CITY OF MARTINEZ **CITY COUNCIL AGENDA**
February 4, 2009

TO: Mayor and City Council

FROM: Joann Tool, Deputy Director Community and Economic Development-Recreation, Community Services & Marina

SUBJECT: New Yacht Club Lease

DATE: January 26, 2008

RECOMMENDATION:

Approve a Lease Agreement with the Martinez Yacht Club for the lawn area adjacent to the Yacht Club building and authorizing the City Manager to execute the lease agreement.

BACKGROUND:

On April 20, 2006, June Catalano, former City Manager, sent a letter to the Yacht Club stating that the City Council Marina Subcommittee would allow requested improvements to the lawn area adjacent to the building (diagram attached). The letter states that requested improvements could be made, a separate lease would be drafted and the lease would be subject to an annual rent of $1. The letter also addressed parameters for the construction of fencing. This lease was developed but was never executed.

In 2008, the Yacht Club decided that they would like to proceed with a lease for the lawn area, but they no longer wished to make improvements to the area. Since the Yacht Club members continue to maintain the area, they decided it would be best to do so under the terms of a lease.

The Yacht Club agreed to pay half of the City Attorney fees ($1500) to have modifications made to the 2006 draft lease. The changes have been made to the attached lease and are submitted for the Council's approval.

The lease for the lawn area contains the following terms:

- The lease term is (1) calendar year
- The lessee shall have the option to extend the original term for four additional one year period(s)
- The City may terminate the lease at anytime with 60 days written notice
- The annual rent is $1
- The area is to be used for aesthetic and recreational enjoyment - no improvements or

permanent fixtures may be placed in the area
- Lessee must maintain the area

FISCAL IMPACT:

$750 from the General Fund to cover half of the cost of drafting the lease.

ACTION:

Motion approving the new Yacht Club lease for the lawn area and authorizing the City Manager to execute the lease.

APPROVED BY: City Manager

APPROVED BY: Assistant City Manager Community & Economic Development

Recording requested by
City of Martinez

When recorded mail to
Joann DeGraef Tool
City of Martinez
525 Henrietta Street
Martinez, CA 94553-2394

LEASE

This Lease is made as of _____, 2009, by and between the City of Martinez, hereinafter called "LESSOR", and Martinez Yacht Club, hereinafter called "LESSEE".

RECITALS

A. LESSOR is the owner of certain unimproved real property in the County of Contra Costa, State of California, shown as the cross-hatched area in the lease diagram (referred to in this Lease as “the New Premises”) attached hereto as Exhibit “A” and made a part of this Lease.

B. LESSOR is not the owner of any building, improvement, storage facility, trailer, structure of any kind, or of any other object affixed to the New Premises or located thereon.

C. LESSEE currently leases from LESSOR the “Demised Premises” described within the Lease dated October 6, 1983 attached hereto as Exhibit “B” (hereafter referred to as “Existing Premises”).

D. The Existing Premises are directly adjacent to the New Premises which LESSEE now desires to lease from LESSOR.

E. LESSEE operates a yacht club at the Existing Premises and has continued to maintain the New Premises as open, lawn area since it began operating the yacht club.

F. LESSEE now wishes to enhance its members’ aesthetic and recreational enjoyment of the Yacht Club by leasing the New Premises in combination with its use of the Existing Premises.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Lease of Premises.

LESSOR hereby leases to LESSEE and LESSEE hereby leases from LESSOR for the term, at the rental, and upon the covenants and conditions set forth herein the New Premises.

2. Term.

The term of this Lease is one (1) calendar year, beginning **February 5, 2009**, and ending at midnight on **January 27, 2010**, unless extended or sooner terminated as provided for in this Lease.

3. Option.

LESSEE shall have the option to extend the original term of this Lease for four (4) additional period(s) of one (1) year each, subject to all the provisions of this Lease. Failure to exercise the option for any period shall nullify the option for all subsequent periods. LESSEE shall exercise said option by providing notice in the manner described by Section 10 to LESSOR at least ninety (90) days prior to the expiration of the term or option period. If the LESSEE exercises its rights under this section, all terms and conditions of this Lease shall be applied to the extended term. LESSEE's rights under this section shall be subordinate to the LESSOR's rights under Section 4 of this Lease.

4. Termination.

At any time that this Lease is still in effect, the LESSOR may terminate this Lease with or without cause. Notice of said termination shall be given at least sixty (60) days in advance of the effective date of termination in the manner described by Section 10.

5. LESSEE's Covenant to Pay.

(a) Upon execution of this Lease agreement by all parties, the LESSEE shall forthwith pay LESSOR the amount of $1 as net rent for the original one-year period of the Lease. Upon each of the four (4) option periods described by Section 3, LESSEE shall pay LESSOR the amount of $1 as net rent for each one-year period by which the Lease is being extended.

6. Use.

LESSEE agrees to use the New Premises for the aesthetic and recreational enjoyment of the members and guests of the Martinez Yacht Club, provided that LESSEE shall not improve or add any permanent or affixed structures to the New Premises.

7. Improvements.

LESSEE shall at all times maintain and utilize the New Premises as an unimproved grassy field. LESSEE shall not install, erect, construct, affix, or add any structure, building, recreational facility, or other affixed object (hereafter referred to collectively as "Improvements") to the New Premises. It is expressly understood and agreed that the New Premises is intended to remain an open area that may be utilized for aesthetic and recreational enjoyment but shall never be altered in character or utilized for any purpose that is not expressed by this Agreement, except upon the advance written approval of the City.

8. Maintenance.

LESSEE shall at all times keep and maintain the New Premises in a healthy, vibrant, well-watered, clean, and attractive state. LESSEE shall maintain and make any necessary repairs to the New Premises at its sole cost and expense. Upon notice from LESSOR to LESSEE that the New Premises is in need of maintenance and/or repair, LESSEE shall maintain and/or repair the New Premises to the satisfaction of LESSOR within thirty (30) days of notice or within the time required by LESSOR.

9. Property Taxes.

LESSEE acknowledges and is hereby notified that by entering into this Lease, LESSEE may be subject to a possessory property interest tax and that LESSEE shall be solely liable for its timely and regular payment.

10. Notices.

All notices and demands which may or are to be required or permitted to be given by either party to the other hereunder shall be in writing. All notices and demands by the LESSOR to the LESSEE shall be sent by United States mail, postage prepaid, addressed to:

Martinez Yacht Club
P.O. Box 128
Martinez, CA 94553

or to such other place as LESSEE may from time to time designate in a notice to the LESSOR. All notices and demands by the LESSEE to the LESSOR shall be sent by United States mail, postage prepaid, addressed to:

City of Martinez
525 Henrietta Street
Martinez, CA 94553-2394

or to such other person or place as the LESSOR may from time to time designate in a notice to the LESSEE.

11. Incorporated terms of Lease.

LESSOR and LESSEE agree that the following terms and conditions in Exhibit “B” shall be incorporated by reference into this Lease as if set forth in full at this place: 16, 17, 18, 19, 20, 21, 22 (B) and (C), 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49, and 51; subject to the following changes:

The term “Improvements” shall replace the term “improvements” whenever that term is used in any of the sections in Exhibit “B” that are listed above, with the sole exception of Section 12.

The term “New Premises” shall replace the term “Demised premises” whenever that term is used in any of the sections in Exhibit “B” that are listed above.

The parties hereto have executed this Lease on the dates specified immediately adjacent to their respective signatures.

LESSOR/CITY OF MARTINEZ	LESSEE/MARTINEZ YACHT CLUB
BY:_____	BY:_____
Title:_____	Title:_____
DATE:_____	DATE:_____

Approved as to form:

_____
Assistant City Attorney

Attachments:
Agreement
Exhibit A– Diagram showing Leased Premises
Exhibit B–Lease between City of Martinez and the Martinez Yacht Club dated October 6, 1983

A C K N O W L E D G E M E N T

STATE OF CALIFORNIA)
) ss.
County of _____)

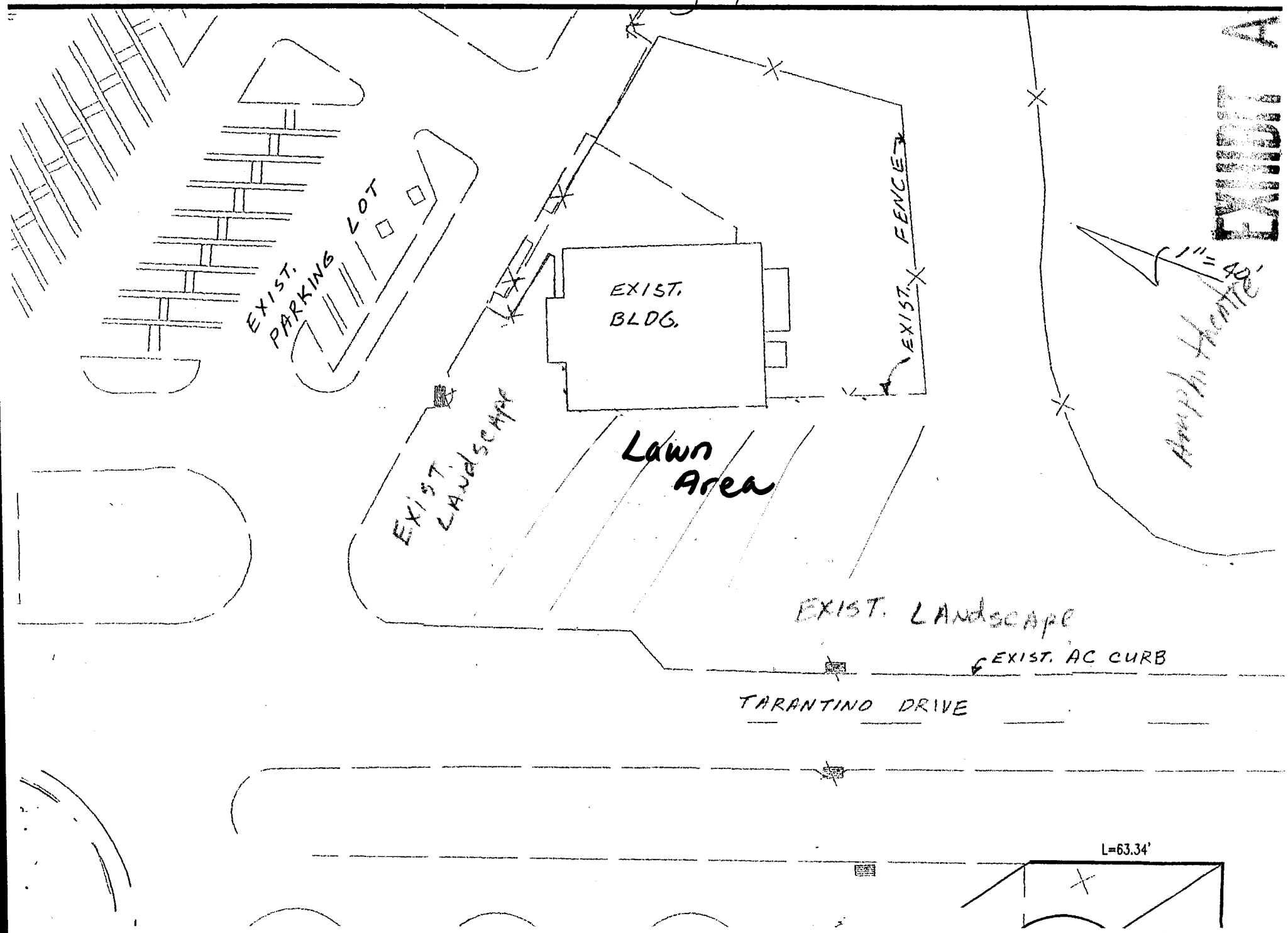
On _____, before me, _____, a Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and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

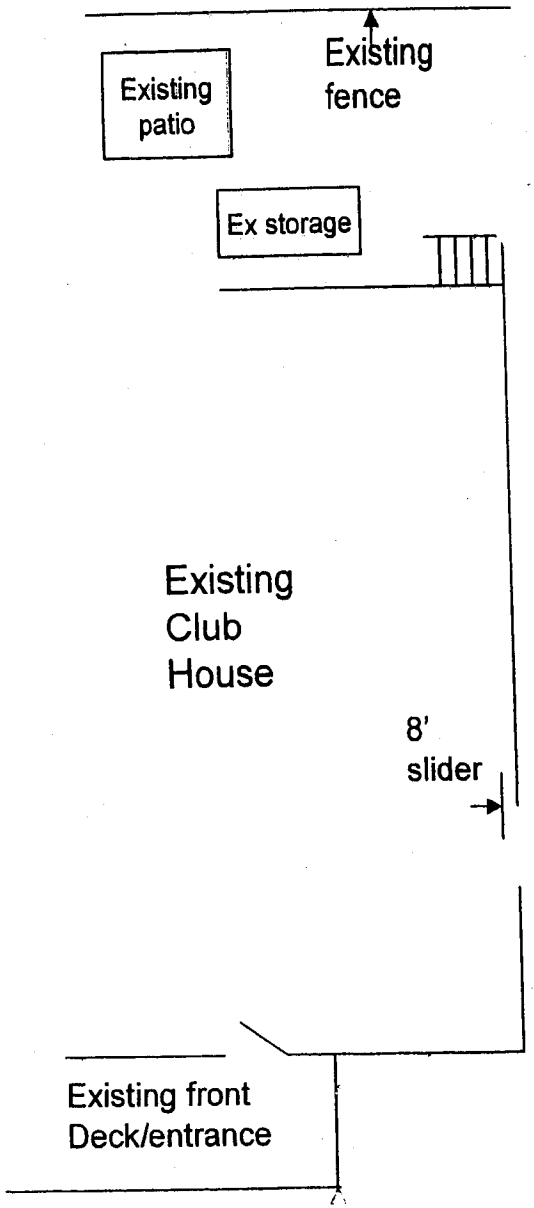
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

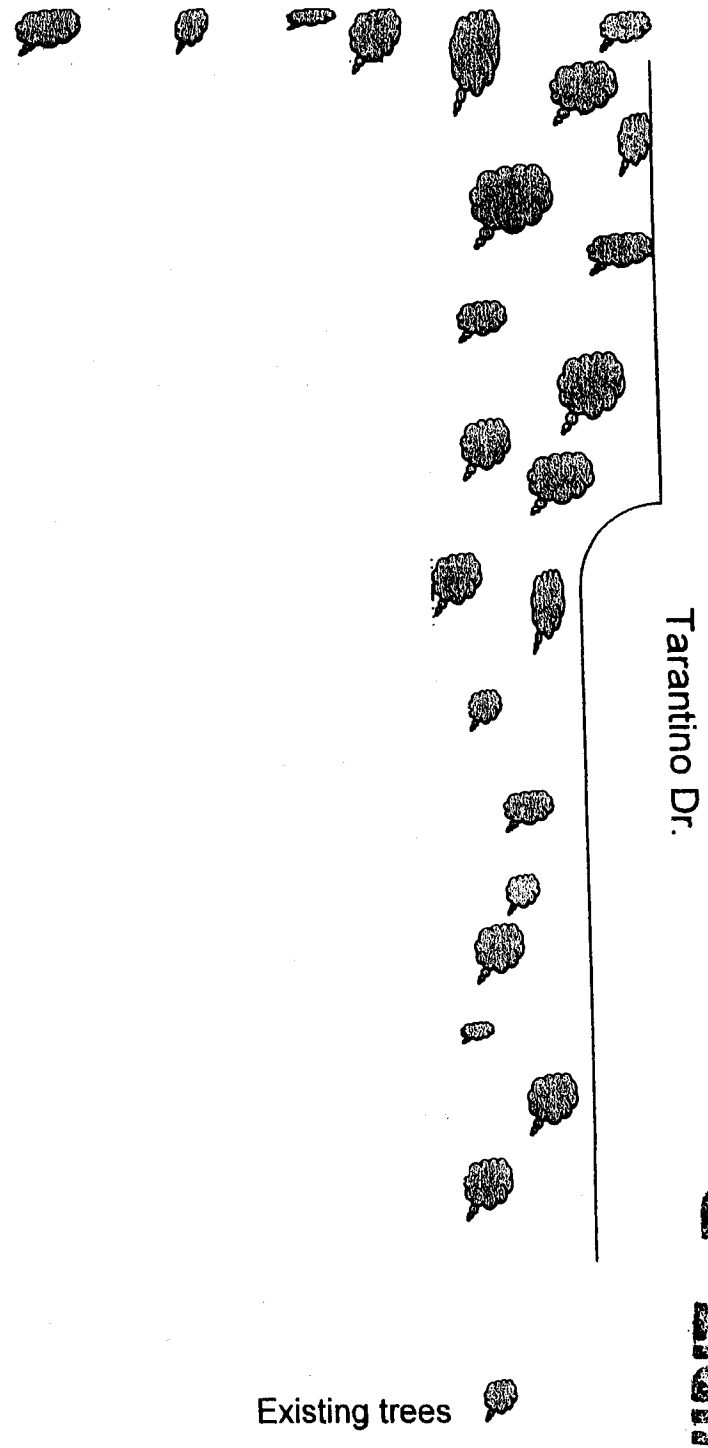
_____
Notary Public, State of California

Martinez Yacht Club




Existing patio
Existing fence
Ex storage
Existing Club House
8' slider
Existing front Deck/entrance

Lawn area


Tarantino Dr.
Existing trees

14.02.01

LEASE

THIS IS A LEASE, made and entered into this 6 day of OCTOBER, 1983, by and between City of Martinez, hereinafter referred to as "LESSOR", and MARTINEZ YACHT CLUB hereinafter referred to as "LESSEE".

W I T N E S S T H :

1. DEMISED PREMISES

LESSOR hereby leases to LESSEE, and LESSEE takes and leases in an "as is" condition from LESSOR, for the term and upon the convenants and condition herein, that area of land described as parcel two (2), and shown on Exibit B. Said leased area shall hereinafter be referred to as "Demised Premises".

2. TERM

The term of this Lease shall be twenty (20) years, commencing the first day of the first full calendar month following the date of execution by LESSOR. The term of this lease, may at the option of the LESSEE be extended for an additional ten (10) years. The option period shall be exercised by giving LESSOR written notice thereof, at least one hundred twenty (120) days prior to the expiration of the term or option period. If said option is exercised, the same terms and conditions shall apply except as set forth in section 3, B. and D. Percentage Rental.

3. RENT

A. Minimum Annual Rent

For the first accounting year of the Lease term, a minimum annual rental for the Demised Premises shall be in accordance with the following schedule:

Year	Rental
1	$2,400

Should this lease be terminated during an accounting year, the applicable minimum annual rental shall be prorated.

EXHIBIT B

B. Percentage Rentals

Revenue Source	Year 1-10	10-20	Option
Initial membership fee.	10%	10%	10%
Dues	10%	15%	15%
Special assessment for maintenance and operation	10%	15%	15%

C. Annual Rental

LESSEE shall pay to the LESSOR for each accounting year the minimum annual rental or the percentage rental, whichever is greater plus three percent (3%) of the gross receipts from business operations conducted on or from the Demised Premises; however, rental on the gross receipts from non member business operations conducted from the Demised Premises shall be computed at the rate of six percent (6%).

LESSEE agrees to additionally compensate LESSOR by providing free use of premises not to exceed 16 hours per month. For use in excess of 16 hours LESSOR shall compensate LESSEE on a cost basis for utility and custodial expenses. Said use to be scheduled so as to not interfere with LESSEE use. Adjustments or revision to the number of hours provided may be requested by either party in the manner set forth in paragraph 3.D.1.

D. Revision of Rentals

1. Revision of Percentage Rentals

Any of the percentages specified in Section 3. B. of this Lease, or of percentages which may be established for other businesses, shall be subject to revision to be effective at each five year anniversary from the date of this Lease, upon written demand of either party made one hundred-eighty (180) days prior to the date which the revision shall become effective. In addition to the revision of said percentages, either party may require that any business activity allowed by this Lease (or any revision hereof), not subject to percentage rentals in this Lease, be made subject to percentages rentals at the revision dates aforementioned. Any revision in percentage rentals rates determined after said dates which such revision is effective shall be retroactive to the beginning thereof.

Adjustments shall be made by negotiation; but if agreement is not reached within two (2) months after demand thereof, LESSOR and LESSEE shall each select a qualified real estate appraiser, and the two chosen shall select a third qualified real estate appraiser. After selection of the appraisers, LESSOR shall immediately fix a time and place for a conference between the parties and the appraisers. Said conference shall be for the purpose of agreeing upon and giving general instructions to the appraisers. Each of the appraisers selected by LESSEE or LESSOR shall, within forty-five (45) days after receiving instructions, deliver copies of a fully documented written report containing his opinion of the fair percentages then current to LESSEE, LESSOR, and the third appraiser. The third appraiser shall analyze said appraisals, conducting such matters relating to the reports as either deems appropriate, within five (5) days after such time, the appraisers shall make a final joint written determination of the fair percentage rental rates then current. LESSEE and LESSOR shall pay the fee of the appraiser each has selected and shall each pay one-half the fee of the third appraiser.

Fair percentage rental, as that phrase is used herein, shall be the highest price estimated in terms of percentage of gross sales which the Demised Premises would bring if offered for lease in the open market under conditions existing as of the date of valuation for the uses, businesses, activities and operations conducted on the Demised Premises by LESSEE, its agents, sublesses, licensees or concessionaires, with a reasonable time allowed in which to find a lessee renting with a knowledge of all of the uses and purposes for which the Demised Premises are being used or are authorized to be used, the LESSOR being willing to lease but under no particular or urgent necessity for so doing nor obligated to lease, and the LESSEE being ready, willing and able to lease but under no particular or urgent necessity for so doing. This definition of "fair percentage rental" presupposes that both the LESSOR and the LESSEE are familiar with the property, its adaptabilities, and its uses.

2. REVISION OF MINIMUM ANNUAL RENTAL

Effective on each anniversary date of this lease, the minimum annual rental specified in Section 3 A (Minimum Annual Rental), shall be automatically adjusted at the same rate as the official U.S. Government Consumer Price Index for the previous year; however at no time following the initial year of this lease shall the minimum annual rent be less than $2,400 per year.

4. DEFINITION OF GROSS RECEIPTS

As used in this section, the term "LESSEE" shall include LESSEE, his agents, sublesses, concessionaires, or licensees, or any person acting under contract with LESSEE. The term "gross receipts" upon which the percentage rentals are to be based shall include:

A. The sale price of all goods, wares, merchandise, food, alcholic and non-alcholic beverages, and other products sold on or from the Demised Premises by LESSEE, whether for cash or credit and whether payment is actually made or not;

B. The charges made by LESSEE for the sale or rendition on or from the Demised Premises of services of any nature or kind whatsoever, whether for cash or credit and whether payment is actually made or not;

C. All admission, entry, rental, and other fees of any nature or kind charged by LESSEE (including but not limited to deposits accepted by Lessee), License fees and taxes excluded;

D. All sums deposited in any coin-operated vending machine or other device maintained on the Demised Premises, regardless of the ownership of the machine or device, or whether such sums are removed and counted by LESSEE or others, and regardless of what percentage thereof LESSEE is entitled to receive.

E. The fair rental value of facilities used by LESSEE or his employee for purposes other than the business purposes for which the Demised Premises are leased.

Gross receipts shall exclude all sales and excise taxes payable by LESSEE to Federal, State, County or Municipal governments as a direct result of operations under this Lease. Refunds for goods returned and deposits shall be deducted from current gross receipts upon return. Bad debt losses shall not be deducted from gross receipts.

5. RENT PAYMENT PROCEDURE AND ACCOUNTING

A. The Accounting Year

The accounting year shall be twelve (12) full calendar months. The accounting year may be established by LESSEE, provided LESSEE notifies LESSOR in writing of the accounting year to be used. Said accounting year shall be deemed to be approved by LESSOR provided LESSOR has not interposed an objection to LESSEE's selection within sixty (60) days of notification by LESSEE.

In the event LESSEE fails to establish an accounting year of its choice, regardless of the cause, the accounting year shall be synonymous with the twelve (12) month period contained in the first one (1) year term of the Lease.

Any portion of a year that is not reconciled, should the accounting year and the anniversary year of the Lease commencement not be the same, shall be accounted for as if it were a complete accounting year.

Once an accounting year is established, it shall be continued through the term of the Lease unless LESSOR specifically approves in writing a different accounting year. LESSOR shall only approve a change in accounting years in the event of undue hardship being placed on either the LESSEE or LESSOR, and not because of mere convenience or inconvenience.

B. Payment of Rentals

On or before the twentieth (20th) day of each month, LESSEE shall render to LESSOR a correct statement of all applicable gross receipts for that portion of the accounting year which ends with and includes the last day of the preceding calendar month. The statement shall be signed by LESSEE or his responsible agent under penalty of perjury, and shall be in the form prescribed by the Ausitor-Controller of the LESSOR. Each statement shall indicate:

1. The total gross receipts for said portion of the accounting year, itemized as to each of the business categories for which a separate percentage rental rate is established:

A breakdown of the gross receipts of each business conducted on the Demised Premises must be attached to each statement where a reported business category is comprised of more than one business operation.

2. The related itemized amounts of percentage rental computed as herein provided and the total thereof;

3. The total rental previously paid by LESSEE for the accounting year within which the preceding month falls; and

4. The rental due for the preceding month.

Concurrently with the rendering of each monthly statement, LESSEE shall pay the greater of the following two amounts:

1. The total percentage rental computed for that portion of the accounting year ending with and including the last day of the preceding month (Item 2 above), less total rentals previously paid for the accounting year (Item 3 above), or

2. One-twelfth (1/12th) of the annual minimum rental, multiplied by the number of months from the beginning of the accounting year to and including the preceding month, less total rentals previously paid for the accounting year (Item 3 above).

Plus 3% of the gross as specified in paragraph 3-C.

C. Charge for Late Payment

LESSEE'S obligation to pay percentage rent to LESSOR for activity or occupancy of a sublessee of all or a portion of Demised Premises shall commence with the earliest of the following dates (whether or not LESSOR has approved the sublease and regardless of whether or not a percentage rent was established by LESSOR). The earliest of the following dates shall be deemed the "due date" for purposes of Section 5C (Charge for Late Payment).

1. Commencement date of sublease.

2. Date of physical occupancy.

3. Date of earliest activity (i.e., sale of goods, solicitation of business, construction or alteration by sublessee, etc.)

If any payment specified in Section 3 is not paid to LESSOR within ten (10) days after due date, a late charge of one percent (1%) of the payment shall become immediately due and payable to LESSOR. 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.

D. Place of Payment and Filing

Rentals shall be delivered to and statements required in Section 5B (Payment of Rentals) above, shall be filed with the City of Martinez Finance Department, 525 Henrietta Street, Martinez, California. The designated place of payment and filing may be changed at any time by LESSOR upon ten (10) day's written notice to LESSEE. Rentals may be paid by check made payable to LESSOR.

A duplicate copy of all statements and reports herein required shall also be filed with the LESSOR, or as the LESSOR may indicate in writing.

6. RECORDS AND ACCOUNTS

LESSEE shall, at all times during the term of this agreement, 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 in pursuance of the rights granted herein. The records must be supported by source documents such as sales slips, cash register tapes, purchase invoices, or other pertinent documents.

All sales and charges shall be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers shall be equipped with devices which lock in sales totals and other transaction records, or with counters which are not resettable and which record transaction numbers and sales details. Totals registered shall be read and recorded at the beginning and end of each day. Exceptions to the use of cash registers of the type mentioned above must be approved by LESSOR.

In the event of admission charges or rentals, LESSEE shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of said tickets, both issued and unissued.

Within one hundred twenty (120) days after the end of each accounting year, LESSEE shall at his own expense submit to LESSOR a balance sheet and income statement prepared or audited by a Certified Public Accountant, reflecting business transacted on or from the Demised Premises during the preceding accounting year. The Certified Public Accountant must attest that the balance sheet and income statement submitted are an accurate representation of LESSEE'S records as reported to the United States of America for income tax purposes. At the same time LESSEE shall submit to LESSOR a statement certified as to accuracy by a Certified Public Accountant wherein the total gross receipts for the accounting year are classified according to the categories of business established for percentage rental and listed in Section 3 (Rent) and for any other business conducted on or from the Demised Premises.

All LESSEE'S books and account and records related to this Lease or to business operations conducted within or from the Demised Premises shall be kept and made available at one location within the limits of the LESSOR. LESSOR 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 LESSOR unless the audit reveals a discrepancy of more than five percent (5%) between the rent due as reported by LESSEE in accordance with this Lease and the rent due as determined by said audit. In the event of a greater discrepancy, the full cost of the audit, as determined by the LESSOR, shall be paid by LESSEE.

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

7. USE OF PROPERTY

LESSEE agrees that the leased premises shall be used for the construction, 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 demised premises and for no other purpose without the written consent of LESSOR, first had and attained.

LESSEE agrees that the uses of said 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 to LESSEE'S own membership and guests thereof and to those persons or groups renting said clubhouse.

The uses described in paragraph 7 are deemed to be active public uses.

8. PLANS AND SPECIFICATIONS FOR REQUIRED CONSTRUCTION

It is expressly understood and agreed that the Demised Premises shall be improved and put to use by the construction of a building of approximately ~~two~~ three thousand square feet designed for Yacht Club use. LESSEE agrees to file in orderly succession all plans, specifications and construction cost estimates with the LESSOR for review and approval. No construction shall begin until the final plans and specifications have been approved by LESSOR. GMB

9. REQUIRED CONSTRUCTION SCHEDULE

LESSEE shall cause to be designed, constructed and installed within the Demised Premises, at no cost to LESSOR, appropriate improvements to adequately accomodate those services and uses required in paragraph 7, Lease, and any approved optional services and uses planned for the Demised Premises by LESSEE as approved by LESSOR. The schematic plans prepared by LESSEE and approved by LESSOR during the period preceding execution of this Lease shall be a master plan for development of the Demised Premises, and the working drawings prepared by LESSEE and approved by LESSOR during the period shall be plans, specifications, and time schedule for construction improvements. Construction of improvements and facilities required shall commence within six (6) months of execution of this lease. LESSEE further agrees to keep LESSOR apprised of the progress of the work to the end that LESSOR may provide timely inspection to assure proper safeguarding of such LESSOR-owned improvements occurring on or near the Demised Premises as seawalls, underground conduits, utility lines, and the like.

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

10. TERMINATION OF THE LEASE IN THE EVENT OF FAILURE TO PERFORM CERTAIN COVENANTS AND CONDITIONS

LESSEE agrees that one of the ultimate purposes of this Lease is to provide completed improvements so that the Demised Premises may be used by the public at the earliest possible date. Therefore, it is understood and agreed that this Lease and any and all rights that LESSEE, his heirs, assignees, and successors may have in and to said Lease and the leasehold estate created thereby shall automatically and without prior notice terminate and be null and void and be of no further force and effect on and after the first day of July, 1984 unless LESSEE has performed all of the following conditions prior to said date.

A. Submitted to the LESSOR and secured the approval thereof of successive schematic, preliminary. and final plans and specifications in accordance with the terms set forth in Section 8 of this Lease.

B. Obtained from the Building Department building permits for all required structures.

C. Submitted evidence satisfactory to LESSOR of ability to finance construction of the proposed development.

D. Commenced construction as provided for in Section 9 of this Lease. By mutual agreement between the LESSOR and LESSEE, the time limit set forth in the first paragraph of this Section may be extended. Such extension may be granted only for good and sufficient reason and at the sole discretion of LESSOR, and any request for such an extension by LESSEE may be denied by LESSOR for any reason whatsoever, without recourse.

If the Lease is terminated under the provisions of this paragraph, LESSEE shall immediately remove any property that he may have placed on the Demised Premises and if LESSEE fails to remove any such property within thirty (30) days after such termination, LESSOR shall be entitled to remove any portion or all of such property at LESSEE'S cost or assume property rights automatically. In addition LESSEE shall pay any and all rents due up until the time of any termination under the provisions of this Section. LESSOR shall refund to LESSEE any excess monies that it may have on deposit and which belong to LESSEE

11. RENTAL SECURITY DEPOSIT

LESSOR hereby acknowledges receipt from LESSEE of the sum of six hundred dollars ($600.00). This sum, which is an amount equal to approximately three (3) months minimum rental, shall be retained by LESSOR 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 LESSOR.

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 LESSOR an amount equal to that portion of the security deposit applied by LESSOR so that at all times during the life of this Lease said full security deposit shall be maintained with LESSOR. Failure to maintain the full amount of security deposit shall constitute an event of default as provided in Section 17. Upon forfeiture or termination of this Lease, any portion of said deposit due the LESSEE shall be returned.

At any time during the term of this Lease, LESSEE may, with approval of LESSOR, substitute for said cash security deposit a corporate surety bond issued by a surety company licensed to transact business in the State of California, or such other bond or written undertaking satisfactory to LESSOR, in an amount equal to said deposit.

12. ADDITIONAL CONSTRUCTION

LESSEE may, at its own expense, make or construct, or cause to be made or constructed, improvements other than those required by Sections 8 and 9, additions, alterations, repairs, or changes in the leased Demised Premises provided such proposed improvements, additions, alterations, repaird, or changes are within the scope of permissible uses set forth in Section 7, and further provided that each specific proposed improvement, addition, alteration, repair, or change must first have the written approval of LESSOR. LESSOR may refuse permission for the construction of any proposed additional improvement, addition, alteration, repair or change, and hisdecision will be final.

If LESSOR approves said proposed construction, LESSEE shall submit plans and specifications to LESSOR and Building Department and may commence construction upon receipt of written approval thereof from LESSOR and Building Department and upon compliance with such terms and conditions relating to the construction as LESSOR may impose.

13. TITLE TO IMPROVEMENTS

Structures, installations or improvements of any kind now existing or hereafter placed on the leased Demised Premises by Lessee shall be removed by LESSEE within sixty (60) days after the expiration of the term of this Lease or sooner termination thereof. If the LESSEE fails to remove such structures, installation or improvements within said sixty (60) days, the LESSOR shall have the right to have such structures, installations or improvements removed at the expense of the LESSEE. As to any or all structures, installations or improvements that LESSEE does not remove title thereto shall vest in the LESSOR without cost to LESSOR and without any payment to LESSEE.

Machines, appliances, equipment and trade fixtures of any kind now existing or hereafter placed on the leased Demised Premises by LESSEE shall be removed by LESSEE within sixty (60) days after the expiration of the term of this Lease or sooner termination thereof; provided, however, LESSEE agrees to repair any and all damage occasioned by the removal thereof. If any such machines, appliances, equipment and trade fixtures are 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 LESSOR without cost to the LESSOR and without any payment to LESSEE; except that LESSOR shall have the right to have the same removed at the expense of LESSEE.

During any period of time employed by LESSEE under this paragraph to remove structures, installations, improvements; machines, appliances, equipment and trade fixture, LESSEE shall pay rent to LESSOR in accordance with the Lease which said rent shall be prorated.

14. LIENS

LESSEE agrees that it will at all times save LESSOR free and harmless and indemnify it against all claims for labor or materials in connection with improvements, repairs, or alterations on the leased 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 Demised Premises or the leasehold interests of the LESSEE therein, the LESSEE shall, upon written request of LESSOR, deposit with LESSOR 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. LESSOR shall have the right to declare this Lease in default in the event the bond required by this paragraph has not been deposited with the LESSOR within ten (10) days after written request therefore has been delivered to LESSEE.

15. LEASE ENCUMBRANCE

LESSEE understands and agrees that it cannot encumber the Lease, leasehold estate and the improvements thereon by a deed of trust, mortage or other security instrument to assure the payment of the promissory note of LESSEE without the express written consent of LESSOR, evidenced by resolution, first had and obtained. If any deed of trust, mortgage or other security instrument that encumbers the Lease, leasehold estate and the improvements thereon is entered into by LESSEE without LESSOR'S prior express written consent, LESSOR shall have the right to declare this Lease in default.

In the event a deed of trust, mortgage, or other security instrument which LESSOR has consented to by resolution, should at any time be in default and 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 LESSOR 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 LESSOR's express written consent thereto. The decision of the LESSOR as to such assignee, purchaser, or subtenant shall be final.

16. ASSIGNMENT - SUBLEASE

LESSEE agrees not to assign or transfer the whole or any part of this Lease or any interest therein, nor to sublease the whole or any part of the Demised Premises, not to permit the occupancy of any part thereof by any other person, not to permit transfer of the Lease or possession of the Demised Premises by merger, consolidation, or dissolution, without the consent of LESSOR, evidenced by resolution, 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 sublease of the whole or any part of the Demised Premises and no permission to any person to occupy the whole or any part of the Demised Premises shall be valid or effective without the consent of LESSOR, first had and obtained in each instance; provided, however, that nothing herein contained shall be construed to prevent the occupancy of said Demised Premises by an employee, or business invitee of LESSEE. LESSOR agrees that no unreasonable objections or conditions shall be imposed to withhold approval under this lease clause.

17. DEFAULT

It is mutually understood and agreed that if any default be made in the payment of rental 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 said Demised Premises are leased as above stated, and such default shall not be cured within five (5) days after written notice thereof if default is in the submittal of monthly reports of gross income if required in this Lease, or thirty (30) days after written notice thereof if default is in the payment of rent, or sixty (60) days after written notice thereof if default is in the performance of any other covenant, condition and agreements, LESSOR shall have the right to immediately terminate this Lease and that in the event of such termination, LESSEE shall have no further rights hereunder and LESSEE shall thereupon forthwith remove from said Demised Premises and shall have no further right to claim thereto, and said LESSOR shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the Demised Premises. LESSOR 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 LESSOR for all the detriment proximately caused by the LESSEE'S

failure to perform his obligations under the Lease or which in the ordinary course of things would be likely to result therefrom.

It is further agreed that LESSOR shall afford the beneficiary in any deed of trust, mortgage, or other security instrument of record with LESSOR and consented to by resolution of LESSOR 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 LESSOR.

In the event of the termination of this Lease pursuant to the provisions of this paragraph, LESSOR 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 13.

18. 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, LESSOR shall have the right to declare this Lease in default.

The conditons of this paragraph shall not be applicable or binding on LESSEE or the beneficiary in any deed of trust, mortgage, or other security instrument on the Demised Premises which is of record with LESSOR and has been consented to by resolution of LESSOR, or to said beneficiary's successors in interest consented to by resolution of LESSOR, as long as there remains any monies to be paid by LESSEE to such beneficiary under the terms of such deed of trust; provided that such beneficiary or its successors in interest, continuously pay to the LESSOR all rent due or coming due under the provisions of this Lease and the Demised Premises are continuously and actively used in accordance with Section 3 of this Lease.

19. EMINENT DOMAIN

If the whole or a substantial part of the Demised Premises hereby leased 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 minimum rent shall be reduced in proportion to the amount of the Demised Premises taken. All damages awarded for such taking shall belong to and be the property of LESSOR whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the Demised Premises herein leased; provided, however, that LESSOR shall not be entitled to any award made for the taking of any installations or improvements on the Demised Premises belonging to LESSEE.

20. SUPERSEDURE

This Lease upon becoming effective shall supersede and annul any and all permits, leases or rental agreements heretofrom made or issued for the Demised Premises between LESSOR and LESSEE, and any such permits, leases or rental agreements shall hereafter be void and of no effect except as to any rentals and/or fees which may have accrued thereunder.

21. USE OBLIGATION

It is mutually agreed that a condition for the granting of this Lease is the active and continuous use of the Demised Premises by LESSEE, 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 LESSOR, provides additional employment, taxes, and other benefits to the general economy of the area.

22. MAINTENANCE AND REPAIR

A. LESSOR's OBLIGATION

LESSOR shall maintain or cause to be maintained, including repair and replacement as necessary, the public road ways and other public facilities within the Harbor but outside the Demised Premises, and the main utility lines indicated on Exhibit to be the responsibility of LESSOR.

Except for said main utility lines, LESSOR shall not be required to maintain, repair or replace improvements constructed within the Demised Premises. Provided, however, LESSOR may, at its sole discretion, do any dredging, filling, grading, slope protecting, constructing of seawalls, or replacing and repairing of other LESSOR-constructed facilities in order to protect or enhance the Demised Premises or other property in the Harbor.

B. LESSEE's OBLIGATION

LESSEE shall, to the satisfaction of LESSOR, keep and maintain the Demised Premises and all improvements of any kind which may be erected, installed, or made thereon in good condition and in substantial repair. 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 Demised Premises in a safe, clean, wholesome and sanitary condition, to the complete satisfaction of LESSOR and in compliance with all applicable laws. LESSEE further agrees to provide approved containers for trash and garbage and to keep the Demised Premises, free and clear of rubbish and litter. LESSOR shall have the right to enter upon and inspect the Demised Premises at any time for cleanliness and safety.

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

C. LESSOR's RIGHT TO REPAIR

If LESSEE fails to maintain or make repairs or replacements as required herein, LESSOR may notify LESSEE in writing of said failure. Should LESSEE fail to correct the situation within a reasonable time thereafter, as established by LESSOR, LESSOR 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) days of receipt of a statement of said cost from LESSOR. LESSOR may, at its option, choose other remedies available herein, or by law.

23. PERFORMANCE BOND

No construction shall be commenced upon the Demised Premises by LESSEE until LESSOR has approved such construction until LESSEE has secured and submitted to LESSOR performance bonds, labor and material bonds in the amount of the total estimated construction costs of improvements to be constructed by LESSEE. LESSOR will accept the performance and labor and material bonds supplied by LESSEE'S contractor of subcontractors. Said bonds must be issued by a company qualified to do business in the State of California and be in a form acceptable to LESSOR.

24. TAXES AND UTILITIES

LESSEE shall pay before delinquency all taxes and assessments assessed or levied upon LESSEE or the Demised Premises by reason of this Lease or of any buildings, machines, or other improvements of any nature whatsoever erected, installed or maintained by LESSEE upon or in connection with the Demised Premises, and shall pay any fees imposed by law for licenses or permits under this Lease, and shall pay before delinquent any and all charges for utilities at or on the Demised Premises.

25. CONFORMANCE WITH RULES AND REGULATIONS

LESSEE agrees that in all activities on or in connection with the Demised 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.

26. NON-DISCRIMINATION

LESSEE agrees not to discriminate against any person or class of persons by reason of sex, color, race, creed, or national origin. LESSEE shall make its accommodations and services available to the public on fair and reasonable terms. LESSOR may terminate this lease should LESSEE be in violation of Section 40 of the California Harbors and Navigation Code.

27. 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.

28. HOLD HARMLESS

LESSEE shall defend, indemnify, and hold harmless LESSOR, its officers and employees against causes of action, liability, damage, and expense, including reasonable attorney's fees, for judicial relief of any kind, for damage to property of any kind whatsoever and to whomever belonging, including without limitation LESSEE or its employees, or injury or death of any person or persons, including without limitation LESSEE or its employees, resulting directly and indirectly from granting and performance of this Lease or arising from the use and operation of the Demised Premises or any defect in any part thereof.

29. 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.

30. EASEMENTS

This Lease and all rights given hereunder shall be non-exclusive and subject to all easements and right-of-way now existing or heretofore granted or reserved by LESSOR in, to or over the Demised 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 LESSOR to be in the best interests of the development of the Harbor.

LESSOR 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.

31. INSURANCE

LESSEE shall maintain insurance acceptable to LESSOR 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 Demised Premises, operations, products and completed operations.)

1. Five Hundred Thousand ($500,000), bodily injury, each person;

2. Five Hundred Thousand ($500,000), bodily injury, each occurence; and

3. Three Hundred Fifty Thousand ($350,000), property damage.

B. Fire and Extended Coverage

To include water damage and debris clean-up provisions in an amount not less than 100 percent (100%) of full replacement value of all improvements located within the Demised 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 LESSOR and LESSEE in order that said proceeds will be reinvested in rebuilding and/or repairing the damaged portions of the Demised Premises; provided, however, that within the period during which there is in existence a mortgage or deed of trust upon the leasehold given by LESSEE with the prior consent of LESSOR, then and for that period all fire and extended coverage policies shall be made payable jointly to the mortgagee or beneficiary and LESSEE, and any proceeds collected therefrom shall be held by said mortgagee or beneficiary for the following purposes.

1. As a trust fund to pay for the reconstruction, repair, or replacement of the damaged or destroyed improvements in kind and scope in progress payments as the work is performed with any excess remaining after completion of said work to be retained by said mortgagee or beneficiary and applied to reduction of the debt secured by such mortgage or deed of trust and with any excess remaining after full payment of said debt to be paid over to LESSEE: or

2. In the event that this Lease is terminated with consent of both LESSOR and mortgagee or beneficiary and said improvements are not reconstructed, repaired, or replaced, the insurance proceeds shall be retained by said mortgagee or beneficiary to the extent necessary fully to discharge the debt secured by said mortgagee or deed of trust and said mortgagee or beneficiary shall hold the balance thereof without liability

to restore the Demised Premises to a neat and clean condition and then for LESSOR and LESSEE as their interests may appear.

C. Blanket Contractual Coverage

The Comprehensive Public Liability insurance shall be in force the first day of the term of this Lease. The fire insurance shall be in force upon the date of completion of construction of each major insurable improvement by LESSEE.

Certificates evidencing the existence of the necessary insurance policies shall be kept on file with LESSOR during the entire term of this Lease. LESSOR shall be named as co-insured on both public liability and fire insurance and evidence of such will be given to LESSOR in accordance with Section A, and B.

LESSOR shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of LESSOR, the insurance provisions in this Lease do not provide adequate protection for LESSOR and/or for members of the public using the Demised Premises, LESSOR may require LESSEE to obtain an insurance sufficient in coverage, form and amount to provide adequate protection. LESSOR'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.

LESSOR shall notify LESSEE in writing of changes in the insurance requirements and, if LESSEE does not deposit certificates evidencing acceptable insurance policies with LESSOR incorporating such changes within sixty (60) days of receipt of such notice, this Lease shall be in default without further notice to LESSEE, and LESSOR 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 Demised Premises.

32. CONTROL OF HOURS, PROCEDURES AND PRICES

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

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

If LESSEE does not agree with the modifications effected by LESSOR, 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 clause shall constitute a serious breach of this Lease and LESSOR may immediately terminate this Lease.

Primary consideration shall be given to the public purpose of the Harbor in implementing this clause.

LESSEE agrees that he 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, efficent, and neat in appearance at all times. LESSEE shall not employ any person(s) in or about the Demised 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 to the public. 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 to the public on or from the Demised 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.

33. WARRANTIES - GUARANTEES - COVENANTS

LESSOR 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 leased premises, including the physical condition thereof, or any condition which may affect the Demised Premises, and it is agreed that LESSOR will not be responsible for any loss, damage or costs which may be incurred by LESSEE by reason of any such condition or conditions.

34. 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 Demised Premises or in the event LESSEE-constructed improvements located within the Demised 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 Demised Prmises for the purposes required by this Lease. Repair, replacement, or reconstruction of improvements within the Demised Premises shall be accomplished in a manner and according to plans approved by LESSOR.

35. 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 LESSOR 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 Demised Premises is quitclained to LESSOR. Should LESSEE fail or refuse to deliver the required deed to LESSOR, LESSOR 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 Demised Premises.

36. PEACEABLE SURRENDER

Upon the expiration of this Lease or the earlier termination or cancellation thereof, as herein proviede, LESSEE will peaceably surrender said Demised Premises to LESSOR in as good condition as said Demised Premises were at the date of this lease, ordinary wear expected.

37. WAIVER

Any waiver by LESSOR 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 LESSOR 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 LESSOR from enforcing the full provisions hereof. The subsequent acceptance 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 rental so accepted, regardless of LESSOR's knowledge of such preceding breach at the time of acceptance of such rent.

38. HOLDOVER

LESSEE shall not holdover after the termination, revocation, or expiration of this Lease without the written approval of the LESSOR. 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 LESSOR in removing buildings, structures and other improvements, or in restoring the Demised Premises, as required by this Lease, shall be included within the requirements of this holdever section.

If, during the period of holdover, LESSOR and LESSEE enter into a new agreement of the same or substantially the same Demised Premises, the compensation for the period of the holdover shall be at the same rate provided in the new permit or other agreement.

39. 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.

40. 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 Demised Premises. No modification, amendment or alteration of this Lease shall be valid unless it is in writing and signed by the parties hereto.

41. 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.

42. ATTORNEY'S FEES

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

43. ACTIVE PUBLIC USE

The ultimate objective of this Lease is the complete and continuous use of the Demised Premises without discrimination as to race or religion. The immediate object being the development of the Demised Premises and the realization of the greatest possible revenue therefrom. It is agreed that said immediate and ultimate objects are consistent and compatible. Accordingly, LESSEE covenants and agrees that he will operate said Demised Premises fully and continuously to the end that the Yacht Club may enjoy maximum benefits.

44. UNLAWFUL USE

LESSEE agrees no improvements shall be erected, placed upon, operated, nor maintained within the Demised Premises, not any business conducted or carried on therein or therefrom violation of the terms of this Lease, or any regulation, order to law, statute, by-law, or ordinance of a governmental agency having jurisdiction.

45. LEESSEE'S ASSOCIATION

LESSEE agrees to maintain membership and pay dues in any organization that may be organized, formed, or sponsored by LESSOR for substantially all lessees within the Harbor, 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 Harbor. 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 clause, unless approved by a majority of Lessees holding leases within the Harbor at the time of adoption.

46. RIGHT OF FIRST REFUSAL TO RE-LEASE

If, at the end of the Lease term, LESSOR wishes to re-lease the Demised Premises to a private party, without offering the leasehold to the public through a competitive proposal procedure, for the purposes set out in this Lease, LESSEE shall have the right of first refusal to re-lease the Demised Premises upon the condition that LESSEE shall have performed, in every way and in good faith, each and all of the terms, covenants, and conditions of this Lease to the satisfaction of LESSOR throughout the Lease term. LESSOR shall be the sole judge of the adequacy of LESSEE'S performance of the Lease obligations for purposes of implementing this Lease clause. No unreasonable objection or conditions shall be imposed.

LESSOR shall notify LESSEE of its intent to re-lease the Demised Premises at some time during the six months prior to expiration of the lease term and shall, at that time, propose the terms and conditions upon which the Demised Premises are to be re-leased.

LESSEE shall have thiry (30) days after such notice in which to accept or reject the offer to re-lease the Demised Premises upon the terms and conditions proposed by LESSOR. If the offer is not accepted within said thiry (30) day period, LESSOR may lease the property to others upon the same terms and conditions as those offered to LESSEE. LESSOR agrees, however, that for one hundred eighty (180) days after the end of the lease term, it will not offer different terms and conditions to other private parties without first offering LESSEE the opportunity to lease the Demised Premises upon such other terms and conditions.

In any event, LESSEE'S right of first refusal shall terminate, absolutely, one hundred eighty (180) days after the end of the term of this Lease.

47. SIGNS

LESSEE agrees not to construct, maintain, or allow any sign upon the Demised Premises except as approved by LESSOR. Unapproved signs, banners, flags, etc. shall be removed by LESSEE upon request of LESSOR.

48. 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 LESSOR of right of entry or re-entry upon the Demised Premises, or in case of abandonment or vacation of the Demised Premises by LESSEE, LESSEE hereby irrevocably appoints LESSOR the agent of LESSEE to enter upon the Demised Premises and remove any and all persons and property whatsoever situated upon the Demised Premises and place all or any portion of said property, except such property as may be forfeited to LESSOR, in storage for the account of and at the expense of LESSEE.

In such case, LESSOR may relet the Demised Premises upon such terms as LESSOR may deem fit, and if sufficient sum 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 LESSOR from any cost, loss or damage arising out of or caused by any such entry or re-entry upon the Demised Premises and the removal of persons and property and storage by LESSOR and its agents.

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

49. QUIET ENJOYMENT

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

50. NOTICES

Notices given or to be given by LESSOR or LESSEE to the other may be personally served upon LESSOR or LESSEE or any person hereafter authorized by either in writing to receive such notice or may be served by certified letter addressed to the appropriate address hereinafter set forth or to such other address as LESSOR and LESSEE may hereafter designate by written notice. Said notices shall also be served by certified letter to the beneficiary of any deed of trust, mortgage, or other security instrument of record with LESSOR and consented to by resolution of LESSOR who has notified LESSOR in writing of its desire to receive said notice.

51. MASTER DEVELOPMENT

If at any time during the term of this lease the Demised Premises becomes the part of a master development, LESSEE shall have the right of first refusal to lease similiar facilities within the master development provided that LESSEE shall have performed, in every way and in good faith, each and all of the terms, covenants and conditions of this Lease to the satisfaction of LESSOR and Master developer. LESSOR and/or Master developer shall be the sole judge of the adequacy of LESSEE's performance of the lease obligations for the purpose of implementing this Lease clause.

LESSEE shall have thirty (30) days after such notice in which to accept or reject the offer to re-lease the similiar facilities upon the terms and condition proposed by LESSOR/Master Developer. If the offer is not accepted within the thirty (30) day period, LESSOR/Master Developer may lease the property to others at no less than the same terms and conditions as those offered LESSEE.

Should Master Developer cause relocation of structures, installations or improvements of any kind located on the Demised Premises, said relocation shall be to a place within Marina boundaries that is mutually agreeable to LESSOR and LESSEE, with final approval vested with LESSOR. Said relocation to be at no expense to LESSOR or LESSEE.

LESSEE

By Gordon L Barna

LESSOR

By

ATTEST

By Patricia G. Beckey, Deputy

EXHIBIT A

MATERIALS FOR SUBMISSION

Schematic Plans

Schematic plans shall include a site layout of all land and water areas showing uses, buildings, landscaping, and other features; schematic floor plans of all structures; key elevations of buildings sufficient to indicate the proposed architectural theme; a detailed description of improvements and methods of operation; a general outline specification indicating materials and methods of construction and an estimate of the total cost of improvements planned.

The schematic plan submittal shall also include a complete topographic/hydrographic survey of the parcel prepared by a licensed surveyor and a soils and/or foundation report of a scope commensurate with the improvements planned for the parcel, prepared by a licensed soils consultant.

Preliminary Plans

Preliminary plans shall consist of the following:

(1) A detailed site plan of all land and water areas showing all improvements planned for the site. This plan shall include any easements set forth in the lease, location of all utilities, drainage plan and grade elevations of all structures.

(2) Floor plans, elevations, and sections of all structures.

(3) Complete outline specifications to cover allphases of the work.

(4) A detailed cost estimate of all improvements.

(5) Exterior color scheme.

(6) Rendering or model in color.

At the conclusion of the preliminary work, plans shall be sbumitted for approval. Upon approval of the preliminary drawings, the working drawings shall then be prepared.

Working Drawings

These shall consist of the following:

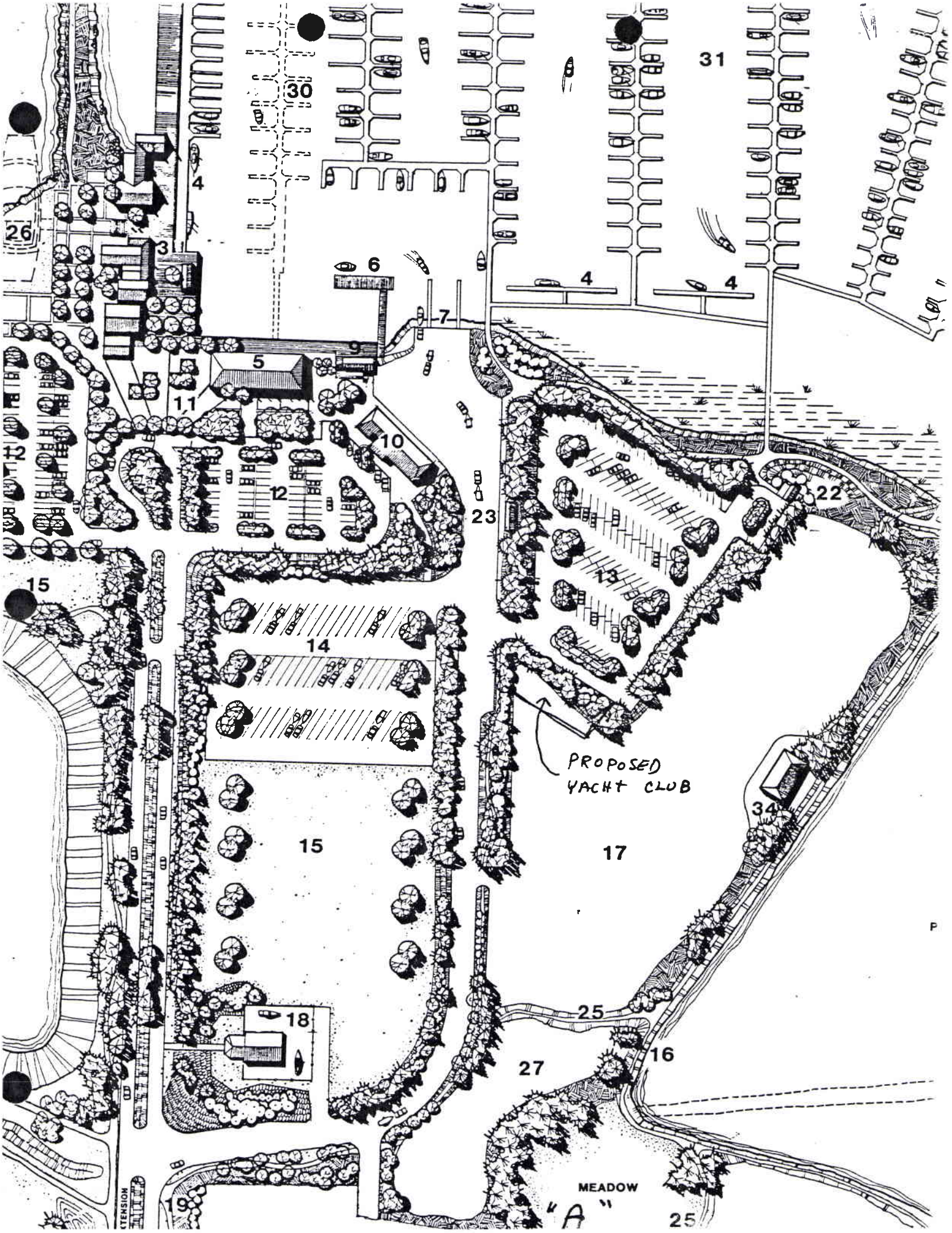
(1) Complete architectural and engineering working drawings.

ATTACHMENTS TO LEASE

A. Materials for submission

B. Map

C. Legal description of parcel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PROPOSED
YACHT CLUB
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MEADOW
"A"
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EXTENSION

(2) Complete specifications.

(3) Construction contract form.

(4) Construction schedule.

"As Built Drawings"

One set of reproducibles shall be submitted.

DESCRIPTION

YACHT CLUB LEASE - 1983

SEPTEMBER 14, 1983

Commencing at the intersection of the north line of Tideland Survey No. 9 and the east line of 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 Map in the Office of the Contra Costa County Recorder; thence North 20° 03' 30" West, along the east right of way line of North Court Street, 660 feet, more or less; thence North 69° 56' 30" East, 480 feet, more or less, to the true point of beginning, said point being on the south edge of an existing parking lot; thence South 77° 33' 30" East, 75 feet; thence south 12° 26' 30" West, 90 feet; thence North 77° 33' 30" West, 75 feet; thence North 12° 26' 30" East, 90 feet, to the true point of beginning; containing approximately 0.15 acres.

"B"