



**CITY OF MARTINEZ**

**CITY COUNCIL**  
**April 1, 2015**

**TO:** Mayor and City Council  
**FROM:** Michael Chandler, Senior Management Analyst  
**SUBJECT:** Yacht Club Lease  
**DATE:** March 25, 2015

**RECOMMENDATION:**

Approve resolution authorizing the Mayor to execute a Lease with the Martinez Yacht Club.

**BACKGROUND:**

The City of Martinez and the State of California entered into a lease agreement through the State Lands Commission in 1964 that leased to the City certain real property within an area previously known as the “City of Martinez Waterfront Area.” The State Lands Lease was amended in 1977 and again in 2010 to provide for leasing to the City of that certain real property (the “Property”).

The City received the Property subject to the public trust and certain conditions regarding using and leasing the Property via Senate Bill 1424, which was signed into law on September 26, 2014. Purposes consistent with the public trust doctrine include, among others, “water-oriented recreation.” On or after January 1, 2020, the use of the Property must conform to additional conditions which include all leases must be consistent with an approved land use plan; lease rental rates must be for a fair annual rent; and all leases shall be in the best interest of the State.

The Martinez Yacht Club (“Yacht Club”) entered into a 20-year lease agreement with the City of Martinez effective November 1, 1983 (“Original Yacht Club Lease”), for a portion of the Property located just to the south of the Martinez Marina (the “Premises”). The Yacht Club constructed a clubhouse building of approximately 3,000 square feet on the Premises for which the City issued a certificate of occupancy on or about October 1984. The Yacht Club exercised its 10-year option on the original lease agreement in 2003 via a First Amendment to Lease. The First Amendment expired on November 1, 2013, and the Yacht Club is currently a month-to-month tenant on the Premises.

The Yacht Club entered into a separate lease with the City in 2009 for an adjacent lawn area on an additional portion of the Property. This “Original Lawn Lease” expired in 2010 and, like the Original Yacht Club Lease, is currently on a month-to-month arrangement. The parties wish to add this area leased within the Original Lawn Lease – along with a horseshoe pit recreational area located east of the Premises – within the proposed new lease to the Martinez Yacht Club.

Key terms of the lease agreement include the following:

- Fixed term of 5 years (January 1, 2015 to December 31, 2019) secures Yacht Club's tenancy while City develops its approved land use plan for the granted Property by January 1, 2020, as required by SB 1424.
- Additional 5-year extension upon mutual consent of parties during which City may terminate for any reason upon 6 month' notice to Yacht Club.
- Rent structure simplified as a flat monthly rental amount instead of percentage-based. New rent starts at \$725/mo (with automatic annual 3% increases) compared to 2014 average monthly rent of \$695/mo.
- Includes Yacht Club's obligation to participate in a dredge fund in the event the City Council establishes one, subject to a meet and confer between the parties prior to amending the Lease.
- Acknowledges presence of the clubhouse building as an improvement on the Premises and provides a procedure for additional improvements.
- Provides that upon termination, the City may elect whether or not to keep the improvements as City property or require the Yacht Club to remove or relocate the improvements.
- Confirms the City use of the Premises as up to 16 hours per month (consistent with the Original Yacht Club lease).
- Modifies the hold harmless and insurance provisions to current risk pool standards

**FISCAL IMPACT:**

Revenue from the Yacht Club lease goes to the Marina Enterprise Fund. Proposed rent of \$725/mo or \$8,700 per year represents an increase of approximately \$360 from the 2014 annual rent of \$8,337.65.

**ACTION:**

Motion to approve resolution authorizing the Mayor to execute a Lease with the Martinez Yacht Club.

Attachments:

- 1) Resolution
- 2) Attachment A: Marina Lease (Yacht Club) with Exhibits A-D

**APPROVED BY:**



Acting City Manager

RESOLUTION NO. -15

**APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE  
A LEASE AGREEMENT WITH THE MARTINEZ YACHT CLUB**

**WHEREAS**, the City of Martinez and the State of California first entered into a lease agreement through the State Lands Commission in 1964 to lease certain real property to the City within the area previously known as the "City of Martinez Waterfront Area"; and

**WHEREAS**, the State Lands Lease was amended in 1977 and again in 2010 to lease to the City that certain real property (the "Property"); and

**WHEREAS**, the City received the Property subject to the public trust and certain conditions for leasing the Property via Senate Bill 1424, which was signed into law on September 26, 2014; and

**WHEREAS**, purposes consistent with the public trust doctrine include "water-oriented recreation," among others; and

**WHEREAS**, on or after January 1, 2020, all leases on the Property must be consistent with an approved land use plan, all lease rental rates must be for a fair annual rent, and all leases must be in the best interest of the State; and

**WHEREAS**, the Martinez Yacht Club ("Yacht Club") entered into a 20-year lease agreement with the City effective November 1, 1983 ("Original Yacht Club Lease") for a portion of the Property located just to the south of the Martinez Marina (the "Premises"); and

**WHEREAS**, the Yacht Club exercised its 10-year option on the Original Yacht Club Lease in 2003 via a First Amendment to Lease, which expired on November 1, 2013, and the Yacht Club is currently a month-to-month tenant on the Premises; and

**WHEREAS**, the Yacht Club entered into a separate lease agreement with the City in 2009 for an adjacent lawn area on an additional portion of the Property ("Original Lawn Lease"); and

**WHEREAS**, the Original Lawn Lease expired in 2010 and is now in a month-to-month arrangement similar to the Original Yacht Club Lease; and

**WHEREAS**, the City and the Yacht Club have negotiated terms and conditions of a new lease agreement and desire to add the lawn area and a horseshoe pit recreational area located east of the Premises within the proposed new lease; and

**WHEREAS**, the parties have reached accord on terms and conditions for the new proposed lease agreement that are beneficial to the City, including additional rent revenue, higher standards for hold harmless and insurance provisions, and continued City rights to use of the Premises for up to 16 hours per month.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Martinez hereby approves and authorizes the Mayor to execute a Lease Agreement with the Martinez Yacht Club in the form attached hereto as Attachment A.

\* \* \* \* \*

**I HEREBY CERTIFY** that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 1<sup>st</sup> day of April, 2015, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ

**RECORDING REQUESTED BY AND  
AFTER RECORDATION, MAIL TO:**

City of Martinez  
Attn: Deputy City Clerk  
525 Henrietta Street  
Martinez, CA 94553

**NO FEE RECORDING PURSUANT  
TO GOVERNMENT CODE §27383**

APN#

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**MARINA LEASE**

**(YACHT CLUB)**

This MARINA LEASE (“**Lease**” or “**Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Martinez, a municipal corporation of the State of California (“**City**”) and The Martinez Yacht Club, (“**Lessee**”). It is hereby mutually covenanted and agreed by and between the parties hereto (collectively, the “**Parties**”) that this Lease is made upon the terms and conditions hereinafter set forth and in reference to the following facts:

**RECITALS**

A. On October 27, 1964, the City and the State of California (the “**State**”) by and through the State Lands Commission (“**State Lands Commission**”) entered into an agreement (Lease No. 3194.9, amended on April 18, 1977) through which the State Lands Commission leased to the City certain properties (“**Original State Lands Lease**”). Said Original State Lands Lease was to expire on or about October 17, 2013. On June 9, 2010, the State Lands Commission and the City entered into a revised lease agreement (“**State Lands Lease**”) through which the State Lands Commission leased to the City that certain real property described therein (the “**Property**”) for an extended period beginning February 1, 2010 and ending January 31, 2056. A description of the Property is more particularly set forth in **Exhibit A**, attached hereto and incorporated herein by reference.

B. The State Lands Lease stated that all leases, subleases and contracts entered into by the City for the development of the Property were subject to the review and approval of the State Lands Commission.

C. On October 6, 1983, the City and Lessee entered into a 20-year lease agreement with an effective date of November 1, 1983, whereby Lessee did lease from the City a portion of the Property (the “**Original Yacht Club Lease**”). In 2009, City and Lessee entered into a separate Lease, whereby Lessee leased from City an additional portion of the Property, specifically a lawn area (“**Lawn Area**”) adjacent to the premises demised pursuant to the Original Yacht Club Lease

(the “**Original Lawn Lease**”). The Term of the Original Lawn Lease expired on January 27, 2010 and Lessee is currently a month to month tenant under the Original Lawn Lease. The Original Yacht Club Lease was extended by the parties by the execution of a First Amendment to Lease (Martinez Yacht Club) on April 23, 2003 (“**First Amendment**”). The First Amendment extended the Term of the Original Yacht Club Lease to November 1, 2013, and Lessee is currently a month to month tenant under the Original Yacht Club Lease as amended by the First Amendment.

D. Upon the approval of the State Lands Lease, the State Lands Commission approved the Original Yacht Club Lease as extended by the First Amendment.

E. Since 1964 the City has received several loans from the State Department of Navigation and Ocean Development, the Department of Natural Resources and the former Department of Boating and Waterways, now referred to as the California State Parks Division of Boating and Waterways (“**DBW**”) and has constructed on portions of the Property a 428-slip marina, breakwater, fuel dock, fishing pier, ferry plaza, three parking lots, harbor master’s building, boat launch ramp, and travel lift haul out pier. Among other things, the Property also contains an old ferry slip, an old ferry pier, the yacht club property and structure, a sea scout building, a bait shop, a boat yard and an amphitheater.

F. On September 26, 2014 the Governor of the State of California signed into law Senate Bill (SB) 1424. SB 1424 transferred the Property to the City of Martinez subject to the public trust and also subject to certain conditions regarding use and leasing of the Property. SB 1424 requires that the Property be held in trust for purposes consistent with the public trust doctrine, including, but not limited to, maritime or water-dependent commerce, navigation, and fisheries, the preservation of the lands in their natural state for scientific study, open space, wildlife habitat, and water-oriented recreation. The City may lease the Property for limited periods, for purposes consistent with the public trust doctrine. On and after January 1, 2020, the use of the Property must conform to certain additional conditions including that all leases shall be consistent with an approved land use plan, the lease rental rates must be for a fair annual rent and the lease shall be in the best interest of the State.

G. The City and Lessee now wish to extend the Term of the Original Yacht Club Lease, as amended by the First Amendment, for an additional five (5) year term and to amend the terms thereof to simplify the rent structure, provide for a direct Lease, and to add the Lawn Area and a horseshoe pit recreational area located to the east of the premises demised pursuant to the Original Yacht Club Lease (“**Recreational Area**”), to the Premises subject to the Lease. The City and Lessee therefore agree to be bound by the terms and conditions contained in this Lease.

WITH REFERENCE TO THE FACTS RECITED ABOVE, the Parties hereby agree as follows:

## AGREEMENT

### 1. **PREMISES; PARKING AREA**

A. City hereby leases to Lessee, and Lessee takes and leases from City, for the Term and upon the covenants and conditions herein described, that area of land set forth in **Exhibit B** (comprised of areas A, B, and C as so designated within the Exhibit), attached hereto and incorporated herein by reference (collectively, the “**Premises**”). Attached hereto as **Exhibit C** is a map of that portion of the Property which is not being exclusively leased pursuant to this Lease. Except as expressly stated hereinafter, the City shall retain full and complete authority to manage, use and control the real property shown on **Exhibit C** and the Improvements located thereon, independent of this Lease. Without limiting the generality of the foregoing, the real property and improvements that are not being Leased exclusively pursuant to this Lease are: the fishing pier, the ferry plaza for public access, all parking lots, the Sea Scouts facility, the amphitheater, amphitheater production building, Eagle Marine’s leased premises, the travel lift and pier, the marina (including but not limited to the boat slips and docks, piers, and floats and waterways adjacent thereto), fuel dock, fuel tanks(s) area and related fueling facilities, harbor master’s building, boat launch ramp, shoreline rip rap, the breakwater, and all other land and improvements included within the Property except those set forth in **Exhibit B**.

B. **Parking**: Lessee is also hereby granted the right to non-exclusive use of the Parking Area for the Term hereof, subject to the terms and conditions of this Lease. A depiction of the Parking Area is set forth in **Exhibit D** attached hereto and incorporated herein by reference (“**Parking Area**”). Lessee understands and agrees that other users and tenants of the Property, City and the public shall also have the right to use the Parking Area.

#### C. **LESSEE Accepts the Premises “As-Is”**:

(1) Lessee acknowledges and represents (a) that Lessee takes the Premises in its "as is" condition without representation or warranty by City, (b) that Lessee is entering into this Lease solely in reliance on Lessee's own investigation, and that no other representations or warranties of any kind whatsoever, express or implied, have been made by City, or City's agents, officers, employees or representatives, (c) that Lessee has (to the best of the Parties’ knowledge) reviewed and fully understands, accepts and shall perform its obligations hereunder in compliance with all grants, loans, leases, stipulations and other agreements between the City and State Lands, the State and/or DBW as well as all applicable provisions of the California Harbors and Navigation Code, and all other federal, state and local laws, rules and regulations pertinent to the Premises, (d) that Lessee has had ample opportunity and complete access to all parts of the Premises to inspect and ascertain, to its entire satisfaction, whether the Premises is suitable to its needs and can be improved, used, maintained and operated in accordance with this Lease, (e) that Lessee has had ample access to and has read, understands and finds acceptable all reports, investigations, studies, evaluations and all other documents regarding the Premises and the Property, including, but not limited to, the City’s files pertaining to the Premises, environmental studies, bathymetrical depth reports, title surveys, preliminary title reports, and other reports and documents Lessee deemed necessary to its decision to enter this Lease, and (f) that Lessee is entirely satisfied as to the Premises (i) compliance or noncompliance with applicable laws,

codes, rules and regulations, including but not limited to fire safety, health safety, hazardous materials and other code standards and all other applicable governmental and other requirements, and (ii) physical condition, environmental condition, title, and all other aspects of the Premises and each component thereof, including but not limited to, investigation of the presence of any hazardous wastes, substances or materials as those terms may be defined by any law, ordinance and/or regulation of any regulatory agency with jurisdiction, at and surrounding the Premises; determination of suitability of the Premises for the uses contemplated herein; investigation of conditions, at, of and surrounding the Premises, including, but not limited to, geotechnical, soils, drainage, flooding, subsidence, erosion, stormwater, earthquake, fault rupture, ground shaking, liquefaction, seiche, tsunami, unstable soils, expansive soils, effect of tides, (including, but not limited to King Tide conditions), parking, access, lighting, and utility availability; investigation and determination of the costs and other financial considerations associated with this Lease and the uses and improvements contemplated herein and/or the fitness of the Premises or any improvements located thereon, for Lessee's intended use, and/or the compliance of the Premises and/or any improvements located thereon with any applicable laws, rules and regulations, including, without limitation, the Americans With Disabilities Act of 1990. Lessee warrants and represents that it is an experienced owner, operator, manager and developer of social clubs, and is familiar and experienced with the requirements for the development, management, financing, operation and ownership of same.

(2) **No City Representations:** Lessee specifically acknowledges that except as otherwise may be expressly provided in this Lease, the City has made no representations concerning the condition of the Premises or any improvements located thereon, including, without limitation, investigation of the presence of any hazardous wastes, substances or materials as those terms may be defined by any law, ordinance and/or regulation of any regulatory agency with jurisdiction, at and surrounding the Premises; investigation of conditions, at, of and surrounding the Premises, including, but not limited to, geotechnical, soils, drainage, flooding, subsidence, erosion, stormwater, earthquake, fault rupture, ground shaking, liquefaction, seiche, tsunami, unstable soils, expansive soils, effect of tides, (including, but not limited to King Tide conditions), parking, access, lighting, and utility availability; investigation and determination of the costs and other financial considerations associated with the Lease and the uses and improvements contemplated and/or the fitness of the Premises or any improvements located thereon, for Lessee's intended use, and/or the compliance of the Premises and/or any improvements located thereon with any applicable laws, including, without limitation, the Americans With Disabilities Act of 1990, and Lessee expressly waives any duty which the City might have to make any disclosures in connection with the subject matter of this Section. Lessee further agrees that, in the event Lessee leases or assigns its interest in this Lease, Lessee shall protect, indemnify, defend and hold harmless the City for, from and against any matters which arise as a result of Lessee's failure to disclose any relevant information about the Premises and/or Improvements located thereon to any subtenant or assignee. It is the intention of the City and Lessee that the provisions of this section shall survive termination of this Lease for any reason. In accordance with California Civil Code Section 1938, the City hereby advises Lessee that the Premises have not undergone inspection by a Certified Access Specialist (CASp). The City has not determined whether the Premises meet all applicable construction-related accessibility standards pursuant to California Civil Code Section 55.53.

## 2. TERM AND TERMINATION

A. The term of this Lease shall be five (5) years, commencing the first day January 2015 and ending on December 31, 2019 (“Term”). The Term of this Lease, may at the mutual agreement of City and Lessee be extended for one additional five (5) year period subject to the provisions of Section 2. B and C below. Lessee shall provide the City written notice of its request for extension of the Term no less than six (6) months prior to the expiration date of the Lease. The City shall provide a written response to the Lessee regarding Lessee’s request for extension and any modified terms and conditions determined by the City to be required pursuant to Section 2. C. below, no less than three (3) months prior to the expiration date of the Lease. Lessee shall have thirty (30) calendar days to accept or reject the amended terms. In the event that Lessee accepts the amended terms, this Lease shall be extended for the above mentioned additional five (5) year term. In the event that the amended terms are not accepted by Lessee, this Lease shall terminate at the end of the original Term.

B. Lessee agrees that, beginning on the first day of any extended Term of this Lease, City may terminate this Lease as to any or all portion of the Premises for any reason upon advance written notice from City to Lessee (“Notice to Terminate”). Said Notice to Terminate shall identify the date of termination of the Term of this Lease, shall be given by City to Lessee no less than six (6) months' prior to the termination date and shall identify whether the Lease shall be terminated to all or a portion of the Premises. If the Lease is to be terminated as to a portion of the Premises, the Notice of Termination shall identify the portion of the Premises to which the termination notice shall apply and Rent shall be prorated accordingly. In the event that City terminates this Lease as to a portion of the Premises, Lessee shall have the right to terminate this Lease as to the remainder of, and vacate the Premises on the date set forth in the Notice of Termination.

C. Lease Extensions Subject to SB 1424

The Parties hereto acknowledge that pursuant to the terms of SB 1424 any extension of this Lease on and after January 1, 2020, requires that the use of the Property must conform to certain additional conditions including, but not limited to, that all leases shall be consistent with an approved land use plan, the lease rental rates must be for a fair annual rent and the lease shall be in the best interest of the State. The Parties hereto agree that any extension of this Lease to include any period after January 1, 2020, shall also include any amendments determined by the City, in the exercise of the City’s judgment, to be necessary to comply with SB 1424.

## 3. RENT

Lessee agrees to pay to City, in advance, without prior notice or demand, the sum of Seven Hundred Twenty Five Dollars (\$725.00) per month (“Rent”), on or before the first day of each and every calendar month during the Term hereof. Rent for any period during the Term hereof which is less than one (1) month shall be a prorated portion of the monthly Rent as set forth herein, based upon a thirty (30) day month. Said Rent shall be legal tender of the United States of America at the time of payment.

**A. RENT ESCALATIONS**

Beginning with the first anniversary of the commencement of this Lease, and continuing annually thereafter, the monthly rent payable shall be increased by three percent (3%) of the monthly rent payable in the preceding year.

**B. Charge for Late Payment**

If any payment specified in this Section 3 is not paid to City within ten (10) days after due date, a late charge of one percent (1%) of the payment shall become immediately due and pay-able to City. An additional charge of one percent (1%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

**C. Place of Payment and Filing**

Rent shall be delivered to the City of Martinez Finance Department, 525 Henrietta Street, Martinez, California. The designated place of payment may be changed at any time by City upon ten (10) day's written notice to Lessee. Rent may be paid by check made payable to City.

**D. Dredge Fund Payments**

In addition to Rent as set forth herein, in the event that the City of Martinez City Council approves, the establishment of a fund, assessment district, improvement district, or other mechanism to pay the costs associated with performing periodic maintenance dredging of the marina and surrounding area ("Periodic Dredging"), the Parties shall meet and confer regarding an amendment to this Lease to require Lessee to make an annual payment in an amount established by the City Council of the City, which shall represent a pro-rata share of the costs to perform the Periodic Dredging which shall be shared by all of the lessees and contractors operating within the Property as established by the City. In the event that the Parties are unable to agree as to Lessee's fair share contribution to the costs of dredging, this Lease shall terminate upon one hundred twenty (120) days written notice by either party to the other.

**4. SECURITY DEPOSIT**

City hereby acknowledges receipt from Lessee of the sum of six hundred dollars (\$600.00). This sum shall be retained by City as a security deposit to cover delinquent Rent and any other financial obligations of the Lessee under this Lease, and shall be so applied at the discretion of City. Said sum shall accrue no interest on the account of Lessee.

In the event all or any part of said sum so deposited is applied against any rent or other financial obligation of Lessee due and unpaid, the Lessee shall immediately reimburse the City an amount equal to that portion of the security deposit applied by City so that at all times during the Term of this Lease said full security deposit shall be maintained with City. Failure to maintain the full amount of security deposit shall constitute an event of default as provided in Section 13. Upon forfeiture or termination of this Lease, any portion of said deposit due the Lessee shall be returned to Lessee, without interest.

## **5. RECORDS AND ACCOUNTS**

Lessee shall, at all times during the term of this Lease, keep or cause to be kept, true and complete books, records, and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted upon, in or about or supported by the activities located at the Premises. The records must be supported by source documents such as sales slips, cash register tapes, purchase invoices, or other pertinent documents.

Lessee shall provide to City within 45 days following a written request therefor, a copy of Lessee's Financial Statements, including, but not limited to an Income and Expense Statement. City, in the sole discretion of the City Manager, or his/her designee, may require a financial audit of Lessee once every two (2) years at the sole expense of Lessee. All Lessee's books and account and records related to this Lease or to business operations conducted within or from the Premises shall be kept and made available at one location within the limits of the City of Martinez. City shall, through its duly authorized agents or representatives, have the right to examine and audit said books of account and records at any and all reasonable times for the purpose of determining the accuracy thereof, and of the monthly statements of sales made and monies received. The cost of said audit shall be borne by City.

Upon the request of City, Lessee shall promptly provide, at Lessee's expense, necessary data to enable City to fully comply with any and every requirement of the State of California, the State Lands Commission or the United States of America for information or reports relating to this Lease and to Lessee's use of the Premises. Such data shall include, if required, a reasonably detailed breakdown of Lessee's receipts and expenses.

## **6. USE OF PREMISES**

Lessee agrees that the Premises shall be used for the establishment, maintenance and operation of a clubhouse, including facilities for the preparation of food and beverages for club members and their guests for consumption on or off the Premises and for incidental recreational uses relating thereto and for no other purpose without the written consent of City, first had and attained.

Lessee agrees that the uses of the Premises which are permitted hereinabove do not include retail or commercial activity other than the renting of space within the clubhouse and the preparation and sale of food and beverages and incidental mementos to Lessee's own membership and guests thereof and to those persons or groups renting said clubhouse.

The uses described in this Section 6 are deemed to be active public uses.

## **7. CLUBHOUSE CONSTRUCTION**

Pursuant to the Original Yacht Club Lease, the Premises were improved by Lessee by the construction of a building of approximately three thousand (3,000) square feet designed for use by the Lessee as a clubhouse and by the general public pursuant to terms agreed to by the Parties. City approved the plans and specifications for the construction of the clubhouse and the same was constructed and the City issued a certificate of occupancy on or about October, 1984.

## **8. ADDITIONAL CONSTRUCTION**

Lessee may, at its own expense, make or construct, or cause to be made or constructed, improvements, other than those already constructed at the Premises, additions, alterations, repairs, or changes in Premises only with the express written consent of the City. City may refuse permission for the construction of any proposed additional improvement, addition, alteration, repair or change, in its sole and absolute discretion. Any decision of City in such regard shall be final.

If City approves said proposed construction, Lessee shall file in orderly succession all plans, specifications and construction cost estimates with the City for review and approval. No construction shall begin until the final plans and specifications have been approved by City. Lessee shall comply with any and all conditions placed upon said construction by City, which may include but not be limited to, conditions relating to design, cost, bidding, insurance, improvement security, etc. Lessee further agrees to keep City apprised of the progress of the work.

In the event that any City-owned improvements may be damaged as a result of said construction, Lessee agrees to repair such damage promptly at no cost to City, or, in the event Lessee does not so repair said damage promptly and to City's reasonable satisfaction, City may enter upon the Premises to make such repairs, the cost of which shall be paid by Lessee promptly upon demand.

## **9. TITLE TO IMPROVEMENTS**

A. All alterations, structures, additions, installations, appliances, equipment and all other improvements of any kind now existing or hereafter placed on the Premises by Lessee, including the structure and improvements located therein, including but not limited to, HVAC equipment, kitchen and bar appliances and equipment, plumbing and electrical fixtures and systems, floor and wall coverings, doors and windows, lights, plate glass and other door and window glass, and fire sprinklers, shall be and remain the Property of the Lessee during the Term of this Lease, but shall not be altered (except as permitted herein) or removed from the Premises. At the expiration or earlier termination of the Term of this Lease, all alterations, structures, additions, installations, appliances, equipment and all other improvements of any kind now existing or hereafter placed on the Premises by Lessee or any other person or entity shall become a part of the Premises and shall at the City's election be the property of City free and clear of any and all liens, encumbrances or claims of any kind and City shall have no obligation to reimburse Lessee for any portion of the value or cost. Notwithstanding the above, in the event that the City does not elect to own said structures, alterations and improvements at the termination of this Lease, City shall have the right, at City's election, to require Lessee to remove or relocate said alterations, structures, additions, installations, appliances, equipment and other improvements, or any of them. Upon such election by City, Lessee shall remove or relocate same at Lessee's sole cost and expense within ninety (90) days after the expiration of the Term or earlier termination of this Lease. Lessee may request a reasonable extension of said ninety (90) day period, which may be approved or denied by City in City's sole discretion. If the Lessee fails to remove such structures, installations, appliances, equipment or improvements within said ninety (90) days (or

any approved extension thereof), the City shall have the right to have such structures, installations appliances, equipment or improvements removed at the expense of the Lessee.

B. If the City elects to own the structures and alterations on the Premises, the personal property which is not a part of the Premises, as set forth herein, now existing or hereafter placed on the Premises by Lessee shall be removed by Lessee within sixty (60) days after the expiration of the Term or earlier termination of this Lease; provided, however, Lessee agrees to repair any and all damage occasioned by the removal thereof. If any such personal property is not removed within sixty (60) days after the termination of this Lease, the same may be considered abandoned and shall thereupon become the property of City without cost to the City and without any payment to Lessee; except that City shall have the right to have the same removed at the reasonable expense of Lessee. In the event that the City elects to have Lessee remove or relocate said structures and alterations, personal property which is not a part of the Premises, as set forth herein, now existing or hereafter placed on the Premises by Lessee shall be removed by Lessee within ninety (90) days after the expiration of the Term or earlier termination of this Lease.

C. During any period of time employed by Lessee under this paragraph to remove alterations, structures, additions, installations, appliances, equipment and all other improvements and personal property, as set forth herein, Lessee shall pay Rent to City in accordance with this Lease, prorated for the period of time required to effectuate said removal by Lessee.

#### **10. LIENS**

Lessee agrees that it will at all times save City free and harmless and indemnify it against all claims for labor or materials in connection with improvements, repairs, or alterations on the Premises, and the costs of defending against such claims, including reasonable attorney's fees.

In the event that any lien or levy of any nature whatsoever is filed against the Premises or the leasehold interests of the Lessee therein, the Lessee shall, upon written request of City, deposit with City a bond conditioned for the payment in full of all claims upon which said lien or levy has been filed. Such bond shall be acknowledged by Lessee as principal and by a corporation, licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company, as surety. City shall have the right to declare this Lease in default in the event the bond required by this Section 10 has not been deposited with the City within ten (10) days after written request therefore has been delivered to Lessee. This section is in addition to the requirements for bonding as set forth in Section 19 hereof.

#### **11. LEASE ENCUMBRANCE**

Lessee understands and agrees that it cannot encumber the Lease, leasehold estate, the Premises or the improvements located thereon, or any part thereof, by a deed of trust, mortgage or other security instrument for any reason whatsoever without the express written consent of City, which consent may be withheld for any reason or no reason whatsoever and which consent, if given, must be evidenced by resolution adopted by the City Council of the City of Martinez. If any deed of trust, mortgage or other security instrument that encumbers the Lease, leasehold estate, Premises and/or the improvements thereon, or any part thereof, is entered into by Lessee

without City's prior express written consent, City shall have the right to declare this Lease in default and to seek any and all other remedies against Lessee, including damages as a result thereof.

In the event a deed of trust, mortgage, or other security instrument which City has consented to by resolution, should at any time be in default and/or be foreclosed, before the Lessee's interest under such Lease may be sold as part of any foreclosure or trustee's sale to any purchaser, prior express written consent of City shall be obtained thereto. Before a purchaser at such a foreclosure or trustee's sale may assign or sublet the Lessee's interest, it shall obtain the City's express written consent thereto. The decision of the City as to such assignee, purchaser, or subtenant shall be final.

## **12. ASSIGNMENT - SUBLEASING**

Lessee agrees not to assign or transfer the whole or any part of this Lease or any interest therein, rent or Lease the whole or any part of the Premises, or permit the occupancy of any part thereof by any other person or entity, or permit transfer of the Lease or possession of the Premises by merger, consolidation, or dissolution, without the express written consent of City, evidenced by a resolution of the City Council, first had and obtained in each instance. Lessee further agrees that no assignment, voluntary or involuntary, in whole or in part of this Lease, or any interest therein, and no Lease of the whole or any part of the Premises and no permission to any person or entity to occupy the whole or any part of the Premises shall be valid or effective without the advance written consent of City, first had and obtained in each instance; provided, however, that nothing herein contained shall be construed to prevent the occupancy of said Premises by an employee, or business invitee of Lessee.

## **13. DEFAULT**

It is mutually understood and agreed that if any default be made in the payment of Rent herein provided or in the performance of the covenants, conditions, or agreements herein, or should Lessee fail to fulfill in any manner the uses and purposes for which the Premises are leased as stated herein, and such default shall not be cured within thirty (30) calendar days after written notice thereof is made to Lessee, or such other reasonable time thereafter if such cure cannot be completed within such thirty (30) day period and Lessee is diligently prosecuting such cure to completion. City shall have the right to immediately terminate this Lease. In the event of such termination, Lessee shall have no further rights hereunder and Lessee shall thereupon forthwith vacate said Premises and shall have no further right or claim thereto, and City shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the Premises. City shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Lessee in the amount necessary to compensate the City for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

It is further agreed that City shall afford the beneficiary in any deed of trust, mortgage, or other security instrument of record with City and consented to by resolution of the City Council the right to cure any default by Lessee within said time periods stated above after written notice

to said beneficiary. The time periods to cure shall be computed from the date of receipt by said beneficiary by certified mail of such notices from City.

In the event of the termination of this Lease pursuant to the provisions of this Section 13, City shall have any rights to which it would be entitled in the event of the expiration or sooner termination of this Lease under the provision of Section 9 above.

**14. BANKRUPTCY**

It is mutually agreed that in the event Lessee commences a proceeding under Chapter XI of the Federal Bankruptcy Act, or is adjudicated bankrupt or insolvent or makes any assignment for the benefit of creditors, or in the event of any judicial sale of Lessee's interest under this Lease, City shall have the right to declare this Lease in default.

**15. EMINENT DOMAIN**

If the whole or a substantial part of the Premises shall be taken by any public authority under the power of eminent domain, then the term of this Lease shall cease as to the part so taken, from the day the possession of that part shall be required for any public purpose, and the Rent shall be paid up to that day, and from that day Lessee shall have the right either to cancel this Lease and declare the same null and void or to continue in the possession of the remainder of the same under the terms herein provided except that the Rent shall be reduced in proportion to the amount of the Premises taken. All damages awarded for such taking shall belong to and be the property of City whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the Premises herein leased.

**16. SUPERSEDURE**

This Lease upon becoming effective shall supersede and replace the Original Yacht Club Lease and the Original Lawn Lease between City and Lessee.

**17. USE OBLIGATION BY LESSEE AND CITY PERMITTED USES**

It is mutually agreed that a condition for the granting of this Lease is the active and continuous use of the Premises by Lessee for a clubhouse, social meeting venue, and recreational area and shall be continuously used by Lessee for such purposes except for failure of use caused by reason of wars, strikes, riots, civil commotion, acts of public enemies, and acts of God, for all the purposes herein described, in that said use enhances the value of the tidelands, provides needed public service, provides reasonable return to City, provides additional employment, taxes, and other benefits to the general economy of the area.

The Parties hereto understand and agree that City shall have the right to use the Premises, including all improvements located thereon, up to sixteen (16) hours each month. Said City uses shall be reserved no less than thirty (30) days in advance and shall be scheduled to the greatest extent possible without interfering with Lessee's use. Said City use shall be without charge to City and the value of said use shall be considered part of the compensation paid by Lessee to City for the Premises.

## **18. MAINTENANCE AND REPAIR**

### **A. City's Obligations**

City shall maintain or cause to be maintained, as deemed necessary, in the sole discretion of City, the following improvements:

- 1) the public rights of way and other public facilities within the area of the Property but outside the Premises;
- 2) the main utility lines within the area of the Property but outside the Premises;

Except for said public rights of way and utility lines, City shall not be required to maintain, repair or replace improvements constructed within or about or serving the Premises or the Parking Area. Provided, however, City may, at its sole discretion, undertake any improvements to the Premises or to the Property which do not unreasonably interfere with the use of the Premises by Lessee.

### **B. Lessee's Obligations**

Lessee shall, to the satisfaction of City, keep and maintain the Premises and all improvements of any kind which may be erected, installed, or made thereon, including, but not limited to: the rights of way and driveways; the clubhouse building and each and every part thereof; the landscaping and all parts thereof, including, but not limited to, trees, shrubs, plants, flowers, lawns; recreational facilities, including, but not limited to the horseshoe pit; utility and service lines, connections, meters, and facilities, in good condition and in substantial repair at all times during the Term or any extension hereof. It shall be Lessee's responsibility to take all steps necessary or appropriate to maintain such a standard of condition and repair.

Lessee expressly agrees to maintain the Premises in a safe, clean, wholesome and sanitary condition, to the reasonable satisfaction of City and in compliance with all applicable laws. Lessee further agrees to provide approved containers for trash and garbage and to keep the Premises, free and clear of rubbish and litter. City shall have the right to enter upon and inspect the Premises at any time for cleanliness and safety.

Lessee shall designate in writing to City an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness, and general order.

### **C. City's Right to Repair**

If Lessee fails to maintain or make repairs or replacements as required herein, City may notify Lessee in writing of said failure. Should Lessee fail to correct the situation within a reasonable time thereafter, as established by written notice by the City, City may make the necessary correction and the cost thereof, including but not limited to the cost of labor, materials, and equipment and administration, shall be paid by Lessee within ten (10) calendar

days of receipt of a statement of said cost from City. City may, at its option, choose other remedies available herein, or by law.

**19. PERFORMANCE BOND**

No construction shall be commenced upon the Premises by Lessee until City has approved such construction as set forth herein and until Lessee has secured and submitted to City performance bonds and labor and material bonds in the amount of the total estimated construction costs of improvements to be constructed by Lessee. Said bonds must be issued by a company qualified to do business in the State of California and be in a form acceptable to City.

**20. TAXES AND UTILITIES**

**A. Taxes**

Lessee acknowledges and understands that this Lease creates a possessory interest in real property that may be subject to real property or other taxation in accordance with Section 107.6 of the California Revenue and Taxation Code. Lessee shall pay any and all taxes (including any possessory interest tax), assessments, and other charges of any description levied or assessed against or on the Premises or Lessee's use of the Premises or any portion thereof, and any interest thereon, during the term of this Lease by any governmental agency or entity. Any and all taxes and assessments and installments of taxes and assessments required to be paid under this Lease by Lessee shall be paid at least ten (10) days before each such tax, assessment, or installment of tax or assessment becomes delinquent.

Lessee shall defend, indemnify, and hold City, including the Premises and any Improvements now or hereafter on the Premises, free and harmless from any liability, loss or damage resulting from any taxes, assessments or other charges required by this Section 20 to be paid by Lessee and from all interest penalties, and other sums imposed thereon and from any proceedings to enforce collection of any such taxes, assessments, or other charges.

Should Lessee fail to pay within the time specified in this Section any taxes, assessments or other charges required by this Section to be paid by Lessee, City may, but is not obligated to, without notice to or demand to Lessee, pay, discharge or adjust such tax, assessment or other charge for its benefit. In such event, Lessee shall promptly, on written demand of City, reimburse City for the full amount paid by it in paying, discharging or adjusting such tax, assessment or other charge together with interest thereon at the rate of ten percent (10%) per annum from the date of payment until the date of repayment.

**B. Utilities**

Lessee shall pay or cause to be paid, and hold City free and harmless from, all charges for the installation, connection, maintenance and furnishing of all necessary utilities, utility facilities, and services, including but not limited to, gas, water, electricity, telephone service, cable or other Television and/or internet service, sewage and other public utilities to the Premises during the term of this Lease and for the removal of garbage, rubbish, and weeds from the Premises during the term of this Lease.

**21. CONFORMANCE WITH RULES AND REGULATIONS**

Lessee agrees that in all activities on or in connection with the Premises and in all uses thereof, including the making of any alterations or changes and the installation of any machines or other improvements, it will abide by and conform to all rules and regulations prescribed by City of Martinez, including tariffs, and any applicable laws of the State of California and the Federal Government, as any of the same now exist or may hereafter be adopted or amended.

**22. NON-DISCRIMINATION**

Lessee, its officers, members, successors, assigns shall not discriminate against any person or class of person in the providing of admission or service hereunder, or use and occupancy of the Premises, on the basis of such person's race, color, creed, religion, national origin, ancestry, sex, age or physical disability. Lessee shall include in any subcontract a nondiscrimination clause forbidding discrimination against any person in the providing of service hereunder because of such person's race, color, creed, religion, national origin, ancestry, sex, age or physical disability. Lessee shall in provision of its accommodations and services comply with the requirements of the public trust classification of the Premises, and specifically including section 40 of the California Harbors and Navigation code. City may terminate this Lease should Lessee be in violation of this section, including Section 40 of the California Harbors and Navigation Code.

**23. PARTIAL INVALIDITY**

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

**24. NON-LIABILITY INDEMNITY AND HOLD HARMLESS**

**A. Limitation on Liability.**

Lessee understands and agrees that Lessee constructed and was responsible for the construction of the clubhouse and related improvements on the Premises pursuant to the Original Yacht Club Lease, that Lessee has full and superior knowledge and experience relating to the past and current condition of the Premises and the improvements located thereon and within the Parking Area during the Original Term of the Yacht Club Lease and the Term hereof, including, but not limited to, the condition of the structures, soils, underground and subsurface conditions, utilities, the periodic and potentially frequent inundation and flooding of the Parking Area and potential flooding and inaccessibility of the improvements, including structures, located on the Premises, and all other conditions in and about the Premises and Parking Area.

City shall not in any event whatsoever be liable for any injury or damage to any property or to any person occurring on, in or about the Premises and its appurtenances, nor for any injury or damage to the Premises, any improvements located thereon or to any property belonging to Lessee or to any other person which may be caused by any cause whatsoever,

including, but not limited to: the presence of any hazardous wastes, substances or materials as those terms may be defined by any law, ordinance and/or regulation of any regulatory agency with jurisdiction, at and surrounding the Premises; the effects of any geotechnical, soils, drainage, flooding, subsidence, erosion, stormwater, earthquake, fault rupture, ground shaking, liquefaction, seiche, tsunami, unstable soils, expansive soils, tides, (including, but not limited to King Tide conditions) conditions, the condition or availability of the Parking Area or parking, access, lighting, and utility availability, any fire, breakage, leakage, flooding or defect or by water, flooding or rain that may leak into, issue or flow from or to any part of the Premises, Parking Area or areas of egress or ingress to the Premises; the use, misuse or abuse of any of the Premises, structures, areas of egress or ingress and Parking Area or which may arise from any other cause whatsoever, except to the extent caused by the gross negligence or willful misconduct of the City or the City's agents or their breach of any of its representations and/or obligations hereunder.

Lessee shall indemnify, defend, protect, and save harmless City and City's officials, officers, employees, and agents, from and against all liabilities, suits, obligations, fines, damages, penalties, demands, claims, costs, charges and expenses, including without limitation reasonable fees of attorneys, architects and consultants, which may be imposed upon or incurred by or asserted against City (collectively, "**Claims**") and arising directly or indirectly out of any of the following except to the extent caused by the gross negligence or willful misconduct of City or City's breach of any of its obligations under this Lease:

- (1) any work, act or event occurring on the Premises or any part thereof, or any work, act or event occurring in any area adjacent to the Premises and related to the activities of Lessee or Lessee's agents;
- (2) any use, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises, or any part thereof by Lessee or Lessee's tenants, subtenants, contractors, subcontractors, employees, affiliates, assigns, members, independent contractors, agents, licensees, invitees, guests, or any other person or entity using, possessing or occupying the Premises or Parking Area by or through Lessee (collectively, "Lessee's Parties");
- (3) granting by City and performance by Lessee of this Lease or arising from the use and operation of the Premises by Lessee or Lessee's Parties, or any defect in any part thereof;
- (4) any act or omission on the part of Lessee or any of Lessee's Parties;
- (5) any lien or claim which may be alleged to have arisen against or on the Premises caused by Lessee or Lessee's Parties under the laws of the State of California or of any other governmental authority;
- (6) any breach by Lessee of any of its representations and/or obligations under this Lease;
- (7) any failure by Lessee to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in any contract or

agreement affecting the Premises, including this Lease, which Lessee is required to keep, observe or perform; and

- (8) any violation by Lessee with respect to the Premises or the Property of any applicable provisions of any federal, State or local, law, rule, regulation, or ordinance dealing with hazardous wastes, toxic substances or similar materials (collectively, “**Environmental Laws**”), applicable fire safety, health safety, building code standard or any other standard, regulation or law .

**B. Prevailing Wage** The Parties acknowledge that work contemplated to be performed under this Lease by Lessee may be subject to the prevailing wage requirements of the State of California, and particularly its Department of Industrial Relations. In the event that said prevailing wage requirements apply to work undertaken by Lessee upon the Premises pursuant to the terms hereof, Lessee agrees to comply with same. In the event claims arise relating to Lessee’s provision or failure to provide prevailing wage rates for work upon the Premises or in the event that the State, a court or other authority with jurisdiction imposes any prevailing wage requirements upon Lessee’s work performed hereunder and, as a result, imposes fines, penalties and/or assessments upon Lessee and/or the City for alleged violations of such prevailing wage requirements, or as a result thereof Lessee suffers increased costs, expenses, attorneys’ fees or other damages or liabilities, Lessee agrees to (i) indemnify, defend and hold the City harmless from any such claims, fines, damages, increased costs, fees, liabilities, penalties and/or assessments, as well as any costs, fees, and expenses incurred by the City in connection with any actions of the State taken in accordance with its prevailing wage laws, rules and/or regulations, and (ii) waive and release the City from any and all claims Lessee may have against the City for such fines, damages, increased costs, fees, liabilities, penalties and/or assessments, including claims Lessee may have under Cal. Labor Code §1781.

**C. Environmental Provisions**

1. **Lessee's Compliance:** Lessee shall, and shall cause all of Lessee’s Parties to, comply with all Environmental Laws affecting or relating to the Premises and Parking Area, and shall not perform, or suffer or permit to be performed, any acts, or omit or refuse to take any required actions, in violation of Environmental Laws. In addition to the foregoing, Lessee agrees as follows:

(a) Lessee will not use the Premises or the Parking Area, nor will Lessee permit the Premises to be used by the Lessee’s Parties, for the purpose of refining, producing, storing, handling, transferring, processing, transporting, generating, manufacturing, treating or disposing of any Hazardous Material except in material compliance with all Environmental Laws and as necessary for the operation of Lessee's business.

(b) Lessee shall comply, and shall cause Lessee's Parties to comply, with all Environmental Laws affecting the Premises and Parking Area and Lessee shall notify City of any Release (as defined below) or violation of any Environmental Law affecting the Premises or Parking Area known to Lessee. Lessee shall be responsible for all liabilities arising out of

violations of Environmental Laws (“**Environmental Liabilities**”), costs and all Remedial Actions associated with any Release or threatened Release in, over, on, under or about the Premises or Property which is caused by Lessee or any Lessee’s Parties. For purposes of this Section, a “Release” shall include any Release occurring in the course of Lessee’s construction activities, including any Release of pre-existing Hazardous Materials caused by such construction activities.

(c) In the event that a document (“**Environmental Lien**”) is recorded or filed against the Premises or any portion thereof as a result of any act or omission for which Lessee bears responsibility under this Section, Lessee shall immediately notify City thereof and, within thirty (30) days from the date that Lessee receives notice that said Environmental Lien has been placed against the Premises or within such shorter period of time as may be required to stay the enforcement of such Environmental Lien and to ensure that no portion of the Premises shall be sold pursuant to any foreclosure of any such Environmental Lien, Lessee shall either (i) pay the claim and remove the Environmental Lien from the Premises or any portion thereof or (ii) institute at Lessee's sole cost and expense, and acting diligently and in good faith, an appropriate legal proceeding to contest, object or appeal the validity of such Environmental Lien; provided, however, that the contest, objection or appeal with respect to the validity of an Environmental Lien shall suspend Lessee’s obligation to eliminate such Environmental Lien under this subsection pending a final determination by appropriate administrative or judicial authority of the legality, enforceability or status of such Environmental Lien.

(d) Lessee shall cause all of Lessee's Parties to comply in all material respects with the representations, warranties and covenants contained in this Section 24C .

2. **Lessee's Indemnification of City:** Lessee agrees to defend, indemnify and hold harmless City, its officials, officers, employees and agents, from and against any and all Environmental Liabilities, Remedial Actions and costs which result directly or indirectly from (a) any violation of any Environmental Law with respect to all or any portion of the Premises or Parking Area caused by Lessee or any of Lessee's Parties ; (b) any Environmental Liabilities or cost and any Remedial Action associated with any Release or threatened Release in, over, on, under or about the Premises or Parking Area which caused by Lessee or any of Lessee’s Parties; (c) any breach, by Lessee or Lessee’s Parties of any warranty or representation regarding environmental matters made by Lessee or Lessee’s Parties hereunder; and (d) the migration, seepage, leaching or other movement of any Hazardous Materials which have been Released onto the Premises or Property by Lessee or any of Lessee's Parties.

The provisions of this Section 24 shall survive the expiration or earlier termination of this Lease.

**25. SUCCESSORS IN INTEREST**

Unless otherwise provided in this Lease, the terms, covenants and conditions herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

**26. EASEMENTS**

This Lease and all rights given hereunder shall be non-exclusive and subject to all easements and rights-of-way now existing or heretofore granted or reserved by City in, to or over the Premises for any purpose whatsoever, and shall be subject to such rights-of-way for reasonable access, sewers, pipelines, conduits and such telephone, telegraph, light, heat, or power lines as may from time to time be determined by City to be in the best interests of the development of the Property.

City agrees that such easements and rights-of-way shall be so located and installed as to produce a minimum amount of interference to the business of Lessee.

**27. INSURANCE**

Lessee shall maintain insurance acceptable to City in full force and effect throughout the term of this Lease. The initial policies for said insurance shall, as a minimum, provide the following forms of coverage:

**A. Comprehensive Public Liability**

(Covering Premises, operations, products and completed operations.)

1. Two Million Dollars (\$2,000,000) per occurrence for personal injury or death combined, single limit with an annual aggregate of three million dollars (\$3,000,000); and
2. Two Million Dollars (\$2,000,000) for property damage.

Each such policy shall be endorsed with the following specific language:

- (i) The City is named as additional insured for all liability arising out of the work performed by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents, and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any respect, directly, or indirectly, in the performance of this Lease.
- (ii) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.

(iii) The insurance provided is primary and no insurance held or owned by the City shall be called upon to contribute to a loss.

(iv) The coverage provided by this policy shall not be canceled without thirty (30) days prior written notice given to the City.

## **B. Property Insurance**

Lessee shall, at Lessee's own cost and expense, secure and maintain all risk extended form insurance (including builder's all-risk insurance during the course of construction) coverage in an amount equal to one hundred percent (100%) of the full replacement cost of the Premises and Improvements (including all changes in building code requirements) and Lessee's personal property and materials and supplies used at the site (including all changes in code requirements) and covering course of construction exposure and all risks of direct physical loss (including flood and losses occasioned by flood). Any loss payable under any policy described in this Section 27B shall be used to rebuild and/or repair the damaged portions of the Premises, Improvements and Lessee's personal property. The insurer shall waive all rights of subrogation against City. The City shall be named a loss payee on all insurance policies covering casualty losses and builder's risk.

## **C. Automobile Insurance.**

Lessee shall, at Lessee's own cost and expense, secure and maintain during the entire term of this Agreement, automobile liability insurance insuring Lessee and Lessee's employees in an amount not less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage for all owned autos (if any) and for all hired and non-owned autos.

## **D. Fire and Extended Coverage**

Lessee shall at Lessee's own cost and expense, secure, and maintain during the entire Term of this Agreement, fire and extended coverage for the Premises to include water damage and debris clean-up provisions in an amount not less than one hundred percent (100%) of full replacement value of all improvements located within the Premises. The fire and extended coverage policies shall provide that any insurance proceeds resulting from a loss under said policies shall be payable jointly to City and Lessee in order that said proceeds will be reinvested in rebuilding and/or repairing the damaged portions of the Premises.

## **E. Worker's Compensation Coverage**

Lessee shall at Lessee's own cost and expense, secure, and maintain during the entire Term of this Agreement, workers' Compensation Insurance to cover its employees and volunteers, and Lessee shall require all contractors and subcontractors doing work on or about the Premises to similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of the contractor's or subcontractors' employees. Each Workers' Compensation policy shall be endorsed with

the provision that it will not be canceled or altered without first giving thirty (30) days prior notice to the City.

Said Worker's Compensation policy shall have the following endorsement:

"All rights of subrogation are hereby waived against the City, its officers and employees when acting within the scope of their appointment or employment".

Certificates and endorsements in a form acceptable to the City and evidencing the existence of the necessary insurance policies shall be kept on file with City during the entire term of this Lease.

City shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the reasonable opinion of City, the insurance provisions in this Lease do not provide adequate protection for City and/or for members of the public using the Premises, City may require Lessee to obtain insurance sufficient in coverage, form and amount to provide adequate protection. City's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of risk which exist at the time a change in insurance is required.

City shall notify Lessee in writing of changes in the insurance requirements and, if Lessee does not deposit certificates and endorsements evidencing acceptable insurance policies with City incorporating such changes within sixty (60) calendar days of receipt of such notice, Lessee shall be in default without any further notice to Lessee, and City shall be entitled to all legal remedies.

The procuring of such required policies of insurance shall not be construed to limit Lessee's liability hereunder, not to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policies of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Lease or with the use or occupancy of the Premises and Parking Area by Lessee and Lessee's Parties.

## **28. CONTROL OF HOURS, PROCEDURES AND PRICES**

Lessee shall at all times maintain a written schedule delineating the operating hours and operating procedures for its business operation on the Premises. Prices charged for all goods and/or services supplied on or from the Premises shall be posted or marked on each item.

Upon written request, Lessee shall furnish City a copy of said schedules. Should City, upon review and conference with Lessee, decide any part of said schedules are not justified with regard to fairly satisfying the public trust nature of the Premises, Lessee, upon written notice from City, shall modify said schedules to the satisfaction of City.

If Lessee does not agree with the modifications effected by City, Lessee may appeal the matter to the Martinez City Council, whose decision shall be final and conclusive. Lessee's failure to comply with the provisions of this section shall constitute a serious breach of this Lease and City may immediately terminate this Lease.

Primary consideration shall be given to the public purpose of the Property in implementing this Section 28 and Lessee agrees that it will operate and manage the services and facilities offered in a competent and efficient manner at least comparable to other well managed operations of similar type.

Lessee shall at all times retain active, qualified, competent, and experienced personnel to supervise Lessee's operation and to represent and act for Lessee.

Lessee shall require its attendants and employees to be properly dressed, clean, courteous, efficient and neat in appearance at all times. Lessee shall not employ any person(s) in or about the Premises who shall use offensive language or act in a loud, boisterous, or otherwise improper manner.

Lessee shall maintain a close check over attendants and employees to insure the maintenance of a high standard of service. Lessee shall replace any employee whose conduct is detrimental to the best interests of the public.

All prices charged for goods and/or services supplied on or from the Premises shall be fair and reasonable, based upon the following considerations:

- A. The degree of public service involved in the sale of the goods and/or services.
- B. The market prices charged by other competing and/or comparable businesses.
- C. The reasonableness of the profit margin as related to industry-wide profit margins.

**29. WARRANTIES - GUARANTEES - COVENANTS**

City makes no warranty, guarantee, covenant, including but not limited to covenants of title and quiet enjoyment, or averment of any nature whatsoever concerning the condition of the Premises, including the physical condition thereof, or any condition which may affect the Premises, and it is agreed that City will not be responsible for any loss, damage or costs which may be-incurred by Lessee by reason of any such condition or conditions.

**30. DAMAGE TO OR DESTRUCTION OF DEMISED PREMISES**

In the event of damage to, or destruction by, fire, the elements, acts of God, or any other cause, of Lessee constructed improvements located within the Premises or in the event Lessee constructed improvements located within the Premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, Lessee shall, within ninety (90) days, commence and diligently pursue to completion the repair, replacement, or reconstruction of improvements necessary to permit full use and occupancy of the Premises for the purposes required by this Lease. Repair, replacement, or reconstruction of improvements within the Premises shall be accomplished in a manner and according to plans approved by City.

**31. QUITCLAIM OF LESSEE'S INTEREST UPON TERMINATION**

Upon termination of this Lease for any reason, including but not limited to termination because of default by Lessee, Lessee shall execute, acknowledge and deliver to City within thirty (30) days after receipt of written demand therefor a good and sufficient deed whereby all right, title and interest of Lessee in the Premises and all improvements located thereon is quitclaimed to City. Should Lessee fail or refuse to deliver the required deed to City, City may prepare and record a notice reciting the failure of Lessee to execute, acknowledge and deliver such deed and said notice shall be conclusive evidence of the termination of this Lease and of all right of Lessee or those claiming under Lessee in and to the Premises.

**32. PEACEABLE SURRENDER**

Upon the expiration of this Lease or the earlier termination or cancellation thereof, as herein provided, Lessee will peaceably surrender the Premises to City in good condition and repair, ordinary wear excepted.

**33. WAIVER**

Any waiver by City of any breach by Lessee of any one of more of the covenants, conditions, or agreements of this Lease shall not be nor be construed to be a waiver of any subsequent or other breach of the same or any other covenant, condition or agreement of this Lease, nor shall any failure on the part of City to require or exact full and complete compliance by Lessee with any of the covenants, conditions, or agreements of this Lease be construed as in any manner changing the terms hereof or to prevent City from enforcing the full provisions hereof. The subsequent acceptance of any rent payment shall not operate as a waiver of any preceding breach by Lessee of any term, covenant, or condition of this Lease, other than the failure of Lessee to pay the particular Rent so accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such Rent.

**34. HOLDOVER**

Lessee shall not holdover after the termination, revocation, or expiration of this Lease without the written approval of the City. Any such holdover shall be deemed an extension of this Lease on a month-to month basis at the same rate of Rent and upon the same terms and conditions as set forth in this Lease. Any time used by Lessee or City in removing buildings, structures and other improvements, or in restoring the Premises, as required by this Lease, shall be included within the requirements of this holdover section.

If, during the period of holdover, City and Lessee enter into a new agreement for the same or substantially the same Premises, the compensation for the period of the holdover shall be at the same rate provided in the new agreement.

**35. SECTION HEADINGS**

The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision thereof.

**36. ENTIRE UNDERSTANDING**

This Lease contains the entire understanding of the parties, and Lessee, by accepting the same, acknowledges that there is no other written or oral understanding between the parties in respect to the Premises. No modification, amendment or alteration of this Lease shall be valid unless it is in writing and signed by the parties hereto.

**37. TIME IS OF THE ESSENCE**

Time is of the essence of each and all of the terms and; provisions of this Lease and this Lease shall inure to the benefit of and be binding upon the parties hereto and any successors of Lessee as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this Lease shall extend to and bind any assigns and sublessees of Lessee.

**38. ATTORNEY'S FEES**

In the event any suit is commenced by City against Lessee to enforce the payment of any Rent due or to enforce any of the terms and conditions hereof, or in case City shall commence summary action under the laws of the State of California relating to the unlawful detention of Premises, for the forfeit of this Lease, and the possession of said Premises, provided City effects a recovery, Lessee shall pay City all costs expended in any such action, together with a reasonable attorney's fee to be fixed by the Court.

**39. UNLAWFUL USE**

Lessee agrees no improvements shall be erected, placed upon, operated, nor maintained within the Premises, nor any business conducted or carried on therein or therefrom in violation of the terms of this Lease, or any regulation, order of law, statute, by-law, or ordinance of a governmental agency having jurisdiction.

**40. LESSEE'S ASSOCIATION**

Lessee agrees to maintain membership and pay dues in any organization that may be organized, formed, or sponsored by City for substantially all Lessees within the Property, and to pay such fees, if any, as may be established by the membership, to be used (except for reasonable administrative expenses) at the direction of the officers of such organization for the promotion of the commercial operations located within the Property. Provided, that under the by-laws of such organization, no matters (including, without limitation, the election of officers and the establishment of dues and fees) shall be deemed to have been adopted by such organization for purposes of this Section 40, unless approved by a majority of Lessees holding leases within the Property at the time of adoption.

**41. SIGNS**

Lessee agrees not to construct, maintain, or allow any sign upon the Premises except as approved in writing in advance by City. Unapproved signs, banners, flags, etc. shall be removed by Lessee immediately upon request of City.

**42. RIGHT OF ENTRY AS AGENT**

In any and all cases in which provision is made herein for termination of this Lease, or for exercise by City of right of entry or re-entry upon the Premises, or in case of abandonment or vacation of the Premises by Lessee, Lessee hereby irrevocably appoints City the agent of Lessee to enter upon the Premises and remove any and all persons and property whatsoever situated upon the Premises and place all or any portion of said property, except such property as may be forfeited to City pursuant to the terms hereof, in storage for the account of and at the expense of Lessee.

In such case, City may relet the Premises upon such terms as City may deem fit, and if a sufficient sum to pay Rent, and all other obligations of Lessee as set forth herein shall not be thus realized, after paying the expenses of such reletting and collecting, to satisfy the Rent and other sums herein reserved to be paid, Lessee agrees to pay any deficiency, and to pay the expenses of such reletting and collecting.

Lessee hereby exempts and agrees to save harmless City from any cost, loss or damage arising out of or caused by any such entry or re-entry upon the Premises and the removal of persons and property and storage by City and its agents.

City reserves right of re-entry to the Premises at reasonable times for purposes of inspection and repair of Premises, to make necessary alterations and to show the Premises for purposes that are in the City's normal course of business.

This section shall survive termination of this Lease.

**43. QUIET ENJOYMENT**

Lessee, upon performing its obligations hereunder, shall have the quiet and undisturbed possession of the Premises throughout the term of this Lease.

**44. NOTICES**

As used in this Lease, notice includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver and appointment.

(1) All notices must be in writing.

(2) All notices shall be delivered via overnight courier, by hand delivery, by first class mail, or by certified or registered mail, return receipt requested, to the appropriate party at the addresses set forth below. All communications shall be deemed served upon delivery of, or if mailed, upon the first of the following events to occur: (a) signed return of the receipt or (b) the expiration of three (3) days after the deposit in the United States Postal Service mail, postage prepaid and addressed to the address specified below. Non-receipt of any communication as the result of any change of address or facsimile number of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

TO THE CITY:

City of Martinez

525 HENRIETTA STREET

MARTINEZ, CA 94553

Attention: City Manager

with a copy to

City Attorney

City of Martinez

670 W. Napa St., Suite F

Sonoma, CA 95476

FAX: (707) 996-9603

TO LESSEE:

Martinez Yacht Club

P.O. Box 128

Martinez, CA 95543

Attention: Commodore

(3) Either party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

IN WITNESS WHEREOF, the Parties hereto have executed this Lease as of the date first set forth above.

LESSEE

CITY

By \_\_\_\_\_

By \_\_\_\_\_

ATTEST: \_\_\_\_\_

ATTEST: \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

EXHIBIT A

DESCRIPTION OF THE PROPERTY

Commencing at the intersection of the north line of Tideland Survey No. 9 and the west line of North Court Street as shown on Map of "City of Martinez Waterfront Area" filed March 10, 1955, in Volume 16, Pages 39 to 43, Licensed Surveyor's Maps in the Office of the Contra Costa County Recorder; thence South 20° 03' 30" East 240.00 feet to the true point of beginning; thence South 69° 56' 30" West 50.00 feet to the centerline of North Court Street; thence North 20° 03' 30" West 630.00 feet along the centerline of North Court Street; thence leaving said centerline North 63° 05' 00" West 410.36 feet; thence North 20° 03' 30" West 530.00 feet; thence North 17° 02' 14" East 272.81 feet; thence North 16° 00' 00" West 380.00 feet; thence South 79° 47' 48" West 300.00 feet; thence North 10° 12' 12" West 200.00 feet; thence North 79° 47' 48" East 380.00 feet; thence North 69° 56' 30" East 810.00 feet; thence South 81° 03' 30" East 710.00 feet; thence South 07° 00' 00" West 900.00 feet; thence South 05° 05' 39" East 119.71 feet; thence South 12° 10' 00" West 660.00 feet; thence South 03° 30' 00" West 110.00 feet; thence South 63° 50' 00" West 85.00 feet; thence South 20° 03' 30" East 130.00 feet to the intersection with the northerly line of the Tideland Survey No. 9; thence along said northerly line South 76° 56' 53" West 35.00 feet; thence leaving said northerly line South 20° 03' 30" East 184.70 feet; thence South 69° 56' 30" West 450.00 feet to the point of beginning.

EXHIBIT B  
DEPICTION OF PREMISES

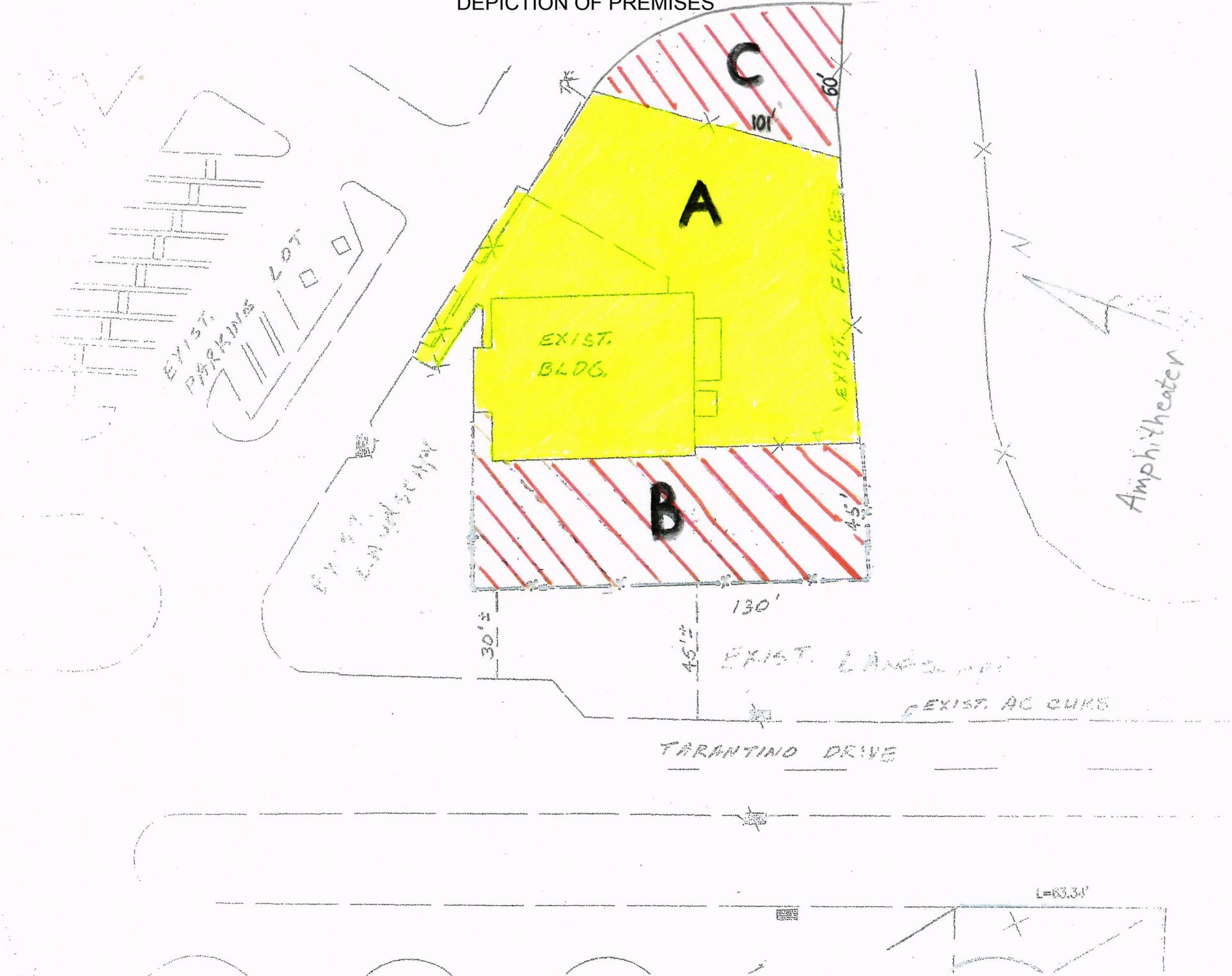


EXHIBIT C  
MAP OF AREA NOT SUBJECT TO LEASE (ALL RED SHADED AREAS)



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# Exhibit D



**Parking Area**