

MUNICIPAL WHARF LEASE AGREEMENT
BETWEEN
THE CITY OF CAPITOLA
AND
JFS, INC.

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EXHIBITS

Exhibit A – Location of Premises and License Area on Capitola Municipal Wharf,
including location of Containers, Existing Storage Shed, Additional Storage
Shed and Fuel Shed

Exhibit B – License Area

Exhibit C – Mooring Area

MUNICIPAL WHARF LEASE AGREEMENT

THIS MUNICIPAL WHARF LEASE AGREEMENT ("**Agreement**") is made this ___ day of _____, 2024, between the City of Capitola ("**Landlord**") and JFS, Inc. ("**Tenant**"). Landlord and Tenant agree to all of the terms and conditions of this Agreement as follows:

ARTICLE 1 - BASIC LEASE PROVISIONS

The following are basic terms applicable to this Agreement. The Sections and Exhibits referenced below in parenthesis explain and define the basic terms and are to be read in conjunction with the basic terms herein:

- 1.01. **Tenant Trade Name.** "**Capitola Boat and Bait.**"
- 1.02. **Target Commencement Date.** August 14, 2024 (Section 4.01).
- 1.03. **Term.** Approximately sixteen (16) months and eighteen (18) days, terminating no later than December 31, 2025. (Section 4.01).
- 1.04. **Premises.** 1400 Wharf Road, Capitola Municipal Wharf, comprised of two 20' long shipping containers set up for office/retail use ("**Containers**"), two storage sheds (one of which is owned by Tenant and currently in place and the other of which will be installed by Landlord and referred to as the "**Additional Storage Shed**"), and a small shed to store fuel ("**Fuel Shed**") (Section 2.02).
- 1.05. **Premises Floor Area.** Approximately 500 square feet including the two 20"long shipping Containers, existing shed, Additional Storage Shed, and the approximately 25 square feet Fuel Shed (Section 2.02).
- 1.06. **License Area.** Approximately 2,500 square feet (Section 3.01).
- 1.07. **Annual Rent.** \$24,000, (adjusting annually, Section 5.01).
- 1.08. **Rent Commencement Date.** January 1, 2025.
- 1.09. **Use of Premises.** Use of the Premises shall be limited to the following: bait and tackle shop, including sale of bottled or canned food and drink and foodstuffs for boaters (excluding any food or drinks which Landlord determines are incompatible with a marine area or marine us and/or with other uses on the wharf); storage within the storage sheds; charter boat operations; boat rentals, sales and repairs; boat hoist operations; storage of fuel in the Fuel Shed; boat shuttle service to and from moored boats; and the mooring operations described in Section 3.02 (collectively, "**Lease Permitted Use**").
- 1.10. **Use of License Area.** Storage, launching, and retrieval of fishing boats and loading and unloading of boat rental customers; the mooring operations described in Section 3.02; boat shuttle service to and from moored boats; and storage of a small amount of associated fuel, oil, gear and equipment (Section 3.01 and 3.02) (collectively, "**License Permitted Use**"). The Lease Permitted Use and the License Permitted Use shall be collectively referred to herein as the "**Permitted Use.**"

ARTICLE 2 - LEASE OF PREMISES

2.01. City of Capitola as Landlord. Tenant acknowledges and understands that Landlord is a municipality consisting of numerous offices, departments, agencies and districts. Whenever a provision contained in this Agreement, or any extension, modification or amendment, requires the written consent of Landlord, such consent must be obtained from the then City Manager for the City of Capitola. Tenant may not rely on any statement or representation by any other employee, agent or representative of Landlord in obtaining such consent and any such statement or representation other than the express written consent of the City Manager shall be null and void and have no effect.

2.02. Premises: Landlord leases to Tenant and Tenant leases from Landlord the Premises designated as 1400 Municipal Wharf, Capitola, California, comprised of the Containers, the existing storage shed, the Additional Storage Shed and the Fuel Shed (collectively, "**Premises**") located on the wharf structure belonging to the City of Capitola and commonly known as the Capitola Municipal Wharf ("**Wharf**"). The Premises shall not include, and Tenant shall have no rights in, the Wharf decking, substructure and support elements underlying or surrounding the Premises, unless otherwise permitted herein. A diagram of the location of the Premises on the Wharf is attached to this Agreement as Exhibit A and incorporated herein by reference.

2.03. Reservations.

(a) Landlord reserves the right at any time to make alterations or additions to the Premises and the Wharf. Landlord also reserves the right to construct other buildings or improvements on the Wharf and to make alterations or additions thereto. Easements for light and air are not granted in this Agreement. Landlord further reserves the right to enter and access the roof of the Premises or to repair and maintain the roof and to use any space within walls or above the ceiling finish and beneath the floor surface for utility lines and conduits.

(b) Landlord reserves the right during the Term to temporarily close to the public and prohibit Tenant from accessing all or any part of the Premises and License Area for City of Capitola sponsored events and gatherings. In connection with such closures, Tenant shall have no right to any abatement of Rent (including Annual Rent, Monthly Rent and/or Additional Rent), except for the Abated Monthly Rent described in Section 5.02(b).

2.04. Condition of Premises: Tenant acknowledges the uniqueness of the Premises and accepts it in its condition existing on the date of this Agreement, subject to all applicable zoning, municipal, county or state laws, ordinances and regulations affecting the use of the Premises. Tenant acknowledges that it has satisfied itself, by its own independent investigation, that the Premises are suitable for its intended use and neither Landlord nor its agents or representatives have made any representation or warranty as to the present or future suitability of the Premises for the conduct of Tenant's business.

2.05. Landlord Work: Notwithstanding Section 2.04, Landlord agrees that prior to the Commencement Date (as defined in Section 4.01), Landlord shall purchase or lease, install and configure: (a) the Containers for use by Tenant as its office and retail store, including connecting electrical service to the Containers and installing a deck between the Containers with an accessible ramp to the deck, and (b) the Additional Storage Shed and the Fuel Shed ("**Landlord Work**").

ARTICLE 3 - LICENSE

3.01. License Area. Landlord is the owner of the public right of way surrounding the Premises. Landlord hereby grants to Tenant the non-exclusive right to use an approximately 2,500 square foot area of the public right of way ("**License Area**"). A diagram of the location of the License Area, including the location of the structures for Tenant's use, is attached to this Agreement as Exhibit B and incorporated herein by reference.

3.02. Business: Tenant shall engage only in the Permitted Use within the License Area.

3.03. Landlord Authority.

(a) Landlord shall at all times retain exclusive final authority over the public right of way on or about the Wharf, including the License Area. Landlord shall have the right to perform any and all acts of construction and maintenance in the public right of way, including the License Area, as fully and completely as if the license for the use of the License Area did not exist. Landlord may provide Tenant with advance notice of any construction or maintenance to be performed by Landlord or Landlord's agents in the License Area, but is under no obligation to do so. Landlord will not be liable to Tenant by reason of any injury to or interference with Tenant's business or property for any inconvenience or damages caused thereby.

(b) Landlord may formulate rules, conditions of, regulations and a permit process for the use of the public property on or about the Wharf, the License Area and other areas in the public right of way of Landlord. The areas surrounding the Premises, including the License Area, may be governed thereby and Tenant agrees to be bound by these rules and regulations and to obtain such permits or licenses as may be required.

(c) Landlord also reserves the right described in Section 2.03(b).

3.04. Maintenance. Tenant shall maintain the License Area in a clean and sanitary manner, sweeping at least daily and washing the surface area when necessary. Tenant must maintain a trash receptacle within the License Area, and must periodically dispose of trash in Tenant's assigned trash receptacle. Tenant may not dispose of trash in the general Wharf trash cans.

3.05. Indemnification and Insurance. As further described in Section 12.01, Tenant agrees to indemnify, defend (with counsel acceptable to Landlord) and hold Landlord harmless from any and all liabilities, claims, and costs (including attorney's fees) arising in any manner from any injury or damage incurred in the License Area during the term of this Agreement. All insurance requirements of the Agreement apply to the License Area, and Tenant must provide Landlord evidence of insurance coverage for the License Area, as described in Section 12.02.

3.06. Condition of License Area: Tenant acknowledges the uniqueness of the License Area and accepts it in its condition existing on the date of execution of this Agreement, subject to all applicable zoning, municipal, county or state laws, ordinances and regulations affecting the use of the License Area. Tenant acknowledges that it has satisfied itself, by its own independent investigation, that the License Area is suitable for its intended use and neither Landlord nor its agents or representatives have made any representation or warranty as to the present or future suitability of the License Area for the conduct of Tenant's business.

ARTICLE 4 - TERM

4.01. Commencement of Term: The term ("Term") of this Agreement shall commence on the later of: (a) the date that Landlord has completed the Landlord Work, and (b) the date specified in Section 1.02 ("**Commencement Date**") and shall continue until the date of termination specified in Section 1.03 ("**Expiration Date**"), unless terminated sooner in accordance with this Agreement.

4.02. Expiration; Holding Over. The Term of this Agreement shall expire at 5:00 p.m.. on the Expiration Date specified in Section 1.03. If Tenant remains in possession of the Premises and/or the License Area after the Expiration Date or termination of this Agreement, as described herein, then such holding over shall be construed as a tenancy from month-to-month, subject to all of the terms, conditions, provisions and obligations of this Agreement at the time of such expiration or termination, except the Annual Rent shall be one and one-half (1 ½) times the amount of such rent in effect prior to the expiration or termination. Unless Tenant obtains the express written consent of Landlord to holdover, Landlord shall have the right to pursue any legal or equitable remedy against Tenant with regard to Tenant's continued possession of the Premises and the License Area after the expiration or termination of the Term of this Agreement.

4.03. Early Access Period. Notwithstanding Section 4.01, Tenant shall be permitted early access to the Premises and License Area commencing on execution of the Lease by Landlord and Tenant and continuing through the Commencement Date ("**Early Access Period**") for the purpose moving in and setting up fixtures and furnishings therein and otherwise undertaking such tasks as are necessary to ready the Premises for Tenant's Permitted Use, provided that during the Early Access Period, Tenant shall not be permitted to undertake boat rentals until the Fuel Shed is installed by Landlord. Tenant shall be permitted to undertake other uses within the Permitted Use during the Early Access Period when the Wharf is open, which opening and closing of the Wharf shall be solely determined by City. Landlord anticipates closing the Wharf for extended periods of time during the Early Access Period. Effective as of the first day of the Early Access Period, Tenant shall comply with all provisions of the Lease, except that Tenant shall not be required to commence paying Base Rent until the Rent Commencement Date.

ARTICLE 5 - RENT

5.01. Annual Rent. Tenant shall pay Landlord "**Annual Rent**" of \$24,000 adjusted annually on each anniversary of the Commencement Date per the cost of living index described in Section 5.06.

5.02. Monthly Rent.

(a) "**Monthly Rent**" to be paid by Tenant to Landlord shall be \$2,000, as described in Section 5.01.

(b) Notwithstanding anything in this Article 5 to the contrary, so long as Tenant is not in default hereunder, Tenant shall be entitled to an abatement of Monthly Rent for the months of August, September, October, November and December 2024 (each, an "**Abatement Period**"). The total amount of Monthly Rent abated during each Abatement Period is referred to collectively as the "**Abated Monthly Rent**". If Tenant is in default hereunder at any time during the Term (i) all previously Abated Monthly Rent shall

immediately become due and payable and (ii) there shall be no further abatement of Monthly Rent pursuant to this Section 5.02(b). The payment by Tenant of the Abated Monthly Rent in the event of a default shall not limit or affect any of Landlord's rights pursuant to this Lease or at law or in equity.

5.03. Rent Commencement Date. Tenant shall commence paying Monthly Rent on January 1, 2025 ("**Rent Commencement Date**"), which Monthly Rent shall be due as described in Section 5.05.

5.04. Additional Rent. As used in this Agreement, the term "**Additional Rent**" shall mean all sums of money, other than Monthly Rent, that are due and payable by Tenant under this Agreement including, but not limited to, the Additional Charges referred to in Section 5.01. The term "**Rent**," as used herein, shall mean all Annual Rent, Monthly Rent, Additional Rent and all other amounts payable hereunder from Tenant to Landlord. Unless otherwise specified herein, all items of Rent other than Monthly Rent shall be due and payable by Tenant on or before the date that is thirty (30) days after billing by Landlord or as otherwise indicated by the provider of such service.

5.05. Rent Payment Schedule. Monthly Rent for the preceding month shall be due and payable in full by Tenant on the fifth (5th) day of the following month. Rent shall be remitted to Landlord at the address set forth below for notices or at such other location as Landlord may notify Tenant in writing. Monthly Rent paid after the tenth (10th) day of the month will be considered late and subject to a late charge and interest as described in Section 5.07.

5.06. Late Charge and Interest on Unpaid Rent.

(a) Monthly Rent is deemed late if not received by Landlord by the 10th day of each month. Rent not paid when due shall bear interest from the date due until paid at the maximum amount permitted by law, not to exceed 1.5% per month. Tenant acknowledges that late payments and/or failure to submit any statement required by this Agreement when due will cause Landlord to incur costs not contemplated by this Agreement, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, but are not limited to, processing and accounting charges. Therefore, if any Rent payment is not received by Landlord by the due date, or if any statements of sales and business transacted are not submitted by Tenant to Landlord by the due date, Tenant shall pay to Landlord an additional sum of ten percent (10%) of the overdue Rent 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.

(b) Landlord's acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount or otherwise affect Landlord's ability to exercise any and all available rights and remedies.

5.07. Damages For Failure To Operate. Landlord desires to keep the Wharf fully operational and to receive Rent from Tenant. Tenant acknowledges and understands that its failure to keep its business open and operational during the times set forth elsewhere in this Agreement without the prior written consent of Landlord will cause Landlord to incur costs not contemplated by this Agreement, the exact amount of such costs being extremely difficult and impracticable to fix. Therefore, (a) if Tenant fails to open and operate its business to the public by the Commencement Date, or (b) if Tenant fails to continuously operate its business in accordance with the terms of this Agreement or vacates the Premises and/or the License Area

prior to the Expiration Date, Landlord shall have the right, at its option, to collect as liquidated damages an amount equal to one-thirtieth (1/30) of the monthly installment of Annual Rent for each day on which Tenant fails to operate in order to compensate Landlord for the loss of Rent and customer traffic, in addition to all other charges and amounts payable under this Agreement. Landlord and Tenant agree that said charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of such action by Tenant.

ARTICLE 6 - TAXES AND ASSESSMENTS

6.01. Personal Property Taxes. Tenant shall pay as Additional Rent before delinquency all federal, state or local taxes, assessments, license fees, and other charges that are levied and assessed against Tenant's personal property installed or located in, on or about the Premises and License Area, and that become payable during the Term. On demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of these payments.

6.02. Possessory Interest Taxes. Tenant shall pay as Additional Rent before delinquency all possessory interest taxes, assessments, license fees, and other charges that are levied and assessed against the leasehold interest. "**Possessory Interest Tax**" means tax imposed pursuant to laws of the State of California on leaseholds of tax exempt property and does not include taxes on Tenant's inventory, personal, or any other tax or assessment that is presently or may, in the future be levied. On demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of these payments.

ARTICLE 7 - ASSIGNMENT AND SUBLETTING

7.01. Landlord's Consent Required. With Landlord's written consent, which consent shall not be unreasonably denied, Tenant may assign or encumber its interest in the Agreement or in the Premises, or sublet all or any part of the Premises, or allow any other person or entity to occupy or use all or any part of the Premises. In the event Tenant submits a request with Landlord pursuant to this section, the request shall be accompanied by a copy of all agreements between Tenant and the proposed assignee setting forth all of the terms and conditions of the sale of the business and assignment of the leasehold interest, a statement by the proposed assignee describing, in detail, assignee's proposed plan for operation of the business, setting forth in particular, any changes in the management operation, staffing, services, merchandise, and pricing proposed by the assignee, pro forma financial statements demonstrating that the assignee would be able to operate the business in an economically viable manner during the remainder of the Term, and any other information requested by Landlord concerning the proposed assignee's ability to financially assume the obligation of the Agreement and to conduct the business designated herein.

7.02. Deemed Assignment. Any transfer of this Agreement from Tenant by merger, consolidation, liquidation or sale of a controlling interest of corporate stock shall constitute an assignment. All transfers shall require Landlord approval. The phrase "**controlling interest**" means the right to vote stock possessing at least fifty-one percent (51%) of the combined voting power of all classes of Tenant's capital stock issued, outstanding, and entitled to vote for the election of directors.

7.03. Involuntary Assignment. It is specifically intended that neither this Agreement, nor any interest therein or in the Premises shall be assigned by operation of law, including, without limitation, testacy or intestacy, bankruptcy, reorganization or insolvency, and no trustee, sheriff, creditor, or purchaser at any judicial sale, or any officer of any court or receiver (unless

appointed at the request of Landlord) shall acquire any rights under this Agreement, or the possession or use of the Premises or License Area, without the written consent of Landlord.

7.04. Unauthorized Assignment or Sublease. Any attempted assignment or subletting without Landlord's required consent shall be void and shall, at the option of Landlord, terminate this Agreement. Any assignee, subtenant or other recipient of Tenant's interest in this Agreement is hereby notified that such transfer is of no force or effect without Landlord's prior written consent.

7.05. Effect of Consent. Consent by Landlord to an assignment or subletting shall not release Tenant from its primary liability under this Agreement, and Landlord's consent to one assignment, subletting or occupation by other parties shall not be deemed a consent to other subleases, assignments or use by other parties.

ARTICLE 8 - USE OF PREMISES AND CONDUCT OF BUSINESS

8.01. Use of Premises and License Area.

(a) Tenant shall use the Premises solely for the Permitted Use under the trade name. No use shall be made of the Premises that interferes with fishing, commerce, navigation or the maintenance and operation of the Wharf.

(b) Tenant shall at no time allow slot machines or any other gaming machines or arcade amusement machines (including without limitation pinball, video, and other games of amusement), to be used, operated or kept within the Premises or License Area without the prior written consent of Landlord. Tenant shall not commit or suffer to be committed any waste upon the Premises or License Area or any nuisance or other act or thing which may disturb the quiet enjoyment of any other tenants or their customers on the Wharf.

(c) Tenant shall not use, or permit the Premises and the License Area or any part thereof to be used, for any purpose other than the purpose for which the Premises and License Area are leased or licensed. No use shall be made or permitted to be made of the Premises and License Area, nor acts done, which will increase the existing rate of insurance upon the Premises and License Area, or cause a cancellation of any insurance policy covering the Premises and License Area or any part thereof. Nor shall Tenant sell or permit to be kept, used, stored or sold in or about the Premises and License Area any article which may be prohibited by any policy of fire insurance obtained by the Landlord. Tenant shall, at its sole cost, comply with any and all requirements regarding the use of the Premises and License Area by any company that issues a policy of fire, casualty or public liability insurance to the Landlord. If Tenant's use of the Premises and License Area results in a rate increase for the Premises and License Area or any other building on the Wharf, or the Wharf itself, Tenant shall pay as Additional Rent within ten (10) days written notice, a sum equal to the additional premium caused by such rate increase.

8.02. Service Requirements. In addition to all other terms and conditions in this Agreement, Tenant shall be obligated to meet the following minimum service requirements (collectively "**Service Requirements**"):

(a) In 2024, Tenant shall supply at least 11 boats with motors available for rental to the public, and in 2025, Tenant shall supply at least 15 boats with motors available

for the public. Said boats and motors shall be in good, operational condition, and shall be in compliance with all Coast Guard regulations.

(b) Tenant shall operate the hoist located on the Wharf during all times necessary to adequately serve the public. Tenant is solely responsible for operation of the hoist. Because of the nature of the hoist, it is not possible to have a railing on the edge of the Wharf in the vicinity of the hoist. Tenant must take all measures necessary to keep the public away from that portion of the Wharf that has no railing, including, but not limited to, the erection of chains or barriers. The City Manager or the Public Works Director may require additional safety measures in this regard.

(c) Tenant shall conduct commercial mooring operations within the 1,000 foot by 1,000 foot area designated in Exhibit C attached hereto and incorporated herein by reference. From May 1 through September 30 of each calendar year, subject to weather conditions prohibiting such activities, Tenant shall perform all of the following activities at its sole cost and expense:

(i) During 2025, install, provide annual inspection of, provide all maintenance and repairs of and replace, as necessary, no fewer than eight (8) and up fifty (50) moorings (or such greater number of moorings as authorized in writing by Landlord), including all related apparatus, and

(ii) Provide, service, maintain and operate a safe, well-maintained shore boat to adequately provide timely transportation between moored vessels and the wharf from 7:00 a.m. to 4:00 p.m., or according to such schedule as approved in writing by Landlord.

(iii) Tenant shall not rent any moorings for any period of time which extends beyond the Expiration Date.

Tenant may, but is not required to, operate boat sales, boat repairs and boat chartering businesses.

8.03. Conduct and Operation of Business. Tenant agrees that Tenant's business operated on the Premises shall be established and conducted throughout the term of this Agreement in a first-class manner and that Tenant will not use the Premises for, or carry on or permit upon the Premises any offensive, noisy, or dangerous trade, business, manufacture, or occupation, or cause or permit any nuisance. Tenant further agrees that neither the Premises nor the License Area shall be used or permitted to be used in whole or in part during the term of this Agreement for any purpose or use that is in violation of an applicable laws, ordinances, regulations, and/or rules of any public authority. Tenant will do all things necessary to maintain the Premises and the License Area in a clean, neat, and sanitary manner, and in compliance with all applicable laws, ordinances, regulations, and/or rules of any public authority, and will keep the Premises open for business and cause such business to be conducted thereon during each and every day and for such number of hours each day as is necessary to fully serve the public. Tenant shall provide, carry and offer for sale at all times a full line of services and full and complete stock of reasonable merchandise at competitive prices, and shall maintain adequate personnel for the efficient serving of customers. Tenant shall provide, carry and offer for sale only high quality merchandise, and shall not lower the quality of its services or merchandise or change the quality of its business without Landlord's consent.

8.04. Licenses, Permits and Approvals. Tenant shall obtain and maintain, at its sole cost and expense, all necessary licenses, permits and approvals to operate the businesses above on the Premises and License Area, including without limitation, all license, permits and approvals required for the Fuel Shed.

8.05. Hazardous or Toxic Materials.

(a) Tenant shall comply, at its expense, with all federal, state and local laws, statutes or regulations concerning environmental conditions, emissions, pollutants and controls, including, without limitation, all such laws, statutes and regulations applicable to the Fuel Shed. Tenant shall not cause, store, use or permit any Hazardous Material (defined below), including without limitation asbestos or polychlorinated biphenyls, to be brought upon, kept or used in or about the Premises and License Area by Tenant, its officers, employees, representatives, agents, customers, invitees or trespasser ("**Tenant Parties**"), without the prior written consent of Landlord, which Landlord shall not unreasonably withhold as long as Tenant demonstrates to Landlord's reasonable satisfaction that such Hazardous Material is necessary or useful to Tenant's business, does not violate any requirements of the Landlord's policies of fire, causality or public liability insurance and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Material so brought upon or used or kept in or about the Premises and License Area.

(b) If Tenant breaches any of its obligation stated herein, or if the presence of Hazardous Material on the Premises and License Area, including, without limitation in the Fuel Shed, caused or permitted by Tenant results in contamination of the Premises, License Area or any area adjacent thereto, then Tenant shall indemnify, defend (with counsel acceptable to Landlord) and hold Landlord harmless from any and all claims, judgment, damages, penalties, fines, costs, liabilities or losses, including, without limitation, diminution in value of the Premises and License Area, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises and License Area, damages arising from any adverse impact on marketing of space on the Wharf, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees which arise during or after the Agreement Term as a result of such contamination. Without limiting the foregoing, if the presence of any Hazardous Material on or about the Premises and License Area, including the Fuel Shed, caused or permitted by Tenant results in any contamination of the Premises, License Area or any area adjacent thereto, Tenant shall promptly take all actions at its sole expense as are necessary to return the Premises, License Area and any adjacent area to the condition existing prior to the introduction of any such Hazardous Material to the Premises, License Area and/or adjacent area; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises and License Area.

(c) As used herein, the term "**Hazardous Material**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Material" shall include without limitation, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii)

defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) asbestos; (vii) listed under Section 9 or defined as hazardous or extremely hazardous pursuant to Section 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (viii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1317); (ix) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (42 U.S.C. § 6903); or (x) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (42 U.S.C. § 9601), and any amendments or successor statutes thereto.

8.06. Compliance with Governmental Regulations. Tenant shall, at its sole cost and expense, comply with all of the requirements of all local, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises and License Area, including without limitation, the Fuel Shed. With regard to the use of the Premises and License Area, Tenant shall faithfully observe all local ordinances and state and federal statutes now in force or which may hereafter be in force.

8.07. Americans With Disabilities Act. Tenant acknowledges and expressly accepts full responsibility and shall incur all costs and expenses for compliance with the requirements of the Americans with Disabilities Act (ADA) and any other local, state or federal law or regulation regarding the accessibility of the Premises and License Area. Tenant agrees to release, indemnify, defend (with counsel acceptable to landlord) and hold Landlord harmless for any claim, loss, expense or liability arising from Tenant's failure to fully comply with all such laws or regulations.

ARTICLE 9 - IMPROVEMENTS

9.01. Consent. Tenant shall not make any improvements, alterations or additions to the Premises or the License Area without Landlord's prior written consent. All improvements, alterations and additions shall be in conformity with the laws, directives, rules or regulations of all applicable public and governmental agencies. Prior to the commencement of any work relating to any repairs, alterations, improvements or additions approved by Landlord, Tenant's contractor(s) shall notify the Public Works Director.

9.02. Notices. At least fifteen (15) days prior to commencing any work relating to any improvements, alterations or additions approved by Landlord, Tenant shall notify Landlord in writing of the expected commencement date. Landlord shall have the right thereafter to post and maintain on the Premises and the License Area such notices as Landlord deems necessary to protect Landlord and the Premises and the License Area from mechanics' liens, materialmen's liens or any other liens. Tenant shall pay, when due, all claims for labor and materials furnished to or for Tenant for use in improving the Premises and the License Area. Tenant shall not permit any mechanics' or materialmen's liens to be levied against the Premises and the License Area arising out of work performed, materials furnished or obligations to have been performed on the Premises and the License Area by or at the request of Tenant. Tenant hereby indemnifies, defends (with counsel acceptable to Landlord) and holds Landlord harmless against loss, damage, attorneys' fees and all other expenses on account of claims of lien of laborers or

materialmen or others for work performed or materials or supplies furnished to Tenant or persons claiming under it.

9.03. Trade Fixtures. Tenant may install trade fixtures, display items, machinery or other trade equipment in conformance with the all laws, ordinances, directives, rules or regulations of all applicable public and governmental agencies. With the exception of furniture, equipment and trade fixtures that may be removed by Tenant without causing damage to the Premises and the License Area, all improvements, alterations or additions shall become part of the Premises and License Area and belong to Landlord at termination of the Agreement. Tenant shall not remove any trade fixtures, display items, machinery or other trade equipment from the Premises and the License Area, without Landlord's written consent, if the removal of any such item would cause damage to the Premises and License Area and, in the absence of Landlord's written consent to removal, any such item shall be deemed a part of the Premises and the License Area and belong to the Landlord at termination of the Agreement.

9.04. Restoration. Except as otherwise provided herein, Tenant shall return the Premises and the License Area to the same condition as existed on the Commencement Date, reasonable wear and tear expected. Landlord, in Landlord's sole discretion and authority, and upon receipt of written request from Tenant, may consider allowing all or some Tenant Improvements approved by Landlord under this Agreement to remain at the Premises or License Area at the expiration or earlier termination of the Agreement. Landlord, at its election, may also require Tenant to remove, at Tenant's sole cost, any improvements, alterations or additions approved by Landlord in accordance with this Agreement. Tenant shall repair, at its sole cost, any damage resulting from the removal of any alterations, improvements, additions, equipment, machinery or trade fixtures,

9.05. Signs and Advertising Matter.

(a) Tenant will not place, install, maintain or construct or allow any third party to place, install, maintain or construct any sign, banner, flag, awning or canopy, covering, or advertising matter on the roof, or on any exterior door, wall or windows of the Premises and the License Area without Landlord's prior written consent, which consent shall not be unreasonably withheld. Tenant further agrees to maintain such sign, awning, canopy, decoration, lettering, advertising matter or window coverings in good condition and repair at all times. Tenant shall not display or sell any merchandise or allow carts, portable signs, devices, vending machines or other objects to be stored or remain on the Wharf or elsewhere outside of the defined exterior of the Premises and the License Area without the prior written consent of Landlord.

(b) No advertising medium shall be used or allowed to be used by Tenant which can be heard or experienced outside the Premises and the License Area, including without limitation, flashing lights, searchlights, loudspeakers, phonographs, radios or television. Except with Landlord's prior written consent, Tenant shall not distribute or cause to be distributed on the Wharf any handbills or other advertising materials.

ARTICLE 10 - MAINTENANCE AND REPAIRS

10.01. Landlord's Maintenance Obligations.

(a) Landlord shall maintain in good condition and repair the roofs, structural components (including Wharf substructure and pilings), and exterior surfaces of exterior walls

of the Building (exclusive of doors, door frame, door checks, windows, window frames and store fronts); provided, however, if any repairs or replacements are necessitated by the negligence, gross negligence or willful acts of Tenant or any Tenant Parties or by reason of Tenant's failure to observe or perform any provisions contained in this Agreement or caused by alterations, additions or improvements made by Tenant, any Tenant Parties, or any contractors, subcontractors, laborers or materialmen of Tenant, the cost of such repairs and replacements shall be the sole obligation of Tenant.

(b) Tenant shall be solely responsible for all repairs to and maintenance of the Premises and the License Area, which are not expressly allocated to Landlord under this Agreement. Tenant shall not undertake any additional improvements at or to the Premises or License Area without Landlord's express written consent to be given in Landlord's sole discretion.

(c) Unless Tenant notifies Landlord in writing of the need for repairs under this provision, Landlord shall not be liable for its failure to make such repairs. Landlord shall be entitled to a reasonable period of time to effect such repairs upon receipt of said written notice from Tenant. Tenant waives any right of offset against any Rent due hereunder and agrees not to assert as an affirmative defense in any judicial proceeding or arbitration brought by Landlord against Tenant on claims made under this Agreement the provisions of Sections 1941 and 1942 of the California Civil Code, or any superseding statute, and of any other law permitting Tenant to make repairs at Landlord's expense.

10.02. Landlord's Right of Entry. Landlord, its agents, contractors, employees and assigns may enter the Premises and License Area at all reasonable times to: (a) examine the Premises and License Area; (b) perform any obligation of, or exercise any right or remedy of, Landlord under this Agreement (c) make repairs, alterations, improvements or additions to the Premises, the Building, the License Area, or to other portions of the Wharf as Landlord deems necessary; (d) perform work necessary to comply with laws, ordinances, rules or regulations of any public authority or of any insurance underwriter; (e) show prospective tenants and licensees the Premises and License Area during the last six (6) months of the Term; and (f) perform work that Landlord deems necessary to prevent waste or deterioration in connection with the Premises and License Area should Tenant fail to commence to make, and diligently pursue to completion, in a reasonable time as defined by Landlord, Tenant's required repairs after written demand therefor by Landlord. Landlord's right of entry includes the right to erect scaffolding and all other necessary structures to make any repairs, alterations, or improvements to the Premises, the License Area, and/or the Wharf. Tenant's Rent for the Premises shall be subject to proration, as reasonably determined by Landlord, during such period that Tenant is unable to occupy the entire Premises due to Landlord's entry to make repairs, alterations or improvements to the Premises, the License Area, and/or the Wharf. Tenant hereby waives any claims to damage against Landlord arising from loss of business by reason of Landlord's entry as provided for in this Section. Landlord will give a minimum of twenty-four (24) hours advance notice of such entry when practicable.

10.03. Tenant's Maintenance Obligations.

(a) Except as provided elsewhere in this Agreement, Tenant, at its sole cost and expense, shall keep the Premises and License Area in good order, condition and repair and shall make all replacements necessary to keep the Premises and License Area in such condition, including, without limitation, maintenance and repair of HVAC systems, and maintenance and inspection of fire sprinkler systems.

(b) All replacement equipment shall be of a quality equal to or exceeding that of the original equipment or improvements, and shall keep with the decor established for the Wharf. Should Tenant fail to make these repairs and replacements or otherwise maintain the Premises and License Area for a period of three (3) days after delivery of a written demand by Landlord, or should Tenant commence, but fail to complete, any repairs or replacements within a reasonable time after written demand by Landlord, Landlord shall have the right to make such repairs or replacements without liability to Tenant for any loss or damage that may occur to Tenant's stock or business, and Tenant shall pay for all costs incurred by Landlord in making such repairs or replacements, together with interest thereon at the maximum rate permitted by law from the date of commencement of the work through the date of payment. Tenant shall, at its expense, repair promptly any damage to the Premises, Building, the License Area, or the Wharf caused by Tenant, any Tenant Parties, or any subtenants, assignees or concessionaires of Tenant, or caused by the installation or removal of Tenant's personal property.

(c) Tenant shall, at its own expense, comply with all requirements of Landlord's insurance underwriters and any other governmental authority having jurisdiction thereof, regarding the installation and periodic maintenance of fire suppression systems or apparatus.

(d) Tenant agrees, at the Expiration Date or upon earlier termination thereof for any reason, to quit and surrender said premises in good condition and repair, reasonable wear and tear and damages by acts of God, excepted. On or before the Expiration Date, Tenant shall remove from the Premises and License Area all personal property owned or controlled by Tenant and shall leave the Premises and License Area and all portions thereof in a broom clean condition.

ARTICLE 11 - UTILITY CHARGES AND COSTS

11.01. Utility Charges. Commencing September 1, 2024 and continuing through the Term of this Agreement:

(a) Tenant shall pay for all water, garbage, gas, heat, light, power, electrical, telephone service, WIFI and any other utilities charges (if any) for the Premises and License Area whether charged separately or otherwise (collectively, "**Utility Charges**").

(b) Tenant shall arrange for adequate garbage service for the Premises and License Area and shall pay for such costs directly to the provider.

(c) Regarding electricity and water costs, Tenant will pay fifty (50%) of the average of its prior electrical and water use for the most recent twelve (12) month period during which Tenant previously occupied the Premises and License Area, as reasonably determined by Landlord. Such payments are due within thirty (30) days of Landlord's invoice.

11.02. Garbage and Trash. Tenant shall promptly and regularly cause the following to occur:

(a) ensure that garbage and trash are regularly and consistently removed from the Premises and from the License Area; and

(b) clean and maintain all fish-cleaning tables and stations located on the Wharf.

11.03. Interruption. Landlord shall not be liable for any failure or interruption of any utility service being furnished to the Premises and License Area, and no such failure or interruption shall entitle Tenant to terminate this Agreement.

ARTICLE 12 - INDEMNIFICATION AND INSURANCE

12.01. Indemnification. Landlord shall not be liable to Tenant for any damage to Tenant or Tenant's property from any cause. Tenant, as a material part of the consideration for this Agreement, hereby expressly waives and releases all claims against Landlord, its elected and appointed officials, officers, employees, representatives, agents and volunteers (collectively, "**Landlord Parties**"), for any injury or damage to any person or property on or about the Premises and License Area arising for any reason. Tenant agrees to indemnify, release, defend (with counsel acceptable to Landlord) and hold harmless Landlord and the Landlord Parties from any loss, claim, cost, expense or liability for any injury or damage to person or property, occurring, in, on or about the Premises and License Area, arising for any reason, including without limitation the condition or use of the Premises and License Area or the improvements or personal property located therein and against any loss, claim, cost, expense or liability for injury to the person or property of Tenant or any Tenant Parties.

12.02. Insurance Requirements. Tenant shall procure and maintain for the duration of the Term coverage against claims for injuries to persons or damages to property which may arise from or in connection with Tenant's operation and use of the Premises and License Area. The cost of such insurance shall be borne by Tenant.

(a) Minimum Scope of Insurance. Coverage shall be at least as broad as the following:

- (i) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- (ii) Workers' Compensation insurance as required by the State of California.
- (iii) Property insurance against all risks of loss to any Tenant property, improvements or betterments.

(b) Minimum Limits of Insurance. Tenant shall maintain limits no less than the following:

- (i) General Liability. \$2,000,000 per occurrence for bodily injury, personal, (Including operations, injury and property damage, products and completed operations).
- (ii) Property Insurance. Minimum of \$2,000,000 or equal to the full replacement value (whichever is greater) of Tenant's personal property, trade fixtures, equipment, merchandise, improvements located on the Premises and License Area.
- (iii) Deductibles and Self-Insured Retentions. Landlord may choose to review deductibles and self-insured retentions on property insurance. At the option of Landlord, either: the insurer shall

reduce or eliminate such deductibles or self-insured retentions as respects Landlord and the Landlord Parties; or Tenant shall provide a financial guarantee satisfactory to Landlord guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(c) Other Insurance Provisions. The general liability policy is to contain, or be endorsed to contain, the following provisions:

- (i) Landlord and all Landlord Parties are to be covered as insured's with respect to liability arising out of ownership, maintenance or use of that part of the premises leased to Tenant.
- (ii) Tenant's insurance coverage shall be primary insurance as respect to Landlord and the Landlord Parties. Any insurance or self-insurance maintained by Landlord or any Landlord Parties shall be excess of Tenant's insurance and shall not contribute with it.
- (iii) Coverage shall not be canceled, except after thirty (30) days' prior written notice has been given to Landlord.

(d) Acceptability of Insurer. Insurance is to be placed with insurers with a current AM. Best's rating of no less than A:VII.

(e) Verification of Coverage. Tenant shall furnish Landlord with original certificates and amendatory endorsements effecting commercial general liability coverage required by this Agreement. Upon request by Landlord, Tenant shall provide certificates evidencing the other coverages required herein. The endorsements should be on forms provided by Landlord or on other than Landlord's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by Landlord before the Commencement Date. Landlord reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

(f) Increase in Coverage. Landlord may increase or decrease the amount of commercial general liability insurance required herein, based upon a general review by Landlord of the standard insurance requirements. Such changes in coverage shall be commercially reasonable at the determination of Landlord. Changes in insurance amounts shall occur not more frequently than every two (2) years. Landlord will notify Tenant of any changes under this provision of this Agreement.

12.03. Tenant's Failure To Maintain Insurance. Tenant agrees that if Tenant does not maintain any insurance policy required under this Agreement or fails to pay any premiums when due, Landlord may, at its election, either terminate this Agreement, require that the Premises and License Area be immediately closed for business pending reinstatement of insurance by Tenant, or obtain the necessary insurance and pay the premium, and the repayment thereof shall be deemed to be Additional Rent due by the Tenant and payable on the next date upon which a payment of Rent is due.

12.04. Fire Insurance/Other Insurance Premiums.

(a) Tenant, at its sole cost, shall procure and maintain an insurance policy throughout the term of this Agreement insurance as may be deemed necessary by Landlord or required by Landlord's lender or by any governmental agency. Tenant shall also carry throughout the term of this Agreement at Tenant's expense, fire and extended coverage casualty insurance covering Tenant's personal property, trade fixtures, equipment and merchandise located in or upon the Premises and License Area in an amount approved by Landlord. Landlord, in its sole discretion, may require Tenant, from time to time, to procure and maintain other policies of insurance covering the Premises and License Area, including without limitation, earthquake insurance, vandalism and malicious mischief endorsement and rental loss insurance.

(b) All policies of insurance required under this Agreement shall name Landlord as an additional insured. Landlord has the right at any time to demand a copy of a Certificate of Insurance from Tenant for the policies of insurance required herein and any other reasonable evidence proving compliance with these provisions. The failure to provide Landlord with such evidence within five (5) calendar days of such demand shall constitute a material breach of this Agreement.

(c) If Tenant is unable to obtain any policy of insurance required by Landlord under this Agreement, then Landlord, at its sole discretion, and subject to the availability of coverage, may purchase such policy of insurance and Tenant shall reimburse Landlord for Tenant's pro rata share of the cost of such insurance as Additional Rent. In determining Tenant's pro rata share of the premiums for any such insurance specified herein, the schedule issued by the organization making the insurance rate on the improvements, areas and/or risks covered, showing the various components of such rates, shall be conclusive evidence of the charges which make up the insurance rate and the pro rata share to be charged to the Premises and License Area. If such a schedule cannot be obtained, then Tenant's pro rata share shall be based upon the ratio that the gross floor area of the Premises and License Area bears to the total gross leasable floor area of the building or buildings for which said insurance policy relates. Landlord may estimate the cost of insurance and collect and impound Tenant's share of these costs upon written notice to Tenant.

12.05. Waiver of Subrogation. Tenant and Landlord each waive its right of recovery against the other, and each party's successors, assigns, directors, agents and representatives, in connection with any loss or damage caused to property belonging to the Tenant or Landlord which is covered by any insurance policy of either the Tenant or Landlord in force at the time of any such loss or damage. Tenant and Landlord hereby waive, on behalf of each party's insurance carriers, any right of subrogation it may have against the other party and each shall notify its carriers of the waiver contained herein.

12.06. Waiver of Loss and Damage. Landlord shall not be liable for any damage to inventory or other property of Tenant, or others, located in, on or about the Premises and License Area, nor for the loss of or damage to any property of Tenant or of others by theft or otherwise, and Tenant waives any claim against Landlord with respect to such property. Landlord shall not be liable to Tenant, Tenant's employees or representatives for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or leaks from any part of the Premises and License Area or from the pipes, appliance or plumbing works or from the roof, street or subsurface or from any other places or by any other cause of whatsoever nature. Landlord shall not be liable to Tenant, Tenant's employees or representatives for any such damage caused by other tenants or persons in the Premises and License Area, occupants of adjacent property of the Wharf, or the

public, or caused by operations in construction of any private, public or quasi-public work. All property of Tenant kept or stored on the Premises and License Area shall be so kept or stored at the sole risk of Tenant, and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carriers, unless such damage shall be caused by the willful act or gross neglect of Landlord.

12.07. Notice by Tenant. Tenant shall give immediate notice to Landlord in case of fire or accidents in or around the Premises and License Area or of any damage or defects in the Premises and License Area, or any fixtures or equipment therein.

ARTICLE 13 - DEFAULT

13.01. Events of Default. The occurrence of any of the following shall constitute a breach and material default of this Agreement by Tenant:

(a) The failure of Tenant to pay or cause to be paid any Rent, monies or other charges due Landlord as set forth in this Agreement if the failure continues for ten (10) consecutive calendar days after the due date payment of any such amounts;

(b) The failure of Tenant to maintain all insurance coverage as set forth in Section 12.

(c) The abandonment of the Premises or the License Area by Tenant, which shall mean failure to operate as set forth in this Agreement for seven (7) consecutive days, except by prior written notice by Tenant and with the written consent of Landlord;

(d) Except as otherwise provided in this Agreement, the failure of Tenant to do or cause to be done any act as set forth in this Agreement, including with limitation, the Service Requirements described in Section 8.02, if the failure continues for ten days (10) consecutive days after notice has been given to Tenant. However, Tenant shall not be in default of this Agreement if Tenant commences to cure the default within said ten (10) day period and diligently and in good faith continues to cure the default to the satisfaction of Landlord;

(e) Tenant causing, permitting or suffering, without the prior written consent of Landlord, any act when this Agreement requires Landlord's prior written consent or prohibits such act; or

(f) Any act of bankruptcy caused, suffered or permitted by Tenant. For the purposes of this Agreement, "act of bankruptcy" shall include any of the following:

(i) Any general assignment or general arrangement for the benefit of creditors;

(ii) The filing of any petition by or against Tenant to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy, unless such petition is filed against Tenant and the same is dismissed within sixty (60) days;

- (iii) The appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located in the Premises and License Area or of Tenant's interest in this Agreement.
- (iv) The attachment, execution, or other judicial seizure of substantially all of Tenant's assets located at the Premises and License Area or of Tenant's interest in this Agreement.

13.02. Notice of Default and Opportunity to Cure. Landlord shall give written notice to Tenant of any event of default on the part of Tenant. Said notice shall specify the nature of the act, omission, or deficiency giving rise to the event of default. In addition, if the event of default is curable, and does not give rise to an imminent danger to health or safety, the notice shall also specify the action required to cure the default, and a reasonable date, which shall not be less than thirty (30) calendar days from the mailing of the notice, by which Tenant must take or commence such action to cure. If the notice specifies only a commencement date for the cure, Tenant must commence such cure within the specified time and shall diligently pursue the cure to completion within a reasonable time thereafter.

13.03. Remedies. In the event of any breach by Tenant, in addition to other rights or remedies of Landlord at law or in equity, Landlord shall have the following remedies:

- (a) Landlord shall have the right to recover against Tenant:
 - (i) The worth at the time of award of the unpaid rent that had been earned at the time of termination;
 - (ii) The worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of the rental loss that Tenant proves could have been reasonably avoided;
 - (iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of the rental loss that Tenant proves could be reasonably avoided; and
 - (iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under the Agreement.

(b) The worth at the time of award of the amounts referred to in the previous subparagraphs shall be computed by allowing interest at ten percent (10%) per annum. The worth at the time of award of the amount referred to in subparagraph (iii) shall be computed by discounting this amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(c) Efforts Landlord may make to mitigate the damages caused by Tenant's breach of this Agreement shall not constitute a waiver of Landlord's right to recover damages against Tenant, nor shall anything contained in this Agreement affect Landlord's right to indemnification against Tenant for any liability arising prior to the termination of this Agreement for personal injuries or property damage, and Tenant agrees to indemnify and hold

Landlord harmless- from any injuries and damages, including all reasonable attorney fees and costs incurred by Landlord in defending any action brought against Landlord for any recovery, and in enforcing the terms and provisions of this indemnification against Tenant.

(d) However, the breach of this Agreement by Tenant, or an abandonment of the Premises and the License Area by Tenant, shall not constitute a termination of this Agreement, nor of Tenant's right of possession under this Agreement, unless and until Landlord elects to do so, and until that time Landlord shall have the right to recover rent and all other payments to be made by Tenant under this Agreement as they become due; provided, that until Landlord elects to terminate this Agreement and Tenant's right of possession under this Agreement, Tenant shall have the right to sublet the Premises and the License Area or to assign interests in this Agreement, or both, subject only to the written consent of Landlord, which consent shall not be unreasonably withheld.

(e) As security for the performance by Tenant of all duties and obligations under the Agreement, Tenant assigns to Landlord the right, power, and authority, during the continuance of this Agreement, to collect the rents, issues, and profits of the Premises and the License Area, reserving to Tenant the right, prior to any breach or default by Tenant under this Agreement, to collect and retain the rents, (solely in the case of a sublease previously approved by Landlord) issues, and profits, from the operation of Tenant's approved business use, as they become due and payable, and so long as payments to Landlord are also kept current. Upon any breach or default, Landlord shall have the right at any time afterward, without notice except as provided for previously, either in person, by agent, or by a receiver to be appointed by a court, enter and take possession of the Premises and the License Area and collect rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney fees, upon any secured indebtedness, and in an order as Landlord may determine.

(f) In the event that Landlord should take any act to maintain or preserve the Premises and the License Area on Tenant's behalf, or seek the appointment of a receiver to protect Landlord's interests under this Agreement, such acts shall not constitute a termination of Tenant's right of possession unless Tenant receives written notice from Landlord to regarding Landlord's election to terminate.

(g) Tenant acknowledges that Landlord has executed this Agreement in reliance on the financial information furnished by Tenant to Landlord as to Tenant's financial condition. If it is determined at any time subsequent to the date of this Agreement that any of the financial information furnished by Tenant and relied upon by Landlord in executing this Agreement is substantially untrue or inaccurate, Tenant shall be deemed to be in default under this Agreement, which default shall not be subject to cure, and which shall entitle Landlord to exercise all remedies reserved to Landlord under this Agreement or otherwise available to Landlord at law.

13.04. Covenants and Conditions. All covenants made by Tenant hereby are conditions of this Agreement; therefore, in the event of any default by Tenant in fulfilling any of the same, Landlord may at any time thereafter at its option declare a forfeiture of this Agreement. Landlord shall not be obligated to perform any covenant made by Landlord under this Agreement which accrues after the date of any default by Tenant hereunder.

ARTICLE 14 - DAMAGE OR DESTRUCTION

14.01. Landlord's Duty To Repair.

(a) If the Premises and the License Area are destroyed or materially damaged from a cause not insured against under a fire or casualty insurance required herein, or if the amount of available insurance proceeds, including deductible costs, is not sufficient to completely repair or restore any such damage or destruction, or if Landlord determines that the required repairs to the Premises and/or the License Area are infeasible or impractical, Landlord shall have the right to terminate this Agreement by giving written notice of termination to Tenant within thirty (30) days after the date of the damage or destruction. If the Agreement is not terminated, then Landlord shall diligently proceed to repair and restore the Premises and the License Area to the extent that insurance proceeds, including deductible costs, are sufficient to completely repair or restore any such damage or destruction. However, if at any time the Landlord determines that repairs to the Premises and License Area are infeasible, the Landlord may terminate this Agreement.

(b) If the Premises and the License Area are materially damaged or destroyed from a cause covered by a fire or casualty insurance required herein, and it can be repaired or restored within thirty (30) days after commencement of repair or restoration, then Landlord shall diligently proceed to repair and restore the Premises and License Area. If Landlord determines that the Premises and the License Area cannot be repaired or restored within this period, then this Agreement may be terminated at the option of either party.

(c) If the Premises and the License Area are damaged to the extent of fifty percent (50%) or more of the replacement cost, Landlord may elect to terminate this Agreement.

(d) If Landlord elects or is required to make repairs under this Section 14, Tenant shall be entitled to a reduction in Rent, equal to that portion of the Premises and the License Area in which the floor area rendered unusable bears to the gross floor area of the Premises and the License Area, from the date of damage to the earlier of the date Tenant reopens for business or thirty (30) days from completion of Landlord's repair work. If, in Landlord's sole determination, the damage to the Premises and the License Area is such that Tenant cannot conduct normal business operations and must close, Tenant shall be entitled to a reduction in Rent from the date of damage to the earlier of the date Tenant reopens for business or thirty (30) days from completion of Landlord's repair work. Tenant waives the provisions of Civil Code Sections 1932(2) and 1933(4) with respect to any destruction of the Premises and the License Area.

(e) Except as otherwise provided in this Agreement, damage to or destruction of the Premises and the License Area shall not terminate this Agreement or result in the abatement of any Rent or other charges payable under this Agreement. Tenant expressly waives any right it may have, in law or equity, to offset any cost incurred by Tenant for repairs or restoration to the Premises and the License Area against Tenant's obligations to pay rent in connection with Landlord's duties of repair and restoration under this Agreement.

(f) Landlord's duties of repair and restoration under the provisions of this Agreement shall extend only to those portions of the Premises and the License Area insured under a policy of fire or casualty insurance required herein, and Landlord shall not be responsible for undertaking any repairs or restoration in excess of the amount of the insurance

proceeds actually received by Landlord or any loss, damage, or destruction to Tenant's personal property, trade fixtures, merchandise, inventory or equipment.

14.02. Tenant's Duty to Repair or Replace. Except as otherwise provided herein, Landlord's obligation to restore shall not include the restoration or replacement of Tenant's personal property, trade fixtures, merchandise, inventory, or equipment. Tenant shall restore and replace said items in the event that Landlord is obligated or elects to repair any damage or destruction of the Premises and the License Area.

ARTICLE 15 - ESTOPPEL CERTIFICATES; ADDITIONAL DOCUMENTS

15.01. Tenant to Furnish Certificate. Tenant shall, within ten (10) business days of written notice from Landlord, execute and deliver to Landlord a written statement certifying that this Agreement is unmodified and in full force and effect or, if modified, stating the nature of such modification. Tenant's statement shall include other details requested by Landlord, such as the date to which Rent and other charges are paid and Tenant's knowledge concerning any uncured defaults in Landlord's obligations under this Agreement and the nature of such defaults if they are claimed. Any such statement may be relied upon conclusively by any prospective purchaser or encumbrance of the Premises and the License Area. Tenant's failure to deliver such statements within such time shall be conclusive upon the Tenant that this Agreement is in full force and effect, except as and to the extent any modification has been represented by Landlord, and that there are no uncured defaults in Landlord's performance and that not more than one (1) month's rent has been paid in advance.

15.02. Additional Documents. Tenant, upon request of any party in interest, shall execute promptly such instruments and certificates necessary to carry out the intent of the foregoing Sections as shall be requested by Landlord.

ARTICLE 16 - MUNICIPAL WHARF RULES AND REGULATIONS

16.01. Rules and Regulations. Tenant acknowledges and understands that the Premises and the License Area are located on property of Landlord primarily devoted to commerce and navigation, namely the Wharf, which is under exclusive control of Landlord. By executing this Agreement, Tenant agrees to abide by all laws, ordinances, directives, rules and regulations promulgated by the City Council of the City of Capitola now existing or hereafter made for the government, management, maintenance, operation or improvement of the Wharf, including such directives as to the usage of the Wharf as may be determined or promulgated by the elected and appointed officials, officers or representatives of Landlord in their official or departmental capacity. Tenant further agrees that such laws, ordinances, directives, rules, regulations or conditions as may be imposed by Landlord through its City Council, administrative officers, department heads or duly authorized representatives, shall be subject to immediate compliance by Tenant without question or qualification as to the validity or reasonableness thereof.

ARTICLE 17 - MISCELLANEOUS

17.01. Attorneys' Fees. In the event of any legal action, arbitration or proceeding between the parties, the prevailing party shall be entitled to reasonable attorneys' fees and expenses as awarded by the court, arbitrator or other person deciding the legal action, arbitration or proceeding as a part of the judgment or award resulting therefrom.

17.02. Sale or Lease of the Premises and the License Area by Landlord.

Notwithstanding any provisions of this Agreement, Landlord may assign in whole or in part Landlord's interest in this Agreement and may sell all or part of Landlord's leasehold interest in the real estate of which the Premises and the License Area are a part. In the event of any sale or exchange of the Premises and the License Area by Landlord and assignment by Landlord of this Agreement, Landlord shall be entirely freed and relieved of all liability under all covenants and obligations contained in or derived from this Agreement or arising out of any act, occurrence or omission relating to the Premises and the License Area which occurs after the consummation of such sale, exchange or assignment.

17.03. Liability to Successors. The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto who shall be jointly and severally liable for the covenants contained herein.

17.04. Interpretation. Whenever the singular number is used in this Agreement, the same shall include the plural. Reference to any gender shall include the masculine, feminine and neuter genders, and the word "person" shall include corporation, firm or association, when required by the content. The headings or titles to the paragraphs of this Agreement are for convenience only and do not in any way define, limit or construe the contents of such paragraphs. This instrument contains all of the agreements and conditions made between the parties with respect to the hiring of the Premises and the License Area and may not be modified orally or in any manner except by a written instrument signed by all the parties to this Agreement. The laws of the State of California shall govern the validity, performance and enforcement of this Agreement. If any provision of this Agreement is determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision of this Agreement and such other provisions shall remain in full force and effect. If any provision of this Agreement is capable of two constructions, one which would render the provision void and one which would render the provision valid, the provision shall be interpreted in the manner which would render it valid. Except as may otherwise be expressly stated, each payment required to be made by the Tenant shall be in addition to and not in substitution for other payments to be made by Tenant.

17.05. Time. Time is of the essence in this Agreement.

17.06. Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, regulations or controls, enemy or hostile government action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to that resulting from such prevention, delay or stoppage. However, Tenant's obligations to make payment for rental and other charges pursuant to the terms of this Agreement shall be excused or reduced only as elsewhere specifically provided in this Agreement.

17.07. Notices. Any notice required to be given by one party to the other or required to exercise an option under this Agreement may be given: by personal delivery in writing to the address set forth below; by registered or certified mail to the address set forth below with postage prepaid and return receipt requested; by private express parcel delivery service such as FedEx or United Parcel Service to the address set forth below; by successful facsimile transmission to the facsimile transmission telephone number set forth below; or by successful email transmission to the email address set forth below. Notice shall be deemed communicated

on the date of personal delivery in the case of personal delivery; as of five days from the date of postmark in the case of certified or registered mail; as of three days from the date of pick-up by the express parcel service in the case of delivery by an express parcel service; as of the date of facsimile transmission in the case of delivery by successful facsimile transmission; as of the date of email in the case of delivery by successful email transmission. A facsimile transmission shall be deemed successful if the facsimile confirmation sheet documents a successful transmission. An email transmission shall be deemed successful if a return unsuccessful email transmission notice is not received by the transmitting party. Each party may change its notification contact information set forth below by providing written notice of any such change in accordance with this paragraph.

Landlord

City of Capitola
Attn.: City Manager
420 Capitola Ave.
Capitola, CA 95010
Attention: City Manager

Tenant

JFS, Inc.
15 Municipal Wharf
Santa Cruz, CA 95060
Attention: David Morris, Tina Morris and Del Morris

Either party may, by proper notice, at any time designate a different address to which notices shall be sent.

17.08. Relationship of Parties. The relationship of the parties hereto is that of Landlord and Tenant and it is expressly understood and agreed that Landlord is not in any way or for any purpose a partner of Tenant, or a joint venturer with Tenant in the conduct of Tenant's business or otherwise.

17.09. Civil Code Section 718. This Lease is made subject to the provisions of Section 718 of the Civil Code of the State of California, and it is agreed that if at any time the leasing of the Premises shall interfere with the use of the Wharf for navigation or fishing, this Lease shall terminate.

17.10. Waiver. The waiver by Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Agreement, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No covenant, term or condition of this Agreement shall be deemed to have been waived by Landlord, unless such waiver is in writing by Landlord.

17.11. Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the rent herein stipulated shall be deemed to be other than on account of

the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Agreement provided.

17.12. Authority. If Tenant is a corporation or partnership, each individual executing this Agreement on behalf of such entity represents or warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of such entity and that such entity shall be bound by all the terms and provisions hereof.

17.13. Broker's Commission. Each party represents and warrants that there are no claims for brokerage commissions or finder's fees arising from that party's activities in connection with this Agreement, and each party agrees to indemnify, defend and hold the other party harmless from all liability arising from any such claim.

17.14. Discrimination. Tenant, in its use of the Premises and License Area, shall not discriminate against any person or class of persons on the basis of race, color, creed, national origin, sex, age, or physical handicap.

17.15. Signs. Tenant shall not place any sign upon the Premises or License Area without Landlord's prior written consent. All signage shall comply with Landlord's signage design criteria, as exist from time to time. In addition, any style, size, materials and attachment method of any such signage shall be subject to Landlord's prior written consent. The installation of any sign on the Premises or License Area by or for Tenant shall be subject to the provisions of this Agreement. Tenant shall maintain any such signs installed on the Premises and License Area. Unless otherwise expressly agreed herein, Landlord reserves the right to install, and retain all revenues from the installation of, such advertising signs on the Premises and License Area, including the roof, as do not unreasonably interfere with the conduct of Tenant's business.

17.16. Recordation. Neither this Agreement, nor any memorandum, affidavit nor other writing with respect thereto, shall be recorded by Tenant or by anyone acting through, under or on behalf of Tenant without the prior written consent of Landlord, which may be granted or withheld in Landlord's sole and absolute discretion. Any recording thereof in violation of this provision shall make this Agreement null and void at Landlord's election.

17.17. OFAC Certification. Tenant represents, warrants and covenants that: (a) Tenant and its principals are not acting, and will not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated and Blocked Person" or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and (b) Tenant acknowledges that the breach of this representation, warranty and covenant by Tenant shall be an immediate default under the Lease.

17.18. Certified Access Specialist Disclosure. Inspection by Certified Access Specialist. Landlord discloses that the Premises and Licensee Area 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 or License Area inspected by a CASp: (i) Tenant must notify Landlord on or before the date when Tenant executes this Agreement 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; (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 hereby waives its right a CASp inspection of the Premises Initials: _____

SIGNATURE PAGE FOLLOWS

The parties have executed this Agreement as of the date first written above.

LANDLORD:

City of Capitola,
a California municipal corporation

By: _____
Jamie Goldstein
City Manager

TENANT:

JFS, Inc.,
a California Corporation

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM

By: _____
Samantha Zutler
City Attorney

Date: _____

Exhibit A

**Location of Premises and License Area on Wharf, including locations of Containers,
Existing Storage Shed, Additional Storage Shed and Fuel Shed**

Exhibit B
Depiction of License Area

Exhibit C
Depiction of Mooring Area