

**LEASE**  
**BETWEEN**

**TOWN OF PROVINCETOWN, AS LANDLORD**

**AND**

**THE PROVINCETOWN PUBLIC PIER CORPORATION, AS TENANT**

**Dated**

**March 29, 2005**

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## LEASE

This Lease (hereinafter referred to as the "Lease") is made as of this 29th day of March     , 2005 by and between THE TOWN OF PROVINCETOWN, a municipal corporation with its principal place of business at 260 Commercial Street, Provincetown, MA 02657 (herein after referred to as "Landlord"), acting by and through the Board of Selectmen and The Provincetown Public Pier Corporation, a body politic and corporate organized and existing under Chapter 13 of the Acts of 2000, as amended by Chapter 260 of the Acts of 2002, (collectively "Special Act"), with its principal place of business at 260 Commercial Street, Provincetown, MA 02657 (hereinafter referred to as the "Tenant").

### W I T N E S S E T H:

WHEREAS, Landlord is the owner of certain real property known as MacMillan Pier, (the "Premises" or "MacMillan Pier") located in the Town of Provincetown, County of Barnstable, and Commonwealth of Massachusetts which property is shown on Exhibit "A" attached hereto;

WHEREAS, Landlord desires that the Premises be used and developed for the purposes set forth in the Special Act and the Town of Provincetown Harbor Plan;

WHEREAS, Tenant has been created as a body politic and corporate, in part, for the purpose of managing the Premises.

WHEREAS, the award of this lease is authorized by and subject to the provisions of the Special Act; and

NOW THEREFORE, Landlord and Tenant hereby agree as follows:

### SECTION 1. GRANT OF LEASE

(a) Premises. The Landlord does hereby lease to Tenant, and Tenant hereby leases from Landlord, subject to all stipulations, restrictions, specifications, conditions, and covenants herein contained, the Premises (as shown on Exhibit "A") located in the Town of Provincetown, County of Barnstable, and Commonwealth of Massachusetts, together with all easements and other rights appurtenant thereto.

(b) Approved Use of Premises. Tenant shall use the Premises solely for the purposes of operating a public pier, in accordance with the Special Act, so as to enable Tenant to, among other things directly, or indirectly by aiding private enterprises, the Town of Provincetown, and other public agencies, to help to stimulate economic development and to encourage and support the commercial fishing industry, as well as managing and regulating all activities occurring on MacMillan Pier. Consistent with the provisions of c. 260 of the Acts of 2002, the Tenant shall manage MacMillan Pier in such a manner as to encourage and support the commercial fishing industry, and shall, at a minimum, give first priority to Provincetown-based commercial fishing vessels in the assignment of dockage space on the

Town-owned finger piers and floating dock slips on the northeasterly side of MacMillan Pier as well as to the provision of adequate loading and off-loading facilities for commercial fishing vessels.

(c) Tenant shall have the right to establish market fees which will be charged to third parties for the use of MacMillan Pier, after a public hearing as required in the Special Act. Tenant shall have the right to (i) approve the transfer of ownership interests in float space licenses or permits and enter into berthing agreements or subleases relating to the Premises, and (ii) assign and designate slippage, dockage or berthing rights at the Property or relative to the area in the vicinity of and including the Premises, provided such rights shall not extend to any boats that have been previously assigned such slippage, dockage or berthing rights and continue to have such rights, except that if such rights of any boat which was previously assigned shall expire or terminate, and come up for renewal during the Term, then Tenant shall have the right to assign and designate to any such boat the exact location for utilizing such rights relative to such renewal (and in such regard Landlord represents that attached hereto as Exhibit "B" is a comprehensive list of (a) all tenants, permittees and licensees who currently have such slippage, dockage or berthing rights at the Property or relative to the area in the vicinity of and including the Property, and (b) all leases, licenses and permits relative to boats currently utilizing such rights and the respective dates of expiration of such rights, as well as the status of payment of all rentals and fees relative to such leases, licenses, and permits), and (iii) establish all fees, rentals, and other payments to be charged to any person or entity in connection with docking or berthing at, utilization of slippage, dockage and berthage rights or any other utilization of the Premises to the extent such fees, rentals and other payments would otherwise have been permitted to be established by Landlord, or Tenant pursuant to the Special Act, for any person or entity who shall be renewing or first obtaining such rights during the Term. Tenant shall have the right to establish market rates for all fees, rentals, and other payments to be charged to any person or entity in connections with docking or berthing at, utilization of slippage, dockage berthing rights or any other utilization of the Premises to the extent such fees, rentals and other payments otherwise would have been permitted to be established by Landlord for any person or entity who shall be renewing or first obtaining such rights during the Term, provided that upon setting such rates and having persons or entities commit to paying such fees, rentals, and other payments, such fees, rentals, and other payments shall continue in effect for the stated period that such fees, rentals, and other payments are to remain in effect (which may not be for a period greater than one year except for subleases which Landlord and/or the Board of Selectmen shall approve pursuant to section 25(a) below) even if such period shall extend beyond the Term, and Tenant shall have the right to collect and retain all such fees, rentals, and other payments (excluding Ferry Service Embarkation Fees, as such fees are particularly referenced in Section 11 of Chapter 55 of the Acts of 2003).

(d) Tenant shall not incur any long term loan obligation (i.e., in excess of one year) with respect to MacMillan

Pier, in excess of fifty thousand dollars (\$50,000), without the prior approval, by a two-thirds vote, of the Provincetown Town Meeting. In addition, Tenant may not, as set forth in the Special Act, expend money for a single purpose in any fiscal year in excess of \$50,000, except as contained in Tenant's annual operating budget, without the approval of Landlord.

## **SECTION 2. TERM OF LEASE**

The term of this Lease shall commence on the date written above, and shall extend for a term ("Term") of twenty (20) years. The lease, at the option of the Tenant, may be recorded at the Barnstable County Registry of Deeds.

## **SECTION 3. RENT AND RENT COMMENCEMENT DATE**

(a) In consideration of the use of the Premises, Tenant covenants and agrees to pay to Landlord, without set off or deduction except as permitted herein, annual rent ("Rent") as provided in Exhibit "C". At the beginning of each fiscal year, the Board of Selectmen may in its discretion notify the Pier Corporation of a rent reduction for the purpose of subsidizing the fees charged in respect of Provincetown-based commercial fishing vessels. The Corporation shall use the rent returned to reduce the fees paid by those Provincetown-based vessels. The Rent for the first five (5) years of the Term is shown in the Rent Determination schedule which is a part of Exhibit "C". The Rent shall be payable once a year on or before June 30th of each year during the Term. Prior to the end of the following periods: (i) the end of the fifth (5<sup>th</sup>) year of the Term, (ii) the end of the tenth (10<sup>th</sup>) year of the Term, and (iii) the end of the fifteenth (15<sup>th</sup>) year of the Term, Tenant shall submit to Landlord its calculations of projected cash flow from the Premises for the next five year period which shall need to have Rent fixed by the parties, which period shall be the period commencing on the beginning of the sixth (6<sup>th</sup>) year of the Term, the eleventh (11<sup>th</sup>) year of the Term, or the sixteenth (16<sup>th</sup>) year of the Term, as the case may be; and at the same time that Tenant so submits such projected cash flow, Tenant shall also at that time propose to Landlord the amount of Annual Rent for such five (5) year period (based upon the outcome of such projections), provided that in no event shall such proposed Rent for such five (5) year period be lower than the Annual Rent for the initial five (5) years of the Term. Landlord shall have thirty (30) days to approve or disapprove such proposal by Tenant and if Landlord shall fail to approve such proposal for Annual Rent for such five (5) year period in writing within such thirty (30) day period, then Landlord and Tenant shall have an additional thirty (30) days to reach mutual agreement about the amount of such Rent during such five (5) year period. If (i) Landlord and Tenant fail to reach agreement about such Rent during such additional thirty (30) day period, and so long as (ii) Tenant's proposed Rent for such five (5) year period is at least equal to the Annual Rent required to be paid during the initial five years of the Term, then such matter may be submitted by either party to arbitration pursuant to the procedure set forth in Exhibit "D" attached hereto. If Tenant's proposed Rent for such five (5) year period does not at least equal the Rent payable pursuant to the initial five (5) years of the Lease, then

following the expiration of the second thirty (30) day period, and if the parties fail to reach agreement of the Annual Rent for the next five (5) year period, then either party may elect to terminate the Lease; and upon the sending of such notice the Lease shall terminate effective at the next anniversary of the commencement of the Term.

(b) Lessee's Annual Statement. Not later than ninety (90) days after the end of each calendar year, Tenant shall deliver to Landlord a Financial Statement which shall include a detailed accounting of all funds received and expended.

(c) Tenant's Holding Over. In the event that Tenant shall hold the Premises after the expiration of the Term of this Lease without the express written consent of Landlord, such holding shall be deemed to have created a tenancy from month to month terminable on thirty (30) days written notice by either party to the other, upon a monthly rental basis, and otherwise subject to all terms and provisions of this Lease. Such monthly rental shall be payable each month.

(d) Payments to Landlord. Tenant shall make all payments of Rent to Landlord by check, payable to Landlord and addressed to Landlord at the address set forth on the first page hereof, unless Tenant is notified in writing of another address.

(e) Interest on Late Payment. In the event Tenant fails to make any payment of Rent, as and when due, Tenant shall pay Landlord, in addition to such Rent, interest on such past due amount at the prime lending rate then being charged by Bank of America to its most favored customers (up to a maximum rate of 9.5%) until all such past due amounts are paid in full by Tenant to Landlord.

(f) Additional Rent. In the event that revenues generated by the Tenant in any fiscal year exceed the operating expenses of the Premises including rental payments due the Landlord, Tenant shall apply such excess revenues as follows: (a) first to pay all amounts of Unpaid Rent accrued pursuant to Section 3 (g), (b) second to fund the required asset replacement Reserve Account to the minimum level as prescribed in the Special Act; and (c) third the remaining sums to be deposited and maintained in a reserve as a discretionary fund to be expended by Tenant only for relief that Tenant determines should be provided to the commercial fishing industry (as set forth in the Special Act) or for Permitted Improvements to be made pursuant to Section 6 of this Lease, or for such other purposes as Landlord and Tenant shall agree upon.

(g) Unpaid Rent. In the event Tenant should ever fail to pay Rent on or before the due date thereof as set forth in this Section 3, then to the extent such failure shall result from the fact that Tenant shall have been unable to generate adequate net cash flow to permit such payment during any applicable annual period ending on June 30<sup>th</sup>: (i) subject to the remaining provisions of this clause (g), if such failure shall be less than 50% of the required Annual Rent payable during such annual period, the payment of such a defaulted rent shall be deferred (with interest accruing thereon as provided for

in Section 3(e)), and shall be payable only to the extent that the end of any subsequent annual period ending on June 30th of such annual period, Tenant shall have generated net cash flow during such subsequent annual period in excess of the amounts necessary to pay its capital and operating obligations and payments arising during such annual period (including the Rent payable under this Lease for such annual period, together with interest which shall have accrued pursuant to Section 3(e)); (ii) notwithstanding the forgoing provisions of this clause (g) and subject to the remaining provisions of this clause (g), if such failure shall be less than 40% of the required Annual Rent payable during any two consecutive annual periods, the payment of such a defaulted rent for the latest annual period shall be deferred (with interest accruing thereon as provided for in Section 3(g)), and shall be payable only to the extent that the end of any subsequent annual period ending on June 30th of such annual period, Tenant shall have generated net cash flow during such subsequent annual period in excess of the amounts necessary to pay its capital and operating obligations and payments arising during such annual period (including the Rent payable under this Lease for such annual period, together with interest which shall have accrued pursuant to Section 3(g)); (iii) notwithstanding the forgoing provisions of this clause (g) and subject to the remaining provisions of this clause (g), if such failure shall be less than 30% of the required Annual Rent payable during any three consecutive annual periods, the payment of such a defaulted rent for the latest annual period shall be deferred (with interest accruing thereon as provided for in Section 3(e)), and shall be payable only to the extent that the end of any subsequent annual period ending on June 30th of such annual period, Tenant shall have generated net cash flow during such subsequent annual period in excess of the amounts necessary to pay its capital and operating obligations and payments arising during such annual period (including the rent payable under this Lease for such annual period, together with interest which shall have accrued pursuant to Section 3(e)); and (iv) notwithstanding the forgoing provisions of this clause (g) and subject to the remaining provisions of this clause (g), if such failure shall be less than 25% of the required Annual Rent payable during any four consecutive annual periods, the payment of such a defaulted rent for the latest annual period shall be deferred (with interest accruing thereon as provided for in Section 3(e)), and shall be payable only to the extent that the end of any subsequent annual period ending on June 30th of such annual period, Tenant shall have generated net cash flow during such subsequent annual period in excess of the amounts necessary to pay its capital and operating obligations and payments arising during such annual period (including the Rent payable under this Lease for such annual period, together with interest which shall have accrued pursuant to Section 3(e)).

#### **SECTION 4. CONDITION OF PREMISES**

(a) Acceptance of Premises by Tenant. Landlord shall have no obligation with respect to the condition of the Premises except as expressly set forth in this Lease. Tenant's occupancy at the commencement of this Lease shall be deemed an acknowledgment that the condition of the Premises is fully satisfactory and suitable for the purposes of this

Lease. Tenant has leased the Premises after a full and complete examination of the Premises and appurtenant areas, as well as the title thereto, and accepts the same in their present condition subject to all easements and restrictions of record and the repair obligations of Landlord expressly set forth in this Section 4. Tenant further acknowledges that neither Landlord nor any officer, agent, employee or other person acting under Landlord, disclosed or undisclosed, has made or implied any representations or warranties other than those expressly set forth in this Lease concerning the Premises, their condition, title thereto, future plans of Landlord with respect to the Premises or appurtenant areas, or this Lease. Notwithstanding the foregoing, (i) Landlord shall be responsible for fully repairing, on a lien free basis, as promptly as possible the items relating to the Premises to be repaired set forth in Exhibit "E" attached hereto, and so long as such repairs are not substantially completed, the Rent shall be partially abated as set forth in Exhibit "C", (ii) Landlord warrants that the Premises are free and clear of all prior existing construction defects regarding whether the same are patent or latent, which warranty shall stay in existence throughout the Term, and if any construction defects are discovered which could have an adverse effect upon the operation of MacMillan Pier, then Landlord shall be obligated to cure such defects in a prompt manner at Landlord's expense, provided Landlord shall be reimbursed for such expenses to the extent there shall be any monies on deposit in, or which are required to be paid into, the reserve required to be established pursuant to Section 3(g), (iii) Landlord warrants that the utilities servicing the MacMillan Pier are reasonably adequate for the current uses being made of MacMillan Pier, and to the extent any such utilities are not adequate for such purposes, Landlord shall cause the same to be repaired or modified to make such warranty correct at Landlord's expense, subject to Landlord being reimbursed for such expenditures as provided in the immediately preceding clause (ii) mutatis, mutandis, (iv) Landlord warrants that MacMillan Pier as of the commencement date of this Lease currently complies with all existing federal, state and local laws, rules, regulations, permits and governmental approvals and requirements, and to the extent there exists any violation of the foregoing which could adversely affect the operations of the MacMillan Pier, then Landlord shall correct such violation in a prompt manner at Landlord's expense, subject to Landlord being reimbursed as provided in the immediately preceding clause (ii) mutatis, mutandis, and (v) Landlord agrees that if as of the date of the commencement of the Lease there shall exist any released hazardous or toxic substances on, under or about, or transported to or from the Premises, that Landlord, at its expense, shall be responsible for remediating the same to the extent (a) any governmental authority initiates any action to enforce any violation of federal, state or local laws or regulations with regard to any such release, or (b) such release adversely affects the operations of MacMillan Pier, subject to Landlord being reimbursed for such expenditures as provided in the immediately preceding clause (ii) mutatis, mutandis.

#### **SECTION 5. REQUIRED IMPROVEMENTS BY LANDLORD**

(a) Landlord's Required Improvements. Except as set forth in Exhibit "E" attached hereto, Landlord shall not

be required to provide any work on, improvements to, or services or other improvements in connection with the Premises, unless otherwise agreed to in writing between the parties and except as expressly set forth in this Agreement.

## **SECTION 6. PERMITTED IMPROVEMENTS BY TENANT**

(a) Design Guidelines. Tenant may make improvements (“Permitted Improvements”) to the Premises, consisting of new construction, demolition, repair, or alteration of any building or structure located on MacMillan Pier. Such improvements other than routine maintenance of the Premises, shall be in conformity with this Lease, all applicable federal, state and local laws, ordinances, regulations and codes, including, without limitation, the Special Act, the Americans With Disabilities Act of 1990, 42 U.S.C. section 12101 et. Seq., and Tenant’s insurance policies.

(b) Permits. It shall be Tenant’s responsibility to obtain and pay for any and all permits, inspections, and local approvals necessary to construct the Permitted Improvements.

(c) General Provisions Governing Construction of Permitted Improvements.

Tenant shall not commence construction of any Permitted Improvements (to the extent such project has a cost in excess of \$50,000 and is of a nature where plans and specifications would customarily be produced) until Landlord, or its designee, has approved the plans and specifications for the proposed work in accordance with the requirements of this Section, which approval shall not be unreasonably withheld. Prior to commencing construction of any Permitted Improvements, Tenant shall submit to Landlord, or its designee, complete plans and specifications for the proposed work, to the extent required by the immediately preceding sentence. Landlord shall review such plans and specifications and shall, within thirty (30) days, notify Tenant in writing of its approval or disapproval of said plans and specifications, provided any failure by Landlord to respond within such period shall be deemed to mean that Landlord shall have approved such plans and specifications. Within thirty (30) days of its receipt of a notice of disapproval from Landlord, or its designee, Tenant shall resubmit the plans and specifications altered so as to conform in those respects specified by Landlord, or its designee, as grounds for its disapproval. The resubmission shall be subject to the review and approval of Landlord, or its designee, in accordance with the procedure herein provided for an original submission until the plans and specifications have been approved by Landlord, or its designee. In the event Tenant desires to make any material change in the plans and specifications after approval by Landlord, or its designee, Tenant shall submit the proposed changes to Landlord, or its designee, for its approval and Landlord, or its designee, shall either give its approval or notify Tenant of its disapproval in accordance with the procedure provided in this section for an original submission. Emergency repairs are exempt from this procedure. The procedure for such construction which shall involve any Permitted Improvements is as follows:

(1) No contractor shall commence construction of any Permitted Improvements until

all permits, certificates, and approvals required by law for the commencement of such construction have been issued.

Tenant, upon Landlord's request, shall deliver to Landlord copies of all such permits, certificates and approvals.

(2) Once commenced, the construction of such Permitted Improvements shall be prosecuted with diligence.

(3) Each contractor shall warrant to Tenant and Landlord, or its designee, that all materials and fixtures furnished by such contractor will be new, except as may be otherwise required by the plans and specifications, and that all construction work will be of good quality, free from faults and defects. Construction work not conforming to these requirements may be

considered defective and not in conformity with the terms of this Lease.

(4) Each contractor shall be obligated to confine its operations to the portion of the Premises within which its construction work is to be performed, and shall not store materials or equipment elsewhere on Landlord's property.

Storage of materials or equipment shall be limited to what is reasonably necessary for the construction of the Permitted Improvements.

(5) Each contractor shall be obligated at all times to keep the Premises reasonably free from accumulation of waste materials or rubbish caused by its operations.

(6) At the completion of the contractor's work, the contractor shall remove all waste materials and rubbish from the Premises as well as all tools, construction equipment, and surplus materials. If any contractor fails to comply with these provisions, it shall be the responsibility of Tenant to do so. Any salvage resulting from the authorized removal, severance, or demolition or property existing within the Premises at the inception of this Lease shall be the property of the Tenant. All construction waste shall be disposed of in a lawful manner.

(7) Unless waived by Landlord in writing, each contractor under a contract which calls for aggregate payments in excess of \$50,000 with Tenant shall be required to furnish and keep in force a performance bond and a labor and materials payment bond in an amount sufficient to guarantee the faithful performance of its obligations under such contract and to pay all obligations arising in connection therewith.

(8) When any construction of Permitted Improvements is in progress, Tenant shall require its contractors to maintain (i) worker's compensation insurance in the amounts required by law (or reasonably comparable insurance if such insurance is no longer available), (ii) builder's risk (or such reasonably comparable insurance) insurance on an "all risk" basis (including collapse) insuring against casualty to such construction for full replacement value of the work performed and the equipment supplies and materials furnished and stored, (iii) automobile liability insurance in the minimum amounts required by law with limits of liability not less than \$1,000,000 per occurrence for property damage and \$2,000,000 combined single limit, (iv) Employer's

Liability Insurance affording protection in the amount of not less than \$500,000 per accident and \$500,000 for disease, (v) public liability insurance within limits in an amount not less than \$3,000,000 comprehensive general liability total with a limit of \$1,000,000 an occurrence, and (vi) Professional/Environmental Impairment Liability Insurance providing coverage for environmental contamination, bodily injury and/or property damage arising out of acts and omissions of Tenant or its contractors, employees or agents in the performance of the Permitted Uses or any other activities or failures to act at or with respect to the Premises in the amount of \$1,000,000 for each claim and \$1,000,000 in the aggregate (which insurance, unlike the other insurance noted above, may be made on a claims made basis).

(d) Payment for Permitted Improvements. In no event shall any work related to the Permitted Improvements, or any other improvements constructed by, on behalf of or under Tenant or Landlord's approval thereof, give rise to any lien on Landlord's interest in the Premises. Tenant shall pay the entire cost of all Permitted Improvements promptly in cash or its equivalent so that both Landlord's and Tenant's interest in the Premises shall always be free of liens for labor and materials.

If any lien relating to Permitted Improvements constructed by, on behalf of, or under Tenant is filed against the Premises, then Tenant shall either (i) discharge the same by payment or by filing any necessary bond within thirty (30) days after Tenant has notice from any source of such lien or (ii) diligently pursue legal proceedings so as to remove such lien so long as such proceeding shall not immediately subject Tenant or Landlord to any immediate risk of losing title to the Premises during the period of such proceedings.

(e) Inspection. Landlord's representatives may enter upon the Premises from time to time on reasonable notice to Tenant for the purpose of inspecting the work being performed by Tenant, and such entry shall not be construed to be a violation of Tenant's right to exclusive possession of the Premises.

## **SECTION 7. TITLE TO IMPROVEMENTS**

(a) Tenant's Title to Improvements. During the term of this Lease, any improvements constructed by, on behalf of, or at the expense of Tenant on the Premises shall become and remain the property of Tenant. Upon the expiration or termination of this Lease, such title shall vest in Landlord. Tenant shall promptly execute any and all documents necessary to the transfer of such title.

## **SECTION 8. UTILITIES**

(a) The Landlord agrees that it shall grant from time to time to public utility companies and other appropriate entities, easements over, under and through the Land or other property owned by Landlord as may be required by such companies and entities in connection with the servicing of the Premises, including, without limitation, easements required

for electric, water, sanitary sewer, storm water drainage, and telephone and telecommunications service. Tenant shall have the right, at its sole expense except as otherwise provided herein, to connect to all common utilities and to enter into agreements with utility and similar service companies and providers as are required in order to service the Premises, and may do so in its name, in Landlord's name, or in both of their names. Landlord covenants and agrees to cooperate and to execute any and all documents, agreements, and instruments in order to effectuate the same. Tenant covenants and agrees to hold Landlord harmless from any costs, fees and/or charges incurred in connection herewith, and to pay on demand any and all costs incurred by Landlord for utilities and similar services.

### **SECTION 9. MAINTENANCE, REPAIRS, SAFE OPERATION**

(a) **Grounds.** Tenant will, at its sole cost and expense, maintain the Premises in good repair and shall promptly remove all accumulations of snow and ice therefrom as is reasonable. Tenant shall not use any chemicals or salt in connection with said snow and ice removal. All activities of Tenant shall preclude the discharge of substances in concentrations which will result in harm to water quality, fish and wildlife. All maintenance work performed by Tenant shall be accomplished in a manner so as to cause no unreasonable interference with any adjacent properties.

(b) **Sanitation.** Tenant, at its sole cost and expense, shall keep the Premises in a clean and sanitary condition at all times. Tenant shall be responsible for all litter pickup, trash disposal, cleaning and sanitation. All Massachusetts health laws and Health Department regulations and local regulations regarding sanitation will be strictly complied with.

(c) **Safe Operation of Premises.** Tenant shall periodically inspect all areas of the Premises for the presence of unsafe and hazardous conditions and shall promptly remedy such conditions when found.

(d) **Cooperation.** Notwithstanding the foregoing to the contrary, where at all commercially feasible, Landlord and Tenant will work together cooperatively to deliver the services which are necessary to operate the Premises in accordance with the Special Act, and in particular it is contemplated that Tenant will subcontract to have Landlord obtain on Tenant's behalf the insurance required to be obtained by Tenant pursuant to Sections 6 and 14 hereof and to have Landlord perform certain services as set forth in Exhibit "F", all at Tenant's expense, with the result that if Landlord fails to perform such services, such default by Landlord, shall not constitute a default by Tenant under this Lease. Accordingly, to the extent Landlord, because of economics of scale or otherwise would be in a better position than Tenant to offer any of these services, then Landlord will use its best efforts to provide such services at its cost (and for no special fee or premium). Nothing herein shall be construed as limiting the authority of the Parties to enter into a separate contract or contracts pursuant to the Special Act for the provision of services, including without limitation, a contract to provide harbor management services by the Tenant to the Landlord.

### **SECTION 10. HAZARDOUS MATERIALS**

(a) Hazardous Materials Activities. Tenant shall not cause any hazardous materials or toxic wastes, hazardous or toxic substances or hazardous or toxic materials to be used, generated, stored or disposed of on, under or about, or transported to or from the Premises except in strict compliance with all applicable federal, state, and local laws and regulations using all necessary and appropriate precautions, and shall not cause or permit any release or threat of release of hazardous materials. In the event of a release or threat of release of any hazardous materials on account of any activities of Tenant or its employees, Tenant shall conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up the release or eliminate the threat of release in accordance with all applicable legal requirements, provided that Tenant shall not be responsible for any pre-existing release of hazardous materials or any future release of hazardous materials by any other person or entity, or any other source of such release.

Tenant shall notify Landlord immediately by telephone and in writing of any release or discharge of hazardous materials or of any condition constituting a threat of release of hazardous materials. Landlord may (but shall not be obligated to) enter upon the Premises at any time during the term of this Lease to inspect Tenant's compliance herewith, and may disclose any violation of any regulation to any governmental agency with jurisdiction.

#### **SECTION 11. INSPECTION AND ACCESS**

(a) Landlord's Right to Inspect Premises. Throughout the Lease Term, Landlord and its representatives shall have the right to inspect the Premises for the purpose of ascertaining Tenant's compliance with the terms of this Lease. Inspections shall be accomplished in a manner which do not unreasonably interfere with the operation of the Premises by Tenant. If requested by Landlord, Tenant shall provide a representative to accompany Landlord on each such inspection.

(b) Landlord's Access. Throughout the Lease Term, Landlord and its Representatives, including, without limitation, representatives of Landlord, shall have the right to pass in, on and over the Premises for the purpose of maintenance, repair and/or replacement of its facilities. Tenant shall allow any public or private utility holding an easement, license or permit, regarding the Premises or any portion thereof, to enter the Premises and perform routine and emergency repairs and maintenance work.

#### **SECTION 12. ACCOUNTING AND REPORTING**

(a) Books of Account and Financial Reporting. Landlord shall have the right at reasonable times and upon reasonable notice to examine the books, records and other compilations of data of Tenant which pertain to the performance of the provisions and requirements of this Lease.

Tenant shall preserve all its accounting books and records pertaining to the Premises for a period of three years or as may otherwise be required by law following the close of each fiscal year of Tenant. All of such books and records shall be subject to review, audit, and analysis by qualified representatives of Landlord at mutually convenient times.

(b) Access to Records. For the purpose of administering this Lease, Tenant agrees to make all of the accounting books and supporting records to its business activities, as well as those of any designees or subtenants operating within the authority of this Lease, available for analysis by Landlord. Review of accounting books and supporting records will be made at dates convenient to Tenant and reviewers.

(c) Repair and Maintenance Records. In addition to any other books and accounts maintained by Tenant, Tenant shall maintain proper records of all repairs and maintenance and shall make these available to Landlord upon request.

(d) Property Accounts. For so long as Tenant shall elect to have Landlord perform the following service, Landlord will, as agent of Tenant, maintain on behalf of PPC a checking account (the "Operating Account") and an investment or market account (the "Grant Account", and the Operating and the Grant Account are collectively called, the "Property Account"). In connection with performing this service, Landlord shall cause to be delivered to Tenant (i) monthly statement of such accounts, and (ii) such other reports and information as shall be reasonably required by Tenant. Checks drawn against the Operating Account may at the direction of Tenant, be made upon the signature of a duly authorized representative of Landlord and shall be made for the following when due:

- (i) expenses of all types and for all services incurred by Tenant in maintaining, administering and operating the Premises;
  - (ii) salary, payroll and social security taxes and other expenses attributable to the employees of Tenant;
- and
- (iii) any other items of expense reasonably incurred by Tenant in connection with the Property provided for hereunder.

(e) Deposits to Property Account. All fees, rents, payments and other collections relating to the Property that shall be payable to Tenant shall be deposited in the Operating Account, and Tenant may direct, from time to time, to transfer funds between the Operating Account and the Grant Account. The Property Account and all funds on deposit therein shall at all times be deemed to be the property of Tenant.

(f) Mooring Fees.

(i) Tenant shall collect all Mooring Fees (as hereinafter defined) which Mooring Fees shall not be deemed to be direct revenues of Tenant, but instead will be deemed to be direct revenues of Landlord). Tenant shall remit all Mooring Fees collected on Landlord's behalf to the Landlord on or before June 30<sup>th</sup> of each year during the Term. The amount of Mooring Fees collected in Fiscal 2005 shall be defined as the "Base Amount". After Fiscal 2005, the Base Amount will be adjusted in each subsequent Fiscal Year by the CPI Index (as hereinafter defined) pursuant to the process

set forth in clause (ii) of this Section 12(f). In Fiscal 2006 and in each subsequent Fiscal Year, if the collected Mooring Fees for the applicable Fiscal Year shall be in excess of the Base Amount for such Fiscal Year, such excess shall be defined as the "Excess Amount". To the extent that there shall be an Excess Amount for such Fiscal Year, said Excess Amount shall be credited to the Rent for such Fiscal Year otherwise payable by Tenant under the Lease.

(ii) For the purpose of this Lease the term "CPI Index" shall mean: the then current Revised Consumer Price Index for Urban Wage Earners and Clerical Workers for Boston, MA: all items index (1982-84=100) published by the Bureau of Labor Statistics, United States Department of Labor (the "*Bureau*"). The basic index ("*Basic Index*") is the CPI Index published for the last period before Fiscal Year 2005. If the CPI Index (the "Current Index") for any Fiscal Year (occurring after Fiscal Year 2005) is greater than the Basic Index, then the Base Amount for such Fiscal Year shall be adjusted so that it equals the sum of the product of (A) the Base Amount for Fiscal Year 2005, multiplied by (B) a fraction, the numerator of which is the Current Index and the denominator of which is the Basic Index. If the Consumer Price Index is converted to a different standard reference base or otherwise revised, the determination of the Current Index shall be made with the use of such conversion factor, formula, or table for converting the Consumer Price Index as may be published by the Bureau or, if the Bureau does not publish same, then with the use of such conversion factor, formula, or table as is published by any nationally recognized publisher of similar statistical information. If the Consumer Price Index ceases to be published, then Landlord may substitute for the Consumer Price Index any independently published index of similar type.

(iii) For the purposes of this Lease, "Mooring Fees" shall mean fees payable in connection with any boat utilizing a semi-permanent anchorage installation (consisting of a heavy anchor or block or mooring buoy) within Provincetown Harbor, which shall include all fees shall be payable pursuant to Section 10A of Chapter 91 of the Massachusetts General Laws, which authorize a city or town to charge a reasonable fee in connection with the mooring of boats.

### **SECTION 13. TAXES AND ASSESSMENTS**

(a) Tenant's Responsibility for Taxes. Tenant covenants and agrees that it will bear, pay, and discharge all taxes, general and special assessments, duties, water rates, sewer charges, and all other utilities charges of every kind and nature, including governmental or other impositions, charged, levied, assessed, or imposed, whether by federal, state, town, or any other public authority, (but only to the extent the same may be lawfully imposed by Landlord) during the term hereof, upon the Premises or any Improvements thereon occupied by Tenant, on or prior to the date on which same may be paid without penalty.

### **SECTION 14. INSURANCE; DAMAGE AND RESTORATION**

(a) Tenant's Insurance Obligation. During the term of this Lease, subject to the provisions of Section 9(d) regarding services to be provided by Landlord and cooperation as between Landlord and Tenant, Tenant shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained, policies of insurance for the benefit of such parties, in the amounts, and in the manner and form set forth in this section; provided, however, that amounts of insurance coverage may be increased and other terms of required insurance may be changed as required or permitted by Tenant's Mortgagee (as hereinafter defined) provided that no coverage provided for herein shall be reduced without the prior written approval of Landlord. The Tenant shall furnish certificates evidencing each such insurance coverage to Landlord prior to the execution of this Lease (to the extent such insurance is appropriate at such time) and providing that the insurer shall give the Landlord written notice at least thirty (30) days in advance of any termination, expiration or any and all changes in coverage.

Such insurance or renewals or replacements thereof shall remain in force during the Term of, and pursuant to the terms of this Lease. The kinds and amounts of such insurance coverage shall not be less than the kinds and amounts designated herein, and the Tenant agrees that the stipulation herein of the kinds and minimum amounts of insurance coverage, or the acceptance by the Town of Provincetown of Certificates of Insurance indicating the kinds and limits of coverage, shall in no way limit the liability of the Tenant to any such kinds and amounts of insurance coverage.

(b) Acceptable Insurers. The insurance required hereunder shall be underwritten with an insurance company or companies licensed to write such insurance in the Commonwealth of Massachusetts and acceptable to the Landlord. Where no insurer so licensed in Massachusetts will provide the required coverage, the insurer shall, at minimum, be approved to do business in Massachusetts (listed on the current "White List") of the Massachusetts Division of Insurance.

(c) Required Coverages. The insurance required shall consist of the following:

(1) GENERAL LIABILITY INSURANCE

A Comprehensive General Liability policy on an occurrence basis endorsed to include broad form comprehensive general liability with a combined single limit of liability of not less than \$1,000,000.00; or a Commercial General Liability policy on an occurrence basis with a general aggregate limit of not less than \$1,000,000.00, a Products/Completed Operations aggregate limit of not less than \$1,000,000.00, and a limit of liability each occurrence of not less than \$1,000,000.00. Automobile Liability and Property Damage insurance for any auto including but not limiting coverage to owned, non-owned and hired autos in the amount of \$1,000,000.00 each accident for bodily injury and property damage.

The policy shall name the Town of Provincetown, and its officers, agents, servants, employees and consultants as additionally insured parties.

(2) LIQUOR LIABILITY INSURANCE

In the event Tenant shall obtain a license for the sale of alcoholic beverages in connection with its operations under this Lease, Tenant shall obtain Dram Shop Act Liquor Liability insurance in the minimum amount or amounts as may be necessary to fully insure for such liability under the laws of the Commonwealth of Massachusetts.

(3) UMBRELLA/EXCESS LIABILITY INSURANCE

An Umbrella/Excess Liability insurance policy on an occurrence basis “following form” of the primary coverage with a limit of liability of \$3,000,000.00. The Umbrella/Excess Liability insurance policy shall include but not be limited to the following coverages for bodily injury, property damage and personal injury:

- (i) Premises - Operations Liability.
- (ii) Contractual Liability.
- (iii) Products/Completed Operations.
- (iv) Automobile Liability for owned, non-owned and hired vehicles.

The Town of Provincetown, its officers, agents, servants and employees shall be named as additional insurers.

(4) PROPERTY INSURANCE

A Commercial Property policy covering MacMillan Pier, the buildings and improvements thereon, in an amount equal to at least one hundred percent (100%) of the replacement cost of such property shall be obtained and maintained by Tenant, at its own expense unless otherwise approved by Landlord in writing.

The Town of Provincetown, its officers, agents, servants and employees shall be named as additional insurers.

(5) WORKER’S COMPENSATION INSURANCE

Tenant shall provide Workers’ Compensation Insurance required by law and the Employer’s Liability insurance for at least the amounts of liability for bodily injury by accident of \$100,000.00 each accident; bodily injury by disease each employee of \$100,000.00; and bodily injury by disease policy limit of \$500,000.00, or such greater amount as may be required from time to time by the laws of the Commonwealth of Massachusetts.

(d) Other Matters. Tenant shall require that Landlord, and its officers, agents, servants and employees be named as additional insurers on all subtenants, concessionaires, subcontractor’s and independent contractor’s insurance, excluding Workers’ Compensation. Tenant and all subtenants, concessionaires, subcontractors and independent contractors and their insurers shall waive all rights of subrogation against Landlord, and its officers, agents, servants, and employees for losses arising from work performed by each.

Tenant shall provide and agrees that its insurance coverage and all other required insurance coverages from other

parties shall be primary insurance, as respects Landlord, and its officers, agents, servants and employees.

Any insurance or self-insurance maintained by Landlord, and its officers, agents, servants and employees shall be excess of Tenant's insurance and from other parties insurance and shall not contribute to it.

(e) Restoration. In the event of physical damage to or destruction of any of the Improvements at any time standing on the Premises, Tenant shall have rights and obligations regarding the repair, replacement, and rebuilding (collectively, "restoration") of the damaged or destroyed Improvements, and the proceeds of insurance shall be applied, as follows:

(1) Subject to Tenant's right to terminate as provided in this Lease, so long as Tenant shall receive an adequate amount from insurance proceeds or from Landlord to cover the full cost of a restoration, Tenant shall restore any such damage or destruction if the estimated cost of restoration does not exceed one million dollars (\$1,000,000.00), or 25% of the then current market value of the Premises, whichever is greater, and the remaining term of the Lease is five (5) years or more from the date of such damage or destruction. The proceeds of insurance shall be used to pay for such restoration, but Tenant's obligation to restore pursuant to the foregoing sentence shall be limited by the amount of any such insurance proceeds. Any proceeds of insurance remaining after the completion of and payment for such restoration shall be deposited in a capital improvement fund to be maintained by Tenant throughout the term of this Lease. Tenant shall provide Landlord an accounting of the expenditure of any and all such insurance proceeds as provided for below. Any restoration to be performed by Tenant shall be approved by Landlord prior to commencement of work.

(2) In the event the cost of any restoration shall exceed one million dollars (\$1,000,000.00), or 25% of the then current market value of the Premises, whichever is greater, and the remaining term of the Lease is less than five (5) years, Tenant may terminate this Lease in accordance with the terms hereof, but only after the delivery to Landlord of any and all insurance proceeds payable in relation to the casualty in question.

(3) Notwithstanding the foregoing sentence, if the proceeds of any and all applicable insurance, plus any deductible payable by Tenant, is sufficient to pay for restoration, Tenant shall restore the Improvements to their condition immediately prior to such casualty.

(4) Except as provided in paragraph (2) above, the proceeds of insurance resulting from any damage or destruction shall be paid to and maintained by Tenant. Tenant shall provide Landlord a written report detailing all insurance proceeds received by Tenant in relation to any and all claims for damage or destruction including

copies of all correspondence from and to the insurer relative thereto. Copies of any and all reports to adjusters, or other assessment of the extent of damage or destruction shall be provided to the Landlord. All insurance proceeds shall be deposited in a separate account, and shall be identified and accounted for separately. Current status of any and all such accounts shall be reported to Landlord monthly beginning on the thirtieth (30) day after receipt of the proceeds, along with a written report as to the status of any restoration. The Tenant shall release monies maintained by it to pay the cost of restoration. Any monies maintained by Tenant after the completion of any payment for such restoration shall be the property of Tenant and shall be maintained in a capital improvement fund as provided above.

(5) Notwithstanding any other provision of this Lease, Tenant may terminate this Lease in the event damage to any of the Improvements substantially in excess of insurance proceeds shall occur at any time. For purposes of this paragraph, “substantially in excess of insurance proceeds” shall mean restoration exceeding the level of insurance proceeds by more than the greater of (i) \$10,000 or (ii) the amount of any unfunded contingency item in the current annual budget or unfunded amount of proceeds then held in reserve pursuant to Section 3(f). The Tenant may effect such termination by giving Landlord written notice thereof not later than twelve (12) months following the occurrence of such damage or destruction. In the event of such termination, any proceeds of insurance resulting from such damage or destruction shall be applied as set forth in paragraph (2) above.

#### **SECTION 15. LIABILITY AND INDEMNITY**

(a) To the fullest extent permitted by law, Tenant agrees to indemnify and hold Landlord harmless against any and all liabilities, losses, costs, forfeitures, or damages, and all out-of-pocket expenses, including reasonable legal fees and court costs (collectively, “Tenant Liabilities”), actually incurred, suffered, or sustained by, or sought to be imposed on, Landlord in connection with the Premises arising out of the negligence or willful misconduct of Tenant or any person or entity under the control or direction of Tenant. The Tenant shall defend any lawsuits with regard to claims for such Tenant Liabilities, and shall pay any judgments which result from the lawsuits, provided Landlord provides Tenant with adequate notice to enable Tenant to defend any lawsuits. “Lawsuits” include arbitration proceedings, administrative proceedings, and all other governmental or quasi-governmental proceedings. The obligations of Tenant under this Section arising by reason of any such occurrence taking place during the Term shall survive any termination of this Lease.

(b) To the fullest extent permitted by law, Landlord agrees to indemnify and hold Tenant harmless against any and all liabilities, losses, costs, forfeitures, or damages, and all out-of-pocket expenses, including reasonable legal fees and court costs (collectively, “Landlord Liabilities”), actually incurred, suffered, or sustained by, or sought to be imposed on, Tenant in connection with the Premises arising out of (i) the negligence or willful misconduct of Landlord or any person or entity under the control or direction of Landlord and (ii) the period prior to the commencement of the Term. Landlord

shall defend any lawsuits with regard to claims for such Landlord Liabilities, and shall pay any judgments which result from the lawsuits, provided Tenant provides Landlord with adequate notice to enable Landlord to defend any lawsuits. The obligations of Landlord under this Section arising by reason of any such occurrence taking place during the Term shall survive any termination of this Lease.

#### **SECTION 16. COVENANTS OF QUIET ENJOYMENT**

(a) **Quiet Enjoyment.** Tenant, upon paying Rent and all other sums and charges to be paid by it as provided in this Lease, and upon performing and complying with all of the terms and provisions contained in this Lease to be performed or kept by Tenant, shall quietly have, hold, and enjoy the Premises during the term of this Lease.

(b) **Notice of Landlord's Breach of Warranty of Quiet Enjoyment.**

(1) If any of the covenants, representations or warranties contained in this Section shall not be kept or performed by Landlord, Tenant shall so notify Landlord in writing. After receiving such notification, Landlord then promptly shall commence to cure the same and shall have sixty (60) days in which to complete such cure, unless a cure cannot with due diligence be effected within a period of sixty (60) days, and Landlord promptly advises Tenant of Landlord's intention to institute all steps necessary to remedy the situation and thereafter promptly and diligently prosecutes the same to completion.

(2) If Landlord fails to cure as provided in subparagraph (1) of this subsection (b), Tenant, in addition to any and all rights and remedies it may have at law or in equity, may terminate this Lease upon written notice to Landlord.

#### **SECTION 17. ADDITIONAL RIGHTS, OBLIGATIONS, AND COVENANTS OF THE PARTIES; PUBLIC BENEFITS**

(a) **Receipt of Payment Not Waiver of Breach.** The receipt of any payment by Landlord, with knowledge of any breach of this Lease by Tenant or of any default on the part of Tenant under this Lease, shall not be deemed to be a waiver by Landlord of any provision of this Lease. If Tenant makes any payment which is less than the amount due, Landlord, without notice, may accept the same as a payment on account, and Landlord shall not be bound either by any notation on any check involving such payment or by any statement in any accompanying letter. A failure on the part of either Landlord or Tenant to enforce any covenant or provision of this Lease, or any waiver of any right by either party, unless in writing, shall not discharge or invalidate such covenant or provision or affect the right of any party to enforce the same in the event of any subsequent breach or default.

(b) **Surrender.** Upon the expiration of the Term of this Lease or upon the effective date of termination of this Lease, Tenant shall peaceably and quietly leave, surrender, and yield to Landlord the Premises and all Improvements

thereon in good order, repair, and condition, ordinary wear and tear excepted, and Tenant shall not remove any items from the Premises, which constitute fixtures under the laws of the Commonwealth of Massachusetts. Tenant shall repair damage resulting from its removal of personal property and trade fixtures. At least one year prior to the expiration of this Lease, Tenant shall provide Landlord with an inventory of all personal property and trade fixtures. The Landlord may, at its discretion, purchase for fair market value any such personal property, trade fixtures or maintenance equipment or other equipment. Landlord shall not be liable or responsible for any loss of or damage to any personalty owned or held by or for Tenant, which may be on the Premises or in the Improvements when Landlord takes possession of it, or required to account for any such personalty. Any such personalty shall be considered abandoned by the Tenant, and title thereto shall vest in the Landlord upon the date of expiration of this Lease, unless otherwise provided by the parties in writing prior to such expiration or termination. In the event of the expiration or other termination of this Lease, Tenant shall, to the extent permitted by law, assign or otherwise transfer any and all licenses, permits and warranties to Landlord. If application to any governmental agency is necessary for such transfer, Tenant shall initiate any such proceeding and shall assist the Landlord throughout such proceeding, even if such proceeding continues after the expiration or termination of this Lease.

(c) Notice of Lease. At the request of Tenant, Landlord promptly shall execute and deliver a Notice of Lease, in form and substance acceptable to Tenant in its sole discretion, which Notice will contain the information required by statute as well as such additional information as Tenant and/or Landlord may choose. The Tenant, or Landlord at its option and expense, may record such Notice of Lease or a copy of this Lease in the Barnstable County Registry of Deeds.

(d) Status of Landlord. Landlord shall in no event be construed, held, or become, in any way or for any purpose, a partner of, associate of, or joint venturer with Tenant or any party associated with Tenant in the conduct of its business or otherwise. Tenant, its officers, agents, servants and/or employees shall in no event be construed, held or become, in any way or for any purpose, agents, servants, employees or independent contractors of the Landlord.

#### **SECTION 18. TAKING**

If a substantial part of the Premises shall be taken for any public or quasi-public use under governmental law or by right of eminent domain and such taking would materially interfere with the use of the Premises by Tenant for the purposes contemplated by this Lease, then the Lease may be terminated by either Landlord or Tenant. Landlord or Tenant shall make such election by giving the other party written notice within sixty (60) days after the event giving rise to a right to terminate. Any such termination shall be effective thirty (30) days after the date of notice thereof

and in the case where all or substantially all of the Premises shall be taken or when Landlord terminates this Lease, to the extent that Landlord pays to each Mortgagee any amount necessary, when added to any condemnation award which Tenant is entitled to retain, will be sufficient to pay-off the then existing outstanding principal indebtedness then owed to such Mortgage.

If any taking materially interferes with Tenant's use and occupation of any part of the Premises, a just portion of the rent shall be abated from the date the Premises or such lesser part are rendered unusable until the date when the Premises (or in the case of a partial taking, what remains thereof) shall be put in proper condition for use and occupation. Tenant shall receive a permanent abatement of rent to the extent that all or any part of the Premises cannot be so used and occupied for the balance of the Term.

Landlord reserves all rights to damages payable by reason of anything lawfully done in pursuance of any public or other authority and, by way of confirmation, Tenant grants to Landlord all of Tenant's rights to such damages and agrees to execute and deliver such further instruments of assignment thereof as Landlord may from time to time request, provided, however, that Tenant reserves for itself any award specifically reimbursing Tenant for moving or relocation expenses and any other award the payment of which does not diminish the amount otherwise payable to Landlord. Tenant shall also be entitled to share in the award proportionately to the unamortized value of any lease improvements constructed by Tenant pursuant to the terms of this Lease.

#### **SECTION 19. DEFAULT OF TENANT AND TERMINATION BY THE LANDLORD**

(a) **Default.** If any of the following occurs, Tenant shall be in default under the terms and provisions of this Lease, and Landlord may terminate this Lease and require Tenant to vacate and surrender possession of the Premises after receipt by Tenant (and by any of Tenant's Mortgagees) of written notice of termination of the Lease provided that such default has not in fact been cured prior to the receipt of the notice of termination:

(1) the failure of Tenant to operate the Premises in accordance with the Special Act for thirty (30) days after receipt of notice from Landlord of such default, provided that if the nature of such default is such that Tenant can not reasonably cure such default within such thirty (30) day period, then so long as Tenant is reasonably pursuing to cure such default in a diligent manner, then Tenant shall have up to an additional one hundred twenty (120) days to cure such default;

(2) subject to the provisions of Section 3(g), the failure of Tenant to pay undisputed Rent when due, and such failure continues for thirty (30) days after receipt of written notice by Tenant from Landlord that such rental payment has

not been paid when due;

(3) the filing by Tenant of a voluntary petition, or the filing against Tenant of an involuntary petition, in bankruptcy or insolvency or adjudication of bankruptcy or insolvency of Tenant, or the filing by Tenant of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy act, or any other present or future applicable federal, state, or other statute or law, or the assignment by Tenant for the benefit of creditors, or appointment of a Trustee, receiver, or liquidator of all or any part of the assets of Tenant, and within one hundred twenty (120) days after the commencement of any such proceeding against Tenant, such proceeding shall not have been dismissed, or if, within one hundred twenty (120) days after the appointment of any trustee, receiver, or liquidator of Tenant or of all or any part of Tenant's property, without the consent or acquiescence of Tenant, such appointment shall not have been vacated or otherwise discharged, or if any execution or attachment shall be issued against Tenant or any of Tenant's property pursuant to which the Premises shall be taken or occupied or attempted to be taken or occupied; or

(4) the failure of Tenant to perform or comply with any of the other material terms or provisions contained in this Lease to be performed by Tenant; provided, however, that Landlord shall not have the right to terminate this Lease or give notice of termination pursuant to this subparagraph (a)(3) if Tenant shall commence to take actions to remedy its failure to perform or comply within thirty (30) days after Landlord shall have given written notification to Tenant of such failure, or, in the case of a failure which cannot with due diligence be remedied within a period of one hundred twenty (120) days, Tenant shall (i) promptly advise Landlord of Tenant's intention to institute all steps necessary to remedy such situation which can be taken with reasonable diligence, (ii) within the first thirty (30) days of such 120-day period begin to determine the actions necessary to remedy the failure, and (iii) thereafter diligently prosecute the same to completion within such time after the notice of default as shall be reasonable under the circumstances. Notwithstanding the foregoing, Tenant shall have the obligation to cure any monetary default hereunder not later than thirty (30) days from the date it receives written notice from Landlord of any such monetary default, except as otherwise set forth herein; or

(5) failure by Tenant to pay any and/or all real estate taxes, general and special assessments, duties, water rates, sewer charges, and all other utility charges of every kind and nature for thirty (30) days after notice and demand by Landlord unless contested by Tenant pursuant to Section 4 hereof;

(6) upon failure, after notice and demand, to provide Landlord with the required Certificates of Insurance evidencing those insurance coverages required pursuant to the Lease for thirty (30) days following written notice from Landlord.

(7) The Provincetown Public Pier Corporation is dissolved pursuant to the Special Act.

(b) Default Due to Bankruptcy. Notwithstanding the provisions of paragraph (a) above, Landlord shall not have the right to terminate this Lease in an event of default under subparagraph (a)(3) of this Section if no application is made in any proceedings for a reformation or recasting of this Lease, or for any change in any of the provisions of this Lease, and if the trustee, receiver, or similar custodian of Tenant's property, or any mortgagee or other party having an interest in this Lease, shall duly perform all of the terms of this Lease, including the payment of Rent when due.

**SECTION 20. LANDLORD'S RIGHT TO ENTER AND MAINTAIN OR REPAIR PREMISES; TENANT'S RIGHT TO CURE LANDLORD'S DEFAULT**

(a) Landlord's Right to Enter. It is understood and agreed by the parties that, as the owner of the Premises, Landlord has the right to protect the Premises from damage and deterioration due to lack of diligence by Tenant. In recognition thereof, the Landlord shall have the right to enter upon the Premises, to inspect said Premises thereon at all reasonable times. If Tenant fails to perform or comply with any of the terms or provisions contained in this Lease to be performed or complied with by Tenant, other than a failure to pay rent or an event of bankruptcy, and, after written notification from Landlord, fails to cure such default within the permitted applicable grace periods specified in this Lease, Landlord may, at its option, and in addition to any other remedies which may be available to it, enter the Premises and effect the cure with or without prior notice to the Tenant. Such entering shall not cause or constitute a termination or cancellation of this Lease or an interference with Tenant's possession of the Premises. Landlord shall have the right to do all things reasonably necessary to accomplish the work required. The cost and expense of such work shall be payable to Landlord by Tenant on demand.

(b) Landlord's Breach and Tenant's Right to Cure. If Landlord fails to perform or comply with any of the terms or provisions contained in this Lease to be performed or complied with by Landlord, and, after written notification from Tenant, Landlord fails to cure such default within thirty (30) days after receipt of such notice and Landlord has not given notice to Tenant within such thirty (30) days that Landlord disputes such default or any such dispute is resolved in favor of Tenant, Tenant may, at its option, and in addition to any other remedies which may be available to it, take action to cure such default in its own name, in the name of Landlord, or in the names of both of them. Notwithstanding the provisions of section 3 hereof, all costs and expense incurred by Tenant to effect such cure shall be deducted from any payments owed by Tenant to Landlord next falling due from Tenant hereunder (including payments of Rent).

**SECTION 21. LIENS AND ENCUMBRANCES**

Tenant shall not suffer or permit any mechanics' or artisans' or other liens to be filed or placed or to exist against Landlord's interest in the Premises or against Tenant's interest in improvements by reason of work, labor, services, or materials supplied or claimed to have been supplied to Tenant or anyone holding the Premises or any part thereof through

or under Tenant. If any such mechanic's lien shall at any time be filed against the Premises, Tenant shall cause the same to be discharged of record or by appropriate proceedings have such lien replaced with a bond or otherwise removed of record within sixty (60) days after notice from Landlord. Failure by Tenant to discharge, remove or bond over any such lien shall not be deemed a default hereunder provided Tenant is diligently contesting the lien. Notwithstanding any provision to the contrary herein contained, Tenant shall hold Landlord harmless from any charge or cost arising from any such lien, including any reasonable attorneys' fees incurred by Landlord to defend against any such lien.

## **SECTION 22. COMPLIANCE WITH LAWS**

(a) **Tenant's Duty to Comply with Laws.** During the Term, Tenant, at its sole cost and expense, shall comply fully with all present and future laws, by-laws, orders, rules, and regulations and requirements of all federal, state, and municipal governments, courts, departments, commissions, boards, or officers or any other body exercising functions similar to those of any of the foregoing, which may be applicable to the Premises and other public improvements adjoining the Premises or to the use or manner of operation of the Premises or the owners, tenants, or occupants thereof. Tenant shall be deemed to be in compliance with the requirements of this paragraph unless and until the appropriate governmental or regulatory body having appropriate jurisdiction over the matter has given notice that, or commenced an action because, Tenant allegedly is not in compliance with any applicable law, ordinance, order, rule, regulation, or requirement. Upon such notice, Tenant shall promptly give notice to Landlord of such notice of non-compliance.

(b) **Tenant's Right to Contest the Law.** Tenant shall have the right to contest by appropriate proceedings diligently conducted in good faith, in the name of Tenant or Landlord, or both, if required by law, without cost or expense to Landlord, the validity or application of any law, ordinance, order, rule, regulation or requirement of the nature referred to in this Section or the filing of any lien against the Premises or any taxes payable by Tenant under this Lease. If by the terms of any such law, ordinance, order, rule, regulation, or requirement, compliance therewith may legally be delayed pending the prosecution of such proceeding without (1) interruption of the operation of the Improvements, and (2) subjecting Tenant or Landlord to any immediate civil or criminal liability for failure to so comply therewith during the period of such contest, Tenant may delay compliance therewith until the final determination of such proceeding.

(c) **Landlord's Participation in any Contest.** Landlord shall not be required to join in any proceedings referred to in this section unless the provisions of any applicable law, rule, or regulation at the time in effect shall require that such proceedings be brought by or in the name of Landlord, in which event Landlord shall join in such proceedings or permit the same to be brought in its name and Tenant shall indemnify Landlord for any liabilities and shall promptly reimburse Landlord for all costs and expenses resulting therefrom. Tenant may delegate the right to bring any such proceeding to

any person or entity having an interest in the Premises or the Improvements or any part thereof.

**SECTION 23. FINANCING; SUBORDINATION OF FEE  
AND LEASEHOLD MORTGAGES**

(a) Tenant's Intention to Finance Construction. The Landlord acknowledges that Tenant may seek construction and permanent financing to enable Tenant to construct and operate improvements on the Premises. Tenant agrees that, at no time during the term of this Lease shall the Premises, or Tenant's leasehold interest therein, be mortgaged to finance the development of any other project(s) undertaken by Tenant, or any entity associated with Tenant. Landlord further acknowledges that a permanent lender or lenders and a construction lender or lenders will look to this Lease as security for any funds it may lend to Tenant and, accordingly, may require Tenant to mortgage its leasehold estate. Consequently, Tenant may mortgage or otherwise encumber the leasehold estate created by this Lease under one or more leasehold mortgages and assign this Lease as security for such mortgage or mortgages, in accordance with the provisions of this Section subject to prior approval of the Landlord, and approval, by a two-thirds vote, of the Provincetown Town Meeting. Any and all such mortgage(s) shall mature not later than the last day of the term of this Lease, and shall be a Leasehold Mortgage only. It is expressly understood and agreed that the Tenant has no right to mortgage or otherwise encumber the fee title to the Premises. Any lender of Tenant who is granted a mortgage of Tenant's leasehold interest shall be referred to as a "Mortgagee". Landlord shall execute and deliver all documents reasonably and customarily required by such Mortgagee or Mortgagee's attorney or by the title company insuring the Mortgage or by any combination of them. The Mortgage may contain language to the effect that Landlord executes the Mortgage solely for the purpose of acknowledging encumbering of the Leasehold Estate and Landlord does not assume any personal liability whatsoever for the payment of any note secured by the Mortgage or for the performance of any other provisions of said note or Mortgage.

(b) Tenant's Duty to Inform Landlord. In the event Tenant receives notice of any assignment of any Mortgage or in the event of a change of address of a Mortgagee or of an assignee of the Mortgage, notice of any new name and address shall be given to Landlord within ten (10) days of Tenant's receipt of such notice. After Landlord has received notice of Mortgage from a Mortgagee, Tenant, shall provide Landlord with copies of the note or other obligation secured by the Mortgage and of any other documents pertinent to the Mortgage. Tenant shall also provide Landlord with copies of each amendment or other modification or supplement to the mortgage or related instruments.

(c) Mortgagee's Right to Cure Tenant's Default. In the event Tenant is in default under its agreement with a Mortgagee, Landlord and Tenant expressly agree that the Mortgagee shall be entitled to enter upon the Premises, to perform such curative acts as may be necessary, and to operate and manage the Premises, either in its own name or right or on behalf of Tenant. Any such Mortgagee in possession of the Premises or Improvements shall be responsible for the

continued operation of the MacMillan Pier, and shall provide such experienced personnel as may be necessary to assure such continued operation. A default of Tenant under its agreement with a Mortgagee shall not be a default under this Lease. Prior notice of such entry shall be provided to Landlord and Tenant shall include such condition in any mortgage in relation to the Premises.

(d) Limitation on Mortgagee's Right to Cure. Nothing herein contained shall require any Mortgagee or its designee, as a condition to its exercise of rights hereunder, to cure any default of Tenant that may not reasonably be cured by such Mortgagee or designee in order to comply with the provisions of this section. The financial condition of any Mortgagee or successor to Tenant's interest under this Lease shall not be a consideration in the determination of the reasonable susceptibility of cure of any default hereunder.

(e) Notice to Mortgagee. No amendment, cancellation, or surrender of this Lease shall be made without the prior express written consent of each Mortgagee.

(f) Term of Mortgagee's Rights. Each Mortgagee shall enjoy the rights granted under this section until such time as its loan to Tenant is repaid and the mortgage or mortgages securing such payment is released. Each Mortgagee shall be entitled, but not required, to exercise such rights within its sole discretion.

(g) Tenant's Right to Refinance. The Tenant, at any time and from time to time, may refinance its investment in the Premises and any improvements and may assign its interest under this Lease as security for any such refinancing, subject to the same restrictions as set out above in Section 23(a). Each refinancing lender shall be entitled to become a Mortgagee and to exercise all of the rights and privileges granted to a Mortgagee under the terms of this Lease. Nothing in this paragraph or this Lease shall limit Tenant's rights or discretion with respect to construction financing for improvements.

(h) Delivery of Documents to Landlord. Notwithstanding anything to the contrary contained herein, the Tenant shall use its best efforts to deliver to Landlord any document Landlord is required to execute hereunder not less than thirty (30) days from the date such document is required to be executed.

#### **SECTION 24. ERRONEOUS PAYMENTS**

No payments made to Landlord by a Mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of this Lease. A Mortgagee having made any payment to Landlord pursuant to Landlord's wrongful, improper, or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof provided demand therefor shall be made not later than one (1) year after the date of such payment.

#### **SECTION 25. ASSIGNMENT AND SUBLETTING**

(a) Limitations. Except as provided in section 1(c) hereof, Tenant shall not assign, transfer, convey, sublet,

encumber or dispose of its right, title or interest in the whole or any part of the Premises provided Tenant shall have the right, without Landlord's consent to (i) sublease a portion of the space on MacMillan Pier to retail vendors, and (ii) sanction and license special events on the MacMillan Pier, which have a duration of one year or less. Notwithstanding the foregoing, other than special events on the MacMillan Pier, which have a duration of one week or less, Tenant shall not enter into a sublease of all or substantially all of the space on the MacMillan Pier or having both a term of more than one (1) year and an annual base rental in excess of \$50,000, without first receiving the approval of the Landlord.

To the extent that any sublessee, licensee, or other person or entity who desires to use or occupy space on MacMillan Pier, and who is prepared to commit to a contractual arrangement that will commit to aggregate payments in excess of \$15,000, requires that Landlord provide such person or entity with a subordination, non-disturbance and attornment agreement, Landlord agrees not to unreasonably withhold its consent to enter into such agreement, consistent with a form to be mutually agreed upon by Landlord and Tenant.

The failure of a transferee or any other successor in all of Tenant's interest under this Lease to assume the obligations of Tenant hereunder or to obtain the approval of Landlord as herein required shall not relieve such transferee or successor of such obligations or limit Landlord with respect to any rights, remedies or controls it may have under this Lease.

Any transfer by operation of law or otherwise of Tenant's interest in this Lease or of a controlling interest in Tenant's ownership so as to permit the exercise of substantial managerial influence over the operations of Tenant by such transferee shall be deemed a transfer of Tenant's interests in the Premises for the purposes of this Section 25. Tenant agrees to comply with the requirements of Massachusetts General Laws, Chapter 7, Section 40J, regarding the filing of updated beneficial interest disclosure statements.

#### **SECTION 26 PERFORMANCE BY SUBTENANT AND OTHERS**

Any act required to be performed by Tenant pursuant to the terms of this Lease may be performed by a sublessee or assignee of Tenant occupying all or any part of the Premises, or by any other person or entity, and the performance of such act shall be deemed to be performance by Tenant and shall be acceptable to Landlord as Tenant's act.

#### **SECTION 27. ESTOPPEL CERTIFICATES**

Either party shall, without charge, at any time and from time to time hereafter, within ten (10) days after written request of the other party, certify, by written instrument duly executed and acknowledged, to any Mortgagee or purchaser, or proposed purchaser, or to any other person or entity specified in such request: (a) as to whether this Lease has been supplemented or amended and, if so, the substance and manner of such supplement or amendment; (b) as to the validity and force and effect of this Lease, in accordance with its tenor as then

constituted; (c) as to the existence of any default; (d) as to the existence of any offsets, counterclaims, or defenses on the part of such other party; (e) as to the commencement and expiration dates of the term of this Lease; and (f) as to any other matters as may reasonably be so requested. Any such certificate may be relied upon by the party requesting it and any other person or entity to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing it.

#### **SECTION 28. EXERCISE OF REMEDIES**

In addition to any remedies specifically granted in this Lease, the parties shall have any and all remedies at law and in equity. A party may exercise its rights and remedies at law and in equity. A party may exercise its rights and remedies without regard to whether the exercise of one right or remedy precedes, concurs with, or succeeds, the exercise of another. No delay or omission in exercising a right or remedy shall exhaust or impair the right or remedy or constitute a waiver of, or acquiescence to, a breach or default under this Lease.

#### **SECTION 29. FORCE MAJEURE**

In the event that Landlord or Tenant shall be delayed, hindered in, or prevented from the performance of any act required under this Lease by reason of strikes; stoppages of labor, shortages of material or equipment; fire; war; civil commotion; flood or other casualty; accident; governmental regulations; the exercise of power of eminent domain; or other contingencies beyond the reasonable control of the parties; then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

#### **SECTION 30. NOTICES**

Notices and communications hereunder shall be in writing and shall be personally delivered or mailed by certified mail, return receipt requested, or by confirmed facsimile transmission to Landlord or Tenant, as the case may be, at their respective addresses first above written, or at such other address as either party shall from time to time designate to the other by notice given as herein provided. A notice shall be deemed received on the date which is three (3) business days after such notice has been sent by certified mail, return receipt requested.

#### **SECTION 31. SEVERABILITY**

If any of the provisions of this Lease or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby, and every provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

#### **SECTION 32. ENTIRE AGREEMENT**

The terms and provisions of this Lease, together with all the exhibits and schedules referenced herein, constitute the entire agreement between the parties and shall supersede all previous communications, representations, or agreements, either oral or written, between the parties with respect to the subject matter hereof and thereof. No agreement or understanding varying or extending the same shall be binding upon either party unless in writing signed by both parties.

**SECTION 33. PROHIBITION OF DISCRIMINATION**

In the performance of this Lease, no discrimination will be practiced by or against any person on the grounds of race, color, marital status, physical disability, age, sex, sexual orientation, religion, ancestry or national origin in any manner prohibited by the laws of the United States, the Commonwealth of Massachusetts or the Town of Provincetown.

**SECTION 34. MISCELLANEOUS**

This Lease may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought. Whenever the consent of the Landlord is required hereunder, such consent shall be valid only where given by the Landlord in writing. This Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto. The headings in this Lease are for purposes of reference only and shall not limit or define the meaning hereof. This Lease may be executed in any number of counterparts, each of which is an original, but all of which shall constitute one instrument. The Lease is to be governed by the laws of the Commonwealth of Massachusetts. Tenant agrees to bring any action to enforce the terms of this Lease in the appropriate court of the Commonwealth of Massachusetts. The standard of interpretation that any ambiguity found within this lease be construed against the drafter shall not be applicable.

IN WITNESS WHEREOF, the parties hereto have executed this Lease through their duly authorized representatives as of the day and year first above written.

**LANDLORD:**  
TOWN OF PROVINCETOWN  
BY ITS BOARD OF SELECTMEN

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**TENANT:**  
PROVINCETOWN PUBLIC PIER CORPORATION  
BY ITS BOARD OF DIRECTORS

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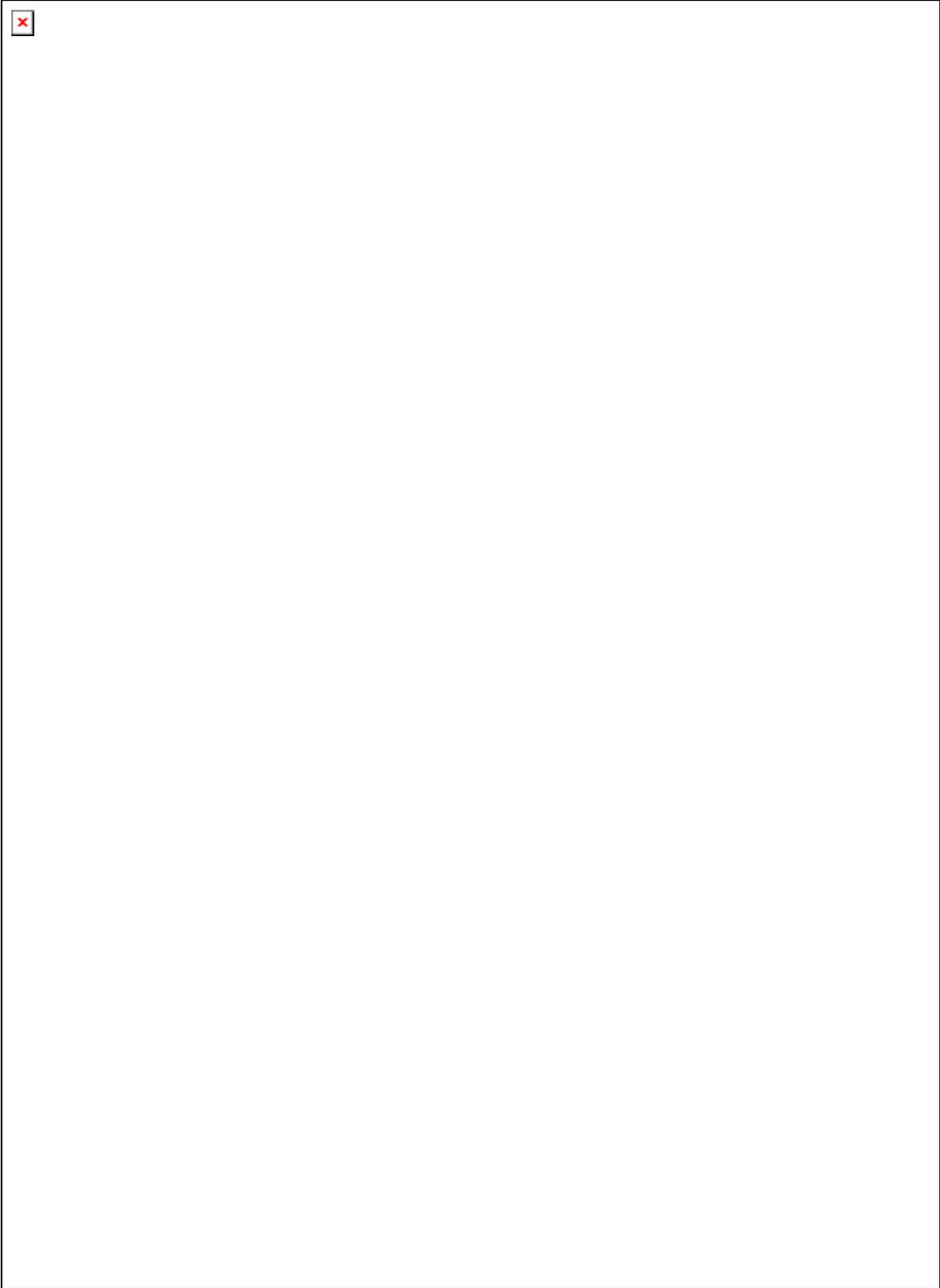
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**EXHIBIT A**  
**Description of Property**



**EXHIBIT B**

**List of Existing Tenants**

<b>Tenant</b>	<b>Status</b>	<b>Expiration</b>
<b>Leases</b>		
Bay State Cruises	10 year lease	December 31, 2013
<b>Float Space Licenses</b>		

1W-Edward J. Salvador	Pending renewal	November 30, 2004
2W- Cee Jay Corp	Pending renewal	November 30, 2004
3W- John R. Woods, Inc.	Pending renewal	November 30, 2004
4W- Portuguese Princess	Pending renewal	November 30, 2004
5W- Dolphin Fleet	Pending renewal	November 30, 2004
6W- Ranger V Corp.	Pending renewal	November 30, 2004
7W- Louigi's Lobster Float	Pending renewal	November 30, 2004
8W- Float Space 8W Inc.	Pending renewal	November 30, 2004
9W Cape Cod Bay Sails	Pending renewal	November 30, 2004
10W- Hindu of Provincetown	Pending renewal	November 30, 2004
1E-John Henrique	Pending renewal	November 30, 2004

<b>Resident Fishing Fleet</b>	<b>Dock Permit Status</b>	<b>Expiration</b>
F/V Allison's Way	Current	March 31, 2005
F/V Ancora Praia	Current	March 31, 2005
F/V Annalise	Current	March 31, 2005
F/V Antonio Jorge	Current	March 31, 2005
F/V Ashley Marie	Current	March 31, 2005
F/V Becca Anna	Current	March 31, 2005
F/V Blue Ocean	Current	March 31, 2005
F/V Blue Skies	Current	March 31, 2005
F/V Camilla Louise	Current	March 31, 2005
F/V Carol Ann	Current	March 31, 2005
F/V Chico Jess	Current	March 31, 2005
F/V Ester's Pride	Current	March 31, 2005
F/V Evelyn M	Current	March 31, 2005
F/V Forecheck	Current	March 31, 2005
F/V Glutton	Current	March 31, 2005
F/V Idle Hour	Current	March 31, 2005
F/V Janet M	Current	March 31, 2005
F/V Jenny B	Current	March 31, 2005
F/V Jersey Princess II	Current	March 31, 2005
F/V Joan & Tom	Current	March 31, 2005
F/V Laura E	Current	March 31, 2005
F/V L. C.	Current	March 31, 2005

<b>Tenant</b>	<b>Status</b>	<b>Expiration</b>
F/V Lisa Anne	Current	March 31, 2005
F/V Little Boat	Current	March 31, 2005
F/V Little Sammy	Current	March 31, 2005
F/V Morgan Gayle	Current	March 31, 2005
F/V Nauset	Current	March 31, 2005
F/V Pam & Todd	Current	March 31, 2005
F/V Pappa John	Current	March 31, 2005
F/V Pamet	Current	March 31, 2005
F/V Princess	Current	March 31, 2005
F/V Raider III	Current	March 31, 2005
F/V Razor's Edge	Current	March 31, 2005
F/V Richard & Arnold	Current	March 31, 2005
F/V Sara E	Current	March 31, 2005
F/V Sea Skipper	Current	March 31, 2005
F/V Sean & Sara	Current	March 31, 2005

F/V Susan L	Current	March 31, 2005
F/V Teri M	Current	March 31, 2005
F/V Terra Nova	Current	March 31, 2005
F/V Second Effort	Current	March 31, 2005
F/V Sea Hunter	Current	March 31, 2005
F/V Silver Mink	Current	March 31, 2005
F/V Susan C III	Current	March 31, 2005
F/V Uptown Girl	Current	March 31, 2005
F/V Valente	Current	March 31, 2005
R/V Vast Explorer	Current	March 31, 2005

## **EXHIBIT "C"**

### **Rent Determination Schedule**

This "Exhibit "C" will include, when completed, a five (5) year operating proforma showing all revenues and expenses, including the required reserve for asset replacement. The PPPC Board is still in the process of finalizing this proforma. In anticipation of our negotiations, however, we thought it useful to provide a brief narrative describing our approach to defining a rent schedule.

PPPC's underlying premise is that there exists a unique relationship between Landlord and Tenant, whose interests, by statute by using simple common sense, are directly aligned. In addition, a very important objective to be achieved in the Lease is to insure that PPPC be permitted to meet its obligations as defined in the Special Act and that there be clear accountability, accompanied by equally clear transparency, with respect to PPPC's fiscal responsibilities to the town.

We propose that Tenant provide to Landlord a proforma budget in multiple five year increments. Each proforma budget will show all projected revenues and projected expenses, including a budgeted capital reserve. Rent for each five year period will be derived from these calculations. The Lease further anticipates that there could either be shortfalls in the rent derived from this process or, in the alternative, an ability to pay more than was estimated. We have drafted how we propose to manage these alternative possibilities. This Exhibit "C" (when completed) along with Section 3 subparagraphs (a), (f) & (g), together will define the rent to be paid by Tenant and simultaneously accomplish the two important objectives defined above. Finally, the Lease also addresses the possibility where Landlord and Tenant cannot agree on the Rent Determination schedule in which case Landlord has the recourse of dissolving PPPC.

## **EXHIBIT D**

### **Arbitration Procedures**

For the purposes of this Agreement, the term “Arbitration Procedures” shall mean that when a matter is to be determined by arbitration, the party desiring arbitration will give notice to that effect to the other party and will, in such notice, appoint an arbitrator on its behalf. Within fifteen (15) days after receipt of such notice, the other party will, by notice to the original party, appoint a second arbitrator on its behalf. Within thirty (30) days after the appointment of the second arbitrator, the two arbitrators will appoint a third and give notice of the appointment to each party. Each arbitrator must be a disinterested person of recognized competence in the field involved. The three (3) arbitrators will, as promptly as possible, determine the matter, provided however, that (a) if the second arbitrator is not appointed in the matter proscribed, the first arbitrator may determine the matter alone; and (b) if the two arbitrators appointed by the parties are unable to agree within thirty (30) days after the appointment of the second arbitrator upon the appointment of a third arbitrator, they must give notice of such failure to agree to the parties and if the parties fail to agree upon the selection of a third arbitrator within fifteen (15) days after notice from the arbitrators, either of the parties upon notice to the other party may request such appointment by a judge of the Superior Court, Barnstable County, Commonwealth of Massachusetts, or of any other court having jurisdiction and exercising functions similar to those now exercised by the Superior Court. The determination of the majority of the arbitrators or the sole arbitrator, as the case may be, will be final and binding. Each party agrees to pay the fees and expenses of the arbitrator appointed by such party and one-half (1/2) of the fee and expenses of the third arbitrator, if any. If arbitration is by one (1) arbitrator by reason of the failure of the second party to appoint an arbitrator, then each party will pay one-half (1/2) of the fee and expense of the one (1) arbitrator. Judgment on the award rendered by the arbitrators may be entered in a court having jurisdiction thereof. Unless otherwise provided in this paragraph, each arbitration shall be governed by the CPR Institute for Dispute Resolution Rules for Non-Administered Arbitration.

**EXHIBIT E**

**List of Repairs**

Floating dock finger piers restoration  
Power supply voltage correction affecting lighting  
Handicap accessible ramp rider  
Handicap ramp for office

Other non-functioning or sub-standard pier equipment

Lighting and power pedestals on fixed finger piers

Previous agreements

Chapter 91 Settlement Agreement conditions DEP File No. W99-9339  
(Primarily, bathrooms, payphone, handicap accessible courtesy float, water quality testing and beach management plan)

**EXHIBIT F**

## **Cooperative Assistance**

Cooperative assistance includes, but is not limited to the following; garbage pickup and cans, snow removal, street sweeping, police and fire services and incidental assistance with heavy equipment, repairs and set-ups.