

# Board Of Harbor Commissioners

## Crescent City Harbor District

7 September 2021

Regular Harbor Commission Meeting



# Regular Meeting

## Board of Harbor Commissioners of the Crescent City Harbor District

Brian Stone, President Wes White, Secretary  
Harry Adams, Commissioner; Rick Shepherd, Commissioner; Gerhard Weber , Commissioner

### AGENDA

**Date: Tuesday, September 7, 2021**

**Time: Open Session 2:00 p.m.**

**Closed Session following Open Session**

**Place: Remote Meeting via Zoom Webinar**

*This meeting will be conducted pursuant to the provisions of the Governor’s Executive Order N-29-20 re: Coronavirus-19, which suspends certain requirements of the Ralph M. Brown Act (“Brown Act”). In an effort to protect public health and prevent the spread of COVID-19, the Board of Harbor Commissioners meeting on April 20, 2021, will be conducted via webinar and telephonically.*

Link for Zoom Webinar: <https://us02web.zoom.us/j/82717545424?pwd=aExZeTRuL0VreFVEZGwweUR2TEpldz09>

Please enter passcode: 182536

## **Call to Order**

## **Roll Call**

## **Pledge of Allegiance**

## **Public Comment**

*This portion of the Agenda allows the public to comment to the Board on any issue not itemized on this Agenda, however, the Board may not take action or engage in discussion on any item that does not appear on the Agenda. Periods when public comments are allowed, Harbor Commissioners will allow attendees to submit questions and/or comments using the Zoom in-meeting chat function. The Harbor Commission asks that members of the public keep questions and comments succinct and relevant.*

## **REGULAR SESSION**

### **1. Consent Calendar**

*Consent Calendar items are considered routine and will be approved by one Motion, with no separate discussion prior to voting. The public, staff, or members of the Harbor Commission may request specific items be removed from the Consent Agenda for separate consideration or action.*

- a. Approval of the Meeting Minutes of the August 17, 2021 Regular Meeting.**
- b. Approval of Warrant List from August 13, 2021 through September 2, 2021.**

## **2. New Business**

- a. Presentation on dredge purchasing options for the Crescent City Harbor District.** Review and discuss dredge models for purchase.
- b. Review and discuss breakdown of attorney fees from Best, Best, & Krieger.**
- c. Review and vote to approve a request from Del Norte Association of Realtors to install a bench to honor Mitzi Travis in the harbor across from Bayside Realty.**
- d. Approve Resolution No. 2021-004 Authorizing The CEO & Harbormaster To Execute A Ground Lease With Renewable Energy Capital, LLC For Development of The Redwood Overflow Lot, and Find the Project Categorically Exempt from CEQA.**
- e. Approve Resolution No. 2021-005 Authorizing The CEO & Harbormaster To Execute A Lease with Fisherman's Catch for Facility at 100 Neptune Way.**

**3. Unfinished Business**

- a. Solar Project Update.**
- b. Dredge Permit Update.**

**4. Communications and Reports**

- a. Financial Reports: Account Balances**
- b. CEO/Harbor Master Report**
- c. Harbor Commissioner Reports**

**5. Adjourn to Closed Session**

## **CLOSED SESSION**

a. CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION

Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: One potential case.

b. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

(Government Code section 54956.9(d)(1))

*Crescent City Harbor District v. Dutra et al.*

Sacramento Superior Court Case No.: 34-2017-00215044-CU-BC-GDS

## **6. Adjourn Closed Session**

## **7. Report out of Closed Session**

## **6. ADJOURNMENT**

*Adjournment of the Board of Harbor Commissioners will be until the next meeting scheduled for Tuesday, September 21, 2021, at 2 p.m. PDT. Until the Governor rescinds Executive Order N-29-20, all Harbor Commission meetings will be held via Zoom Web Conferencing. Access code for public participation can be found in the meeting notice posted on the Harbor District website or on the Harbor bulletin board at 101 Citizens Dock Road.*

*The Crescent City Harbor District complies with the Americans with Disabilities Act. Upon request, this agenda will be made available in appropriate alternative formats to person with disabilities, as required by Section 12132 of the Americans with Disabilities Act of 1990 (42 U.S.C. §12132). Any person with a disability who requires modification in order to participate in a meeting should direct such request to (707) 464-6174 at least 48 hours before the meeting, if possible.*



## 1. Consent Calendar

*Consent Calendar items are considered routine and will be approved by one Motion, with no separate discussion prior to voting. The public, staff, or members of the Harbor Commission may request specific items be removed from the Consent Agenda for separate consideration or action.*

- a. Approval of the Meeting Minutes of the August 17, 2021 Regular Meeting.**
- b. Approval of the Warrant List from August 13, 2021 through September 2, 2021.**

***Public Comment?***



<b>Regular Meeting Minutes of the Board of Harbor Commissioners of the Crescent City Harbor District</b>	
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Harbor District Office, 101 Citizens Dock Road Crescent City, CA 95531	August 17, 2021 2:00 p.m.
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## Board of Harbor Commissioners of the Crescent City Harbor District

### MINUTES

*Regular Meeting, Tuesday August 17, 2021 at 2:00 P.M.*

**CALL TO ORDER:**      2:00 PM

**ROLL CALL:**

<i>PRESENT:</i>	<i>President</i>	BRIAN STONE
	<i>Secretary</i>	WES WHITE
	<i>Commissioner</i>	RICK SHEPHERD
	<i>Commissioner</i>	HARRY ADAMS
	<i>Commissioner</i>	GERHARD WEBER

*ABSENT:*      NONE

*QUORUM:*      YES

**PLEDGE OF ALLEGIANCE:**

**MOVE TO CLOSED SESSION:**

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

(Government Code section 54956.9(d)(2))

Significant Exposure to Litigation: One case based on correspondence with Fashion Blacksmith regarding entry to lease area.

CONFERENCE WITH LEGAL COUNSEL – INITIATION OF LITIGATION

(Government Code section 54956.9(d)(4))

Number of Cases: 1



## **RECONVENE OPEN SESSION:**

REPORT FROM CLOSED SESSION: Nothing to report.

**PUBLIC COMMENT:** The following individuals addressed the Board regarding subject matters not on the meeting agenda:

Jennifer Faer addressed the Board and expressed concern over rumors that RV park residents might be evicted as part of redevelopment plans for the Harbor. Ms. Faer suggested that redevelopment should focus on repaving roads and making the Harbor more accessible for handicapped individuals.

Linda Sutter stated that she was working on an initiative to rescind the transient occupancy tax that partially funded the Harbor. Ms. Sutter also stated she was working to oppose redevelopment plans and recall Harbor Commissioners.

Roger Gitlin addressed the Board and expressed opposition to Harbor redevelopment plans that might create a hardship on existing Harbor tenants. Mr. Gitlin requested that redevelopment include improvements to public bathrooms at the Harbor.

Annie Nehmer expressed opposition to the Harbor accepting private investment in redeveloping the Harbor, because she preferred public ownership and control. Ms. Nehmer believed it was financially disadvantageous to share profits with a private entity.

Leonard Franklin addressed the Board and encouraged the Harbor to disclose more details concerning its redevelopment plans. Mr. Franklin suggested that information was being concealed from the public.

Christopher Johns identified himself as a resident of Bayside RV Park. He supplied a list of the 29 nearest locations that RVs could be relocated in the event of eviction. Mr. Johns stated that the locations all had requirements that excluded older RVs, generally those older than the 2005 model year.

A woman, who chose not to identify herself, expressed her enthusiasm for the recreational opportunities at the Harbor, but she encouraged the Harbor District to do a better job of promotion and marketing.

A second woman, who also chose not to identify herself, expressed concern about rumors of evictions at the RV parks. She feared she would become homeless.

The Commissioners acknowledged the comments received from the public and thanked the public for their feedback.

### **1) CONSENT CALENDAR**

***(1A) Approval of the Meeting Minutes of the August 3, 2021 Regular Meeting.***

***(1B) Approval of the Warrant List from July 30, 2021 through August 12, 2021.***

Commissioner Shepherd **moved** to approve the consent calendar. Commissioner Adams **seconded** the motion. Commissioner White asked for an explanation as to why the Harbor was being billed from Pacific Power when the Harbor had an existing electricity contract with Renewable Energy Capital (REC). CEO/Harbormaster Tim Petrick replied that the Bayside RV

Park was not included in the REC contract. Also, there were nuances in terms of how solar credits were applied to offset electrical usage. Commissioner White asked for an explanation of charges from Tech Wild. CEO/Harbormaster Tim Petrick replied that the charges were for installation of new wireless antennas for the Harbor's public internet service, and other charges were for regular monthly maintenance and hosting services. Commissioner White requested a more detailed accounting of attorney fees, including a breakdown based on subject matter, to be presented at an upcoming meeting. President Stone then opened up public comment on the agenda item. No members of the public commented on the agenda item. President Stone then moved the discussion back to the Board.

**POLLED VOTE** was called, **MOTION CARRIED.**

*Ayes:* ADAMS, WEBER, SHEPHERD, WHITE, STONE / *Nays:* NONE

*Absent:* NONE / *Abstain:* NONE

## **2) NEW BUSINESS**

### ***(2A) Discuss security measures (i.e., gates) for Docks A, B, and C.***

CEO/Harbormaster Tim Petrick presented a proposal to install gates at docks A, B, and C (currently un gated), with the additional option of replacing existing gates on docks D and E. Mr. Petrick addressed a concern raised by a member of the public who suggested, at an earlier meeting, that locked gates could be rattled loose without using a key. This was apparently an old issue that had been corrected by Harbor maintenance. Nonetheless, existing gates on docks D and E might be replaced with more secure models. Commissioner Weber asked if locked gates would negatively impact the ability of fisherman to sell to the public. Mr. Petrick replied that a policy of leaving gates unlocked during daylight hours could address the concern. The Board expressed unanimous support for installing gates on docks A, B, and C, and also support for replacing existing gates on docks D and E with more secure gates. President Stone then opened up public comment on the agenda item. Linda Sutter suggested that it was improper to lock out the public. Annie Nehmer disagreed with Ms. Sutter, and suggested that restricting public access was reasonable in order to protect the property of boat owners. President Stone then moved the discussion to the next agenda item.

### ***(2B) Discuss and vote to waive fee for COVID-19 vaccination tent to be placed outside of the Farmer's Market event area on Saturdays.***

CEO/Harbormaster Tim Petrick explained that Rural Human Services [the organization managing the Farmer's Market] had considered making a vaccination tent available within the Farmer's Market licensed area, but had decided against it. As an alternative, Mr. Petrick proposed that a vaccination tent could be located outside the Farmer's Market area, and that the normal usage fee could be waived in support of public health. Commissioner White **moved** to approve the vaccination tent proposal with the normal usage fee waived. Commissioner Shepherd **seconded** the motion. Present Stone then opened up public comment. Linda Sutter

suggested that vaccination was actually increasing the risk of COVID-19 infection, despite a strong consensus to the contrary among doctors and public health agencies declaring vaccination to be safe and effective. President Stone then moved the discussion back to the Board.

**POLLED VOTE** was called, **MOTION CARRIED.**

*Ayes:* WHITE, SHEPHERD, WEBER, ADAMS, STONE / *Nays:* NONE

*Absent:* NONE / *Abstain:* NONE

***(2C) Discuss and vote to approve resuming Harbor Commissioner Meetings to virtual only (via Zoom) due to rising number of COVID-19 cases.***

President Stone explained that both he and his wife were at elevated risk of contracting COVID-19, along with several other Commissioners. Furthermore, the local hospital had become inundated with COVID-19 patients from a recent surge in infections. In response, it seemed logical to return to a virtual-only meeting format to protect public health. President Stone then opened up public comment. Pat Franklin commented that Zoom was unreliable, and he encouraged the Board to continue in-person meetings. A woman, who chose not to identify herself, mentioned that Zoom [the Harbor's web conferencing provider] did not provide a user-friendly format. She also mentioned that network carriers sometimes imposed data limits on individual users that could create an obstacle to public participation in virtual-only meetings. President Stone responded that a hybrid format [Zoom webinar plus in-person attendance] was an alternative. Roger Gitlin endorsed a hybrid format. Linda Sutter also endorsed a hybrid format. A woman, who chose not to identify herself, commented that immunocompromised individuals needed virtual meeting options for public participation in local government. She encouraged the Board to continue with a hybrid format even after the COVID-19 public health threat waned. Commissioner Shepherd **moved** to continue with a hybrid meeting format, and he encouraged Board members to attend meetings in-person, assuming they were not at high risk for infection. Commissioner White **seconded** the motion. Commissioner Adams expressed support for the hybrid format proposed by Commissioner Shepherd. Commissioner Adams encouraged his fellow Board members to participate in-person, if they felt it was safe to do so. Commissioner Weber supported a hybrid format, and he also noted that he preferred in-person meetings because it allowed for better communication. Commissioner White supported a hybrid format, but he acknowledged that other Board members, or members of the public, might have health concerns that would preclude in-person participation.

**POLLED VOTE** was called, **MOTION CARRIED.**

*Ayes:* SHEPHERD, WEBER, ADAMS, WHITE, STONE / *Nays:* NONE

*Absent:* NONE / *Abstain:* NONE

### **3) UNFINISHED BUSINESS**

#### ***(3A) Solar Project Update.***

CEO/Harbormaster Tim Petrick explained that electricity production from solar panels was exceeding electricity demand in the Harbor. During the preceding months of February through June, production had been 202,000 kilowatt-hours, whereas solar generation had been 365,000 kilowatt-hours. Mr. Petrick explained that bills received from Pacific Power continued to have many irregularities. Pacific Power attributed the billing errors to a lack of experience, explaining that the Harbor's solar installation was the first large scale system Pacific Power's California team had undertaken to manage. Commissioner White queried whether solar production credits could be carried over from year to year if demand did not exceed production. CEO/Harbormaster Tim Petrick replied in the affirmative. President Stone then opened up public comment. No members of the public commented. President Stone then moved the discussion to the next agenda item.

#### ***(3B) Dredge Permit Update.***

CEO/Harbormaster Tim Petrick explained that he had a meeting planned with the U.S. Army Corps of Engineers to discuss approval of a dredge spoils disposal site. President Stone commented that he had been in contact with U.S. Congressman Jared Huffman's office to see if they could facilitate permit approval. President Stone had made similar entreaties to California State Senator Mike McGuire's office repeatedly, as recently as that day. President Stone then opened up public comment. Roger Gitlin commented that a lack of dredging was resulting in lost business for Harbor tenants. Ted Long alleged that the Harbor had breached its lease obligations with Fashion Blacksmith by failing to set aside a portion of lease payments for maintenance of facilities that Fashion Blacksmith relied upon. Mr. Long claimed that the purported breach had resulted in lost revenue for his business. Without conceding the allegation made by Mr. Long, President Stone replied that the Harbor was working with Mr. Long towards a resolution. Roger Gitlin asked if the Harbor was prepared to begin dredging immediately upon receiving the required regulatory permits. CEO/Harbormaster Tim Petrick replied that he had plans in place to begin dredging without delay, including the use of dredgers from one or more neighboring harbors. Commissioner Weber suggested that it would be useful for Harbor staff to prepare a public report that detailed action taken towards dredge permit approval. President Stone then moved the discussion to the next agenda item.

#### ***(3C) Discuss Marinesync costs for metering electricity on docks***

CEO/Harbormaster Tim Petrick explained that five meters had been installed as a demonstration project, and they appeared to be functioning well. Mr. Petrick then detailed a cost analysis of expanding meter installation throughout the marina. He estimated it would cost \$32,000 for parts, and \$18,000 for labor. Associated expenses could bring the total to around \$55,000. Mr. Petrick expressed concern about being able to recoup those costs due to regulatory restrictions that only allowed billing tenants for actual electricity usage. The useful life of the meters was expected to be 7 years, and so the recurring meter equipment expense would be significant. An

alternative approach might be a uniform fee payable equally by all marina tenants. Dividing the total marina electricity usage by the average occupancy of 147 marina slips worked out to approximately \$41 of monthly electricity usage per tenant. Commissioner White expressed reservations about billing an average fee when there was a wide range of individual usage, such as individuals who made use of arc lights. President Stone then opened up public comment. Annie Nehmer suggested that the Harbor require tenants to use isolation transformers to prevent stray current discharge. Commissioner Adams commented that isolation transformers were commonly required in other harbors. President Stone then moved the discussion to the next agenda item.

#### **4) COMMUNICATIONS AND REPORTS**

##### ***(4A) Financial Reports: Account Balances, Profit & Loss Statements, Accounts Receivable***

President Stone noted there were 108 Harbor debtors with delinquent accounts, totaling approximately \$100,000. Approximately \$35,000 of that debt was 90 days or more in arrears. President Stone requested that the Harbor's financial consultant, Stephen, give attention to the matter and develop a plan to address the issue. CEO/Harbormaster Tim Petrick noted that a significant portion of the debt could be recovered under a federally funded program to provide COVID-19 rental reimbursement to landlords. Mr. Petrick also noted that Stephen had been working to categorize the debt based on the likelihood of it being collectible. President Stone then opened up public comment on the agenda item. No members of the public commented on the agenda item. President Stone then moved the discussion to the next agenda item.

##### ***(4B) CEO/Harbormaster Report***

CEO/Harbormaster Tim Petrick reviewed briefing materials provided to the Board. He explained that trenching had begun outside the Fashion Blacksmith lease area to support installation of power boxes for two newly established lease areas, expected to be worth approximately \$60,000/year plus poundage fees. Internet and phone service in the RV parks had been down due to power issues with an antenna. An alternative antenna installation was in the works, at a cost of approximately \$3,500 in parts, plus labor. It was expected to improve network access for Harbor patrons above that available in the past. A financial consultant, Stephen, who had been working on-site, had returned home to Las Vegas, but would continue to perform financial analysis for the Harbor as a teleworker. The Harbor's Special Projects Coordinator, Ashley Thompson, relocated to Astoria, but would continue working part-time as a teleworker. South Bend Seafoods decided to move on from Crescent City. Leon Gavin and his business partner Peter Nguyen expressed interest in taking over the rental space. The Northcoast Marine Mammal Center Run for the Seals was cancelled due to COVID-19 concerns. Two new maintenance persons were being onboarded. Del Norte County approved the Harbor's Land Use Plan and passed it on to the Coastal Commission for their review.

**(4C) Commissioner Reports.**

(a) Commissioner Shepherd: no report.

(b) Commissioner Adams: responded to inaccurate statements made by the public with regard to planned redevelopment of the Harbor. He lamented a rumor mill that had been promoting a false narrative about evictions. He encouraged the public to give attention to accurate information provided by the Board at public meetings.

(c) Commissioner Weber: disputed public comments that Commissioners were insensitive to the housing needs of RV park tenants. Commissioner Weber noted that he was working on creative solutions that would improve the revenue of the Harbor while balancing the needs of the 25,000 constituents throughout Del Norte county. Commissioner Weber requested that the matter of Harbor redevelopment be placed on the next Board meeting agenda to allow for a complete discussion of potential solutions for RV park tenants who were concerned about evictions.

(d) Commissioner White: reported that there had been an overwhelming response to the “Go for the Gold” campaign to promote local tourism. A report from the Convention and Visitors Bureau revealed an unprecedented level of interest from tourists. Commissioner White also noted that efforts to develop wind power in the area were moving forward steadily, in coordination with the Tri-Agency Economic Development Authority.

(e) President Stone: reassured RV park tenants that evictions were not being planned. He explained the open, transparent, and competitive process that had been conducted to select Renewable Energy Capital as the Harbor’s partner in redevelopment. Rumors surrounding redevelopment plans were wildly inaccurate. President Stone closed by reassuring the public that the Board was responsive to public concerns.

**5) ADJOURNMENT**

*ADJOURNMENT TO THE BOARD OF HARBOR COMMISSIONERS NEXT REGULAR MEETING SCHEDULED FOR TUESDAY, SEPTEMBER 7, 2021 AT 2 P.M., VIA ZOOM WEB CONFERENCE AND IN-PERSON AT THE MAIN HARBOR OFFICE, LOCATED AT 101 CITIZENS DOCK ROAD.*

Approved this \_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
Brian Stone, President

\_\_\_\_\_  
Wes White, Secretary

**Crescent City Harbor District  
Check Detail**

August 13 through September 2, 2021

<u>Type</u>	<u>Num</u>	<u>Date</u>	<u>Name</u>	<u>Account</u>	<u>Original Amount</u>
Check	ACH	08/13/2021	US BANK	1040 · CCHD US BANK OPERATING 4766	-4,265.61
Check	ACH	08/31/2021	CALPERS RETIREMENT	1040 · CCHD US BANK OPERATING 4766	-7,075.91
Check	ACH	09/02/2021	USDA LOAN VENDOR	1040 · CCHD US BANK OPERATING 4766	-260,302.97
Bill Pmt -Check	1336	08/17/2021	CRESCENT ACE HARDWARE	1047 · BAYSIDE- RV PARK-1766	-217.08
Bill Pmt -Check	1337	08/17/2021	DAVID'S MOBILE RV SERVICE	1047 · BAYSIDE- RV PARK-1766	-868.84
Check	1338	09/02/2021	CLR LAUNDRY	1047 · BAYSIDE- RV PARK-1766	-837.50
Check	1339	09/02/2021	ROBERT J. FRAZIER	1047 · BAYSIDE- RV PARK-1766	-4,190.50
Check	1340	09/02/2021	KENNETH BRUCE DWELLEY	1047 · BAYSIDE- RV PARK-1766	-4,190.50
Bill Pmt -Check	1341	09/02/2021	RECOLOGY DN	1047 · BAYSIDE- RV PARK-1766	-2,299.28
Bill Pmt -Check	1342	09/02/2021	SUBURBAN PROPANE	1047 · BAYSIDE- RV PARK-1766	-365.94
Bill Pmt -Check	1343	09/02/2021	CRESCENT ACE HARDWARE	1047 · BAYSIDE- RV PARK-1766	-96.67
Bill Pmt -Check	2052	08/17/2021	CRESCENT ACE HARDWARE	1045 · REDWOOD HARBOR VILLAGE 0707	-240.12
Bill Pmt -Check	2053	09/01/2021	SUBURBAN PROPANE	1045 · REDWOOD HARBOR VILLAGE 0707	-178.72
Bill Pmt -Check	2054	09/02/2021	ADVANCED SECURITY SYSTEMS CC	1045 · REDWOOD HARBOR VILLAGE 0707	-106.50
Bill Pmt -Check	2055	09/02/2021	MENDES SUPPLY CO	1045 · REDWOOD HARBOR VILLAGE 0707	-179.19
Bill Pmt -Check	2056	09/02/2021	RECOLOGY DN	1045 · REDWOOD HARBOR VILLAGE 0707	-2,583.48

# Crescent City Harbor District Check Detail

August 13 through September 2, 2021

Bill Pmt -Check	2057	09/02/2021	SUBURBAN PROPANE	1045 · REDWOOD HARBOR VILLAGE 0707	-156.70
Bill Pmt -Check	2058	09/02/2021	CRESCENT ACE HARDWARE	1045 · REDWOOD HARBOR VILLAGE 0707	-106.83
Bill Pmt -Check	6058	08/13/2021	TECH-WILD	1040 · CCHD US BANK OPERATING 4766	-3,467.00
Bill Pmt -Check	6059	08/17/2021	4IMPRINT	1040 · CCHD US BANK OPERATING 4766	-324.06
Bill Pmt -Check	6060	08/17/2021	ARAMARK INC	1040 · CCHD US BANK OPERATING 4766	-351.48
Bill Pmt -Check	6061	08/17/2021	BLACK & RICE LLP	1040 · CCHD US BANK OPERATING 4766	-123.00
Bill Pmt -Check	6062	08/17/2021	GEORGE'S AUTO INC	1040 · CCHD US BANK OPERATING 4766	-14.09
Bill Pmt -Check	6063	08/17/2021	INDUSTRIAL STEEL & SUPPLY	1040 · CCHD US BANK OPERATING 4766	-236.33
Bill Pmt -Check	6064	08/17/2021	MENDES SUPPLY CO	1040 · CCHD US BANK OPERATING 4766	-370.76
Bill Pmt -Check	6065	08/17/2021	O'REILLY AUTO PARTS	1040 · CCHD US BANK OPERATING 4766	-43.38
Bill Pmt -Check	6066	08/17/2021	PACIFIC POWER	1040 · CCHD US BANK OPERATING 4766	-25.03
Bill Pmt -Check	6067	08/17/2021	SPONSORED PROGRAMS FOUNDATION	1040 · CCHD US BANK OPERATING 4766	-4,781.18
Bill Pmt -Check	6068	08/17/2021	STREAMLINE	1040 · CCHD US BANK OPERATING 4766	-200.00
Bill Pmt -Check	6069	08/17/2021	TECH-WILD	1040 · CCHD US BANK OPERATING 4766	-1,125.00
Bill Pmt -Check	6070	08/17/2021	TOP TIER CHEMICALS	1040 · CCHD US BANK OPERATING 4766	-990.33
Bill Pmt -Check	6071	08/17/2021	VISITORS BUREAU	1040 · CCHD US BANK OPERATING 4766	-6,000.00
Check	6072	08/17/2021	ESSARY, BARBARA	1040 · CCHD US BANK OPERATING 4766	-2,000.00



### Crescent City Harbor District Check Detail

August 13 through September 2, 2021

Bill Pmt -Check	6073	08/17/2021	CRESCENT ACE HARDWARE	1040 · CCHD US BANK OPERATING 4766	-308.69
Bill Pmt -Check	6074	08/17/2021	C RENNER PETROLEUM INC	1040 · CCHD US BANK OPERATING 4766	-831.21
Check	6075	09/02/2021	CARPENTERS LOCAL 751	1040 · CCHD US BANK OPERATING 4766	-60.00
Bill Pmt -Check	6076	09/02/2021	ACCONTEMPS	1040 · CCHD US BANK OPERATING 4766	-8,563.03
Bill Pmt -Check	6077	09/02/2021	C RENNER PETROLEUM INC	1040 · CCHD US BANK OPERATING 4766	-468.01
Bill Pmt -Check	6078	09/02/2021	CITY OF CRESCENT CITY	1040 · CCHD US BANK OPERATING 4766	-504.00
Bill Pmt -Check	6079	09/02/2021	CRESCENT ELECTRIC	1040 · CCHD US BANK OPERATING 4766	-280.00
Bill Pmt -Check	6080	09/02/2021	MENDES SUPPLY CO	1040 · CCHD US BANK OPERATING 4766	-279.19
Bill Pmt -Check	6081	09/02/2021	PROGRESSIVE INSURANCE	1040 · CCHD US BANK OPERATING 4766	-769.08
Bill Pmt -Check	6082	09/02/2021	R.A. KIRKLAND INC.	1040 · CCHD US BANK OPERATING 4766	-11,666.66
Bill Pmt -Check	6083	09/02/2021	RECOLOGY DN	1040 · CCHD US BANK OPERATING 4766	-3,771.54
Bill Pmt -Check	6084	09/02/2021	TECH-WILD	1040 · CCHD US BANK OPERATING 4766	-3,222.65
Bill Pmt -Check	6085	09/02/2021	XEROX	1040 · CCHD US BANK OPERATING 4766	-356.74
Bill Pmt -Check	6086	09/02/2021	CRESCENT ACE HARDWARE	1040 · CCHD US BANK OPERATING 4766	-147.00
Bill Pmt -Check	6087	09/02/2021	US CELLULAR	1040 · CCHD US BANK OPERATING 4766	-217.65
				TOTAL	-339,759.43



## **2. New Business**

- a. Presentation on dredge purchasing options for the Crescent City Harbor District.** Review and discuss dredge models for purchase.

***Public Comment?***





**ERDC**  
ENGINEER RESEARCH & DEVELOPMENT CENTER

Building Strong®

DISCOVER | DEVELOP | DELIVER

**Background:** A major portion of U.S. military combat power and sustainment will arrive in theater via commercial shipping and military sealift vessels of varying drafts. In order to optimize force closure timelines and sustain the force vessels must unload as close to the point of debarkation as possible. The MRSD will provide an organic and intermodal transportable dredging capability to enable joint forces access and maneuver through areas previously inaccessible due to shallow shoreline gradients.

#### System Components

- Unmanned submersible Mini Dredge
- Topside Hydraulic Power Unit (HPU)
- 300' umbilical line
- Mobile Control Room
- Pipe, fittings, floats, handling equip.
- Underwater Video and Acoustic cameras
- Control and Monitoring software
- Stored and transportable in four 20' ISO containers

#### Operational Characteristics

- 6" dredge pump that can move approximately 200 cubic yards/hour
- Real time operational and performance monitoring using On-board sensors.
- Crewed and maintained by a 4-man team
- Purpose built dredge for port and harbor dredging ops and JLOTS beach landing operations
- Modular pump/head adaptable for different types of employment (excavator, crane, cable)
- Interchangeable heads (cutter, non-clog, jetting)







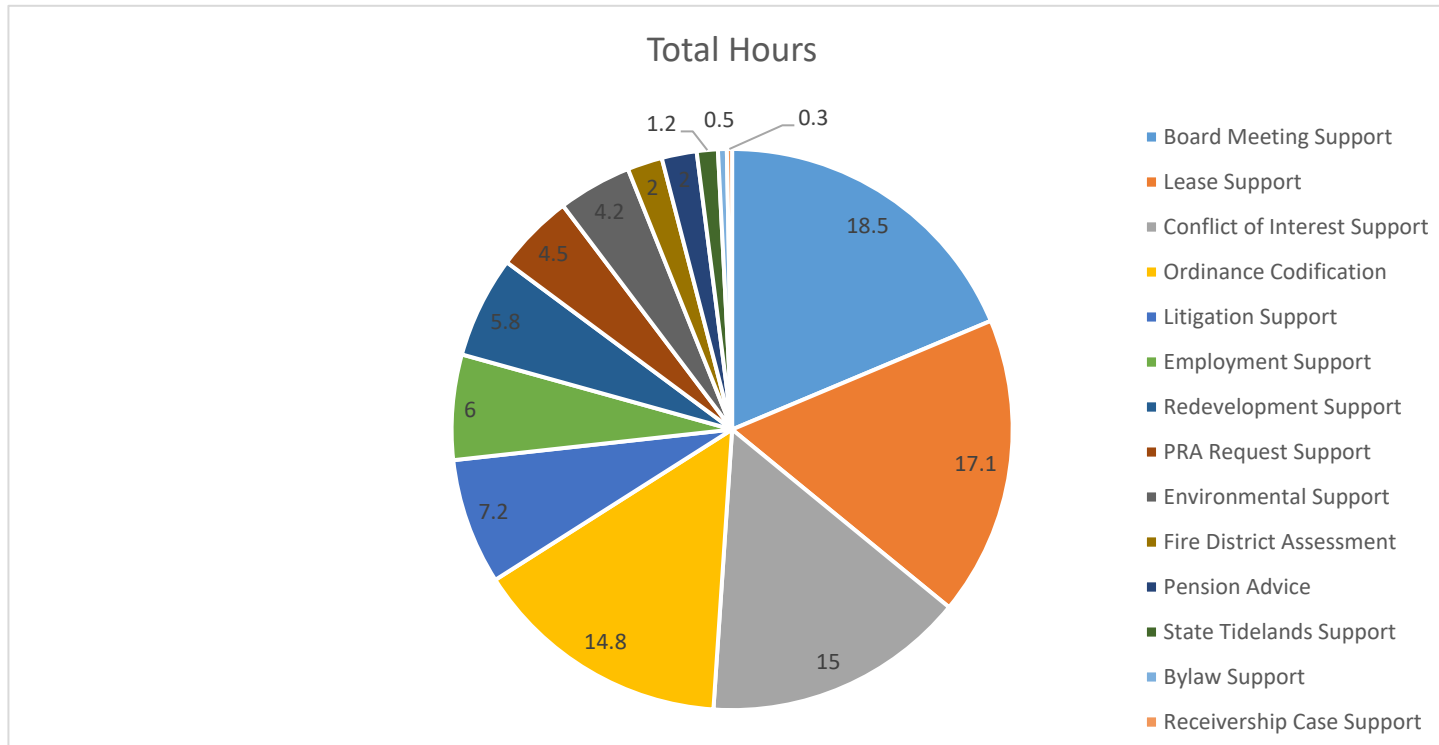
## **2. New Business**

- b. Review and discuss breakdown of attorney fees from Best, Best, & Krieger.**

***Public Comment?***

## BB&K ATTORNEYS - Billable Hours - JUNE & JULY 2021

Type of Legal Support	Total Hours
Board Meeting Support	18.5
Lease Support	17.1
Conflict of Interest Support	15
Ordinance Codification	14.8
Litigation Support	7.2
Employment Support	6
Redevelopment Support	5.8
PRA Request Support	4.5
Environmental Support	4.2
Fire District Assessment	2
Pension Advice	2
State Tidelands Support	1.2
Bylaw Support	0.5
Receivership Case Support	0.3



<b>Type of Legal Work</b>	<b>Month</b>	<b>Hours</b>	<b>Amount</b>
Board Meeting Support	June	0.2	\$ 53.00
Board Meeting Support	June	0.4	\$ 106.00
Board Meeting Support	June	1.6	\$ 424.00
Board Meeting Support	June	0.5	\$ 132.50
Board Meeting Support	June	0.3	\$ 79.50
Board Meeting Support	June	0.3	\$ 79.50
Board Meeting Support	June	2.3	\$ 609.50
Board Meeting Support	June	0.2	\$ 53.00
Board Meeting Support	June	0.3	\$ 79.50
Board Meeting Support	June	0.2	\$ 53.00
Board Meeting Support	June	0.4	\$ 106.00
Board Meeting Support	July	1.4	\$ 371.00
Board Meeting Support	July	0.2	\$ 53.00
Board Meeting Support	July	0.1	\$ 26.50
Board Meeting Support	July	0.6	\$ 159.00
Board Meeting Support	July	3.3	\$ 874.50
Board Meeting Support	July	0.4	\$ 106.00
Board Meeting Support	July	0.9	\$ 238.50
Board Meeting Support	July	0.2	\$ 53.00
Board Meeting Support	July	0.3	\$ 79.50
Board Meeting Support	July	0.1	\$ 26.50
Board Meeting Support	July	3	\$ 795.00
Board Meeting Support	July	1.3	\$ 344.50
Bylaw Support	July	0.2	\$ 53.00
Bylaw Support	July	0.3	\$ 79.50
Conflict of Interest Support	June	0.2	\$ 53.00
Conflict of Interest Support	July	0.1	\$ 26.50
Conflict of Interest Support	July	0.5	\$ 132.50
Conflict of Interest Support	July	0.3	\$ 79.50
Conflict of Interest Support	July	0.1	\$ 26.50
Conflict of Interest Support	July	0.6	\$ 159.00
Conflict of Interest Support	July	2.1	\$ 556.50
Conflict of Interest Support	July	0.4	\$ 106.00
Conflict of Interest Support	July	0.4	\$ 106.00
Conflict of Interest Support	July	1.5	\$ 397.50
Conflict of Interest Support	July	0.2	\$ 53.00
Conflict of Interest Support	July	0.2	\$ 53.00
Conflict of Interest Support	July	1.2	\$ 318.00
Conflict of Interest Support	July	1.9	\$ 503.50
Conflict of Interest Support	July	2.4	\$ 636.00
Conflict of Interest Support	July	2.9	\$ 768.50
Employment Support	July	0.4	\$ 64.00
Lease Support	June	0.3	\$ 79.50
Lease Support	June	0.3	\$ 79.50
Lease Support	June	0.1	\$ 26.50
Lease Support	June	0.6	\$ 159.00



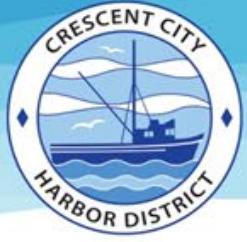
Lease Support	June	0.5	\$	132.50
Lease Support	June	0.3	\$	79.50
Lease Support	June	0.9	\$	238.50
Lease Support	June	3.5	\$	927.50
Lease Support	June	0.2	\$	53.00
Lease Support	June	0.5	\$	132.50
Lease Support	June	1.1	\$	291.50
Lease Support	June	1.8	\$	477.00
Lease Support	July	0.3	\$	79.50
Lease Support	July	0.1	\$	26.50
Lease Support	July	0.3	\$	79.50
Lease Support	July	0.2	\$	53.00
Lease Support	July	0.7	\$	185.50
Lease Support	July	1.5	\$	397.50
Lease Support	July	0.3	\$	79.50
Lease Support	July	0.4	\$	106.00
Lease Support	July	0.4	\$	106.00
Lease Support	July	0.4	\$	106.00
Lease Support	July	1.2	\$	318.00
Lease Support	July	0.1	\$	-
Lease Support	July	0.1	\$	26.50
Lease Support	July	1	\$	265.00
Ordinance Codification	June	1.1	\$	291.50
PRA Request Support	June	0.3	\$	79.50
PRA Request Support	July	1.2	\$	318.00
PRA Request Support	July	1.5	\$	240.00
PRA Request Support	July	0.8	\$	212.00
PRA Request Support	July	0.4	\$	64.00
PRA Request Support	July	0.3	\$	48.00
Receivership Case Support	June	0.3	\$	79.50
Redevelopment Support	July	0.2	\$	53.00
Redevelopment Support	July	0.8	\$	212.00
Redevelopment Support	June	1.4	\$	371.00
Redevelopment Support	June	0.3	\$	79.50
Redevelopment Support	July	0.4	\$	106.00
Redevelopment Support	July	0.4	\$	106.00
Redevelopment Support	July	0.1	\$	26.50
Redevelopment Support	July	0.4	\$	106.00
Redevelopment Support	July	0.2	\$	53.00
Redevelopment Support	July	0.2	\$	53.00
Redevelopment Support	July	0.6	\$	159.00
Redevelopment Support	June	0.3	\$	79.50
Redevelopment Support	June	0.5	\$	132.50
State Tidelands Support	July	0.3	\$	79.50
State Tidelands Support	July	0.9	\$	238.50
Ordinance Codification	June	1.1	\$	176.00
Ordinance Codification	June	0.6	\$	96.00

Ordinance Codification	June	2.2	\$	352.00
Ordinance Codification	June	1.6	\$	256.00
Ordinance Codification	June	1.4	\$	224.00
Ordinance Codification	June	0.7	\$	112.00
Ordinance Codification	June	1.1	\$	176.00
Ordinance Codification	July	3.2	\$	512.00
Ordinance Codification	July	0.4	\$	64.00
Ordinance Codification	July	1.4	\$	371.00
Employment Support	June	0.7	\$	224.00
Employment Support	June	0.8	\$	232.00
Employment Support	June	0.3	\$	87.00
Employment Support	July	0.5	\$	160.00
Employment Support	July	0.8	\$	256.00
Employment Support	July	0.7	\$	203.00
Employment Support	July	0.3	\$	96.00
Employment Support	July	0.1	\$	29.00
Employment Support	July	0.2	\$	64.00
Employment Support	July	0.2	\$	64.00
Employment Support	July	0.4	\$	128.00
Employment Support	July	0.4	\$	116.00
Employment Support	July	0.1	\$	32.00
Employment Support	July	0.1	\$	32.00
Environmental Support	June	0.6	\$	192.00
Environmental Support	June	0.8	\$	256.00
Environmental Support	June	0.4	\$	128.00
Environmental Support	June	0.5	\$	160.00
Environmental Support	June	0.3	\$	96.00
Environmental Support	June	0.5	\$	160.00
Environmental Support	June	0.8	\$	256.00
Environmental Support	June	0.3	\$	87.00
Litigation Support	July	0.5	\$	160.00
Litigation Support	July	0.3	\$	87.00
Litigation Support	July	0.1	\$	29.00
Litigation Support	July	0.5	\$	160.00
Litigation Support	July	0.3	\$	96.00
Litigation Support	July	1.9	\$	551.00
Litigation Support	July	0.3	\$	96.00
Litigation Support	July	0.2	\$	64.00
Litigation Support	July	0.4	\$	128.00
Litigation Support	July	0.2	\$	64.00
Litigation Support	July	0.1	\$	32.00
Litigation Support	July	0.4	\$	128.00
Litigation Support	July	0.3	\$	87.00
Litigation Support	July	0.2	\$	58.00
Litigation Support	July	0.2	\$	58.00
Litigation Support	July	0.8	\$	256.00
Litigation Support	July	0.5	\$	160.00

Fire District Assessment	July	0.1 \$	32.00
Fire District Assessment	July	0.2 \$	64.00
Fire District Assessment	July	1.4 \$	448.00
Fire District Assessment	July	0.3 \$	96.00
Pension Advice	June	0.2 \$	64.00
Pension Advice	June	1.6 \$	512.00
Pension Advice	June	0.2 \$	64.00

## **JUNE & JULY 2021 ATTORNEY FEES**

GENERAL COUNSEL SERVICES	\$ 16,959.60
ORDINANCE CODIFICATION	\$ 1,392.00
EMPLOYMENT LAW	\$ 2,707.00
GENERAL LITIGATION	\$ 2,278.00
ENVIRONMENTAL LAW	\$ 1,655.00
FIRE DISTRICT ASSESSMENT	\$ 1,152.00
PENSION ADVICE	\$ 640.00
TOTAL	<u>\$ 26,783.60</u>



## **2. New Business**

- c. **Review and vote to approve a request from Del Norte Association of Realtors to install a bench to honor Mitzi Travis in the harbor across from Bayside Realty.**

***Public Comment?***



# DNAOR

**Del Norte Association of Realtors**

126 US Highway 101 N Crescent City, CA 95531 phone: 707-465-3321

Email – [DNAOROFFICE@GMAIL.COM](mailto:DNAOROFFICE@GMAIL.COM) website – [WWW.DNAOR.COM](http://WWW.DNAOR.COM)

August 31, 2021

Honorable Harbor Officials,

On behalf of the Del Norte Association of Realtors, we would like to formally request permission to permanently place a memorial bench in honor of Mitzi Travis. Mitzi was a very well-known local realtor who served our community for over 40 years. Mitzi passed away last week. It would mean the world to us to be able to provide a bench in her honor in the harbor located across from Bayside Realty where Mitzi practiced her trade. I believe we have done so in the past with Norma Cassidy and the harbor has installed it per their requirements for a fee. I not sure of the logistics, but I wanted to start the process.

We believe that this would not only enrich and beautify the harbor itself, but give travelers and visitors a place to sit and enjoy the beautiful harbor that your board has worked so hard to achieve.

Respectfully,

Donna DeWolf

President Elect 2021 Del Norte Association of Realtors



## **2. New Business**

- d. Approve Resolution No. 2021-004 Authorizing The CEO & Harbormaster To Execute A Ground Lease With Renewable Energy Capital, LLC For Development of The Redwood Overflow Lot, and Find the Project Categorically Exempt from CEQA.**

***Public Comment?***



Board of Harbor Commissioners  
**MEETING AGENDA ITEM**

**APPROVE RESOLUTION NO. 2021-004 AUTHORIZING THE CEO & HARBORMASTER TO EXECUTE A GROUND LEASE WITH RENEWABLE ENERGY CAPITAL, LLC FOR THE DEVELOPMENT OF THE REDWOOD OVERFLOW LOT, AND DETERMINATION THAT PROJECT IS CATEGORICALLY EXEMPT FROM CEQA**

**EXECUTIVE SUMMARY**

On September 21, 2020, the Crescent City Harbor District (“District”) released a Request for Proposal (“RFP”) to redevelop designated areas within the District’s boundaries to both support the mission of the District and to provide for future growth of the District’s facilities and grounds. Renewable Energy Capital, LLC (“REC”) submitted a proposal for the RFP on November 2, 2020 (“REC Proposal”). On December 1, 2020, the REC Proposal was submitted to the Board of Harbor Commissioners (“Board”) for review and approval, which the Board did approve at the same meeting. This agenda item seeks the Board’s approval for the a ground lease (“Ground Lease”) with REC, consistent with the REC Proposal, for the development of the Redwood Overflow Lot (“Lot”) that has been vacant for more than five (5) years.

**DISCUSSION**

The broader purpose of the RFP was in support of the District’s four strategic goals, which were developed through workshop discussions with the Board of Harbor Commissioners (“Board”), District staff, and community input, and are as follows:

1. Financial Management Objective: To develop a financial system that is resistant to economic shocks, fulfills basic functions, manages risks, diversifies revenue streams, and allows for growth.
2. Planned Development Objective: To plan for major development opportunities available to the Harbor District.
3. Infrastructure Objective: To improve existing infrastructure deficiencies, accommodate desired future growth, and replace worn-out facilities.
4. Increase Tourism Objective: To increase awareness of the Harbor District as an excellent tourism destination, as well as improving the Harbor District’s aesthetics and enhancing visitor experiences.



In order to develop the Lot in a manner consistent with the four strategic objectives of the District provided above, the District will enter into a Ground Lease with REC, whereby it will lease the Lot located southwesterly of the intersection of Anchor Way and Starfish Way, Assessor Parcel No. 117-020-016, consisting of approximately 39,139 square feet to REC. The Ground Lease will have an initial term of twenty five (25) years, and REC will have the option to extend for up to three (3) periods of five (5) years. REC will pay the District a monthly rent of Three Thousand Nine Hundred Thirteen Dollars (\$3,913.00) per month, subject to an annual increase of two (2) percent (“Rent”).

Pursuant to the Ground Lease, REC will have the right to make and infrastructure upgrades necessary to the Lot, with the objective of developing a Recreational Vehicle (“RV”) Park. All improvement, changes or alternations to the Lot that exceed \$10,000, will be subject to approval from the District for site plan and plans, and other specifications for tenant improvements.

Developing the Lot into an RV Park will generate additional revenue for the District and will promote public recreation in the District by providing additional opportunities for the public to access the harbor.

## **FISCAL IMPACT**

Approval of the attached Ground Lease will provide the District with additional revenue in the amount of \$46,956 annually in Rent, subject to an annual escalation rate of two (2) percent, for a period of 25 to 40 years.

## **ENVIRONMENTAL REVIEW**

The approval of the Ground Lease and REC’s operation of a RV Park on the Lot (collectively, the “Project”) is categorically exempt from the California Environmental Quality Act (“CEQA”). The Project includes various improvements and infrastructure upgrades to develop the Lot into an RV Park, including landscaping, trenching, grading, carports, patios, and fences. As further explained below, the Project is categorically exempt from CEQA under the Class 1, Class 3, and Class 4 exemptions set forth, respectively, in State CEQA Guidelines sections 15301, 15303, and 15304.

The Project falls within the Class 1 exemption, which applies to the operating, maintenance, permitting, leasing, and minor alteration of existing public or private structures, facilities, or topographical features involving negligible or no expansion of existing or former use. (State CEQA Guidelines, § 15301.) Here, the Lot’s former use was a RV Park facility, and the Project proposes only a negligible expansion of that former use. The leasing of the Lot, the operation of the RV Park, and the minor alterations that comprise the Project are thus all exempt from CEQA.

The Project further falls within the Class 3 exemption, which applies to the construction and location of limited numbers of new, small facilities or structures. (State CEQA Guidelines, § 15303.) The Class 3 exemption explicitly applies to accessory (appurtenant) structures including carports, patios, and fences—the very type of infrastructure upgrades at issue in the Project here.

Finally, the Project is additionally exempt from CEQA under the Class 4 exemption, which applies to minor public or private alterations in the condition of land that does not involve removal of healthy, mature, and scenic trees; the exemption explicitly applies to grading on land with a slope of less than ten percent (with exceptions not relevant here) and to “new gardening or landscaping,” which is a feature of the Project here. (State CEQA Guidelines, § 15303(a)-(b).) Here, any grading as part of the Project would not occur on land with a slope of over ten percent, and the Project would not result in the removal of any healthy, mature, and scenic trees. The Project is therefore exempt.

None of the exceptions to the categorical exemptions set forth in State CEQA Guidelines section 15300.2 have any applicability here. The Project will not impact any environmental resource of hazardous or critical concern, will not result in significant cumulative impacts, is not subject to any unusual circumstances that could result in a significant environmental impact, would not damage any scenic resources within a scenic highway, is not located on a hazardous waste site identified on any list compiled pursuant to Government Code section 65962.5, and would not impact any historical resource.

For all of the foregoing reasons, the entirety of the Project is categorically exempt from CEQA.

#### **OPERATIVE DOCUMENTS**

By approving the Resolution attached to this staff report, the Board will authorize the CEO & Harbormaster to take any and all necessary steps to review with the advice of counsel and consultants, comment on, negotiate, approve and execute on behalf of the District the Ground Lease.

#### **RECOMMENDATION:**

Approve Resolution No. 2021-004 Authorizing The CEO & Harbormaster To Execute A Ground Lease With Renewable Energy Capital, LLC For Development Of The Redwood Overflow Lot, and Find the Project Categorically Exempt from CEQA

#### **ATTACHMENT(S):**

1. Resolution No. 2021-004
2. Ground Lease with Renewal Energy Capital, LLC

**RESOLUTION NO. 2021-004**

**A RESOLUTION OF THE BOARD OF HARBOR COMMISSIONERS OF THE CRESCENT CITY HARBOR DISTRICT AUTHORIZING THE CEO & HARBORMASTER TO EXECUTE A GROUND LEASE WITH RENEWABLE ENERGY CAPITAL, LLC FOR THE DEVELOPMENT OF THE REDWOOD OVERFLOW LOT, AND FINDING THE PROJECT CATEGORICALLY EXEMPT FROM CEQA**

**WHEREAS**, the State of California (“State”) granted Crescent City Harbor District (the “District”) right, title and interest in certain tidelands and submerged lands to be held in trust to promote and accommodate commerce, navigation, and fisheries, and for public recreation purposes; and

**WHEREAS**, Harbors and Navigation Code section 6075(a), authorizes the District to develop facilities within the limits of the District’s established boundaries; and

**WHEREAS**, Harbors and Navigation Code section 6075(b) provides that no interest in lands owned and operated by the District, including a lease interest, may be acquired without the prior consent of the Board of Harbor Commissioners of the District (“Board) by resolution; and

**WHEREAS**, the California Coastal Act (Public Resources Code § 3000 *et seq.*) does not require a coastal development permit from the District for the any development on tidelands, submerged lands, or on public trust lands, whether filled on unfilled; and

**WHEREAS**, the California Surplus Land Act (Government Code § 54220 *et seq.*) defines “surplus lands” to mean land owned in fee simple by any local agency, and because the District does not own its tidelands and submerged lands in fee simple and instead holds the lands in trust for the State, the District’s tidelands and submerged lands are not surplus lands; and

**WHEREAS**, the District is the owner of record of certain real property located in an unincorporated portion of Del Norte County California, commonly known as the Redwood Overflow Lot, located southwesterly of the intersection of Anchor Way and Starfish Way, Assessor Parcel No. 117-020-016, consisting of approximately 39,139 square feet, and more particularly described in Exhibit “A” attached hereto (“Lot”); and

**WHEREAS**, the Lot is located in the District’s granted tidelands and submerged lands; and

**WHEREAS**, the District has embarked upon the development of facilities and properties within the District by issuing a Request for Proposals (“RFP”) for the Development of the Harbor on September 21, 2020, including the Redwood Overflow Lot Project (the “Redwood Overflow Lot Project”); and

**WHEREAS**, on December 1, 2020, the Board approved the acceptance of a proposal by Renewal Energy Capital, LLC for the development of various facilities within the District; and

**WHEREAS**, in order to develop the Lot and in order to make mutually agreed upon improvements for the proposed development and operation of a Recreational Vehicle Park (“RV Park”), Renewable Energy Capital, LLC will enter into a long-term ground lease (“Ground Lease) with the District; and

**WHEREAS**, pursuant to the California Environmental Quality Act (Public Resources Code, § 21000 et seq.), the State CEQA Guidelines (California Code of Regulations, Title 14, § 15000 et seq.), and the District’s local CEQA Guidelines (collectively, “CEQA”), the District is the lead agency for the Redwood Overflow Lot Project; and

**WHEREAS**, in accordance with State CEQA Guidelines section 15061, the District evaluated the Redwood Overflow Lot Project by reviewing the land use application and considering existing conditions at the Redwood Overflow Lot Project site and surrounding vicinity, to evaluate whether an exemption from CEQA applied; and

**WHEREAS**, in accordance with Del Norte County Code (“County Code”) Title 21, Chapter 50, Section 30(A)(2), the District determined that Redwood Overflow Lot Project does not require a coastal development permit because the proposed improvements do not (1) involve a risk of adverse environmental effect, (2) adversely affect public access, or (3) involve a change in use contrary to the County’s policy; and

**WHEREAS**, the Redwood Overflow Lot Project would support the four strategic goals, identified in the District’s ten (10) year strategic plan (2018-2028), including developing a new revenue stream, developing and improving harbor infrastructure, and increasing awareness of the District as a tourism destination; and

**WHEREAS**, the Board hereby finds that the Redwood Overflow Lot Project is in the best interests of the District because it promotes public recreation by providing additional opportunities for the public to access and enjoy the harbor.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF HARBOR COMMISSIONERS OF THE CRESCENT CITY HARBOR DISTRICT THAT:**

Section 1. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. The Board finds that Redwood Overflow Lot Project, including the approval of the Ground Lease and improvements to the Lot (i.e., landscaping, trenching, grading, carports, patios, and fences), is categorically exempt from CEQA under the Class 1, Class 3, and Class 4 exemptions. An RV Park formerly operated at the Lot, and the leasing of the Lot and operation of the Project would involve only a negligible expansion of that former use. (State CEQA Guidelines, § 15301 [Class 1 exemption applies to the operating, repair, maintenance, permitting, leasing, or minor alteration of existing structures, facilities, or topographical features where the project involves negligible or no expansion of existing or former use].) Additionally, accessory structures including carports, patios, and fences—all of which are part of the Project here—are explicitly exempt from

CEQA. (State CEQA Guidelines, § 15303, subd. (d).) Moreover, minor alterations in the condition of land is exempt from CEQA where, as here, such alterations would not involve removal of healthy, mature, and scenic trees. (State CEQA Guidelines, § 15304.) For all of the foregoing reasons, the Board finds that the Redwood Overflow Lot Project is categorically exempt from CEQA.

Section 3. The Board hereby approves the Ground Lease with Renewable Energy Capital, LLC, in substantially the form attached to this Resolution as Exhibit “A.”

Section 4. The CEO & Harbormaster (“Authorized Officer”) is hereby authorized and directed to execute the Ground Lease to which the District is a party, with such changes, insertions and omissions as may be approved by the Authorized Officer and District Counsel.

Section 5. The Authorized Officer is hereby authorized and directed, to do any and all things necessary to execute the Ground Lease, and to execute and deliver any and all documents which the Authorized Officer or District Counsel deem necessary or advisable, in order to consummate the transactions contemplated by the Ground Lease and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution and the documents referred to herein.

Section 6. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application and, to this end, the provisions of this Resolution are severable. The Board declares that the Board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

Section 7. This Resolution shall take effect immediately upon its adoption.

APPROVED, ADOPTED AND SIGNED this 7<sup>th</sup> day of September, 2021, by the following vote, to wit:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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Brian Stone, President  
Board of Harbor Commissioners  
Crescent City Harbor District

ATTEST:

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Clerk of the Board of Harbor Commissioners  
Crescent City Harbor District

EXHIBIT "A"

GROUND LEASE

[Attached behind this cover page]

## GROUND LEASE

THIS GROUND LEASE (“**Lease**”) is dated for reference purposes as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021 (the “**Effective Date**”), by and between CRESCENT CITY HARBOR DISTRICT, a \_\_\_\_\_ (“**Landlord**”) and RENEWABLE ENERGY CAPITAL, LLC, a California limited liability company (“**Tenant**”), who, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, agree as follows:

**1. Background.** Landlord is the owner of record of that certain real property (“**Property**”) located in an unincorporated portion of Del Norte County California, commonly known as the Redwood Overflow Lot located southwesterly of the intersection of Anchor Way and Starfish Way, Assessor Parcel No. 117-020-016, consisting of approximately 39,139 square feet, and more particularly described in Exhibit “A” attached hereto. Tenant wishes to lease the Property from Landlord, together with all rights, privileges and easements appurtenant thereto. Landlord is willing to lease the Property to Tenant. The Property and such appurtenant rights, privileges and easements are collectively referred to as the “**Premises.**”

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

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

(a). Initial Term. The initial term (“**Initial Term**”) of this Lease shall commence (“**Commencement Date**”) 30 days after satisfaction of the conditions set forth in Section 5, below, and shall continue for a period of twenty five (25) Lease Years. Should the Initial Term commence on a date other than the first day of a calendar month, the Term shall be extended by this fractional month. Each period of twelve (12) consecutive calendar months during the term (following any adjustment for a fractional month as described in the preceding sentence) is referred to hereafter as a “**Lease Year.**” Tenant shall record the Memorandum of Lease described in Section 38 below, in the form attached hereto as Exhibit “B” (“**Memorandum**”).

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

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



(a) Monthly Rent . Beginning on the Commencement Date, Tenant shall pay to Landlord a monthly rent payment (“**Monthly Rent**”) in the amount of Three Thousand Nine Hundred Thirteen Dollars (\$3,913.00) per month. The Monthly Rent will be prorated with respect to any partial month at the commencement of the Initial Term. Tenant may elect to prepay Monthly Rent on an annual, semi-annual, quarterly or such other basis as Tenant deems appropriate. In the event of any sale or other conveyance of the Premises by Landlord, Landlord covenants and agrees that it will disclose any prepaid rents to the transferee and appropriately prorate such prepaid rents.

(b) Adjustments to Monthly Rent During the Lease. At each anniversary from the Commencement Date (each an “**Adjustment Date**”), Monthly Rent will be increased by two percent (2%). The adjustments to Monthly Rent shall continue through any Extension Period exercised by Tenant.

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

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

(a) Tenant’s Feasibility and Due Diligence. Tenant has conducted feasibility and due diligence activities and has determined the suitability of the Premises for Tenant’s proposed use, including but not limited to environmental studies, review of title, architectural and engineering studies, and investigation of entitlements.

(b) Landlord’s Approval of Tenant’s Finances. Landlord shall have sixty (60) days from the Effective Date to review and approve Tenant’s financials and credit enhancements. The Lease is contingent upon Landlord’s approval and determination, in its reasonable discretion, that Tenant’s financial condition is sufficient to meet its obligations under this Lease.

If the conditions in this Section 5 are not satisfied, all obligations and responsibilities of and between the Parties pursuant to this Lease shall be terminated except for those obligations which expressly survive, and the parties shall have no further obligation to each other.

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

(a) Tenant Responsibility. Tenant covenants and agrees to pay and discharge, during the entire Term, before delinquency, all taxes, assessments, water charges, sewer charges, utility rates and fees, levies or other charges, general, special, ordinary, extraordinary and otherwise, of every kind and character which are or may during the Term be levied, charged, assessed or

imposed upon or against the Premises or any buildings or improvements located thereon, or against any of Tenant's personal property located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby. In addition, Tenant shall pay any tax assessed exclusively on rental income of Landlord to the extent such income is allocable to this Lease, if and only if such tax is assessed by State or local authorities upon the elimination of and in lieu of taxation based on the ownership of real property. At the commencement and at the end of the Term, such taxes, assessments and other charges to be paid by Tenant shall be prorated on the basis of the fiscal year of the taxing authority in question so that, at the commencement and at the end of the Term, as to any such taxes, assessments and other charges levied or assessed for a fiscal year preceding the commencement or extending beyond the end of the Term, Tenant will pay only such proportion of such taxes, assessments and other charges as the portion of such fiscal year following the commencement and preceding the end of the Term bears to the entire fiscal year.

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

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

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

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

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

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

**9. Use.** Tenant may use the Premises for a recreational vehicle park (the “**Approved Use**”) and for no other purpose. Without limiting the foregoing, Tenant will not use the Premises for any purpose or use which in any manner that causes, creates or results in a public or private nuisance.

**10. Covenant to Open and Operate** Tenant covenants to open for business to the public within 90 days of the Commencement Date and thereafter, subject to temporary closures for casualty, condemnation, remodel (to the extent approved by Landlord), or Force Majeure (as defined below), which prevent Tenant from conducting its normal business operations in the Premises, to operate continuously and uninterrupted in the entirety of the Premises throughout the Term the business described in Section 3.

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

(a) Title to all buildings, structures and improvements that now, or may from time to time constitute a part of the Premises shall be and remain in Tenant until the termination of this Lease. Upon termination of this Lease, Tenant may remove from the Premises all machinery, equipment and fixtures. Landlord may, by written notice to Tenant given not less than one (1) year prior to the expiration of the Term of this Lease, elect (i) to require that Tenant remove all improvements from the Premises; or (ii) leave

building improvements (but not machinery, equipment and fixtures) in place, in which case title will pass to and vest in Landlord without cost or charge to it.

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

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

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

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

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

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

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

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

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

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

(a) Tenant shall have the right at any time and from time to time during the Term to make such improvements to the Premises and such changes and alterations, structural or otherwise, to any buildings, improvements, fixtures and equipment located on the Property, as Tenant shall deem necessary or desirable.

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

(c) All improvements, changes and alterations (other than changes or alterations of movable trade fixtures and equipment or improvements, changes or alterations involving costs less than Ten Thousand Dollars (\$10,000)) shall be undertaken in all cases subject to the following conditions which Tenant covenants to observe and perform:

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

(2) Landlord shall have reasonably approved the site plan and plans and specifications for such Tenant Improvements.

(3) Tenant shall have procured and paid for, so far as the same may be required from time to time, all municipal and other governmental permits and authorizations of the various municipal departments and governmental subdivisions having jurisdiction, and Landlord agrees to join in the application for such permits or authorizations whenever such action is necessary. In the event that any future Tenant Improvement qualifies as a “project” under CEQA requiring discretionary approval from Landlord, any such project shall be subject to CEQA, and Landlord shall make a determination of whether such project is exempt from CEQA or whether additional environmental review is necessary.

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

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

Lease. As a material part of this Lease, Tenant agrees to assume all risk of liability arising from any decision not to comply with Prevailing Wage Laws.

(f) In addition to the insurance coverage referred to in Section 19 below, Workers' Compensation Insurance covering all persons employed in connection with the work and with respect to whom death or injury claims could be asserted against Landlord, Tenant or the Premises, and a general liability policy coverage, naming Landlord with limits of not less than Two Million Dollars (\$2,000,000), shall be maintained by Tenant, at Tenant's sole cost and expense, at all times when any work is in process in connection with any improvement, change or alteration. Tenant may provide such coverage by means of a blanket policy, covering other locations in addition to the Premises, provided that such blanket policy provides aggregate coverage of not less than Four Million Dollars (\$4,000,000). All such insurance shall be obtained and kept in force as otherwise provided in Section 19 below.

**15. Damage or Destruction.** No loss or damage by fire or other cause required to be insured against hereunder resulting in either partial or total destruction of any building, structure, or other improvement on the Property, shall operate to terminate this Lease, or to relieve or discharge Tenant from the payment of rents or amounts payable as rent as they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained on the part of Tenant to be performed and observed. Tenant hereby waives the provisions of subsection 2 of section 1932 and subsection 4 of section 1933 of the California Civil Code, as amended from time to time.

**16. Assignment and Subletting.** Tenant shall have no right to assign all or any part of its interest in this Lease without Landlord's prior consent, not to be unreasonably withheld. Tenant shall not have the right or power to request or effect a Transfer at any time an Event of Default shall exist, and no right to Transfer prior to Commencement Date or the first forty-eight (48) months after the Commencement Date without Landlord's prior consent, which may be withheld in its sole discretion. By way of example and without limitation, the parties agree that it shall be reasonable for Landlord to withhold its consent to a Transfer if any of the following situations exist or may exist: (a) in Landlord's reasonable business judgment, the transferee lacks sufficient experience to manage a successful development and project of the type and quality being conducted at the Premises; or (b) in Landlord's reasonable business judgment, the then net worth of the transferee is inadequate (after taking into account the net worth of the guarantor of Tenant's obligations under this Lease, if any) to manage a successful development and project of the type and quality being conducted at the Premises. Tenant shall be free to sublet retail shop space constructed by Tenant on the Premises at all times and without Landlord's prior consent so long as Tenant provides Landlord a copy of any such sublease within ten (10) days of sublease execution and the sublessee agrees to be bound by the terms of this Ground Lease.

(a) Procedures. Should Tenant desire to assign, transfer, sublet, mortgage, pledge, hypothecate or encumber this Lease or any interest therein (a "**Transfer**"), Tenant shall give notice thereof to Landlord by requesting in writing Landlord's consent to such Transfer at least thirty (30) days before the effective date of the Transfer and shall provide Landlord with the following: (a)

The full particulars of the proposed transaction, including its nature, effective date, and material terms and conditions, including the purchase price and payment terms of the purchase price. Such documentation shall include, without limitation, an executed copy of the agreement(s) effecting the Transfer. (b) A description of the identity, net worth, and previous business experience of the transferee, including, without limitation, copies of such transferee's latest income statement, balance sheet, and statement of cash flows (with accompanying notes and disclosures of all material changes thereto) in audited form only if available at the time, and certified as accurate by the transferee along with a written statement authorizing Landlord or its designated representative(s) to investigate such transferee's business experience, credit, and financial responsibility; (c) A statement that Tenant intends to consummate the transaction if Landlord consents to the Transfer; and (d) Any further information relevant to the transaction that Landlord reasonably requests within ten (10) days after receipt of Tenant's written request for consent.

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

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

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



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

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

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

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

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

(e) Any event of default under this Lease which is not susceptible to remedy by a Lender shall be deemed to be remedied if (i) within thirty (30) days after receiving written notice from Landlord setting forth the nature of such event of default, or

prior thereto, a Lender shall have acquired Tenant's leasehold estate created hereby or shall have commenced foreclosure or other appropriate proceedings seeking such acquisition, (ii) a Lender shall diligently prosecute any such proceedings to completion, and (iii) a Lender shall have fully cured any default in the payment and performance of any monetary or other obligations of Tenant hereunder which do not require possession of the Premises within such sixty day period and shall thereafter continue faithfully to perform all such monetary obligations which do not require possession of the Premises, and (iv) after gaining possession of the Premises, a Lender shall perform all other obligations of Tenant hereunder as and when the same are due.

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

(g) Landlord shall mail by certified or registered post, return receipt requested, or personally deliver to any Lender a duplicate copy of any and all notices in writing which Landlord may from time to time give to or serve upon Tenant pursuant to the provisions of this Lease, and such copy shall be mailed or delivered to any Lender at, or as near as possible to, the same time such notices are given or served by Landlord. No notice by Landlord to Tenant hereunder shall be deemed to have been given unless and until a copy thereof shall have been so mailed or delivered to any Lender. Upon the execution of any Leasehold Mortgage, Landlord shall be informed in writing of the vesting of the security interest evidenced by the Leasehold Mortgage and of the address to which all notices to the Lender are to be sent. Notwithstanding any other provision of this Section 18, any Lender shall be deemed to have waived any right to receive notice pursuant to this Section unless and until Landlord has received such information.

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

(i) Should Landlord terminate this Lease by reason of any default by Tenant hereunder, Landlord shall, upon written request by a Lender given within thirty (30) days after such termination, immediately execute and deliver a new lease of the

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

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

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

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

(c) Tenant shall, at its sole expense, obtain and keep in force during the Term general liability insurance with limits of not less than Two Million Dollars (\$2,000,000) for injury to or death of any number of persons in one occurrence, and not less than One Million Dollars (\$1,000,000) for damage to property, insuring against any and all liability of Landlord and Tenant including, without limitation, coverage for contractual liability, broad form property damage, personal injury, and non-owned automobile liability, with respect to the Premises or arising out of the maintenance, use or occupancy thereof, and insurance on all boilers and other pressure vessels, whether fired or unfired, located in, on, or about the Premises, without exclusion for explosion, collapse and underground damage, in an amount not less than One Million Dollars (\$1,000,000). Tenant may provide coverage for general liability insurance under a blanket policy, provided that such blanket policy provides aggregate coverage of not less than Four Million Dollars (\$4,000,000) as specified in Section 14(c)(3). All of such insurance shall insure the performance by Tenant of the indemnity agreement as to liability for injury to or death of persons and damage to property set forth in Section 21(b) hereof. All of such insurance shall be noncontributing with any insurance which may be carried by Landlord and shall contain a provision that Landlord, although named as an insured, shall nevertheless be entitled to recover under the policy for any loss, injury or damage to Landlord, its agents and employees, or the property of such persons.

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

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

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

**21. Indemnity.**

(a) Tenant shall have the right to contest the amount or validity of any lien of the nature set forth in Section 20 hereof or the amount or validity of any tax, assessment, charge, or other item to be paid by Tenant under Section 6 hereof by giving Landlord written notice of Tenant's intention to do so within twenty (20) days after the recording of such lien or at least ten days prior to the delinquency of such tax, assessment, charge, or other item, as the case may be. In any such case, Tenant shall not be in default hereunder, and Landlord shall not satisfy and discharge such lien nor pay such tax, assessment, charge or other item, as the case may be, until ten (10) days after the final determination of the amount or validity thereof, within which time Tenant shall satisfy and discharge such lien or pay such tax, assessment, charge or other item to the extent held valid and all penalties, interest, and costs in connection therewith; provided, however, that the satisfaction and discharge of any such lien shall not, in any case, be delayed until execution is had upon any judgment rendered thereon, nor shall the payment of any such tax, assessment, charge or other item, together with penalties interest, and costs, in any case be delayed until sale is made or threatened to be made of the whole or any part

of the Premises on account thereof, and any such delay shall be a default of Tenant hereunder. In the event of any such contest, Tenant shall protect and indemnify Landlord against all loss, cost, expense, and damage resulting therefrom, and upon notice from Landlord so to do, shall furnish Landlord a corporate surety bond payable to Landlord, in one hundred and twenty percent (120%) of the amount of the lien, tax, assessment, charge, or item contested, as the case may be, conditioned upon the satisfaction and discharge of such lien or the payment of such tax, assessment, charge, or other item, and all penalties, interest, and costs in connection therewith.

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

(c) Tenant shall indemnify, protect, defend, and hold Landlord, and/or any of Landlord's officials, officers, employees, agents, departments, and instrumentalities (collectively, the "Indemnified Parties") harmless from any and all claims, demands, lawsuits, petitions for writ of mandamus, alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and other such procedures), judgments, orders, decisions, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature) (collectively "Actions") brought against the Indemnified Parties that challenge, attack, or seek to modify, set aside, void, or annul any action of, or any permit or approval issued by, Landlord and/or any of its officials, officers, employees, agents, departments, and instrumentalities, for or concerning this Lease, the operation of a recreational vehicle park on the Premises (collectively, the "Project"), or any other permits, entitlements, or approvals related to the Project; Tenant's obligation to indemnify against the Actions shall apply whether such Actions are brought under the Ralph M. Brown Act, California Environmental Quality Act, the California Coastal Act, the Planning and Zoning Law, the Subdivision Map Act, Community Redevelopment Law, Code of Civil Procedure Sections 1085 or 1094.5, or any other federal, state, or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. Applicant's obligation under this condition of approval shall extend to indemnifying and holding harmless the Indemnified Parties against any damages, fees, or costs awarded in connection with any Action challenging the Project. Landlord and Tenant expressly agree that Landlord shall have the

right to choose the legal counsel providing Landlord's defense, and that Tenant shall reimburse, on a monthly basis, Landlord for any costs, fees, and expenses incurred by Landlord in the course of the defense. Landlord shall promptly notify Tenant of any Action brought, and Tenant shall cooperate with Landlord in the defense of the Action. Tenant's obligation to fully indemnify Landlord shall survive the suspension, revocation, expiration or termination of any permit, entitlement, or approval issued by Landlord for or relating to the Project.

## **22. Eminent Domain.**

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

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

(2) A proportionate share of all compensation and damages payable for or on account of buildings and improvements having a remaining useful life greater than the remaining Term as of the date of such taking, determined by the ratio that the then remaining Term bears to the then remaining useful life of such buildings and improvements, shall be payable to and be the sole property of Tenant and Lender, as their interests may appear, and the remaining share thereof shall be payable to and be the sole property of Landlord.

(b) If less than the whole of the Premises should be taken by any public or quasi-public authority under the power or threat of eminent domain during the Term and this Lease is not terminated as provided in subsection (a) above, Tenant shall promptly reconstruct and restore the Premises, with respect to the portion of the Premises not so taken, as an integral unit of the same quality and character as existed prior to such taking. The Monthly Rent payable by Tenant following such taking shall be equitably reduced by agreement of Landlord and Tenant in accordance with the reduced economic return to Tenant, if any, which will occur by

reason of such taking. The compensation and damages payable for, or on account of, such taking shall be applied to the reconstruction and restoration of the Premises by Tenant pursuant to this subsection (b) by application, first, of any sums payable for or on account of the buildings and improvements situated on the Property, and second, of any sums payable for or on account of the Property exclusive of such buildings and improvements. The remainder, if any, after reconstruction and restoration shall be divided among Landlord, Tenant and Lender in the manner provided in subsection (a) above.

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

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

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

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

**24. Tenant's Defaults and Landlord's Remedies.** It shall be an event of default hereunder (each an "Event of Default") if (i) default shall be made by Tenant in the punctual payment of any rent or other moneys due hereunder and shall continue for a period of five (5) days after written notice thereof to Tenant; (ii) default shall be made by Tenant in the performance or observance of any of the other agreements, covenants or conditions of this Lease on the part of Tenant to be performed and observed and such default shall continue for a period of thirty (30) days after written notice thereof to Tenant, or, in the case of a default which cannot be cured by the payment of money and cannot be cured within thirty (30) days, shall continue for an unreasonable period after such written notice; (iii) Tenant shall abandon the Premises; (iv) Tenant shall admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation under any law or statute of the federal government or any state government or any subdivision of either now or hereafter in effect, make an assignment

for the benefit of its creditors, consent to, or acquiesce in the appointment of a receiver of itself or of the whole or any substantial part of the Premises; (v) a court of competent jurisdiction shall enter an order, judgment or decree appointing a receiver of Tenant or of the whole or any substantial part of the Premises, and such order, judgment or decree shall not be vacated, set aside or stayed within sixty (60) days from the date of entry of such order, judgment or decree, or a stay thereof be thereafter set aside; (vi) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Tenant under any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation law or statute of the Federal government or any state government or any subdivision of either now or hereafter in effect, and such order judgment or decree shall not be vacated, set aside or stayed within sixty (60) days from the date of entry of such order, judgment or decree, or a stay thereof be thereafter set aside; or (vii) under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction shall assume custody or control of Tenant or of the whole or any substantial part of the Premises, and such custody or control shall not be terminated within sixty (60) days from the date of assumption of such custody or control. Upon the occurrence of any Event of Default by Tenant hereunder, Landlord shall have the following rights and remedies, in addition to all other rights and remedies of Landlord provided hereunder or by law:

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

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

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

(4) The right to cause a receiver to be appointed in any action against Tenant to take possession of the Premises or to collect the rents or profits therefrom. Neither appointment of such receiver nor any other action taken by Landlord shall constitute an election on the part of Landlord to terminate this Lease unless written notice of termination is given to Tenant.

**25. Nonwaiver.** If any action or proceeding is instituted or if any other steps are taken by Landlord or Tenant, and a compromise part payment or settlement thereof shall be made, either before or after judgment, the same shall not constitute or operate as a waiver by Landlord or Tenant of any agreement, covenant or condition of this Lease or of any subsequent breach thereof. No waiver of any default under this Lease shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege, or option under this Lease shall constitute a waiver, abandonment or



relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege, or option hereunder. No waiver of any provision hereof by Landlord or Tenant shall be deemed to have been made unless and until such waiver shall have been reduced to writing and signed by Landlord or Tenant, as the case may be. The receipt by Landlord of rent with knowledge of any default under this Lease shall not constitute or operate as a waiver of such default. Payment by Tenant or receipt by Landlord of a lesser amount than the stipulated rent or other sums due Landlord shall operate only as a payment on account of such rent or other sums. No endorsement or statement on any check or other remittance or in any communication accompanying or relating to such payment shall operate as a compromise or accord and satisfaction unless the same is approved in writing by Landlord, and Landlord may accept such check, remittance or payment without prejudice to its right to recover the balance of any rent or other sums due by Tenant and pursue any remedy provided under this Lease or by law.

**26. No Merger.**

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

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

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

**28. Covenants Run With Land.**

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

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

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

\_\_\_\_\_  
Attn: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

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

\_\_\_\_\_  
Attn: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

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

**30. Limitation of Landlord’s Liability.** In the event of any transfer of Landlord’s interest in this Lease, the Landlord herein named (and in case of any subsequent transfer, the then transferor) shall be automatically freed and relieved from and after the date of such transfer of all personal liability for the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed; provided, however, that any funds in the hands of Landlord or the then transferor at the time of

such transfer, in which Tenant has an interest shall be turned over to the transferee and any amount then due and payable to Tenant by Landlord or the then transferor under any provision of this Lease shall be paid to Tenant; and provided, further, that upon any such transfer, the transferee shall expressly assume, subject to the limitations of this Section 30, all of the agreements, covenants and conditions in this Lease to be performed on the part of Landlord, it being intended hereby that the covenants and obligations contained in this Lease on the part of Landlord shall, subject as aforesaid, be binding on each Landlord, its successors and assigns, only during its period of ownership.

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

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

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

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

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

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

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

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

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

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

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

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

**43. Commissions, Indemnity, Disclosure.** Each party represents to the other party that, aside from \_\_\_\_\_, there is no broker representing such party in the current transaction, and that the representing party has incurred no liability for any brokerage commission or finder's fee arising from or relating to the transactions contemplated by this Lease. Each party hereby indemnifies and agrees to protect, defend and hold harmless the other party from and against all liability, cost, damage or expense (including without limitation attorneys' fees and costs incurred in connection therewith) on account of any

brokerage commission or finder's fee which the indemnifying party has agreed to pay or which is claimed to be due as a result of the actions of the indemnifying party. This Section 44 is intended to be solely for the benefit of the parties hereto and is not intended to benefit, nor may it be relied upon by, any person or entity not a party to this Agreement.

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

(a) Tenant shall have no right to exercise an Option (i) during the period commencing with the giving of any notice of default and continuing until such default is cured; (ii) during any period during which rent is unpaid (without regard to whether notice thereof has been given to Tenant); (iii) during any time Tenant is materially in default under this Lease; (iv) in the event that Tenant has been given three (3) or more notices of separate defaults, whether or not such defaults have been cured, during the twelve (12) month period immediately preceding the attempt to extend the Term.

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

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

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

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

(3) Rent during any Extension Period will be established and adjusted in accordance with the provisions of Section 4 of the Lease.

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

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

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

LANDLORD:

CRESCENT CITY HARBOR DISTRICT

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

TENANT:

RENEWABLE ENERGY CAPITAL, LLC, a  
California limited liability company

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

**EXHIBIT "A"**

**DESCRIPTION OF PROPERTY**

That certain real property located in unincorporated Del Norte County, California, described as follows:

**EXHIBIT "B"**

**MEMORANDUM OF LEASE**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO

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

MEMORANDUM OF LEASE

This memorandum of lease ("**Memorandum of Lease**") is made as of \_\_\_\_\_, 2020 between \_\_\_\_\_ ("**Landlord**") and \_\_\_\_\_ ("**Tenant**"), who agree as follows:

1. The Lease. Landlord leases to Tenant, and Tenant leases from Landlord, the Premises (described below) on the terms and conditions of that certain unrecorded Ground Lease ("Lease") dated as of \_\_\_\_\_, 2021, between the parties. (Unless expressly provided otherwise, all capitalized terms and phrases used in this Memorandum shall have the same meanings as set forth in the Lease.)

2. The Premises. The Premises which are the subject of the Lease are that certain real property situated in an unincorporated portion of Del Norte County, California, located southwesterly of the intersection of Anchor Way and Starfish Way, Assessor Parcel No. 117-020-016, and more particularly described in Exhibit "1" attached hereto and made a part hereof by this reference.

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

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

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



LANDLORD:

CRESCENT CITY HARBOR DISTRICT

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

TENANT:

RENEWABLE ENERGY CAPITAL, LLC, a  
California limited liability company

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

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

STATE OF CALIFORNIA  
COUNTY OF ORANGE

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

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

STATE OF CALIFORNIA  
COUNTY OF ORANGE

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

EXHIBIT "1" TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION OF PREMISES

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



## **2. New Business**

- e. Approve Resolution No. 2021-005 Authorizing The CEO & Harbormaster To Execute A Lease with Fisherman's Catch for Facility at 100 Neptune Way.**

***Public Comment?***

**RESOLUTION NO. 2021-005**

**A RESOLUTION OF THE BOARD OF HARBOR COMMISSIONERS OF THE CRESCENT CITY HARBOR DISTRICT AUTHORIZING THE CEO & HARBORMASTER TO EXECUTE A LEASE WITH FISHERMAN’S CATCH GROUP, INC.**

**WHEREAS**, the State of California (“State”) granted Crescent City Harbor District (the “District”) right, title and interest in certain tidelands and submerged lands to be held in trust to promote and accommodate commerce, navigation, and fisheries, and for public recreation purposes; and

**WHEREAS**, Harbors and Navigation Code section 6075(b) provides that no interest in lands owned and operated by the District, including a lease interest, may be acquired without the prior consent of the Board of Harbor Commissioners of the District (“Board) by resolution; and

**WHEREAS**, the District is the owner of record of certain real property located at 100 Neptune Way, Crescent City, California 95531, Assessor Parcel No. 117-020-016, consisting of approximately 17,815 square feet (“District Property”); and

**WHEREAS**, the District desires to enter into a Lease for the District Property with Fisherman’s Catch, Inc. in substantially the form attached to this Resolution as Exhibit A (“Lease”); and

**WHEREAS**, the Board hereby finds that the Lease is in the best interests of the District because it promotes fisheries within the harbor.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF HARBOR COMMISSIONERS OF THE CRESCENT CITY HARBOR DISTRICT THAT:**

Section 1. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. The Lease is exempt from the environmental review requirements of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines sections 15301 and 15378 because there is no potential direct physical change in the environment, no reasonably foreseeable indirect physical change in the environment and consists only of interior alterations to existing facilities with negligible or no expansion of an existing commercial use.

Section 3. The Board hereby approves the Lease, in substantially the form attached to this Resolution as Exhibit “A.”

Section 4. The CEO & Harbormaster is hereby authorized and directed to execute the Lease to which the District is a party, with such changes, insertions and omissions as may be approved by the CEO & Harbormaster and District Counsel.

Section 5. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application and, to this end, the provisions of this Resolution are severable. The Board declares that the Board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

Section 6. This Resolution shall take effect immediately upon its adoption.

APPROVED, ADOPTED AND SIGNED this 7<sup>th</sup> day of September, 2021, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Brian Stone, President  
Board of Harbor Commissioners  
Crescent City Harbor District

ATTEST:

---

Clerk of the Board of Harbor Commissioners  
Crescent City Harbor District

EXHIBIT "A"

LEASE

[Attached behind this cover page]

**LEASE BY AND BETWEEN THE  
CRESCENT CITY HARBOR DISTRICT AND  
FISHERMEN'S CATCH, INC.**

This lease ("**Lease**") is executed this 1st day of September, 2021 by and between the Crescent City Harbor District ("**Landlord**"), a special district organized pursuant to the California Harbors and Navigation Code, and **Fishermen's Catch, Inc.**, a California corporation ("**Tenant**"), whose address is 1951 Windward Point, Discovery Bay, California 94505, under the following terms and conditions:

**1. Basic Terms**

1.1 Leased Premises. The leased premises ("Premises"), located at 100 Neptune Way, Crescent City, California is shown on **Exhibit A** and consist of all of the following:

- (a) Two small buildings ("Building") of approximately 400 square feet;
- (b) A surrounding area ("Surrounding Area") of two boundaries totaling approximately 17,415 square feet;
- (c) The exclusive use of the two (2) hoist areas ("Hoists") ; and
- (d) The exclusive use the truck pit included in the Lease Area.

1.2 Rental. The monthly rental is: \$3,250.

1.3 Rent Commencement Date. Sept. 1, 2021.

1.4 Use. Fish offloading and processing.

1.5 Term.   1   years.

1.6 Tenant's Insurance. Tenant shall furnish public liability property damage insurance, fire and casualty insurance, pollution legal liability insurance, and worker's compensation insurance pursuant to Section 6 with the following limits: \$2,000,000 per person and \$2,000,000 per occurrence public liability and \$2,000,000 property damage.



## 2. Premises, Use, Compliance with Laws

2.1 Leased Premises. Landlord hereby leases to Tenant and Tenant hires from Landlord on the terms, conditions and covenants hereinafter set forth the premises of the Crescent City Harbor District listed in Section 1.1 and outlined or described on **Exhibit A** attached hereto and incorporated herein by reference (the "**Premises**"). Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the condition of the Premises or with respect to the suitability of either for the conduct of Tenant's business. The taking of possession of the Premises by Tenant shall establish that the Premises and the Building were at such time in satisfactory condition and that Tenant has accepted the condition of the Premises and the Building in their "as-is" condition.

2.2 Term. The Term of this Lease shall be as set forth in Section 1.6 unless terminated pursuant to Section 4.

2.3 Option to Renew. Provided Tenant is not in default in any terms of this Lease, Tenant is hereby granted an option to renew this Lease, under the same terms and conditions as set forth in this Lease, for 2 terms from and after the expiration of the original Term of this Lease (the "**First Renewal Term**") or after the expiration of the First Renewal Term ("**Second Renewal Term**").

2.4 Use. Tenant shall use the Premises only for the purpose specified in Section 1.5 and shall not use the premises for any other purpose without prior written consent of Landlord thereto.

2.5 Compliance with Law. Tenant shall, at its own cost and expense, conduct its business on the Premises in accordance with all applicable federal, state, county and municipal statutes, ordinances, rules and regulations.

(a) Tenant shall, at its sole cost and expense, comply with the State Water Resources Control Board Order NPDES No. CAS000001, *National Pollution Discharge Elimination System General Permit for Storm Water Discharges Associated with Industrial Activities*, as it currently exists or may hereafter be amended or reissued (the "Industrial General Permit"). Tenant shall keep itself and all subcontractors, staff, and employees fully informed of, adequately trained in, and in compliance with all local, state, and federal laws, rules and regulations that may impact, or be implicated by the Use the Premises authorized by Section 2.4, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); and any and all regulations, ordinances, policies, or permits issued pursuant to any such authority.

(b) Tenant shall procure coverage under the Industrial General Permit to the extent required by law, shall prepare, update, and implement a Storm Water Pollution Prevention Plan, implement all other provisions, and monitoring and reporting requirements set out in the Industrial General Permit.

(c) Failure to comply with the Industrial General Permit may be a violation of federal and state law. Tenant hereby agrees to indemnify and hold harmless Landlord, its officials, officers, agents, employees, and authorized volunteers from and against any and all claims, demands, losses, or liabilities of any kind or nature which Landlord, its officials, officers, agents, employees, and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, ordinances, Industrial General Permit, and other regulatory mechanisms referenced in this Section arising out of or in connection with Tenant's use of the Premises in accordance with Section 6.

(d) In addition to any other remedy provided herein for a default, Landlord reserves the right to terminate this Lease for a violation this Section and to defend any enforcement action or civil action brought against the Landlord for Tenant's failure to comply with any applicable water quality law, regulation, or policy. Tenant hereby agrees to be bound by, and to reimburse the Landlord for the costs associated with, any settlement reached between the Landlord and any relevant enforcement entity. This Section survives Termination of the Lease.

2.6 Hazardous Materials. Tenant may operate its business so long as the use or presence of Hazardous Materials is strictly and properly monitored according to all applicable governmental requirements. As a material inducement to Landlord to allow Tenant to use Hazardous Materials, defined below, in connection with its business, Tenant agrees to deliver to Landlord prior to the Commencement Date a list identifying each type of Hazardous Materials to be present on the Premises and setting forth any and all governmental approvals or permits required in connection with the presence of Hazardous Materials on the Premises ("**Hazardous Materials List**"). Tenant shall deliver to Landlord an updated Hazardous Materials List at least once a year and shall also deliver an updated list before any new Hazardous Materials are brought onto the Premises or on or before the date Tenant obtains any additional permits or approvals. In connection with any Hazardous Materials utilized by Tenant on the Premises, Tenant shall be responsible, at its sole cost and expense, for making any necessary modifications or Improvements either to Premises or Tenant's equipment as required by applicable laws, or any governmental agency, Landlord's insurance company, Landlord's lender(s), Landlord's consultant(s), or prospective purchaser(s). Tenant will, at its sole cost and expense, promptly upon receipt of written notice from Landlord complete such Improvements. If such work is not promptly undertaken and completed, Landlord shall have the right, but not the obligation, to complete such work and to charge such amounts to Tenant as additional Rent under this Lease.

(a) Hazardous Materials and Hazardous Materials Laws Defined. The term "**Hazardous Materials**" shall mean those substances (i) defined as "hazardous substances," "hazardous materials," "toxic substances," "hazardous wastes," "extremely hazardous wastes" or "restricted hazardous wastes;" (ii) stated to be known to cause cancer or reproductive toxicity; or (iii) defined in similar terms as matters which are hazardous to the environment under (a) the laws of the United States, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. Section 1317 et seq., and the Toxic Substances Control Act,

15 U.S.C. Section 2601 et seq., (b) the laws of the State of California including, without limitation, Sections 25117 and 25316 of the California Health and Safety Code, and (c) any of the regulations adopted and publications promulgated pursuant to said laws described in (a) and (b) above, all as they may be amended from time to time ("**Hazardous Materials Laws**").

(b) Compliance With Hazardous Materials Laws. Tenant at Tenant's sole cost and expense, shall comply (and cause sublessees to comply) with all Hazardous Materials Laws pertaining to any Hazardous Materials which are used, generated, stored or disposed on, under or about the Premises by Tenant, its sublessees and invitees, or other persons and entities that are under the control of or at the direction of Tenant.

(c) Tenant's Indemnity Obligations. Tenant shall indemnify, defend, and hold Landlord harmless from and against all claims, demands, actions, damages, liability, and expense including all foreseeable and unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage or disposal by Tenant, its sublessees, and invitees of any or all of them, of Hazardous Materials, including, without limitation, the cost of any required or necessary repair, clean up or detoxification and the preparation of any closure or other required plans, to the full extent that such action is attributable, directly or indirectly, to the use, generation, storage or disposal of Hazardous Materials.

2.7 Homeland Security. Tenant shall, at Tenant's sole cost and expense, comply with all laws and regulations, including, but not limited to, those of the United States Coast Guard and Landlord applicable to the Crescent City Harbor District insofar as they pertain to Tenant and Tenant's use of the Premises.

2.8 Harbor Regulations. This Lease is subject to the rules and regulations governing the operation of the Crescent City Harbor District. Such rules and regulations and such changes as may subsequently be made or added thereto are incorporated herein by reference.

2.9 Inspection. Landlord or its duly authorized representative shall have the right to enter the Premises at reasonable times during business hours to inspect the condition or the operations of Tenant conduct thereon.

2.10 Inspection by Certified Access Specialist. Landlord discloses that the Premises have not undergone inspection by a Certified Access Specialist as referenced in California Civil Code Section 1938 subsection (e) which provides: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the

cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." Pursuant to the foregoing Section 1938(e), Tenant acknowledges and agrees that, if Tenant wishes to have the Premises inspected by a CASp: (i) Tenant must notify Landlord on or before the date when Tenant executes this Lease pursuant to the election below; (ii) the inspection will be at Tenant's sole cost and expense; (iii) the inspection must be scheduled through Landlord and in coordination with the Building's property manager; (iv) any repairs or modifications necessary to correct any violation of construction-related accessibility standards that is noted in the CASp report shall be Tenant's responsibility; and (v) Tenant must provide a copy of the CASp report to Landlord on completion. By initialing below, Tenant represents that:

Tenant wishes to have a CASp inspection of the Premises Initials: \_\_\_\_\_

Tenant waives its right to have a CASp inspection of the Premises Initials: \_\_\_\_\_

**3. Rent**

3.1 Rent. Tenant shall pay Landlord in advance without notice, demand, or setoff, a monthly rental during the Term hereof in the total amount determined at the rates specified in Section 1.2 for the area leased (the "**Rent**"). All Rent is payable in advance on the first day of each month. If the Term of this Lease commences on a day other than the first day of the month, Rent for the first month of the Term shall be pro-rated.

3.2 Rent Adjustment. Each of the monthly rental rates, and the monthly Rent payable by application of these rates, as set forth in Section 1.2 shall be adjusted each year on 1 September for changes in the Consumer Price Index during the preceding calendar year by application of the following formula:

$$\text{Adjusted Monthly Rental Rate} = \text{Rent specified in Section 1.2} \times \frac{\text{CPI for May of Year of Adjustment}}{\text{CPI for May next preceding the commencement of this Lease}}$$

The term "Consumer Price Index" means the Consumer Price Index, U.S. Department of Labor, Bureau of Labor Statistics, All Urban Consumers (1982, 1984 = 100) for the Los Angeles Riverside Orange Co. California area, all items. In the event the Consumer Price Index referred to above ceases to be published during the Term of this Lease or any revised or substituted index ceases to be comparable

to the Consumer Price Index as defined above, then the most reasonably comparable figures available shall be substituted therefore in determining increases or decreases in Rent.

The May CPI figure shall be used since it will be the latest published CPI figure as of July 1 of any year.

3.3 Late Charge. Tenant acknowledges that late payment by Tenant to Landlord of Rent or other charge will cause Landlord to incur costs not contemplated by this Lease. If any installment of Rent, or any other payment due to Landlord, due from Tenant is not received by Landlord within five (5) days after such payment is due, it shall be considered late, and Tenant shall pay to Landlord an additional sum of the greater of \$100 or 6% of the overdue amount as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the other rights and remedies available to Landlord.

3.4 Document Fee. Tenant must pay to Landlord a clerical and legal fee for entering or modifying a lease with the Landlord. The current amount of that fee is Five Hundred Dollars (\$500) for each document submitted for approval by the Harbor Master or Board of Commissioners of the Harbor ("Board"), provided, however, that the amount of the fee specified in this section will be superseded by the amount of such fees specified in the Service Fee Schedule adopted by the Board. The fee for entering into or modifying a lease must be remitted for payment prior to the approval of such documents by the Board.

3.5 Taxes. Tenant shall pay, before the same become delinquent, all taxes assessed upon the Premises, appurtenances or improvements thereto or upon any interest of Tenant therein. Tenant hereby recognizes and understands that this Lease may create a possessory interest subject to property taxation under California Revenue and Tax Code Section 107.6, and that Tenant may be subject to the payment of property taxes levied on such interest. Any such imposition of a possessory interest tax shall be a tax liability of Tenant solely, and shall be paid for by Tenant; and any such tax payment shall not reduce any Rent due to Landlord. Tenant shall also pay all interest and penalties any government entity assesses for late payment of any possessory interest taxes that this Lease requires Tenant to pay. Tenant shall within a reasonable time after written notice from Landlord give Landlord reasonable proof that Tenant has paid any possessory interest taxes that this Lease requires Tenant to pay. Nothing herein shall prohibit Tenant from the right to challenge any assessment of possessory interest tax in accordance with the procedures set forth by the taxing authority and where applicable withhold any overcharge by such taxing authority until the disputed matter is resolved. Landlord is a non-taxable entity and any taxes assessed against the Property as a result of Tenant's occupancy shall be Tenant's responsibility.

3.6 Utilities. Landlord is not obligated to furnish utilities or services to the Premises. Tenant shall pay for all utilities and services supplied to said Premises including all installation and connection charges. If utilities or services are furnished by Landlord for use of Tenant, Tenant shall on demand reimburse Landlord for the cost thereof attributable to Tenant. In no event shall Landlord be

liable to Tenant for any failure or interruption of any utilities or other services being furnished to the Premises, and no such failure or interruption shall entitle Tenant to abate payment of Rent or to terminate the Lease.

3.7 Refuse Collection and Janitorial Service. Tenant shall provide, or obtain, a refuse collection service for the Premises at Tenant's sole cost and expense. Tenant shall provide janitorial service to the Premises at Tenant's cost and expense if Tenant desires such services.

3.8 Poundage Fees. The monthly Rent payable under this Lease does not include any poundage fees for product offloads that may be assessed against Tenant pursuant to the provisions of Landlord's Fee Schedule.

#### **4. Termination**

4.1 Harbor Expansion or Improvements. Landlord, at its option, may terminate this Lease in the event Landlord, in its sole discretion, requires the Premises (or any portion thereof) to implement any harbor expansion or improvement program or project undertaken by Landlord. This Lease shall terminate on the date specified in a notice of termination served on Tenant by Landlord in the manner provide by Section 11.1 of this Lease. Said notice shall be served not less than thirty (30) days prior to the termination date. If Landlord terminates this Lease as to a portion only of the Premises and Tenant, in its commercially reasonable judgment, believes that an insufficient portion of the lease premises remains for use by Tenant for the purpose specified in this Lease, Tenant may terminate this Lease as to the remaining portion of the Premises by serving on Landlord, during the notice of termination period, a written notice of Tenant's election to terminate this Lease as to all the Premises.

If Landlord exercises its option to terminate granted by this Section 4.1, Landlord will in good faith endeavor to relocate Tenant on other premises of Landlord for the duration of the Term (including any Renewal Term, if exercised by Tenant) of this Lease.

4.2 Termination. This Lease shall terminate on the date said written notice of termination is served on Tenant in the manner provided by Section 11.1 of this Lease.

#### **5. Remedies Upon Default**

5.1 Events of Default. The following shall constitute an "Event of Default":

(a) Monetary Default. Except as otherwise provided herein, should Tenant default in the performance of any covenant or provision herein with reference to the payment of Rent or other payment of money or the furnishing of the public liability and property damage insurance required by Section 6, and such default continues for five (5) days after service on Tenant of a written notice from Landlord of such default, or

(b) Non-monetary Default. Should Tenant default in the performance of any other covenant or provision herein other than payment of money, other than those stated in subsections (c) and (d) below, and such default, if curable, is not cured within thirty (30) days after service upon Tenant of a written notice thereof from Landlord, or, if not curable within thirty (30) days, a cure is not commenced within fifteen (15) days and diligently prosecuted to completion.

(c) Insolvency, Receivership or Bankruptcy. It shall constitute an Event of Default under this Lease and Landlord, at its option and upon giving written notice of termination to Tenant, may immediately terminate this Lease if any of the following events occur:

- (i) The appointment of a receiver to take possession of all or substantially all of the assets of Tenant;
- (ii) A general assignment for the benefit of creditors by Tenant;
- (iii) The filing of a petition in bankruptcy by or against Tenant and the Lease is not assumed with approval of the Bankruptcy Court within the time prescribed by the Bankruptcy Code;
- (iv) Any other action taken or suffered by Tenant because of insolvency.

## 5.2 Landlord's Remedies.

(a) Upon an Event of Default, Landlord may terminate Tenant's right of possession of the Premises and may recover all of the following from Tenant:

- (i) The worth at the time of award of the unpaid Rent which had been earned at the time of termination;
- (ii) The worth at the time of the award of the amount by which the unpaid Rent, which would have been earned after termination until the time of award, exceeds the amount of such rental loss that Tenant proves could have reasonably been avoided;
- (iii) The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonable avoided;
- (iv) Any other amount necessary to compensate the Landlord for all the detriment proximately caused by Tenant's failure to perform its obligation hereunder or which in the ordinary course of things would be likely to result therefrom, including any costs incurred by Landlord to cure any default by Tenant in the performance of any obligation hereunder.

(b) None of the Landlord's rights herein specified upon an Event of Default by Tenant shall prejudice any other legal remedies available to Landlord other than those herein enumerated and the remedy described by Civil Code section 1951.4 is available to Landlord.

5.3 No Waiver. Efforts by Landlord to mitigate the damages caused by Tenant's breach of this Lease shall not waive Landlord's right to recover damages under this Section 5. For the purpose of Section 5.2 above, the following shall not constitute a termination of Tenant's right to possession:

- (a) Acts of maintenance of preservation or efforts to relet the property.
- (b) Appointment of a receiver upon initiative of Landlord to protect Landlord's interest under the Lease.

5.4 Re-entry. Upon an Event of Default of Tenant not cured within the time specified in Section 5.1 or if Tenant vacates or abandons the premises, Landlord shall have the right to re-enter the Premises, take corrective action as needed, and take possession thereof with or without terminating this Lease upon giving notice of re-entry required by law

5.5 Remedies Cumulative. All of Landlord's rights, privileges and elections or remedies are cumulative and not alternative, to the extent permitted by law and except as otherwise provided herein.

## **6. Indemnification and Insurance**

6.1 Indemnification. Tenant agrees to indemnify, defend (with counsel selected by Landlord at Tenant's expense), protect and hold harmless Landlord, its employees, agents, officers, legal counsel, assigns, public officials, any successor or successors to Landlord's interest in the Premises and any future owners of the Premises to whom this Lease is assigned (hereinafter collectively referred to as the "Indemnitees") from and against all claims, actual damages (including but not limited to special and consequential damages), punitive damages, injuries, costs, response costs, remedial costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses arising out of any damage to any person or property occurring in, on, from or about the Premises, except for any acts of gross negligence or willful misconduct by Indemnitees. Indemnitees shall not be liable to Tenant for any damage by or resulting from any act or negligence of any other tenant of property adjoining the Premises or by the owner or occupant of any adjoining or contiguous property. The preceding provisions shall not be construed to relieve any Indemnitee from any liability Indemnitees may have to Tenant, or third persons, by reason of the California Government Claims Act or resulting from any liability resulting from the gross negligence or willful misconduct of Indemnitees.

6.2 Insurance.



(a) Tenant shall furnish to Landlord a certificate of insurance, duplicate policy, or other evidence satisfactory to Landlord that Tenant has obtained the insurance required by Section 1.6. Each policy shall also provide for at least thirty (30) days' written notice by the insurer to Landlord prior to the cancellation thereof. If such insurance is to be cancelled, Tenant shall promptly notify Landlord of such proposed cancellation. All insurance obtained by Tenant pursuant to this Section shall be with a company licensed by the Insurance Commissioner of the State of California to do business within the State of California and shall have financial and policy holder Best ratings of no less than A-VIII. All insurance shall name Landlord, its Board of Harbor Commissioners, its officers, agents and employees as additional insured in such policies, and shall include a waiver of subrogation in favor of Landlord.

(b) Waiver of Subrogation. The parties release each other, and their respective authorized representatives, from any claims (for damage to any person or to the Premises and/or the building in which the Premises are located, and to the fixtures, personal property, Tenant's improvements, and alterations of either Landlord or Tenant in or on the Premises and/or the building in which the Premises are located) that are caused by or result from risks which are insured against under any insurance policies carried by the parties and in force at the time of any such damage and to the full extent of any proceeds paid under said policies.

(c) Public Liability Insurance. Tenant shall carry and maintain in full force during the Term of this Lease an insurance policy for public liability and property damage in an amount not less than the amount set forth in Section 1.6 insuring any liability arising, or alleged to arise, on account of the death or injury to any person, or loss or damage to property occurring on the Premises, or as a result of the activities of Tenant on or off the Premises, or resulting from the use of the premises by Tenant under this Lease, or resulting from the negligence or intentional acts of Tenant, its employees, agents, or contractors. The public liability and property damage insurance policies obtained by Tenant pursuant to this paragraph shall be primary policies and any public liability and property damage insurance carried by Landlord shall be excess and noncontributing.

(d) Fire and Casualty Insurance. Except for fixtures, trade fixtures, or personal property installed or placed on the Premises by Tenant, fire and extended coverage casualty insurance on the Premises shall be the sole responsibility of Landlord. However, no use except that which is expressly provided in this Lease shall be made of the Premises nor acts done which will increase the existing rate of fire or extended coverage insurance on the Premises or any part thereof, nor shall Tenant sell or permit to be kept, used or sold in and about said premises any article that is prohibited by the standard form of fire insurance policy. Tenant shall, at Tenant's sole cost and expense, comply with any and all requirements pertaining to the Premises of the insurance company providing the fire insurance with a standard extended coverage casualty endorsement covering the Premises.

Fire and extended coverage casualty insurance on fixtures, trade fixtures or personal property installed or placed on the Premises by Tenant shall be the sole responsibility of Tenant at Tenant's sole cost and expense.

(e) Pollution Legal Liability. At all times during the Term of this Lease, and for sixty (60) months following the termination of this Lease, the Tenant shall maintain Pollution Legal Liability insurance. Tenant's employees, agents, and contractors, who have a reasonable probability of coming into contact with hazardous materials, shall be adequately trained to comply with and shall comply with all laws and regulations relating to the care and protection of the environment for the duration of the term of this Lease.

(f) Worker's Compensation Insurance. At all times during the Term of this Lease, including, Tenant shall maintain or cause to be maintained with regard to its employees, Workers' Compensation Insurance as required by law.

## **7. Maintenance and Alterations**

7.1 Repair and Maintenance. Tenant shall keep the Premises in good condition and repair and free from dirt and accumulation of waste. Tenant at its own cost and expense shall repair any damage to the interior of the Premises, including, but not limited to windows, doors, glass, floor coverings, HVAC system, electrical equipment and plumbing and sprinkler systems, if any; and any damage to the exterior of the Premises (including parking area, roof and structural members) resulting from Tenant's use of the Premises under this Lease including any damage to the piles and common loading dock from the use of the hoists.

7.2 Installations, Alterations and Improvements. Tenant shall not make any alterations, additions, improvements or changes to the Premises without the prior written approval of Landlord. All fixtures installed on the Premises (other than all trade fixtures) shall immediately become a part of the realty and belong to Landlord and shall not be removed therefrom by Tenant without the prior written consent of Landlord to such removal.

Tenant may, at Tenant's own cost and expense, install or place such furniture, equipment and machinery or other personal property in or upon the Premises as may be necessary for Tenant's use of the Premises for the purpose for which they are leased. Tenant shall have the right to remove any furniture, equipment and machinery, or other personal property (including without limitation, all trade fixtures) installed or placed in or upon the Premises at Tenant's own expense at any time prior to the expiration or termination of this Lease. In the event of termination of this Lease on less than thirty (30) days' notice as provided in this Lease, Tenant shall have a reasonable time not to exceed thirty (30) days from the date of service of the notice of termination to make such removal. All personal property not removed by Tenant following the expiration or termination of this Lease within the time allowed for removal shall be deemed abandoned by Tenant and may be used or disposed of by Landlord in the manner prescribed by law without any liability to Tenant therefor. Such abandonment shall in no way reduce the obligation of Tenant to make restoration under Section 8.2 of this Lease.

In the event that during the Term of this Lease any alteration, addition or change of any nature to the Premises or to any portion thereof is required by law, regulation or rule (other than a law, regulation or rule of Landlord), the same shall be made by Tenant at Tenant's own cost and expense.

Before making any alteration, addition, improvement or change to the Premises with the prior written consent of Landlord, Tenant shall obtain all approvals and permits as may be required by law, including but not limited to, those of the California Coastal Commission. All such permits and approvals shall be obtained by Tenant at Tenant's sole cost and expense. Tenant also agrees that if any construction projects on the Premises are paid for by Landlord's funds, including offsets, then such construction projects will comply with the same legal requirements applicable to the Landlord (including, but not limited to, competitive bidding requirements, prevailing wage requirements, and public works bonding requirements.)

7.3 Adjustment to Rent. The parties acknowledge and agree that Tenant may be required to undertake installations, repairs and improvements (collectively "Improvements"). As such, Landlord agrees to offset up to fifty percent (50%) of the Rent for Improvements made by the Tenant and in accordance with the requirements described in Section 7.2. This section is limited to the initial Term of this Lease, and does not apply to the First or Second Renewal Terms.

## **8. Surrender, Restoration, Holdover**

8.1 Surrender. Upon expiration of this Lease or its prior termination, Tenant shall quietly and peacefully vacate the Premises and surrender possession thereof to Landlord.

8.2 Restoration. Prior to the expiration of this Lease (and only to the extent directed by Landlord) Tenant shall restore the Premises to the condition in which received, ordinary wear and tear excepted, or to such improved condition as may have resulted from improvements made thereon by Landlord or Tenant. In the event this Lease is terminated on less than thirty (30) days' notice, Tenant shall be allowed a reasonable period of time not to exceed thirty (30) days from the date of service of the notice of termination within which to complete restoration.

8.3 Holding Over. Tenant may only hold over after the expiration or earlier termination of the term hereof with the express prior written consent of Landlord. Acceptance of Rent is not Landlord's consent to holdover. Without Landlord's express consent Tenant shall become a tenant at sufferance only at a rental rate equal to one hundred fifty percent (150%) of the Rent in effect upon the date of such expiration. Acceptance by Landlord of rent after such expiration or earlier termination shall not constitute a holdover hereunder or result in a renewal. The foregoing provisions of this Section 8.3 are in addition to and do not affect Landlord's right of re-entry or any rights of Landlord hereunder or as otherwise provided by law. If Tenant fails to surrender the Premises upon the expiration of this Lease, Tenant shall indemnify, protect, defend and hold Landlord harmless from all loss or liability, including without limitation, any claim made by any succeeding tenant founded on or resulting from such failure to surrender. Such indemnity shall survive the expiration of this Lease.

## 9. Assignment and Subletting

9.1 Assignment and Subletting. Tenant shall not permit the Premises to be occupied or used by any person other than Tenant, its agents and employees without Landlord's prior written consent to such operation or use. This Lease may not be assigned nor the Premises sublet by Tenant without the prior written consent of Landlord, which shall not be unreasonably withheld. Tenant shall not be released from any obligations under this Lease due to any assignment or subletting.

## 10. Destruction of Premises, Condemnation

### 10.1 Destruction.

(a) Total Destruction. In the event the Premises or a substantial portion thereof are destroyed by any cause so as to render the premises unfit for purposes designated in Section 1.5, or if the Premises are so badly damaged that they cannot be repaired within ninety (90) days from the date of such damage, either party may terminate this Lease by giving to the other party a written notice of termination served in the manner provided by Section 11.1 of this Lease. After such notice of termination has been given, Rent shall be prorated to the date Tenant actually vacates the Premises.

(b) Insured Partial Destruction. If the Premises are partially destroyed by any cause covered by insurance, and the destroyed portion can be rebuilt or repaired within ninety (90) days from the date of destruction, Landlord shall repair the same with reasonable diligence to the extent permitted by the insurance proceeds. In such event, this Lease shall remain in full force and effect, but until the destroyed premises are repaired, Rent paid by Tenant to Landlord shall be reduced in the same proportion that Tenant's square footage leased is reduced by such destruction at the rates specified in Section 1.2 as adjusted from time to time for changes in the Consumer Price Index.

(c) Non-insured Partial Destruction. If the Premises are partially destroyed by any cause not insurable by fire insurance with extended coverage casualty endorsement but can still be used for the purpose designated in Section 1.5 of this Lease, Tenant may, at its option, terminate this Lease unless Landlord rebuilds or repairs the destroyed portion of the Premises within 90 days from the date of destruction. Such termination by Tenant shall be accomplished by serving on Landlord a written notice of termination in the manner prescribed by Section 11.1 of this Lease. This Lease shall terminate on the date such notice of termination is served on Landlord which date shall not be less than 90 days after the date of destruction. If Landlord accomplishes such repair or if Tenant fails to exercise its option to terminate, this Lease shall remain in full force and effect, but until the destroyed premises are repaired, Rent paid by Tenant to Landlord shall be reduced in the same proportion that Tenant's square footage is reduced by such destruction at the rates specified in Section 1.2 as adjusted from time to time for changes in the Consumer Price Index.

(d) Glass Breakage. Glass breakage shall not be deemed a partial destruction within the meaning of Subsections (b) and (c) above.

(e) Waiver of Civil Code Sections. Tenant waives the provisions of California Civil Code Section 1932(2) and California Civil Code Section 1933(4) with respect to any destruction of the Premises.

(f) Tenant's Fault. Notwithstanding anything herein to the contrary, if the Premises or any other portion of the property in which the Premises are located is damaged by casualty resulting from the fault, negligence, or breach of this Lease by Tenant, Rent shall not be diminished during the repair of such damage and Tenant shall be liable to Landlord for the cost and expense of the repair and restoration of the property caused thereby to the extent such cost and expense is not covered by insurance proceeds.

## 10.2 Condemnation.

(a) Condemnation Resulting in Termination. If the whole or any substantial part of the Premises should be taken or condemned for any public use under any regulation, or by right of eminent domain, or by private purchase in lieu thereof, and the taking would prevent or materially interfere with Tenant's Use of the Premises, either party shall have the right to terminate this Lease at its option.

(b) Condemnation Not Resulting in Termination. If a portion of the property of which the Premises are a part should be taken or condemned for any public use under any regulation, or by right of eminent domain, or by private purchase in lieu thereof, and the taking prevents or materially interferes with the Tenant's use of the Premises, and this Lease is not terminated as provided in Section 10.2 above, the Rent payable hereunder during the unexpired portion of this Lease shall be reduced, beginning on the date when the physical taking shall have occurred, to such amount as may be fair and reasonable under all of the circumstances, but only after giving Landlord credit for all sums received or to be received by Tenant by the condemning authority. Notwithstanding anything to the contrary contained in this Paragraph, if the temporary use or occupancy of any part of the Premises shall be taken or appropriated under power of eminent domain during the Term, this Lease shall be and remain unaffected by such taking or appropriation and Tenant shall continue to pay in full all Rent payable hereunder by Tenant during the Term; in the event of any such temporary appropriation or taking, Tenant shall be entitled to receive that portion of any award which represents compensation for the use of or occupancy of the Premises during the unexpired Term.

(c) Award. Landlord shall be entitled to (and Tenant shall assign to Landlord) any and all payment, income, rent, award or any interest therein whatsoever which may be paid or made in connection with such taking or conveyance and Tenant shall have no claim against Landlord or otherwise for any sums paid by virtue of such proceedings, whether or not attributable to the value

of any unexpired portion of this Lease, except as expressly provided in this Lease. Notwithstanding the foregoing, any compensation specifically and separately awarded Tenant for Tenant's personal property and moving costs, shall be and remain the property of Tenant.

(d) Waiver of Code of Civil Procedure § 1265.130. Each party waives the provisions of California Code of Civil Procedure Section 1265.130 allowing either party to petition the superior court to terminate this Lease as a result of a partial taking.

## **11. Miscellaneous**

11.1 Notice. All notices required herein shall be served by personal service or by registered or certified mail, or by nationally recognized overnight delivery services. Notices shall be addressed as follows:

(a) Notice to be served on Landlord shall be sent to Landlord addressed to Crescent City Harbor District, Attn: CEO/Harbor Master, 100 Citizens Dock Road, Crescent City, California 95531.

(b) Notice to be served on Tenant shall be sent to Tenant addressed to Tenant at the address shown in the introductory paragraph to this Lease.

(c) The date of service of any notice shall be deemed to be 24 hours after the date such notice is deposited in the United States mail or with such overnight delivery service.

11.2 Liens. Tenant shall promptly discharge or cause to be discharged any valid lien, right *in rem*, claim or demand of any kind (except one in favor of Landlord) arising or existing with respect to the Premises or for materials or equipment furnished therefor or for any part thereof. If the same is not promptly discharged by Tenant, Landlord may discharge the same and Tenant shall immediately reimburse Landlord the cost thereof.

11.3 Failure to Insist on Compliance. Landlord's or Tenant's failure to take advantage of any default or breach of covenants on the part of the other party or to insist upon the performance of any terms, covenants and conditions of this Lease shall not be a waiver or relinquishment of such party's right to the future performance of such terms, covenants or conditions. Tenant's or Landlord's obligations with respect to such future performance shall continue in full force and effect. No custom or practice which may develop between the parties in the course of administering this Lease shall be construed to waive or lessen the right of either party to insist upon the performance by either of any term, covenant or condition hereof.

11.4 Successors in Interest. The terms, covenants and conditions contained herein shall apply to and bind the successors and assignees of all the parties hereto.

11.5 Attorney's Fees. If either party employs an attorney or attorneys to enforce the provisions hereof, the prevailing party (whether by negotiation, settlement or suit) shall be paid his reasonable attorney's fees by the non-prevailing party.

11.6 Amendments, Changes or Additions to Statutes. Whenever reference is made in this Lease to any provision of law such reference applies to all amendments, changes and additions now or hereafter made to such provisions.

11.7 Time. Time is of the essence of this Lease.

11.8 Non-discrimination. In conducting Tenant's activities on the Premises, Tenant must not unlawfully discriminate against employees or applicants for employment or for services or segregate any person or group of any member of the public on account of sex, sexual orientation, marital status, age, race, color, creed, national origin, ancestry, medical condition or physical handicap in the leasing, subleasing, renting, transferring, use, occupancy, or enjoyment of the premises. Tenant must abide by the Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and regulations issued pursuant to the Act

The foregoing provision includes, but is not limited to, the following: employment upgrading, demotion, transfer, recruiting, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, including apprenticeship. Tenant shall post notices provided by the State of California or the United States of America or its local government representative setting forth the provisions of this non-discrimination clause in conspicuous places available for employees and applicants for employment.

Tenant shall insert the foregoing provision in all contracts entered into by Tenant in the performance of any work permitted under this Lease except contracts for standard commercial supplies or raw materials.

11.9 Tenant's Representations and Warranties. Tenant hereby represents and warrants as follows:

(a) Tenant has full right, power and authority to execute, deliver, and carry out the terms of this Lease and all documents and agreements necessary to give effect to the provisions contained in this Lease.

(b) Neither Landlord nor any agent or employee of Landlord has made any representation, promise, or warranty except as expressly set forth in this Lease.

11.10 Captions. The captions of this Lease are not a portion of the substantive terms hereof.

11.11 Signs. Tenant shall not erect, install, or make any signs on the Premises without the prior written consent of Landlord thereto. Landlord will not unreasonably withhold its consent to the erection or installation of signs stating the name of Tenant's business of reasonable dimensions and decor.

11.12 Estoppel Certificate. Tenant shall execute and deliver to Landlord within ten (10) days of request a commercially reasonable estoppel statement. Landlord and Tenant intend that any estoppel statement delivered pursuant to this Section may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the building or any interest therein and failure to execute and return such estoppel shall be a material breach of the Lease.

11.13 Integration. This lease is the final agreement between Landlord and Tenant with regard to the Premises and supersedes all prior agreements (oral/or written), negotiations or representations. This lease may only be modified in writing, approved by Landlord's Board of Harbor Commissioners or CEO/Harbor Master, as applicable, and signed by both Landlord and Tenant.

11.14 Authorized Representatives. Each of the persons whose signature is subscribed hereto warrants that he or she has the proper authority to execute this Lease on behalf of Landlord or Tenant as appropriate.

11.15 Force Majeure. If performance by a party of any portion of this Lease is made impossible by any prevention, delay, or stoppage caused by strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes for those items, government actions, civil commotions, tsunami, pandemic, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, performance by that party for a period equal to the period of that prevention, delay, or stoppage is excused. Either party shall have the right to terminate this Lease in the event of Force Majeure for a consecutive six (6)-month period.

11.16 Choice of Law. This Lease shall in all respects be governed by the laws of the State of California.

11.17 Subordination. Without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, this Lease shall be and is hereby declared to be subject and subordinate at all times to: (a) all ground leases or underlying leases which may now exist or hereafter be executed affecting the Premises and/or the land upon which the Premises are located; and (b) any mortgage or deed of trust which may now exist or be placed upon the land upon which the Premises is situated, or said ground leases or underlying leases, or Landlord's interest or estate in any of said items which is specified as security. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated any such ground leases or underlying leases or any such liens to this Lease. If any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall, notwithstanding any subordination, attorn to and become the Tenant of the successor in interest to Landlord provided that Tenant shall not be disturbed in its possession under this Lease by such successor in interest so long as Tenant is not in default under this Lease. Within ten (10) days after request by Landlord, Tenant shall



execute and deliver any additional documents evidencing Tenant's attornment or the subordination of this Lease with respect to any such ground leases or underlying leases or any such mortgage or deed of trust, in the form requested by Landlord or by any ground landlord, mortgagee, or beneficiary under a deed of trust, subject to such nondisturbance requirement.

11.18 Counterparts. This Lease may be executed in several counterparts and all documents so executed shall constitute one Lease, binding on all of the parties hereto, notwithstanding that all of the parties did not sign the original or the same counterparts.

[signatures on following page]

**SIGNATURE PAGE TO  
LEASE  
BY AND BETWEEN THE CRESCENT CITY HARBOR DISTRICT AND  
FISHERMEN'S CATCH, INC.**

TENANT:

LANDLORD:

Fishermen's Catch, Inc.

Crescent City Harbor District:

By: \_\_\_\_\_  
Peter Nguyen, CEO

By: \_\_\_\_\_  
Tim Petrick, Harbor Master

Approved as to form:

Approved as to form:

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

By: \_\_\_\_\_  
Ruben Duran, General Counsel

EXHIBIT "A"

LEASED PREMISES

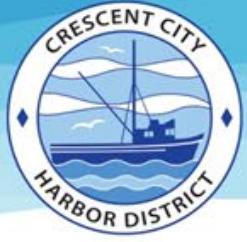
[Attached behind this cover page]



### **3. Unfinished Business**

#### **a. Solar Project Update**

***Public Comment?***



### **3. Unfinished Business**

#### **b. Dredge Permit Update**

***Public Comment?***



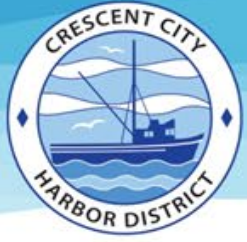
## **4. Communication and Reports**

### **a. Financial Reports: Account Balances**

***Public Comment?***

**BANK BALANCES AS OF 8.12.21****BANK BALANCES AS OF 9.2.21****DIFFERENCE**

CCHD OPERATING	\$277,849.88	CCHD OPERATING	\$78,797.33	-\$199,052.55
CCHD SAVINGS	\$30,021.29	CCHD SAVINGS	\$30,021.29	\$0.00
REDWOOD HARBOR	\$160,572.39	REDWOOD HARBOR	\$112,038.85	-\$48,533.54
BAYSIDE RV PARK	\$94,311.56	BAYSIDE RV PARK	\$41,372.77	-\$52,938.79
LAIF ACCOUNT	\$1,394,957.09	LAIF ACCOUNT	\$1,394,957.09	\$0.00
<b>TOTALS</b>	<b>\$1,957,712.21</b>	<b>TOTALS</b>	<b>\$1,657,187.33</b>	<b>-\$300,524.88</b>



## **4. Communications and Reports**

### **b. CEO/Harbormaster Report**

As part of the dredge permitting and equipment work I had a meeting with the Military Technical Director for Coastal and Hydraulics Engineering Coastal and Hydraulics Lab, ERDC. That's a mouthful. Thad Pratt is an engineering researcher for the US Army Corps of Engineers. He is going to work on helping us find beneficial uses for our dredge spoils and possibly even find a way to turn dredge spoils into a revenue stream as they are high in Nitrogen and Phosphates that make it excellent for planting.

I have identified and made an offer to a candidate for Assistant Harbormaster. He is working on figuring a plan for moving to the area and I hope to have him here to introduce for the next meeting. He has a strong background in municipal and state government having worked for Montana Fish, Wildlife, and Parks as a Fishing Site Access Coordinator. We're excited to get him here and throw him directly into the fire...

I've had meetings with multiple Dock Gate designers and I am working on compiling some designs and Estimates for one of our next few meetings. Keep your eyes on the meeting packets for info.

***Continued on next slide...***





## **4. Communications and Reports**

### **b. CEO/Harbormaster Report**

The trenching has been completed and the power boxes installed. We will be hopefully finalizing a lease for our second new tenant in the area to the south of Fashion Blacksmith at the next meeting. The tenants will be responsible for the build out of the power beyond the boxes.

Farmers Market has been given the all clear to continue to operate with Covid 19 precautions. Please wear your mask and stay safe in crowded situations and come support our local vendors on Saturdays.

Safecoast Seafoods had a theft from their area about 10 days ago. Aluminum forklift propane tanks, some crab cooking bags and some copper wire were stolen. There are flyers posted on the bulletin boards with a picture of the thieves and their vehicle, please let the harbor office or Mandy at Safecoast Seafoods know if you have any information.

*Continued on next slide...*



## **4. Communications and Reports**

### **b. CEO/Harbormaster Report**

We will be publicly posting our first set of codified ordinances this week (years after the project was first started). For board approval in early October.

On 9/2 we had a walk through inspection of multiple harbor buildings with the Insurance inspector for the underwriters as part of the valuations for property insurance. No significant changes expected.

We have had a number of incidents over the last few weeks in the RV Parks. Many of the incidents have involved law enforcement or could have involved law enforcement, some of these incidents were violent and many involved illicit drugs. The Crescent City Harbor District wants to create a safe and clean environment for our tenants and visitors; however, without your help we are unable to remove problem tenants or visitors. You must fill out incident reports, which are available in the harbor office, the security vehicle or the RV park offices. With proper documentation we can begin eviction proceedings to help make a clean and safe park.

***Public Comment?***



## **4. Communications and Reports**

### **c. Harbor Commissioner Reports**

Pursuant to the Brown Act, this item allows the Commissioners to briefly discuss activities engaged in since the previous public meeting.

**Commissioner Rick Shepherd**

**Commissioner Harry Adams**

**Commissioner Gerhard Weber**

**Commissioner Wes White, Secretary**

**Commissioner Brian Stone, President**

## 5. Adjourn to Closed Session

### CLOSED SESSION

- a. CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION  
Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: One potential case.
- b. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION  
(Government Code section 54956.9(d)(1))  
*Crescent City Harbor District v. Dutra et al.*  
Sacramento Superior Court Case No.: 34-2017-00215044-CU-BC-GDS

## 6. Adjourn Closed Session

## 7. Report out of Closed Session



## 8. ADJOURNMENT

*Adjournment of the Board of Harbor Commissioners will be until the next meeting scheduled for Tuesday, September 21, 2021, at 2 p.m. PDT. Until the Governor rescinds Executive Order N-29-20, all Harbor Commission meetings will be held via Zoom Web Conferencing. Access code for public participation can be found in the meeting notice posted on the Harbor District website or on the Harbor bulletin board at 101 Citizens Dock Road.*

*The Crescent City Harbor District complies with the Americans with Disabilities Act. Upon request, this agenda will be made available in appropriate alternative formats to person with disabilities, as required by Section 12132 of the Americans with Disabilities Act of 1990 (42 U.S.C. §12132). Any person with a disability who requires modification in order to participate in a meeting should direct such request to (707) 464-6174 at least 48 hours before the meeting, if possible.*

