated. Any waiver by Landlord of any provision of this Lease must be in writing. Such written waiver shall affect only the provision specified and only for the time and in the manner stated in writing. The acceptance of rent hereunder by Landlord shall not be a waiver of any preceding breach of Tenant of any provision hereof other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

(2) The Landlord's neglect or omission to provide notice to the Tenant as to why the Landlord is not enforcing any provision of this Lease, or the Landlord's neglect or failure to enforce any provision of this Lease, whether known to Landlord or not, and any statement made by the Landlord or conduct by the Landlord herein that the Landlord is not enforcing any provision of this Lease, shall not act as an estoppel on the Landlord to enforce any provision of this Lease.

(g) Surrender on Termination. On expiration of the term of this Lease or the earlier

termination of this Lease, Tenant agrees to surrender the Premises in good order and condition (reasonable wear and tear excepted). Further, Tenant shall, at Tenant's expense, remove all of its merchandise, inventory, and trade fixtures, and repair any damage caused by the removal. Landlord shall also have the right to require Tenant, at Tenant's expense, to remove any improvements made to the Premises by Tenant and to repair any damage caused by the removal.

(h) Holdover Tenancy. If Tenant remains in possession of the Premises after expiration of the term of this Lease without renewing or extending this Lease or entering into a new lease with Landlord, Tenant's continued occupancy of the Premises, at Landlord's option, shall be considered a month-to-month tenancy that may be terminated by either party on 30 days' prior notice to the other. All terms of this Lease shall be fully applicable to the month-to-month tenancy.

## **15. General Provisions**

(a) Landlord has entered into various agreements with the owners of or occupants of other premises located in the harbor district relating to the operation and use of the tenants of Landlord (hereafter collectively referred to in this Paragraph as "Operating Agreements"). These Operating Agreements include reciprocal common use agreements and leases. This Lease shall be subject at all times to these Operating Agreements. Landlord shall not be liable to Tenant for the breach of any Operating Agreement by any owner or occupant of other premises located in the harbor, and shall not be required for Tenant's benefit to institute efforts to enforce any party's obligations under an Operating Agreement or to terminate any Operating Agreement because of a party's default.

(b) Attorneys' Fees, Counterclaims, Venue and Jury Trial. If Landlord or any of its officers, directors, trustees, beneficiaries, partners, agents, volunteers, affiliates, employees, successors or assigns shall be made a party to any litigation commenced by or against Tenant and are not found to be at fault, Tenant shall pay all costs, expenses and reasonable attorneys' fees incurred by Landlord or any such party in connection with such litigation. Tenant shall also pay all costs, expenses and reasonable attorneys' fees that may be incurred by Landlord in successfully interpreting or enforcing this Lease.

(c) Tenant shall not transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any "Hazardous Material" (as defined below) upon or about the Premises, or permit Tenant's employees, agents, contractors, invitees and other occupants of the Premises to engage in such activities except for those substances customarily used in the business or activity expressly permitted to be undertaken in the Premises. If any hazardous materials or substances prohibited by law are found to exist on the Premises and the presence of the materials or substances has not been caused by Tenant or by Tenant's use of the Premises, Landlord shall, at Landlord's sole cost and expense, perform necessary removal and cleanup as required by law. If any hazardous materials or substances prohibited by law are found to exist on the Premises and the presence of the materials or substances has been caused by Tenant or by Tenant's use of the Premises, Tenant shall be responsible for any required cleanup or removal and for the

cost of the foregoing.

(d) This Lease establishes a Landlord-Tenant relationship between the parties. It shall not be construed or deemed to create any other type of relationship between them, including one of agency, partnership, or joint venture.

(e) Landlord, at its discretion during tenants regular business hours and with two hours notice to Tenant will have the right to enter, for the purpose of inspection of the Premises or perform any repairs Landlord is permitted or required to make under this Lease, whether to the Premises, adjoining premises, or the building containing the Premises. If, in the sole opinion of Landlord, the hoist or any portion of the Premises is not being properly maintained, Landlord shall have the right, but not the obligation, to have it repaired or maintained at the expense of Tenant. Tenant expressly agrees that Landlord shall have no duty to inspect or correct any defective condition of the hoist or other improvement within the Premises or the common area. For any entry made while Tenant is open for business, Landlord shall use its best efforts to minimize interference with the conduct of Tenant's business. Repairs required or permitted to be made by Landlord may, at Landlord's option, be scheduled for times when Tenant's business is not open, provided prior written notice is given to Tenant. In the case of an emergency, Landlord may enter the Premises at any time without prior notice to Tenant, but shall notify Tenant promptly afterwards of its emergency entry.

(f) Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to either party to this Lease by the other party to this Lease shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom they are directed or any managing employee of that party, or in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, addressed to Landlord at 101 Citizen's Dock Road, Crescent City, CA 95531 or to Tenant at **#1 Commercial Street, Eureka, CA 95501**. Either party may change its address for purposes of this Paragraph by giving written notice of that change to the other party in the manner provided in this Paragraph.

(g) This lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of Tenant, but nothing in this Paragraph shall be construed as a consent by Landlord to any assignment of this Lease or any interest in this Lease by Tenant except as provided in this Lease.

(h) Time is expressly declared to be of the essence in this Lease.

(i) This Lease contains all the terms and provisions between Landlord and Tenant relating to the matters set forth herein and no prior or contemporaneous agreement or understanding pertaining to the same shall be of any force or effect. Without limiting the generality of the foregoing, Tenant hereby acknowledges and agrees that Landlord's leasing and field personnel are only authorized to show the Premises and negotiate terms and conditions for leases subject to Landlord's final approval, and are not authorized to



make any agreements, representations, understandings or obligations binding upon Landlord, respecting the present or future condition of the Premises or Building, suitability of the same for Tenant's business, or any other matter, and no such agreements, representations, understandings or obligations not expressly contained herein shall be of any force or effect. TENANT HAS RELIED ON TENANT'S INSPECTIONS AND DUE DILIGENCE IN ENTERING THIS LEASE AND NOT ON ANY REPRESENTATIONS OR WARRANTIES MADE BY LANDLORD CONCERNING THE CONDITION OR SUITABILITY OF THE PREMISES OR BUILDING FOR ANY PARTICULAR PURPOSE. Neither this Lease, nor any Riders or Exhibits referred to above may be modified, except in writing signed by both parties.

(j) Exhibit A, the Site Plan for the Premises is incorporated by reference in and constitutes a part of this Lease.

(k) If any provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Lease shall remain in full force and effect.

(l) No waiver of any term, condition, or covenant of this Lease shall be presumed or implied. Any such waiver must be expressly made in writing by the party waiving the term, condition, or covenant. The acceptance by Landlord from Tenant of any amount paid for any reason under this Lease in a sum less than what is actually owing shall not be deemed a compromise, settlement, accord and satisfaction, or other final disposition of the amount owing unless Landlord agrees otherwise in writing.

(m) The captions and numbers of the Articles and Paragraphs of this Lease are for convenience only and are not intended to reflect in any way on the substance or interpretation of the provisions of this Lease.

(n) Tenant agrees that in the use and occupancy of the Premises and in the conduct and operation of Tenant's business, Tenant shall not in any way restrict the use of said premises on the basis of race, sex, religion, color, creed, national origin, or ancestry.

(o) This Lease and the obligations of the Tenant hereunder shall not be affected or impaired because the Landlord is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, inclement weather, government agencies, inability by Landlord to lease this trust land or any other cause beyond the reasonable control of Landlord.

(p) This Lease shall be construed in accordance with the laws of the State of California.

Nothing in this agreement shall be construed to limit Landlord's legislative discretion as a governmental entity. Nothing in this agreement is intended to require Landlord to use a different standard than is applicable to legislative determinations of a government entity. This agreement shall not be deemed to waive any immunities or defenses available to a public entity and its employees. Landlord shall have no duty to take actions to ensure the

profitability of Tenant's business enterprise. It is agreed that nothing in this agreement shall be construed to imply that Landlord has any duty to dredge the Crescent City Harbor. It is agreed that nothing in this agreement shall be construed to imply that Landlord has any duty to take action to ensure that other harbor tenants are restricted in their competition with Tenant. This agreement may not be unilaterally amended and shall be strictly construed as set forth herein to accomplish the provisions expressly set forth herein

(r) This Lease, and any Riders and Exhibits hereto, have been mutually negotiated by Landlord and Tenant, and any ambiguities shall not be interpreted in favor of either party. Any printed provisions that have been deleted shall not be used to interpret the remaining provisions.

(s) The parties fully understand all the terms used in this agreement and their significance. The parties are each satisfied with the provisions of this agreement and have signed this Agreement with sound mind and memory, freely and voluntarily without duress, menace, fraud or undue influence.

(t) This agreement is not intended to, and shall not be construed to, create any right on the part of a third party to bring an action to enforce any of its terms. It is not to be construed as precedent binding Landlord to take the same action with other Tenants.

(u) The parties shall perform all acts and execute further documents necessary to effectuate the intent of this agreement.

(v) Tenant shall furnish Landlord with accurate information with regard to all matters under this agreement.

(w) The Tenant is duly organized and existing under the laws of the State of **Oregon** and has all necessary power and authority to enter into and perform its duties under this Lease.

(x) The execution and delivery by the Tenant of this Lease and compliance with the provisions hereof will not conflict with or constitute a breach of or default under any law, administrative regulation, court decree, resolution, charter, by-law or any agreement to which the Tenant is subject or by which it is bound or by which its properties may be affected.

(y) There is no action, suit, proceeding or investigation at law or in equity before or by any court or governmental agency or body pending or threatened against the Tenant to restrain or enjoin the execution or delivery of this Lease, or in any way contesting or affecting the validity of this Lease, or contesting the powers of the Tenant to enter into or perform its obligations under this Lease.

(z) The Tenant is not in breach of or in default under any applicable law or administrative regulation of the State or the United States, the Constitution of the State (including article XVI, section 18 thereof), any applicable judgment or decree, any loan

agreement, indenture, bond, note, resolution, agreement or other instrument to which the Tenant is a party or is otherwise subject which would have a material adverse impact on the Tenant's ability to perform its obligations under this Lease and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument.

(aa) No consent or approval of any trustee or holder of any indebtedness of the Tenant, and no consent, permission, authorization, order or licenses of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Lease or the consummation of any transaction contemplated herein, except as have been obtained or made and as are in full force and effect.

(bb) The information relating to the Tenant and the Premises submitted by the Tenant to the Landlord, was true at the time submitted to the Landlord and as of the date of this Lease, remains true and correct in all material respects.

(cc) In the event that Tenant furnished or furnishes financial statements to the Landlord, they shall have been or will be prepared in conformity with generally accepted accounting principles and fairly present in all material respects the financial condition of the Tenant as of the date thereof and the results of its operations for the period covered thereby. There has been no material adverse change in the business, condition (financial or otherwise) or operations of the Tenant since the date of such financial statements.

(dd) Tenant agrees to notify the Landlord promptly in writing, if there is a stop notice, litigation or any other legal proceeding which may impact the operation of Tenant's business.

(ee) The Tenant will adopt, make, execute and deliver any and all such further resolutions, deed, conveyances, instruments, assurances and such other documents as may be reasonably required to carry out the intention or to facilitate the performance of this Lease and for the better assuring and confirming unto the Landlord of the rights and benefits provided in this Lease.

(ff) Landlord shall have the right (but not the obligation) to limit or prevent access to all or any portion of the Premises, Common Areas and Dock, activate emergency controls or procedures, or otherwise take such action or preventive measures deemed necessary by Landlord for the safety of tenants or other occupants of the harbor district or the protection of the Premises, Dock, Common Area or other property located thereon or therein, in case of fire or other casualty, riot or other civil disorder, strike or labor unrest, public excitement or other dangerous condition, or threat thereof.

**IN WITNESS WHEREOF**, the parties have caused this Lease to be executed on the day and year last below written.